REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 426 OF 2009
(Arising out of SLP (Crl.) No. 3239 of 2007)

Riyojoddin Rafiyoddin Shaik ….Appellant

Versus

State of Maharashtra Rep. by Public Prosecutor ….Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of Bombay High Court, Aurangabad Bench, dismissing the appeal filed by the appellant who was convicted for offences punishable under Sections 302 and 498-A of the Indian Penal Code, 1860 (in short the 'IPC'), so far as the

conviction under Section 302 IPC is concerned, while directing acquittal in respect of offence punishable under Section 498-A IPC. Seven persons faced trial before the learned Additional Sessions Judge, Amalner.

3. Brief facts giving rise to the prosecution are as under:

Akbarbeg (PW-4) is the father of Sayarabi (hereinafter referred to as the 'deceased'). The marriage of the deceased Sayarabi with accused No.5 Riyazoddin, present appellant was preferred one year back. Accused Nos.1 and 2 are the parents and accused Nos.3 and 6 are the brothers of accused No.5. Accused No.4 is the wife of accused No.3.

It was alleged that the accused were giving ill treatment to deceased Sayarabi during the period of her stay in the matrimonial house at Parola, Dist. Jalgaon. The accused No.5-appellant was abusing and beating the deceased Sayarabi. Accused Nos.1 and 2 had brought the deceased to her parent's house at village Dherangeon Tal Onerrangaon Dist. Jalgaon three months back. Deceased disclosed about her ill treatment at the hands of accused to her relatives.

On 12.5.1996 the marriage of niece of P.W.4 Akbarbeg was performed at Dharangaon. Accused No. 3 and 5 had attended the said marriage. They demanded Rs.2000/- for the construction of a house from P.W. 4 Akberbeg. He expressed his inability to pay the amount.

On 20.5.1996 the deceased was sent to stay at her matrimonial house along with accused 1 and 2. On 25.5.1996 at about 2.00 midnight P.W.4 Akbarbeg received the message through police about the serious condition of the deceased. Thereafter he along with his relatives paid visit to the matrimonial house of his deceased daughter. He saw the dead body of his daughter with burn injury in her matrimonial house. He found kerosene smell on the hair and half burnt cloth.

Ramesh (PW-1) the Police Patil of Parola lodged an occurrence report to the police. On the basis of his report A.D. bearing No. 35/96 was registered. Inquest panchanama on the dead body was prepared on 25.5.1996 in A.D. case. Spot panchanama was also prepared in A.D.Case. Dead body was sent for conducting the post mortem to the cottage Hospital, Parola.

Akberbeg came to know through his relative Rahanabi (PW-5) that the accused No.5 committed the murder of the deceased by pouring kerosene oil on her person and setting her on fire. Accused Nos.1 to 4 and 6 abetted the accused No.5 in the commission of murder of the deceased. P.W.4 Akberbeg lodged the complaint dated 25.5.1996 alleging ill-treatment to the deceased prior to 25.5.1996 and committing her murder on 24.5.1996 at about 11-00 P.M.

On the basis of his complaint crime bearing No.121/1996 was registered with Parola Police station at about 1.00 p.m. M.D. Patil (PW-11) carried out the investigation of the crime. On 27.5.1996, he sent the seized articles for examination to the C.A. Aurangabad. After the completion of investigation on 14.8.1996 he submitted the charge sheet against the accused for the offences as stated above to the learned Judicial Magistrate, First Class. Parola.

The learned Judicial Magistrate, First Class, Parola by an order dated 21.8.1996 committed the case to the Additional Sessions Judge, Amalner, as the offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions.

In Sessions case charge was framed against accused Nos.1 to 6 for the offence punishable under Section 498-A read with section 34 IPC and against accused Nos.1 to 4 and 6 under Section 302 read with Section 114 IPC.

The charge was read over and explained to the accused in vernacular. They pleaded not guilty and claimed to be tried. The defence of the accused is that the house caught fire due to short circuit. Deceased sustained burn injury on account of house catching fire in a short circuit.

The trial Court directed acquittal of A-1 to A-4 and A-6 but held the present appellant guilty of offence punishable under Sections 302 and 498-A IPC. In appeal, as noted above the High Court found that the accusations so far as Section 498-A are concerned are not established, but the evidence was sufficient to hold the appellant guilty of offence punishable under Section 302 IPC.

4. In support of the appeal, learned counsel for the appellant submitted that there was no direct evidence and the prosecution case was based on

circumstantial evidence. The circumstances highlighted do not lead to conclude about the guilt of the accused.

5. Learned counsel for the State on the other hand supported the judgment.

6. The circumstances highlighted by the trial Court and the High Court are essentially as follows:

(i) The appellant was residing with his wife.

(ii) Death of wife at odd hours (midnight) and in unnatural manner.

(iii) Kerosene smell in the body and articles around the body.

(iv) False defence (i.e. fire by short circuit).

7. Learned counsel for the appellant submitted that there is no evidence to show that the deceased was sprinkled with kerosene. The evidence clearly established that there was no homicidal death and it was due to short circuit of electricity.

8. 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 AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). 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 (AIR 1954 SC 621), 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.

9. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, 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....".

10. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), 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.

11. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 1104), 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.

12. 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 as of right to be acquitted".

13. 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.

14. In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343), 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."

15. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). 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.

16. These aspects were highlighted in State of Rajasthan v. Raja Ram (2003 (8) SCC 180), State of Haryana v. Jagbir Singh and Anr. (2003 (11) SCC 261), 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).

17. The doctor (PW-8) clearly stated that the dead body was totally burnt and was smelling of kerosene and the cause of death was due to burns and shock. It was also opined that the injuries found on the dead body were sufficient in the ordinary course of nature to cause death and by pouring kerosene the injury as mentioned in Column No.17 of P.M. Notes Exh.78 would be caused. The circumstances highlighted by the prosecution as analysed in detail by the trial and High Court clearly established the guilt of the accused. That being so, there is no merit in this appeal which is accordingly dismissed.

……..J.
(Dr. ARIJIT PASAYAT)

……...J.
(ASOK KUMAR GANGULY)

New Delhi,

March 03, 2009