

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Criminal Appeal No.61/2010

Munna @ Manshalal **Appellant**
 Versus
 State of Madhya Pradesh..... **Respondent**

For the appellant : Mr.B.R.Vijaywar, Advocate
 For the respondent: Mr.A.T.Faridi, Government Advocate

=====

Present: **Hon'ble Mr.Justice J.K.Maheshwari**
Hon'ble Mrs.Justice Anjuli Palo

J U D G M E N T

[17/05/2019]

As per Mrs.Anjuli Palo,J:

The accused has preferred this appeal being aggrieved by the judgment dated 30.9.2009 passed by Additional Sessions Judge, Pipariya, District Hoshangabad whereby he has been convicted by the trial Court for committing offence punishable under section 302 of the Indian Penal and sentenced to undergo life imprisonment with fine of Rs.1,000/-, and in default of payment of fine amount, to suffer rigorous imprisonment for one month.

2. It is not in dispute that, deceased (Asha Bai) was wife of the accused/appellant. Both were residing in the same house situated in Jai Prakash Ward, Pipariya, District Hoshangabad. The prosecution witnesses, namely, Sandeep and Sangita were their children. At the time of incident, they were also residing with

their parents in the same house.

3. In brief, the prosecution case is that in the intervening night of 03.3.2018 & 04.3.2018 at about 2 a.m. the appellant committed murder of his wife at his own house on account of some dispute and quarrel on the ground as to why appellant got assaulted her through Lachchho Bai. In presence of the children, the appellant took fire-wood and gave its blow on his wife (Asha Bai). As a result of which, she became unconscious. Thereafter, the appellant flee away from the house. Since the children were not aware about the critical condition of their mother, they lay the body of their mother on the bed and went off for the sleep. In morning their aunty-Ms.Arati and Maan Singh came there. At that time, Asha Bai was alive, but was in serious condition, later in their presence she died. The children of deceased (Asha Bai) told them about the entire incident. Thereafter, Sangita(daughter of the appellant) went to the Police Station alongwith her relatives and lodged the First Information Report (Exhibit-P-21) against her father (appellant) at the Police Station, Pipariya, which was registered as Crime No.144/2008 for offence under section 302 of the Indian Penal Code. After investigation of the matter, charge-sheet was filed by the Police at the concerned Court.

4. After committal of the case, learned trial Court conducted

trial as per the procedure. After due consideration of the evidence the trial Court found the appellant guilty of having committed murder of his wife in his own house. Hence, the trial Court convicted and sentenced the appellant as mentioned hereinabove.

5. The appellant has challenged the aforesaid findings on the grounds that learned trial Court has wrongly convicted him without any cogent evidence. The children of the deceased and the appellant stated that their mother had fallen down from the train and received injuries on her head and other parts of her body. This version has wrongly been ignored by the learned trial Court. The Doctor also corroborated the same, but the trial Court held the appellant guilty on the contradictory evidence produced by the prosecution. Therefore, the impugned judgment is liable to be set aside and the appellant be acquitted from the charges levelled against him.

6. Learned Government Advocate has strongly opposed the contentions raised by learned counsel for the appellant and supported the impugned judgment. He further submits that trial Court considered the entire prosecution evidence and defence version in right perspective and came to the right conclusion with regard to the conviction of the appellant. Hence, the present appeal is liable to be dismissed.

7. We have heard learned counsel for the parties at length and perused the record. The question arises before us is -"Whether the learned trial Court has wrongly appreciated the prosecution evidence against the appellant and held the appellant guilty for committing murder of his wife?"

8. It is not in dispute that deceased (Asha Bai) was the wife of appellant-Munna. On the date of incident i.e. 04.3.2008 the deceased was residing with her husband (appellant) and children, namely, Sangita and Sandeep. It is pertinent to note that deceased died at her house in the presence of the appellant due to fatal injury sustained by her on her head, which is duly proved by Dr. N.K.Ahirwar (PW-4), as per his statement and postmortem report the deceased sustained following injuries:-

- 1) Fracture on her little finger on left hand.
- 2) Lacerated wound over dorsel region of right hand with swelling.
- 3) A deep abrasion over right forearm.
- 4) Contusion and swelling on left temporal region of head.

During the internal examination, Dr. N.K.Ahirwar found that all the membranes which covered the brain matter were ruptured. A hematoma was present. Brain was damaged As per the opinion of Dr. N.K.Ahirwar, the deceased died due to coma caused as a result of head injury, within 6-12 hours of the postmortem.

9. Dr. N.K.Ahirwar (PW-4) also examined the two firewoods

(wooden stick) which was used for committing the offence. The first firewood was 31 1/2" long and 6" wide and the second firewood was 32" long and 5" wide, and opined that, the grievous injury on temporal region of the deceased, may be caused by such fire woods. In cross-examination, it is specifically denied by him that the injuries caused to the deceased would be as a result of cutting wounds and head injury may be caused due to falling on earth. Looking to his testimony we do not find any reason to disbelieve the statement of doctor which corroborates the testimony of eye-witness Sandeep (PW.12).

10. Deceased (Asha Bai) died due to head injury. Such injury was sufficient to cause death in ordinary course of nature and were antemortem and homicidal in nature. Hence, the appellant has not raised any plea in his defence that some stranger has cause death of his wife for some reason. The appellant's own son Sandeep (PW.12) clearly deposed that in the presence of him and his sister the appellant caused fatal injury to their mother. In their presence, appellant quarrelled with the deceased between 12 mid-night and 2 a.m. Thereafter, when their mother became unconscious, the appellant flee away from the house.

11. Learned counsel for the appellant has not challenged that from mid-night itself the appellant was absconding from his own

house. He neither offered for any medical aid to his wife nor took her to the hospital. Such a conduct of the appellant and looking to the testimony of Sandeep (PW.12) clearly establish that appellant caused death of his wife, by assault over her head. Sangita (PW.13) also partly supported the version of her brother-Sandeep (PW.12). In paragraph 4 she stated that her mother raised objection as to at whose instance Lachchho Bai assaulted her. In paragraph 5 she admitted that during the aforesaid incident and quarrel between her mother (deceased) and appellant, she fallen down on the earth and thereafter became unconcious. Then appellant flew away from the place of occurrence. The said evidence is sufficient to establish that he caused injury to the deceased in presence of Sandeep (PW.12) and Sangita (PW.13) and after sometime Asha Bai died.

12. Sangita (PW.13) herself promptly lodged the First Information Report against her father (appellant). Shri U.K.Dixit, T.I. (PW.11) registered the Merg Intimation (Exhibit-P-21) on the same day i.e. 04.3.2008 at about 9.15 a.m. U.K.Dixit (PW.11) explained that Sangita (PW.13) had narrated him that the incident happened in mid night and she had come alongwith Maan Singh and Aarti. Although the prosecution witness Sakun Bai (PW.2) has been declared hostile, but Smt.Ganpati Bai (PW.1) is named witness in the First Information Report (Exhibit-P-21),

corroborated the statement of Sandeep (PW.12). She stated that after the incident at morning Sangita came to inform that her mother had become unconscious at her house, on which, she visited to the house of deceased. She saw that Asha Bai was unconscious and Sangita told her that appellant caused injury to her mother. She did not find the appellant there. Then she went to the Police Station alongwith Sangita (PW.13). The prosecution case is also corroborated by other evidence, namely, Maan Singh (neighbour of the appellant) to some extent.

13. Learned counsel for the appellant submits that conviction cannot be based on the testimony of related eye witness. In the present case, the relationship between deceased Asha Bai with her son Sandeep (PW.12) does not given any reason to ignore or brush aside the evidence of Sandeep (PW.12).

14. In *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006)

10 SCC 681it was held as under:- (SCC pp.694-94, para 22)

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible

for commission of the crime. In *Nika Ram vs. State of H.P.* (1972) 2 SCC 80 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal vs. State of Maharashtra*, (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under section 313 Cr.P.C. The mere 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 is a prime accused in the commission of murder of his wife. In *State of U.P. vs. Ravindra Prakash Mittal*, (1992) 3 SCC 300 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N. v. Rajendran*, (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any

hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime."

15. We do not find that the learned trial Court has wrongly relied on the testimony of the eye witness Sandeep (PW.12), may be he is the son of the deceased, but he is also son of the appellant. Without any reason we cannot disbelieve his testimony.

In case of *Laltu Ghosh vs. State of West Bengal*, AIR 2019 SC

1058, the Hon'ble Supreme Court has held as under :

"12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki, (1981) 2 SCC 752; Amit v. State of Uttar Pradesh, (2012) 4 SCC 107; and Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298). Recently, this difference was reiterated in Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549, in the following terms, by referring to the threeJudge bench decision in State of Rajasthan v. Kalki (supra):

"14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in 9 the circumstances of a case cannot

be said to be "interested"..."

13. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, 1954 SCR 145, wherein this Court observed:

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person..."

14. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. Union Territory of Pondicherry, (2010) 1 SCC 199:

"23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

16. Further, that, at the time of incident the presence of Sangita and Sandeep has not been challenged by the learned counsel for

the appellant. Doctor N.K.Ahirwar (PW.4) gives opinion that injuries of the deceased were caused within 6 to 12 hours from the post mortem. As per prosecution case, Asha Bai (deceased) sustained injuries in the intervening night of 03.3.2008 and 04.3.2008 and she died in the early morning of 04.3.2008. First Information Report has been lodged at 9.15 a.m. Post mortem was conducted at about 4 p.m. Thus, we find that the prosecution case is duly supported by the medical evidence. We do not find any material inconsistency in the aforesaid evidence also. All the evidence duly establish the guilt of the appellant. We are not inclined to accept the defence of the appellant that the deceased died due to falling from the train while the appellant himself had not lodged any report or provided any medical aid to his wife immediately.

17. It is pertinent to note that after the incident the accused absconded and was arrested on 05.3.2008, to which, no explanation is offered by him in this regard. He also not offered any explanation about the fact that he was present at home in the night hours and that in his presence who caused such greivous injuries to his wife. Because, he failed to offer his explanation, therefore, adverse inference may be drawn against him. The prosecution successfully proved the case that the appellant caused death of the deceased at his own house by causing fatal injury on

her head. Thus, in the light of provision of section 106 of the Evidence Act, burden shifts on the appellant to prove how such injuries have been caused to his wife (the deceased) at his own house in his presence. Because he failed to offer any proper explanation about such circumstances. Hence, on that ground also we can easily presume that the appellant is guilty for causing death of his own wife.

18. In the cases of **Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10 SCC 681; Ganeshlal Vs. State of Maharashtra (1992) 3 SCC 106; Dhyaneshwar Vs. State of Maharashtra (2007) 10 SCC 445; Jagdish Vs. State of MP (2009) 9 SCC 495 and Gian Chand Vs. State of Haryana (2013) 14 SCC 420** the Supreme Court held that :

“Law is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

(See also Pappi @ Mehboob vs. State of Rajasthan, AIR 2019 SC 904).

19. In the case of *State of Rajasthan vs. Thakur Singh*, (2014) 12 SCC 211 the Hon'ble Supreme Court has held that in case of

unnatural death of wife of the accused in a room occupied only by both of them when there is no evidence of anybody else entering the room, facts relevant to cause of death being only known to accused and he has not explained them therefore, principle under section 106 of Evidence Act is clearly applicable. There is a strong presumption that accused murdered his wife. The Supreme Court has further held that High Court erred in not applying under section 106 of Evidence Act and reversing conviction of accused.

20. In the case of ***Gajanan Dashrath Kharate vs. State of Maharashtra***, (2016) 4 SCC 604 the Supreme Court has held as under:-

"13. Therefore, the appellant is duty-bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer."

21. In the light of the principles laid down by the Hon'ble Supreme Court and as per the above discussions, we come to the conclusion that the learned trial Court rightly held the appellant guilty for committing murder of his wife Asha Bai.

22. Learned counsel for the appellant submits that appellant a person belonging to 'Gond Adiwasi' community, therefore, he is not aware about the consequence for committal of the offence. *Union of India and another Vs. Bharat Bhushan Pal Verma*, (2006) 3 MPLJ 366 wherein it has been observed that the appellant, a Tribal, assaulted his wife with a stone weighing 1/2 Kg. causing grievous hurt which ultimately resulted into her death. The accused/appellant can only be ascribed knowledge that his act was likely to cause death. Therefore, the conviction and sentence under section 302 of I.P.C. is set aside and he was convicted in the said case under section 304 Part-II of I.P.C.

23. Learned counsel has also placed reliance on the decision in the case of *Ram Prakash Singh vs. State of Bihar*, 1998 AIR SCW 1013 and submitted that the incident occurred at the spur of moment in the domestic quarrel without any pre-planning or intention. He took wooden stick at the spot and inflicted single blow on the head of the deceased. Although he inflicted some other injuries to the deceased. Looking to the nature of injuries, cause of death and facts and circumstances of the case, in our considered opinion this case also falls under the purview of section 304 Part-II of the Indian Penal Code and does not come within the purview of culpable homicide not amounting to

"murder".

24. Hence, the conviction of the appellant under section 302 of the Indian Penal Code is liable to be converted under section 304 Part-II of I.P.C. Accordingly, appeal is partly allowed on that point. We also consider that appellant is liable to be entitled for lesser punishment and his sentence from life imprisonment to 10 years of rigorous imprisonment. He was in custody since 05.3.2008. He has served the sentence almost for 10 years. Keeping in view the law laid in the case of *Lurchriya @ Nurchiya s/o Butha vs. State of M.P.*, 2006 (3) MPLJ 366 and *Ram Prakash Singh (supra)* the sentence for the period the appellant had already undergone is sufficient. Accordingly, we hereby award the sentence of period of custody already undergone. However, the fine amount shall remain same.

25. As per paragraph 39 of the impugned judgment, the appellant was in custody from the date of arrest i.e. 05.3.2008 till the date of judgment dated 30.9.2009. His jail sentence has also not been suspended as his application for suspension of sentence has been dismissed vide order dated 26.08.2010. Thus, the appellant is still in jail. In view of aforesaid, it is directed that he be released forthwith, on deposit of fine amount, if not already deposited, and if he is not required in any other case.

26. Let a copy of this judgment be sent by the Registry of this Court to the trial Court as well as to the Jail Authorities for necessary compliance.

(J.K.Maheshwari)
Judge

(Smt.Anjuli Palo)
Judge

RM