IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 29th OF APRIL, 2025

CRIMINAL APPEAL No. 3572 of 2016

SHYAMLAL ALIAS BABLU ALIAS PAPPU PANDEY

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Ram Prakash Yadav - Advocate for the appellant.

Shri Arvind Singh - Government Advocate for the respondent/State.

JUDGMENT

Per*: *Justice Atul Sreedharan

The present appeal has been filed by the appellant who is aggrieved by the judgment dated 27.09.2016 passed in S.T. No.213/2015 by the Court of learned III Additional Sessions Judge, Sidhi (M.P.) by which the appellant was convicted for the offence under Sections 302 and 201 IPC for the murder of his wife and was sentenced for suffer life imprisonment. Today the case has been listed for arguments on the application for suspension of sentence. The appellant has already undergone a little over 10 years of his sentence. However, with the consent of parties, the appeal has been heard finally.

2. The case of the prosecution is that, on 14.10.2015, the appellant herein committed the murder of his wife by hacking her neck with an axe.

Thereafter, he buried her in the courtyard of his own house. He is stated to have made an extra-judicial confession to his aunt (father's sister-in-law) that he had committed the nefarious act. She is PW-4 in this case. She informs her son (PW-3) who drives, a mini transport vehicle called TATA Magic. Upon receiving the information from his mother, he informs the police about the incident and the FIR at Crime No.549/2015 was registered at Police Station Majholi at 09:30 PM on 15.10.2015 for the offence of murder made punishable under section 302 and 201 (for unlawful disposal of body/concealment of evidence) of IPC. The appellant is named in the FIR, and he is the sole accused. In the course of investigation, the police recorded the Section 27 memorandum of the appellant on 15.10.2015 and thereafter arrested him on 16.10.2015. The exhumation of the body of deceased was done on 15.10.2015 in the presence of the witnesses. It is further the case of the prosecution the exhumation was done by the appellant and the original complainant (PW-3). Further, in the course of investigation, the axe that was used in the offence was seized from the appellant and the same was sent for FSL for chemical analysis to test for blood.

3. After the investigation was concluded, the charge-sheet was filed before the learned trial Court, the charges were framed and the prosecution witnesses were examined.

4. The most material witnesses in this case are PW-3 and PW-4. PW-4, Rajkumari is the aunt of the appellant herein to whom he had allegedly confessed about the crime and the manner in which it was committed and where the body was kept. PW-3 is the son or PW-4 to whom PW-4

conveyed the message relating to the alleged confession made to her by the appellant herein and on whose behest, the FIR was registered. Both of them have turned hostile and have not supported the case of the prosecution. Their hostility is to the extent that they have resiled from their previous statement that it was the appellant who committed the murder and that it was the appellant who had interred the body of the deceased in the pit dug by him in the courtyard of the house. It was also the case of the prosecution before the trial Court that the mother, father, brother and sister of the appellant were also residing in the same house, but on the date of the incident, they had gone to the house of a relation to attend a family function. The axe was examined for human blood by the FSL and returned a negative finding.

5. PW-5 and PW-6 are the Sarpanch and Upsarpanch of the village, who are witnesses to the exhumation process. PW-5 has stated that he received a call from the police in the evening of 14.10.2015 who informed the Sarpanch that there has been an incident in the village and he must go and check out at the house of the appellant. He further states that upon getting the information, he went into the house of appellant and saw that people numbering about 50-100 had already gathered there. He further states that PW-4 informed him that the entrance to the house was locked. He further states that when the police came the next morning, he informed the police that the key to the door leading to the Courtyard was with PW-4. However, it is essential to state here that PW-5 does not state that the key was taken from PW-4 and the door opened thereafter. PW-5 further states that he followed the appellant and PW-3 to the Courtyard where PW-3 and the appellant started digging the

place where the body was interred which led to its recovery. He further states that he saw an incised wound on the neck of the deceased.

6. PW-6 is the Upsarpanch of the village who has also stated accordingly. PW-5 and PW-6 corroborate each other and have not been contradicted in cross-examination and neither have they been confronted with their 161 statement to bring out improvisations in their examination-in-chief. The IO in this case has stated that the appellant was arrested from Diyadol on 16.10.2015 which was the place of the incident. He has also proved the Section 27 memorandum of the appellant which was recorded on 15.10.2015. He has also proved the arrest memo of the appellant which was on 16.10.2015 and there is a difference of almost 23 hours between the statement recorded under Section 27 of Indian Evidence Act being given by the appellant to the police and his subsequent arrest on 16.10.2015.

7. Learned counsel for the appellant has argued that the appellant has falsely been implicated in this case and that he had an unshakable alibi on the basis of which he should have been acquitted. He says that he was working at the house of one Brijlal Loni who was constructing his house. The house was being constructed at village Banjari which is about 10 kms from village Diyadol (the place of occurrence). Learned counsel for the appellant has led us through the statements of Brijlal Loni who has been examined as DW-1. Briefly, the statement of Brijlal Loni can be summarized in the following manner; He states that the appellant was working at his house from 01.10.2015 till 14.10.2015. He further says that the payments made to the appellant were being maintained by his daughter in a register. He has

produced the register before the trial Court which reflects the payments made on different dates to the appellant herein. He further states that the appellant was actually taken into custody by the police from his house on 15.10.2015. Therefore, learned counsel for the appellant has argued that PW-3 and PW-4 were the star witnesses in this case and they have turned hostile and have not supported the case of prosecution and have in fact shaken the very genesis of the offence. He further states that the arrest memo of the appellant discloses manipulations and overwriting which raises a strong doubt that the documents have been fabricated/ manufactured by the police in order to fit the same to their narration. He further submits that the absence of blood on the axe seized from him goes to show that the said weapon itself was never used to commit the crime.

8. Per contra, learned counsel for the State submits that the prosecution has been able to prove its case against the appellant beyond reasonable doubt and that the appeal deserves to be dismissed. He has further stated that absence of an eyewitness does not weaken the case and that the same remained firmly founded on circumstantial evidence even though PW-3 and PW-4 who were the material witnesses in this case have turned completely hostile. Learned counsel for the State has relied heavily on the statements of PW-5 and PW-6 who were the Sarpanch and Upsarpanch of the village and has taken this Court through their examination-in-chief and cross-examination. On the basis of statement of these two witnesses, learned counsel for the appellant has argued that PW-5 clearly discloses that he was informed by the police on the 14.10.2015, in relation to the incident that had taken place in his village,

at the house of the appellant and had asked him to go and check it out. Learned counsel for the State further submits that the PW-5 went to the scene and held guard throughout the night to ensure that nobody disturbs the crime scene. He states that the next morning, the police came and after that the door which was locked from outside was opened and the police along with the appellant and the witnesses went to the courtyard where the body was interred and exhumed the body. He further submits that the same has been stated by PW-6 the Upsarpanch and both these witnesses have collaborated each other. It is further the case of the prosecution that the exhumation of the body in the presence of these witnesses, by the appellant who was brought by the police in the morning of 15.10.2015, has been proved beyond reasonable doubt by these witnesses. According to the State, these two witnesses are of sterling quality as they have stood by their 161 statement and in their cross-examination, they have not been contradicted on any material fact attributable to them.

9. As regards the absence of blood on the axe sent to the FSL, learned counsel for the State submits that the said axe was washed by the appellant and that is the reason why there was no blood on the axe. He further submits that the postmortem report corroborates the statements of PW-5 and PW-6 who had seen the incised wound on the neck of the deceased. The opinion of doctor who performed the postmortem is that the victim died on account of injury received by her on the neck.

10. As regards the statement given by (DW-1) Brijlal Loni, learned counsel for the State has drawn the attention of this Court to paragraph 46 of the trial

Court judgment to show that the learned trial Court had considered the said evidence in detail and given cogent reason for disbelieving the same. Learned counsel for the State has also referred to Section 313 statements of the appellant with regard to the last question put by the trial Court "do you have anything else to say" to which the appellant has stated that he has falsely been implicated in this conspiracy and that the intention of those who have implicated him falsely is to acquire his property and deprive him of the same. He also states that four days preceding the offence, he was working at the house of Brijlal Loni at village Banjari.

11. Heard the learned counsel for the parties and perused the record of the trial Court.

12. The genesis of the case is as per the disclosure of PW-3 and PW-4. Allegedly, it is PW-4 to whom the extra-judicial confession is stated to have been given by the appellant herein who conveys the said information to PW-3 who registered the FIR on 15.10.2015. However, as stated earlier hereinabove, both these witnesses have turned hostile and have not supported the case of the prosecution. It is necessary to state here that both these witnesses are closely related to the appellant. However, in their cross-examination by the prosecution, they have completely denied their statements under Section 161 wherein they had disclosed about the confession made by the appellant with regard to the murder, how the murder was carried out and where the body has been interred.

13. The statements of PW-5 and PW-6 i.e. the Sarpanch and Upsarpanch has been seen by this Court in great details. PW-5 has already stated

hereinabove, reached the scene of occurrence in the night of 14.10.2015 and stayed there overnight. He further states that the appellant was brought by the police on 15.10.2017 and the door leading to the courtyard was opened. This witness had earlier stated that the key to open the lock was with PW-4. However, he does not state that it was received from PW-4. This assumes importance as PW-4 has turned hostile and does not even refer to the key being with her or with anyone else. Thereafter he says that the appellant and PW-3 went to the place where the body was buried and exhumes the body. He says that the neck bore an incised wound.

14. PW-1 and PW-2 are the father and brother of the deceased. Their significance is only to the extent of proving motive. They have stated in their examination-in-chief that the deceased, whenever she went to her parental home, used to inform PW-1 and PW-2 that the appellant used to taunt her to the effect that her father had not given anything at the time of marriage. They both further state that the appellant also used to assault the deceased while taunting her as above. However, it must be stated here that neither PW-1 nor PW-2 stated in their testimony that there was any demand for dowry by the appellant. A distinction is required to be made between a demand for dowry and the taunt for not bringing dowry.

15. PW-1 with specific reference to paragraph 6 and 8 of the cross-examination has stated that he has made the allegations only upon being tutored by the police. Similarly, PW- 2 also has stated in paragraph 11 (in cross-examination) that he has given the testimony against the appellant upon being tutored by the police. As PW-1 and PW-2 are unreliable on

account of their admission of having been tutored by the police, there is no evidence for the motive of the murder.

16. As regards PW-6, who is the Upsarpanch of the village; he has also corroborated PW-5. However PW-5 and PW-6, evidence when appreciated constructively, do not go beyond the evidence of exhumation of the body by the appellant and PW-3. The same does not prove motive, or the manner in which or by whom the murder was committed. Their statement also leaves a grey area with regard to the procurement of the key by which the door lock was opened inasmuch as neither of the witnesses said as to who gave the key to the said lock and who opened it. Their statement do not go on to prove the material fact relating to the execution of the offence and it is restricted only to the recovery of the body.

17. This Court has also considered the submission put forth by the learned counsel for the State that the place where the body was kept was only known to the appellant and therefore, the discovery of the body at the behest of the appellant is the strong link in the chain of circumstances which go to prove beyond reasonable doubt that appellant is the only person who had the knowledge where the body was kept and who got the body recovered. This Court is unable to accept the said contention put forth by the learned counsel for the state as the place where the body was kept was known to the PW-3 and PW-4 and the FIR itself discloses that the location of the body was known to the prosecution well before it was exhumed. Therefore, this is not a case where pursuant to the Section 27 memorandum of the appellant, the body of the deceased was recovered.

18. There is no evidence of last seen together or last being with the deceased as no witness says that on 14.10.2015, the appellant and the deceased were seen at the house before the body was recovered on the next date. In this regard, the statement of (DW-1) Brijlal Loni assumes significance. His evidence has already summarized hereinabove, goes to disclose that the appellant was attending the construction work of DW-1 from 01.10.2015 till 14.10.2015 and has also produced the register maintained by the daughter of this witness to show the number of payments that were made to the appellant on different dates. However, the learned trial Court has disbelieved this statement and has held it to be manufactured subsequently to save the appellant as the appellant in his Section 313 Statement answering the last question, has stated that he was at Banjari, constructing the house of Brijlal Loni, four days prior to 14.10.2015. Thus, the learned trial Court has held that there is a contradiction to the statement given by Brijlal Loni that the appellant was involved in the construction of the house of the witness from 01.10.2015 to 14.10.2015.

19. As regards this, the Court is of the opinion that the learned trial Court has erred on two points. **Firstly**, that it has applied the standard of beyond reasonable doubt for believing the evidence produced by the defence whereas the settled principle in criminal jurisprudence is that while the prosecution has to prove every fact in issue and relevant fact to secure the conviction of accused beyond reasonable doubt, the defence when it takes a statutory exception in the Chapter of General Exception in the IPC would still have the *onus probandi* of proving the same, but the degree of evidence required

to prove a fact in issue or relevant fact in its favour would be on the anvil of preponderance of probability or the standard of evidence required in a civil case.

20. The distinction between the two can be summarized by holding that in beyond reasonable doubt, the standard must be such that any person of reasonable prudence is willing to accept that in all probability than not, the evidence adduced against the accused would go to reveal that it was the accused and only the accused who had committed the offence in the absence of any parallel hypothesis by way of a defence under the Chapter of General Exceptions in the IPC. It is also trite law that beyond reasonable doubt, does not mean beyond fanciful doubt. However, the same cannot be applied in a manner that the benefit of doubt is given to the prosecution instead of the accused. The standard of preponderance of probability on the other hand, is in a civil case between two parties, where the plaintiff has to only show that he has in all probability, a better case than the defendant to succeed. However, where the defendant by evidence demonstrates that he has just as good a case as the plaintiff, which is equally probable, then the cause of the plaintiff will fail. Instead of applying the second standard mentioned hereinabove, the learned trial Court erred in applied the higher degree of beyond reasonable doubt by holding that the discrepancy between the answer given by the appellant to the last question in the 313 statement, is in contradiction to the statement given by the defence witness DW-1. **Secondly** the learned trial Court erred in using the statement given by the accused in Section 313 to his disadvantage for contradicting a defence

witness, the Ld. Trial Court failed to appreciate that the statement of the accused u/s. 313 Cr.P.C can only be used to clear up any cobwebs of doubts which is secondary to the material allegations already established by the prosecution. The trial Court would have been justified in coming to this conclusion had the accused examined himself as a witness under Section 315 of Cr.P.C, then the discrepancy between the statement of the accused under Section 315 in contradiction to that of the defence witness would have been relevant for the learned trial Court to discard the evidence of DW-1.

21. Therefore, applying the anvil of preponderance of probability, the fact that no witness has stated that they had ever seen the appellant for the last time in the house from where the body was recovered coupled along with a fact that there are manipulations and discrepancies between the Section 27 memorandum of the appellant and the arrest memo. The Section 27 memorandum shows that it was recorded on 15.10.2015, even before the appellant was arrested. The arrest memo shows that he was arrested on 16.10.2015, but the second page of the arrest memo, on the bottom left, the date 15.10.2015 is also written. There are overwriting at several places in the arrest memo, which shows that the police had indulged in manipulation with regard to the date of his arrest which gives greater credence to the statement of DW-1 who says that the appellant was arrested from his house at village Banjari on 15.10.2015.

22. The absence of blood on the axe though not of crucial relevance but is a factor that has to be taken note of by the Court, more so in a case which is entirely pivoted on circumstantial evidence where the material witnesses

have turned hostile. Therefore, the absence of blood on the axe allegedly used for the offence also goes to weaken the prosecution's case.

23. This brings the Court to the last question as to who else could have access to the house to murder the deceased and bury her in the courtyard of the house occupied by the appellant and other member of his family. As already stated hereinabove earlier, the front door of the house was locked. Though one of the witnesses (PW-5) states that the key was with PW-4, he does not state that before opening the door, the key was received from PW-4. It is the accepted case of the prosecution that entry was after opening the lock and not after breaking down the door.

24. The investigating officer states in his cross-examination that the mother father, brother and sister of the appellant were also living in the same house along with the appellant. However, he volunteers the statement that on the date of incident, they were not present in the house and had gone for a family function of their relative. The IO does not state that he has recoded the statements of the other occupants of the house and neither does he record the statement of the relation to whose house these persons had gone to attend the family function. Moreover, as the statement was volunteered and not pursuant to the question put in the cross-examination, it appears that the IO has deliberately made the statements in order to fortify the case of prosecution, by ensuring that there is no doubt with regard to anyone else being present in the house on 14.10.2015.

25. Therefore, there is sufficient doubt that is created in the absence of affirmative evidence that no one else was in occupation of the house along

with the appellant on 14.10.2015, the absence of a motive on the part of the appellant to murder his wife, the alibi of the appellant that he is working at the house of Brijlal Lodhi from 01.10.2015 till 14.10.2015, the arrest of the appellant after the recording of statement under Section 27 of Indian Evidence Act and manipulations at the several places in the arrest memo prepared by the police, this Court is of the opinion that the prosecution has not been able to prove its case beyond reasonable doubt against the appellant herein. Therefore, the **appeal is allowed**. The judgment of conviction and sentence imposed upon the appellant by the learned trial Court is set aside and the appellant is acquitted.

26. The appellant shall be released forthwith, if not wanted in any other case.

27. The appeal is, accordingly, disposed of.

28. Let the record of the trial Court be sent back along with the copy of this order.

(ATUL SREEDHARAN)
JUDGE

(ANURADHA SHUKLA)
JUDGE

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