SUPREME COURT OF INDIA

Arvindkumar Anupalal Poddar

Vs.

State of Maharashtra

Crl.A.No.53 of 2010

(Swatanter Kumar and Fakkir Mohamed Ibrahim Kalifulla, JJ.)

26.07.2012

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla, J.

1. Accused No.1 is the appellant. The appeal is directed against the judgment of the High Court of Bombay in Criminal Appeal No.564 of 2006 dated 24.4.2008. By the judgment of the trial Court dated 25 & 28.11.2005 the appellant was convicted and sentenced to undergo life imprisonment apart from imposition of fine along with accused No.2 for offences under Section 302 read with Section 34, Indian Penal Code, and for causing disappearance of evidence under Section 201 read with Section 34, IPC and fine of Rs. 5,000/-each was also imposed and in default to suffer further rigorous imprisonment in custody. Both the accused preferred appeals before the High Court and the appeal preferred by accused No.2 in Criminal Appeal No.563 of 2006 was allowed and he was acquitted of the charges punishable under Section 302 and 201, IPC while the appellant's appeal came to be dismissed confirming the conviction and sentence imposed on him by the learned Sessions Judge.

2. The case of the prosecution was that deceased Sita Devi was the first wife of the appellant, that on the date of occurrence, namely, on 06.12.2001 at 8 a.m. the appellant was seen going along with the deceased Sita Devi and accused No.2, who is none other than his brother. According to Sachidanand Baleshwar (PW-1) who is closely related to the deceased, the appellant told him that he is going with his wife for a stroll. It was stated that the appellant and A-2 were seen in the evening and the deceased was not with them at that time while their clothes were blood stained. On the next day, i.e. on 07.12.2001, appellant stated to have proclaimed that the deceased ran away from the matrimonial home.

3. On 08.12.2001, it was noticed that the appellant and his family were in the process of leaving the village by packing all their materials, the same was informed to Malvani police station, that PW-3 Sub-Inspector of Police of Malvani police station went to the residence of

the appellant by around 12 noon when he was informed that the deceased was missing for the last two days and that the appellant and his second wife were planning to run away from the village. According to PW-3 the appellant informed that he took the deceased on 06.12.2001 in the morning to Gorai Creek where she was killed by him with the aid of a knife. PW-3 stated to have forwarded the complaint based on the information gathered by him to Borivali police station since the place of occurrence fell within their jurisdiction. All the papers stated to have been transferred around 1-1.30 p.m. along with the accused to the said police station.

4. Subsequently, at the instance of PW-4, A-2 was also stated to have been apprehended through whom the clothes were also seized. At the instance of the appellant, the dead body of the deceased Sita Devi was stated to have been fished out from Gorai Creek and the same was found to have been lying entangled in the weeds and parts of the body were also found to have been eaten away by aquatic animals. PW-1 stated to have identified the body with the aid of toe ring and the petticoat of the deceased. The motive for the alleged offence was stated to be that both the wives of the appellant were indulging in frequent fights which irked the appellant and this ultimately resulted in the killing of his first wife Sita Devi.

5. The appellant and his brother A-2 were tried for offences under Section 302 read with Section 34, IPC as well as Section 201 read with Section 34, IPC. As stated earlier while the conviction and sentence imposed on the appellant came to be confirmed by the impugned common order of the High Court, the conviction and sentence imposed on the second accused came to be set aside for want of proof. For the prosecution, PWs 1 to 10 were examined and Exhibits 1-26 were marked. When the accused were questioned under Section 313 Cr.P.C. they simply denied the offence alleged against them. None was examined on the defense side. It was, therefore, based on the circumstances which linked the appellant to the death of the deceased, the conviction and sentence came to be imposed on him.

6. Assailing the judgment impugned in this appeal the learned counsel for the appellant contended that since the body of the deceased was found in mutated condition; half of which was eaten away by aquatic animals, the identification of the same was not proved. Learned counsel, therefore, contended that the conviction of the appellant based on such slender evidence cannot be sustained. The learned counsel also contended that there were very many missing links in the chain of circumstances and, therefore, the conviction imposed on the appellant is liable to be set aside.

7. As against the above submissions, learned counsel appearing for the respondent State submitted that the appellant was last seen with the deceased on 06.12.2001 by PW-1, that he was also seen on the same evening with blood stained clothes when the deceased was not found along with him, that at the instance of A-2 blood stained clothes were recovered as

stated by PW-4 and that the theory of running away of the deceased from the matrimonial home was never pleaded before the Courts below. Learned counsel also contended that at no point of time the appellant disputed the identity of the body of the deceased in the course of trial. It was, therefore, contended that if the deceased had run away from the matrimonial home, it was for the appellant to explain the said situation in a satisfactory manner which the appellant failed to do. Learned counsel, therefore, contended that the impugned judgment does not call for interference.

8. Having heard learned counsel for the appellant as well as the respondent and having perused the judgment impugned in this appeal and all other material papers placed before us, we are also convinced that there is no merit in this appeal. The chain of circumstances noted by the Court below and approved by the High Court were that the deceased was last seen on 06.12.2001 at 8 a.m. along with the appellant and his brother, that even according to the appellant he was going to Gorai Creek for a stroll with his first wife, namely, the deceased Sita Devi, that when on the evening of the same day, the accused alone returned leaving behind the deceased and their clothes were found to be blood stained they were questioned as to the whereabouts of the deceased to which the appellant stated that she ran away from the home. The knife used was stated to have been recovered through the I.O. PW-2, the landlady in her evidence stated that she used to hear the frequent fights of the appellant with the deceased Sita Devi, that when the appellant was making preparations to leave the village on 08.12.2001, on suspicion the information was sent to the police and, at the instance of the appellant, the body of the deceased was recovered in a decomposed state from the Creek. PW-5 the doctor who did the post mortem on 09.12.2001 at about 5.30 p.m. noted the following injuries:-

> "Extemal Injuries: Swelling and bloating of trunk eyes. Eyes absent due to PM animal bites. Soft portions of face like lips, ear, nose, cheek portions eaten by animals. Tongue inside mouth. There is a mouth gag of blouse portion inside mouth inserted from left of mouth (corner). Column 16-position of limbs Lower extremities straight Left forehead from elbow joint present and preserved but remaining portion up to shoulder joint muscular part eaten by animals. Right humeros without muscles was present/lower forehead absent missing. A- Except cervical verterbra all neck soft tissues and organs missing. B- Sternum alongwith ribs upto costo chondrai junction missing.- from L/3 of oesohaus present. 1) 3 cm x 0.5 cm incised would cut mark seen over C4/5 verterbra body obliquely placed inflittration staining seen at the marginer. 2) 1.0 cm x 0.5 cm IW of 0.5 cm x 0.5 cm over middle phalex of left thumb over palmer surface. Internal injuries:

"1) Brain Membrance loose, matter softened due to advanced decomposition. Liquefying stag. Thorax walls, ribs, cartilages absent as 17,13 order ribs loosed out and displaced.Pleura, Larynx, Trachea and Bronchi missing due to animal bites. Abdomen-stomach and its contents L/3 onwards preserved alongwith stomach The following items were kept back for C.A. and blood grouping:

1. Stomach and intestine

2. Liver/Spleen/Kideny for C.A.

3. Hairs, two teeth alongwith roots and lower end of hammerous bones for blood grouping.

4. Skull preserved for superimposition technique."

9. According to PW-5, the death of the deceased was due to the cut injury in her throat and neck and the other injuries which were found to be fatal. He also opined that such injuries could have been caused by a sharp edged weapon like the one marked in the case. The suggestion that the injuries could have been caused if the person had fallen on a blunt surface was 'denied'. The clothes seized from the appellant were found to contain human blood.

10. The circumstances narrated above clearly establish the guilt of the appellant in the killing of the deceased who was his first wife and he had a clear motive to eliminate her since there were constant fights between the deceased on the one side and the appellant and his second wife on the other which he could not tolerate.

11. As in the case on hand conviction imposed on the appellant is only based on circumstantial evidence, we feel that the various decisions of this Court laying down the principles of appreciating the circumstantial evidence while imposing the sentence can be highlighted. The earliest case on this subject was reported as Hanumant *Govind Nargundkar & Anr. v. State of Madhya Pradesh*[1].In para 10, the position has been succinctly stated as under:

"10. xxx xxx xxx xxx. 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 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. In spite of the forceful arguments addressed to us by the learned Advocate-General on behalf of the State we have not been able to discover any such evidence either intrinsic within Ex.P-3A or outside and we are constrained to observe that the Courts below have just fallen into the error against which warning was uttered by Baron Alderson in the above mentioned case. The decision in Hanumant Govind (supra) was followed in the Constitution Bench decision of this Court reported as *Govinda Reddy Krishna & Another v. State of Mysore*[2].The said position was subsequently reiterated in the decision reported as *Naseem Ahmed v. Delhi Administration*[3].In para 10 of the decision in Naseem Ahmed (supra), the legal position has been stated as under:

"10. This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by clear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in isolation and divorced from the context of the over all picture emerging from a consideration of the diverse circumstances and their conjoint effect may by them selves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect. If a person is seen running away on the heels of a murder, the explanation that he was fleeing in panic is apparently not irrational. Blood stains on the clothes can be attributed plausibly to a bleeding nose. Even the possession of a weapon like a knife can be explained by citing a variety of acceptable answers. But such circumstances cannot be considered in water-tight compartments. If a person is found running away from the scene of murder with blood-stained clothes and a knife in his hand, it would in a proper context, be consistent with the rule of circumstantial evidence to hold that he had committed the murder. In the decision reported as *Sharad Birdhichand Sarda v. State of Maharashtra*[4]this Court has laid down the cardinal principles regarding appreciation of circumstantial evidence and held that whenever the case is based on circumstantial evidence, the following features are required to be complied with which has been set out by this Court in para 153 at page 185 which reads as under:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1)The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the following observations were made [SCC para 19, p.807: SCC (Crl.) p. 1047]. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions. (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."The above principles have been followed and reiterated in the recent decision of this Court reported as *Mustkeem @ Sirajudeen v. State of Rajasthan*[5].In the decision reported in *Rukia Begum & Ors. v. State of Karnataka*[6]his Court again restated the principles as under:

"17. In order to sustain conviction, circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard- and-fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case.

18. Here in the present case the motive, the recoveries and ascendance of these appellants immediately after the occurrence point out towards their guilt. In our opinion, the trial Court as also the High Court on the basis of the circumstantial evidence rightly came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt so far as these appellants are concerned. When we apply the above principles to the case on hand, the circumstances stated by the trial Court and concretized by the High Court, namely, were that the deceased and the accused were last seen together on 06.12.2001 as per the

version of PWs 1 and 6, the body of the deceased was recovered at the instance of the appellant as stated by PW-7, the recovery of knife by the I.O. from the place of occurrence, the frequent quarrels between the deceased and the accused as stated by PWs 1 and 2, the theory of the deceased having run away from the matrimonial home not properly explained by the appellant apart from the fact that no steps were taken by him to trace his wife, the weapon used, namely, the knife containing blood stains, that the nature of injuries found on the body of the deceased, that as per the version of PW-5, the post mortem doctor, the death was homicidal and that the injuries could have been caused with the weapon marked in the case, that the appellant wanted to flee from the town itself and that the clothes seized from the appellant were found containing human blood. When the above circumstances relied upon by the Courts below for convicting the appellant are examined, we find that the principles laid down by this Court in the above referred to decisions are fully satisfied. The circumstances narrated above as held by the Courts below were all established without any doubt and are conclusive in nature. They were not explainable with any other possibilities. The circumstances are consistent which leads to the only hypothesis of the guilt of the appellant alone and none else and the said circumstances exclude every other hypothesis and show that in all probabilities, the killing of the deceased could have been done only by the appellant. The motive along with the chain of circumstances stood proved against the appellant only go to show that the appellant alone was responsible for the killing of the deceased. The appellant has miserably failed to show any missing link in the chain of circumstances demonstrated by the prosecution for the offence alleged against him. We are in full agreement with the above conclusions of the High Court and we find no good grounds to interfere with the same. As rightly argued by learned counsel for the respondent the appellant did not dispute the identity of the body at any point of time, that he did not state any thing in the course of 313 questioning about the running away of his wife and that there was no missing link in the chain of circumstances demonstrated before the Courts below. If according to the appellant the deceased ran away from the matrimonial home he should have established the said fact to the satisfaction of the Court as it was within his special knowledge. In this context it will be worthwhile to refer to the recent decision of this Court reported as *Prithipal Singh & Ors v. State of Punjab*[7].In para 53, it has been held that a fact which is especially in the knowledge of any person then the burden of proving that fact is upon him and that it is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Having regard to our above conclusions, we do not find any merit in this appeal. The appeal fails and the same is dismissed.

Judgment Referred

[1]*AIR 1952 SC 0343*
[2]*AIR 1960 SC 0029*

[3]*1974 3 SCC 0668*
[4]*1984 4 SCC 0116,*
[5]*2011 11 SCC 0724*
[6]*2011 4 SCC 0779*
[7]*2012 1 SCC 0010*