# Jayantilal Verma vs State Of M.P. (Now Chhattisgarh) on 19 November, 2020

## Author: Sanjay Kishan Kaul

## Bench: Sanjay Kishan Kaul, Dinesh Maheshwari, Hrishikesh Roy

REPOR

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 590 OF 2015

JAYANTILAL VERMA …Appellant

Versus

STATE OF M.P. (Now Chhattisgarh) …Resp

JUDGMENT

SANJAY KISHAN KAUL, J.

1. On the fateful day of 24.8.1999, one Sahodara Bai was found dead on a cot in her matrimonial home located in village Uslapur, District Rajanandgaon, M.P. (now Chhattisgarh). A marg intimation was lodged with the police at the behest of her brother, one Kishore Kumar, who alleged that he had returned to village Uslapur to see his sister, where he was informed by her in-laws that she had died. He related a prior incident from a few days ago alleging that on 19.8.1999, the deceased had returned to her maternal home to village Baiharsari stating that she had been harassed at the hands of her in-laws for the last 6-7 months. The cause for harassment was stated to be that the appellant herein (her husband) had a brother who lived separately and the in-laws would beat and harass her if she attempted to speak to the wife of the brother of the appellant herein. The endeavour of reconciliation took place when Kishore Kumar along with another brother, Lochan, had brought the deceased back to her matrimonial home. Even at that stage, on being asked whether they wanted her to live with them, the in-laws responded that they will see for a few days and then decide. The deceased thereafter stayed back at her matrimonial home.

2. A postmortem was conducted on the body and FIR No.72/99 came to be registered at P.S. Bodla, District Kawargha on 29.8.1999 arraying the appellant herein, his father, one Lalchand and mother, one Ahiman Bai as accused for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). The FIR is stated to have been registered at the behest of one K.P.S. Paikara, the SHO of P.S. Bodla, who relayed the abovementioned information from the marg intimation and also elaborated on the relationship of the deceased and the appellant herein along with the findings of the postmortem report. The marriage between the appellant herein and the deceased had taken place about 8 years prior to the incident and there was a son born, who was only a few months old. The appellant herein, along with the deceased was staying with his parents. The post mortem report stated that the cause of death was asphyxia due to strangulation, and the nature of death was possibly homicidal. On completion of investigation, Chargesheet No. 64/99 was filed and charges were framed by the Sessions Court in Sessions Trial No.165/1999, arraying the appellant herein and his parents as accused. The version given by the accused in their statements under Section 313 Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') was that on the morning of the incident all the three accused had gone to the fields, while only the deceased remained at home. Lalchand stated that after taking a bath in the pond, when he returned, he discovered the deceased lying dead in her cot. Thereafter he called the appellant herein and his wife, Ahiman Bai, who were still in the fields. No evidence was led in this regard.

3. The prosecution led evidence of 9 witnesses to establish their case. Five of these witnesses turned hostile – PW-2 (Lochan), brother of the deceased, PW-3 (Mukund), PW-4 (Jagdev), PW-5 (Pitambar Verma) and PW-6 (Ghasiya). The case of the prosecution was, thus, based on the testimonies of the remaining witnesses, i.e., PW-1, Kishore Kumar, the brother of the deceased and PW-7, Rajendra Chauhan, who prepared the site plan, PW-8, K.P.S. Paikara, Investigating Officer and PW-9, Dr. M.S. Bachkar, who conducted the postmortem. Thus, effectively the case was based on the testimony of PW-1, apart from the testimony of the doctor who conducted the postmortem.

4. The Sessions Court held all the three accused persons guilty of offences punishable under Section 302 of the IPC, in terms of the judgment dated 21.7.2000.

5. The finding of the Sessions Court was based on the cause of death being asphyxia due to strangulation. The testimony of the doctor, PW-9, was relied upon to come to the conclusion that the death was homicidal as it was a result of strangulation. The possibility of any other manner of death was explored by the court, i.e., thieves killing the deceased in order to snatch a chain from her neck. This was ruled out as the incident took place in the house, which in turn was surrounded by other houses on three sides and no commotion was heard. Further, no crime of theft had been reported in the recent past. Next, the possibility of death caused by a snakebite was explored. This was owing to the testimony of PW-1, who had stated, that upon finding his sister dead and enquiring as to what had happened, Lalchand, father of appellant herein had stated that she had died of a snakebite. Court noted that the postmortem did not indicate any symptom of a snake bite as there was no mark or any poisoning detected in the body. The suicide theory was also ruled out as there were scratch marks found on her neck. The conclusion was, thus, based on circumstantial evidence to convict the accused. All the three accused preferred an appeal before the High Court, being

Criminal Appeal No.1930/2000. In the course of the pendency of the appeal, Lalchand, the father-in-law of the deceased passed away. The High Court concluded that there was no legally admissible evidence to convict the mother-in-law of the deceased, and hence she was acquitted. However, the conviction of the appellant herein was upheld by the High Court.

6. The appellant herein filed the present appeal in which leave was granted on 30.3.2015.

7. It would be appropriate to note that there was some improvement in the statement of PW-1 to the extent that he had never mentioned Lalchand's explanation of the death of the deceased by snake bite in the earlier statement. While this was noted by the Trial Court, all other aspects were found to be consistent with his earlier statements. The testimony of PW-1 as a whole was found to be natural. It was also noted that there was an absence of any prior animosity between PW-1 and the family of the appellant herein. PW-1, incidentally, was the stepbrother of the deceased, while PW-2, who turned hostile was her real brother. The cause of witnesses turning hostile, as per the Trial Court, was that PW-2 was influenced on account of subsisting family relationship, as the daughter of Lalchand (sister of the appellant herein) was married to the brother of PW-2.

8. The circumstantial evidence was examined closely as that could be the only basis of conviction, and it was found that there was a complete chain to prove the guilt of the accused. The visit of the deceased to her maternal home, her statement regarding the ill-treatment by her in-laws to her brother, PW-1, her being taken to the matrimonial home by PW-1 along with another brother, Lochan, the discussion between PW-1 and Lalchand and finally the cause of death being homicidal were all circumstances examined to establish guilt of the accused. The Trial Court held that after the murder, Lalchand sent his wife and the appellant herein to the fields, while he himself went to the pond to bathe and when he returned to his house, he raised a hue and cry, pretending to be shocked by the sudden death of the deceased. There was a possibility of death being caused by strangulation by an article made of a chain-like material but the same had likely been destroyed. The Trial Court did castigate the manner of prosecution.

9. The High Court in the given situation, apart from relying on the testimony of PW-1, turned its attention to the postmortem report. In this context, it was noted that there was blood oozing from both nostrils and mouth of the deceased, there was swelling over the right cheek, marks of ecchymosis at epiglottis region and back of the neck, bruise present at left axillary of cheek and there was depression mark of a mala on the left side of the neck. It went on to state that since the incident had taken place inside the privacy of the house, the onus was on the persons residing in the house, to give an explanation. In such situations, it was noted that it is difficult for the prosecution to lead any direct evidence to establish the guilt of the accused. In this regard, the High Court referred to Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), which reads as under:

> "106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." It, thus, opined that in such cases, while the initial burden to establish the case would be upon the prosecution, it would be of a relatively light character. There

would be a corresponding a burden on the inmates of the house to give cogent explanation as to how the crime was committed. They could not get away by keeping quiet and offering no explanation.

10. In the aforesaid contours of the factual situation we have examined the submissions of the learned counsels for the parties.

11. The submission of the learned counsel for the appellant herein was that the circumstantial evidence was not of such a nature that it could be said to be conclusive, and the chain of evidence was not complete to pronounce the appellant herein guilty. The previous allegations of cruelty had not been proved as there was no prior complaint of harassment lodged by the deceased or her relatives and that the testimony of PW-1 is further discredited, as he is the stepbrother and not the real brother of the deceased. It was further argued that the statements of the witnesses were not recorded prior to 29.8.1999 i.e., for five days from the date of incident, and even the site plan prepared by PW-7 was not proved. There was stated to be no intention or motive attributable to the appellant herein to kill the deceased and the prosecution could not absolve itself of the burden to prove the case beyond reasonable doubt.

12. The testimony of PW-9, Dr. Bachkar was assailed as there was no formation of a firm opinion regarding the nature of death as it was mentioned that it “may” have been homicidal. There was stated to be a mark on the left side of the neck and but no such mark existed around the neck. He had stated that the mark could have been caused by pressing the necklace on the neck, but asphyxia was not possible due to the same.

No recovery of necklace had taken place from the appellant herein and the weapon of crime was never recovered. Lastly, it was contended that on the same evidence, the mother of the appellant herein had been acquitted.

13. The appellant herein is stated to have served 16 years and 9 months of his sentence but some dispute was raised about the actual time he had spent in jail by learned counsel for the respondent State, though it was conceded that cases for release were considered after 14 years of serving the actual sentence.

14. Learned counsel for the respondent State relied upon the absence of any explanation by the accused regarding the cause of death, even though the death had occurred in the privacy of the matrimonial home. The appellant herein and his family are stated to be the only residents, where the body of the deceased was found and that itself cast a burden on them within the meaning of Section 106 of the Evidence Act.

15. In order to support the aforesaid proposition, reliance was placed on the following judgments:

a. Amarsingh Munnasingh Suryawanshi v. State of Maharashtra1: In this case, the death had occurred in the matrimonial home but the conviction was supported by a dying declaration. b. Raj Kumar Prasad Tamarkar v. State of Bihar & Anr.2: Here, the weapon of offence, a gun, was recovered from the room of the accused and the dead body was found on the terrace attached to the private room of the accused.

c. Trimukh Maroti Kirkan v. State of Maharashtra 3: In this case, the body of the deceased was found in the matrimonial home and the cause of death was strangulation, though the defence pleaded it to be a case of a snakebite.

16. The aforesaid, would thus, show that the third case best fits the factual scenario in the present case.

17. Learned counsel for the State emphasised that the other witnesses turning hostile cannot be a ground itself to acquit the accused and the testimony of PW-1 was consistent and sufficient to convict the appellant herein. In this behalf, a reference was made to Section 134 of the Evidence Act, which reads as under:

> (2007) 15 SCC 455 (2007) 10 SCC 433 (2006) 10 SCC 681 "134. Number of witnesses. – No particular number of witnesses shall in any case be required for the proof of any fact."

18. It was, thus, contended that mere presence or absence of a large number of witnesses cannot be the basis of conviction. It is the quality of evidence and not the number of witnesses, which is relevant. In this behalf, a reference was made to the following cases:

> a. Yanob Sheikh Alias Gagu v. State of West Bengal4, where it was observed as under:
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> "20. We must notice at this stage that it is not always the quantity but the quality of the prosecution evidence that weighs with the Court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature. In the case of Namdeo v. State of Maharashtra [(2007) 14 SCC 150], the Court held as under:
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> "28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in (2013) 6 SCC 428 spite of testimony of several witnesses if

it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negatived." b. Gulam Sarbar v. State of Bihar (Now Jharkhand) 5 wherein the Court relied on the same aforementioned principle.

19. On consideration of the evidence led by the prosecution and considering the concurrent findings by the two courts qua the appellant herein we are unable to find any reason to interfere with the judgment of the courts below.

20. It is no doubt true that a large number of witnesses turned hostile and the Trial Court was also not happy with the manner of prosecution conducted this case. But that is not an unusual event in the long drawn out trials in our country and in the absence of any witness protection regime of substance, one has to examine whatever is the evidence which is capable of being considered, and then come to a finding whether it would suffice to convict the accused.

21. The rationale adopted for coming to the conclusion behind the reason for the real brother of the deceased turning hostile while step brother stood his ground is also obvious and correctly appreciated, i.e., to (2014) 3 SCC 401 preserve the close family ties which continued to exist by marriage in the instant case, in view of the siblings of the deceased and appellant herein being married. In the Indian context, there exists a continued relationship between two families wherein the daughter-in-law comes from another house.

22. We are conscious that the case of the prosecution rests only on the testimony of PW-1 and the medical evidence. The statement of PW-1 was consistent and cogent except to the extent that in the earlier statement he had not mentioned the factum of the death being attributed to snakebite. However, that itself would not nullify the remaining part of his testimony. In fact, the said witness did not back out from the statement, but could not state the reason why the police did not record it in the FIR though it was mentioned.

23. The doctor opined the cause of death to be asphyxia due to strangulation. Thereafter, he has stated that nature may be homicidal. This was so stated because asphyxia being the cause of death, the doctor himself could not have conclusively said whether it was homicidal or suicidal. It was also voluntarily opined, that there had to be a minimum of five minutes of forceful pulling to cause the death.

24. In our view, the most important aspect is where the death was caused and the body found. It was in the precincts of the house of the appellant herein where there were only family members staying. The High Court also found that the location of the house and the surrounding buildings was such that there was no possibility of somebody from outside coming and strangulating the deceased and that too without any commotion being caused or any valuable/jewellery missing.

25. We are confronted with a factual situation where the appellant herein, as a husband is alleged to have caused the death of his wife by strangulation. The fact that the family members were in the home some time before is also quite obvious. No explanation has been given as to how the wife

could have received the injuries. This is a strong circumstance indicating that he is responsible for commission of the crime.6 The appellant herein was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313 of the Cr.P.C. and mere denial could not be the answer in such a situation.

26. We, thus, find no reason to interfere with the impugned judgment. Trimukh Maroti Kirkan v. State of Maharashtra (supra). The appeal is accordingly dismissed leaving the parties to bear their own costs.

27. We, however, direct the respondent State to examine whether the appellant herein has completed 14 years of actual sentence or not and if it is so, his case should be examined within a maximum period of two months for release in accordance with norms. If not, the exercise be undertaken within the same time on completion of 14 years of actual sentence.

.....J. [Sanjay Kishan Kaul] .....J. [Hrishikesh Roy] New Delhi.

November 19, 2020.