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SOOGURU SUBRAHMANYAM

v.

STATE OF A.P.

(Criminal Appeal No. 164 of 2008)

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APRIL 04, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

PENAL CODE, 1860:

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s.302 - Murder - Circumstantial evidence - Husband suspecting fidelity of wife - Dead body of wife found in the premises in exclusive possession of the couple - Death caused by smothering - Husband absconded after the incident - Held: All the links in the chain of evidence are established beyond reasonable doubt and the established circumstances are consistent with the singular hypothesis that the accused is guilty of the crime and it is totally inconsistent with his innocence - Conviction and sentence as awarded by trial court and affirmed by High Court, upheld - Evidence - Circumstantial evidence - Criminal law - Motive.

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The appellant was prosecuted for the murder of his wife. The prosecution case was that the appellant suspected the character of his wife. In the morning of 17.10.2000, the wife of the appellant was found dead in their house. The appellant was absconding. The medical evidence established that it was a case of homicidal death and not of suicide as the deceased had died due to smothering. The trial court convicted the appellant u/ s 302 IPC and sentenced him to imprisonment for life. The High Court affirmed the conviction and sentence.

Dismissing the appeal, the Court'

HELD: 1.1 The deceased had died of asphyxia as a

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result of smothering. The injuries and the opinion has clearly revealed that the death was homicidal. There can be no iota of doubt that the death was homicidal and not suicidal and further it was not a case of rape and murder. [para 9] [522-F-H]

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1.2 From the testimony of PW-8, the younger sister of the deceased and PW-9, another relative of the deceased, it is evidence that the accused, for whatever reason, had garnered suspicion against the attitude and character of his wife. Further, PW-7, who in his 161 Statement had stated that the accused has told him about the anguish relating to his wife's character, though has turned hostile, yet the same would not make any difference to arrive at the conclusion on the basis of the evidence of PWs-8 and 9 that he had a suspicious mind as regards the character of his wife. [para 11-13] [523-C-E, F-H]

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1.3 It has been established on the basis of the material on record that the premises had been taken on rent by the accused and he was residing with his wife in the said premises. From the evidence of PW-1, the land lady and her son (PW-5), it is evident that the deceased had died about 6.30 a.m., The evidence of PW-12, the Councillor, and PW-13, the Investigating Officer, established that after breaking open the lock the dead body was found in the room. [para 14] [524-A-B, D-E, F-G]

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1.4 It is worthwhile to note that the accused did not take the plea of alibi. On the contrary, the factum of abscondence has been proven. Under these circumstances, the cumulative effect is that the husband was present in the house when the death of the wife occurred. The circumstances soundly establish that the deceased was with the accused during the night, there was a locking of the door from outside which could not have been done by anyone else except him and further he absconded from the scene of the crime and did not report

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A to the police. Thus, the irresistible and inescapable conclusion is that the accused was the culprit in committing the murder of his wife. [para 15] [525-B-C, D-E]

B 1.5 In the case at hand, there is material on record which suggests that there was some ire that had swelled up in the mind of the accused to extinguish the life spark of the wife. It is to be borne in mind that suspicion pertaining to fidelity has immense potentiality to commit irreversible wrongs as it corrupts the mind and corrodes the sense of rational thinking and further allows liberty to the mind to pave the path of evil. [para 17 and 18] [526-G; 527-A-B]

C *Nathuni Yadav and Others v. State of Bihar and Another* 1996 (10) Suppl. SCR 905 = (1998) 9 SCC 238 - referred to.

D 1.6 Therefore, this Court holds that all the links in the chain of evidence are established beyond reasonable doubt and the established circumstances are consistent with the singular hypothesis that the accused is guilty of the crime and it is totally inconsistent with his innocence. [para 19] [527-C-D]

E *Sharad Birdhichand Sarda v. State of Maharashtra* 1985 (1) SCR 88 = AIR 1984 SC 1622 *Padala Veera Reddy v. State of Andhra Pradesh and Ors.* AIR 1990 SC 79; *Balwinder Singh v. State of Punjab* 1995 (5) Suppl. SCR 10 = AIR 1996 SC 607, *Harischandra Ladaku Thange v. State of Maharashtra* 2007 (9) SCR 562 = AIR 2007 SC 2957 and *Jagroop Singh v. State of Punjab* 2012 SCR 91 = AIR 2012 SC 2600 - relied on.

G Case Law Reference:

	1996 (10) Suppl. SCR 905	referred to	para 16
	1985 (1) SCR 88	relied on	para 19
H	AIR 1990 SC 79	relied on	para 19

1995 (5) Suppl. SCR 10 relied on para 19 A
2007 (9) SCR 562 relied on para 19
2012 SCR 91 relied on para 19

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 164 of 2008. B

From the Judgment and Order dated 28.08.2006 of the
High Court of Judicature, Andhra Pradesh at Hyderabad in
Criminal Appeal No. 1478 of 2004. C

Ashok Kumar Sharma, Avinash Kumar Jain for the
Appellant.

Shishir Pinaki, D. Mahesh Babu, Mayur Shah for the
Respondent. D

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The accused-appellant had entered
into wedlock with Nagamani, the deceased, on 30.4.1998 and
for some time, they lived in marital bliss at Hindupur. After four
months, the needs of life compelled the couple to shift to
Srikalahasti where the father of the deceased was working. The
experience of life not being satisfactory hardly after eight
months, at the insistence of the wife, they shifted back to
Hindupur. The shifting to Hindupur did not bring satisfaction as
expected and hence, eventually, they shifted to Madanapalle
town where the accused was working prior to the marriage. As
the prosecution story further unfurls, at the time of occurrence,
i.e., on 17.10.2000, the accused was staying in the rented
portion of the house belonging to Dhanalakshmi, PW-1. The
other portion was occupied by one Imamvalli, father of S. Syed
Basha, PW-5. Imamvalli was staying with his children and his
wife was away at Kuwait and the proximity of stay, as alleged
by the prosecution, gradually developed to an illicit intimacy
between him and the deceased. Twelve days prior to the E
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A incident, the deceased was found in the company of Imamvalli
in an auto-rickshaw by the accused, who dragged him out from
the auto-rickshaw and assaulted him. The accused took the
deceased to the house and warned her. The differences
B quarrels during nights. On 16.10.2000, there was a quarrel and,
as the prosecution version proceeds, the accused had
expressed his agony and anger before Pavankumar, PW-7, that
if the deceased did not discontinue her illicit relationship, he
might be compelled to send her back to her matrimonial home
C or get rid of her.

2. As the version of the prosecution has been further
depicted, on 17.10.2000, about 6.30 a.m., the deceased was
found dead in the house and the doors were locked from
outside. PW-1, the landlady, lodged an FIR and a crime was
D registered. During the course of investigation, the lock of the
room was opened by PW-13, the Investigating Officer, in the
presence of one Babu Naidu, PW-12, and another. The further
investigation led to seizure of incriminating material from the
scene of the offence. Thereafter, inquest was held over the dead
E body of the deceased and it was sent for post mortem. The
investigating agency examined number of witnesses and after
completing the investigation, placed the charge-sheet for an
offence punishable under Section 302 of the Indian Penal Code
(for short "the IPC") against the accused-husband before the
F competent court which, in turn, committed the matter for trial to
the Court of Session.

3. The accused abjured his guilt and pleaded false
implication and claimed to be tried.

G 4. The prosecution, in order to substantiate the offence as
alleged against the accused, examined as many as 15
witnesses, got 29 documents exhibited and 15 material objects
marked. PWs-1 to 5 and 7 turned hostile and they were cross-
examined by the prosecution. PW-1 was the landlady who had
H lodged the FIR, Ext.-1, and PWs-2 to 5 and 7 were the

neighbours and all of them resiled from their original version. A
The learned trial Judge took note of the fact that there was no
direct evidence to prove the involvement of the accused in the
crime, but taking note of the series of facts, namely, that the
death was homicidal and not suicidal; that the deceased was
in the house of the husband and her dead body was found in B
the house; that the house was locked from outside and the
husband had absconded; that there was no complaint by the
husband with regard to the death of his wife; that the cross-
examination of the hostile witnesses would indicate that the
deceased and the accused were staying together and the C
incident occurred as per the FIR, Ex. P-1; that the testimony of
PWs-8 to 10 clearly established that the accused was
suspecting the character of the deceased and had picked up
quarrels alleging illicit intimacy with another person; that the
suggestion on behalf of the accused that there was violent D
intercourse on the deceased was found to be false on the base
of the evidence of PW-11, Dr. Paul Ravi Kumar; that from the
evidence of PW-1, Dhanalakshmi, it was quite obvious that she
was aware of the death of Nagamani before she gave the
report; and that during the investigation, Exs. P-21 and P-22 E
were found in the house of the accused and Ex. P-21 which
was disputed to have been written by him was found to be false
in view of the evidence of PW-15, K. Vani Prasada Rao, the
hand-writing expert who had clearly stated that the writings in
Ex. P-21 were that of the accused and that the cumulative effect F
of all the circumstances did go a long way to show that the chain
was complete to establish that it was the accused and the
accused alone who had committed the crime and none else,
and, accordingly, convicted him under Section 302 of the IPC
and sentenced him to suffer rigorous imprisonment for life and
to pay a fine of Rs.200/- in default, to suffer simple G
imprisonment for one month.

5. On appeal being preferred, the Division Bench of the
High Court, appreciating the evidence brought on record,
concurred with the view of the learned trial Judge, regard being H

A had to the circumstances which had been taken note of by him, especially that the premises was in exclusive possession of the accused; that the accused had lived with the deceased during that night; that the door was locked from outside; that the accused had absconded for a long time and, accordingly, gave the stamp of approval to the judgment of conviction and order of sentence of the learned trial Judge. Hence, the present appeal by way of special leave by the accused-appellant.

6. Mr. Ashok Kumar Sharma, learned counsel appearing for the appellant, in support of the appeal, has submitted that the trial court as well as the High Court has erroneously come to the conclusion that the chain of circumstances have proven the guilt of the accused though on a proper scrutiny of the evidence, it is perceivable that there are many a missing link in the version of the prosecution. The learned counsel would submit that the very presence of the accused on the site and the foundation of the prosecution relating to harbouring of suspicion by the accused relating to the character of the wife are extremely doubtful and cannot, by proper appreciation of evidence, be said to have been proven. It is urged by him that the circumstances have been stretched to an unimaginable length on the basis of surmises and conjectures ignoring the relevant facets of the evidence, more importantly, that there was amicable relationship between the husband and wife and the same has been clearly borne out in the testimony of PWs 1 to 5 and 7. It is his further submission that when the neighbours have not supported the case of the prosecution, it was absolutely improper on the part of the learned trial Judge to ignore the compatible relationship between the accused and the deceased and accept the prosecution version of suspicion by the husband on the basis of some sketchy material on record to proceed to the ultimate conclusion for finding the accused guilty of the offence. That apart, submits the learned counsel that no motive has been exhibited to rope the appellant in the crime and convict him. The learned counsel would emphatically put forth that the High Court has not appositely

appreciated the evidence brought on record which amounts to failure of the legal obligation cast on the appellate Court and, therefore, both judgments of the appellate Court as well as of the trial Court deserve to be annulled and the appellant should be acquitted of the charge.

7. Mr. Shishir Pinaki, learned counsel for the State, resisting the aforesaid proponent's arguments of the learned counsel for the appellant, would contend that each of the circumstances has been properly weighed by the learned trial Judge and has been keenly scrutinized by the High Court and, hence, there is no perversity of approach to nullify the judgment of conviction. It is canvassed by him that the mere repetition by the neighbours that the husband and wife lived in an atmosphere of harmony and compatibility should not be given more credence than the testimony of the witnesses that there was suspicion in the mind of the husband, the presence of the husband in the house, his abscondence and absence of positive plea in the statement recorded under Section 313 of the Code of Criminal Procedure and the injuries found on the body of the deceased. The learned counsel would urge with immense conviction that the suspicion which was at the root of the crime, as the circumstances unfold, shows the ultimate causation of death in a violent manner by the accused.

8. To appreciate the rival submissions raised at the bar, it is obligatory to see the nature of the injuries sustained by the deceased and the opinion of the doctor on the same. PW-11, Dr. Paul Ravi Kumar, who had conducted the post mortem, has stated that he had found the following external and internal injuries on the dead body of the deceased: -

"External injuries:

There is bloody discharge coming out from both the nostrils. Tongue tip bluish in colour seen in between the upper and lower teeth. Lips blackish in colour with diffuse abrasions over both the lips. Nose bluish discolour tim

A present over right nostril, ears - bluish black discolour of the left pinna.

1. An abrasion of 4 x 2 cm over left mandibular margin.
2. An abrasion of ½ x ½ cm over left upper lid.

B 3. An abrasion of 2 x ½ cm over right leg anterior aspect.

4. A linear abrasion of 2 x 1/3 cm over dorsum of right foot.

C **Internal injuries:**

Neck - Hyoid normal, thyroid, cricoid cartilagas normal, larynx - congested. Trache - Bronchi - normal. Lungs - Normal, cut section congested, stomach - normal and they are congested. Intestines distended gases, urinary bladder empty. Uterus - normal. Scalp: A diffuse contusion of 10 x 8 cm over left occipito-partial region. On reflexion of scalp a diffuse hematoma of 8 x 8 cm over left occipito partial region present. Skull, bones, base of the skull-normal. Meninges - normal, brain - normal size congested. Spine bones of the extremities - normal."

9. On the basis of the said injuries, he has expressed the opinion that the deceased had died of asphyxia as a result of smothering and the time of death was 36 to 40 hours prior to his examination. The aforesaid injuries and the opinion has clearly revealed that the death was homicidal. In examination-in-chief, he has deposed that the external injuries mentioned by him vide Ex. P-8 are possible when a person places a pillow on the face and presses and the result is struggle. In the cross-examination, it has been suggested to him that the injuries recorded by him could be possibly by participating in violent sexual intercourse but the same has been categorically denied. Thus, there can be no iota of doubt that the death was homicidal and not suicidal and further it was not a case of rape and murder.

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10. Once it is held that the death was homicidal and the injuries were not the result of any violent sexual intercourse, the circumstances are to be scrutinized to see the complicity of the accused in the crime. A

11. First, we shall advert to the issue whether the suspicion relating to the illicit relationship by the accused-appellant has been established. True it is, the neighbours, PWs-1 to 5, who have turned hostile, have stated that the husband and wife had an amicable relationship but the version of the other witnesses project otherwise. From the testimony of PW-8, Triveni, the younger sister of the deceased, it is apparent that on 1.10.2000, the deceased had come to their house at Hindupur and had told her that the accused was harassing her on the pretext that she had developed illicit relationship with someone and was not providing her food. She has deposed that she advised the deceased that quarrels are common in family life and she should adjust herself and, accordingly, she went back to her husband. In the cross-examination, nothing has been elicited to discredit her testimony. B
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12. PW-9, P. Gangappa, another relative of the deceased, has deposed about the deceased agonisedly describing before him the harassment meted out to her by her husband on the excuse that she had developed illicit intimacy with someone. There has been absolutely no cross-examination on this score. E
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13. In view of the aforesaid, we are disposed to think that the accused, for whatever reason, had garnered suspicion against the attitude and character of his wife. We may hasten to add that PW-7, who in his 161 Statement had stated that the accused has told him about the anguish relating to his wife's character, though has turned hostile, yet the same would not make any difference to arrive at the conclusion on the basis of the evidence of PWs-8 and 9 that he had a suspicious mind as regards the character of his wife. G
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A 14. Presently, we shall proceed to consider certain other
circumstances. It has been established on the basis of the
material on record that the premises had been taken on rent
by the accused and Imamvalli from the landlady, PW-1. PW-1
has admitted that she had given the accused a portion of the
B house on rental basis. PW-5, son of Imamvalli, has admitted
that the accused and his wife were residing on rent in the next
portion of their house. Thus, they were close neighbours. PW-
1 in her evidence has stated that she was not aware if the
deceased was alive or not. The learned trial Judge has
commented on her conduct which we need not further expatiate.
C The fact remains that she has deposed that when she got up
in the morning, she found that there was some commotion in
the portion which she had given on rent and it was informed to
her that someone had died. It is interesting to note that she has
admitted the FIR Ex. P-1. In the cross-examination, she has also
D admitted that the contents of Ex. P-1 were read over and
explained to her before she signed it. PW-5 has deposed that
Nagamani, the deceased, had died about 6.30 a.m., when PW-
1, the landlady, was shouting. PW-12, N. Babu Naidu, the
E councillor of 26th Ward, has stated that after coming to know
about the death of the deceased, he went to her house and
found it locked and the same was opened after the police came
and the dead body was found on the ground with a pillow on
her face. His testimony has gone undented, for nothing has
been put to him in the cross-examination except that he was
F making efforts to oblige the police. It has come in the evidence
of PW-13, the Investigating Officer, that the lock was broke
open in the presence of the witnesses and the dead body was
found in the room. He has spoken about the seizure of Ex. P-
21, the writing of the accused on a book. In the cross-
G examination, apart from a singular question relating to the
Inquest Report, nothing has been asked.

15. At this juncture, it is apt to note that PW-1, in the cross-
examination, has stated that she had gone to Sai Baba Bhajan.
H The said aspect has not been believed by the learned trial

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[DIPAK MISRA, J.]

Judge and we are inclined to think correctly. On the contrary, the circumstances have clearly established that she was in her house. The evidence on record clearly shows that there was a commotion in the morning, she had lodged the FIR, the police arrived and found the house locked from outside and it was broke open in the presence of the witnesses. It is worthwhile to note that the accused did not take the plea of alibi. On the contrary, the factum of abscondence has been proven. Under these circumstances, the cumulative effect is that the husband was present in the house when the death of the wife occurred. The suggestion of rape and murder which has been put in the form of violent sexual act has been found to be untrue on the basis of medical evidence and there is no reason to differ with the said finding. The husband has not come with any explanation where he was on the fateful night and how the door was locked. As has been stated earlier, he had absconded for long. He has not taken any step to report the unnatural death of his wife. From the aforesaid aspects, the circumstances soundly establish that the deceased was with the accused during the night, there was a locking of the door from outside which could not have been done by anyone else except him and further he absconded from the scene of the crime and did not report to the police. Thus, the irresistible and inescapable conclusion is that the accused was the culprit in committing the murder of his wife.

16. Now, we may deal with the submission that the prosecution has not been able to prove any motive for the commission of the crime because the suspicion on the part of the husband has not been established. We have already recorded an affirmative finding on that score. However, we may, in this context, profitably refer to the pronouncement in *Nathuni Yadav and Others v. State of Bihar and Another*¹ wherein a two-Judge Bench has laid down thus: -

"17. Motive for doing a criminal act is generally a difficult

1. (1998) 9 SCC 238.

A area for prosecution. One cannot normally see into the
mind of another. Motive is the emotion which impels a man
to do a particular act. Such impelling cause need not
B necessarily be proportionally grave to do grave crimes.
Many a murders have been committed without any known
or prominent motive. It is quite possible that the aforesaid
impelling factor would remain undiscoverable. Lord Chief
Justice Champbell struck a note of caution in *R. v.*
*Palmer*² thus:

C "But if there be any motive which can be assigned,
I am bound to tell you that the adequacy of that
motive is of little importance. We know, from
experience of criminal courts that atrocious crimes
of this sort have been committed from very slight
D motives; not merely from malice and revenge, but
to gain a small pecuniary advantage, and to drive
off for a time pressing difficulties."

Though, it is a sound proposition that every criminal act is
done with a motive, it is unsound to suggest that no such
E criminal act can be presumed unless motive is proved.
After all, motive is a psychological phenomenon. Mere fact
that prosecution failed to translate that mental disposition
of the accused into evidence does not mean that no such
mental condition existed in the mind of the assailant."

F 17. In the said case, it was also observed that in some
cases, it may not be difficult to establish motive through direct
evidence, while in some other cases, inferences from
circumstances may help in discerning the mental propensity of
the person concerned. In the case at hand, as is noticed, there
G is material on record which suggests that there was some ire
that had swelled up in the mind of the accused to extinguish
the life spark of the wife.

H 2. Shorthand Report at p. 308 CCC May 1856.

18. It is to be borne in mind that suspicion pertaining to fidelity has immense potentiality to commit irreversible wrongs as it corrupts the mind and corrodes the sense of rational thinking and further allows liberty to the mind to pave the path of evil. In fact, it brings in baseness. It quite often impures mind, takes it to the devil's den and leads one to do unjust acts than just deeds. In any case, it does not give licence to commit murder. Thus, the submission pertaining to the absence of motive has no substance. A
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19. In view of the aforesaid analysis, we conclude and hold that all the links in the chain of evidence are established beyond reasonable doubt and the established circumstances are consistent with the singular hypothesis that the accused is guilty of the crime and it is totally inconsistent with his innocence. We have said so on the basis of the pronouncements in *Sharad Birdhichand Sarda v. State of Maharashtra*³, *Padala Veera Reddy v. State of Andhra Pradesh and Ors.*⁴, *Balwinder Singh v. State of Punjab*⁵, *Harischandra Ladaku Thange v. State of Maharashtra*⁶ and *Jagroop Singh v. State of Punjab*⁷. C
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20. Consequently, the appeal, being sans substratum, stands dismissed. E

R.P.

Appeal dismissed.

3. AIR 1984 SC 1622.
4. AIR 1990 SC 79.
5. AIR 1996 SC 607.
6. AIR 2007 SC 2957.
7. AIR 2012 SC 2600.