(2007) 08 MP CK 0059

Madhya Pradesh High Court

Case No: None

Santosh Kaurav		APPELLANT
	Vs	
State of Madhya Pradesh		RESPONDENT

Date of Decision: Aug. 10, 2007

Acts Referred:

- Evidence Act, 1872 - Section 106
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: K.S. Chauhan, J; Arun Mishra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Arun Mishra, J.
The appeal has been preferred by accused Santosh Kaurav aggrieved by conviction u/s 302 of IPC and sentence of rigorous life imprisonment for committing the murder of his wife Sunita on 15.4.1997.

2. The prosecution case, in brief, is that marriage of Santosh had been performed on 13.2.92. Accused Santosh used to live with his wife Sunita in the same house in which she was found dead in the intervening night of 14th & 15th April, 1997. Other accused Bhawani Prasad, Ramkunwar Bai and Paplesh @ Rajesh were father, mother and brother of accused Santosh. On 15.4.97 accused Bhawani Prasad had informed the village Kotwar Harnarain that Sunita had died due to fever. Harnarain saw the dead body of Sunita and lodged marg intimation report (Ex.P.9) at P.S. Goti Toriya (Chichali) to the effect that he, the village Kotwar expressed a doubt as to the cause of death as villagers had not been called and were not found on the spot. On 15.4.97 autopsy of dead-body of Sunita was performed by Dr. O.P. Naik. In the post-mortem report Doctor opined that cause of death was due to asphyxia resulting from throttling of her neck, as many as 10 injuries were found including multiple abrasions on the body of deceased Sunita. Sunita owing to the dispute with

her husband had to live in the parental house for the period of 7 months. Panchayat was also held. The prosecution further alleged that after marriage accused persons used to harass her, demanded dowry and they used to beat her. Demand of Rs.20,000/-and television had been made. In the Panchayat also demand of television was made by accused Santosh. On that the television was given. On 14.4.97 Paplesh @ Rajesh and Mulayam informed the parents & brother of the deceased that she was not well, consequently Leeladhar, brother of Sunita went to the village Pipariya and found her dead.

3. The accused abjured the guilt and contended that he had been falsely implicated in the case. Accused further stated in the statement recorded u/s 313 of Cr.P.C. that owing to the pregnancy Sunita had lived in the parental house out of her free will, as a son was born, her father had given the television of his own. On the date of incident Sunita was not well. She had observed a fast because of "Navratri". She was under treatment by Doctor of Govt. hospital. His parents were residing separately. He had gone to the residence of his parents on 14.4.97, when he came back after 1,1/2 hours, he found Sunita was unconscious. He called the Doctor and intimated it to the parents of Sunita. His house was open from one side, thus, there was possibility for someone else to enter in his house.

4. Out of 4 accused, 3 have been acquitted by the trial court. Only the appellant, husband of deceased, had been convicted by the trial Court. Consequently, he has come up in the appeal.

5. Shri Yogesh Dhande, learned Counsel for appellant, has submitted that there is no eye witness of the incident. Accused-husband had taken timely steps to call the Doctor and also informed the village Kotwar and timely intimation was also sent to the family of deceased Sunita. Sunita was suffering with fever. It appears that she has died due to fever and in case her murder had been committed accused was not in the house at the relevant time, he had gone to the house of his parents and also watching TV in the nearby house as stated by Ravi Shanker Vishwakarma (D.W.2), consequently appellant deserves to be acquitted of charge, his conviction & sentence be set aside.

6. Shri T.K. Modh, learned Dy. AG appearing on behalf of respondent-State, has submitted that husband & wife were living together in the same house, the conduct of husband was extremely doubtful in the instant case, he intimated the fact that Sunita, his wife had died due to fever whereas the death was due to asphyxia caused by throttling her neck. There were several injuries found on the person of deceased in the postmortem indicating that she was subjected to physical violence, even the village Kotwar had been informed wrongly by the husband as to the cause of death being fever, husband had not any taken any steps in case someone else had committed murder of his wife, he ought to have rushed to the police station to lodge the report, it was only when post-mortem had been conducted, the cause of death came to the light, every effort was made by the husband to pretend that the

death of Sunita was due to fever. He has also relied on the various decisions to be referred later that in such cases burden was on the accused to explain the circumstances in which wife has died, when the offence has taken place in the closed vicinity of the house, ocular evidence may not be available, consequently the conviction of appellant was based on overwhelming evidence against him including that of father of deceased; even the statement of brothers of deceased though they had been declared hostile by the prosecution indicates in that there used to be harassment meted out to the deceased by the accused- appellant.

7. In the instant case, it is not in dispute that Sunita died in the four walls of the house, there could have been no eye witness except the family members. Family was consisting of husband and wife and infant son when death has taken place. In such circumstances, a doubt is cast on one of the family member or husband. The Apex Court in State U.P. Vs. Dr. Ravindra Prakash Mittal, , has laid down that false plea of alibi was taken by accused instead of giving any plausible explanation for the death, traditional external visible features of strangulation and other internal injuries were found. It was held by their Lordships that chain of circumstances projected in the case lead to the conclusion of commission of offence by the accused. The accused has deliberately feigned ignorance and incredibly denied his complicity, the overwhelming persuasive circumstances attending the case and the crucial inculpatory evidence bear chilling testimony unmistakably proving the gruesome offence of murder and its diabolical execution and unerringly establishing the guilt of the accused beyond all reasonable doubts.

In Shri Kishan Vs. State of Haryana, , the Apex Court has laid down that when the accused was present in the house on the fateful night. The medical evidence assumes importance in this case to ascertain the cause of death. Medical evidence shows that death was due to asphyxia as a result of strangulation around the neck. The evidence of this witness falsified the version of the accused that the dead body of the deceased was seen hanging. It was not his case that he brought down the dead body and placed it on the cot. The fact that the dead body was found lying on the cot also corroborates the prosecution version that the death was due to strangulation and accused was responsible for that. In Sheikh Abdul Hamid and Another Vs. State of Madhya Pradesh, , it was laid down by the Apex Court that accused were living with the deceased, accused did not show any interest to find out the whereabouts of the deceased. In the circumstances, it was concluded that there was no possibility of any outsider committing the murders of 3 deceased persons, as no outsider would have comitted the murder of these three deceased persons and buried them in the Dhaba. The situation of the room in the Dhaba indicated that it was accessible only to the appellants who were living therein. The guilt of accused was upheld.

In Trimukh Maroti Kirkan v. State of Maharashtra JT 2006 (9) SC 50, the Apex Court has considered that when an offence takes place inside the privacy of a house and in

such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the Courts. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It has been further observed that where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a 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 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 an accused to offer any explanation.
In Collector of Customs, Madras and Others Vs. D. Bhoormall, , it was laid down that the law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that the prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man''s estimate as to the probabilities of the case.

In State of West Bengal Vs. Mir Mohammad Omar and Others etc., , the Apex Court has observed that the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty. When the prosecution succeeded in establishing the particular circumstances, the court has to presume the existence of certain facts which it thinks likely to have happened.

In State of Tamil Nadu Vs. Rajendran, , State U.P. Vs. Dr. Ravindra Prakash Mittal, , State of Maharashtra Vs. Suresh, , Ganesh Lal Vs. State of Rajasthan, and Gulab Chand Vs. State of Madhya Pradesh, , the Apex Court has observed that in a case based on circumstantial evidence where no eye-witness account is available, the principle is that when an incriminating circumstance is put to the accused and the

accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

In Nika Ram Vs. State of Himachal Pradesh, , the Apex Court has observed that a wife was murdered with a sharp edged weapon,when the accused alone was with his wife in the house and 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, , the Apex Court observed that when the appellant was prosecuted for the murder of his wife inside his house, 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 u/s 313 of Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prima accused in the commission of murder of his wife.

8. In the light of the aforesaid principles when we consider the facts of the instant case, it is clear that husband was in the house on the date of incident, though he has taken a plea that he had gone to the house of his parents for having dinner and came back after 1,1/2 hours, this he has stated in his statement recorded u/s 313 of Cr.P.C. However, Ravi Shanker Vishwakarma (D.W.2), a neighbour has been examined to prove the alibi. Ravi Shanker Vishwakarma has stated that accused was watching TV in the house of Halke and came back to his house on hearing hue and cry. Halke has not been examined in defence by the accused. The statement of this witness to prove the plea of absence is useless as the accused has stated that he had gone to the house of his parents, he has not stated that he was in the house of Halke to watch the TV, before he found the dead-body of his wife, thus, plea taken by the accused was contradicted by the defence witness. We are not relying upon this circumstance alone to base conviction, conduct of the accused was otherwise writ large and that pointed unerringly to his guilt, firstly it was not his case that death caused was suicidal or was caused due to hanging, secondly he had spread a lie that Sunita had died due to fever which was palpably false and thirdly in case he has found dead-body of Sunita after coming out from outside, he has failed to explain why he has not rushed to the police station, the marks of violence were visible on the body of deceased, the relationship of the accused with his wife was quite strained, wife had to reside for 7 months separately and even Panchayat was convened to intervene in the matter of their relationship and father of deceased has also supported the case that relationship between husband and wife was strained, they were not living happily. In case any outsider had committed the murder, the family members of accused or accused would have been first person to lodge an FIR not to make an effort to cover up the case, even in the intimation lodged by village Kotwar, Harnarain (P.W.5), the serious doubt was expressed as to the cause of death of Sunita, as villagers were not called or assembled in case it was the natural death;

none else was in the house even as per the case of husband, parents were residing separately, thus, apparently only the accused Santosh was responsible for committing the murder. Dr. O.P. Naik (P.W.3) had performed autopsy. He had found following injuries on the body of deceased Sunita:

1. Contusion 4cm x 2cm, horizontal on frontal area of scalp.

2. Abrasion 1cm x 1/2cm x superficial on posterior aspect of right shoulder.

3. Abrasion 1cm x 1/2cm x superficial on posterior aspect of left shoulder.

4. Abrasion 1cm x 1/2cm x superficial on left knee anteriorly.

5. Contusion 1cm x 1cm inner aspect of lower lip on left side.

6. Contusion 4cm x 2cm left side of neck, anteriorly involving the mid line.

7. Contusion 1,1/2cm x 1cm right side of chin.

8. Contusion 3cm x 1cm over left side of face, near the angle of mouth.

9. Multiple abrasions ranging in size from 1/2cm x 1/10cm x 1,1/4cm cm to 1/2cm x superficial on both cheeks and lower jaw, few having semi inner shape.

10. Abrasion1/2cm x 1/2cm x superficial on right upper lid laterally.

9. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. In the instant case the circumstances unerringly point to the guilt of accused, and supported by medical evidence which indicated that Sunita died due to asphyxia resulting from throttling of her neck, froin was coming out of her mouth. Instead of explaining the aforesaid accused had taken a false defence that Sunita died due to fever. Thus Sunita''s husband was responsible for causing death of Sunita by throttling her neck in the privacy of the house.

10. Jwala Singh (P.W.4), father of deceased Sunita, has statd that accused used to harass the deceased. He had paid once a sum of Rs.5,000/-, thereafter he had given the television, Sunita remained for 7 months in the parental house as she was left by her husband Santosh, subsequently due to intervention of elders, they had started living together, thereafter Santosh had committed murder of Sunita. He has also stated that there were several injuries on the body of deceased. He has substantially corroborated the prosecution case pointing out towards the guilt of accused and has completed the chain of circumstances.

Much was tried to be made out by counsel for appellant that Leeladhar, brother of deceased, has stated that he was not aware whether the accused used to harass Sunita, he had been declared hostile by the prosecution; in cross-examination he has supported the version of his father that for 7 months his sister had to reside in the parental house and Panchayat was also held in order to resolve the dispute between husband and wife, TV was also given on the birth of child. Similarly the

statement of brother of deceased indicating that he was not aware whether relationship between husband and wife was strained cause no dent in the prosecution case, as circumstances unerringly points out that accused was in the house and had committed the offence in question. B.S. Parihar (P.W.6) has recorded marg intimation and has made investigation. He has also stated that a doubt was expressed as to the cause of death by the village Kotwar he prepared inquest (Ex.P.8), remaining part of investigation has been proved by Rajesh Tiwari (P.W.7).

11. Coming to defence evidence Heeralal Namdeo (D.W.1) has stated that he had treated wife of accused Santosh before one year, he had prescribed certain medicines and next day he came to know that Sunita had died. We find the statement of Heeralal Namdeo (D.W.1) to be false as the death was not due to fever, cause of death was totally different as stated by Dr. O.P. Naik due to throttling of her neck.

12. In view of aforesaid testing of case from both the angles of the prosecution and the defence of accused, we find that guilt of accused stands proved beyond periphery of reasonable doubt. Consequently we find that conviction of the appellant u/s 302 of IPC to be proper.

13. Resultantly, we find no merit in this appeal. Conviction of the appellant u/s 302 and the sentence imposed are hereby affirmed. Appeal being devoid of merit is hereby dismissed.