Ravi vs The State Of Punjab on 10 February, 2025

Author: Pankaj Mithal

Bench: Pankaj Mithal

2025 INSC 170 REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(Arising out of SLP (Crl) No.7712 OF 2022)

RAVI …APPELLANT(S)

VERSUS

THE STATE OF PUNJAB …RESPONDENT(S)

JUDGMENT

PANKAJ MITHAL, J.

1. Leave granted.

2. The appellant-accused Ravi has been convicted by both the courts below for the murder of his first wife Jamni by strangulation. Therefore, the present appeal.

3. The appellant was living in the village Madh, Amritsar by constructing a jhuggi in an open space, where he was working as a labourer. He used to live with his deceased 17:17:05 IST Reason:

> wife Jamni, his second wife Soma and his two sons born from the first wedlock. They all had been living together as such for over 10-12 years.

4. The incident is of 22.08.2014. According to the case of the prosecution, Chaina Ram (PW-1), the brother of the deceased lodged a Zero FIR at Police Station Rajgarh, District Churu, Rajasthan on 22.08.2014 stating that his sister Jamni with her husband i.e., appellant, was living at Rayya Mandi, Tehsil Baba Bakala, District Amritsar, Punjab. On the night of 22.08.2014 at about 11:00 pm, she

was murdered by her husband in connivance with his second wife Soma. The husband of the deceased i.e., the appellant, brought the dead body from his village Rayya Mandi to village Gujjuwas in a truck. In the FIR, he also stated that his sister Rajo was residing in the neighbouring jhuggi of the appellant and she, herself, had seen the appellant committing the murder of the deceased by strangulating her with a rope and that he threatened her from disclosing anything about it to anyone.

5. The aforesaid FIR was transferred to the Police Station, Khilchian, Amritsar, Punjab and the dead body of the deceased was also taken there, where the memo of panchnama was executed and the post-mortem was conducted.

6. The panchnama on record reveals that it was conducted at village Rayya Mandi, Police Station Rayya, Tehsil Baba Bakala, District Amritsar, Punjab, i.e., the place where the appellant was living in a jhuggi. The said panchnama, apart from other things, records the marks of injury on the body of the deceased and reports that there were marks of ligature around the neck and the mouth was open with tongue protruding outward.

7. The post-mortem report states that in the opinion of the doctor, the deceased died of asphyxia caused by hanging and that there were ligature marks on the neck.

8. The prosecution, to prove the appellant guilty of the aforesaid offence, examined seven witnesses which included the brother of the deceased Chaina Ram (PW-1), her sister Rajo (PW-2), her cousin Deep Chand (PW-3), the doctor who conducted the post-mortem Dr. Mohan Lal Meena (PW-5), retired DSP Bagla Ram (PW-6), Inspector Rachhpal Singh (PW-4) and Inspector Amolak Singh (PW-7).

9. The entire case of the prosecution is based on circumstantial evidence. Though, the sister of the deceased, i.e., Rajo (PW-2) is said to be an eye witness, she had not seen the commission of the crime. She was simply a resident of the neighbouring jhuggi and as such, may have had the first-hand information.

10. It is an admitted position that after the death of the deceased, the appellant, i.e., her husband carried her dead body on a truck to the native place of the brother of the deceased Chaina Ram (PW-1) and the sister of the deceased Rajo (PW-2) had accompanied him. Chaina Ram (PW-1), the brother of the deceased who had lodged the complaint in his testimony, accepted that her sister was married to the appellant and they were residing in Rayya Mandi. However, he was not aware of what actually happened on 22.08.2014 and stated that her sister died due to her illness. He categorically stated that the appellant was not responsible for her death. The said witness, as such, was declared hostile.

11. It may be pertinent to mention here that the aforesaid witness admitted his signatures on the Zero FIR (Exh. PW4/1) but went on to state that he had signed a blank paper and did not know what was written there.

12. A pursual of the Zero FIR reveals that it is a computerized FIR and is not in the handwriting of the aforesaid witness. It only bears his signatures at the relevant place on both the pages of the Zero FIR.

13. The sister of the deceased Rajo (PW-2) was also declared hostile as she stated that there was no dispute between her sister and her husband i.e. the appellant and that she died due to illness and breathing problems. Similarly, the cousin of the deceased Deep Chand (PW-3) was also declared hostile as he expressed ignorance as to what had actually happened on 22.08.2014.

14. In view of the aforesaid three witnesses turning hostile, the prosecution was left with the formal witnesses, namely, Dr. Mohan Lal Meena (PW-5) who conducted the post-mortem, the police officer/retired DSP Bagla Ram (PW-6) who registered the Zero FIR at Churu, Rajasthan, the SHO/retired Inspector Racchpal Singh (PW-4) who registered the formal FIR (Exh.PW4/2) and Inspector Amolak Singh (PW-7) who carried out the investigation.

15. Dr. Mohan Lal Meena (PW-5), in his testimony, stated that he had conducted the post-mortem. The deceased had died due to asphyxia caused by hanging which is established by the ligature marks appearing on her neck. The death may have occurred two to five days prior to the post- mortem. In cross-examination, this witness accepted that, though the cause of death is asphyxia, it can be caused by chronic tuberculosis also and that the appearance of ligature marks on the neck might be due to the long journey of the dead body from one place to another. The above testimony of PW-5, thus, in no certain terms, establishes that the deceased died of asphyxia due to hanging or strangulation inasmuch as he had also opined that the death may be due to chronic tuberculosis. He had also explained the possibility of the ligature marks on the neck to be on account of the long journey and not solely due to hanging or strangulation.

16. The Inspector Amolak Singh (PW-7), who carried out the investigation, simply states that he had conducted the investigation and had arrested the appellant. On appellant's disclosure, he discovered the rope which was used in the commission of the crime. However, in cross- examination, he admitted that similar ropes were easily available in the market.

17. Now, if we discard the evidence of the witnesses who turned hostile, the crucial evidence with which we are left with is that of the doctor conducting the post-mortem (PW-

5) and that of the inspector conducting the investigation (PW-7). The evidence of the aforesaid two, if read together, would only reveal that they have conducted the post- mortem and the investigation respectively. The doctor opined the cause of death to be asphyxia due to hanging with ligature marks on the neck but in the cross- examination admitted that the ligature marks could be on account of the long journey of the dead body and that the cause of death of the deceased can also be due to chronic tuberculosis. Therefore, his evidence does not conclusively establish the cause of the death. Even the evidence of the Inspector (PW-7) does not establish beyond the shadow of doubt that the rope which was recovered by him was the same rope with which the crime may have been committed as similar ropes were easily available in the market.

Nothing much turns upon his evidence as well.

18. In a leading case of Sharad Birdhichand Sarda v. State of Maharashtra1 this Court laid down the five golden principles, the panchsheels of circumstantial evidence, namely, (i) The circumstances from which the conclusion of guilt is to be drawn should be fully established; (ii) The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. If we apply the above principles, the circumstances of this case, in no way, conclusively establish the guilt of the (1984) 4 SCC 116 appellant rather it gives sufficient room to form a different opinion. On the basis of the above circumstantial evidence, the innocence of the appellant cannot be completely ruled out.

20. Learned counsel for the State has placed reliance upon Trimukh Maroti Kirkan v. State of Maharashtra2, wherein it has been held that in view of Section 106 of the Evidence Act, there is a corresponding burden on the inmates of the house to give a cogent explanation about the manner of the commission of the crime. Therefore, Learned counsel for the State argued that in view of Section 106 of the Evidence Act, it was for the appellant to have explained the circumstances under which the deceased died as the crime had occurred within the four corners of a house i.e. jhuggi and he alone had knowledge as to what had happened inside at the time of the crime.

21. The above argument may appear to be of some substance but if we look into the law deeply, we would find that the initial burden is upon the prosecution to first prima facie establish the guilt of the accused and then only the (2006) 10 SCC 681 burden shifts upon the accused to explain the circumstances as contemplated by Section 106 of the Evidence Act.

22. A three judge Bench of this Court in Anees v. The State Govt. of NCT3 has elaborately considered the principles of law governing the applicability of Section 106 of the Evidence Act and has held that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. The ordinary rule which applies to criminal trials and places the onus on the prosecution to prove the guilt of the accused, does not, in any way, stand modified by the provisions contained under Section 106 of the Evidence Act. The said provision cannot be invoked to make up the inability of the prosecution to produce the evidence of circumstances pointing to the guilt of the accused. The said provision cannot be used to support a conviction unless the prosecution has discharged the onus by proving all elements necessary to establish the offence. In other words, the prosecution does not stand absolved from its initial liability to prove the offence and it (2024) SCC OnLine SC 757 is only when such an onus is discharged and a prima facie case of guilt is made out that the provisions of Section 106 of the Evidence Act may come into play.

23. It has further been emphasized in the above case that Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding the guilt of the accused and not otherwise.

24. This apart, the courts below have completely lost sight of the statement of the appellant recorded under Section 313 of Code of Criminal Procedure4. The appellant in his statement under Section 313 CrPC, on being asked if he had anything further to say, categorically stated that the deceased had died a natural death as she was suffering from chronic tuberculosis for which she was under

> treatment at Beas hospital. Once the appellant had disclosed about the aforesaid illness of the deceased and her treatment in a particular hospital, it was for the prosecution to have sought re-examination of the doctor In short 'CrPC' conducting the post-mortem so as to ascertain as to whether the deceased was actually suffering from chronic tuberculosis, though he may have opined that the death may be due to asphyxia caused due to tuberculosis. The prosecution failed to do so or to produce any other independent evidence in this regard to dislodge the version of the appellant.

25. In view of the totality of the facts and circumstances of this case, we are of the opinion that the prosecution has completely failed to produce evidence to prove the guilt of the appellant beyond the shadow of doubt on the basis of the circumstantial evidence. Rather the evidence on record gives ample leverage for two conflicting opinions, and in such circumstances, the benefit of doubt has to be given in favour of the appellant.

26. Accordingly, the impugned judgment and order dated 23.01.2019 passed by the High Court of Punjab and Haryana at Chandigarh is liable to be and hereby set aside and the appeal deserves to be allowed.

27. The appellant is not on bail as per the reports on record.

He is in jail and as per the custody certificate, he has been in jail for six years and two months as on 05.01.2021, meaning thereby that he is in jail for over ten years as of today. Accordingly, he is directed to be released from custody immediately.

28. Before parting, we record our appreciation to the valuable assistance rendered by the legal aid counsel Ms. Sonia Mathur, Senior Advocate, who had appeared for the appellant and ably assisted by learned counsel, Ms. Surbhi Bhardwaj.

29. The appeal is allowed accordingly.

..... J.

(PANKAJ MITHAL) ..... J.

(AHSANUDDIN AMANULLAH) NEW DELHI;

FEBRUARY 10, 2025