

2025 LiveLaw (SC) 409

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SUDHANSHU DHULIA; J., K. VINOD CHANDRAN; J.
Criminal Appeal No.2605 of 2024; April 07, 2025
Jagdish Gond versus The State of Chhattisgarh and Ors.

Penal Code, 1860; Section 302 - Evidence Act, 1872; Section 106 - Plea of Alibi - Last Seen Theory - Prosecution must disprove accused's plea of alibi before convicting based on 'last seen' theory. Mere fact that the husband and wife were last seen together in their shared home does not, by itself, justify convicting the husband for the alleged murder if he raises a plea of alibi and the prosecution fails to effectively disprove it. The High Court wrongly placed the burden on the accused to prove his alibi, despite his early claim of absence in an intimation to the police and the police's failure to investigate the same. While a husband's failure to explain his wife's death in their shared home can be a strong incriminating circumstance, it cannot alone establish guilt, especially when he has raised a plausible plea of alibi offering an explanation about his absence at the place of incident. (Para 13 & 14)

Penal Code, 1860; Section 302 - Evidence Act, 1872; Section 106 - Plea of Alibi - Last Seen Theory - If the prosecution establishes that shortly before the crime, they were seen together or the offence takes place in the dwelling home where the husband also resides, then if the accused does not offer any explanation or offers an explanation which is palpably false; that would be a strong circumstance, establishing his culpability in the crime. However, it cannot be the sole circumstance leading to the conclusion of guilt on the part of the accused husband. In the present case, the accused has also offered an explanation that he had gone for duty at the cement factory; which is also mentioned in the first intimation given by the accused. The police ought to have inquired about his presence at the factory to disprove his alibi. Even before the FIR was registered, the intimation recorded clearly indicated this fact. The explanation was not one offered as an after-thought nor can it be termed to be false or even an improbable one. A mere suspicion cannot lead to a finding of guilt, especially when there is not available a chain of circumstances, unequivocally pointing to the guilt of the accused in the alleged crime. (Para 9)

Penal Code, 1860; Section 302, 498 and 306 r/w. 34 - Evidence Act, 1872; Section 106 - Murder - Acquittal - Reversal by High Court - Deceased, married for two years, found dead with ligature mark on neck - Trial Court acquitted husband and in-laws, finding death to be suicide - High Court convicted husband under Section 302 IPC, citing failure to explain death under Section 106 and disbelief in alibi. Held, High Court erred in reversing acquittal without evidence of manifest illegality or perversity in Trial Court's findings - Medical evidence inconclusive on homicidal death - Prosecution failed to disprove husband's plausible alibi of being at work, supported by initial police intimation - Section 106 inapplicable absent *prima facie* evidence of guilt - No chain of circumstances established guilt unequivocally - Allegations under Sections 498A, 306 IPC unsubstantiated - Conviction set aside, Trial Court's acquittal restored - Appeal allowed. (Para 13 & 14)

For Appellant(s): Mr. Sameer Shrivastava, AOR Mr. Niteen Sinha, Adv. Ms. Yashika Varshney, Adv. Ms. Palak Mathur, Adv. Dr. Sangeeta Verma, Adv.

For Respondent(s): Mr. Apoorv Shukla, AOR Ms. Prabhleen A. Shukla, Adv. Mr. Ayush Acharjee, Adv.

J U D G E M E N T

K. VINOD CHANDRAN, J.

1. The death; not unequivocally proved to be a murder, of a young woman, married for two years, led to the prosecution of her husband and in-laws. The Trial Court acquitted all the three accused finding the death to be a suicide and holding that there was absolutely no circumstance pointing to the guilt of the accused. The High Court; on appeal by the State, against the acquittal, upheld the acquittal of the in-laws but convicted the husband under Section 302 of the Indian Penal Code, 1860 (hereinafter, '*the IPC*') and sentenced him to life imprisonment.

2. On facts regarding the incident, suffice it to notice that the husband, on returning from work, found his wife lying supine on the cot inside their house. The accused immediately informed his parents; living nearby and also the Police Station at Mulmula, District – Janjgir, Champa, where it was recorded under Section 174 of the Code of Criminal Procedure, 1973, (hereinafter, '*the Cr.PC*') as a sudden and unnatural death. The death was detected on 29.01.2017 and the intimation was made on the same day. An inquest was carried out in which a ligature mark was noticed on the front side of the neck of the deceased. No suspicion was raised by anyone regarding the death. On 03.02.2017, on a complaint lodged by the father of the deceased, an FIR was registered and the three accused were arrested. A charge sheet was filed, and charge was framed under Sections 498A & 306 read with Section 34 and in the alternative Section 302 read with Section 34 of the IPC.

3. In the trial, eight witnesses were examined. PW-1; the Patwari who prepared the site plan, PW2; father of the deceased, PW-3; Tehsildar who prepared the inquest report (P-9), PW-4; mother of the deceased, PW-5; who registered the FIR on the complaint (P-5) of PW2, PW-6; the cousin of the deceased, PW-7; the Investigating Officer and PW-8; the Doctor who conducted the postmortem.

4. The Trial Court acquitted the accused, finding the deceased to have committed suicide and held there was absolutely no circumstance pointing to the guilt of the accused. The Trial Court emphasized the fact that there is no clear opinion coming from the Doctor, who was examined as PW-8, as to the cause of death. Examining the authoritative medical texts, it was opined that the ligature mark on the front of the neck and the various fractures noticed from the body, as has been stated in the postmortem report, the clear indication is that the death was not one by reason of strangulation; especially since the ligature mark was not found around the neck; ruling out the possibility of death by hanging or strangulation.

5. The High Court however emphasized that the accused and the deceased were living together and hence, the accused should have an explanation regarding the death of his wife under Section 106 of the Indian Evidence Act, 1872. The defense of the accused that he was on duty, at a nearby cement factory on the ill-fated night was disbelieved, since it was not substantiated by any evidence led on the part of the accused. On the grounds only of the '*alibi*' put forth having been discredited and the admission of the deceased and the accused living together in the same house, the High Court convicted the accused under Section 302 of the IPC.

6. We have given our anxious consideration, especially in the context of the acquittal by the Trial Court having been reversed by the High Court. The Division Bench of the High Court had, in fact, noticed various judgments of this Court in so far as the consideration of an appeal against acquittal. It is trite that unless it is demonstrated that there is some

manifest illegality or perversity in the conclusions recorded by the Trial Court while arriving at the finding of guilt of the accused, an acquittal ordinarily should not be reversed. Where two views were possible, it is also trite, that the one taken by the Trial Court to acquit the accused, if found to be a plausible one, cannot be upset lightly by the Appellate Court. The presumption of innocence available to an accused gets further fortified by the acquittal entered by the Trial Court. Having noticed the trite law, we have to say, the High Court unfortunately reversed the acquittal without anything other than a finding on *alibi* having not been proved and the accused not having offered any explanation regarding the death of the deceased, which occurred while they were living together.

7. Admittedly, the first information as recorded in the sudden and unnatural death intimation register was given by the husband, who is the first accused in the above case. He was accompanied by the Village Kotwar when he appeared before the Police Station, Mulmula. Even in the said information recorded, it was clearly noted that on 28.01.2017 at around 9 O'clock he had gone to the cement factory for labour work and on his return at 6 AM on 29.01.2017, he saw his wife lying supine on her cot. After having entered into the house by breaking open the door, which was closed from the inside, he immediately informed his parents and also the Ward Panch and as noticed above, he was accompanied by the Village Kotwar when he intimated the fact at the Police Station.

8. The Inquest Report, Exhibit P-9 prepared by PW-3, indicates that there was no suspicion raised by any person present at the inquest, regarding the death of the woman. In fact, the father of the deceased along with her in-laws had categorically stated that the accused was not present in the house on the night when the incident occurred. The father of the deceased, PW-1, the mother PW-4 and cousin brother PW-6 deposed that even when they saw the deceased with a visible mark on her neck, they suspected strangulation to be the cause of her death. This is contrary to the facts recorded in the Inquest Report. PW-1 also stated that in his written complaint produced as Exhibit P-5 he had clearly stated about this suspicion, which is startlingly absent in Exhibit P-5 as has been admitted, in cross-examination, by PW-7 who registered the FIR on the complaint Exhibit P-5 and carried out investigation. While PW-2 and PW-6 denied that they were aware that the accused was absent in the house on the ill-fated night, PW-4, the mother, in her cross-examination admitted that she was informed that the accused was not present in the scene of occurrence. The fact of absence of the accused at the time of occurrence having been categorically stated in the first intimation, we find the High Court's conclusion that it was his duty to establish the *alibi* is flawed.

9. We cannot also agree with the finding of the High Court regarding the effect of Section 106, placing reliance on the decision of this Court in ***Trimukh Maroti Kirkan v. State of Maharashtra***¹. The said decision is an authority for the principle that when an accused is alleged to have committed the murder of his wife; if the prosecution establishes that shortly before the crime, they were seen together or the offence takes place in the dwelling home where the husband also resides, then if the accused does not offer any explanation or offers an explanation which is palpably false; that would be a strong circumstance, establishing his culpability in the crime. However, it cannot be the sole circumstance leading to the conclusion of guilt on the part of the accused husband. In the present case, the accused has also offered an explanation that he had gone for duty at the cement factory; which is also mentioned in the first intimation given by the accused. The police ought to have inquired about his presence at the factory to disprove his *alibi*.

¹ (2006) 10 SCC 681

Even before the FIR was registered, the intimation recorded clearly indicated this fact. The explanation was not one offered as an after-thought nor can it be termed to be false or even an improbable one. A mere suspicion cannot lead to a finding of guilt, especially when there is not available a chain of circumstances, unequivocally pointing to the guilt of the accused in the alleged crime, as has been held in **Sharad Birdhichand Sarda v. State of Maharashtra**².

10. The *alibi* being a possible and probable explanation, the accused cannot also be found to be in the teeth of Section 106 of the Evidence Act. We find that there was not enough material to upset the order of acquittal of the Trial Court, especially when there was also no evidence led regarding the death being a result of homicide.

11. PW-8, the Doctor who conducted the postmortem had categorically deposed that the ligature mark was only found on the front part of the neck. The evidence of PW-2, PW-4 and PW-6, the close relatives of the deceased, who also saw the body, spoke of the ligature mark, solely on the front side of the neck. There were no *ante mortem* injuries noticed in the inquest report or the postmortem. The cause of death in the opinion of the expert was due to '*asphyxia shock and sudden cardio respiratory arrest as a result of ante mortem compression of trachea, fracture of cricoid cartilage within 24 hours of postmortem*' (sic). The postmortem report was marked as Exhibit P-11 and the police had raised a query regarding the death by Exhibit P-15. Exhibit P-15 raised two questions (i) whether the mark found on the front side of neck of the deceased can be caused by throttling and (ii) whether the death is homicidal or suicidal. To the said queries, reply by PW-8, Doctor, was as follows:-

"In this relation we had told that the mark found on the body of deceased is caused by noose and mark of throttling has not been found. Noose was not found on the body of deceased. So, the death of deceased was homicidal or suicidal is the subject of investigation. In this relation our report is Ex.P/16 and its part A to A bears signature of Senior Dr. R. Dahire."

Hence, there was no clarity as to whether the death was homicidal. We would not venture, as far as the Trial Court did, to find the death to be a suicide. But the fact remains that it has not been established to be homicide.

12. Considering the fact that there was a charge laid under Sections 498A & 306 read with Section 34 of the IPC, we looked at the depositions of the related witnesses; PW-2, PW-4 and PW-6. The depositions of all three witnesses is only to the effect that the in-laws of the deceased used to complain that the deceased was lazy, sick and slept throughout the day. There is absolutely no allegation of any physical violence on the deceased. Nor are there any injuries found on the body, immediately before the incident, which could lead to such an allegation.

13. We do not find a single circumstance pointing to the guilt of the accused, leave alone, a chain of circumstances fully establishing the guilt of the accused and excluding every possible hypothesis, except that of guilt. True, the young woman, who was married just two years back died, tragically, at the house of the husband. There is no evidence to show that the husband was available on the illfated night when the death occurred. The husband–accused had a plausible explanation that he was on duty when the death of his wife occurred. It was the husband who first intimated the police about the sudden and unnatural death of his wife. The relatives of the deceased having come to the matrimonial house of the deceased on the very same day of the death, did not raise any suspicion as

² (1984) 4 SCC 116

to the death being homicidal. It was after five days that a complaint was registered, alleging suicide by reason of the constant complaints raised against the deceased by her husband and in-laws; which remained largely unsubstantiated.

14. Having found absolutely no circumstance leading to the guilt of the accused, we are unable to sustain the order of the High Court which we set aside and restore the order of acquittal of the Trial Court. The Criminal Appeal stands allowed. The accused shall be set free forthwith, if not wanted in any other case. The bail bonds, if any, executed by the accused shall stand discharged.

15. Pending applications, if any, shall also stand disposed of.

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