

Reserved
AFR

Court No. - 45

Case :- CRIMINAL APPEAL No. - 1171 of 2006

Appellant :- Charan Singh

Respondent :- State of U.P.

Counsel for Appellant :- Umesh Shankar, Subedar Mishra

Counsel for Respondent :- Govt. Advocate

Hon'ble Manoj Misra, J.

Hon'ble Sameer Jain, J.

(Delivered by Manoj Misra, J.)

1. This appeal is against the judgment and order of conviction and sentence dated 12.01.2006 passed by the Additional Sessions Judge (Fast Track Court), Court No. 1, Pilibhit in Sessions Trial No. 695 of 2004 whereby, the appellant has been convicted under section 302 I.P.C. and sentenced to imprisonment for life with fine of Rs. 5,000/- and on default of payment of fine, additional six months imprisonment.

INTRODUCTORY FACTS

2. On a written report (Exb. Ka-1), lodged by Surendra Singh (PW-1), the brother of the deceased, on 28.06.2004, at 17:35 hours, a Chik FIR (Ex. Ka-4) was prepared by PW-5, giving rise to Case Crime No. 54 of 2004, under Section 302 I.P.C., at P.S. Hazara, District Pilibhit. The prosecution case, in brief, is that informant's elder sister Banso Bai (the deceased) was married to the appellant (Charan Singh) twelve years ago; she had five daughters and a son; the appellant used to suspect and taunt the deceased of being unchaste and treated her with cruelty; in the evening of 27.06.2004, the deceased and the accused had a fight; in the night of 27/28.06.2004, deceased's neighbours Darshan Singh (PW-3) and Parsa Singh (PW-

4), at about 2.00 am, heard noises; upon which, PW-3 and PW-4 went to the spot to notice that the appellant was strangulating the deceased; that, by the time they could come to the rescue of the victim, she was dead and the appellant escaped. It was claimed that after receipt of the above information from PW-3, PW-1 (informant) went to the house of the deceased to confirm the news and, upon finding her sister dead, the report has been lodged.

3. The inquest was conducted by 19:50 hours on 28.06.2004, which was witnessed by PW-1 (Surendra Singh-informant); Jarnail Singh (not examined); Satnam Singh (not examined); Puran Singh (not examined) and Resham Singh (not examined). The inquest report (Exb. Ka-2) was prepared by PW-6.

4. Autopsy of the body of the deceased was conducted at about 4 pm on 29.06.2004. The autopsy report (Exb. Ka-3) prepared by Dr. K.K. Sharma (PW-2) notices as under:

External examination: Female body of average build and muscularity; face swollen, cynosed, eye-balls prominent (sic) congested. Tongue swollen, bitten by the teeth. Frothy blood coming out of mouth and nostrils. Rigor mortis had passed off from both upper limbs, passing off from lower limbs. Signs of decomposition present. Foul smell coming out of body. Abdomen distended.

Ante-mortem injuries:

- (a) Contusion 6 cm x 4 cm on upper part of neck, left side;
- (b) Contusion 5 cm x 3 cm on upper part of neck, right side.

On deeper dissections:,

Underlying tissues are ecchymosed; larynx, trachea, bronchial tubes are congested (sic) frothy blood and mucous.

Internal Examination:

(i) Both lungs congested;

(ii) Stomach had 150 ml of fluid; small intestine had fluid and gases; and large intestine had faecal matter and gases.

Cause of death -Asphyxia due to throttling.

Estimated time of death: About one and a half day before.

5. Charge-sheet (Exb. Ka-11) was submitted on 18.08.2006 by S.O. Rajendra Prasad (not examined) but it was proved by PW-6. After taking cognisance on the police report, on committal of the case to the court of session, on 03.03.2005, charge of the offence punishable under Section 302 I.P.C. was framed against the appellant, which was denied and a trial was claimed.

PROSECUTION EVIDENCE

6. During the course of trial, the prosecution examined as many as six witnesses. PW-1 (Surendra Singh) the informant; PW-2 - the Doctor who carried out autopsy; PW-3 (Darshan Singh) and PW-4 (Parsa Singh) - eye-witnesses; PW-5 (Virendra Kumar Srivastava) is the constable clerk, who made G.D. Entry of the FIR (Ex. Ka-5) and prepared the Chik FIR (Ex. Ka-4); and PW-6 (Narendra Singh Tiwariya) - the first investigating officer (I.O.) who carried out initial stages of the investigation including preparation of the site plan, inquest report, etc but was, later, transferred and replaced by Rajendra Prasad, who was not examined. PW-6, however, proved the charge-sheet submitted by Rajendra Prasad.

7. At this stage, it would be appropriate to notice the testimony of the prosecution witnesses in some detail.

(i) **PW-1 (Surendra Singh)**. He stated that the deceased Banso

Bai was married to the accused-appellant 13 years ago. Out of the wedlock, she had five daughters and one son; that his brother-in-law (the accused) used to level allegation of unchastity on his sister and also used to treat her cruelly. In respect of the incident, PW-1 stated that Darshan Singh (PW-3) came and informed him that in the evening, preceding the night of the incident, the appellant and the deceased had a fight and, at 2 am in the night, on hearing shrieks, PW-3 and PW-4, who were neighbours of the deceased, woke up and witnessed that the accused was pressing the neck of the deceased but, by the time they could save her, the deceased had died and the accused escaped. PW-1 stated that upon getting the above information, he went to the house of the deceased at village Tatarganj, found body of the deceased lying on a cot; thereafter, PW-1 dictated the report to Jarnail Singh (not examined), who wrote the report, read it over to PW-1, which, PW-1 signed. On this statement, the written report was marked Exb. Ka-1. PW-1 also proved that at the time of inquest proceeding, he was present and had signed the report, which was exhibited as Exb. Ka-2. *{Note: At the time when the statement in chief of PW-1 was recorded, the accused was not represented by a lawyer and, therefore, the court appointed an Amicus Curiae to represent the accused and assist him in cross-examining the witnesses. The Court, accordingly, fixed 14.07.2015 for cross-examination of PW-1. However, the cross-examination of PW-1 was held on 28.07.2005}.*

(i-a) In his **cross-examination**, PW-1 stated that, initially, the relations were good between the accused and the deceased; that when he heard that the accused used to level allegations of unchastity on the deceased, he took no step, thinking that bickering between husband and wife is common. He admitted that his sister had not told him that her husband was treating her cruelly, perhaps, she used to hide all

those things. But, through her neighbours, he came to know that she was being harassed by her husband. In respect of the incident, he stated that he came to know about the incident in the morning, between 7.30 and 8.00 am, through PW-3 (Darshan Singh). This information came to him while he was staying with his elder sister at Bazaar Ghat. When PW-1 got information from Darshan Singh, he and his elder sister, namely, Surno Bai went to the house of Banso Bai (the deceased). He stated that it took them one and a half hours to reach the house of the deceased. He stated that deceased's children are being looked after by their 'Tau' (father's elder brother) and that PW-1 is not looking after them. In respect of the incident, PW-1 stated that when he had reached her sister's place in the morning, he did not see any policemen there, though her neighbours were there; after staying there for one and a half hours, PW-1 went to the police station with his other sister to lodge report. PW-1 stated that he saw his sister's body lying on a cot. He stated that near the hut of her deceased sister, at a short distance, there were huts of PW-3 and PW-4. The hut of the deceased and her husband had three shades (*Chhappar*). Two shades were joint and one was separate. Under the two joint shades there was a kitchen and a *Baithak* (a platform for sitting purposes), partitioned by a *Tatiya* (straw mat). Under the third shade, animals of the accused used to be tied, which was at a distance of five to six paces. In respect of writing the report, PW-1 stated that he met the scribe of the FIR, namely, Jarnail Singh, at a Tea Stall, outside the police station. By the time the report was scribed, it was 4:30 to 5 pm. He stated that he had gone to the police station on a bicycle and it must have taken two and a half to three hours to reach the police station. He stated that when he returned from the police station it was evening and while he was returning on his bicycle, he saw the police proceeding in a Jeep to the village. By the time PW-1 arrived at the village, the

police had already reached there. PW-1 stated that the police had prepared documents in his presence; that he and his sister had arrived from the police station by about 7 pm; that the first information report must have been lodged between 4:30 pm to 5 pm.

(i-b) In respect of the condition of his sister's body, PW-1 stated that when he had noticed his sister's body, she was wearing a Kurti and Salwar and her eyes were shut and her hands were on her chest. He had not noticed any injury on her hands though, there were old injury marks on her leg. He stated that on exposed parts of her body, he had not noticed any injury though, blood was oozing out from her nose and mouth. He also stated that she had glass bangles. PW-1 stated that at the time of inquest there were many persons; that the body of his sister was taken for autopsy in the night, between 1.30 am to 2 am. He denied the suggestion that there was animosity between the accused-appellant and his neighbours Darshan Singh and Parsha Singh in respect of some land dispute. He also denied the suggestion that the deceased and the accused-appellant had good relations. He also denied the suggestion that he is telling a lie.

(ii) **PW-2 (Dr. K.K. Sharma)**. He proved the autopsy report and accepted the possibility of death of the deceased to have occurred at about 2 am on 28.06.2004.

(ii-a) In his **cross-examination**, he admitted that the estimated time of death can vary by nine hours and it is also possible that the injuries found on the body of the deceased could be on account of use of hard and blunt object.

(iii) **PW-3 (Darshan Singh)** - Eye witness. He stated that he knows the accused-appellant as his hut is near the hut of PW-3; that the accused-appellant is deaf and dumb; that there used to be fights between the accused-appellant and the deceased as the accused-

appellant used to level allegations of unchastity on her; that in the evening, preceding the night of the incident, the accused and his wife (the deceased) had a fight; that in the night of the incident, while PW-3 was in his own hut, at about 2 am, he heard noises coming from the hut of the accused-appellant; on hearing the noise, PW-3 and his brother Parsa Singh (PW-4) went towards the hut of the accused and saw the accused strangulating his wife. Seeing PW-3 and PW-4, the accused ran away but by the time they reached there, the deceased had died. PW-3 stated that he gave information about the incident to the informant.

(iii-a) In his **cross-examination**, PW-3 stated that the accused is his relative; PW-1 is also his relative; his relationship with the accused is through PW-1; the accused has no agricultural holding though, PW-3 has two acres of land; whereas, his brother Parsa Singh (PW-4) has one and a quarter acre of land; that the deceased, in relation, is PW-3's 'Mausi' (mother's sister); that deceased is a cousin of PW-3's uncle; that the deceased had four daughters and a son and the eldest, amongst the daughters, is 11-12 years old whereas, youngest would be 3-4 months old; that deceased and the appellant had been fighting with each other since last two to three months before the incident; that PW-3 had not given information about their fights to Surendra Singh (PW-1); that Surendra Singh (PW-1) had not visited the deceased in the last 2-3 months, though PW-1's father used to visit, who is 60-70 years old; that in the night of the incident, PW-1's father (Makhan Singh) was not there as he was away; in PW-3's village, there is no electricity; that PW-3's hut is about 10 paces away from that of the accused; that PW-3's brother Parsa Singh's hut is towards east of his hut and the distance between his hut and his brother's hut is about 12 paces; that in the evening, preceding the night of the incident, the accused-appellant had not assaulted the deceased

with danda (stick) or slaps; that accused-appellant can neither speak nor listen; PW-2 denied the suggestion that there use to be no fight between Charan Singh (appellant) and Banso Bai (the deceased).

(iii-b) On further cross-examination, PW-3 stated that Charan Singh can communicate with the help of signs, through his fingers, and can also understand what others wish to communicate. He admitted that earlier, relationship between Charan Singh and Banso Bai was cordial and that, out of their relationship, they had six children.

(iii-c) On further cross-examination, PW-3 stated that the night of the incident was a dark night. When he heard noises, he rushed to the spot from his own hut and his brother also arrived there; that deceased's children were there and were crying; that Banso Bai's mother and father were also sleeping there. PW-3 stated that Charan Singh was pressing the neck of Banso Bai and when PW-3 and PW-4 reached the spot and were just about 5-6 paces away, seeing them, accused-appellant ran away. PW-3 stated that after Charan Singh ran away, several others arrived at the spot; that he went to inform the informant (PW-1) at about 6 am on a cycle; that PW-3 reached informant's house by 7 am and after giving information to the informant, PW-3 returned back. PW-3 stated that the police had arrived by 12 (noon). PW-3 stated that he does not remember as to what happened thereafter. PW-3 also clarified that deceased's children were young therefore, they could not save their mother.

(iii-d) PW-3 denied the suggestion that thief/dacoit/robber killed Banso Bai in the night. PW-3 also denied the suggestion that he has a dispute with Charan Singh (the accused-appellant) and therefore he is lying with a view to grab Charan Singh's land. He also denied the suggestion that because Surendra Singh (informant) is his relative,

therefore, he is lying.

(iii-e) PW-3 told the Court that when he went to the hut of Banso Bai, he had a torch and in the light of the torch, he had spotted Charan Singh strangulating the victim. He also stated that he had screamed at Charan Singh but, he did not respond. Rather, he ran away. PW-3 stated that the torch which he had, he has not brought. He also could not remember whether he had shown the torch to the I.O. He also stated that the cot where the deceased was lying was outside the shade. He denied the suggestion that he is telling a lie.

(iv) **PW-4 (Parsha Singh)**- another eye-witness. In his statement in chief, he narrates the same story as narrated by PW-3 (Darshan Singh) including that the accused is deaf and dumb. He also stated that the incident was witnessed in the light of a torch.

(iv-a) In his **cross-examination**, he stated that the informant, in relation, is his 'Mama' (maternal uncle) and the deceased is his 'Mausi' (maternal aunt). He also stated that deceased had six children and her son is about 10-11 years old. PW-4 stated that he had disclosed to the I.O. that Banso Bai was of bad character but this was not disclosed to Surendra Singh (PW-1) and Banso Bai's mother and father. He stated that at present Banso Bai's children are being looked after by their grand parents.

(iv-b) On further cross-examination, he admitted that Charan Singh (the accused-appellant) held about two acres of land, which is being ploughed by him. He also stated that, after marriage, Charan Singh and Banso Bai had good relations though, since two months before her death, they used to have fights. PW-4, however, admitted that he never informed Surendra Singh (PW-1) or mother and father of Banso Bai about their fights. PW-4 stated that a day before the incident, the appellant had assaulted Banso Bai with a lathi though it

had left no injury mark. PW-4 stated that he had not informed brother, father and mother of Banso Bai about this incident.

(iv-c) In respect of the incident, he stated that that night was dark; that night, Banso Bai had cried 2-3 times and on hearing her cries, he and his brother (PW-3) went to the spot. Charan Singh's children had also raised alarm but, as they were very young, they could not save their mother. PW-4 stated that outside the shade (*Chhappar*), there was just one cot where Banso Bai was lying. Rest were sleeping inside the shade. He stated that other cot was at some distance from the cot of Banso Bai. When questioned about distance of the other cot, PW-4 stated that it must have been 20-25 hands away. On further cross-examination, PW-3 stated that in that separate cot Charan Singh's mother and father were sleeping but they did not make any attempt to save the deceased.

(iv-d) On further cross-examination, PW-3 stated that when he had reached the spot, he had seen Charan Singh on top of the cot and pressing the neck of Banso Bai. Banso Bai was screaming but in low volume. When he and his brother (PW-3) arrived, Charan Singh left and ran away. PW-4 further stated, that when they examined Banso Bai from close proximity, she was found dead. He stated that he saw the incident from a distance of 6-7 paces in torch light.

(iv-e) To Court – PW-3 stated that Charan Singh cannot speak clearly but can speak little bit and can communicate by hand gestures. PW-4 also stated that Charan Singh cannot properly hear but has good eye sight and is not insane or of weak mind.

(iv-f) On further cross-examination, PW-4 stated that he had shown to the I.O. the place where the cot was lying and from where he and his brother (Darshan Singh) had challenged Charan Singh and the direction in which he ran away towards the jungle but, if this fact was

not mentioned by the Investigating Officer, then he cannot tell the reason. PW-4 stated that after the incident, he had stayed overnight at the spot whereas the police had arrived in the morning at 9 am and had prepared documents and had also got his thumb impression. He stated that the police had not taken thumb impression of Jarnail Singh or anybody else in his presence. PW-4 stated that the police had lifted the body by about night. He denied the suggestion that he had not witnessed the incident and he is telling a lie because of being a relative of Surendra Singh (PW-1).

(v) **PW-5 (Constable Clerk-Virendra Kumar Srivastava).** He proved lodging of the first information report at 17:35 hours on 28.06.2004 of which GD entry no. 20 (Exb. Ka-5) and Chik FIR (Exb. Ka-4) was prepared by him.

(v-a) In his cross-examination, he stated that he is not aware as to how and by what conveyance the informant came to the police station. He stated that Chief Judicial Magistrate had seen the Chik FIR on 02.07.2004. He further stated that at the time of lodging the first information report, the Investigating Officer was there and papers were handed over to him; and that he left immediately. PW-5 stated that the body had not come to the police station. He denied the suggestion that first information report was ante-timed under the influence of the informant.

(vi) **PW-6 (S.I. Narendra Kumar Tivatia).** He is the investigating officer, who conducted investigation in the matter up to 09.08.2004 whereafter, he was transferred. PW-6 stated that after the FIR was lodged, he took the informant with him on official Jeep to village Tatarganj (the village in which the crime was committed) and, upon reaching the spot, at the behest of the informant, he inspected the spot, prepared site plan (Exb. Ka-6), conducted and prepared inquest

report (Exb. Ka-2) as well as letter for the CMO and other documents in respect of post-mortem etc. and, thereafter, recorded statement of the inquest witnesses and made an effort to search out the accused. He stated that on 29.06.2004, he made an effort to arrest the accused but could not find him in his house. Thereafter, on 30.06.2004, he got copy of the post-mortem report which was incorporated in the case diary. On 01.07.2004, he made efforts to arrest the accused but the accused could not be found. On the same day, he recorded statement of witnesses Parsha Singh and Darshan Singh. Again, on 02.07.2004; 04.07.2004; 07.07.2004; and 10.07.2004, he made effort to arrest the accused-appellant Charan Singh but he could not be found. Finally, on 11.07.2004, he submitted an application in Court, stating Charan Singh has absconded therefore, proceeding under Section 82 and 83 Cr.P.C. be initiated on which, on 14.07.2004 he got information from the Court that the application will be considered on 17.07.2004. On 17.07.2004, he obtained processes, under section 82 Cr.P.C. as also non-bailable warrants. On 21.07.2004, he searched for the accused and took steps under Section 82 Cr.P.C. On 31.07.2004, again, raid was conducted to arrest Charan Singh but he could not be found. On 09.08.2004, he came to know that Charan Singh had left Uttar Pradesh for Uttranchal and is in district Udham Singh Nagar. PW-6 stated that, thereafter, he was transferred and the remaining investigation was conducted by Rajendra Prasad. PW-6 stated that Rajendra Prasad arrested Charan Singh and after recording his statement, submitted charge-sheet. PW-6 proved the writing and signature of the second I.O. on the charge-sheet, which was marked Exhibit Ka-11.

(vi-a) In his **cross-examination**, PW-6 stated that he had not disclosed in the site plan the route which Charan Singh took to escape from the spot. He stated that witnesses Darshan Singh and Parsha Singh did not inform him the direction and the route which the

accused take to escape from the spot. He, however, stated that huts of the witnesses and the accused were at close proximity to each other.

(vi-b) He denied the suggestion that Surendra Singh (the informant) was crossed by the police while he was on a cycle, 5-6 kms away from the village. PW-6 stated that when he had gone to prepare the inquest report, deceased's mother-in-law and children were there. Children were young though, he could not recollect their age. PW-6 stated that he had enquired from the mother of the accused but had not recorded her statement. The children had no clue about the incident as they were sleeping. He stated that he had not questioned the children at the time when he was preparing the inquest report. He stated that when he had visited the spot, he had seen only one cot lying there where there was dead body. He stated that the witnesses had not shown any torch to him. He denied the suggestion that he reached the spot at noon. He also denied the suggestion that he found the body of Banso Bai in an open field. He stated that the witness Parsha Singh had not informed about the bad character of Banso Bai though, Parsha Singh had told him that Charan Singh, by gestures, did communicate that his wife is not of good character. On being shown paper no. 11/35, PW-6 stated that this was a letter written by Station Officer Rajendra Prasad to the Chief Medical Officer in respect of accused being deaf and dumb. He stated that since he had been transferred by then, he did not investigate in that regard. PW-6 stated that from the entry in the case diary, it appears, that the investigating officer, namely, Rajendra Prasad, had interrogated the accused with the help of gestures though, he could not find any report of the Chief Medical Officer on the record. He denied the suggestion that charge-sheet was submitted by conducting a bogus investigation.

8. After the statement of the prosecution witnesses were recorded,

on 21.12.2005, the statement of the accused was recorded under Section 313 Cr.P.C. The order-sheet of the court below reflects that the trial court on 21.12.2005 passed following order:-

“21-12-05

आज प्रस्तुत

अभियुक्त मय अधिवक्ता उपस्थित। अभियुक्त साफ नही बोल पाता किन्तु बातों को समझ लेता है व तुतलाकर व इशारे से अपनी बात कह लेता है। उसके विद्वान अधिवक्ता व **ADGC** के समक्ष व उनके सहयोग से बयान 313 लिखा गया।

सफाई हेतु अवसर दिया जाना उचित होगा।

न्यायहित मे दिनांक 24.12.05 को सफाई साक्ष्य हेतु पेश हो।”

9. The incriminating circumstances appearing in the prosecution evidence were put to the accused-appellant while recording his statement under Section 313 Cr.P.C. and at the bottom of that statement, following note was put:-

“उक्त पृच्छा मेरी उपस्थिति एवं श्रवणगोचरता मे की गयी, जिसमें अभियुक्त द्वारा किये गयेकथनों की पूर्ण व सही हाल अन्तर्विष्ट है।”

10. After 21.12.2005, on 24.12.2005, a written explanation was also submitted on behalf of the accused, duly thumb marked by him and signed by his lawyer, which reads as follows:-

“न्यायालय श्रीमान् **ASJ/FTC I** महोदय, पीलीभीत

ST No. 695/04

राज्य बनाम चरन् सिंह

धारा 302 **IPC**

थाना हजारा

श्रीमान् जी,

लिखित कथन वास्ते सफाई साक्ष्य

1. यह कि प्रार्थी चरन सिंह को उपर्युक्त वाद में झूठा फंसाया गया है।
2. यह कि प्रार्थी की भैंसे व जमीन कृषि भूमि हडप करने की नियत से साक्षी दर्शन सिंह व साक्षी परशा सिंह ने प्रार्थी की पत्नी को मार कर झूठी कहानी बनाकर प्रार्थी को झूठा फंसाया गया है।

3. यह कि प्रार्थी न तो बोल पाता है और न ही कुछ सुन पाता है जिस कारण अपनी बातको पुलिस के सामने कह नहीं सका और साक्षी परशा सिंह व दर्शन सिंह व अन्य साक्षी झूठी गवाही दे रहे हैं। और साक्षीगण परशा सिंह दर्शन सिंह ने पुलिस से मिल कर झूठा मुकदमा कायम करा दिया।

4. यह कि प्रार्थी विवाह के उपरान्त अपनी पत्नी के साथ प्रेमपूर्वक सहवास करता रहा जिसके फलस्वरूप प्रार्थी की पत्नी के सन्ताने उत्पन्न हुई। प्रार्थी की पत्नी एक चरित्रवान स्त्री थी।

अतः श्रीमान् जी से प्रार्थना है कि प्रार्थी का लिखित कथन सामिल पत्रावली करने की कृपा की जावे।

दिनांक

24.12.05

प्रार्थी

नि० अं० चरन सिंह

चरन सिंह

ह० अप०

द्वारा रा..... एड०

एम० ई० कस० क्यूरी”

11. The trial court, by the impugned judgment and order dated 12.01.2006, held that from the prosecution evidence it is established that in the night of the incident, the appellant killed his wife by strangulating her and that the appellant being husband of the deceased, living with her, has given no explanation as to in what other manner the deceased was killed, accordingly, the appellant is liable to be convicted and sentenced, as above. While writing its judgment, in paragraph no.16 and 17 of the judgment, the trial court dealt with the plea of the appellant that, because he was deaf and dumb, he could not put his defence properly. In this context, the trial court held that the accused was not mentally weak and could communicate verbally, in a stuttering manner, as well as by gestures and, therefore, could defend himself. While holding so, it relied on its own observations, the record and the statement of PW-4.

12. We have heard Sri Subedar Mishra for the appellant; Sri J.K.

Upadhyay, learned A.G.A., for the State; and have perused the record.

SUBMISSIONS OF THE APPELLANT

13. The submission of the learned counsel for the appellant is that it was proved on record that the appellant is a deaf and dumb person as this position is admitted to the prosecution witnesses of fact, namely, PW-1, PW-3 and PW-4, and a letter was also written by the Investigating Officer to the Chief Medical Officer for medical examination of the accused as he was deaf and dumb. The said letter dated 17.08.2004 is there on record as Paper No. 11/35 and it was put to PW-6 during cross-examination wherein, he admitted that the said letter was sent by the I.O. to the Chief Medical Officer, Pilibhit. The letter dated August 17, 2004 is being extracted below:-

“सेवा में,

थाना-हजारा – P.B.T.

मुख्य चिकित्साधिकारी

पीलीभीत

विषय:- मु० अ० सं० 54/04 धारा 302 IPC बनाम अभि० चरन सिंह S/O गुलशेर सिंह R/O टाटरगंज थाना हजारा P.B.T. के गूंगे बहरे की जांच कर परिणाम से अवगत कराने विषयक।

महोदय,

निवेदन है कि थाना स्थानीय पर दिनांक 28.06.04 को अभि० चरन सिंह S/O गुलशेर सिंह R/O टाटरगंज थाना हजारा जि० पीलीभीत के विरुद्ध मु० अ० सं० 54/04 धारा 302 IPC का अभियोग पंजीकृत होकर विवेचना प्रचलित की गयी दौराने विवेचना अभि० चरन सिंह उक्त का गूंगा, बहरा होना प्रकाश में आया। अभि० चरन सिंह आज गिरफ्तार किया गया है जो न तो बोल पाता है और न ही सुन सकता है ऐसी दशा में अभि० चरन सिंह के गूंगे/बहरे की जांच/परीक्षण होना अति आवश्यक है।

अतः अनुरोध है कि अभि० चरन सिंह उपरोक्त की गूंगे/बहरेपन की जांच कर परिणाम से अवगत कराने की कृपा करें।

आख्या सेवा में प्रेषित हैं।

दिनांक अगस्त 17. 04

ह० अप०

S.O.

17.8.04

PS हजारा

थानाध्यक्ष

हजारा (पीलीभीत)''

14. By citing the above letter, the learned counsel for the appellant submitted that despite the said request and a clear-cut statement made before the trial court that the accused is deaf and dumb, no medical examination of the accused was conducted and no sign language interpreter was provided to the accused either for getting his statement recorded under Section 313 Cr.P.C. or to enable him to communicate with his lawyer for setting up proper defence, and to enable an effective cross-examination. This, therefore, caused serious prejudice to the appellant, thereby, vitiating the trial. It has been submitted that the whole case turns on the ocular evidence of PW-3 and PW-4. Admittedly, the children who had reached the age of understanding were not produced. The eye-witnesses stated that the mother and father of the accused were there, but they have not been examined. Noticeably, the body of the deceased carried no injuries except on her neck which is suggestive of the fact that she might have been strangulated with the help of others, who might have held her hand and legs so that she could offer no resistance. He further submits that it is quite possible that if the facility of a sign language interpreter had been provided to the accused, the accused might have explained that on the night of the incident he was not even there at the house and was elsewhere. Thus, not providing an interpreter to the accused has resulted in serious miscarriage of justice.

15. It has further been submitted that the entire prosecution story does not inspire confidence as the prosecution case is that the accused

used to accuse the deceased of bad character but, if the accused was deaf and dumb, how would he be able to level those allegations and, if he did level those allegations, how would others come to know of it. Further, the prosecution case that the accused used to suspect and taunt his wife is not substantiated; because, PW-3 and PW-4 have not informed the informant or anybody else in respect of such accusations. He submitted that at the spot only one cot was noticed; if there was just one cot there, where was the accused sleeping because the other cot, according to PW-4, was of father and mother of the accused. This suggests that the accused was not even there at home when the deceased died. It has also been submitted that the investigating officer, who arrested the accused, has not been examined because he could have disclosed as to from where and in what circumstances the accused was arrested. As, admittedly, the accused was not given the benefit of sign language interpreter, which ought to be available to a deaf and dumb person to enable him to render his explanation, the accused was seriously prejudiced as he was not able to disclose the circumstances in which he was arrested and whether he was there at the spot or elsewhere. Equally, at the time of framing of charge, the accused did not have a counsel to represent him because when the witness PW-1 was tendered for cross-examination, the Court discovered that the accused was unrepresented therefore, the Court offered and provided him services of an Amicus Curiae. Under the circumstances, even the recording of statement of the witnesses in accused's presence was meaningless as how will he understand as to what the witnesses were saying. Similarly, if the benefit of a sign language interpreter was not provided to the accused at the time of recording his statement under Section 313 Cr.P.C., how would he be able to understand as to what incriminating circumstances appeared against him. It has been submitted that, it appears, by guess work, the

statement of accused has been recorded under Section 313 Cr.P.C. This vitiates the entire trial.

16. On merits, it was argued that the prosecution story does not inspire confidence inasmuch as, admittedly, the village had no electricity, the witnesses are stated to have seen the incident in the light of a torch which was never produced before the Investigating Officer and was never part of the record. Further, the site plan did not disclose the route taken by the accused to escape from the scene. Meaning thereby that the eye-witnesses had not seen the incident and, therefore, it is a case, where, with ill motive, to grab the land of the appellant he has been implicated, which is borne out from the statement of PW-4, where he admits that PW-4 is ploughing the field of the appellant. Thus, in a nutshell, the submissions of the appellant could be summarised as follows:-

(a) The FIR is highly delayed; the prosecution has suppressed evidence by not examining vital witnesses, namely, mother and father of the accused-appellant as well as her children, who were all sleeping at the place where the deceased was killed. More so, when, according to own case of PW-3 and PW-4, the children were there and crying. Even according to I.O. (PW-6), the children were sleeping there. Yet, their statement was not recorded which means that the investigating agency did not try to verify the allegations;

(b) The ocular evidence does not inspire confidence inasmuch as, admittedly, the incident occurred on a dark night, the body of the deceased showed no marks of resistance, suggesting that she was caught hold by someone and some other person strangulated her. This circumstance renders the ocular account untrustworthy;

(c) That the appellant was deprived of the right of defence as he was not provided services of a sign language interpreter despite the fact that he was deaf and dumb and, that too, to the knowledge of the Court yet, despite application and information to the Court that he was deaf and dumb, the Court did not direct for his medical examination to ascertain whether he was in a position to understand and communicate; and

(d) That the endorsement at the bottom of the statement recorded under Section 313 Cr.P.C. that it was recorded with the help of gestures after being satisfied as to what the accused wanted to communicate, is contrary to the order recorded on the order-sheet that the accused could communicate in low tones and that his statement was recorded with the help of his counsel and the ADGC. All of this would suggest that there was no serious effort to understand the disability of the accused and to record his statement.

SUBMISSIONS ON BEHALF OF THE STATE

17. **Per contra**, the learned A.G.A. submitted that though PW-1, PW-3 and PW-4 stated that the accused was deaf and dumb but, from their testimony it is clear that the accused could communicate in low tones and was not of a weak mind. Moreover, the court recorded accused's statement under Section 313 Cr.P.C. after being satisfied that what the accused wanted to communicate, he had communicated. Hence, there was no miscarriage of justice even if there had been no formal medical examination of the accused to ascertain whether he could hear and communicate. He further submits that even if the facility of sign language interpreter was not provided to the accused that, by itself, would not vitiate the judgment and order of the trial court as there is a legal presumption that all official acts have been

performed in accordance with law unless proved otherwise. He submits that since there is an endorsement of the presiding officer of the court that the statement under Section 313 Cr.P.C. was recorded with the help of the advocates after understanding the gestures and the utterances made by the accused in low tones and in a lisping manner, there was substantial compliance of the legal provisions in that regard and, therefore, the trial did not vitiate.

18. On merits, the learned A.G.A. submitted that this is a case where the wife had died in the night on account of strangulation; that the presence of the appellant is proved by ocular account, burden was heavy on the accused to explain the circumstances in which she had suffered injuries but there appears no explanation in what other manner she suffered the injuries and, in fact, there was not even a denial in respect of his presence there, therefore, the trial court was justified in recording conviction.

ANALYSIS

19. Having noticed the rival submissions, before examining the merit of the prosecution case, we deem it appropriate to first examine the merits of appellant's counsel's submission that the trial vitiated because, firstly, no medical examination of the appellant with regard to his speech and hearing disability was conducted to ascertain whether, without the help of a sign language interpreter, the trial could have proceeded against the accused and, secondly, whether in absence of the facility of a sign language interpreter to the appellant, the appellant was seriously prejudiced in setting up his defence, resulting in complete miscarriage of justice. Before we proceed to test the aforesaid submission, we must first examine whether the appellant is deaf and dumb, if so, to what extent; and whether, in the facts of the case, without medical examination of the accused-appellant in respect

of his disability, the trial court could have proceeded on court's own understanding of the issue, if not, whether it vitiates the trial.

20. Before we proceed to ascertain whether the accused-appellant was deaf and dumb and the consequences of him being so, it would be useful to first examine the law governing trial of deaf and dumb accused. Section 318 of the Code of Criminal Procedure, 1973, which is *pari materia* section 341 of the Criminal Procedure Code, 1898 (old Code), provides as follows:

“S. 318. Procedure where accused does not understand proceedings.- If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit”

21. Interpreting section 341 of the old Code, in **Emperor V. Deaf and Dumb, AIR 1917 Bombay 288**, it was observed that though great caution and diligence are necessary in the trial of a deaf and dumb person yet, if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment. In **Emperor V. Ulfat Singh, AIR 1947 Alld 301**, a single judge Bench of Allahabad High Court, interpreting section 341 of the old Code observed: *“It would appear from the section that the Court has first to find whether the accused can be made to understand the proceedings. If the Court finds that he cannot it may proceed with inquiry or trial, but proceedings have to be forwarded to the High Court with a report of the circumstances of the case for suitable orders by the High Court.”* The court went on to observe that there is

no provision in the Indian Penal Code under which accused could be exempted from punishment merely because he is deaf and dumb. The court further observed that in such kind of cases, *the Courts have to do their best to see that the trial is a fair trial and the accused gets a chance of putting up such defences as he may have.* The above view has been noticed and followed by a Division Bench of the Bombay High Court in **State V. Radhamal Sangatmal Sindhi, AIR 1960 Bombay 526**, wherein it was observed that: *“the Court trying such an accused will be directed to see that he has the necessary legal assistance, that the trial proceeds on the basis that the accused has pleaded not guilty to the charge, and that all possible defences open to him in the circumstances of the case are considered.”* A Division Bench of Kerala High Court **In re: Padmanabhan Nair Narayan Nair, AIR 1957 Kerala 9**, in respect of holding trial of a deaf and dumb person clarified the law further, by observing that *“it is court’s duty to make a proper endeavour to see whether the accused can be made to understand the proceedings. If the Judge finds that the accused can be made to understand the proceedings the trial must proceed in the ordinary way. If the trial proceeds in the ordinary way the court can pass sentence if the accused is found guilty and convicted. However, if it is found that the accused cannot be made to understand the proceedings the court can convict him if the evidence warrants it, but it cannot pass sentence against him. The court must forward the proceedings to the High Court to pass such orders as the High Court thinks fit.”*

22. From the decisions noticed above, the law as it stands is that there is no bar to proceed against a deaf and dumb accused on a charge of a criminal offence. But, whenever a criminal proceeding is drawn against a deaf and dumb person, the endeavour should be that

he understands the proceedings. If the court finds that he understands the proceedings, the trial must proceed in the ordinary way. However, while doing so, courts have to see to it that the trial is fair and the accused gets a chance of putting up such defences as he may have.

23. In the case at hand, the court below had satisfied itself that the accused could communicate, though in low lispings tone, and could understand the proceeding. This satisfaction is reflected in the order sheet of the trial court as well as the impugned judgment. The finding returned by the trial court in that regard has not been questioned in the grounds of appeal. No doubt, during the course of cross-examination, the I.O. (PW-6) was confronted with an application moved by the second I.O. for medical examination of the accused in respect of his disability, but, during trial, no application for medical examination of the accused in respect thereto has been made, or, at least, brought to our notice, even though the appellant was represented by a counsel. Interestingly, after oral examination, under section 313 CrPC, the appellant submitted a written statement. In that written statement, dated 24.12.2005, he stated that he is deaf and dumb therefore, he could not place his defence properly before the police. This written statement nowhere stated that he could not understand the evidence led against him during the course of trial or that he needed a sign language interpreter to place his case properly before the court. There is also no prayer in that written statement for his medical examination. Notably, prior to submission of written statement, dated 24.12.2005, the court, after personally examining the accused, on 21.12.2005 had recorded its satisfaction that the accused is in a position to understand and can communicate with the help of gestures and in a low lispings tone. We also notice from record that at the instance of the appellant all the prosecution witnesses were cross-examined at length, on various aspects, negating the possibility of him not being able to

properly instruct his counsel because of his professed disability. Further, there appears no application of the counsel representing the appellant to provide a sign language interpreter to enable the counsel to communicate with the appellant or for the appellant to communicate with the court. Under illustration (e) to section 114 of the Evidence Act, 1872 there is a legal presumption that judicial and official acts have been regularly performed. In these circumstances once the court had recorded its satisfaction with regard to the ability of the accused to understand and communicate, and there being no application before that court questioning its satisfaction or praying for services of a sign language interpreter for the accused, in our view, an unrebutted legal presumption with regard to the regularity of the judicial act would operate against the accused-appellant. Thus, keeping in mind the legal presumption as also the statement of PW-4 that the appellant is in a position to understand and communicate and is not of weak mind, we are satisfied that the trial did not vitiate for lack of appointment of a sign language interpreter for the accused-appellant or for any other like reason. In addition to above, we notice from the record that the appellant has extensively put forth his defence not only by undertaking gruelling cross-examination of the prosecution witnesses but also by making his statement, both oral and written, under section 313 CrPC. Consequently, we reject the defence plea that the appellant was seriously prejudiced in putting forth his defence on account of his disability and non appointment of a sign language interpreter to assist him.

24. Now, we shall examine the merit of the prosecution case. In this regard, the submissions on behalf of the appellant are that it was a night incident, other than torch light no source of light is professed, whereas, the torch has not been shown to the I.O.; the FIR is delayed; family members of the deceased including children, who were there,

have not been examined; and all of this, coupled with the delay in lodging the report, would suggest that no body witnessed the incident, the prosecution story is contrived with ill-motives to grab the property of the appellant.

25. In so far as the delay in lodging the FIR is concerned, the explanation offered is that the eye witness went to inform the brother of the deceased who resided elsewhere. After receipt of information, the brother went to deceased's place to confirm the news. When he confirmed the news, he went to lodge the report. The explanation offered is not an eyewash. It appears realistic considering that the informant, the witnesses and the accused are men of ordinary means. Notably, the informant travelled from one place to the other on a bicycle carrying his other sister. No doubt, the eye witnesses could themselves have lodged the report but, ultimately, it is their outlook. Ordinarily, people do not like to interfere in others' family matter. Indisputably, the incident was post mid-night and early morning the eye witness went to inform the brother of the deceased. In these circumstances, though the FIR may be a bit delayed and could have been lodged much earlier but, in the facts of the case, where husband of the deceased is an accused for the murder of the deceased, it does not, by itself, give rise to an adverse inference against the truth of the prosecution case.

26. In so far as absence of light to enable the witnesses to witness the incident is concerned, no doubt, neither the torch used, as a source of light, was shown to the I.O. during investigation, nor was taken into custody, but we must not be oblivious of the fact that the eyewitnesses and the deceased resided in their respective huts in close proximity to each other. Notably, the proximity of the hut of the deceased/accused with those of the eye witnesses have not been disputed rather, it is

proved by oral evidence as well as the site plan prepared by the I.O. on the basis of spot inspection. The witnesses came out of their huts on hearing noises and from close proximity they witnessed the accused pressing the neck of the deceased. The deceased died due to strangulation. Further, the incident is of the year 2004, by then, presence of torches in areas where there is no electric supply, as was the village concerned, is a common feature. In these circumstances, the oral deposition in respect of use of torch is not liable to be discarded merely because the I.O. did not question the witnesses with respect to the source of light.

27. In so far as non-examination of children and other family members of the deceased is concerned, suffice it to say that where the accused is one's own family member, witnesses of that family are reluctant to give evidence. Moreover, children rarely go against their parents. Therefore, their non-examination, in the facts of the case, is not fatal to the prosecution case.

28. Having dealt with the arguments advanced on behalf of the appellant, what clinches the issue against the appellant is that he is admittedly the husband of the deceased and there is no denial of the appellant with regard to him residing with his wife at the time and place of the incident. Most importantly, the deceased died due to strangulation. There is no serious challenge to the incident occurring at the time set out by the prosecution. Even the autopsy surgeon accepts the possibility of death occurring at the time set out by the prosecution. Though, a feeble attempt is there to point out that body was found in the field but that is not substantiated by any evidence. The body was noticed on a cot at a place where the hut of the accused was there, which fact was proved by the oral testimony as well as the site plan prepared by the I.O. after inspecting the spot. Further, from

the statement of I.O. it is clear that the appellant had escaped from the spot and for several days he was absconding. In fact, a search had to be made for him and, ultimately, after recourse to coercive processes, appellant's arrest could be secured. All these are highly incriminating circumstances which, by themselves, complete a chain of circumstances pointing towards the guilt of the appellant and in absence of cogent explanation, could form the basis of conviction. Whereas, to explain this chain of incriminating circumstances, nothing has come, either through cross-examination, or by way of explanation under section 313 CrPC, that the appellant resided elsewhere or worked for gain elsewhere and was not present at the scene of crime in the night of the incident. Notably, accused-appellant in the written statement under section 313 CrPC has admitted that the deceased was his wife and they had cordial relationship out of which they had several issues, which, in absence of any specific statement of separation, or claim of residing elsewhere in connection with work, would give an impression that the appellant, as husband, resided with the deceased. Thus, we do not find a good reason to disbelieve the prosecution case or to discard the prosecution evidence which proves the guilt of the appellant in the murder of his wife beyond reasonable doubt.

29. Consequently, we affirm the judgment and order of the trial court and the appeal is, accordingly, **dismissed**. The appellant is in jail and shall serve out the sentence awarded to him without prejudice to his right to apply for remission.

30. Let the record of the court below along with certified copy of this order be sent to the trial court below for information and compliance.

Order Date :- 08.04.2022

Sunil Kr Tiwari