

DEV KANYA TIWARI

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v.

THE STATE OF U.P.

(Criminal Appeal No. 720 of 2016)

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MARCH 12, 2018

**[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]**

*Penal Code, 1860 – s. 302 r/w. s.34 – Prosecution case that brother of complainant-PW-5 was killed by his wife and in-laws – Defence plea that the deceased had committed suicide by consuming poisonous tablets – During the pendency of trial, accused-wife of deceased passed away – Trial court convicted accused-appellant (mother-in-law of deceased) u/s.302/34 – High Court affirmed the conviction of the accused-appellant – On appeal, held: In instant case, a complaint was already lodged by the other accused-wife of the deceased, prior to the complaint lodged by PW-5 – As per that complaint, deceased informed the Dr. ‘H’ that he had consumed poisonous tablets and requested him not to save his life – In their depositions, PW1, PW2 and PW3 also affirmed these facts – If two views are possible basing on the evidence adduced in the case, one pointing to the guilt of the accused and other to the innocence of accused, the view which is favorable to the accused should normally be adopted – In instant case is entirely based upon circumstantial evidence – The prosecution miserably failed to establish the chain of events, which point out at the guilt of the accused – The presence of blisters all over the body of the deceased and his nails turning into bluish colour, no mark of fingers on the body of the deceased as noted in the postmortem report and presence of PW-5 (complainant) at the time of panchanama without any objection, non-examination of a Dr. ‘H’, the corroborative statements by most of the prosecution witnesses and that of I.O. to whom Dr. ‘H’ also disclosed that deceased had consumed poison, all these circumstances form ample evidence to strengthen the case of the accused that the deceased committed suicide – In the peculiar circumstances of the case, not safe to convict the accused u/s.302.*

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A **Allowing the appeal, the Court**

**HELD : 1. In the case on hand, a complaint was already lodged by the other accused (died during the pendency of trial) – wife of deceased, prior to the complaint lodged by PW5. As per that complaint, on the previous day, after having food the deceased went out for stroll and came back at about 6 pm with unsteady walking, wobbling and falling. When he was taken to the Dr. ‘H’ (not examined) the deceased informed the Doctor about consuming tablets of sulfas as he does not want to live anymore and requested the Doctor not to make any attempt to save his life. While they were shifting him to the Allahabad hospital, he had expired on the way. In their depositions, PW1, PW2 and PW3 also affirmed these facts. PW 8, the Investigating Officer also in his cross examination admitted the fact that Dr. ‘H’ in his statement disclosed as the deceased saying to him that he was fed up with his life and therefore he had taken sulfas tablets. He (PW8) has specifically revealed that at the time of panchanama there was no apparent injury on the dead body. [Para 11][287-B-E]**

**2. On an analysis, it is clear that PW1, PW2, PW3 have not supported the prosecution case but specifically supported the version of the accused. It assumes importance that these witnesses were not declared hostile. The evidence of I.O.—PW 8 made it clear that Dr. ‘H’ disclosed to him that the deceased pleaded not to save his life as he was fed up with his life and had taken the sulfas tablets. The panchanama was accordingly prepared, admittedly in the presence of PW5, and there was no apparent injury on the dead body at the time of panchanama. PW7 who filled the panchanama (Ext. P2) and got the signatures of panch witnesses, also stated that no noticeable injury was found on the body of the deceased and it was the collective opinion of the panch witnesses that the deceased expired due to eating some poisonous substance and he also concurred with them. [Para 15][289-C-E]**

**3. In the above backdrop of the case, primarily when there existed a complaint lodged by the wife of deceased pointing out that the deceased committed suicide by consuming poison,**

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generally it is expected that the Doctor will preserve viscera for chemical analysis. On this point, prosecution has failed in its duty as no steps have been taken to preserve viscera. Merely a statement by Doctor—PW 6, who performed postmortem on the body of deceased, that viscera was not preserved as there is no presence of poison would not suffice in the peculiar circumstances of this case, particularly when the independent panch witnesses together as well as the Investigating Officer recorded their view that it was a case of poisoning, which has been duly supported by PWs 1, 2 and 3. [Para 16][289-F-G]

4. Medical evidence in the form of postmortem report though supports the case of prosecution, non-preservation of viscera by the Doctor-PW6, remains fatal to the prosecution case. It is worthwhile to note that nowhere in his evidence, PW5 mentioned about noticing ligature mark on the neck of the deceased, nor he agitated the cause of death during panchanama. The fact remains that on certain aspects, the trial Court also disbelieved the version of PW5. The prosecution miserably failed to establish the chain of events, which points out at the guilt of the accused, and the Courts below gravely erred in not considering the case in accordance with the settled principles of law. [Para 17][292-A-C]

5. The paramount consideration of the Court must be to ensure that miscarriage of justice is prevented. Much acclaimed notion in the administration of criminal justice is that if two views are possible basing on the evidence adduced in the case, one pointing to the guilt of the accused and the other to the innocence of accused, the view which is favourable to the accused should normally be adopted. There is no direct evidence as to the deceased consuming poison or having been done to death by throttling. The presence of blisters all over the body of the deceased and his nails turning into bluish colour, no mark of fingers on the body of the deceased as noted in the postmortem report and the presence of PW5 at the time of panchanama without any objection, non-examination of Dr. 'H', the corroborative statements by most of the prosecution witnesses and that of the I.O. to whom Dr. 'H' also disclosed that the deceased consumed poison, all these circumstances form ample evidence to

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**A strengthen the case of the accused that the deceased committed suicide. [Para 18][290-D-E]**

*Hanumant Govind Nargundkar v. State of Madhya Pradesh 1953 CriLJ 129 – referred to.*

**Case Law Reference**

**B 1953 CriLJ 129 referred to Para 10**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 720 of 2016.

From the Judgment and Order dated 14.03.2016 of the High Court of Judicature at Allahabad in Criminal Appeal No. 2894 of 2014.

**C S. Wasim A. Qadri, Jubair Ahmad Khan, Zaid Ali, Tamim Qadri, Mudasir Nabi, Saeed Qadri, Syed Faizan Ali, Lakshmi Raman Singh, Advs. for the Appellant.**

Ratnakar Dash Sr. Adv., Ardhendumauli Kumar Prasad, Adv. for the Respondent.

**D The Judgment of the Court was delivered by**

**N. V. RAMANA, J.** 1. This appeal by special leave arises out of judgment dated 14<sup>th</sup> March, 2016 passed by the High Court of judicature at Allahabad in Criminal Appeal No. 2894 of 2014 whereby the High Court, while dismissing the criminal appeal filed by the accused—appellant, upheld the conviction and sentence awarded by the trial Court on 22<sup>nd</sup> July, 2014 for the offences under Section 302/34 IPC in Sessions Trial No. 105 of 1997.

**F** 2. The facts of the case, as culled out from the prosecution case, are that the complainant—Shashi Bhushan Tiwari (PW5) lodged a complaint (Annexure P-2) on 30-09-1995 with Karchhana Police Station, District Allahabad, which was registered as Crime Case No. 177 of 1995, stating that his brother Brij Bhushan Tiwari (deceased) went to his in-laws house on 28-09-1995 to see the well being of his children, and to his belief his brother was killed by his wife and in-laws. The wife of the deceased has also given a complaint to the police. The Station Officer—**G** Ram Niwas Pandey (PW7) held the inquest of the dead body, prepared panchayatnama (Ext. P2) and sent the body for postmortem. Dr. Ashok Kumar Gupta (PW6) conducted postmortem on 1<sup>st</sup> October, 1995 and the postmortem report is marked as Ex.P1. The Doctor opined that the cause of death was asphyxia due to strangulation of throat.

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3. The Investigating Officer (PW 8)—Veer Bahadur Singh after making necessary entries in the general diary, visited the spot and prepared site plan (Ext. P5), recorded statements of witnesses and filed charge sheet (Ext. P6) against the accused. The Chief Judicial Magistrate, First Class, Allahabad took cognizance of the offence and committed the case to the Sessions Court for trial. Learned Additional Sessions Judge framed charges under Section 302/34, IPC against the accused Santosh Devi (wife of the deceased) and Dev Kanya Tiwari (mother-in-law of the accused and appellant herein). They denied to have committed the crime and requested for trial. They took the defence that the deceased had committed suicide by consuming poisonous tablets and they were falsely implicated in the case by the complainant as he wanted to usurp the whole property. However, during the pendency of trial, accused Santosh Devi—wife of the deceased had passed away.

4. At the trial, the prosecution in support of its case examined as many as eight witnesses. The trial Court came to the conclusion that the explanation given by the accused for the death of the deceased was false. Having satisfied that the prosecution could prove the guilt of the accused beyond reasonable doubt, the trial Court convicted the accused—appellant under Section 302/34 IPC and sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/- failing which to further suffer rigorous imprisonment of six months.

5. Dissatisfied with the order of conviction and sentence passed by the trial Court, the accused—appellant went in appeal before the High Court. By the judgment impugned herein, the High Court affirmed the order passed by the trial Court and dismissed the appeal of the accused—appellant. Aggrieved by the decision of Courts below, the appellant preferred this appeal before us.

6. We have heard learned counsel appearing for the appellant as well as the learned senior counsel for the State.

7. The specific contention of the learned counsel for the appellant is that the order of conviction and sentence awarded by the Courts below suffers from severe infirmities. Undue importance has been given to the postmortem certificate which indicated that the deceased died of strangulation and a ligature mark was found on the body. The organs of the deceased were got congested and on the whole body blisters were found and nails turned bluish, which clearly portray that it was a case of

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A poisoning and as a matter of fact the deceased committed suicide by consuming poison. With a view to falsely implicate the appellant, the factum of deceased committing suicide by consuming poison has been sidelined and therefore viscera was not preserved by the Doctors. There was no independent witness to support the case of prosecution.

B 8. Learned counsel further submitted that the panchanama report was prepared in the presence of PW5 and there was no mention in the panchanama of any ligature mark or injuries on the body. There was no objection by PW5 during the preparation of panchanama. Ignoring the crucial facts of the case, the Courts below went on convicting the accused—appellant which is serious error of law and the same should  
C be interfered by this Court exercising its power under Article 136 of the Constitution.

D 9. On the other hand, learned counsel appearing for the State vehemently opposed the arguments advanced on behalf of the appellant and submitted that there is enough evidence on record to convict the accused and the Courts below have not committed any mistake in considering the medical evidence. The deceased had died in the house of the accused where he was last seen in the company of the accused and the chain of events have been completely proved, hence sought dismissal of the appeal.

E 10. Having heard learned counsel on either side, we have carefully gone through the material on record. Apparently, there is no eyewitness to the incident and the case is entirely based upon circumstantial evidence. In such a case, the Court is expected to be more careful while analyzing the evidence and convicting the accused. In other words, in all probabilities, the chain of circumstances should lead to the irresistible conclusion that  
F the accused participated in the commission of crime and committed the offence. This Court has long back set the mode of evaluating circumstantial evidence in *Hanumant Govind Nargundkar Vs. State of Madhya Pradesh*, 1953 CriLJ 129 in the following terms:

G “It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be  
H such as to exclude every hypothesis but the one proposed to be

proved. In other words, **there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.**” A

11. In the case on hand, a complaint (Annexure P-1) was already lodged by the other accused Santosh Devi (died during the pendency of trial)—wife of deceased Brij Bhushan Tiwari, on 30-09-1995, prior to the complaint lodged by PW5. As per that complaint, on the previous day, after having food the deceased went out for stroll and came back at about 6 pm with unsteady walking, wobbling and falling. When he was taken to the Doctor—Hiralal (not examined) the deceased informed the Doctor about consuming tablets of sulfas as he does not want to live anymore and requested the Doctor not to make any attempt to save his life. While they were shifting him to the Allahabad hospital, he had expired on the way. In their depositions, PW1 (Santosh Kumar), PW2 (Lallan) and PW3 (Shiv Lal) also affirmed these facts. Veer Bahadur Singh—PW 8, the Investigating Officer also in his cross examination admitted the fact that Dr. Hiralal in his statement disclosed as the deceased saying to him that he was fed up with his life and therefore he had taken sulfas tablets. He (PW8) has specifically revealed that at the time of panchanama there was no apparent injury on the dead body. It would be relevant to extract the wife’s complaint, which reads as under: B  
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“It is respectfully submitted that the applicant Santosh Devi, wife of Brij Bhushan Tiwari is the resident of Hindupur, P.S. Karchhana. My husband came to my father’s house about 3/4 days back and was living here comfortably. Yesterday, at about 10 am, he after taking food went out for stroll. When he came back about 6 o’clock to my father’s house he was walking unsteadily and was wobbling and falling. So in these circumstances, the applicant, her mother and other residents of the village somehow managed to bring him to the clinic of Hiralal. There Shri Brij Bhushan Tiwari himself told the Doctor that I have taken many tablets of sulfas and I don’t want to live anymore and don’t make any attempt to save my life. Thereafter, while we were taking him to the Allahabad Hospital, then he expired on the way. F  
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It is therefore the applicant is informing you to take appropriate action.” H

A 12. On the same day i.e. 30-09-1995, PW5—brother of the deceased had also filed a complaint before the Station Officer, Karchhana P.S. as under:

B “It is humbly submitted that the applicant is resident of village Naree, Police Station Soraunw, District Allahabad. There is the Ram Surat Tiwari’s house in Bela Chauraha, Police Station Karchhana, which is the house of in-laws of applicant’s brother late Shri Brij Bhushan Tiwari. The applicant’s brother had gone to the house of his in-laws on 28/09/1995 for the sake of knowing about his children and for seeing them to know about their well-being. Yesterday on 29/09/1995 at 3 o’clock in the night the information was received in the house of the applicant that some unknown persons of Bela Chauraha killed the applicant’s brother late Shri Brij Bhushan Tiwari.

C On getting the information, I have come directly to the police station to lodge the first information report. The applicant believes that the applicant’s brother was killed by his in-laws.

D The report is hereby submitted. Necessary action may be taken”.

E 13. On the basis of the aforementioned two complaints, the criminal law was set into motion. The trial Court as well as the High Court mainly relied upon the evidence of the brother of the deceased (PW5) and the opinion of the Doctor (PW 6—Dr. Ashok Kumar Gupta) who conducted postmortem. According to PW5 when he reached the house of accused at 10 am, they started crying and confessed to him that they had committed the mistake of strangulating his brother as he was adamant to take his wife back. He further deposed that the accused pleaded him not to lodge police complaint and even after lodging FIR they requested him to withdraw. As there was no mention of this circumstance in the FIR, the trial Court disbelieved the version of PW5 as regards to extra judicial confession of accused, yet observed that panchanama was prepared prior to any member of the deceased’s family made a visit to the place of occurrence and none of his family members were present at the time of panchanama. It is important to note that PW5 in his cross examination admitted that he was present at the time of preparation of panchanama and when the body was sent for postmortem. As regards to the occurrence, he stated that he had no personal knowledge but only on hearsay basis, he came to know about the occurrence.

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14. Dr. Ashok Kumar Gupta—(PW6) who performed postmortem on the body of the deceased, deposed that he found bloodstained fluid coming out of mouth and nose of the deceased, while his nails turned into bluish colour and tongue protruded out of mouth caught between teeth. An ante mortem injury of ligature mark  $13\frac{1}{2} \times \frac{1}{2}$  was found on mid of neck while contusion present all over the neck situating horizontally. Internally, thyroid bone was found fractured. In his opinion, the cause of the death was asphyxia resulting from strangulation of throat. In the cross-examination, it was revealed that due to not getting the symptoms of poison, viscera has not been preserved.

15. On an analysis, it is clear that PW1—Santosh Kumar, PW2—Lallan, PW3—Shiv Lal have not supported the prosecution case but specifically supported the version of the accused. It assumes importance that these witnesses were not declared hostile. The evidence of I.O.—PW 8 made it clear that Dr. Hiralal disclosed to him that the deceased pleaded not to save his life as he was fed up with his life and had taken the sulfas tablets. The panchanama was accordingly prepared, admittedly in the presence of PW5, and there was no apparent injury on the dead body at the time of panchanama. PW7—Ram Niwas Pandey, who filled the panchanama (Ext. P2) and got the signatures of panch witnesses, also stated that no noticeable injury was found on the body of the deceased and it was the collective opinion of the panch witnesses that the deceased expired due to eating some poisonous substance and he also concurred with them.

16. In the above backdrop of the case, primarily when there existed a complaint lodged by the wife of deceased pointing out that the deceased committed suicide by consuming poison, generally it is expected that the Doctor will preserve viscera for chemical analysis. On this point, prosecution has failed in its duty as no steps have been taken to preserve viscera. Merely a statement by Doctor—PW 6 that viscera was not preserved as there is no presence of poison would not be suffice in the peculiar circumstances of this case, particularly when the independent panch witnesses together as well as the Investigating Officer recorded their view that it was a case of poisoning, which has been duly supported by PWs 1, 2 and 3.

17. However, the allegation against the accused levelled by prosecution found support only from PW5—brother of the deceased. Even the evidence of father of the deceased (PW4) cannot be taken

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A into consideration as it clearly appears that he has come to know about the incident through PW5 only. Medical evidence in the form of postmortem report (Ext. P1) though supports the case of prosecution, non-preservation of viscera by the Doctor remains fatal to the prosecution case. It is worthwhile to note that nowhere in his evidence, PW5  
B mentioned about noticing ligature mark on the neck of the deceased, nor he agitated the cause of death during panchanama. The fact remains that on certain aspects, the trial Court also disbelieved the version of PW5. In our opinion, the prosecution miserably failed to establish the chain of events, which points out at the guilt of the accused, and the Courts below gravely erred in not considering the case in accordance  
C with the settled principles of law.

18. The paramount consideration of the Court must be to ensure that miscarriage of justice is prevented. Much acclaimed notion in the administration of criminal justice is that if two views are possible basing on the evidence adduced in the case, one pointing to the guilt of the accused and the other to the innocence of accused, the view which is  
D favourable to the accused should normally be adopted. As we have already observed in the case on hand there is no direct evidence as to the deceased consuming poison or having been done to death by throttling. The presence of blisters all over the body of the deceased and his nails turning into bluish colour, no mark of fingers on the body of the deceased  
E as noted in the postmortem report and the presence of PW5 at the time of panchanama without any objection, non-examination of Dr. Hiralal, the corroborative statements by most of the prosecution witnesses and that of the I.O. to whom Dr. Hiralal also disclosed that the deceased consumed poison, all these circumstances form ample evidence to  
F strengthen the case of the accused that the deceased committed suicide. We are therefore constrained to observe that the Courts below must have persuaded themselves to give the benefit of doubt to the appellant, as in the peculiar circumstances of this case, it is not safe to convict the accused under Section 302 IPC.

G 19. In view of the foregoing discussion, the appeal succeeds. The appellant be released from custody forthwith, if not required in any other case.

20. The appeal stands allowed accordingly. Pending applications, if any, shall also stand disposed of.