

HIGH COURT OF MADHYA PRADESH JABALPUR

Cr. A. No.512/1995

Ramadhar @ Daddi Kachhi

Vs.

State of Madhya Pradesh

Present : Hon'ble Mr. Justice S.K. Gangele, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge

Whether approved for reporting: Yes/No

Name of counsel for the parties:

Ms. Manju Khatri, Advocate with Ms. Arti Vishwakarma, counsel for the appellant as amicus curiae.

Shri A.N. Gupta, Govt. Advocate for the respondent/State.

Law laid down:-

(I) If, in presence of the accused at his house something wrong has happened with his wife, then in view of Section 106 of the Evidence Act, he is under burden to give a cogent explanation as to how the crime was committed.

(II) Conviction can be based on circumstantial evidence.

Significant Paragraphs:- 10 to 20, 25 & 26.

J U D G M E N T
(24.01.2018)

Per : Smt. Anjuli Palo, J.

This criminal appeal under Section 374(2) of the Cr.P.C. has been filed by the appellant being aggrieved by the judgment and

sentenced dated 29.12.1994 passed by 1st Additional Sessions Judge, Sidhi in S.T. No.108/93, whereby the appellant was convicted for offence punishable under Section 302 of the IPC and sentenced for life imprisonment.

2. It is not in dispute that the appellant and the deceased (Rani) are husband and wife. On 27.7.1993, Rani died in the house of appellant due to fatal injuries sustained on her neck.

3. In brief the prosecution case is that on 27.7.1993 at about 10:00 a.m., dead body of Rani @ Munni was found in the appellant's house, which is situated at village Jamua, Police Station Majholi, District Sidhi. Her neck was half cut. The appellant himself went to the Police Station, Majhauri and lodged the FIR Ex.P/13. Merg report was registered at Police Station. During investigation, involvement of the appellant was found by the police. Hence, charge sheet has filed against the appellant for offence punishable under Section 302 of the IPC.

4. After committal of the case, learned trial Court framed the charge under Section 302 of the IPC against the appellant. The appellant abjured the guilt and pleaded that he was falsely implicated by the police with the crime.

5. Learned trial Court found that, the appellant caused death of his wife Rani by cutting her neck. He used a *pahsool* (a sharp cutting weapon made by iron) to kill his wife, which was seized by the police on the basis of memorandum given by the appellant. Blood stain was also found on it. Similarly, blood stain was found in the nails of

the appellant. Therefore, he was convicted for offence under Section 302 of the IPC and sentenced for life imprisonment.

6. The appellant has challenged the impugned judgment and sentence on the grounds that his conviction is based on the circumstantial evidence. There is no eye-witness of the incident in the case. The circumstantial evidence is not sufficient to connect him with the offence. On the date of incident, he left his house early morning. The prosecution case is not supported by the prosecution witnesses. Therefore, the impugned judgment is liable to be set aside and the appellant is entitled to be acquitted.

7. We have heard learned counsel for the parties and perused the record.

8. Learned Govt. Advocate has submitted that the appellant was rightly convicted by the trial Court. He further contended that there is sufficient evidence against the appellant. The trial Court has not committed any error in convicting and sentencing the appellant for the offence under Section 302 of the IPC. A proper sentence was awarded against him. Therefore, it is prayed that the appellant may not be acquitted from the charges levelled against him.

9. It is not in dispute that the deceased/wife of the appellant died at the house of the appellant. Her dead body was found in the room, which is shown at 'F' in the spot map prepared by A.P. Dwivedi (PW-10) and that place belongs to the appellant only.

10. On 27.7.1993, appellant himself informed the police that the dead body of his wife was found lying in his house at about 12:00

p.m. and her neck was half cut. At that time, he was not present at his house. His mother informed about the incident to him, then he came there. He saw the dead body of his wife, then he informed the police and thereafter, FIR Ex.13 was registered against an unknown person.

11. Police sent the dead body of the deceased for postmortem. Dr. V.K. Gautam (PW-8) conducted autopsy. He found incised wound at the neck of the deceased size of 4" in length and 3" in deep. During the internal examination, he found cervical wound cut by a sharp weapon. Due to such injury and excessive bleeding, deceased died due to under shock. We find that the opinion of Dr. V.K. Gautam is not rebutted in his cross-examination. Hence, the postmortem report (Ex. P/15) supports the prosecution story.

12. Prosecution has examined the family members of the appellant, because at the time of the incident the deceased was residing with them in separate room in same house. Meharniya (PW-1) mother-in law and Buttu Bai (PW-9) wife of brother of the appellant had not supported the prosecution story. It is quite natural that because they are close relatives of the appellant hence, they do not want that the appellant be punished for offence.

13. Buttu Bai (PW-9) (Devrani of the deceased) clearly stated that she was residing with her mother-in-law and husband in a separate room at the time of incident and appellant was resided with the deceased in separate room. The spot map also indicates that Meharniya (PW-1) is living in a separate room, whereas the dead body was found in appellant's room and that house belongs to Dulare

Kachhi, father of the appellant. There is no possibility that any stranger would commit murder of the deceased.

14. In case of **Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681**. It was held that:-

“In view of Section 106 of the Evidence Act there will be the corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering not explanation on the supposed premises that the burden to establish its case lies entirely upon the prosecution and there is no doubt at all on an accused to offer any explanation.”

16. Learned counsel for the appellant has contended that at the time of incident, the appellant was not present in his house. He left the house in early morning.

17. In case of **Suresh Vs. State of Haryana (2015) 2 SCC 227**, the Supreme Court has observed that:-

“No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts, which are strictly within the knowledge of the accused.”

18. In such situation, where there is no cogent evidence on record in this regard that at the time of incident, the appellant was present at village Umariya and further the appellant has not taken plea of alibi nor any person was examined as defence witness to

establish such facts.

19. In case of **Kuldeep Singh Vs. State of Rajasthan (2000) 5 SCC 7** in para-18 of three judges Bench of Supreme Court as held that:-

18. Reliance was placed by this Court on *Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106* in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in *Dnyaneshwar v. State of Maharashtra (1992) 3 SCC 106* the Supreme Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In *Jagdish v. State of Madhya Pradesh, (2007) 10 SCC 445*, the Supreme Court observed as follows:

“It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.”

See also **Jamnadas Vs. State of Madhya Pradesh and Manoj Vs. State of Madhaya Pradesh (2016)**

13 SCC 12.

20. In the light of above principles laid down by the Supreme Court, we are of considered view that wife of the appellant was found dead in the dwelling home. The husband ordinarily resides, and the husband he offers no explanation that who killed his wife then, this circumstance would indicate that the appellant/husband is responsible for the injury caused to his wife in her neck.

21. Muniraj (PW-4) brother of the deceased deposed that he received information about the death of his sister, then he reached at her house. At that time, Meharaniya (PW-1) mother-in-law of the deceased narrated him that Rani Bai died due to burst of wound present on her neck. He further stated that when his sister came to his house, she told that the appellant was in habit to beat her. The statement of Muniraj (PW-4) cannot be brushed aside.

22. Investigation Officer A.P. Dwivedi (PW-10) deposed that incident took place on 27.7.1993, and on 29.7.1993 he recorded the memorandum of appellant with regard to weapon used for committing offence, which was hidden in the "thaat" (between roof and door of the room) of appellant's house. As per memorandum Ex.P/4 of the appellant, he also recovered appellant's Jangiya vide seizure memo Ex.P/5 before the witnesses. Similarly, as per seizure memo Ex.P/7 he recovered blood stains soil from the spot, where the dead body of deceased was found. All these articles were sent to FSL, Sagar for examination. Panch witness Chhotelal (PW-2) put his signature on the

above documents.

23. Rukmani Prasad (PW-3) duly corroborate the testimony of A.P. Dwivedi (PW-10) that in his presence, the incriminating weapon was recovered as per memorandum of the appellant. There is no contradiction or omission between the testimony of Rukmani Prasad (PW-3) and A.P. Dwivedi (PW-10). It is also stated by Rukmani (PW-3) that he saw some blood stains on the weapon (*pahsool*). He also stated that courtyard of the appellant was covered by walls of room and that place was not in the range of stranger. As per FSL report Ex.P/17, blood stains were found on the soil, Jangiya of the appellant and weapon (*pahsool*).

24. The police also took nails samples of the appellant and sent the same to the FSL, Sagar for its examination. FSL report confirms that blood stains were present in the nails sample of the appellant. Hence, the blood was found on all these articles to connect the appellant with the crime. Therefore, a complete chain of circumstantial evidence is made out against the appellant.

25. This is a case of circumstantial evidence and in cases of circumstantial evidence, the settled law is that the prosecution must establish the entire chain of circumstances, which connects the accused to the crime vide **Wakkar Vs. State of U.P. (2011) 3 SCC 306, Krishnan Vs. State (2008) 15 SCC 430, Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116 and Mohd. Mannan Vs. State of Bihar, (2011) 5 SCC 317.**

26. Recently, in case of **Dhal Singh Dewangan Vs. State of**

Chhattisgarh 2017 CrLJ 1143 (SC), the Supreme Court has held that :

“In cases based on circumstantial evidence, if circumstances on record not framing complete chain so as to exclude every possible hypothesis except the guilt of the accused held entitle to acquittal.”

27. In view of the above discussion, we find that there is sufficient evidence on record. All the circumstances linked properly and duly establish the guilt of appellant beyond any reasonable doubt. Only the appellant is guilty for committing murder of the deceased. Therefore, we are not inclined to accept the contention of learned counsel for the appellant. We find that learned trial Court has rightly convicted and sentenced the appellant for offence under Section 302 of the IPC. Accordingly, the present appeal is hereby dismissed.

28. At present, the appellant is on bail. His bail bonds stands cancelled. He is directed to surrender before the trial Court to undergo the remaining part of jail sentence awarded by the trial Court, failing which the trial Court shall take appropriate action under intimation to the Registry.

29. Copy of the judgment be sent to the trial Court along with its record for information and necessary compliance.

(S.K. Gangele)
Judge

(Smt. Anjuli Palo)
Judge