MANGAT RAI

v.

STATE OF PUNJAB

JULY 9, 1997

[M.M. PUNCHHI AND S.B. MAJMUDAR, JJ.]

Criminal trial :

Circumstantial evidence—Circumstances establishing guilt of the accused—Insufficient dowry being motive of crime—Accused creating wrong evidence of hanging—Defence of suicide set up by the accused husband-Ante-mortem injuries on the body of the deceased indicating that she was forcibly administered the alcohol mixed with poison—Accused being a doctor had every facility and opportunity for administering the poison—Conduct of the accused in not immediately informing the relatives of the deceased and his absconding from the scene of offence—Though by itself not conclusive, becomes clinching circumstance against the accused—Held, in the circumstances of the case, chain of the circumstances leads to the inevitable conclusion that it was the accused and no one else who was responsible for the murder of his wife.

The appellant/accused was a doctor by profession. Deceased, married to accused, was constantly ill-treated by the accused and his family members for not bringing sufficient dowry. Deceased gave birth to a son before 2 months of the incidence and even at that time the accused failed to visit his in-laws. On the day of the incident she was found dead hanging with 'dupatta' around the neck and her legs were tied to the foot of the cot. It was established through the chemical examination that the deceased was forcibly administered alcohol mixed with poison before her death. According to the medical report, two injuries were found to be ante-mortem while ligature mark on the neck was post-mortem. The accused did not immediately inform the relatives of the deceased and absconded from the place of occurrence.

The Trial Court on these facts held the appellant guilty under Section 302 IPC and the same was upheld by the High Court on appeal by the appellant.

A Before this Court the main contentions of the accused was that, (i) the case was of circumstantial evidence and the chain of circumstances was not complete; (ii) accused, recently blessed with a male child, had no occasion to murder the wife; and (iii) there was evidence to show that the deceased was in a depressed state of mind and therefore, there was all
B possibility of her hanging herself.

The main contentions of the State were that, (i) accused had another clinic one kilometer away from his residence and it was very easy for him to go to his clinic after administering the poisonous alcohol and after creating a false evidence as if the deceased had committed suicide; (ii) not
C intimating the in-laws on the date of the incident itself and subsequently his absconding from the place of occurrence are all pointer to his guilty mind.

Dismissing the appeal, this Court

D HELD : 1. The medical evidence and the report of the Chemical Examiner clearly show that deceased lost her life as a result of administration of organophosporus compound mixed with alcohol. [668-F]

2. It is pertinent to note that deceased, a mother of two-and-a half-
E months baby, having allegedly taken half a bottle of liquor could not have remained in senses to hang herself later on by self-strangulation.[668-E]

3. The entire defence version was preposterous and violated all basic norms of probabilities and was an affront to common sense.[668-E]

F 4. The accused had every facility and opportunity coupled with the knowledge that the lethal dose of huge quantity of poison which by itself was very pungent required to be diluted by mixing it up with alcohol before it could be administered to anyone. [669-E]

G 5. The two ante-mortem injuries detected by the doctors on the body of the deceased clearly indicated that she had resisted before the intake of aforesaid quantity of alcohol mixed with poison. [669-E-F]

6. The aforesaid circumstances proved that death was due to administration of alcohol and adequate quantity of organophosporus
H compound.

7. The subsequent conduct of accused of not immediately informing his in-laws and relatives of the deceased and his absconding from the scene of offence for couple of days till he was ultimately arrested, which conduct though by itself might not be conclusive, becomes a clinching circumstance clearly point an accusing finger to the appellant and no one else. [670-A-B]

8. All the aforesaid circumstances must be treated to have represented a complete chain of circumstantial evidence leading to the inevitable conclusion that it was the accused and no one else was responsible for murder. [670-D]

Jose alias Kolli Jose **v.** *The State of Kerela*, **[1973] 3 SCC 472;** *Smt. Phino* **v.** *State of Punjab*, **[1975] 4 SCC 119 and** *State* **v.** *Fateh Bahadur & Ors.*, **AIR (1958) All. 1, cited.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 683 of 1990.

From the Judgment and Order dated 2.8.88 of the Punjab & Haryana High Court in Crl. A. No. 60-DB of 1986.

R.L. Kohli, Kawaljeet Kochhar and J.D. Jain for the Appellant.

R.S. Sodhi, for the Respondent.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. The appellant who was convicted by the Trial Court for murder of his wife unsuccessfully carried the matter in appeal before the High Court and having lost there has landed in this Court by way of this appeal by special leave. A few relevant facts leading to these proceedings deserve to be noted at the outset.

Introductory facts

The appellant is a practising doctor having two clinics. One is at Village Pakhopura in Amritsar District in State of Punjab. That clinic is run as a part of his residential house where his wife Madhu Bala aged 24 years met a tragic end. His other clinic is at Village Ratoke situated at a distance of about one kilometre from his residential house. The appellant was married to aforesaid Madhu Bala about one and a half years prior to

A the incident that took place on 04th September 1985. The case of the prosecution is that after his marriage with said Madhu Bala neither the appellant nor his mother got satisfied with the dowry which she brought and they continuously went on complaining about its insufficiency. On that account they used to ill-treat her. About four and a half months earlier to the date of the incident Madhu Bala visited her parents' house at Faridkot and informed her relations about ill-treatment and the demand for T.V. set, a refrigerator and a scooter and also about their complaining that Madhu Bala had not been presented with a watch by her parents. The evidence led by the prosecution at the stage of the trial showed that P.W.4 Brij Bhushan, brother of Madhu Bala accompanied by his maternal-uncle Roshan Lal and Des Raj who had acted as a go-between for getting the appellant married to Madhu Bala, contacted the appellant-accused and the other accused, his mother Indra Wati, who is acquitted by the Trial court, and talked to them and informed them that they could not meet the demand as they were poor and accused should not ill- treat Madhu Bala on that score. The prosecution case further is that the accused confessed their guilt and promised not to repeat such demands in future and also promised not to ill-treat Madhu Bala. In the meantime Madhu Bala gave birth to a son. That happened about two months prior to the date of the incident. An intimation was sent about the birth of the child to the appellant but he did not visit the house of his in-laws. About 16-17 days before the occurrence Madhu Bala's mother-in-law Indra Wati, the acquitted accused, visited the house of parents of Madhu Bala to take her back. While taking her back she expressed dissatisfaction about the customary presents made to the child and remarked, addressing Madhu Bala, that her parents had not given her anything at the time of marriage and even after the birth of the son she was going empty-handed.

Now came the date of the occurrence, that is, 04th September 1985 on which day Madhu Bala met an unnatural death at the residential house of the accused, her husband. Intimation about the same was conveyed on 05th September 1985, that is on the next day, to the relations of Madhu Bala about her death. They started for Village Pakhopura and on reaching Sirhali, on way to Pakhopura, they received information that dead body of Madhu Bala had already been removed to Tarn Taran. They then visited the hospital at Tarn Taran where they felt that the post-mortem examination at Tarn Taran might not be fair. An application was moved by them to Sub-Divisional Magistrate for carrying out post-mortem

examination by doctors at Amritsar. Under direction of the Sub-Divisional Magistrate, therefore, post-mortem was carried out by a Board of Doctors at Amritsar. P.W.4 Brij Bhushan gave his statement to the police authorities on the basis of which First Information Report was recorded and the case was registered against the appellant and his mother.

Previous to the registration of the said case appellant accompanied by Sarpanch Sohan Singh had already visited Police Station Chola Sahib and had lodged Report No. 18 on the night of 04th September 1985 itself alleging that his wife had committed suicide by hanging herself. When Assistant Sub-Inspector Balbir Singh visited the place of incident pursuant to the aforesaid report by the appellant he found the dead body of Madhu Bala hanging with 'dupatta' around the neck and her legs were tied to the foot of the cot. Usual steps towards investigation were undertaken. Post-Mortem examination on the dead body of Madhu Bala was carried out by a Board of Doctors consisting of Dr. Jagdish Gargi, P.W.1, Dr. H. Rai and Dr. R.K. Goria. Out of them Dr. Gargi was examined as P.W.1. Others were tendered for cross examination. Dr. Gargi, P.W.1 stated that he along with Dr. H. Rai and Dr. R.K. Goria carried out the post-mortem on the dead body of Madhu Bala on 06th September 1985 at 11.15 a.m. He found that there was a brownish ligature mark 2 cm broad encircling the neck horizontally, sparing the skin below the right angle on the mandible as well as interiorly 4 cm below the remus of the mandible. He also found two further injuries on the dead body as under :

1. A reddish brown abrasion 20 x 2 cm. on the right side and from of the abdomen, extending horizontally from the right iliac fossa forward and medially.

2. Reddish brown abrasion 0-3 x 0.2 cm. on the dorsum of the right foot, 3 cm. proximal to the base of the big toe.

According to Dr. Gargi the aforesaid two injuries were ante-mortem while ligature mark on the neck was post-mortem.

Viscera of the deceased was preserved and sent to Chemical Examiner for analysis. The skin removed from the side of the ligature mark was also preserved for being pathologically examined by the Professor and the Head of Pathology Department, Amritsar. The Chemical Examiner in his report stated that there was blood alcohol concentration of estimated

322.0 mgms/100 mls of blood. Alcohol and organophosphorus compound were detected in the viscera. The pathologist confirmed that there was no evidence of congestion and inflammatory exudate in the sections of the skin. On the basis of this report the doctors confirmed that the ligature mark around the neck of the deceased was post-mortem and other injuries were ante-mortem. In the opinion of Dr. Gargi the death was due to organophosphorus poisoning and alcohol. Dr. Prem Wadhera, P.W. 12 who had examined the piece of skin taken out from the neck of the deceased confirmed that the examination of the skin showed that the ligature mark at the seat of the skin indicated that it was a post-mortem mark.

In the light of this evidence led at the trial the learned Sessions Judge, to whom the case was committed by the Committal Court, came to the conclusion that the prosecution had brought home the offence under Section 302, Indian Penal Code to the appellant-accused. But so far as his mother, accused no. 2 was concerned, she was given benefit of doubt. Learned Trial Judge rejected the theory propounded by the defence that the deceased had committed suicide and had got herself strangulated. It was on the other hand found that it was the accused who had administered poison to the deceased by mixing it with alcohol which the deceased was made to drink and consequently the appellant was sentenced to imprisonment for life. As noted earlier, the appellant carried the matter in appeal without any success and that is how he is before us in these proceedings.

Rival Contentions

Learned senior counsel for the appellant vehemently submitted that this is a case of circumstantial evidence and the chain of circumstances is not complete. He submitted that the appellant was at his clinic at the other village at the relevant time. That as he was recently blessed with a male child there was no occasion for him to murder his wife. That on the contrary the evidence showed that she was in a depressed state of mind and, therefore, there was all possibility of her committing suicide by hanging herself. It was next contended that in any case it was for the prosecution to bring home the charge of murder to the appellant. That there are varieties of organophosphorus compound and all may not be equally lethal. In any case there was no evidence on record to show that the trace of organophosphorus compound detected in the viscera of the

deceased was sufficient to prove fatal and in the absence of such evidence led by the prosecution the benefit of doubt must go to the accused and not to the prosecution. In support of this conntention reliance was placed on two decisions of this Court in the case of *Jose alias Kolli Jose* v. *The State of Kerala*, [1973] 3 SCC 472 at page 474 para 5 and in the case of *Smt. Phino* v. *State of Punjab*, [1975] 4 SCC 119 at page 122 as well as on a decision of the Allahabad High Court in the case of *State* v. *Fateh Bahadur & Ors.*, AIR 45 (1958) Allahabad 1 at para 10 of the Report. He, therefore, submitted that the appellant deserves to be acquitted of the charge of murdering his wife.

On the other hand learned counsel for the respondent submitted that both the courts below have concurrently held on appreciation of relevant evidence that it was the appellant and no one else who could commit the murder of his wife. That she had died at his own residence. That he was having his other clinic only one kilometer away from his residence and it was very easy for him to go to his clinic at the relevant time after liquidating the deceased. That the theory of suicide by the deceased was patently false as the ligature mark was found to be post-mortem by the doctors and it is impossible to even allege that a dead person would hang herself and, therefore, it was a false case tried to be made to mislead the investigating agency and precisely for that reason the appellant rushed to the police authorities and gave a wrong version about the incident. That as the appellant resided with the deceased at the relevant time in his residential house where his wife met her untimely death, the inference drawn by both the courts below against the appellant that it was he and no one else who had committed the murder of his wife, can be said to be well justified on record of the case. That his earlier conduct of harassing the deceased and nagging her in connection with the dowry demand, his conduct of not even visiting his in-laws' house when he was blessed with a son and his subsequent conduct of giving false version of the incident before the police and not intimating the in-laws on the date of the incident itself and subsequently his absconding from the place of occurrence are all pointer to his guilty mind and, therefore, his appeal deserves to be dismissed.

We have given our anxious consideration to these rival contentions. Certain salient features of the case which are well established on record and which, in our view, project a complete chain of circumstantial evidence against the accused deserve to be noted at this stage -

A 1. The death of Madhu Bala had occurred at the residential house of the appellant.

2. The appellant was not happy with the dowry brought by Madhu Bala at the time of marriage and had motive to get rid of Madhu Bala who instead of forcing her parents to give articles demanded by the accused, had sent her relations to prevail upon him to withdraw the demand and accused also had given promise of treating her properly in future. This aspect of the case is well established by the evidence of P.W. 4 Brij Bhushan. Nothing has been brought out in his cross-examination to falsify his version.

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3. A false version was given by the appellant before the police that Madhu Bala had died by committing suicide. That version is completely falsified by medical evidence of Dr. Jagdish Gargi, P.W.1. Dr. Gargi in his evidence stated that there is normally trickling of the saliva from the angle of the mouth of the deceased which stains the cloths of the deceased. He had specifically observed the cloths worn by the deceased in this case. He found no stains of saliva on the body of the deceased. This version could not be effectively challenged in the cross-examination of this witness. It is also pertinent to note that a young girl of 24 years, mother of an infant of two and a half months having allegedly taken half a bottle of liquor could not have remained in senses to hang herself later on by self-strangulation. The entire defence version to say the least was preposterous and violated all basic norms of probabilities and was an affront to common sense. Once the theory of suicide is ruled out it has to be held that deceased died a homicidal death in the residence of appellant who himself is a practising doctor. The medical evidence and the report of the Chemical Examiner clearly show that deceased Madhu Bala lost her life as a result of administration of organophosphorus compound mixed with alcohol. It is required to be noted that Madhu Bala who was a young Brahmin girl aged 24 and who had recently given birth to a male child who was two and a half months old, is found to have consumed half a bottle of liquor which contained the mixture of organophosphorus compound. The Chemical Examiner's Report showed that the blood alcohol concentration was estimated as 322 mgms/100 mls and, therefore, on a rough estimate the deceased could be said to have consumed about 400 cc of alcohol. Such type of does would not have been voluntarily taken by her but would have been administered the does.

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4. The Chemical Examiner's Report also shows that once that organophosphorus compound along with 400 cc of alcohol was administered to the deceased, the concentration of said compound went to such a high degree that it travelled in the blood stream and poison was detected in her blood sample no. IV which was a sealed bottle containing blood of the deceased. Thus it could easily be seen that sufficient quantity of poison was administered to the deceased so that it could enter her blood stream and result in her death. Under these circumstances it is not possible to agree with the contention of learned senior counsel for the appellant that the prosecution had failed to bring home to the accused the charge of having administered sufficient quantity of poison which could prove fatal. In fact it has proved fatal.

5. The administration of poison to the deceased could not be treated by way of accident or a voluntary act on her part as she by herself would have no occasion to commit suicide leaving her male son of two and a half months in the lurch.

6. It is also well established that the appellant was a medical practitioner having two clinics. Therefore he had every facility and opportunity coupled with the knowledge that the lethal dose of huge quantity of poison which by itself was very pungent was required to be diluted by mixing it up with alcohol before it could be administered to anyone.

7. The two ante-mortem injuries detected by the doctors on the body of the deceased clearly indicated that she had resisted before the in-take of aforesaid quantity of alcohol mixed with poison. In this connection Dr. Gargi stated that he could not rule out the possibility of these injuries being result of a scuffle if the deceased resisted the administration of alcohol or organophosphorus compound. Consequently the aforesaid circumstances clearly proved that death of Madhu Bala was result of administration of alcohol and adequate quantity of organophosphorus compound which proved fatal.

8. The accused had created a false evidence of hanging by rushing to the police on the same night of the incident which obviously was an attempt to side-track the investigating agency. This was a strong indicator about his guilty mind. Furnishing such false information to the police about the cause of death inevitable pointed to his guilt.

A 9. His subsequent conduct of not immediately informing his in-laws and relatives of the deceased and his absconding from the scene of offence for couple of days till he was ultimately arrested which conduct though by itself might not be conclusive, becomes a clinching circumstance in the light of the aforesaid tell-tale pre-existing circumstances well established on B record and which clearly point an accusing finger to the appellant and no one else.

10. In the household of the appellant apart from his wife, the deceased and the co-accused, his mother who is acquitted, there was his younger brother who in no circumstances could be alleged to have C committed this heinous crime. By a process of elimination, therefore, it was appellant-doctor who being dissatisfied with his in-laws and with his wife can be said to have liquidated her.

All the aforesaid circumstances, therefore, must be treated to have represented a complete chain of circumstantial evidence leading to the D inevitable conclusion that it was the accused and no one else who was responsible for this heinous crime which deprived a young woman of 24 years of her life at the threshold of existence and also in turn deprived a two and a half months old infant of his mother. Consequently there is no escape from the conclusion that the prosecution has brought home to the E appellant-accused the charge of murdering his wife beyond shadow of any reasonable doubt.

In the result this appeal fails and is dismissed.

R.K.S. Appeal dismissed.