**SUPREME COURT OF INDIA**

Nawab

Vs.

State of Uttarakhand

Crl.A.No.884 of 2013

(Ashok Bhushan and Navin Sinha,JJ.,)

22.01.2020

**JUDGMENT**

**Navin Sinha,J.,**

1. The appellant is aggrieved by his conviction under Section 302 IPC sentencing him to life imprisonment, and under Section 25 of the Arms Act for one year.

2. The appellant submitted a written report to the police that in the night intervening between 24/25.03.2002, at about 01:30 AM, three hooligans entered his house to abduct him. His wife was shot dead by the miscreants after a scuffle Msf22 when she tried to prevent them from doing so. One firearm injury was found on the person of the deceased, with an entry and exit wound. On consideration of the evidence, the appellant was convicted by the trial court and which has been upheld by the High Court.

3. Dr. Surender Singh Hooda, learned counsel for the appellant, submitted that the present is a case of circumstantial evidence. Relying on Sharad Birdhichand Sarda vs. State of Maharashtra, 1984 (4) SCC 116, it was submitted that the links in the chain of circumstances had not been established pointing conclusively towards the guilt of the appellant alone. Mere suspicion, no matter how strong, cannot be the basis of conviction. No incriminating circumstances were put to the appellant under Section 313 Cr.P.C. The High Court has disbelieved the recovery of the country made pistol on the alleged confession of the appellant under Section 27 of the Evidence Act, 1872. The conviction of the appellant is unsustainable and he is entitled to acquittal.

4. Mr. Jatinder Kumar Bhatia, learned counsel appearing for the State and Mr. Sanjay Kumar Dubey, learned counsel appearing on behalf of the relative of the deceased, whom we permitted to address us allowing his application for impleadment, submitted that the motive of the appellant stands clearly established to obtain the benefit of the Life Insurance Policy ( LIC) taken few days earlier in the name of the deceased. The plea of entry by outsiders has been completely disbelieved in absence of any evidence. The occurrence having taken place at past midnight when the appellant was alone at home with the

deceased, the onus shifts on him under Section 106 of the Evidence Act to explain the circumstances under which his wife met a homicidal death. The appellant failed to furnish any plausible defence.

5. We have considered the submissions on behalf of the parties and also perused the evidence on record. The appellant had taken an LIC policy in the name of his deceased wife on 23.03.2002, barely few days before the occurrence. PW-4, brother of the deceased, deposed that they reached at six in the morning after being informed of the death of his sister by others and not the appellant. The mother of the deceased PW-6 deposed that the appellant was greedy for money and prior to the occurrence he had demanded Rs.10,000 from the witness.

6. The appellant initially stated in the FIR that three persons entered his house at midnight to abduct him. In his evidence as DW-1 he stated that there were five persons. If the intruders had come to abduct the appellant and his wife had been shot dead after she tried to prevent his abduction, it would have been all the more convenient for the intruders to take the appellant away with them. No explanation has been furnished by the appellant in this regard. The appellant has not mentioned any reason or named any on suspicion of enmity or otherwise why the intruders wished to abduct him. No details of the physical features and approximate age, height, built of the intruders has been mentioned even if they had their faces covered despite the fact that the spot map proved by PW-9 and PW-13 establishes the light of an electric bulb. The appellant initially took the defence that he suspected his wife of having an illicit relationship. The defence of unknown intruders having entered by scaling the northern side wall built of mud and cement is belied by the spot map and evidence that no damage or marks were found on the wall. Not a single brick was found disturbed and neither were there any foot marks in the muddy courtyard of the house. We see no reason to differ with the conclusion of the Trial Judge that there ought to have been some marks or signs of scaling the wall, if not shifting of bricks especially when three to five persons are said to have done so.

7. In his defence under Section 313 Cr.P.C., the appellant stated that he had made a complaint against the police to the superintendent of police and that is why he had been falsely implicated. But no evidence was laid much less copy furnished of any such complaint. A bald statement was made that he has been falsely implicated at the behest of his mother-in-law and father-in-law in collusion with department officials.

8. The appellant as DW-1 stated that villagers came to his house when he raised hue and cry after the occurrence. He has further deposed that eight to ten persons had gone with him to the police station. But the appellant apart from himself did not lead any independent defence evidence. The mere fact of broken bangles or a thumb injury on the deceased is not sufficient to absolve the appellant in view of the nature of the other evidence against him. We find it very difficult to accept the explanation of the appellant that despite the presence of five persons, when one of them could have easily over powered the lady, there was any need for them to shoot her as an obstruction in the abduction of the appellant. We have gone through the statement of the appellant under Section 313 Cr.P.C. and find that

all relevant questions were put to him including from the spot map.

9. The wife of the appellant met a homicidal death in her own house past mid night when the appellant was alone with her. His defence has completely been disbelieved with regard to the intruders and we find no reason not to uphold the same. The prosecution had therefore established a prima facie case and the onus shifted to the appellant under Section 106 of the Evidence Act,1872 to explain the circumstances how his wife met a homicidal death. The appellant failed to furnish any plausible defence and on the contrary tried to lead false evidence which is an additional aggravating factor against him.

10. In *Trimukh Maroti Kirkan vs. State of Maharashtra*[1], it was observed as follows:

> "14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him....
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> 15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

11. The deceased had only one entry and exit wound. The bullet apparently exited her body and thus the likelihood of its recovery from the place of occurrence with the round end damaged after it was fired. The pistol was recovered on the confession of the appellant from under the earth in the courtyard, the earth was freshly dug. The High Court disbelieved the recovery because the independent witness PW- 2 went hostile. But the High Court missed the reasoning by the trial court that PW-2 did not deny his signature on the recovery memo nor did he state that his signature was obtained by threat, duress or

coercion. The absence of any FSL report may at best be defective investigation.

12. We find no reason to interfere with the conviction of the appellant. All the links in the chain of circumstances point to the guilt of the appellant alone. The appeal is dismissed.

Judgment Referred.

[1]*(2006) 10 SCC 0681*