Kalu @ Laxminarayan vs The State Of Madhya Pradesh Home ... on 7 November, 2019

Equivalent citations: AIRONLINE 2019 SC 1453, 2019 (10) SCC 211, (2019) 16 SCALE 183, (2019) 204 ALLINDCAS 39, (2019) 4 ALLCRILR 805, (2019) 4 CRIMES 194, (2020) 110 ALLCRIC 676, (2020) 129 CUT LT 296, 2020 (1) SCC (CRI) 142, (2020) 77 OCR 258

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Bench: B.R. Gavai, Navin Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1677 OF 2010

KALU alias LAXMINARAYAN .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH .....RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The appellant, husband of the deceased, is aggrieved by his conviction under Section 302 of the Indian Penal Code (in short, 'IPC') affirmed by the High Court. There is no eye witness and the case rests only on circumstantial evidence.

2. The deceased was married to the appellant approximately six to seven years back. Both of them were living alone in the house with their minor child. On 14.10.1994, late in the evening, the Reason:

> family members of the deceased, who resided about 35□40 kms.
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> away, received a telephone call that their daughter had died. They came the next morning at 06.00 AM and found the body of the deceased in the middle room of the house, lying on the ground covered with a white sheet. The first information report was lodged at about 07.00 AM, the inquest report was prepared same day as also the

post mortem was done in the afternoon. The police after completing investigation submitted charge sheet under Section 306 and 498A, IPC. During the course of the trial, considering the nature of evidence that emerged, the Sessions Judge also added Section 302, IPC in the charges. The Sessions Judge held the charge under Section 302 to be established as the deceased had been strangulated to death. The High Court in appeal opined that the deceased had been hanged to death. Both the courts have unanimously held that the deceased did not commit suicide but that it was a homicidal death.

3. Learned senior counsel Shri Vinay Navare, appearing for the appellant, submitted that the deceased had committed suicide. The conviction of the appellant under Section 302 IPC was not justified. The appellant has been acquitted of the charge under Section 498A. It was impossible for the appellant to have alone forcibly hanged the deceased from a height of 11 feet. The fact that the body was found lying on the ground in the house, does not detract from the appellant's defence that she was brought down from the noose after she committed suicide and the body laid on the ground. If the appellant had strangulated the deceased, nothing prevented him from concealing the dead body or cremating her in the night itself. His conduct is not conducive of his guilt. The mere fact that the deceased died in unnatural circumstances inside the matrimonial home cannot by itself be sufficient to shift the onus on the appellant under Section 106 of the Indian Evidence Act, 1872 (hereinafter called as "the Act"). The onus first lies on the prosecution to establish a prima facie case of a homicidal death ruling out all possibilities of a suicide. Reliance was placed on Shambu Nath Mehra vs. The State of Ajmer, 1956 SCR 199; Sawal Das vs. State of Bihar, (1974) 4 SCC 193 and Jose vs. The Sub□Inspector of Police, Koyilandy and Ors., (2016) 10 SCC

519.

4. Shri Sunil Fernandes, learned Addl. Advocate General appearing on behalf of the respondent State, submitted that all the circumstances in the case inevitably point towards the guilt of the appellant. Death was homicidal in nature. The nature of oral, physical and medical evidence completely rules out the defence of a suicide by the deceased.

5. We have considered the submissions on behalf of the parties and have also gone through the evidence and other materials on record. The deceased lived alone with the appellant and their minor child. The evidence of the relatives of the deceased, PW 2, PW 4 and her parents PWs.6 and 8 reveal that all was not well between the appellant and the deceased. Because of the strained relations between them, the deceased had stayed at her parents' home for nearly 10 months prior to the occurrence and had returned barely a month before the fateful day after her father□in□law had come to take her back. We find no reason to disbelieve this part of evidence of PWs. 6 and 8.

6. PW 5 had deposed that he had seen cow dung on the hands of the deceased indicating that she was working when the homicidal assault had been made on her. He deposed having said so in his statement under Section 161, Cr.P.C. When the omission was pointed out to him in cross examination, he reiterated the same. This omission in his police statement was put to PW 17, the Investigating Officer, under Section 145, Cr.P.C. The witness replied that he did not remember the

statement made to him and not that PW 5 had not made such a statement. The question was specifically put to the appellant under Section 313, Cr.P.C. also, to which he only gave a stock denial. The only defence taken by the appellant under Section 313 Cr.P.C. was that he had been falsely implicated. The prosecution has therefore sufficiently established that there was cow dung on the hands of the deceased indicating that she was engaged in house hold chores when the assault was made.

7. The inquest report of the deceased noticed that her hair was open and scattered, both eyes were closed and froth was coming out of the nose and mouth, the tongue was inside and the teeth visible. The right hand was on the stomach and the left hand was on the floor with the fist half open. There was a ligature mark at the back. On turning over the body, there was blackening on the back and in the loin area. The post mortem report estimated the age of the deceased as 22 years and noticed the following:

a) Froth marks blood is seen at the mouth and nostrils.

The saliva is seen running out from left side of mouth and neck is tilted to left side. Ante mortem injuries were present. Abrasions varying in left from ¼" to ½" and varying in width from 1/8" to 1/4" situated on dorsum of fingers of right hand are present.

b) Abrasions on right forearm, upper dorsum signs ½" x ½".

c) On dissection of the subcutaneous at the ligature mark, it is dry, and the M.M. of troches is red and congested and contain forth tinged with blood. The right chamber of heart contained blood and left chamber empty. The tongue caught between teeth.

d) There is well defined ligature mark, situated above the thyroid cartilage between larynx and chin 1" width and ½" deep directed obliquely upwards following the line mandible and reaching the mastoid process. The mark is interrupted at the back. The base of the mark is pale and hard and the margins are red and congested. The wound with crust and scan on left knee which appears to 7 to 12 days old.

All the injuries were ante mortem in nature opining that the deceased had died of asphyxia following hanging.

8. The injuries on the person of the deceased, as noticed in the inquest report as also in the post mortem report, are clearly indicative of a struggle or resistance put up by the deceased in the last hour. It is unusual that if the deceased had committed suicide by hanging herself, her right hand would be lying on the stomach and the left hand would be on the ground with both fists half open. This is more of a probability if the deceased was strangulated when life ebbed out of her slowly. The fact that the neck of the deceased was not found stretched and elongated, considering that the body was still fresh, rules out any possibility of suicide by the deceased. The tongue was not protruding. Scratches and abrasions would not be present in case of a suicide. There is no fracture or dislocation of the bones in the neck area. The saliva was not running down the face or chest of the deceased but

had flowed out at the left of the mouth.

9. The High Court opined that the deceased had been hanged to death. Suicide was ruled out as the wooden log in the room used for storing grains from which a piece of a rope was found hanging was 11 ft. 2 inches in height from the floor. The deceased was of 5'4" and assuming that she would stretch out another one foot six inches it would still leave gap of 4 feet between her and the log, therefore suicide was an impossibility. We find no reason to differ with the reasoning. The conclusion of the High Court, to our mind, also does not help the appellant in the defence of a suicide. The views taken by the Trial Court and the High Court nonetheless both point towards a homicidal death clearly. We would rather be inclined to accept the view of the Sessions Court that the deceased was strangulated to death as it would not also be possible for the appellant to hang the deceased alone. The body has also been found lying on the ground.

10. The aforesaid factors leave us satisfied that the prosecution has been able to successfully establish a case for a homicidal death inside the house where the deceased resided with the appellant alone. The conduct of the appellant, in the aforesaid background, now becomes important. If the deceased had committed suicide, we find it strange that the appellant laid her body on the floor after bringing her down but did not bother to inform anyone living near him much less the parents of the deceased. There is no evidence that the information was conveyed to the family members of the deceased by the appellant or at the behest of the appellant. The appellant was also not found to be at home when her family members came the next morning. The appellant offered no defence whatsoever with regard to his absence the whole night and on the contrary PW 3 attempted to build up a case of alibi on behalf of the appellant, when he himself had taken no such defence under Section 313, Cr.P.C.

11. The occurrence had taken place in the rural environment in the middle of the month of October when it gets dark early. Normally in a rural environment people return home after dusk and life begins early with dawn. It is strange that the appellant did not return home the whole night and was taken into custody on 21.10.1994.

12. In the circumstances, the onus clearly shifted on the appellant to explain the circumstances and the manner in which the deceased met a homicidal death in the matrimonial home as it was a fact specifically and exclusive to his knowledge. It is not the case of the appellant that there had been an intruder in the house at night. In Hanumant and Ors. vs. State of Madhya Pradesh, AIR 1952 SC 343, it was observed "10. .....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 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...."

13. In Tulshiram Sahadu Suryawanshi and Ors. vs. State of Maharashtra, (2012) 10 SCC 373, this Court observed:

> "23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar "38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambhu Nath Mehra v. State of Ajmer the learned Judge has stated the legal principle thus:
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> '11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.
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> The word "especially" stresses that. It means facts that are pre□eminently or exceptionally within his knowledge."

14. In Trimukh Maroti Kirkan vs. State of Maharashtra, 2006 (10) SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case:

> "14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge

> does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions — quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:
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> "(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

15. In view of our conclusion that the prosecution has clearly established a prima facie case, the precedents cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313, Cr.P.C. with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

16. We find no merit in the appeal. It is dismissed. The appellant is stated to be on bail. His bail bonds are cancelled and he is directed to surrender within two weeks for serving out his remaining period of sentence.

.....J. (NAVIN SINHA) .....J. (B.R. GAVAI) New Delhi, November 07, 2019