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**(1997) 01 MP CK 0014**

**Madhya Pradesh High Court**

**Case No:** Criminal Appeal No. 814 of 1992

Manoj Singh @ Vishvanath Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** Jan. 10, 1997

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Citation:** (1999) 1 DMC 47

**Hon'ble Judges:** Usha Shukla, J; D.M. Dharmadhikari, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

D.M. Dharmadhikari, J.

The appellant has been convicted u/s 302, Indian Penal Code and sentenced to life imprisonment by judgment dated 4th August, 1992 of 3rd Additional Sessions Judge, Bilaspur for committing murder of his wife Malti Singh on 27th March, 1991.

2. The factual background of the commission of the crime as brought out in the evidence produced by the prosecution is as under :

The accused was living with his wife separately from other members of the family, in village Torva. According to Smt. Devki Singh (PW 1) wife of Deepak Singh (PW 3 brother of the accused), the accused came to her at about 9.00 or 10.00 a.m. to tell her at the house of Mrs. Banerjee where the former had gone for a visit, that health of his wife has gone bad (Malti Ki Tabiyat Kharab Ho Gai Hai), When witness Smt. Devki Singh (PW 1) went to the house of the accused, she found that the deceased was lying on a bed and her husband (PW 3) Deepak Singh had called an auto-riksha for taking her to the hospital. Her husband, then with the help of Mst. Smt. Devki Singh, their grand-mother Luthra Bai took the deceased to the hospital. In the hospital, a doctor examined her and declared her dead.

3. According to Deepak Singh (PW 3), who is elder brother of the accused, at about 9.00 in the morning, accused came to him to report that his wife Malti had hanged herself (Mali Ne Fansi Laga Lia). According to this witness, the accused asked him to call the doctor and then the witness went to Dr. Kumar. Dr. Kumar expressed his inability to attend to her health at the house and asked them to bring the patient to his clinic. Deepak Singh (PW 3) then returned to his house and finding that the condition of Malti was not fit to carry her to the doctor's place and approached another Dr. Suresh Thakur (PW 14). Dr. Suresh Thakur (PW 14) states that when he went to examine Malti at her residence, he found her already dead. He also saw some blue ligature marks on her neck and finding the situation suspicious advised PW 3 to take her to main hospital. Malti was then taken to G.P. Hospital, Bilaspur where in the casualty ward, Dr. P.K. Tiwari (PW 7) examined her who found that she was dead and therefore, he reported the matter to City Kotwali, Bilaspur. According to this doctor, the lady who had brought the patient was unable to give any information as to the cause of death of the patient. The post-mortem report was prepared on the examination of the body of the deceased by three doctors. Dr. P.C. Gupta (PW 8) who was assisted by Dr. L.P. Bajaj and Dr. Mrs. Neelima Ghatge. The doctors found the following ante-mortem injuries on the body of the deceased :

(1) Ligature marks on the left side neck, transversely placed extending from the left side of neck upto the centre of neck. The base of the furrow, soft and reddish, abrasions 1 1/2 cm. x 2 cm. on the right side of neck 2" away and on the right side of neck 1" below the line of mandible right.

(2) On dissection of ligature marks, the subcutaneous tissues accymosed abrasion and ligature marks ante-mortem.

(3) Uterus was gravid having 10 to 12 weeks pregnancy.

(4) Injuries described above were ante-mortem. Size of the ligature mark 12 cm. x 3/4 cm.

In the opinion of the doctors, the cause of death was asphyxia.

4. A lady purse was seized in the course of investigation and on being questioned from the doctors whether the strap of the bag, if used for strangulation of the neck would leave some such ligature marks, the answer of the doctor was that "it was likely to be so".

5. The prosecution also examined Lakhanlal Jaiswal (PW 2) who was a teacher in Tribal Welfare Department where the deceased Malti was also employed as Teacher to prove that the accused was insisting on Malti to resign and such talk took place between husband and wife in the presence of this witness. He also stated that the accused had, on that difference, in his presence, beaten Malti and the witness had intervened to pacify them.

6. The prosecution then examined Kirti Bala Futere (PW 4) who was landlady of the house which was occupied by the couple on rent. According to her testimony, the husband and wife used to quarrel on the issue of insistence of the accused for Malti resigning her job. She also stated that the deceased had told her that the accused had poured kerosene oil on her. In her cross-examination, she denied to have stated to the police that once she had found smell of kerosene on clothes of Malti and when questioned her, she had replied that it was because of use of stove in the kitchen.

7. In order to prove motive for committing the crime, the prosecution examined the parents of the deceased, namely, Phool Singh (PW 11), Laxmi Bai (PW 13) and Kunti Barkade (PW 12) sister of the deceased. In their statements, it is said that deceased was ill-treated by insisting that she should withdraw some amount from her GPF account for purchasing a motor bike for the accused. They also stated that as and when deceased had met them, she had complained about the ill-treatment she received from her husband.

8. On the state of above evidence, the learned Judge of the Trial Court in paragraph 51 of his judgment, enumerated 11 circumstances for holding that the accused and no one else killed his wife by strangulating her.

9. Learned Counsel appearing for the appellant assails the conviction of the appellant and submits that the depositions of the parents of the deceased, her sister and her landlady suffer from material improvements and exaggeration. All of them have tried to improve upon and add materially to their versions made to the police. The allegations of alleged cruelty for withdrawal of GPF amount and insistence on her to resign from her job are after-thought and concocted. It is pointed out that in cross-examination the correctness of their version of alleged cruelty towards Malti Bai, was successfully demolished by confronting them with their police statements which show material omissions and contradictions. It is argued that there absolutely existed no motive whatsoever for the appellant to kill his own wife. It is then argued that the appellant himself reported the fact of her bad health to the members of his family and made sincere efforts to get her treated. The circumstances show that he did not commit any crime.

10. The learned Counsel then relied on document Ex. P/6 which is stated to be a suicide note left by the deceased which was seized from the possession of Deepak Singh (PW 3). On the basis of the suicide note, it is argued that according to the case of the prosecution itself, death of Malti Singh by suicide was not ruled out.

11. We have also heard the learned Government Advocate appearing for the State who in his reply tried to meet each of the arguments for supporting the judgment of conviction.

12. The existence of motive cannot be taken as circumstance adverse to the accused as the same has not been satisfactorily proved. The parents of the deceased (PW 11

and PW 13), her sister (PW 12), the landlady (PW 4) and the teacher (PW 2) who were examined to prove the fact have given different versions. So far as the version of ill-treatment by the parents is concerned, they have materially improved their version in the Court over the version they gave to the police in their statement u/s 161, Criminal Procedure Code. Kirti Bala (PW 4) is not very definite as to the cause of their quarrel which she had described as day-to-day bickerings of married life. She herself stated that they used to quarrel and then used to rejoin. The teacher Lakhanlal Jaiswal (PW 2) after being declared hostile and on being cross-examined denied that he ever gave any statement to the police that in his presence the accused had beaten deceased when he was insisting on her to resign from her job.

13. It cannot, therefore, be held that the prosecution has been able to successfully prove existence of a strong motive for the appellant to commit murder of his own wife.

14. So far as the alleged suicide note (Ex. P. 6) is concerned, the learned Trial Judge has rightly excluded it from consideration as a circumstance against the accused. The seizure of suicide note from the possession of Deepak Singh (PW 3) is not proved as the said witness in paragraph 5 accepts his signature on the paper (Ex. P. 6) but denies the fact of its seizure from his possession. The prosecution has also not made any effort to prove that the suicide note contained the writing and signature of the deceased. In the absence of proof of the above fact that any such suicide note was left by the deceased near the place of occurrence the said suicide note cannot be used against or in favour of either the prosecution or the accused.

15. So far as the other circumstances stated in paragraph 51 of the judgment of the Trial Court and discussed by it in detail, in our opinion, are pieces of such circumstantial evidence which unerringly lead to the only irresistible conclusion that it was the accused who had killed his wife by strangulating her by neck. Confirming the conclusions reached by the Trial Judge, we uphold the conviction. In our opinion, the following circumstances rule out every hypothesis of the innocence of the accused, and lead only to one reasonable conclusion of his guilt :

(i) The accused and his wife lived separately from other members of the family. From the evidence of his Bhabhi Devki Singh (PW 1), his Older brother Deepak Singh (PW 3) they were by her side, when her health was said to have gone bad. The accused reported to his Bhabhi Devki Singh (PW 1) that his wife's health had suddenly gone bad, but to his elder brother Deepak Singh (PW 3) he told that his wife had hanged herself. Thus, the accused gave two different versions of the cause of bad health of his wife.

(ii) The medical evidence in this case is clinching to point towards the guilt of the accused. According to the unanimous opinion of the three doctors who conducted the autopsy, ligature marks on the neck of the deceased would not have been caused by hanging. According to them, the cause of death was strangulation of

neck.

(iii) The possibility of Malti's committing suicide is absolutely ruled out as the existence of suicide note and its seizure from Deepak Singh (PW 3) have not been proved.

(iv) There were also no signs anywhere in the house of hanging. The witnesses Devki Singh (PW 1) and Deepak Singh (PW 3) had immediately reached the house of the accused after they were called by him. There were no signs or marks that the deceased had put a noose on her neck to commit suicide. There was no noose or rope found anywhere in the house, at or near the place where she was found by the witnesses to be lying with injuries on her neck. In answer to the question put to him in his examination, the accused made imputations against his in-laws but did not state any cause for tragedy. According to him, they demanded money from her and used to ill-treat her. His answer on the face of it, cannot be a cause of her homicidal death.

16. In our opinion, therefore, the learned Judge of the Trial Court rightly convicted and sentenced the accused.

17. Consequently, the appeal fails and is hereby dismissed.