

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
(DIVISION BENCH : HON. Mr. JUSTICE ALOK VERMA AND
HON'BLE Mr. JUSTICE VED PRAKASH SHARMA)

Criminal Appeal No. 142 of 2014

Suraj @ Suresh

... Appellant

Vs.

State of Madhya Pradesh
Through Police Station Thikri
District Barwani (M.P).

.. Respondent.

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JUDGMENT

(Delivered on February, 2017)

Per Ved Prakash Sharma, J :

In this appeal, preferred through Superintendent, Central Jail, Barwani, the appellant has challenged the judgment and order dated 17.12.2013 passed by Sessions Judge, Barwani in S.T. No.81/2013, whereby the appellant has been convicted u/s. 302 of the IPC for committing murder of his wife Sumanbai and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- and, in default of payment of fine, to further undergo 3 months' rigorous imprisonment.

2. The prosecution story, as unfolded during trial, briefly stated, is that the appellant Suraj @ Suresh along with his wife Sumanbai (deceased), daughter – Kajal (P.W.3) and son was residing at Village Dawana, Talaipura, Police Station Thikri, District Barwani. In the intervening night of 27th and 28th March, 2013, the appellant came to his house around 11-12 in the midnight and demanded Rs.500/- from his wife for liquor. Allegedly, on refusal of Sumanbai to pay money, the appellant

started quarrelling with her. His daughter – Kajal (P.W.3) requested him not to quarrel with her mother, however, the appellant drove her out of the dwelling house, bolted the front door of the house from inside and thereafter started assaulting Sumanbai by wooden log, which was witnessed by Kajal (P.W.3) from the window ('Ujaldan'). As per prosecution, on being asked by Kajal (P.W.3) as to why he is assaulting his mother, the appellant opened the door of the house and also tried to assault Kajal (P.W.3), therefore, she ran away towards the forest and spent the night in an agricultural field. In the morning, when she came back to her house, she found the front door of the house open and saw her mother lying dead inside the house having multiple injuries on various parts of the body including genitals. As per prosecution, thereafter, Kajal (P.W.3) went to the house of Ajay (P.W.2) – her cousin brother, situated in the same village, and apprised him about the incident. Thereafter, Ajay (P.W.2) and some other persons of the village reached at the place of occurrence and found Sumanbai lying dead inside the house of appellant. Ajay (P.W.2) same day, at around 9.30 am. Lodged first information report Ex.P/2 at Police Station Thikri regarding this incident. 'Merg' report Ex. P/8 was also recorded in this regard.

3. The investigation ensued. Umed Singh Borana (P.W.12), the then Station House officer, Police Station Thikri, carried out the inquest proceedings and vide inquest report Ex.P/6 found that Sumanbai died because of multiple injuries caused to her on various parts of the body including genitals. The dead body was sent for post-mortem examination. Same day at around 3.45 pm. a team of doctors comprising of Dr. D.S. Chouhan (P.W.1),

Dr. (Smt.) Mandloi and Dr. Manoj Kumar Nirala conducted autopsy on the dead body of Sumanbai. Vide post mortem report Ex.P/1 they found following 9 ante-mortem injuries on various parts of the body :

- (i) L.W. – Size 1 x 1 (Inch) over Lt. eye brow;
- (ii) L.W. – Size 1 x 1 (Inch) over Lt. side of maxillary region;
- (iii) L.W. – Size 1 x 1 (Inch) over Lt. side of mandibular region;
- (iv) L.W. – Size 1 x 1 (Inch) over Rt. Side of upper lip;
- (v) L.W. – Size 1 x ½ over Lt. Forearm and Lt. hand;
- (vi) Contusion – Size 3 x2 (Inch) below umbilicus over pubic region;
- (vii) L.W. – Size 3 x 2 muscle deep with bony fracture over middle of Rt. Leg with fracture of both bone externally visible;
- (viii) Contusion over Lt. thigh (medical aspect) size – 3 x 2 (Inch);
- (ix) Contusion over 2 x 2 just above Lt. knee.

Frontal and left parietal bone were found fractured with a further damage to the brain material. A stabbed wound running from Urethra to the bladder causing intra pelvic hemorrhage was also found.

4. The doctors opined that Sumanbai died due to hemorrhage and shock as a result of injury to brain, urinary bladder and right leg and that, the death was homicidal in nature caused within 24 hours of the examination.

5. Umed Singh Borana (P.W.12) in the course of investigation visited the place of occurrence and prepared sight-map Ex.P/3, simple and blood stained earth including a wooden log, a Sickle, a wooden roller ('Belan'), some broken pieces of bangles and a wooden stick around 1 ft. in length having stains of blood, were recovered from the spot vide seizure memo Ex. P/4. The clothes found on the body of the deceased were removed during autopsy and were handed over in a sealed cover to the Police, which were seized vide seizure memo Ex.P/9. The appellant came to be arrested on next day i.e. on 29.3.2013 in the evening vide arrest memo Ex. P/10. On interrogation, he allegedly, revealed vide Ex. P/11 that he caused the death of his wife Sumanbai by assaulting her with a wooden log, which he had thrown on the spot itself. The articles recovered from the spot were sent for forensic examination to FSL, Indore. The Assistant Chemical Examiner vide report dated 9.5.2014, Ex.P/14 found presence of human blood on all the articles except simple earth.

6. After usual investigation, a charge-sheet was filed before the competent Magistrate, who in turn, committed the case to the Court of Sessions. A charge for the offence u/s. 302 of IPC was framed by the learned Sessions Judge against the appellant, who abjured the guilt and claimed to be tried pleading total innocence.

7. The prosecution, in order to bring home the charge, examined as many as 12 witnesses including Kajal (P.W.3), said to be an eye-witness of alleged assault of the deceased by the appellant; Dr. D.S. Chouhan (P.W.1) is as a member of team of

doctors which conducted autopsy, while Umed Singh Borana (P.W. 12) is the Investigating Officer. Apart this, the documents vide P/1 to P/13 were also marked as exhibits.

8. The incriminating materials appearing in the evidence against the appellant were brought to his notice during his examination u/s. 313 of the Criminal Procedure Code, 1973 (hereinafter, for short, 'the Code') however, he expressed total ignorance regarding the same and stated that he has been falsely implicated in the case and that, he is an innocent. He further stated that on his return to home, he found his wife lying dead in the house and that, the prosecution witnesses want to falsely implicate him in the matter. None was examined in defence.

9. The learned trial Court, on the basis of evidence available on record, vide the impugned judgment, found that on the basis of ocular evidence of Kajal (P.W.3), the daughter of appellant, and the circumstantial evidence, it is proved beyond reasonable doubt that the appellant committed murder of his wife Sumanbai by assaulting her in a brutal manner. Accordingly, he was convicted and sentenced u/s. 302 of the IPC, as stated hereinabove.

10. The learned counsel appearing on behalf of the appellant has challenged the finding of conviction recorded against the appellant submitting that the learned trial Court has seriously erred in placing reliance on the testimony of a child witness viz. Kajal (P.W.3). It is further contended that various inferences drawn against the appellant on the basis of circumstances are based on surmises and conjectures and that, the conviction and

sentence being contrary to law and evidence is liable to be set aside.

11. Per contra, it is submitted by learned Public Prosecutor that the learned trial Court on proper appreciation and analysis of evidence has recorded the finding of guilt against the appellant and that, the testimony of Kajal (P.W.3) has been relied upon because despite being subjected to elaborate cross-examination, nothing could be elicited so as to discredit her version. It is further submitted that the appellant on the fateful day was with the deceased, his wife and it was for him to explain as to under what circumstances, she sustained multiple injuries and succumbed to such injuries. It is contended that the learned trial Court has rightly recorded the conviction against the appellant. Hence, the appeal is liable to be dismissed.

12. Heard learned counsel for the parties and perused the record.

13. We have given hour thoughtful consideration to the rival submissions made by learned counsel for the parties and have also carefully gone through the record.

14. Considering the pleas raised at the Bar, we are required to examine as to whether the learned trial Court has committed any factual or legal error in arriving at a finding of guilt against the appellant regarding charge u/s. 302 of the IPC.

15. The prosecution case rests on two sets of evidence – firstly, the ocular testimony of Kajal (P.W.3), the daughter of

deceased as well as the appellant; secondly, the incriminating circumstances including the evidence of last seen as well as post-incident conduct of the appellant.

16. A serious challenge has been made to the testimony of Kajal (P.W.3), a child witness, aged about 12 years, hence at the very outset it has to be examined whether her testimony inspires confidence. The law is well settled that a reasonable degree of caution and circumspection is required while dealing with the evidence of a child witness (See : ***Rajaram Yadav vs. State of Bihar, JT 1996 SC 140***), however, if the same on a close and careful scrutiny is found to be reliable, the Court can act upon such an evidence.

17. In the instant case, Kajal (P.W.3) has been found by the learned trial Court worthy of reliance. We have carefully gone through her testimony which is clear, cogent, consistent and free from any material infirmity or anomaly. Despite being subjected to searching cross-examination, the defence has not been able to shake her credibility. Being the daughter of the deceased and appellant and considering the fact that she was residing with her parents in the same house, where her mother was found dead, her presence on the spot cannot be doubted. Apart this, nothing has emerged in her cross-examination to indicate that she has any motive to falsely implicate her own father in causing death of her mother. While there is nothing to indicate that Kajal (P.W.3) has any ill-will or animosity against the appellant, with whom she being his daughter must naturally be affectionate; the appellant in his examination u/s. 313 of 'the Code' has not stated anything so

as to indicate that Kajal (P.W.3) is interested in falsely deposing against him. The learned trial Court, on consideration of various relevant factors discussed in Para 15, 16 and 17 of the impugned judgment, has found the testimony of Kajal (P.W.3) as reliable and trustworthy. On re-appreciation of her evidence, we concur with the finding recorded by the learned trial Court in this regard.

18. Kajal (P.W.3) has deposed that on the fateful night, she along with her mother and younger brother was inside her house. It has further been deposed by this witness that at around 10 to 11 pm., the appellant – her father came to the house and demanded Rs.500/- from her mother and that, on refusal of her mother to pay the money, the appellant started quarrelling with her and when this witness tried to calm down the appellant, he slapped her and pushed away from the house and bolted the door from inside. As per Kajal (P.W.3), thereafter, she peeped into the house from window situated besides the main door of the house and saw the appellant assaulting Sumanbai by wooden stick and brick and that, when she asked him not to assault her mother, the appellant opened the door and also tried to assault her, therefore, she ran away from the spot towards the forest and that, in the morning on her return, found her mother lying dead inside the house, regarding which, she informed her cousin brother – Ajay (P.W.2). In Para 5 of her cross-examination, this witness has clearly deposed that she narrated the incident to her brother Ajay (P.W.2). Kajal (P.W.3) has denied the suggestion that she did not see the appellant assaulting her mother; though she has admitted that on the date of occurrence, her mother Sumanbai had also consumed liquor, however, it is denied by her that because of influence of liquor, her

mother felled down on the ground.

19. Ajay (P.W.2) – cousin brother of Kajal (P.W.3), has supported the version put forth by Kajal (P.W.3) to the extent that at around 6 to 6.30 in the morning, Kajal (P.W.3) came to him and informed about the incident and further told him that the appellant had assaulted Sumanbai on her refusal to pay the money to him and that, she could see the appellant assaulting her mother from the window situated besides the door of the house. There is nothing to indicate that Ajay (P.W.2), who has lodged the First Information Report Ex.P/2 regarding the incident, has an axe to grind against the appellant. On various material points, his testimony is found to be clear and consistent, therefore, we do not find any reason to doubt the credibility of the version put forth by this witness.

20. Apart the aforesaid ocular testimony of Kajal (P.W.3), which stands corroborated with the testimony of Ajay (P.W.2), indicating towards complicity of the appellant in causing death of Sumanbai, there are certain other tall telling circumstances unerringly pointing towards the guilt of the accused.

21. The appellant in his examination u/s. 313 of 'the Code' has stated in response to Question No.72 that when he came back to his house, he saw his wife Sumanbai in a dead state, however, he does not know as to how it has happened. His statement in this regard is quite vague and silent on the point as to where he had gone to perform manual work; at what time he came back to his house and saw his wife lying dead inside the house; why he immediately did not react and informed his neighbours, relatives

and other persons and Police that his wife is lying dead inside the house.

22. No doubt, the prosecution is required to prove the guilt beyond reasonable doubt and has to stand on its own legs and that, the accused has a right to keep mum, however, when a particular fact can be said to be within the personal knowledge of the accused, then unless he comes out with some plausible explanation regarding the same, his silence or failure to offer any plausible explanation may be taken as an incriminating circumstance against him. In this connection, we can refer to the observations made by Hon'ble the apex Court in *Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681*, wherein it has been held as under :

"15. 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 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."

23. In *Pudhi Raja vs. State, (2013) 1 SCC Cri. 430*, the apex Court observed that it is obligatory on the part of the accused while being examined u/s. 313 of 'the Code' to furnish some

explanation with respect to the incriminating circumstances appearing against him. It was held that if the accused fails to offer an appropriate explanation or gives a false reply, the said act may be counted as providing an incriminating circumstance.

24. In the instant case, the testimony of Kajal (P.W.3) loudly speaks that on the fateful day, the appellant was in the house with his wife Sumanbai. As Sumanbai was found dead in the house, therefore, it was for the appellant to explain as to how her death occurred. Though, suggestions have been given on behalf of defence to Ajay- P.W.2 (Para 10), Leela – P.W.8 (Para 5) that Sumanbai having consumed liquor had fell down on the heap of logs and thus, sustained injuries, however, it is noteworthy that the appellant has not come out with any such plea in his examination u/s. 313 of ‘the Code’. Therefore, the defence taken in this behalf appears to be a total concoction.

25. The plea made on behalf of the appellant that on the fateful night, he was engaged in some work and found his wife in dead state when he came back to his house, is not at all convincing. Nothing has been brought either during cross-examination of witnesses or by way of defence as to with whom the appellant was working, what work was being done by him, where he was engaged and at what time he returned his house. In absence of such particulars, the aforesaid plea cannot be accepted. Even if it is taken for a moment for the sake of argument that on his return, he found his wife dead inside the house, then what prevented him from bringing this incident to the notice of neighbours, relatives so also the police and why he did not react in

that very manner. Being husband of the deceased, it was something bare minimum expected from him.

26. Another aspect which invites attention of this Court is that, on the following day of the fateful night, the appellant was not available and he could be apprehended only on next day i.e. in the evening of 29th March, 2013. Why a person, whose wife has suffered death, will keep hiding or absconding for more than 30-35 hours of the incident?

27. The learned trial Court while appreciating and analysing and evaluating the evidence has taken all these aspects into consideration. We are in agreement with the reasonings so also with the finding recorded by the learned trial Court.

28. As regards nature of death, the testimony of autopsy surgeon Dr. D.S. Chouhan (P.W.1) to the effect that Sumanbai died because of multiple injuries and the consequent hemorrhage and shock and the death was homicidal in nature, has remained unchallenged. Considering the nature of injuries found on the person of the deceased including fracture of left parietal and left frontal bone leading to damage of brain material coupled with the injury found on the internal part of genital organs, there can be no manner of doubt that the deceased was put to death and that the same was homicidal. Considering the nature of injuries, the only inference can be that the injuries were inflicted with an intention to cause death, therefore, the act comes within the category of murder punishable u/s. 302 of the IPC.

29. Hence, the finding of guilt arrived at by the learned

trial Court against the appellant that he committed murder of Sumanbai being based on proper appreciation of evidence does not call for any interference.

30. Resultantly, we agree with the finding of guilt and the consequent conviction and sentence recorded against the appellant u/s. 302 of the IPC. Therefore, this appeal having no merit, fails and is hereby dismissed.

(ALOK VERMA)
JUDGE

(VED PRAKASH SHARMA)
JUDGE.

Alok/