

MEDICAL EVIDENCE IN ABSENCE OF EYE WITNESS -A CASE REPORT

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Introduction

In India ours being an inquisitorial system of Inquest, the medical evidence do not find much of place in this system until and unless the eye witness is there narrate and corroborate the exact happenings. It is to emphasize that the medical evidence is one of the most valuable evidence once the post-mortem examination is carried out meticulously with due care, keeping in view every aspect of the case. It goes a long way in imparting justice to the aggrieved even if no eyewitness is there. Here is one case, which speaks of in volume of the importance of medical evidence, supported by the highest court of the land in its reportable judgement (A.I.R., Oct. 1997).

Brief history:

The deceased was the wife of a practising registered medical practitioner. 24 years female Brahmin by caste was brought to the department of Forensic Medicine of Govt. Medical College, Amritsar. Death was alleged due to hanging on 5.9.85 at 5.30 p.m. Post mortem on the dead body was carried out by the board of doctors of the Department of Forensic Medicine on 6.9.1985. Following were the important findings:

It was a decomposed dead body of a female, 5'3" in length, moderately built, and nourished wearing printed suit and salwar, plastic bangles in both forearms and red ribbon in the scalp hairs. Features were bloating. Putrefactive gases were coming out from the orifices of the face with hissing noises. An abscess in right sub areolar region of right breast along with the following injuries was observed: -

1. Reddish brown abrasion 20 x 2 cm on the right side and front of abdomen, extending horizontally from right iliac fossa forward and medially.
2. Reddish brown abrasion 0.3 x 0.2 cm on the dorsum of the right foot, 3 cm proximal to the base of big toe.
3. On the neck a brownish ligature mark, 2 cm broad, encircling the neck horizontally, sparing the skin below right angle of the mandible posteriorly and 4 cm below the ramus of mandible anteriorly. Ligature mark was situated over the thyroid cartilage. Ligature material around the neck was absent. On dissection, there was the compression of the underlying tissue corresponding to the ligature mark. All the viscera showed putrefactive changes. Small amount of semi digested food was present in the stomach. Viscera was subjected to chemical examination and ligature site was subjected to histopathological examination. The probable duration between death and post mortem was 36 to 72 hours.

Chemical examiner's report: "Blood alcohol concentration was estimated as 322.00 mg/100 ml. Alcohol alongwith organophosphorous compound were detected in all the exhibits. No poison was detected in the

preservative".

Pathologist Report: Report suggested the ligature as post mortem. The cause of death was declared as organophosphorous poisoning and alcohol. Injuries around neck was declared post mortem whereas injury no 1 and 2 on the body of the deceased as antemortem.

RESULT

As per the board findings, it was decided unanimously that the female was neglected individual. It was evident from the presence of breast abscess although her husband was a registered medical practitioner. She was subjected to torture, which was evident from the injuries present on her body. She was given organophosphorous with alcohol perhaps in the pretext to cure ailment i. e. breast abscess, which in all probability was known to her, husband that it would lead to her death.

Based on these findings, the Session's court convicted her husband to life imprisonment for causing the death of the deceased and subsequently mimicking it as that of suicide by hanging, taking into consideration, the other circumstantial evidences without eye witness.

Appeal against the judgement was filed in the honorable Punjab and Haryana High Court, Chandigarh with out any relief. Again an appeal was filed in the honorable Apex Court of India and a Double bench made the following observations in relation to the importance of medical evidence and other facts as observed by the apex court are reproduced below :

1 The appellant who was convicted by the Trial Court for murder of his wife unsuccessfully carried the matter in appeal before the High Court and having lost there has landed in the Court by way of this Special Leave Petition. A few relevant facts leading to these proceedings deserve to be noted at the outset.

2 **Introductory Facts:**

The applicant is a practising doctor having two clinics, one is at village Pakhopura in Amritsar District in State of Punjab. That clinic is run as a part of his residential house where his wife Madhu Bala aged 24 years met a tragic end. His other clinic was at Village Ratoke situated at a distance of about one-kilometer from his residential house. The appellant was married to aforesaid Madhu Bala about one and a half years before the incident that took place on 4th September 1985. The case of the prosecution is that after his marriage with said Madhu Bala neither the applicant nor his mother got satisfied with the dowry which she brought and they continuously went on complaining about its insufficiency. On that account they used to ill-treat her. About four and a half months earlier to the date of the incident Madhu Bala visited her parent's house at Faridkot and informed her relations about ill-treatment and the demand for T.V. set, a refrigerator and a scooter and also about their complaining that Madhu Bala had not been presented with a watch by her parents. The evidence led by the prosecution at the stage of the trial Showed that P.W. 4 Brij Bhushan, brother of Madhu Bala accompanied by his maternal uncle Roshan Lal and Des Raj who had acted as a go-between for getting the appellant married to Madhu Bala, contacted the appellant-accused and the other accused, his mother Indra Wati, who is acquitted by the Trial Court, and talked to them and informed them

that they could not meet the demand as they were poor and accused should not ill-treat Madhu Bala on that score. The prosecution case further is that the accused confessed their guilt and promised not to repeat such demands in future and promised not to ill-treat Madhu Bala. In the meantime Madhu Bala gave birth to a son. That happened about two months before the date of the incident. An intimation was sent about the birth of the child to the appellant but he did not visit the house of his in-laws. About 16-17 days before the occurrence Madhu Bala's Mother-in-law Indra Wati, the acquitted accused, visited the house of Parents of Madhu Bala to take her back. While taking her back she expressed dissatisfaction about the customary presents made to the child and remarked, addressing Madhu Bala, that her parents had not given her anything at the time of marriage and even after the birth of the son she was going empty-handed.

Now came the date of occurrence, that is, 4th September 1985 on which day Madhu Bala met an unnatural death at the residential house of the accused, her husband, intimation about the same was conveyed on 5th September 1985, that is on the next day, to the relations of Madhu Bala about her death. They started for village Pakhopura and on reaching Sirhali, on way to Pakhopura, they received information that dead body of Madhu Bala had already been removed to Tarn Taran. They then visited the hospital at Tarn Taran where they felt that the post-mortem examination at Tarn Taran might not be fair. An application was moved by them to Sub-Divisional Magistrate for carrying out post-mortem examination by doctors at Amritsar, Under direction of the Sub-Divisional Magistrate, therefore, post-mortem was carried out by a Board of doctors at Amritsar, P.W.4 Brij Bhushan gave his statement to the police authorities on the basis of which First Information Report was recorded and the case was registered against the appellant and his mother.

- 4 Previous to the registration of the said case appellant accompanied by Sarpanch Sohan Singh had already visited Police Station Chola Sahib and had lodged Report No. 18 on the night of 4th September 1985 itself alleging that his wife had committed suicide by hanging herself. When Assistant Sub-Inspector Balbir Singh visited the place of incident pursuant to the aforesaid report by the appellant he found the dead body of Madhu Bala hanging with 'dupatta' around the neck and her legs were tied to the foot of the cot. Usual steps towards investigation were undertaken. Post-mortem examination on the dead body of Madhu Bala was carried out by a Board of Doctors consisting of the Dr. Jagdish Gargi P.W.I, Dr. H. Rai and Dr. R.K. Gorea. Out of them, Dr. Gargi was examined as P.W.1 others were tendered for cross-examined as . Dr. Gargi P.W.1. stated that he along with Dr. H. Rai and Dr. R.K. Gorea P.W.1. Stated that he along with Dr. H. Rai and Dr. R.K. Gorea carried out the post-mortem on the dead body of Madhu Bala on 6th September 1985 at 11-15 a.m. He found that there was a brownish ligature mark 2 cm broad encircling the neck horizontally, sparing the skin below the right angle of the mandible as well as anteriorly 4 cm below the ramus of the mandible. He also found two further injuries on the dead body as under :

- (i) A reddish brown abrasion 20 x 2 cm. on the right side and front of the abdomen, extending horizontally from the right iliac fossa forward and medially.

- (ii) Reddish brown abrasion 0.3 x 0.2 cm on the dorsum of the right foot, 3 cm proximal to the base of the big toe.

According to Dr. Gargi the aforesaid two injuries were ante-mortem while ligature mark on the neck was post-mortem.

5. Viscera of the deceased was preserved and sent to Chemical Examiner for analysis. The skin removed from the site of the ligature mark was also preserved for histopathological examination by Pathology Department, Amritsar. The Chemical Examiner in his report stated that there was blood alcohol concentration of estimated 322.0 mgms/100 mls of blood. Alcohol and organophosphorous compound were detected in the viscera. The pathologist confirmed that there was no evidence of congestion and inflammatory exudate in the sections of the skin. On the basis of this report the doctors confirmed that the ligature mark around the neck of the deceased was post-mortem and other injuries were ante-mortem. In the opinion of Dr. Gargi the death was due to organophosphorous poisoning and alcohol. Dr. Prem Wadhwa, P.W. 12 who had examined the piece of Skin taken out from the neck of the deceased confirmed that the examination of the skin showed that the ligature mark at the seat of the skin indicated that it was a post-mortem mark.

5A. In the light of this evidence led at the trial the learned Sessions Judge, to whom the case was committed by the Committal court, came to the conclusion that the prosecution had brought home offence under Sec 302 I.P.C. to the appellant-accused. But as far as his mother, accused No.2 was concerned, She was given benefit of doubt. Learned Trial Judge rejected the theory propounded by the defence that the deceased had committed suicide and had got herself strangled. It was on the other hand found that it was the accused that had administered poison to the deceased by mixing it with alcohol, which the deceased was made to drink, and consequently the appellant was sentenced to imprisonment for life. As noted earlier, the appellant carried the matter in appeal without any success and that is how he is before us in these proceedings.

6. **Rival Contentions**

Learned senior counsel for the appellant vehemently submitted that this is a case of circumstantial evidence and the chain of circumstances is not complete. He submitted that the appellant was at his clinic at the other village at that relevant time. That as he was recently blessed with a male child there was no occasion for him to murder his wife. That on the contrary the evidence showed that she was in a depressed state of mind and, therefore, there was all possibility of her committing suicide by hanging herself. It was next contended that in any case it was for the prosecution to bring home the charge of murder to the applicant. That there are varieties of organophosphorous compound and all may not be equally lethal. In any case there was no evidence on record to show that the trace of organophosphorous compound detected in the viscera of the deceased was sufficient to prove fatal and in the absence of such evidence led by the prosecution the benefit of doubt must go to the accused and not to the prosecution. In support of this contention reliance

examination of this witness. It is also pertinent to note that a young girl of 24 years, mother of an infant of two and a half months having allegedly taken half a bottle of liquor could not have remained in sense to hang herself later on by self-strangulation. The entire defence version, to say the least was preposterous and violated all, basic norms of probabilities and was an affront to common sense. Once the theory of suicide is ruled out it has to be held that deceased died a homicidal death in the residence of appellant who himself is a practising doctor. The medical evidence and the report of the Chemical Examiner clearly show that deceased Madhu Bala lost her life as a result of administration of organophosphorous compound mixed with alcohol. It is required to be noted that Madhu Bala who was a young Brahmin girl aged 24 and who had recently given birth to a male child who was two and a half months old, is found to have consumed half a bottle of liquor which contained the mixture of organophosphorous compound. The Chemical Examiner's Report showed that the blood alcohol concentration estimated the deceased could be said to have consumed about 400 cc of alcohol. Such type of dose would not have been voluntarily taken by her but would have been administered the dose.

- (iv) The Chemical Examiner's Report also shows that once that organophosphorous compound along with 400 cc of alcohol was administered to the deceased, the concentration of said compound went to such a high degree that it traveled in the blood stream and poison was detected in her blood sample No. IV, which was a sealed, bottle containing blood of the deceased. Thus, it could easily be seen that sufficient quantity of poison was administered to the deceased so that it could enter her blood stream and result in her death. Under these circumstances it is not possible to agree with the contention of learned senior counsel for the appellant that the prosecution had failed to bring home to the accused the charge of having administered sufficient quantity of poison which could prove fatal. In fact, it has proved fatal.
- (v) The administration of poison to the deceased could not be treated by way of accident or a voluntary act on her part as she by herself would have no occasion to commit suicide leaving her male son of two and a half months in the lurch.
- (vi) It is also well established that the appellant was a medical practitioner having two clinics. Therefore he had every facility and opportunity coupled with the knowledge that the lethal dose of huge quantity of poison, which by itself was very pungent, was required to be diluted by mixing it up with alcohol before it could be administered to anyone.
- (vii) The two ante-mortem injuries detected by the doctors on the body of the deceased clearly indicated that she had resisted before the intake of aforesaid quantity of alcohol mixed with poison. In this connection Dr. Gargi stated that he could not rule out the possibility of these injuries being result of a scuffle if the deceased resisted the administration of alcohol or organophosphorous compound. Consequently the aforesaid circumstances clearly proved that death of Madhu Bala was result of administration of alcohol and adequate quantity of organophosphorous compound which proved fatal.
- (viii) The accused had created a false evidence of hanging by rushing to the police on the same night of the

incident, which obviously was an attempt to sidetrack the investigating agency. This was a strong indicator about his guilty mind. Furnishing such false information to the police about the cause of death inevitably pointed to his guilt.

- (ix) His subsequent conduct of not immediately informing his in-laws and relatives of the deceased and his absconding from the scene of offence for couple of days till he was ultimately arrested which conduct though by itself might not be conclusive, becomes a clinching circumstance in the light of the aforesaid tell tale pre-existing circumstances well established on record and which clearly point an accusing finger to the appellant and no one else.
 - (x) In the household of the appellant apart from his wife, the deceased and the co-accused his mother who is acquitted, there was his younger brother who in no circumstances could be alleged to have committed this heinous crime. By a process of elimination, therefore, it was appellant doctor who being dissatisfied with his in-laws and with his wife can be said to have liquidated her.
9. All the aforesaid circumstances, there-fore, must be treated to have represented a complete chain of circumstantial evidence leading to the inevitable conclusion that it was the accused and no one else who was responsible for this heinous crime which deprived a young woman of 24 years of her life at the threshold of existence and also in turn deprived a two and a half months old infant to his mother. Consequently, there is no escape from the conclusion that the prosecution has brought home to the appellant-accused the charge of murdering his wife beyond shadow of any reasonable doubt.

In the result this appeal fails and is dismissed.

Appeal Dismissed

CONCLUSION

This case highlights the importance of medical evidence in the absence of eyewitnesses in our inquisitorial system of inquest. Medical personnel undergoing the medicolegal and post mortem work should not take it granted that their evidence/ opinion is final, rather ours is an assisting agency to come to right conclusion by the court of law. It is the discretion of the Honourable court to take our opinion in its proper prospective in light of the other circumstances of the case. We wish to emphasis that medical fraternity should not be disheartened any way but should work with fairness and zeal, keeping themselves embarrassed with the latest knowledge of the subject and make proper conclusions so that the image and importance of this speciality can be improved further.