

A RAGHAVENDRA SHARMA

v.

STATE OF M.P.

(Criminal Appeal No. 1063 of 2001)

NOVEMBER 7, 2008

B [DR. ARIJIT PASAYAT, C.K. THAKKER AND
D.K. JAIN, JJ.]

Penal Code, 1860; s. 302 r/w s.34:

C *Murder – Husband allegedly committed murder of his*
wife – Trial Court, on the basis of post-mortem report and
evidence of doctor, found the accused guilty of committing
murder of his wife and sentenced him accordingly – Affirmed
by High Court – Correctness of – Held: Correct – Doctor
conducted post-mortem opined that cause of death was
asphyxia as a result of suffocation – Since no food particles
found in trachea, larynx and bronchitis, question of vomited
material blocking the air passage clearly ruled out – Accused
was living along with deceased in the same room and doubted
fidelity of his wife and was also not happy with the dowry and,
therefore, had motive to commit the crime – Under the
circumstances, trial Court rightly found that the accused had
motive of committing the murder of his wife – Hence, no
infirmity found in the impugned order warranting interference.

F **Appellant had been harassing his wife for more and**
more dowry and also doubting her fidelity. He allegedly
committed her murder. Family members of the deceased
lodged an F.I.R. The Police conducted the post-mortem
and, after investigating into the matter submitted the
charge sheet against the accused husband for
committing the murder of his wife. Trial court found that
the appellant doubted the fidelity of his wife and believed
that she had illicit relationship with her brother in law and

was not happy with the dowry articles given to him at the time of marriage and as such had motive to commit the crime; that the deceased was in the company of the appellant in the night when she died and it was he who alone had committed her murder. The trial Court on the basis of post mortem report and evidence of PW7, one of the doctors who had conducted the post mortem, found the accused husband guilty of committing the murder of the deceased, his wife. On appeal, High Court affirmed the conviction and sentence of the accused. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. The evidence of PW 7, the doctor who had conducted the post mortem, categorically ruled out the theory of accidental death as was projected by the accused. PW 7 had committed the postmortem along with another doctor and stated that the cause of death was asphyxia as a result of suffocation. [Para 4] [921-C-D]

1.2. PW 7 had found a dark red colour mucoid fluid on the trachea and found violet bluish froth in the lungs. No food particles were found in the trachea, larynx and bronchitis. Therefore the question of vomited material blocking the air passage was clearly ruled out. DW 3 had never any occasion to see the dead body and purportedly had looked at the postmortem report. In that sense his evidence has evidentiary value. Apart from that the deceased was living with the appellant staying in the same room and that is another factor which has been rightly taken note of by the trial court and the High Court. No infirmity found on the conclusions of the trial Court or the High Court to warrant interference. [Para 5] [922-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1063 of 2001.

A From the final Judgment and Order dated 27.2.2001 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 68 of 1989.

B Dr. Madan Sharma, Bakas Kar Gupta, Asha Upadhyay, R.D. Upadhyay and Rajeev Sharma for the Appellant.

C.D. Singh, Sunny Chowdhary, Vairagya Vardhan Dubey, Aditya Singh, Upasana Nath and Vibha Datta Makhija for the Respondent.

C The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgement of the Madhya Pradesh High Court, Jabalpur upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') as was recorded by learned Second Additional Sessions Judge, Chhindwara in Sessions Trial No. 136 of 1986. Appellant alongwith his father Bhuvneshwar Dayal Sharma faced trial for commission of offences punishable under Section 302 read with Section 34 and 201 IPC. Father of the appellant was acquitted of both the charges, while appellant was acquitted of charges under Section 201.

2. Background facts in a nutshell are as follows:

F Maya (hereinafter referred to as the 'deceased') was the wife of the appellant and they were married about 11 months prior to the date of incident. It is further an admitted position that the deceased was a teacher posted at Parasia whereas appellant was also a teacher posted at village Mungwani and he used to visit his wife at village Parasia. It is further not in dispute that Narendra Kumar Sharma (P.W.2) and Dipal alias Pappu (P.W. 11) are brothers of deceased whereas Sushila Bai (P.W.8) and Rajkumari (P.W. 10) are sisters of the deceased. It is also an admitted position that appellant along with the deceased had gone to his father-in-law's place on 8.5.1886.

H They had gone to Vidisha along with Rajkumari (P.W.10) and

her husband Radhakrishan and Dipak. They stayed there for about ten days and thereafter on 19.5.1988 appellant along with the deceased and Dipak (P.W.11) returned to village Parasia and on the same day he went to village Salkhani, declining the request to stay at village Parasia. There is no dispute that the deceased was at advance stage of pregnancy and she died in the night between 21-22 May, 1986 at her father-in-law's at village Salkhani. On receipt of the information about the death of Maya, Mahesh Prasad (P.W. 1) who is the husband of the sister of the deceased along with Sushila (P.W.8) and Narendra Kumar Sharma (P.W.2) went to village Salkhani. Seeing dead body of Maya they perceived her death to be suspicious and hence gave report to the Chourai Police Station. On receipt thereof, inquest report (Ex. P/3) was prepared in presence of the witnesses and vomited material along with the earth were seized. Dr. Panchamlal (P.W. 5) who was called by the appellant on 22.5.1986 declared her dead.

After the marriage of the deceased with the appellant on 2.6.1985, deceased came to her father-in-law's place at village Salkhani only 3-4 times and although appellant used to go to meet his wife at village Parasia, but was not happy with the articles given at the time of marriage and had kept the same at the parents' place of the deceased at Paresis. Appellant further used to demand Scooter and had suspicion about his wife's fidelity and believed that she had illicit relationship with her brother-in-law Radhakishan i.e. husband of Rajkumari (P.W.10). Immediately prior to the incident appellant and deceased had gone to Radhakrishnan's House at Vidisha. After returning from Vidisha to Parasia, in spite of the request made, appellant did not stay with his wife there and went along with the deceased to his village Salkhani, although deceased was not inclined to go. On 21.5.1986, the villagers heard the cries of the deceased. She was done to death by the appellant and in order to conceal the crime, he projected that she died of vomiting.

A While preparing the inquest report it was found that there were red and blue spots on the face and chest of the deceased and thin blood coming out from the nostrils and as such the death was found to be suspicious and accordingly the dead body of Maya was sent for post-mortem examination. The Post
B mortem was conducted by a team of doctors consisting of Dr. V.E. Chako (P.W.7) and Dr. K.D. Khan and they submitted the post-mortem report (Ex.P/12) signed by both of them. According to the post-mortem report and the evidence of Dr. Chako (P.W.7), Maya's death was "asphyxiated as a result of suffocation".

C On enquiry by the investigating officer, Dr. Chako opined that swelling between Pannum adeomi and the border of the breast was ante-mortem in nature and could have been possible by pressing hard the chest and smothering by an
D object like soft pillow. The investigating agency also sent the earth containing vomited material for chemical examination to the Forensic Science Laboratory. But in its report the Forensic Science Laboratory did not find any poison. However, on the seized under-garments of the deceased and on the slides prepared from the vaginal fluid human sperms were found to
E show that the deceased had sexual intercourse before her death.

Trial court on appreciation of the evidence, on placing reliance on the post mortem report and the evidence of Dr.
F Chako, PW7, found the death of the deceased to be homicidal in nature. The trial court rejected the evidence of Dr. S.D. Vaidya, DW3 who had opined that the death of Maya was accidental in nature. Trial court found that the appellant doubted the fidelity of his wife and believed that she had illicit
G relationship with her brother in law and was not happy with the dowry articles given to him at the time of marriage and as such had motive to commit the crime. It was further found that the deceased was in the company of the appellant in the night when she died and it was he who alone had committed her
H murder.

The High Court analysed the stand taken by the appellant and came to hold that the conclusions of the trial court were justified. Accordingly the appeal as noted above has been dismissed.

In the present appeal the stand taken before the High Court with reference to evidence of PW 3 was reiterated.

3. Learned counsel for the State on the other hand supported the judgment of the High Court.

4. The evidence of PW 7 categorically ruled out the theory of accidental death as was projected by the accused PW 7 had committed the postmortem alongwith Dr. Kahare and stated that the cause of death was asphyxia as a result of suffocation. Dr. Chako in her evidence has stated that on 5.6.1986 she had received a query, Ex. P.13 from the investigating agency and had given an answer. The queries and the answers are as follows:

"1. You have mentioned in P.M. report that "swelling between pomum-adami and border of the breast" please clear that how that swelling can be caused.

2. You have also mentioned in P.M. report that "Nails of fingers of both the hands are blue and terminal pulps of the fingers of the right and found blueish purple colour (Coppery) while in the left hand it is present over the tips of fingers" please clarify that how it can be caused.

3. The case of death according to P.M. report 'Asphyxiated death due to suffocation" please how that suffocation caused resulting into death".

4. Please clarify that the mode of death is whether homicidal, suicidal or accidental."

In answer thereto, Dr Chako had stated as follows:

- A 1. The swelling on the said area in ante-mortem in nature and can be caused both by external heavy pressure applied on the chest and the said region and smothering by an object like soft pillow with deeply applied pressure.
- B 2. The blueish purple (Coppery) colour on the said areas are as a result of asphyxia.
3. Cause of death given as asphyxia as a result of suffocation which can be attributed to the ante-mortem Injury (swelling)mentioned in the P.M. Report.
- C 4. Death is homicidal:"
5. PW 7 had found a dark read colour mucoid fluid on the trachea and found violet bluish froth in the lungs. No food particles were found in the trachea, larynx and bronchitis. Therefore the question of vomited material blocking the air passage was clearly ruled out. DW 3 had never any occasion to see the dead body and purportedly had looked at the postmortem report. In that sense his evidence has evidentiary value. Apart from that the deceased was living with the appellant staying in the same room and that is another factor which has been rightly taken note of by the trial court and the High Court. We find no infirmity on the conclusions of the trial court or the High Court to warrant interference.
- D
- E
- F 6. Appeal is accordingly dismissed.

S.K.S.

Appeal dismissed.