

HIGH COURT OF MADHYA PRADESH AT JABALPUR**DIVISION BENCH****Criminal Appeal No. 2031/2009****Appellant : Smt. Sudama Bai****Vs.****Respondent : State of Madhya Pradesh**

For the Appellant : Shri Chetan Jaggi, Advocate as
Amicus Curiae.For the Respondent : Shri A.N.Gupta, Govt. Advocate

**PRESENT : Hon'ble Shri Justice Sujoy Paul &
Hon'ble Smt. Justice Nandita Dubey**

Arguments heard on : 17.11.2018

Judgment delivered on : 10.12.2018

Whether approved for reporting : Yes/No

Law laid down :

Significant paragraph numbers :

J U D G M E N T**As per Nandita Dubey, J.:**

This appeal has been filed by the appellant, being aggrieved by the judgment dated 02.09.2009, passed by Sessions Judge, Chhatarpur in S.T. No.57/2009, whereby the appellant has been found guilty for the offence punishable under Sections 302 and 201 of the

Indian Penal Code, and has been sentenced to life imprisonment and fine of Rs.200/- under Section 302 of the I.P.C.with default stipulation, and one year rigorous imprisonment under Section 201 of IPC. Both the sentences were directed to run concurrently.

2. The prosecution case, in brief, is that, deceased Narayan Das Nigam was a doctor. Appellant was living as a kept with him and his two daughters. It is alleged that Narayan Das had suspicion about the character of appellant and used to beat and torture her for this reason. On 12.12.2008, the appellant murdered the doctor and hid his body in an iron trunk/box . On the next day, i.e. on 13.12.2008, she asked her landlord Ramprasad Kushwaha (PW.1) to call a vehicle. Ramprasad when enquired about the purpose, he was informed that the doctor had died and his body was lying in the trunk. On hearing this, Ramprasad refused to call the vehicle and went to Police Station-Rajngar to lodge a report.

3. On the basis of complaint lodged by Ramprasad (PW.1), *Marg* intimation (Ex.P/1) was recorded and the criminal law was set into motion. *Panchnama* and the spot map were prepared in presence of the witnesses

and their statements were also recorded. Body of the deceased was taken out from the trunk/box and sent for postmortem. After investigation, the FIR was registered against the accused/appellant under Sections 302 and 201 of IPC at Crime No.189/2008.

4. Dr.Vineet Sharma (PW.5) who conducted the autopsy found the following injuries on the body of the deceased :-

“(i) Multiple linear small abrasions present at anterior lateral aspect of neck just lateral to cricoid prominence, bilaterally (size between 1-2 cm.);

(ii) Oval shaped bruises on both sides of posterior lateral aspect of neck (size 2.5 cm.in circumference each);

(iii) O2 on left and O3 on right side subcutaneous tissue and vessels of neck are crushed and internal haemorrhage present beneath and around bruises;

(iv) Cricoid cartilage and thyroid cartilage are fractured;

(v) Left scrotal sac is ruptured; testis is out (open to air).”

In the opinion of the doctor, the death had

occurred prior to 48 hours due to asphyxia as a result of throttling.

5. To substantiate the charges, on behalf the prosecution, 11 witnesses were examined. One Court witness Ramprakash was also examined as CW.1.

6. The accused abjured her guilt and pleaded false implication, however, chose not to examine any witness in her defence.

7. The prosecution relied upon the following circumstances to prove the charges against the accused :-

(i) The deceased was living with the accused in the same house;

(ii) On 12.12.2008 when Priyanka D/o deceased enquired from accused about her father, she was told he had gone away;

(iii) The dead body of victim was found lying in the trunk on 13.12.2008;

(iv) The said trunk was recovered from inside the house jointly occupied by the deceased and accused;

(v) Scratch marks were found on the neck of the dead body;

(vi) Dr. Vineet Sharma who conducted the autopsy has categorically stated that death of

victim was a result of asphyxia due to throttling;

(vii) The failure of the accused to give an explanation in respect of the incriminating circumstances as narrated above.

8. The trial Court considered each of the circumstances in a detailed manner and convicted the accused relying mainly on the testimony of Priyanka (PW.11) daughter of the deceased, and the medical evidence on record, and held that the prosecution has established the guilt of the accused beyond reasonable doubt, and sentenced her as aforesaid.

9. Shri Chetan Jaggi, Advocate who appears as *amicus curiae* for the appellant has submitted that there is no material evidence on record to justify the guilt against the appellant. It is stated that there is no eye-witness and the case is based on circumstantial evidence. Ramprasad (PW.1) and Gudde Khan (PW.2) who lodged the complaint have turned hostile along with other witnesses Ramkishore (PW.3) and Munnalal (PW.4). It is also urged that the incident was not pre-planned, hence, the appellant could not have been convicted under Section 302 of IPC.

10. Learned Govt. Advocate, on the other hand, has supported the impugned judgment and prayed for dismissal of the appeal.

11. We have heard learned counsel for the parties at length and meticulously perused the record.

12. It is clear that there is no direct evidence to establish that the appellant murdered the deceased doctor by throttling and the evidence regarding murder is purely circumstantial.

13. The law regarding basis of conviction by the Courts on circumstantial evidence is well settled. The factors to be taken into account in adjudication of cases of circumstantial evidence is laid down by the Supreme Court in **Anjan Kumar Sarma and others vs. State of Assam (2017) 14 SCC 359** thus :-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other

hypothesis except that the accused is guilty;
(3) the circumstances should be of a conclusive nature and tendency;
(4) they should exclude every possible hypothesis except the one to be proved; and
(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. (See *Sharad Birdhichand Sarda vs. State of Maharashtra* (1984) 4 SCC 116, SCC p.185, para 153; *M.G. Agarwal vs. State of Maharashtra* AIR 1963 SC 200, AIR SC para 18)."

14. In Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 1 SCC 681, the Supreme Court held :-

"12. In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was

committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."

15. In **State of U.P. Vs. Satish, (2005) 3 SCC 114**, the Supreme Court has reiterated that there is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touch stone of law relating to circumstantial evidence. Following was laid down in paragraphs 14, 15 and 16:

"14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back in 1952.

15. In Hanumant Govind Nargundkar v. State of M.P., AIR (1952) SC 343 it was observed thus;

"It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be

such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

16. In the present case, Ramprasad (PW.1) who reported the *Marg* and Gudde Khan (PW.2) along with other witnesses Ramkishore (PW.3) and Munnalal (PW.4) have not supported the prosecution case and turned hostile.

17. Ku.Priyanka (PW.11), daughter of the deceased, has stated that the appellant was living as step mother with her father. On the date of incident, after coming back from the school, when she had asked the appellant about her father, the appellant informed her that he had gone out/ran away. She had further deposed that on the next day, police came to her house and opened the trunk/box and found the dead body of her father inside. In her 161 Cr.P.C.statement, she had clearly stated that there were scratch marks on the neck of deceased. The statement of this

witness found due corroboration with the postmortem report which is very clear and precise that the death occurred as a result of throttling.

18. Ramprasad (PW.1) has stated that the box was recovered from the room and the dead body was taken out of the box in his presence. He had also admitted his signature on the *japti Panchnama* (Ex.P/6), on the notice (Ex.P/2), on *panchnama* of the dead body (Ex.P/3), and spot map (Ex.P/4), and has also proved the arrest memo (Ex.P/7) and the photographs (Ex.P/17 to P/23).

19. Having gone through the testimony of Ku.Priyanka (PW.11), daughter of the deceased, the postmortem report, the testimony of Dr. Vineet Sharma (PW.5) and the photographs, it is clear that death of deceased was due to throttling, but the question is whether the appellant could be the author of the crime?

20. It is true that in a case of circumstantial evidence not only the various links in the chain of evidence should be clearly established, but the complete chain must be such so as to rule out a

reasonable likelihood of the innocence of the accused. In the present case, the body of the deceased was found hidden inside a trunk/box in the room which was occupied by the appellant and the deceased. The presence of appellant on the spot is also established by Ku.Priyanka (PW.11) and Ramprakash (CW.1). The appellant in her 313 Cr.P.C. statement, in reply to question no.10, has also admitted that Priyanka, after coming back from school, had asked about her father, and accused had informed her that deceased had gone out, thereby establishing her presence on the date of incident. As per the postmortem report dated 14.12.2008, at 11 AM the autopsy was conducted. The death had occurred prior to 48 hours of the time of postmortem which places the time of death somewhere around 10-11 AM on 12.12.2008. As the body of deceased was found hidden in a trunk/box in the room in possession of and occupied by the appellant, it was expected of the appellant to furnish some explanation regarding this in her statement under Section 313 of Cr.P.C., as to who else could have been responsible for killing of the deceased and for hiding his dead body in the trunk. It is settled law that in a case of circumstantial evidence, when the accused offers an explanation and the explanation is found to

be untrue, then the same offers an additional link to the chain of circumstances to complete the chain.

21. In **(2007) 12 SCC 288 Swamy Shdaddananda alias Murali Manohar Mishra Vs. State of Karnataka**, the Supreme Court has observed that if it is proved that the deceased died in an unnatural circumstance in her bedroom, which was occupied only by her and her husband, law requires the husband to offer an explanation in this behalf, however, do not intend to lay down a general law in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstance against the accused.

22. Similarly in **Nika Ram vs. The State of Himachal Pradesh** reported in **AIR 1972 SC 2077**, the Supreme Court has held thus :

"16. It is in the evidence of Girju PW that only the accused and Churi deceased resided in the house of the accused. To similar effect are the statements of Mani Ram (PW 8), who is the uncle of the accused, and Bhagat Ram school teacher (PW 16). According to Bhagat Ram, he saw the accused and the deceased together at their

house on the day of occurrence. Mani Ram (PW 8) saw the accused at his house at 3 p.m., while Poshu Ram, (PW 7) saw the accused and the deceased at their house on the evening of the day of occurrence. The accused also does not deny that he was with the deceased at his house on the day of occurrence. The house of the accused, according to plan PM, consists of one residential room one other small room and a varandah. The correctness of that plan is proved by A. R. Verma overseer (PW 5). The fact that the accused alone was with Churi deceased in the house when she was murdered there with the Khokhri and the fact that the relations of the accused with the deceased, as would be shown hereafter, were strained would, in the absence of any cogent explanation by him, point to his guilt."

23. In the instant case, there is no direct evidence to prove the involvement of the appellant in the crime, but in view of the series of facts mainly that the death of Dr. Narayandas Nigam was homicidal, the deceased was staying together in the house with the appellant and his two children, his dead body was found hidden in a trunk in the room, there was no explanation regarding the dead body being found inside the trunk in the room occupied by the appellant, the postmortem report, and the specific evidence of Ku.

Priyanka (PW.11) only points an accusing finger towards the accused/appellant. Once the prosecution has been able to show that at the relevant time, the room was in exclusive possession of the deceased and appellant, the burden of proof lies on the appellant under what circumstances the death was caused to her husband. The onus was on her, which she failed to discharge.

24. In view of the medical evidence and the photographs (Ex.P/17 to Ex.P/23), the fact that body of the deceased was found hidden in a trunk in possession of the appellant and in absence of an explanation by accused in this regard, it is clear that the links have been satisfactorily made out and the circumstances point to the guilt of the accused. Hence, we are of the opinion that the trial Court has rightly convicted the appellant under Section 302 and 201 of IPC.

25. In view of the aforesaid, no illegality or perversity is found in the appreciation of the evidence made or finding of the conviction recorded by the trial Court. The appeal being meritless is, accordingly, **dismissed**. The conviction of the appellant under

Section 302 and 201 of the IPC is upheld and affirmed.
The appellant, who is in jail, shall remain incarcerated to undergo the remaining part of her jail sentence.

26. A copy of the order sheet as well as this judgment be sent to Secretary, M.P. High Court Legal Services Committee, Jabalpur for information and necessary action.

(Sujoy Paul)
JUDGE
10/12/2018

(Nandita Dubey)
JUDGE
10/12/2018