

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
Criminal Appeal No. 2218 of 2009

Rachhpal Kaur & Anr.

Appellant(s)

Versus

State of Punjab

Respondent(s)

ORDER

The appellants, the wife and son-in-law of the deceased, are in appeal against their conviction under Section 302/34 of the Indian Penal Code, 1860 sentencing them to imprisonment for life.

The deceased was found dead in his own house between the night intervening 27/28 April 2001. There is no eye-witness to the occurrence. The prosecution case rests on circumstantial evidence alone. The other two sons who lived with the deceased were also made accused. One of them was a juvenile and the elder Amrik Singh has been acquitted.

Learned counsel for the appellants submitted that there was a property dispute between the deceased and his brothers. They were not on talking terms. There were civil and criminal cases between them. PW-2, the brother of the deceased has admitted that he was not called for the wedding of the daughter of the deceased also.

The property of the deceased by inheritance would have

devolved upon the accused No.1 along with her sons. The reasoning by which the Trial Court has acquitted the elder son of the deceased as natural inheritor of the property of the deceased applies with equal force to accused No.1. Thus there was no motive for them to murder the deceased for acquisition of property. The conviction by false implication inures to the benefit of the brothers of the deceased alone as they would become the owners of the property if the entire family of the deceased is to be convicted and sent to jail. The alleged story of the prosecution that the murder was caused because of the alleged illicit relationship between the two accused which was disliked by the deceased is a pure figment of imagination with no evidence whatsoever in support.

Referring to the evidence of doctor who conducted the post mortem, PW-8 opining that it could be a case of suicide also, the submission is that the benefit of doubt has to be given to the accused. Strong reliance has been placed on the conclusion of the High Court that the medical traits found on the person of the deceased were evenly balanced between suicide and strangulation to submit that in the circumstances if a view possible and favourable to the accused could be taken, the benefit of doubt must follow.

The appellants had taken a specific defence under Section 313 of the Code of Criminal Procedure, 1973 that they were being falsely implicated by the brothers of the deceased due to the property dispute. The Trial Court while acknowledging the existence of litigation with regard to property disputes failed

to consider the defence and shrugged it aside by holding that it could not be a reason for false implication. The failure of the Trial Court to consider the defence in its proper perspective naturally has caused serious prejudice to the appellants. In absence of the prosecution having established a prima facie case on basis of a chain of circumstances, the onus does not shift to the appellants under Section 106 of the Indian Evidence Act, 1872 (for short "the Act") merely because death may have taken place inside the house. Reliance was placed on *Jose v Sub-Inspector of Police* (2016) 10 SCC 519.

Learned counsel for the State and the complainant submitted that the body was not found hanging but lying on a bed. There is no evidence furnished for the manner in which the body came to be found on the bed if the deceased committed suicide by hanging. Referring to the evidence of PW-2, the brother of the deceased, the neighbor, PW-4 and another relative of the deceased PW-12, it was submitted that the previous evening, arguments were heard from inside the house and the next morning it was revealed that the deceased had been murdered in his own house. On the disclosure statement of accused No. 1, piece of cloth "parna" used for strangulating the deceased has been recovered. Reliance was placed on State of Rajasthan vs Thakur Singh (2014) 12 SCC 211 to submit that when death has occurred in the confines of the house, the onus lay on the appellants under Section 106 of the Act to establish that the death was suicidal and it was not murder.

We have considered the submissions on behalf of the

parties and scrutinised the evidence on record as also examined the conclusions in the impugned orders convicting the appellant. Conviction can be based on circumstantial evidence only if the prosecution establishes a complete link in the chain of circumstances leading to the only and inevitable conclusion of guilt incompatible with any hypothesis suggesting the innocence of the accused.

In the present case, merely because death may have taken place inside the house does not absolve the prosecution from establishing a prima facie case of murder only whereafter the burden will shift to the accused under Section 106 of the Act. Reference may appropriately be made to *Issardas Daulat Ram v. Union of India*, 1962 Supp (1) SCR 358.

The law was put in motion on the information furnished by PW-2, the brother of the deceased. The witness deposed that he was informed by his wife. The latter has not been examined. The witness on being informed of the demise of his brother did not proceed for the house of the deceased, which would have been the normal human reaction if it was a case of murder, but went straight to the police station. The witness initially sought to deny that there was any dispute between him and the deceased brother with regard to the property but subsequently in cross-examination acknowledged that there was civil litigation with regard to the inheritance from their father including criminal complaints filed by accused No. 1 against him.

He also acknowledges that because of the strained relations between them he was not called for the wedding of the

daughter of the deceased. Not a single incident or evidence has been pointed out by the witness with regard to the alleged illicit relations between the accused ascribed as motive by the prosecution. The present occurrence is based in a rural society. Had there been any illicit relations between the mother-in-law and the son-in-law, it would have been an open secret. We find considerable force in the submission that there was no occasion for the accused to murder the deceased alike the reasoning for acquittal to the son of the deceased Amrik Singh.

The evidence of the doctor, PW-8 is inconclusive with regard to the cause of death except for mentioning asphyxia. Whether it was a suicide by hanging, or murder by strangulation, asphyxia will be present in both situations. The cloth alleged to have been discovered on the confession of accused No. 1 and stated to have been used for strangulation was not even sent to the forensic laboratory for examination. The prosecution does not state of any blood stains on it. Merely because it may have been creased cannot by itself be construed as evidence of murder. The possibility of it having been used for suicide also remains open. Even otherwise, in view of the medical evidence of PW-8 that the possibility of death being suicidal could not be ruled out, we are of the opinion that the possibility of the deceased having strangulated himself cannot be completely ruled out. If there is a doubt with regard to whether death was homicidal, the benefit of doubt has to be given to the accused.

We have discussed the materials on record only to

demonstrate our satisfaction that there are no circumstances clearly suggestive of the fact that the deceased was strangled by the appellants. The evidence is not credible establishing a complete link in the chain of circumstances leading to the inevitable conclusion that the appellants were the assailants who strangled the deceased.

At this juncture, the conclusion of the High Court as follows is extremely crucial:-

"We come to the conclusion that the medical traits are somewhat evenly balanced but it was for the appellants to explain that the death was by hanging. This was the requirement of Section 106 of the Evidence Act. The appellants have hopelessly failed to discharge the burden cast on them by law."

In our opinion, the High Court erred in law by straight away casting the burden upon the appellants under Section 106 of the Act without the prosecution having first established a prima facie case that the death occurred due to external manual strangulation alone and all possibilities of the deceased strangulated himself by committing suicide having been ruled out.

If the High Court was satisfied that the medical traits were "evenly balanced" meaning thereby that the possibility existed of a suicidal death also, the interpretation favourable to the accused had to be adopted giving the benefit of doubt to the appellants. The discussion by the High Court based on conjectures and surmises with regard to the conduct of the appellants incompatible with a case of suicide is in the realm

of speculation and cannot be the foundation for a conviction.

In *Jose (supra)*, considering the possibility of the deceased having committed suicide as distinct from a homicidal death, granting the benefit of doubt to the accused it was held as follows :

51. The medical evidence as elaborated hereinabove also does not decisively establish the case to be of homicidal hanging. The unchallenged expositions of the doctor performing the post-mortem examination highlighting the absence of the characteristic attributes attendant on death due to homicidal hanging following strangulation further reinforce the possibility of suicide. The absence of definite medical opinion about the homicidal death of the deceased in our comprehension is a serious setback to the prosecution.

56. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of "may be true" but has to essentially elevate it to the grade of "must be true". In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.

The appellants took a defence under Section Section 313

Cr.P.C for false implication because of the property dispute between the deceased and his brothers. We find force in the submission on behalf of the appellants that it would best suit the PW-2 and other brothers that the entire family of the deceased by false implication be sent behind bars to facilitate the other brothers from unhindered exclusive enjoyment of the properties. Unlike the burden of proof beyond reasonable doubt, an accused is not required to establish his defence beyond reasonable doubt. The accused has only to create a doubt about his defence. It would then be for the prosecution to dispel that doubt for sustaining the conviction. The opportunity to an accused to establish his defence under section 313 Cr.P.C. is but a facet of a fair trial. In the facts of the present case it cannot be held that the defence was frivolous or weak to merit no consideration because of other overwhelming evidence. Unfortunately both the courts failed to deal with it properly. Prejudice to the appellants is therefore writ large.

The importance of his defence to an accused under section 313 Cr.P.C was recently noticed in *V.K. Sasikala v. State*, (2012) 9 SCC 771, observing as follows :-

23.1. The examination of an accused under Section 313 CrPC not only provides the accused an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence but such examination also permits him to put forward his own version, if he so chooses, with regard to his involvement or otherwise in the crime alleged against him. Viewed from the latter point of view, the examination of an accused under Section 313 CrPC does have a fair nexus with the defence that he may choose to bring, if the need

arises. Any failure on the part of the accused to put forward his version of the case in his examination under Section 313 CrPC may have the effect of curtailing his rights in the event the accused chooses to take up a specific defence and examine the defence witnesses. Besides, the answers given by the accused in his examination, if incorrect or incomplete, may also jeopardise him as such incorrect or incomplete answers may have the effect of strengthening the prosecution case against the accused.

In absence of the prosecution having failed to establish a *prima facie* case of a homicidal death reliance by the prosecution on *Thakur Singh* (supra) is no avail to it. The aforesaid discussion leads us to the conclusion that the conviction of the appellants is not sustainable and is accordingly set aside. The appellants are stated to be on bail. The bail bonds of the appellants stand discharged.

The appeal is allowed.

Pending application(s), if any, shall also stand disposed of.

.....J.  
(Navin Sinha)

.....J.  
(Indira Banerjee)

New Delhi  
September 18, 2019

ITEM NO.101

COURT NO.12

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2218/2009

RACHHPAL KAUR & ANR.

Appellant(s)

VERSUS

STATE OF PUNJAB

Respondent(s)

Date : 18-09-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s)

Mr. Harpreet S. Sandhu, Adv.  
Mr. Vikram Singh, Adv.  
Bhanu Pant, Adv.  
Ms. Smita Singh, Adv.  
Mr. Satyapal Khushal Chand Pasi, AOR

For Respondent(s)

Mr. P. N. Puri, AOR  
Ms. Reeta Dewan Puri, Adv.  
Mr. Abhishek Puri, Adv.  
  
Ms. Jaspreet Gogia, AOR  
Ms. Mandakini Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)  
COURT MASTER (SH)

(BEENA JOLLY)  
BRANCH OFFICER

(Signed order is placed on the file)