

(2017) 04 MP CK 0061
MADHYA PRADESH HIGH COURT
Case No: 1097 of 2016

Daduram

APPELLANT

Vs

Chief Engineer, M.P. Power
Generating Co. Ltd.

RESPONDENT

Date of Decision: April 20, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 161, Section 164 - Examination of witnesses by police - Recording of confessions and statements
- Indian Penal Code, 1860,

Hon'ble Judges: N.K. Gupta, S.K. Awasthi

Bench: Single Bench

Advocate: Anjali Gyanani, Raghuveer Singh

Judgement

1. The State has preferred the present appeal against the judgment dated 12.07.2016 passed by the Additional Sessions Judge, Chachoda, District Guna (M.P.) in S.T. No.312/2014 whereby the respondent has been acquitted from the charge of Section 302 of IPC.

2. The prosecution's case, in short, is that on 20.07.2014 Jagdish Meena (PW-7) lodged the Marg Intimation Ex.P-7 to the effect that the deceased Mithilesh wife of respondent Indar Singh was found dead in the house. In the early morning, Sheetal (PW-1), daughter of respondent, went to the house of Jagdish Meena (PW-7) and Rampati Bai (PW-10) etc. and told about the death of the deceased and also told that she was killed by respondent Indar Singh. Marg enquiry was initiated thereafter. Dead body of the deceased Mithilesh was sent for post mortem. Dr. Manish Jain (PW-6) performed the post mortem on the body of the deceased Mithilesh and gave a report Ex.P-11. According to Dr. Manish Jain (PW-6) blood was oozing from the left

ear. Face, nails, tongue and lips were cyanosed. Four abrasions were found on her neck and one contusion was found on her left neck. Tongue was found to be swollen. According to Dr. Manish Jain (PW- 6), the deceased died due to throttling. Her larynx and trachea were found fractured. Her left hyoid bone was fractured from one corner and the death of the deceased was homicidal in nature.

3. The investigating officer Babeeta Katheriya (PW-8) who was the sub-inspector at Police Station Chachoda and incharge of outpost Beenaganj, after marg enquiry, found that the deceased Mithilesh was killed by the respondent and therefore, an FIR Ex.P-14 was registered and it was sent for registration of the case to police Station Chachoda. Head Constable Latoorchand (PW-4) had registered the FIR Ex.P-8 at police station Chachoda.

4. During marg enquiry, Sub-Inspector Babeeta Katheriya (PW-8) prepared a spot map Ex.P-5. She took a tin from the spot and prepared a seizure memo Ex.P-6. Sheetal (PW-1) was produced before the concerned magistrate to record her statement under Section 164 of Cr.P.C. After registration of the case Babeeta Katheriya (PW-8) examined various witnesses again, thereafter, respondent was arrested and a memo Ex.P- 16 was prepared. After due investigation, the chargesheet was filed before the Judicial Magistrate First Class, Chachoda who committed the case to the Court of Session and ultimately it was transferred to Additional Sessions Judge, Chachoda, District Guna (M.P.)

5. The respondent abjured his guilt. He took a plea that he was falsely implicated in the matter, however, no defence evidence was adduced.

6. The trial court after considering the prosecution's evidence acquitted the respondent from the above charge.

7. First of all, it is to be considered as to whether the death of the deceased was homicidal in nature or not. In this connection, the evidence of Dr. Manish Jain (PW-6) is important who performed the post mortem on the body of the deceased Mithilesh and gave a report Ex.P- 11. He found a nylon rope on the neck of the deceased but no ligature mark was found on the throat. Face, nails, tongue and lips were found cyanosed. Blood was coming out from the left ear. There were four abrasions having size 1/2 x 1/4 cms found on the neck. A blunt injury was found on the neck. After opening of the body, he found that larynx and trachea were fractured whereas her left hyoid bone was fractured from its one corner. According to Dr. Manish Jain (PW-6) the deceased died due to strangulation. As per Dr. Jain (PW- 6) and looking to the various injuries, the death of the deceased was homicidal in nature and such injuries were sufficient to cause her death in the ordinary course of her life. In cross-examination, various suggestions were given to doctor but his opinion remained unshaken. Looking to the various injuries, it was not the case of suicide

and such injuries could not be caused due to an accident in the closed house, hence, the opinion given by Dr. Manish Jain (PW-6) is acceptable that the death of the deceased was homicidal in nature and the injuries sustained by her were sufficient to cause her death in the ordinary course of her life.

8. In the present case, there was no eyewitness and the entire case depends upon the circumstantial evidence. First circumstance is that the death of the deceased was homicidal in nature. Second circumstance is the motive which is told by witness Deendayal Meena (PW-3) and Shrimohan (PW-2) that often quarrel used to take place between respondent and his wife Mithilesh. Such minor quarrels take place between husband and wife, however, it cannot be said that the respondent had a motive to kill his own wife. Hence, by evidence of these two witnesses, motive of the respondent could not be proved beyond doubt, however, it is the settled view of the Apex Court as laid down in the case of *Atley Vs. State of Uttar Pradesh* [AIR 1955 SC 807] that for conviction under Section 302 of IPC, motive is not the essential ingredient. If it is proved then it would be an additional piece in the chain of circumstantial evidence.

9. The third circumstance is extra-judicial confession done by the respondent before his relatives. In this connection, the evidence of witnesses Rampati Bai (PW- 10) and Rekha Bai (PW-11) is important. In case-diary statements, they have stated about the extra-judicial confession made by the respondent that due to quarrel the deceased Mithilesh was taking some poisonous substance and thereafter under anger the respondent killed her by strangulation and thereafter one rope was wrapped around her neck. Dr. Manish Jain (PW-6) found that one rope was wrapped on the neck of the deceased Mithilesh but no ligature mark was found and therefore it is possible that it was a case of throttling but since Rampati Bai (PW-10) and Rekha Bai (PW-11) have turned hostile, extra-judicial confession made by the respondent Indar Singh could not be proved. Hence, such circumstance could not be proved against the respondent.

10. In this connection, the evidence of Sheetal (PW-1) was important. She is the daughter of respondent Indar Singh and the deceased Mithilesh. She has stated before the police as well as the Magistrate that in the quarrel, respondent killed her mother Mithilesh by strangulation. However, Sheetal (PW-1) has turned hostile before the court. It is the settled view of the Apex Court that the evidence given before the police can be used for the purpose of contradiction and omission. Statement under Section 161 of Cr.P.C. recorded by the police is not a substantive piece of evidence. Similarly, the statement recorded under Section 164 of Cr.P.C. is not a substantive piece of evidence. At that time, no opportunity of cross-examination was received by the accused. Hence, when Sheetal (PW-1) turned hostile, her previous statements have no meaning in the case and cannot be treated as the substantive piece of evidence. However, in such cases where the death of the

wife of the accused is found to be homicidal then by mere presence of the accused husband in the house, a strong presumption would be created against him that he was the culprit. In this connection, the judgment rendered by the Apex Court in the case of "Trimukh Maroti Kirkan Vs. State of Maharashtra" [(2006)10 SCC 681] may be referred in which it is held that if the deceased wife is found dead in the house by a homicidal death then it is for the husband who was the sole person residing with her to inform as to how she died and if he does not give any acceptable explanation then it would be presumed that he was the culprit. In this connection, it is to be examined as to whether the presence of the respondent was established when the deceased was found dead.

11. Initially, Sheetal (PW-1) had stated that the respondent was present in the house, however, when she turned hostile she accepted that she had given her previous statement due to tutoring of her maternal uncle who was resident of Kamalpur and in para 2 of her cross-examination she stated that her father was not present in the house. He had gone to Gujarat at that time. Hence, the witness Sheetal (PW-1) herself proved the alibi of the respondent. Similarly, Rampati Bai (PW- 10) and Rekha Bai (PW-11), amongst whom the respondent had confessed the crime, have turned hostile. They did not state anything as to whether the respondent was present in his house at the time of incident or not and therefore their statement are not much material in favour of the prosecution. Jagdish Meena (PW-7) had lodged the marg intimation at outpost Beenaganj. In the marg intimation, he did not mention that the death of the deceased was caused by respondent Indar Singh or Indar Singh was present in the house at the time of incident. Marg Intimation Ex.P- 7 is a document in which only information of death is given. Jagdish Meena (PW-7) had lodged the marg intimation Ex.P-7 on the intimation given by Sheetal (PW-1), daughter of the deceased Mithilesh. Under these circumstances, the prosecution could not prove that the respondent was present in his house at the time of incident and therefore such circumstance for which the presumption is attached could not be proved by the prosecution. When no presumption can be done that the crime was committed by respondent Indar then it is not for the respondent Indar to give any explanation about the death of the deceased Mithilesh.

12. On the basis of the aforesaid discussion, it appears that since mother of witness Sheetal (PW-1) had died and she had to reside with her father, it was not possible for her to state against her father and also the other relatives of the respondent would have thought to save the respondent and therefore, they have turned hostile. Under such circumstances, the chain of circumstantial evidence is broken and it cannot be said beyond doubt that the respondent was the person who killed his wife. The trial court has rightly acquitted the respondent from the aforesaid charge. In this connection, view of the Apex Court is important that in appeal against the judgment of acquittal, the appellate court shall not interfere in the judgment of trial court if it has a second view. Interference can be done in the judgment of trial court if

appreciation of evidence was not done properly or gross miscarriage of justice has taken place by such judgment rendered by the trial court.

13. On the basis of the aforesaid discussion, there is no substance in the appeal filed by the State and therefore, the appeal filed by the State against the respondent pertaining to aforesaid judgment is hereby dismissed.

14. Since the respondent could not furnish any bail bond when the bailable warrant was issued against him to procure his presence, he is in custody and hence this appeal was heard out of turn. The Registry is directed to issue the release warrant without any delay so that the respondent shall be released forthwith.