IN THE HIGH COURT OF MADHYA PRADESH
A T G W A L I O R
BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 11th OF NOVEMBER, 2022

CRIMINAL APPEAL NO. 513 OF 2012

BETWEEN:-

1. BIHARI SINGH, SON OF CHUTAI SINGH KUSHWAH, AGED ABOUT 56 YEARS,
2. HARIOM SINGH, SON OF BIHARI SINGH KUSHWAH, AGED ABOUT 28 YEARS,
BOTH ARE RESIDENTS OF GANESH COLONY, FATEHPUR, DISTRICT SHIVPURI (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI ASHOK JAIN- ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION KOTWALI, DISTRICT SHIVPURI (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI C. P. SINGH- PANEL LAWYER)

……..

This appeal coming on for final hearing this day, ***Hon'ble Shri Justice Rajeev Kumar Shrivastava*** *passed the following:*

J U D G M E N T

The appellants have preferred this appeal under Section 374 of CrPC against the judgment of conviction and sentence dated 14-05-2012 passed by Sessions Judge, Shivpuri (MP) in Sessions Trial No. 113 of 2011, by which each of them has been convicted under Section 302 of IPC and sentenced to undergo Life Imprisonment with a fine of Rs. 1,000/- default stipulation and further sentenced to undergo one year Rigorous Imprisonment with fine of Rs.500/- with default stipulation for offence under Section 201 of IPC respectively. Both the sentences have been directed to run concurrently.

(2) In brief, the prosecution case is that on 17-02-2011 at around 08:00 in the morning, Veer Bahadur Singh (PW3) the brother of accused Bihari Singh, lodged a report at Police Station Kotwali, Shivpuri to the effect that at around 05:00 in the morning his brother Bihari Singh informed him that his daughter-in-law Jyoti, aged about 24 years, was found dead in burn condition and the cause of which is not known to him. On the basis of that, a merg was recorded under Section 174 of CrPC vide Ex.5-A. Thereafter, police reached the spot and recorded Panchnama of dead body of deceased Jyoti vide Ex.P3 and seized plain and blood-stained earth and other articles vide Ex.P4 and also spot map Ex.P6 was prepared. Thereafter, the dead body of

the deceased sent for its postmortem vide Ex.P12. At the time of preparation of Panchnama of dead body of deceased, injuries were found on her body. The statements of neighbours were recorded. After the incident, the father-in-law, husband and other family members remained absconding on the basis of which, the Police in-charge Shri Dilip Singh Yadav, on the basis of causing disappearance of evidence of offence, committed by appellants- accused, registered the FIR vide Ex.P15. Statements of the witnesses were also recorded and thereafter, the accused were arrested and on the basis of memorandum of accused Bihari Singh, one shirt vide Ex.P11 was seized. All seized articles were sent to FSL for examination. After completion of investigation and other formalities, police filed charge sheet before the Court of JMFC on 11-05-2011 from where the case was committed to the Sessions Court for its trial. The accused abjured their guilt and pleaded complete innocence. They did not examine any witness in their defence. The prosecution in order to prove its case examined as many as ten witnesses.

(3) The trial Court, after appreciating the entire evidence, led by the prosecution and relying on the same, found charges against appellants proved and accordingly, convicted and sentenced them for offences as mentioned above in paragraph 1 of this judgment.

(4) The learned counsel for the appellants contended that the judgment passed by the Trial Court as well as the approach of Trial Court is bad in law. There are material contradictions and omissions in

the statements of prosecution witnesses, therefore, their evidence are unreliable. There is no eye-witness to the alleged incident and only on the basis of surmises and conjectures, the appellants have been charged for the alleged offence. The prosecution has failed to prove its case beyond all reasonable doubt. It is further submitted that the Trial Court has not evaluated and appreciated the prosecution evidence properly and committed an error in convicting and sentencing the present appellants. There is no independent witness to the incident. Therefore, the impugned judgment of conviction and sentence passed by the Trial Court deserves to be set aside and the appellants- accused are entitled for acquittal.

(5) Refuting the aforesaid contentions raised by learned counsel for the appellants, learned State Counsel submitted that considering the nature and gravity of offence as well as the material available on record, the Trial Court has rightly assigned cogent reasons in order to hold the appellants guilty and, therefore, no interference is warranted and the appeal deserves to be dismissed.

(6) Following questions are necessary for determination of present appeal:-

(1) As to whether death of deceased was homicidal in nature or not?

(2) As to whether appellants- accused have caused death of deceased with common object or not?

(3)As to whether appellants- accused after committing murder of deceased have destroyed evidence in order to save themselves or not ?

(7) We have heard learned counsel for the parties and perused the evidence available on record.

(8) To answer the above-mentioned questions, it is necessary to analyze the evidence of following material witnesses.

(9) PW1- Baiju Adiwasi in para 1 of his examination-in-chief deposed that he came to know that deceased Jyoti died by setting her on ablaze and he did not know about the incident. This witness in para 2 as well as in para 6 denied that on 16-02-2011 at 09:00 in the night when he reached house of Bihari and Hariom, at that time, a quarrel was going on with deceased by Bihari and Hariom because she was adamant to go to her parental house. This witness in para 4 further deposed that the police had neither interrogated him nor had recorded any of his statement and he could not say as to why the police did not record his statement in Ex.P1.This witness did not support the prosecution version and turned hostile.

(10) PW2 Madanlal in para 1 of his examination-in-chief deposed that neither he does know about the cause of death nor he does get any information about the death of deceased. In para 2 this witness further deposed that in his presence, no seizure was made by the police. This witness in para 7 denied that he is giving false evidence in order to

save the accused because of accused's neighbour. This witness also did not support prosecution version and turned hostile.

(11) Veer Bahadur Singh (PW3) brother of appellant No.1 on the basis of whose information merg was recorded at police station, had put in his signatures on Panchnama of dead body of deceased Ex.P3 and spot map Ex.P6. This witness in para 4 denied that while on 16-02-2011 accused Bihari Singh and his son co-accused Hariom were present in the house, deceased Jyoti was adamant to go to her parental home and in his presence Bihari was trying to reconcile her. This witness denied that Bihari and Hariom committed murder of the deceased. This witness in para 7 admitted that on the date of incident no sound of quarrel with the deceased was heard by him and before her death, he could not say about the quarrel. In relation, the father of deceased Hasan Singh is his brother-in-law and the deceased died by setting her on ablaze. This witness also did not support prosecution case and turned hostile.

(12) PW4 Prabhu, the witness of arrest memo Ex.P9, memorandum of accused Bihari Singh Ex.P10 and seizure memo Ex.11, did not support the prosecution case and also turned hostile as this witness in para 5 deposed that in his presence the aforesaid documents were not prepared by police and the police had only taken his signatures.

(13) PW5- Dr.O.P. Sharma in his evidence deposed that on 17-02-2011 he was posted as Medical Officer in District Hospital Shivpuri

and on external examination, he found the following burn marks suffered by the deceased:-

> Body lying lupine on table, Pugilistic appearance, while body become black due to burn except both hands, legs (below knee) kerosene smell come from body, hairs (scalp), Remnants of burnt clothes are adherent to body around chest, abdomen and waist and back, both eye are closed, tongue protrude out, bitten between teeth, tongue become black due to smoke, she wear sandal in both foot are burnt. Skin of both arm on post-arm became cracked and contracted and exposed of mid burned present over face, neck, whole chest, whole back, both upper limbs, upper wrist, whole abdomen and perineum except 1/4th upper part of abdomen, both thigh and private part. No redness margin present at margin of burn. Few dry particles are present over thigh, Margin not inflammation present over burn area.

Dr. Sharma also found the following injuries over the body of deceased on conduction of postmortem:-

> Injury No.1- Lacerated wound over mid-forehead size 2''x ¾'' x bone deep caused by hard and blunt object.
>
> Injury No.2- Lacerated wound over left parietal region size 1''x1/4''x skin deep caused by hard and blunt object.

According to the opinion of doctor, the injuries are ante-mortem in nature caused by hard and blunt object and injury no.1 is grievous and rest are simple. The mode of death is asphyxia as a result of airway obstruction due to compression of trachea. The death is homicidal in nature and duration of death was within 24 hours of postmortem examination. Thus, it is clear that after strangulating the deceased, she was burnt.

(14) PW6- Hasan Singh who is father of deceased Jyoti in para 1 of his examination-in-chief deposed that he had talked with his daughter deceased Jyoti in the night on 16-02-2011 and his daughter told that she will come to her parental house and told him to bring her to her parental house. In para 2 this witness deposed that on the next day, TI Shivpuri telephoned him and told regarding death of deceased Jyoti. In para 4, this witness deposed that he had gone to the house of accused with the police and had seen the dead body of deceased Jyoti having sign of injuries and also burn injuries on her body. This witness further in para 5 denied that before his arrival at Shivpuri, the police had sent the dead body of deceased to postmortem house.

(15) PW7 Jitendra Singh who is brother of the deceased, in para 1 of his examination-in-chief deposed that there was a talk with Joti at 09:00 in the night and Jyoti expressed her willingness to come to her parental house because the accused are harassing her. This witness in para 3 deposed that in the morning, he had seen the dead body of deceased in the postmortem room.

(16) PW8 Jagnnath Singh, who was posted as Head Constable at Police Station Kotwali on 20-03-2011 recorded merg Ex.P5-A on the basis of information furnished by Veer Bahadur Singh.

(17) PW9 Ranvir Singh Yadav who was also posted as ASI at Police Station Kotwali, Shivpuri on 17-02-2011 deposed that after receipt of merg no.11of 2011, he reached the spot and thereafter, merg enquiry was conducted by him. Similarly, PW10 Dilip Singh Yadav who was

posted as Town Inspector at Police Station Kotwali Shivpuri also recorded the statements of witnesses and seized articles were sent vide Ex.P17 and Ex.P18 by him to FSL Sagar for examination.

(18) Section 201 of IPC reads as under:-

> Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;
>
> **If a capital offence** — shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;
>
> **If punishable with imprisonment for life** — and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
>
> **If punishable with less than ten years imprisonment** — and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

(19) Section 106 of the Indian Evidence Act reads as under:-

> **''106. Burden of proving fact especially within knowledge.-** When any fact is especially within the

> knowledge of any person, the burden of proving that intention is upon him."

It is well-established principle of law that where an incident is especially within the knowledge of the accused, then the burden of proof is on the accused to prove as to how the death of the deceased had occurred other than in normal circumstance.

The Hon'ble Apex Court in the matter of **Babu alias Balsubramaniam and Anr. vs. State of Tamil Nadu, (2013) 8 SCC 60** has held as under:-

> "**21.** It is also pertinent to note that PW-5 Dr. Rajabalan stated that the injuries sustained by the deceased could have been caused 10 to 12 hours prior to the post-mortem. We have already stated that the post-mortem was conducted at 5.00 p.m. Thus, the death occurred around 6.00 a.m. The death occurred in the house where the deceased resided with A1-Babu. Presence of the accused at 6.00 a.m. in the house is natural. Besides, it is not contended by A1-Babu that he was not present in the house when the incident occurred. To this fact situation, Section 106 of the Evidence Act is attracted. As to how the deceased received injuries to her head and how she died must be within the exclusive personal knowledge of A1-Babu. It was for him to explain how the death occurred. He has not given any plausible explanation for the death of the deceased in such suspicious circumstances in the house in which he resided with her and when he was admittedly present in the house at the material time. This circumstance must be kept in mind while dealing with this case. We are mindful of the fact that this would not relieve the prosecution of its

burden of proving its case. But, it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference. In this case, in our opinion, the prosecution has succeeded in proving facts from which reasonable inference can be drawn that the death of the deceased was homicidal and A1-Babu was responsible for it. A1-Babu could have by virtue of his special knowledge regarding the said facts offered an explanation from which a different inference could have been drawn. Since he has not done so, this circumstance adds up to other circumstances which substantiate the prosecution case.

22. In *Tulshiram Sahadu Suryawanshi & Anr. V. State of Maharasthra [(2012) 10 SCC 373],* while dealing with Section 106 of the of the Evidence Act, this Court observed as under:

> "A fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as to the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act

> can also be utilized. Section 106 however is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference." The above observation is attracted to this case."

Similarly, the Hon'ble Apex Court in the case of **Tulshiram Sahadu Suryawanshi and Anr. vs. State of Maharashtra (2012) SC 373,** has held as under:-

> ''**22.** The evidence led in by the prosecution also shows that at the relevant point of time, the deceased was living with all the 3 accused. In other words, the appellants, their son-A3 and the deceased were the only occupants of the house and it was, therefore, incumbent on the appellants to have tendered some explanation in order to avoid any suspicion as to their guilt. All the factors referred above are undoubtedly circumstances which constitute a chain even stronger than the account of a eye-witness and, therefore, we are of the opinion that conviction of the appellants is fully justified.
>
> **23.** It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a

process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. It is useful to quote the following observation in State of *West Bengal vs. Mir Mohammed Omar (2000) 8 SCC 382:*

"38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In *Shambhu Nath Mehra v. State of Ajmer (2000) 8 SCC 382* the learned Judge has stated the legal principle thus:

11"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in

> which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

(20) It is on record that the incident took place inside the house of appellants. Appellant No.1 is the father-in-law and appellant No.2 is the husband of deceased Jyoti. Deceased Jyoti died due to asphyxia as a result of strangulation and the injuries were ante-mortem in nature caused by hard and blunt object. Injury No.1 is the lacerated wound over the mid-forehead and grievous in nature. The death of deceased was homicidal in nature and thereafter, her body was burnt and burn marks were found in postmortem. It is also settled principle of law that only with the aid of Section 106 of Evidence Act, no person can be convicted but considering the other evidence available on record as mentioned above, the burden of proof shifts over the accused. It is the case of the prosecution that the parents of deceased were not informed about the death of the deceased. Although the real brother of appellant No.1 Veer Bahadur Singh (PW3) who lodged merg report did not support prosecution case but other evidence is available on record to establish the appellants guilty. There is another circumstance against the appellants that they had absconded after the incident. Although it is equally true that in some of cases the person under apprehension of false implication may abscond after the incident but in some of cases, where remaining circumstance indicates guilty consciousness of the

accused, then his absconsion after the incident is also an incriminating circumstances indicating towards guilt of accused. It is also well-established principle of law that non-explanation of incriminating circumstances can be construed as circumstances indicating guilt of accused. Similar view has been expressed by the Hon'ble Apex Court in the case of **Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC 681**.

(21) Once the prosecution has established the circumstances, then by virtue of provisions of Section 106 of the Evidence Act, the happenings inside room of the appellants' house comes within exclusive knowledge of the appellants- accused. The aforesaid Section applies to the cases like the present one where the prosecution has succeeded in proving the facts from which a reasonable inference can be drawn regarding the death of the deceased. The prosecution has rightly established strong prima facie case by which the burden or onus is shifted upon the appellants- accused. The appellants remained failed to establish that they have not committed the alleged offence. Thus, it is clear that in view of Section 106 of the Evidence Act, the burden of proof is on the appellants and the prosecution has already proved the circumstances beyond reasonable doubt. Therefore, the present case is a fit case for invoking Section 106 of Evidence Act which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and with the aid of Section 106 of the Evidence Act, the appellants-accused can be held guilty for alleged offence committed by them.

(22) In view of above discussion as well as totality of the facts and circumstances of the case and the materials available on record, this Court is of the considered opinion that the prosecution has succeeded in establishing the guilt of the appellants for the offences under Sections 302, 201 of IPC. The learned trial Court has not committed any error in passing the impugned judgment of conviction and sentence. Accordingly, the appeal filed by the appellants fails and is hereby **dismissed.** The impugned judgment of conviction and sentence dated 14-05-2012 passed by Sessions Judge, Shivpuri (MP) in Sessions Trial No.113 of 2011 is **affirmed.**

(23) The appellants are in jail. They shall undergo the remaining jail sentence.

(24) A copy of this judgment be sent to the concerning Jail as well as a copy of this judgment along with record be sent back to the Court below for necessary information and compliance.

(G. S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

MKB