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JOYDEB PATRA & ORS.

v.

STATE OF WEST BENGAL  
(Criminal Appeal No. 203 of 2007)

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MARCH 06, 2013

**[A.K. PATNAIK AND SUDHANSU  
JYOTI MUKHOPADHAYA, JJ.]**

*Penal Code, 1860 – s.302/34 – Alleged murder of woman by poisoning – By her husband and his relatives – Conviction by courts below, solely on the basis of ocular testimony of the doctor who had conducted postmortem – Courts below placed onus on the accused to prove that the deceased did not die on account of homicide – Held: The Inquest Report, Postmortem Report and Chemical Examiner's Report do not show that death occurred due to poisoning – Prosecution failed to establish beyond reasonable doubt that poison was administered to the deceased – Courts below wrongly shifted the onus on the accused persons to prove that they were not guilty – Burden to prove the guilt is on the prosecution and only when this burden is discharged, accused are required to prove any fact within their special knowledge u/s.106 of Evidence Act – Evidence Act, 1872 – s.106.*

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*Sucha Singh Vs. State of Punjab (2001) 4 SCC 375: 2001 (2) SCR 644; Vikramjit Singh Vs. State of Punjab (2006) 12 SCC 306: 2006 (9) Suppl. SCR 375 – relied on.*

**Case Law Reference:**

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**2001 (2) SCR 644**                      **relied on**                      **Para 8**

**2006 (9) Suppl. SCR 375**                      **relied on**                      **Para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 203 of 2007.

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From the Judgment & Orders dated 28.07.2006 of the High Court of Calcutta in Criminal Appeal No. 397 of 1988. A

Dr. Sumant Bharadwaj, Vivekanand Mishra, Archana Pathak Dave, Ajit Kumar Gupta, K.K. Shukla, Ankita Chaudhary, Manoj Kumar, Mridula Ray Bharadwaj for the Appellants. B

Bijan Kumar Ghosh, Avijit Bhattacharjee for Respondent.

The Order of the Court was delivered by

**ORDER** C

**A.K. PATNAIK, J. 1.** This is an appeal against the judgment dated 28.07.2006 of the Division Bench of the Calcutta High Court in Criminal Appeal No. 397 of 1988. D

2. The facts very briefly are that Madhabi Patra @ Khendi got married to Joydeb Patra, the Appellant No. 1 herein. Through the marriage she got a daughter. She again became pregnant and when she was carrying the pregnancy for nine months, a ceremonial function called 'Sadh' was arranged on 18th Baisak, 1393 B.S. After taking food, Madhabi fell ill and her condition deteriorated quickly and she died late in the night. According to the prosecution, Madhabi (the deceased) had died because poison was administered to her with the food by the appellants. Accordingly, after investigation, a charge-sheet was filed and the Appellant No. 1 and his father, brother (appellant No. 2), sister (appellant No. 3) and mother (appellant No. 4) were tried and convicted under Section 302/34, I.P.C. The accused persons filed Criminal Appeal No. 397 of 1988 before the High Court of Calcutta but by the impugned judgment, the High Court maintained the conviction of the appellants. E F G

3. We are told that the father of the Appellant No. 1 died when the appeal was pending before the High Court and appellant No. 3 died during the pendency of the appeal before this Court. H

A 4. We have heard learned counsel for the appellants and  
 learned counsel for the State at length and we find that the  
 conviction of the appellants is solely based on the evidence of  
 PW 12 who conducted the postmortem on the body of the  
 deceased that the death was due to poisoning. The Trial Court  
 B and the High Court have taken a view that as the deceased  
 died on account of poisoning, onus was on the appellants to  
 show that the deceased did not die on account of homicide but  
 suicide. We also find on a reading of the lengthy judgments of  
 the Trial Court as well as the High Court that the explanation  
 C given by the accused persons before the Courts explaining their  
 suspicious conduct has been rejected by the two Courts as not  
 believable and it has been ultimately held that the appellants  
 were guilty of the offence under Section 302 read with Section  
 34, IPC.

D 5. On a perusal of the evidence, however, we find that in  
 the Inquest Report (Ext. B) prepared on 03.05.1986 (the date  
 on which the deceased died) it is stated that though the  
 relatives of the deceased stated that she has taken poison, no  
 froth was seen on the nostril and mouth of the deceased. The  
 E postmortem report (Ext. P 2) prepared on 4.5.1986 by PW 12  
 does not state the cause of death of the deceased. PW 12 has  
 stated in the postmortem report:

F "Opinion as to the cause of death is kept reserved pending  
 to receipt of C.E.'s report on the preserved viscera."

Thus PW 12 has not been able to reach a conclusion about  
 the cause of death of the deceased when he examined the  
 dead body of the deceased one day after the death of the  
 deceased and has instead preferred to await the report of the  
 G Chemical Examiner of the Forensic Science Laboratory,  
 Government of West Bengal. The report of the Senior Chemical  
 Examiner, Forensic Science Laboratory, Government of West  
 Bengal finds place in the record of the Trial Court. This report  
 states that the glass jar contained a stomach with its contents,

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portion of liver, gall bladder, kidneys and spleen said to be of Madhabi Patra and the test tube contained some salt solution said to be a sample preservative used in the above viscera. The report states the following result of the examination: A

“No poison could be detected in the viscera said to be of Khendi @ Madhabi Patra.” B

6. After reading the postmortem Report (Ext. P 2) and the report of the Senior Chemical Examiner, Forensic Science Laboratory, Government of West Bengal, we are of the considered opinion that there was no evidence to show that the death of the deceased was caused by administering poison. Nonetheless, an effort was made by the prosecution at the time of examination of PW 12 in Court almost after two years i.e. on 9th June, 1988 to establish that the death of the deceased was caused on account of administering poison to her. In our view, the Trial Court and the High Court should not have relied on the evidence of PW 12 given in Court more than two years after the deceased died to hold that poison was administered to the deceased when there was nothing in evidence either in the postmortem report or in the report of the Senior Chemical Examiner, Forensic Science Laboratory, Government of West Bengal to show that poison had been administered to the deceased. Since the prosecution has failed to establish beyond reasonable doubt that poison was administered to the deceased, the very foundation of the case of the prosecution stood demolished. C D E F

7. Learned counsel for the State, Mr. Bijan Ghosh, vehemently submitted that since the death took place in the house of the appellants, burden was on the appellants to prove as to how the death of the deceased actually took place. He submitted that the death of the deceased obviously took place under very mysterious circumstances and when the medical facilities were very near to the place of occurrence, the appellants should have availed the medical facilities but have not done so and this conduct of the appellants has given scope G H

A to the prosecution to believe that they were guilty of the offence under Section 302/34, I.P.C.

B 8. We are afraid, we cannot accept this submission of Mr. Ghosh. This Court has repeatedly held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106 of the Indian Evidence Act to establish that he was not guilty. In *Sucha Singh Vs. State of Punjab* (2001) 4 SCC 375, this Court held:

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E “We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.”

Similarly, in *Vikramjit Singh Vs. State of Punjab* (2006) 12 SCC 306, this Court reiterated:

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G “Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.”

H 9. As the prosecution has not been able to discharge its burden of establishing beyond reasonable doubt that the

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deceased died due to poisoning, in our view, the trial court and the High Court could not have held the appellants guilty just because the appellants have not been able to explain under what circumstances the deceased died. A

10. We accordingly allow this appeal and set aside the impugned judgment of the High Court as well as the judgment of the Trial Court and direct that the bail bonds of the appellants will stand discharged. B

K.K.T.

Appeal allowed.