

REPORTABLE**IN THE SUPREME COURT OF INDIA****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 269 OF 2007****STATE OF HIMACHAL PRADESH****... APPELLANT****VERUS****JAI CHAND****... RESPONDENT****J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal is preferred by the State of Himachal Pradesh against the judgment dated 16th November, 2004 in Criminal Appeal No. 392 of 2002. By the impugned judgment the Division Bench of the Himachal Pradesh High Court at Shimla, acquitted the accused-respondent by allowing the appeal and set aside the order of conviction under Section 302 IPC and Section 498-A IPC with sentence thereunder, passed by the Sessions Judge, Hamirpur, HP on 13th June, 2002.

2. The respondent(herein) Jai Chand, along with two others were tried for offence punishable under Section 302 (r/w Section 34)IPC and Section 498-A IPC. Learned Sessions Judge, Hamirpur found Jai Chand, accused no. 1 to be guilty under

Section 302 and 498-A IPC. He was sentenced to undergo Imprisonment for life and to pay fine of Rs.5000/-, in default of payment of fine, to undergo imprisonment for one year. No separate sentence under Section 498-A IPC was imposed upon the accused. The two other accused, namely, Prem Chand and Smt. Nimmo Devi were acquitted.

3. The record reveals that accused no. 1, Jai chand (respondent herein) and accused no. 2, Prem Chand are real brothers whereas accused no.3, Nimmo Devi is their sister-in-law (Bhabhi), the wife of their elder brother, Prakash Chand.

4. The prosecution version as unfolded during the trial may briefly be stated as follows:

Smt. Vidya Devi (since deceased) was wife of Jai Chand, accused no. 1(respondent herein). She was married to Jai Chand in the year 1996. On 13th July, 2001, Smt. Vidhya Devi was brought to District Hospital, Hamirpur in serious condition by accused no. 1 for medical treatment. The Medical Officer on duty had informed the police, Police Station at Sadar vide Rapat No. 3 dated 13th July, 2001(Ex.PW-8/A) that one woman was brought to the hospital for medical treatment under suspicious circumstances. On the said information, Sansar Chand (PW-8), Inspector/S.H.O. accompanied by other police officials went to

the hospital where he found the dead body of Vidya Devi lying in the Varanda. Roshan Lal, (PW-1), father of the deceased was standing near the dead body. He made statement (Ex.PW-1/A) that his son-in-law, Jai Chand(accused No.1) is a habitual drunkard and under the influence of liquor, he was in the habit of beating and treating his daughter with cruelty. Prem Chand (accused no.2) and Smt. Nimmo Devi (accused no.3) also used to taunt and abuse the deceased. Two years ago, accused no. 1, left the deceased at her parents' house. PW-1 pacified his daughter that all this happens in joint families and sent her back to matrimonial house. In these circumstances, Vidhya Devi committed suicide due to mal-treatment and torture by all the accused persons. On 13th July, 2001 at about 8.30A.M. one Kashmir Singh, resident of his Village Kot, informed PW-1 that his daughter Vidhya Devi had been brought to the hospital at Hamirpur where she expired. PW-1 alongwith his son, Ajit Singh(PW-2) went to the hospital and found Vidhya Devi dead. PW-1 had noticed injuries on her person. The statement of PW-1 (Ex.PW.1/A) was forwarded by PW-8 (vide Ex.PW-8/A) to the Police Station for registration of the case. First Information Report (Ex.PW-6/A) was recorded by PHC Ramesh Chand(PW-6) P.S. Sadar Hamairpur, H.P.. Investigation was conducted initially

by PW-8. He prepared inquest reports (Ex.PW-2/A) and Ex.PW-2/B). He wrote an application (Ex.PW-8/B) to the Senior Medical officer, Zonal Hospital, Hamirpur for conducting the post-mortem to the dead body of the deceased. Photographs (Ex.P-9 to Ex.P-14) of the dead body were also taken. Jai Chand (accused no. 1) was present in the hospital and he handed over 'dupattas' (Ex.P-2), 'shirt' (Ex.P-3) and 'Salwar' (P-6) of the deceased to PW-8 which were taken into possession vide memos; (Ex.PW-2/C and PW-2/D) respectively. Thereafter, PW-8 handed over the file for investigation to Hari Ram (PW-9). PW-9 collected the post-mortem report (Ex.PW-10/A). On the basis of the report, the case was converted from Section 306 IPC to under Section 302 IPC.

5. Jai Chand, accused no. 1 made the alleged disclosure statement (Ex.PW-5/A) under Section 27 of the Evidence Act to the effect that he alongwith co-accused had hanged the deceased with 'Barli' (a wooden kari placed horizontally on the walls of the room). To the same effect, disclosure statements (Ex.PW.5/B and Ex.PW-5/D) were made by accused no. 3. Jai Chand, accused no. 1 also got recovered one iron bucket (Ex.P-7) which was taken into possession vide disclosure memo (PW-5/C). PW-9 prepared the site map (Ex. PW-9/A) depicting the

place where the accused person had put the face of the deceased in the bucket filled with water and pointed the place where her body was tied with 'barli' by accused persons.

6. As per, the disclosure statement of Jai Chand, (accused no. 1) and Nimmo Devi (accused no. 3), on the intervening night of 12th/13th July, 2001, Vidhya Devi came out of the room and went to a place where the cattle were used to be kept. Her husband, Jai Chand, accused no. 1 also followed her and asked his wife to go to bed but she did not respond thereto. Both of them entered into verbal fight. Accused no. 1 at that time dipped the head of the deceased in the bucket full of water lying there. As a result thereof, she felt suffocated and the water entered into her mouth as well as in stomach. Accused no. 1 then lifted her from that place and laid her on the cot. Accused no. 1 called accused nos. 2 and 3. Accused no. 3 caught hold of arms of the deceased whereas accused no. 2 caught hold of her legs. Accused no. 1 throttled the deceased with hands and caused her death. On finding no movement in her body, all the accused hanged the deceased with dupattas and thereafter laid the dead body of the deceased Vidhya Devi on a cot. On the following morning, Jai Chand, accused no. 1 told his mother that his wife had become unconscious during

the night and now she is not speaking anything. Jai Chand, accused no. 1 then took her wife to the courtyard and laid her body on a cot lying there. The residents of the village were informed about the death of Vidhya Devi. One Smt. Damodri Devi brought some milk from her house but the deceased could not inhale the same. Thereafter, accused no. 1 accompanied by Kartar Singh and Deepak Kumar brought the deceased on the cot to the road side. Prakash Chand, brother of accused no.1 who had gone to call the doctor, had brought the taxi and the deceased was thus taken to the Zonal Hospital, Hamirpur where she was declared dead. The body of the deceased was sent for post mortem. PW-10, Dr. K. C. Chopra submitted post mortem report (Ex.PW-10/A). The stomach contents including viscera etc. preserved by the team of doctors has been got analysed and as per report Ext. PW-8/B, neither the contents of any poison nor intoxicant could be detected on analysis thereof. Thus, no case of poisoning was found.

7. On receipt of post mortem report (Ex.PW-10/A) and report of the Chemical Examiner(Ex.PW-8/D), it was found that the deceased had not committed suicide but she was killed by the accused no. 1 by dipping her face into a bucket of water and strangulating her. All the three accused were sent for trial

for the office under Section 302 read with Section 34 IPC and 498-A IPC.

8. PW-10, Dr. K. C. Chopra, Medical officer, Zonal Hospital, Hamirpur, H.P., in his statement stated that he alongwith Dr. K.S. Dogra conducted post mortem of the dead body of Smt. Vidhya Devi, wife of Jai Chand and observed as follows:

"EXTERNAL APPEARANCE:

Dead body was lying in supine with face in the centre (there was no turning of face to either side). White leathorthy foam seen at both nostrils which was more on pressing the epigastrium. No sticky saliva was present on the angle of the mouth. No postmortem staining was present over the back and legs. No petechial haemorrhages seen over the chest or legs. Two contusions 3x2 cm present on the left upper arm, reddish blue in colour. No stretching and elongation of neck, head inclined to neither side.

LIGATURE MARK

There was 10 cm long ligature mark of dark brown colour extending from left sternocleid mastoid to the right sternocleid mastoid below cricoid cartilage, reddish brown in colour, abrasion to be on the right side. Ligature mark encircles the neck only on front side. No encircling of the neck on the back and away from sternocleid mastoid. There was ligature of 1.5 cm wide or less than it at places (ligature used was not presented by the police at the time of postmortem examination). It was not with the body either. No abrasion/bruises on the mouth, nose, cheeks, forehead. Lips were blue. Tongue was in drawn, pinching of teeth, on opening base of tongue swollen. No injury to tongue, clinching of hands present.

DISSECTION OF NECK

On dissection, there was extra vasation of blood into sub-subcutaneous tissue under ligature mark on right side present. Platysma and right sternocloide mastoid muscle lacerated. No laceration of sheath of carotid arteries. No fracture of hyoid bone or thyroid cartilage. Epiglottis not cyanosed Trachea and larynx were congested and have forthy mucous. First 2-3 rings of trachea fractured.

ABDOMEN:

Walls and peritoneum were normal. Mouth Pharynx and oesophagus had whitish fluid. Stomach was containing 500 cc of fluid mixed with mucous and small sticky material. Small Intestine was containing semi-digested food but no fluid are present. Faecal matters were present in large intestine. Liver was normal, it was dark in colour, on cutting dark fluid came out. The spleen was dark in colour and was congested. Kidney was normal in size and was congested. The bladder was empty. Organ of generation was normal. There was no evidence of rape or any injury.

CRANIUM SPINAL CORD

There was no fracture of skullbone. Brain was congested and also the membrane.

THORAX:

Walls, ribs, cartilages and pleurae were normal. Larynx and trachea was congested and contained white fluid, no sand or mud seen, no food particles present. Right and left lung were distended, pale grey, indented by the ribs, heavy cedemataous, spongy, pite on pressure. On pressing, frothy whitish fluids came through bronchials. Heart was normal, left side was empty and the right was full. No fracture/dislocation of bones were found.

9. Dr. K.C. Chopra (PW-10) also stated their opinion as to cause of death of the deceased. The same is quoted hereunder:

"In our opinion deceased died due to asphyxia caused by drowning and strangulation. The probable time between injury and death was immediate and between death and postmortem within 24 hours.

x x x x x x x x x

In our opinion as mentioned in Ex.PW-10/A strangulation in this case was not caused by suspending the body. The chances of dupatta as ligature mark in the case were minimum, i.e. dupatta like Ex P-2 and P-3. Drowning and strangulation are possible in this case while putting the face/mouth of deceased in bucket Ex-P-8 filled with water and with pressure being applied."

10. Dr. K.C. Chopra (PW-10) further stated that the post mortem report was written by Dr. K.S. Dogra (PW-8) and was signed by both of them.

11. The accused no. 1 (respondent herein) made a plain denial of the prosecution case. In statement under Section 313 Cr.P.C., accused no. 1 (respondent herein) alleged that witnesses have falsely deposed against him being relative of the deceased and due to enmity with him. In reply to question no. 26, the accused no. 1 stated as follows:

"Q.26 Anything else you want to say?

Ans. The deceased had illicit relations with my nephew Banku Ram, S/o Shri Rohli Ram. On one occasion when I came on leave to the house, came across few love letters written by said Banku Ram to the deceased; on this I inquired from her about such relations and asked her to discontinue such relations. On this she went to the house of her parents and stayed there for about 3 months and when brought to my house by her parents, she used to

remain depressed. She has, thus committed suicide due to her own problems and not on account of the alleged torturing attributed to him. I am thus innocent and implicated falsely in this case. It is, however, submitted that those letters were burnt by me with the idea to maintain cordial relations with the deceased and also to forget whatever as happened in the past."

12. The Trial Court considered the version of Kartar Chand (PW-3) posted as Primary Education Teacher in Government High School, Barhi, an independent witness, Post Mortem Report (PW-10/A), statement of Dr. K.C. Chopra (PW-10), report and the testimony of PW-1 and PW-2 and held that "the circumstances reveal that the deceased has been done away to death by the said accused and none else"....."The circumstances appearing in the prosecution evidence are conclusive in nature and leads to the only conclusion that it is accused no.1 who has caused the death to the deceased."

13. The Division Bench of the High Court rejected the evidence of the prosecution witnesses for the reasons which may be summed up as below:

- (1) Dr. K.C. Chopra (PW-10) had no experience as a forensic expert, therefore, his evidence cannot be read under Section 45 of the Evidence Act.
- (2) The Division Bench appreciated the medical evidence itself and held that there was no sign of injuries suggestive of resistance on the part of

the deceased to establish that the face of the deceased was forcibly thrust into iron bucket filled in with water. Only 500cc of fluid mixed with mucous and small sticky material was found in the stomach. The hairs of the deceased was not found wet. Dr. K.C. Chopra (PW-10) found marks of injuries on the neck of the deceased but in his cross examination he stated that if the force was applied, in that event, the bucket which was used as ligature could touch both the ears. But no injuries were found on the ears of the deceased or on any part of her mouth or head.

(3) The conduct of Jai Chand, accused no.1 would go to show that he tried very hard to save the life of his wife by taking her to the Zonal Hospital, Hamirpur for medical treatment. Had Smt. Vidhya Devi been killed by her husband, he would not have dare to take the dead body of the deceased to the hospital to get the medical opinion against himself.

14. Learned Counsel on behalf of the appellant-State submitted that the High Court was wrong in ignoring the medical evidence which clearly established that it was not a case of suicide but a case of homicide which ultimately has been caused by the husband of the deceased. The High Court also failed to notice the statement of Jai Chand, accused no. 1 (respondent herein), husband of the deceased under Section 313 which is self explanatory that he had been keeping a hatred attitude towards

his wife due to her illicit relation with his nephew and which resulted in motive and intention to kill her during night. This statement coupled with other circumstantial evidence leave no doubt that the accused no.1 cannot escape himself from the commission of offence. Further according to the appellant as deceased Vidhya Devi was staying with the respondent and died unnatural death, it was for Jai Chand (respondent) being husband to explain the circumstances under which she died. Learned counsel also contended that the High Court failed to appreciate that although there is no direct evidence, chain of circumstances appeared on record is so complete to fetch conviction to the husband of the deceased if not to all the accused. It is on the basis of disclosure statement of accused no.1 a bucket which is most relevant evidence relating to the medical evidence is recovered, which is sufficient to convict the respondent.

15. Learned counsel appearing on behalf of the respondent referred to the findings of the Division Bench of the High Court in support of the respondent.

16. The principal contention raised in support of the appeal filed on behalf of the State is that the medical evidence available on record completely supports the prosecution case.

Let us, therefore, have a look at medical evidence available on record. Post-Mortem Report(PW-10/A) has already been noticed above. The plea raised by accused no. 1(respondent herein) was that the deceased died due to suicidal hanging cannot be accepted for the reason that her body was not found stretched. If she had strangled herself, her body should have been stretched and the fracture of hyoid bones and thyroid cartilages should have been there. Post mortem Report clearly shows that there is no such fracture and the testimony of Dr. K.C. Chopra(PW-10) supports the same. In a death case, by way of hanging, the tongue of the deceased should not have been indrawn as has been noticed in the post mortem report(Ex.PW-10/A), but the same should have been out of the mouth. There being the evidence of 2-3 rings of trachea fractured, trachea, larynx, spleen and kidney being congested is also suggestive of the fact that it was not a suicidal death, but a homicidal one. The team of doctors after observing so, during the examination, have come to the conclusion that the cause of death was Asphyxia caused by drowning and strangulation. The probable time between injury and death had been recorded minimum. The death by way of drowning and strangulation can be caused instantaneously. Admittedly, it is not the case of either of

the parties that the death is caused by way of poisoning, however, in order to rule out the possibility in this behalf also, the stomach contents including viscera etc. preserved by the team of doctors got analysed and as per report (Ex.PW-8/D), neither the contents of any poison nor any intoxicant could be detected on analysis thereof.

17. Dr. K.C. Chopra (PW-10) is specific while deposing in his examination-in-chief that strangulation in this case has not been found to be caused by suspending the body. He also ruled out the chances of dupattas (Ex.P-2 and P-3) being the ligature used for strangulation by the deceased and to the contrary, he specifically stated that drowning and strangulation are possible in this case by dipping the face/mouth of the deceased into the bucket (Ex.P-8) filled with water and by applying force in pressing her mouth therein.

18. Much stress was made by learned counsel appearing on behalf of the respondent that there is no possibility of the ears touching the top of bucket, even if mouth of anyone is dipped therein and pressed with force. An effort was thus been made to discard the testimony of PW-10. However, in our view, it is not so relevant as to whether the bucket used as a ligature was touching the ears or not.

19. It is true that post-mortem report(PW-10/A) is not a substantive piece of evidence. But the evidence of such doctor cannot be insignificant. This Court in **State of Haryana v. Ram Singh, (2002)2 SCC 426** held as under:

"1. While it is true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis-à-vis the injuries appearing on the body of the deceased person and likely use of the weapon therefor and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses."

20. In the present case, the post-mortem was conducted by a team of doctors, namely, Dr. K.C. Chopra and K.S. Dogra. In cross-examination, no suggestion was made on behalf of the defence that they were not competent or that Dr. K.C. Chopra and Dr. K.S. Dogra have not expertised to perform post mortem of a body. The viscera test was done by forensic expert (PW-8), who submitted the report.

21. From the aforesaid evidence, it is clear that Dr. K.C. Chopra (PW-10) conducted the post mortem and the forensic expert (PW-8) conducted the viscera test. The High Court proceeded on erroneous premise to hold that "Dr. K.C. Choopra might have acquired some experience as Medical Officer but he

is not a forensic expert to give the level of an expert witness examined in the Court."

22. The High Court was thus, clearly in error, in formulating its own opinion based on conjectural premises and deciding the case on the basis of that, discarding the opinion of the medical experts regarding the nature of the injury and cause of death. The conclusions are not sustainable otherwise also .

23. It is true that PW-1, father of the deceased, PW-2, brother of the deceased and PW-5 Prem Chand belong to the same village. However they being related to each other and being residents of the same place is not fatal to the prosecution case, because they have deposed about the facts which are not in controversy save and except that the deceased was being tortured by the accused persons. However, the present case is not a case of suicidal death of the deceased on being fed-up with the torture of the accused persons, but a case of homicidal death and as such, the version of PWs. 1 and 2 in this behalf is not so material.

24. The recovery of bucket(Ex.P-8) has been proved as the same has been produced by accused no. 1(respondent herein) himself before the police as recorded in memo (Ex.PW-5/C) recorded at his instance in the presence of Prem Chand (PW-5) and Pyare

Lal. As a matter of fact, the bucket was lying in the courtyard where it is identified by accused no. 1(respondent herein) and thereafter, was taken into possession by the police. The reference in this behalf can be made to the statement of Prem Chand(PW-5) who stated that accused no. 1 had shown the bucket to the police which was sealed in a parcel and thereafter taken into possession vide recovery memo ((Ex.PW-5/C). Not only this, he even identified the bucket(Ex.P-8) to be the same. The recovery of an incriminating article from a place which is open and accessible to others, alone cannot vitiate such recovery under Section 27 of the Indian Evidence Act. Thus, the present is the case where there is no difficulty in holding that the bucket(Ex.P-8) is the same which was used by the respondent(herein) for drowning and strangulating his wife, Vidhya Devi.

25. Kartar Chand(PW-3) is an independent witness. In his testimony, he deposed that on his way to school on 13th July, 2001 from his village, when he reached Village Ulehra, (native place of the accused) around 7.15 A.M., he met accused no. 1(respondent) and Deepak carrying the deceased on the cot to the road side for carrying her to the hospital and it was the accused no. 1(respondent herein) who told Kartar Chand(PW-3)

that as she was ill, hence being taken to the hospital. The accused no. 1 has thus, misrepresented the factual position to PW-3 which shows guilty intention on his part. No doubt, in reply to question no. 11, he denied having represented so to Kartar Chand(PW-3) and as per his version, the said witness was told that deceased had strangled herself, but there is no reason to disbelieve the testimony of PW-3, as a matter of fact, PW-3 is an independent witness. Reply to question no. 11 shows that accused no. 1 also accepted that PW-3 met him on the spot in the early morning. Therefore, it cannot be said that the PW-3 was interested in the case of either of the parties. Not only this, as per version of PW-3, the deceased at that time was silent and there was no movement in her body, meaning thereby that she was already dead in the house itself and in order to mislead the village folks and to create evidence that he made efforts to save his wife's life he took her dead body to the hospital. Such conduct on his part amply demonstrates that it is the accused no. 1 (respondent herein) alone who caused the death of his wife, Vidhya Devi.

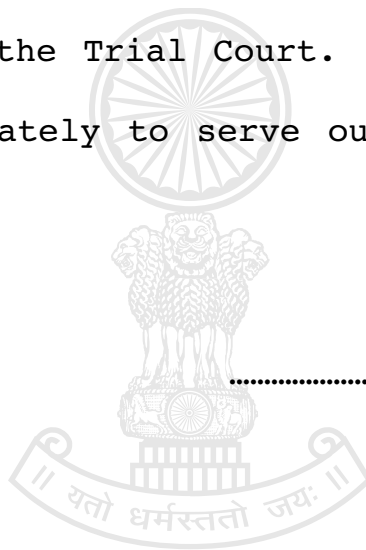
26. Post mortem report(PW-10/A) prepared by Dr. K.C. Chopra(PW-10) shows that there was ligature mark on the neck of the deceased. The opinion of the doctor is clear and definite

that the ligature mark of 10cm long and 1.5 cm. wide in horizontal position cannot be caused by hanging but could have been caused by strangulation. Medical evidence, therefore, completely falsify the case of accused no. 1(respondent herein). The conduct of the accused no. 1 was also not natural. When he found his wife hanging, he neither made hue and cry nor called the villagers nearby. He along with others brought down the body of the deceased. He, even thereafter, did not report the matter immediately on his own to police.

27. The act of bringing his wife, Vidhya Devi to the hospital cannot absolve the guilt of accused no. 1(respondent herein) of an offence committed by him. He was the best person who could have explained the reasons for the horizontal ligature mark of 10 cm. x 1.5cm. on the neck of the deceased and as to why he did not inform the matter to the villagers before bringing down the body of the deceased.

28. Therefore, we find that all the findings by the Division Bench of the High Court, rejecting the evidence of Dr. K.C. Chopra (PW-10) and other material witnesses including Kartar Chand (PW-3) and Prem Chand (PW-5) are clearly unsustainable, whereas those given by the Trial Court accepting the evidence of these witnesses were weighty and sound.

29. Hence, we allow the appeal and set aside the impugned order of acquittal passed by the Division Bench of the High Court of Himachal Pradesh on 16th November, 2004 and convict the accused-respondent under Section 302 IPC for the murder of his wife, Vidhya Devi and sentence him to imprisonment for life. We, thereby restore the order of conviction passed against the accused-respondent by the Trial Court. The accused-respondent shall surrender immediately to serve out the remainder of the sentence.



.....J.

(A.K. PATNAIK)

.....J.

(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI,
JULY 3, 2013

JUDGMENT