SUPREME COURT OF INDIA

Krishna Ghosh

Vs.

State of West Bengal

Crl.A.No…..of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

31.03.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court upholding the conviction of the appellant for offence punishable under Sections 498-A and 302 read with 34 of the *Indian Penal Code, 1860* (in short the `IPC'). The present appeal is filed by the appellant, husband of Yogmaya (hereinafter referred to as the `deceased'). A single appeal was filed by the present appellant and his mother-Gita Ghosh and unmarried sister Kalyani Ghosh A-3.

3. Prosecution version in a nutshell is as follows:

> "One Jiten Ghosh happens to be the de facto complainant of the instant case who lodged one written complaint with the local P.S. at Ranaghat on 24.07.1987 at 11.05 hours with a plea that his niece (sister's daughter) Yogmaya was married about 1 year 4 months ago with accused Krishna Ghosh after giving proper dowry. Krishna Ghosh, his mother Gita Ghosh and sister Kalyani Ghosh used to rebuke his niece on very trivial house-hold affairs as they did not like his niece as his niece used to intimate her agony to her parents and to him. They went to Yogmaya's in-law's house and used to pacify the matter and ameliorate the same for the benefit of the Yogmaya and thus the conjugal life of Yogmaya was not so peaceful.
>
> On 24.07.1987 when he had been to his field one Tentul Mondhal intimated him that the woman folk were weeping at his house and he came to learn from his daughter-in-law Asha Ghosh that his niece Yogmaya had died.
>
> Then he proceeded to the house of Yogmaya which was about one mile away from his house and found the dead body of his niece Yogmaya at the verandah of the house

of the accused covered with a cloth and the in-laws of Yogmaya were absconding at the relevant time. He came to learn from one Badli Ghosh, wife of Rishipada Ghosh, that on 23.07.1987 at about 8 p.m. she heard about the assault and crying and shouting of his niece Yogmaya but the persons of the locality could not enter into the house of the accused persons. On the relevant day, the dead body of Yogmaya was taken out by her mother-in-law and sister-in-law and one Brijbala and they fled away after covering the dead body with a cloth. After uncovering the cloth he found that Yogmaya sustained bleeding injuries on her ear, nose, left eye, back and leg. Yogmaya died due to assault and torture of her in-laws by chain.

Upon such complaint, the instant case germinated against the accused persons and the criminal law was set in motion after investigation and they came to the conclusion with the submission of charge-sheet against all the three accused persons under Sections 498A and 302 read with Section 34 IPC. Copies were duly supplied to the accused persons under section 207 of the *Code of Criminal Procedure, 1973* (in short the `Code') and the case was committed by the learned Magistrate to the Court of Sessions and the cognizance of the case was taken under Section 193 of Code and charges were framed in terms of section 228 (1) (b) of Code on 9th February, 1993.

Trial was held as the accused persons abjured guilt. Witnesses were examined and accused persons were examined under Section 313 of Code Learned Sessions Judge, Nadia held that the prosecution has established the accusations and directed conviction as noted above.

However, no separate sentence was imposed in respect of offence relatable to Section 498-A.
In appeal, the High Court found that the same was without merit and dismissed the same by the impugned judgment."

4. In support of the present appeal, learned counsel for the appellant submitted that the case rests on circumstantial evidence and the circumstances do not establish the guilt of the accused.

5. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

6. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan*[1]*; Eradu and Ors. v. State of Hyderabad*[2]*; Earabhadrappa v. State of Karnataka*[3]*; State of U.P. v. Sukhbasi and Ors.*[4]*; Balwinder Singh v. State of Punjab*[5]*; Ashok Kumar Chatterjee v. State of M.P.*[6].) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v.*

State of Punjab[7], it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

7. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Ors. v. State of A.P.*[8], wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature.
>
> Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence.
>
> Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

8. In *Padala Veera Reddy v. State of A.P. and Ors.*[9], it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

9. In *State of U.P. v. Ashok Kumar Srivastava*[10], it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

10. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on

the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled of the right to be acquitted".

11. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

12. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*[11], wherein it was observed thus:

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

13. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*[12]. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned `must' or `should' and not `may be' established;
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> (3) the circumstances should be of a conclusive nature and tendency;
>
> (4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

14. These aspects were highlighted in *State of Rajasthan v. Raja Ram*[13], *State of Haryana v. Jagbir Singh and Anr.*[14], Kusuma Ankama Rao v State of A.P. (Criminal Appeal No.185/2005 disposed of on 7.7.2008) and Manivel and Ors. v. State of Tami Nadu (Criminal Appeal No.473 of 2001 disposed of on 8.8.2008).

15. The evidence of PWs 1, 2, 4, 7, 8 and 14 clearly establish that the body was found in the matrimonial home of the deceased with injuries noticed by them which fit in with the evidence of the Autopsy Surgeon (PW-15). The evidence of PWs 2, 4, 7 and 8 throw considerable light on the controversy. The death took place within one year and four months of the marriage in the house of the accused persons and the dead body was found with injuries. At the relevant time the accused persons were absconding which is of considerable importance. The plea of alibi set up by the present appellant has been discarded because there was no material to substantiate such plea. The trial Court and the High Court have analysed this aspect in great detail. From the evidence of PWs 2, 4, 7 and 8 it is seen that the accused persons were absconding since the date of incident when the dead body of the deceased lay in her matrimonial home. PW-14 the Investigating Officer's evidence was to that effect. The High Court has rightly noted that the conduct of the accused appellants before it had a striking feature in the absence of any reasonable explanation and is an inculpating circumstance against them. The injuries on the dead body were noticed by several witnesses e.g. PWs 1, 2, 4, 7 and 8. The autopsy examination on the dead body of the deceased revealed the following injuries: 1. Nail marks (illegible) in shape four in numbers over left side of the neck placed one below the other and extended laterally and other marks over the right side of the neck, aclymorsis over the front of the neck. On direction extravagation of the blood found in the muscles of the neck and fractures of the (illegible) cartilage found. 2. Multiple abrasion and aclynorsis of the varying sizes are seen over the back and different parts of the body both appear and lower (illegible).

16. According to the doctor the death was due to asphyxia resulting from throttling which was ante mortem and homicidal in nature.

17. Above being the position we find no merit in this appeal which is accordingly dismissed.

[1]*AIR (1977 SC 1063* [2]*AIR 1956 SC 316* [3]*AIR 1983 SC 446* [4]*AIR 1985 SC 1224*
[5]*AIR 1987 SC 350* [6]*AIR 1989 SC 1890* [7]*AIR 1954 SC 621* [8]*(1996) 10 SCC 193*
[9]*AIR 1990 SC 79* [10]*(1992 Crl.LJ 1104)* [11]*AIR 1952 SC 343* [12]*AIR 1984 SC 1622*
[13]*(2003 (8) SCC 180)* [14]*(2003 (11) SCC 261)*