

## **S.D. Soni vs State Of Gujarat on 21 December, 1990**

**Equivalent citations: 1991 AIR 917, 1990 SCR SUPL. (3) 668, AIR 1991 SUPREME COURT 917, 1991 AIR SCW 179, (1991) CRICJ 200, 1991 CRILR(SC MAH GUJ) 114, 1992 SCC(CRI) 331, (1991) 1 JT 1 (SC), 1992 (1) SCC(SUPP) 567, 1992 SCC (SUPP) 1 567, 1991 (1) JT 1, 1991 CRIAPPR(SC) 102, (1991) SC CR R 355, (1991) 1 DMC 212, (1991) 1 GUJ LR 321, (1991) 1 GUJ LH 105, (1991) 1 HINDULR 472, (1991) 1 RECCRIR 249, (1992) 1 CHANDCRIC 58, (1991) 1 ALLCRILR 324, (1991) 2 CRIMES 4**

**Author: S.R. Pandian**

**Bench: S.R. Pandian**

PETITIONER:

S.D. SONI

Vs.

RESPONDENT:

STATE OF GUJARAT

DATE OF JUDGMENT 21/12/1990

BENCH:

PANDIAN, S.R. (J)

BENCH:

PANDIAN, S.R. (J)

REDDY, K. JAYACHANDRA (J)

CITATION:

1991 AIR 917 1990 SCR Supl. (3) 668

1992 SCC Supl. (1) 567 JT 1991 (1) 1

1990 SCALE (2) 1342

ACT:

Indian Penal Code 1860: Sections 300, 302 and 304 Part II-Deceased--Whether committed suicide by taking poison or was murdered by her husband--No direct evidence to prove either of the versions--Guilt of appellant/husband to be drawn from circumstantial evidence--Held on facts--Defence theory of suicide----Complete hoax-Falsely invented to escape guilt, legal punishment and drift course of investigations-blow given to deceased on vital part of body containing vital organ--Held act done only with knowledge that it is likely to cause death.

Indian Evidence Act, 1872: Sections 3, 11 and 45

Alibi--Plea of--Appreciation of evidence--Opinion of medical witness--Doctor's evidence--Consideration of case based on circumstantial evidence-Nature of proof of commission of offence--Necessary requirements-What are.

HEADNOTE:

The appellant in Criminal Appeal No. 459 of 1987 was married to one Varsha on 4th December 1982. After the marriage, she came to Ahmedabad and stayed with her husband who was in joint family. After having stayed for about a month with her husband, she returned to her parents' place at Bombay. The husband took her back to the matrimonial home after about a month.

The prosecution alleged that even during her stay with her husband for about a month, the matrimonial life was not happy as the lady members of the house used to taunt her. She was not even allowed to see and freely talk to her father and brother in private when they used to visit her. On 7.7.1983 she wrote a letter Exh. 18 to her parents informing them that she was being ill-treated by her husband and in laws and other relatives complaining that her father did not give her anything at the time of marriage, and that only Almighty could save her from threatened danger.

After the receipt of this letter, the father contacted the appellant's

669

father-PW15, to come to meet him personally. Thereafter, there was a chain of correspondence between the parents of both the wife and the husband. While this was going on, the wife was found lying dead in her bed in her matrimonial home on the morning of August 1, 1983.

It was the case of the appellant-husband that a chit Exh. 80 was seen underneath a pillow, said to have been written by the deceased herself that she was committing suicide on her own volition by consuming sleeping pills as she was in love with a boy at Bombay and her demand for divorce was not acceded to by her husband. The medical officer PW3 examined her and declared her to be dead. Thereafter, the police was informed that she had committed suicide.

The Sub-Inspector of Police (PW 17) held the inquest over the dead body and sent a report Exh. 10 stating that it was a suicidal death. After the inquest, the dead body was sent to the Civil Hospital for post-mortem, The parents of the deceased on being informed that their daughter was in a serious condition rushed to Ahmedabad from Bombay. The dead body was brought to the appellant's house in the morning of August 2, 1983 and thereafter the cremation took place.

The father of the deceased (PW 5) having suspected some foul play and that the death was not of a natural one, sent letters to the Commissioner of Police the Home Minister, IGP

and Chief Justice of Gujarat and wanted the matter to be investigated. The matter was examined and further investigation was taken up on January 7, 1984 by the Investigating Officer (PW 21) who after recording the statement of witnesses and receiving the opinion of the Handwriting Expert laid the charge sheet and arrested the appellant in August 16, 1984. The defence of the appellant was one of denial.

The Trial Court found the appellant guilty of having committed the murder of his wife and convicted him under Section 302 IPC and sentenced him to imprisonment for life. He was also charged for two other offences viz. under Section 196 IPC that he attempted to use the chit Exh. 80 as a true or genuine evidence knowing that it was false and fabricated one, and another under Section 498A that he subjected his wife, the deceased to cruelty thereby driving her to commit suicide.

On appeal, the High Court held the appellant guilty of the offence punishable under Section 304 Part II IPC, and not under Section 302 IPC and sentenced him to rigorous imprisonment for five years.

670

The appellant filed an appeal to this Court challenging his conviction and sentence, and the State of Gujarat also preferred an appeal on the ground that the evidence makes out a case for an offence punishable under section 302 IPC.

In the appeal to this Court it was contended on behalf of the appellant-accused relying on the evidence of the doctor PW11 and the Sub-Inspector PW17 that the deceased should have been suffering from malaria resulting in splenic fever and that she would have collapsed while violently vomiting and sneezing by taking excessive doses of sleeping pills or barbiturates and that a fall from the cot might have caused all the internal injuries, showing no visible marks of external injuries, Strong reliance was also placed on the chit Exh. 80 in support of the defence theory that it is a case of suicide and that the deceased has unfolded her mind therein that she had already fallen in love with her lover at Bombay and that her marriage with the appellant had been solemnised against her will, and as the appellant had refused to accede to her request for divorce she was committing suicide.

On behalf of the State it was contended that the offence was one of murder within the ambit of Section 300 IPC, and that the punishment provided thereunder should be imposed. Dismissing the Appeal, this Court,

HELD: 1. There is no direct evidence to prove whether the deceased committed suicide by taking poison on account of the alleged failure in love or whether she was murdered by her husband. Therefore, the guilt or otherwise of the appellant has to be drawn only from the circumstantial evidence. [676F]

2. In a case in which the evidence is of a circumstantial nature the facts and circumstances from which the

conclusion of guilt is said to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and the circumstances so established should not only be consistent with the guilt of the appellant but also they must entirely be incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence. [676G]

Gambir v. State of Maharashtra, [1982] 2 SCC 351; Rama Nand and Ors. v. State of Himachal Pradesh, [1981] 1 SCC 511; Prem Thakur v. State of Punjab, [1982] 3 SCC 462; Earabhadrapa alias Krishnappa v. State of Karnataka, [1983] 2 SCC 330; Gian Singh v.

671

State of Punjab, [1986] (Suppl.) SCC 676 and Balvinder singh v. State of Punjab, [1987] 1 SCC 1, referred to.

3. Exh. 80 is not proved to be under the handwriting of the deceased and, therefore, no reliance can be placed on this document. [684A]

4. The appellant has failed in his attempt to prove the defence theory of suicide which is fanciful and incredible. [686D]

Sharad Birdhichand Sarda v. State of Maharashtra, [1984] 4 SCC 116 at 184 and Lakshmi Singh and Ors. v. State of Bihar, [1976] 4 SCC 394, referred to.

5. Admittedly, Varsha was found dead in her bed-room PW13 is the witness who speaks of having seen Varsha lying on her cot. This witness is none other than the wife of the younger brother of PW15 the father of the appellant. It is found from her evidence that when all the family members pushed Varsha's room a little the door had opened. This indicates that the door was not locked from inside. Therefore from these circumstances, one could safely infer that Varsha had slept in her room with her husband on the intervening night of 31.7.1983 and 1.8.1983 and that the appellant had came out of the room and that Varsha was found dead in her bed. [687G-688F]

6. The witnesses PW13, 14, 15 and 16 have attempted to create the defence of alibi saying that the appellant was not present in the house on the night of 31.7.1983. These four witnesses are none other than the aunt, parents and brother of the appellant and their evidence is highly tainted with interestedness. Even in their attempt at creating alibi, there is no consistent version in that while PW13 would state that the appellant left the house on the evening of 31.7.1983, PWs 14 and 15 would go to the extent of saying that the appellant was not in the house even from 30.7.1983 till the morning of 1.8.1983. According to PW.23 it was the appellant who came to his house at about 8.00 a.m. on the morning of 1.8.83 on a scooter and took him to the scene house to examine Varsha. The inconsistent evidence of PWs 13, 14 and 15, whose testimony is highly interested, has to be thrown overboard in view of the abundant circumstances appearing in the case demonstrably showing that the appel-

lant was in his bed room on the night of 31.7.1983. It further transpires from the evidence of PWs 14 and 15 that the appellant used to come to the house late in the night and sleep in his bed room. [688G-689B]

672

7. It boggles one's mind that as to how the appellant suddenly appeared in the scene house in the early morning of 1.8.1983 when he had been away from the house for two days as per the evidence of PWs 14 and 15. The various compulsive circumstances appearing against the appellant, when examined in proper perspective, lead to only one conclusion that the appellant was in the scene house on the fateful night and that he knew the cause of death of his wife and that he has now come forward with a complete false defence that he was away from the house. [689D-E]

8. The defence theory of suicide is a complete hoax and an incredulous one falsely invented by the appellant in order to escape from his guilt and the legal punishment, and also to drift the course of the investigation. [690B]

9. The deceased Varsha did not die by taking any sleeping pills or consuming poisonous substance but only on account of external severe pressure on region of pancreas and spleen. [686B]

Taylor's Principles and Practice of Medical Jurisprudence, Vol. I (1965 Edn.) p. 253; Parikh's Textbook of Medical Jurisprudence, p. 353; Modi's Medical Jurisprudence and Toxicology ed. by CA Franklin; Harrison's Principles of Internal Medicine, (11th Edn.) Butterworth's Medical Dictionary, referred to.

10. The appellant in his statement under Section 313 Cr. P.C. has stated that he did not go to the cremation grounds as the elders had asked him not to go and that he did not enquire as to why he was not to attend the cremation of his life. This is one more clinging circumstance raising same suspicion about the conduct of the appellant. [689C]

11. The High Court has also examined the nature of the offence proved to have been committed by the appellant, and has rightly held that even though he may not have had the intention to cause death, his act is done with the knowledge that it was likely to cause death and therefore he had committed the offence punishable under Section 304 Part II I PC and was required to be convicted and punished for the same. [690D-F]

JUDGMENT: