

SHANMUGHAN

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v.

STATE OF KERALA

(Criminal Appeal No. 1157 of 2007)

JANUARY 19, 2012

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[ASOK KUMAR GANGULY AND T.S. THAKUR, JJ.]

Penal Code, 1860 - ss. 323/302 - Conviction and sentence under - Death of appellant's wife as a result of poisoning on having been administered cyanide - Conviction of appellant u/ss. 323/302 alongwith imposition of life imprisonment by courts below - Interference with - Held: Not called for - Prosecution succeeded in proving the motive of the appellant - Entire chain of circumstances is consistent with the guilt of the appellant - There were clear injuries on the deceased which show that some force was used while administering the poison - Without any force these injuries could not be there in a case of suicidal poisoning - Evidence of doctor who conducted post mortem confirmed the same - Appellant and the deceased admittedly slept together on the night of occurrence inside a bed room and no third person was there to apply force on the victim - Administration of poison took place inside the bed room which could only be administered by the appellant - Thus, prosecution rightly proved that it was a case of murder.

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'R'-wife of appellant died as a result of poisoning on having been administered cyanide. The relationship between 'R' and the appellant were strained. There was evidence of mal-treatment of 'R' by the appellant. Also few weeks prior to the death of 'R', there was some quarrel between the parties. The trial court convicted the appellant under Sections 323/302 IPC and sentenced him to life imprisonment. The High Court upheld the order of

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A the trial court. Therefore, the appellant filed the instant appeal.

Dismissing the appeal, the Court

B HELD: 1.1 When a case is sought to be proved by the prosecution on the basis of circumstantial evidence, the burden on the prosecution is that it must prove each circumstance in such a way as to complete the chain and at the same time it should be consistent with the guilt of the accused. Any reasonable doubt in proving the
C circumstances must be resolved in favour of the accused. The accused must be given the benefit of any fact or circumstance which is consistent with his innocence, which is to be presumed, unless the contrary is proved by chain of circumstances. In the instant case, the
D prosecution succeeded in proving the motive of the appellant and the entire chain of circumstances is consistent with the guilt of the appellant. On the fateful night, admittedly nobody was present in the bed room where the appellant and the deceased were sleeping as
E husband and wife. The victim admittedly screamed at about 2 a.m. This attracted the inmates of the house to rush to the bed room to find the victim dead as a result of administering of poison. This is not disputed. [Paras 7, 8 and 9] [417-A-E]

F 1.2. It is the case of the prosecution that the victim died of cyanide poison which is a highly corrosive poison and is obtained by distilling potassium cyanide or potassium ferrocyanide with dilute sulphuric acid. The
G post mortem examination in cases of death by administering such corrosive poison, would show that the mouth, lips, skin and mucous membrane are corroded in patches and in acute cases, the same may be charred. [Paras 10 and 11] [417-F-G; 418-A]

H *Medical Jurisprudence and Toxicology by Modi 24th*

Edition Year 2011 Page 260, Chapter 12, Section 2 - A
referred to.

1.3. In the instant case, it is found from the injuries that there is presence of lacerated wounds on the lips, contusions in the ear and abrasions in the chest. These injuries clearly show that some force was used while administering the poison. Without any force these injuries could not be there in a case of suicidal poisoning. Apart from the appellant no one was there in bed room to apply force on the victim. That apart the evidence of PW 7, doctor who conducted post mortem also showed that all the injuries were fresh injuries and cannot be sustained by fall on a hard substance. PW 7 also deposed that the injuries could be because of forcible administration of poison. Thus, the prosecution rightly proved that it was a case of murder. [Para 12] [418-B-D]

Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC116: 1985 (1) SCR 88 - referred to.

1.4. The appellant and the deceased were admittedly sleeping together on the night of occurrence inside a bed room and no third person was there and administration of poison took place inside the bed room. There are clear injuries on the deceased, which cannot be self inflicted. Therefore, poison could only be administered by the accused-appellant. [Paras 15 and 18] [419-C-D; 420-C-D]

Anant Chintaman Lagu vs. The State of Bombay AIR 1960 SC 500: 1960 SCR 460; *Bhupinder Singh vs. State of Punjab* (1988) 3 SCC 513: 1988 (3) SCR 409; *Nirmala Devi vs. State of J & K* (1994) 1 SCC 394 - referred to.

1.5. At the time of his statement under Section 313 Cr.P.C also, the attention of the accused-appellant was specifically drawn by the trial court to the injuries on the

A deceased. To that the appellant did not give any answer. Therefore, taking all these facts and also the concurrent findings of the two courts, interference is not called for. [Para 22 and 23] [421-D-F]

B Case Law Reference:

	1985 (1) SCR 88	Referred to.	Para 13
	1960 SCR 460	Referred to.	Para 16
	1988 (3) SCR 409	Referred to.	Para 20
C	(1994) 1 SCC 394	Referred to.	Para 21

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1157 of 2007.

D From the Judgment and Order dated 13.06.2006 of the High Court of Kerala at Ernakulam in Criminal Appeal No. 1303 of 2003.

E Venkat Subramonium T.R., Satya Mitra and Romy Chacko for the Appellant.

Liz Mathew, Sama A.R. Khan for the Respondent.

The Judgment of the Court was delivered by

F **GANGULY, J.**

G 1. This appeal is from the judgment and order of conviction dated 13.6.2006 of the Division Bench of the Kerala High Court in Criminal Appeal No. 1303 of 2003 whereby the High Court confirmed the judgment and order of sentence of the learned Trial Judge. The Sessions Judge, Thrissur in Sessions Case No. 224 of 2002 convicted the appellant under Sections 323/302 I.P.C and gave him life imprisonment. No separate sentence was given for Section 323.

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2. The material facts as appearing from the judgments are that one Raji, wife of the appellant died as a result of poisoning on having been administered cyanide on the night of 2nd March, 1992. In this case, there are certain admitted facts: A

1. The victim Raji was sleeping on the fateful day in the bed room with her husband- the appellant herein. B

2. The deceased and the appellant had a love marriage about 14 years prior to the incident. C

3. They had three children from the said marriage.

4. There is evidence of mal-treatment of the deceased by the appellant.

5. Their son PW 5 deposed that there were some quarrel between the father – appellant and mother – deceased and with the intervention of neighbours the deceased was sent to her parental home. D

3. This happened couple of weeks prior to the death of the deceased. It is also evident from the evidence that the appellant developed suspicion about the character of the deceased and tortured her in the past. There is evidence of the deceased suffering from burn injuries from cigarette butts inflicted by the appellant. Therefore the relationship between the couple was strained. E F

4. PW 7 Dr. N. Rajaram, Lecturer in Forensic medicine, Medical College, Thrissur who conducted the post mortem examination on the body of the deceased found the following injuries on the body of the deceased. The injuries are set out herein below: G

1. Abrasion 0.4x0.1 cm oblique over the back of chest; its lower end 17.5 cm above the hip bone and its upper end 9.5 cm to the right of midline. H

A 2. Crescentic abrasion 0.5x0.1 cm vertical over the back of lower part of chest; its upper end 6.5 cm to the left of midline; its lower end 21.5 above hip.

B 3. Skin contusion 1x0.6 cm and 1.7x0.8 cm over the front and back of left ear lobule

4. Skin deep irregular wound 1.1x0.3 cm over the back of root of left ear.

C 5. Lacerated wound 0.3x0.2 cm over the mucosal aspect of upper lip in between the left canine and 1st premolar.

6. Lacerated wound 0.5x0.2 cm over the mucosal aspect of lower lip opposite the lower left canine.

D 7. Lacerated wound 1.3x0.6 cm over the mucosal aspect of lower lip close to the left angle of mouth and in between injury number 5 and 6.

E 5. Assailing the concurrent finding of facts, the learned counsel appearing for the appellant made his first submission that the prosecution has not proved that the appellant was in possession of the poison which is said to have been administered on the deceased. The next argument is that the defence suggestion that the deceased committed suicide by taking poison herself cannot be ruled out in view of the fact that the deceased was not going out anywhere and was simply confined in her house.

F 6. The next submission of the learned counsel is that there is no direct evidence and the entire case is based on the circumstantial evidence. Since this is a case of circumstantial evidence, the prosecution can only succeed in proving the guilt by the appellant by showing that there is no gap in the chain of circumstances proved by it.

G 7. We take up for consideration the last submission made

by the learned counsel for the appellant. We are inclined to agree that when a case is sought to be proved by the prosecution on the basis of circumstantial evidence, the burden on the prosecution is that it must prove each circumstance in such a way as to complete the chain and at the same time it should be consistent with the guilt of the accused. Any reasonable doubt in proving the circumstances must be resolved in favour of the accused. The accused must be given the benefit of any fact or circumstance which is consistent with his innocence, which is to be presumed, unless the contrary is proved by chain of circumstances.

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8. If we go to the aforesaid principle, we find that in the instant case, the prosecution has succeeded in proving the motive of the appellant and the entire chain of circumstances is consistent with the guilt of the appellant.

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9. On the fateful night, admittedly nobody was present in the bed room where the appellant and the deceased were sleeping as husband and wife. The victim admittedly screamed at about 2 a.m. This attracted the inmates of the house to rush to the bed room to find the victim dead as a result of administering of poison. This is not in dispute.

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10. The only dispute is who administered the poison, and whether it was a case of suicidal poisoning or homicidal poisoning. The injuries which have been found on the deceased by PW 7 are very vital to answer this question. It is the case of the prosecution that the victim died of cyanide poison which is a highly corrosive poison and is obtained by distilling potassium cyanide or potassium ferrocyanide with dilute sulphuric acid. [See: Modi, a textbook of Medical Jurisprudence and Toxicology 24th Edition Year 2011 Page 260, Chapter 12, Section 2]. As a result of administering such corrosive poison, there is bound to be local and chemical action of corroding and destroying all tissues which come in contact with it. [See: *Modi* (supra) page 31, Chapter 2, Section 2]

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A 11. The post mortem examination in cases of death by administering such corrosive poison, would show that the mouth, lips, skin and mucous membrane are corroded in patches and in acute cases, the same may be charred. [See: *Modi* (supra) pages 33-37, Chapter 2, Section 2).

B 12. In this case, we find from the injuries discussed above that there is presence of lacerated wounds on the lips, contusions in the ear and abrasions in the chest. These injuries clearly show that some force was used while administering the
 C poison. Without any force these injuries could not be there in a case of suicidal poison. Apart from the appellant no one was there in bed room to apply force on the victim. That apart the
 D evidence of PW 7 also shows that all the injuries were fresh injuries and cannot be sustained by fall on a hard substance. PW 7 also deposed that the injuries could be because of forcible administration of poison. Thus the prosecution has rightly proved that it is a case of murder and there is no reason for our interference.

E 13. On the next point urged by the learned counsel that as the prosecution has failed to prove that the appellant had the possession of poison, the prosecution's case will be vitiated, we are not accepting the aforesaid proposition. However, in support of the aforesaid submission, learned counsel for the
 F appellant relied upon a three Judge Bench decision of this Court in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra* reported in (1984) 4 SCC 116 and the learned counsel relied upon paragraph 165 at page 188 of the judgment where Justice Fazal Ali, J. formulated certain propositions to indicate that in a case relating to murder by poison, four
 G important circumstances can justify a conviction and His Lordship laid down the following principles:

"1. there is a clear motive for an accused to administer poison to the deceased,

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2 that the deceased died of poison said to have been administered, A

3. that the accused had the poison in his possession,

4. that he had an opportunity to administer the poison to the deceased” B

14. We have gone through the said judgment carefully. We find that in the said case, the learned Judges gave the accused the benefit of doubt in view of the last seen theory.

15. Here the facts are much more loaded against the appellant. In this case, the appellant and the deceased were admittedly sleeping together at the night of occurrence inside a bed room and no third person was there and administration of poison took place inside the bed room. However, it appears that on those principles which have been formulated by Justice Fazal Ali, some doubts were expressed both by Justice Varadarajan and Justice Mukharji, JJ (as His Lordship then was) in paragraphs 199 and 204 of the Judgment. However, the learned Judges agreed with the conclusions reached by Justice Fazal Ali. C D E

16. Another three Judge Bench of this Court in a matter relating to murder by poisoning gave a unanimous verdict formulating different principles. In the case of *Anant Chintaman Lagu vs. The State of Bombay* reported in AIR 1960 SC 500, Justice Hidayatullah (as His Lordship then was) elaborated these principles succinctly in paragraph 58 of the judgment. His Lordship referred to three principles which are necessary to prove in order to return a conviction in a case of murder by poisoning. Those principles are as follows: F G

a. That death took place by poisoning.

b. That the accused had the poison in his possession and.

c. That the accused had an opportunity to administer the poison to the deceased. H

A 17. At page 520 of report, in paragraph 59, the Learned Judge clarified those principles by saying that *“three propositions must be kept in mind always, the sufficiency of the evidence direct or circumstantial, to establish murder by poisoning will depend on the facts of each case”*. His Lordship
 B further clarified by saying *“if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the Court can unhesitatingly hold that the death was a result of administration of poison and that the poison must have been administered by the accused persons, then the conviction can be rested on it”*.
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18. In the instant case, there was no third person in the bed room and there are clear injuries on the deceased, which cannot be self inflicted. Therefore, poison could only be administered
 D by the accused – appellant.

19. Reference in this connection can also be made to other judgments of this Court where this Court has taken a view which is consistent with the view taken by the unanimous three Judge Bench of this Court in *Anant Chintaman Lagu* (supra).
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20. In *Bhupinder Singh vs. State of Punjab* reported in (1988) 3 SCC 513, this question has been fully answered by this Court in paragraph 25 which reads thus:

F “We do not consider that there should be acquittal or the failure of the prosecution to prove the possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The
 G person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such cases, it would be impossible for the prosecution to prove possession of poison with the
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accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused".

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21. Similarly, in a subsequent decision of this Court in the case of *Nirmala Devi vs. State of J & K* (1994) 1 SCC 394, this Court again affirmed the aforesaid principles in paragraph 7 by holding as follows:

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".....Yet another submission of the learned Counsel is that the prosecution has not established as to how the appellant came into possession of arsenic poison. We are of the view that this by itself does not affect the prosecution case when the other evidence is clinching".

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22. In the instant case, at the time of his statement under Section 313 Cr.P.C also, the attention of the accused – appellant was specifically drawn by the trial court to the injuries on the deceased. To that the appellant did not give any answer.

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23. Therefore, taking all these facts and also the concurrent findings of the two courts, we are not inclined to interfere in this appeal. The appeal is accordingly dismissed. The appellant is to serve out the remaining sentence.

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N.J.

Appeal dismissed.