

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

1	Case No.	Criminal Appeal No.1387/2011
2	Parties Name	Ganesh <i>Vs.</i> State of M.P.
3	Date of Judgment	12/7/2022
4	Bench constituted of	Hon'ble Shri Justice Vivek Rusia and Hon'ble Shri Justice Anil Verma
5	Judgment delivered by	Hon'ble Shri Justice Anil Verma
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri M.K. Vijaywargiya Adv. for the appellant. Shri Mukesh Kumawat, GA for the respondent/State.
8	Law laid down	If the accused/appellant was alone in a car with the deceased persons, the burden of proof lies upon the appellant to explain certain circumstances in respect of his plea regarding the accidental death of deceased. The appellant did not sustain any injury in the accident and did not make any report to the police. The conduct of the appellant becomes suspicious. In absence of any cogent explanation by the appellant, point to his guilt.
9	Significant paragraph numbers	20 to 27.

**(VIVEK RUSIA)
JUDGE**

**(ANIL VERMA)
JUDGE**

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE ANIL VERMA**

CRIMINAL APPEAL No. 1387 of 2011

Between:-

**GANESH S/O POONAMCHAND KHATI,
AGED ABOUT 22 YEARS,
OCCUPATION: FARMAR
R/O: VILLAGE LOKODA DISTRICT - UJJAIN
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI MANISH KUMAR VIJAYWARGIYA ADV.)

AND

**THE STATE OF MADHYA PRADESH
THROUGH - P. S. KHUDEL, INDORE
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI MUKESH KUMAWAT, GA)

*This appeal coming on for hearing this day, **JUSTICE ANIL VERMA**
passed the following:*

JUDGMENT

(Delivered on 12/7/2022)

1/ The appellant has preferred the present appeal against the judgment of conviction dated 11.11.2011 passed by the Sessions Judge,

Indore in Sessions Trial No.937/09, whereby the appellant Ganesh has been convicted and sentenced as under:-

Conviction u/S.	Sentence	Fine	Imprisonment in lieu of payment of fine amount
302 of IPC	Life Imprisonment (two counts)	Rs.10,000/-	1 year R.I.
201 of IPC	Two years' R.I.		

Both the jail sentences have been directed to run concurrently.

2/ It is admitted fact that deceased Girija Bai was married to the appellant about 3 years prior to her death and they were having one infant son Krishna.

3/ As per the prosecution story, on 22.5.2009 at about 6.15 p.m. police station Khudel got information from Rajesh Yadav (PW-9) about a burning car lying in the deep ditch at Nachanmore Valley. Police party reached on the spot and found the burning car lying in the 30 ft. deep ditch at Nachanmore Valley, in which dead bodies of a female and one boy were found observed by the police in totally charred condition. On the basis of the said information two Merg Nos. 1/09 and 2/09 were registered. ASI A.R. Sheikh (PW-10) prepared the inquest report of the dead bodies before the Panch witnesses and sent for the autopsy through Ex.P/16 & P/17 respectively. Postmortem examination was conducted by Dr. N.M. Unda (PW-8) on 23.5.2009. Senior scientific officer Dr. Sudheer sharma (PW-11) inspected the place of occurrence and prepared report Ex.P/18. During the inquiry statement of the witnesses were recorded and it is gathered that the appellant and the deceased were

engaged in violent quarrel with each other and when the deceased was pregnant, she was taken by her parents in their house, where she delivered a male child who was named Krishna. The appellant was suspecting upon the character of the deceased Girija. At the time of living his in-law's home, the appellant had threatened the parents of the deceased by saying that Girija Bai would never see border of the village Baman Khedi. It is also gathered that appellant intentionally and deliberately committed murder of his wife Girija Bai by strangling her in his Maruti Car bearing registration No.MP09-A-5293 and in order to commit the murder of his son Krishna he set the car on fire, pushed it into the deep ditch, due to which Krishna lost his life and in order to escape from the punishment of committing the murder of his wife and son, appellant destroyed the evidence by setting the car on fire and thereafter pushing it down into the deep ditch of the valley. Accordingly offence has been registered against the present appellant.

4/ After completion of the investigation, charge sheet was filed before the Addl. Chief Judicial Magistrate, Indore, who committed the case to the Court of Sessions Judge, Indore, who had framed the charges against the appellant under Section 302 and 201 of IPC. The appellant abjured his guilt. He pleaded innocence and took the plea that death of his wife and son had occurred due to the car accident and he has been falsely implicated in this matter. In order to bring home the charges framed against the appellant, prosecution has examined 14 witnesses.

5/ The trial Court after appreciation of the evidence available on record, arrived at the conclusion that the prosecution has duly proved its case and there is a significant material available against the appellant which is sufficient to convict him. Consequently vide impugned

judgment appellant was held guilty and convicted and sentenced as mentioned above. Hence, the appellant has preferred this appeal.

6/ Learned counsel for the appellant contended that the entire case is based upon circumstantial evidence. There is no eyewitness in the case and no oral or written dying declaration of the deceased has been recorded in this case. The evidence of last seen with the deceased was not established by the prosecution. The chained and linked evidence is missing. The phone call of the accused that he has informed regarding the said incident, is not proved by the prosecution. Ex.P/1 and P/15 are highly doubtful. Prosecution has failed to prove its case beyond reasonable doubt. The chain of the evidence is not complete, therefore, he prays that no case is made out against the appellant under Section 302 and 201 of IPC. Hence he prays that appellant be acquitted from all the charges and the judgment of conviction and sentence passed against him be set aside.

7/ On the other hand, learned GA for the respondent/State submitted that there is ample evidence available against the appellant, which is sufficient to affirm the findings recorded by the trial Court, therefore, the appeal be dismissed.

8/ We have duly examined the entire record and have considered the rival contentions of both the parties.

9/ In the present case first of all it is to be considered that as to whether the death of deceased Girija Bai and Krishna were homicidal in nature.

10/ So far as the death of Girija Bai is concerned, a perusal of the postmortem report of Dr. N.M. Unda (PW-8) shows that the bones of

the neck were found fractured owing to the application of pressure on the neck before her death. The burning of her dead body was subsequent to her death. As per the opinion of the doctor, body of Girija Bai was found in burnt condition and burns were postmortem in nature. Death of Girija Bai was caused by strangulation and it was homicidal in nature. The doctor was cross-examined in this respect, but the doctor's statement makes it manifesto by enlarging the point that the thyroid cartilage of the deceased Girija Bai was found fractured. He has categorically stated in Para 22 and 23 of his statement that aforesaid fracture was antemortem, which was not caused by dashing her body against anything. Dr. N.M. Unda (PW-8) has also denied any possibility that such a fracture was caused after burning the body. Nothing is on record to disbelieve the medical opinion given by doctor N.M. Unda (PW-8) and postmortem report (Ex.P/7). Therefore, the trial Court has rightly held that the death of Girija Bai was homicidal in nature and caused by strangulation.

11/ Dr. N.M. Unda (PW-8) has also performed the postmortem examination of infant Krishna and proved the postmortem report Ex.P/12. The doctor has stated that the poor child Krishna lost his life owing to 3 to 6 degree burns sustained by his body, which were in the nature of antemortem burns. Doctor has opined that the infant Krishna died due to the antemortem burns.

12/ Therefore, on the basis of the evidence of Dr. N.M. Unda (PW-8) and postmortem reports (Ex.P/4 & P/12), it has been proved that the death of Girija Bai was homicidal in nature and caused by strangulation and death of Krishna is due to the burns and the same is also homicidal in nature.

13/ It is clear that there is no direct evidence to establish that the appellant murdered his wife Girija Bai by strangulation and his son Krishna by setting him on fire. The entire case of the prosecution is based upon the circumstantial evidence. In the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116**, the Hon'ble Apex Court has held as under:-

“1. The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established;

2. The facts so established should be consistent with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

3. The circumstances should be of a conclusive nature and tendency;

4. They should exclude every possible hypothesis except the one to be proved; and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

14/ The factors to be taken into account in adjudication of cases of circumstantial evidence is laid down by the Supreme Court in **Anjan Kumar Sarma and others vs. State of Assam (2017) 14 SCC 359** thus :-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to

say, they should not be explainable on any other 7 Cr.A. No.2031/2009 hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

15/ In the case of **Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 1 SCC 681**, the Supreme Court has held as under:-

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was 8 Cr.A. No.2031/2009 committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

16/ The principles of circumstantial evidence is reiterated in **Nizam and another Vs. State of Rajasthan (2016) 1 SCC 550**, wherein the Supreme Court has held that:-

“8. Case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial

evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, forming a chain and there should be no gap left in the chain 15 Cr. A. Nos. 1552/2005, 1569/2005 & 1605/2005 of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally inconsistent with his innocence.”

17/ In the instant case the trial Court has relied on the testimony of Basanti Bai (PW-1), Makhanlal (PW-3) and Dashrath (PW-4). Basanti Bai (PW-1) who is the mother of deceased Girija Bai, Makhanlal (PW-3) and Dashrath (PW-4) have categorically stated in their statements that appellant was used to frequently quarrel with his wife and doubting her character and used to say that he will not keep her with him. Makhanlal (PW-3) has also stated in his statement that deceased Girija Bai had told him that her husband/appellant threatened her that she should leave him, otherwise consequences would not be good. From the statement of Basanti Bai (PW-1) it is also proved that at the time when deceased Girija Bai was pregnant, her parents were compelled and pressed to take their daughter with them. After some time she delivered a male child namely Krishna, but at the time of leaving his in-law's home, the accused had threatened them by saying that Girija Bai would never see the border of village Baman Khedi, i.e. the village of her parents. The conduct of the appellant clearly indicates that his relation with wife was not cordial. He suspected upon her regarding character, therefore, it is proved that there is a sufficient motive of the appellant to kill his wife and his poor child.

18/ As regards the presence of the appellant at the place and time of the occurrence, Chhotelal (PW-2) and Dashrath (PW-4) both have

deposed that on the date of occurrence Ganesh made a call to him asking him to let him talk to Chhotu, but since Dashrath was out of his village so it was not possible for him to contact Chhotu at once. Dashrath also stated that appellant Ganesh had told him that his car was set on fire and he had become unconscious, but appellant in his statement under Section 313 of Cr.P.C. has specifically mentioned that he was not present on the spot. Girija Bai and Krishna had gone with Dashrath and after that the said accident was occurred, but in the inquest report (Ex.P/15) it is also indicated that appellant was present on the spot and he was taken to the hospital after the tragic occurrence.

19/ Chhotelal (PW-2) has stated in his statement that when he reached on the place of occurrence, at that time appellant Ganesh was found there alone and he was doing the drama of becoming unconscious. Rajesh Yadav (PW-9) is the first person who reached on the place of occurrence just after the incident, has stated that when he arrived at the spot he found the burning car in which dead body of a female and a boy were observed by him in a totally charred condition and when he was going to ditch of Nachanmore Valley, he found present appellant there. Rajesh Yadav (PW-9) has given the Merg intimation Ex.P/10 & P/11, which was also proved by ASI Mr. A.R. Sheikh (PW-10). Therefore, the presence of the appellant on the spot of the tragic occurrence at that time is established beyond reasonable doubt. Surprisingly present appellant himself not gave any information to the police regarding this tragic incident and he was not present on the spot at the time of inquest Panchnama (Ex.P/1). Even the appellant absconded from the spot and he was arrested by the police after 3 days of the incident. This conduct of appellant is found very unnatural and suspicious.

20/ On the contrary during the course of argument it was argued by learned counsel for the appellant that although appellant was present on the spot and his car was accidentally fell down in the Nachanmore Valley and gas-kit caught fire, due to which car got burnt along with his wife and child and he tried to save them, but unfortunately he could not succeed. But in the present case the medical evidence discloses that the wife of appellant Girija Bai died due to strangulation before the burning.

21/ It is also noteworthy that after the incident the spot was inspected by senior scientific officer Dr. Sudhir Sharma (PW-11), wherein it has been described in his report (Ex.P/18) that it is quite improbable that the car had fallen in the ditch of valley just by accident. He has categorically stated and opined that the car appears to have been pushed down into the ditch of the valley at an angle of 90 degree and subsequently it was set on fire. Nothing has been come out in the cross-examination of this witness to disbelieve his statement. Therefore, the trial Court has rightly believed his statement.

22/ Section 106 of the Evidence Act says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. If the appellant was alone with both the deceased in the said car, the burden of proof lies upon the appellant to explain certain circumstances in respect of his plea regarding the accidental death, but the appellant did not produce any evidence in his defence, even he has denied his version which was admitted by him at earlier stage. The appellant did not sustain any injury in the aforesaid accident and did not make any report to the police authorities about the incident. Therefore, his conduct becomes very suspicious. In absence of any cogent explanation by the appellant, point to his guilt, by which it is established

that appellant is the prime accused of commission of murder of his wife and infant child and he is perpetrator of the crime and in order to escape from the punishment of the aforesaid crime he destroyed the evidence by setting the car on fire and thereafter pushing it down into the deep ditch of the valley.

23/ Now coming to the evidentiary value of the disclosure statement made by the appellant in presence of the inspector Daulat Singh Ranawat (PW-14), Ashok Kalyane (PW-13) and Sanjay Prajapati (PW-12). In the case of **Mohd. Aslam Vs. State of Maharashtra reported in 2001(9) SCC 362** and in the case of **Antar Singh Vs. State of Rajasthan reported in 2004(10) SCC 657** it has been held that even if the Panch witnesses turned hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand violated.

24/ In the instant case the appellant made a statement in Ex.P/4 & P/5 in regard to the recovery of his belt, matchbox and shoes. He also made a statement as to whether the belt, matchbox and shoes were hidden by him. He also stated that he had thrown out his belt and shoes in the valley. SHO D.S. Ranawat allowed the appellant to lead him to the place where the corroborated weapon, belt and other articles were hidden by the appellant. Those articles were recovered and seized in presence of Sanjay Prajapati (PW-12) and Ashok Kalyane (PW-13). Therefore, part of the statement made by the accused was admissible in evidence, as such disclosure statement and consequential recovery of the offending vehicle and other articles found corroborated in the evidence of Sanjay Prajapati (PW-12), Ashok Kalyane (PW-13) and Daulat Singh Ranawat (PW-14).

25/ A perusal of the entire evidence of the aforesaid prosecution case, witnesses, manner in which they deposed before the court and the details stated by them are acceptable and there is no valid reason to disbelieve their statements. It is the duty of the accused to explain the incriminating circumstances proved against him while making statement under Section 313 of Cr.P.C.. Keeping silent and not furnishing any explanation for such circumstances, is an additional link in the chain of circumstances to sustain the charges against him. Recovery of the incriminating materials on his disclosure statement is a duly proved positive circumstance against him.

26/ In the case of **Arun Bhakta Vs. State of West Bengal reported in AIR 2009 SC 1228** it was held that the circumstances from which as inference as to the guilt of the accused was drawn had to be proved beyond reasonable doubt and had to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In the said case the cumulative effect of the circumstances could not negate the presumption of innocence of the accused and the prosecution failed to bring home the offences beyond reasonable doubt. In this case, the circumstances from which the conclusion of guilt of the appellant has been proved are conclusive in nature and all the circumstances are completed and there was no gap left in the chain of evidence. The prosecution has proved the case on the basis of sequence of events and chain of evidence. The defence has failed to establish any fact which would lead to any inference in favour of the accused. The inculpatory fact in this case is incompatible with the innocence of the accused and there is no reasonable doubt with regard to the guilt of the

accused. The guilt of the accused has been fully established and the circumstances are conclusive in nature.

27/ Thus, following circumstances are found proved against the appellant:-

- i. Failure to prove alibi.
- ii. Belt used for strangulation of his wife was recovered at the behest of the appellant.
- iii. The cause of death of his wife Girija Bai was by strangulation and homicidal and death of his child Krishna was also homicidal.
- iv. Recovery of other incriminating articles from the appellant.
- v. Attempt to destroy the evidence by the appellant.
- vi. Presence of motive for causing murder of his wife and child by the appellant.

28/ In view of the above discussion, we find that there is sufficient evidence available on record and the circumstances are linked properly and the guilt of the appellant has been duly established beyond reasonable doubt. Only the appellant is guilty for committing the murder of his wife and infant child. Therefore, we are not inclined to accept the contention of learned counsel for the appellant. We find that the learned trial Court has rightly convicted and sentenced the appellant for offence under Section 302 and 201 of IPC. Accordingly the present appeal is hereby **dismissed**.

29/ The sentence of Life Imprisonment (two counts) with fine of Rs.10,000/- for the offence under Section 302 of IPC and sentence of 2 years R.I. for the offence under Section 201 of IPC, is hereby affirmed.

30/ Disposal of the property shall be as per the orders of the trial Court.

31/ The appeal stands disposed of as dismissed.

32/ Let a copy of this judgment be sent to the trial Court along with the record of the trial Court for information and necessary compliance.

C.C. as per rules.

(VIVEK RUSIA)
JUDGE

(ANIL VERMA)
JUDGE