REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 373 OF 2006

BIRENDER PODDAR ... Appellant

VERSUS

STATE OF BIHAR ... Respondent

J U D G M E N T

GANGULY, J.

Initially four persons filed the special leave petition but as three of them, namely, Petitioner Nos. 1, 2 and 3 refused to surrender, their special leave petition stood dismissed by an order dated 05.01.2004.

Leave was granted in respect of the present appellant on 27.03.2006.

This appeal which is now surviving only at the instance of Birender Poddar, the husband of the deceased woman, is directed against the concurrent judgment and order of his conviction. In the Sessions Trial No. 380 of 1994, the appellant stood convicted under Section 302/34 of the Indian Penal Code and was sentenced to suffer imprisonment for life. The appellant was also convicted under Section 498-A of the Indian Penal Code and was sentenced to suffer two years rigorous imprisonment, sentence to run concurrently. The High Court on appeal, affirmed the conviction and the sentences.

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We have gone through the records of the case carefully and also the judgment of the High Court and also of the learned Sessions Judge.

The learned counsel for the appellant in support of the appeal raised several contentions. His main contention is that there is no direct evidence in the case. He further submitted that there is substantial contradiction in the matter of identification of the dead body. He also submitted that out of the several witnesses cited by the prosecution, PWs 1, 2 and 3 have turned hostile and the other witnesses, namely, PWs 5, 6, 7 and 8 are relations and interested witnesses. The learned counsel further submitted that there is substantial contradiction in this matter between the medical evidence and the oral evidence. He, therefore, submitted that in the facts of this case, the conviction against the appellant should be quashed and considering the fact that he has been in custody for all these years, he should be set free immediately.

Learned counsel for the appellant has further raised a defence that the deceased died a natural death as she was suffering from jaundice. Learned counsel further urged that the entire evidence on which the prosecution relied consists of evidences of interested persons who are related with the deceased woman.

The learned counsel for the State supporting the concurrent findings of the Sessions Court and that of the High Court urged that there is no contradiction in the material part of the prosecution case and the defence taken by the appellant has not at all been proved. Learned counsel further submitted that the evidences of the so-called hostile witnesses do not support the defence version of the case and there is no discrepancy in the material part of the prosecution case and both the courts, especially the High Court, have correctly appreciated the facts of the case.

It is obviously true that this case rests solely on circumstantial evidence. It is true that in cases where death takes place within the matrimonial home, it is very difficult to find direct evidence. But for appreciating circumstantial evidences, the court has to be cautious and find out whether the chain of circumstances led by the prosecution is complete and the chain must be so complete and conclusive as to unmistakably point to the guilt of the accused. It is well settled that if any hypothesis or possibility arises from the evidences which is incompatible with the guilt of the accused, in such case, the conviction of the accused which is based solely on circumstantial evidences is difficult to be sustained.

(See AIR 1952 SC 343 'Hanumant Govind Nargundkar and another v. State of Madhya Pradesh', AIR 1954 SC 621 'Bhagat Ram v. State of Punjab' and AIR 1956 SC 316 'Eradu and others v. State of Hyderabad')

Following the aforesaid time honoured principles, if we look into the facts of the case, we find from the evidence of PWs 5, 6, 7 and 8 on which the prosecution relied that there is consistent evidence of ill-treatment of the deceased. There is also evidence of beating and injury mark on the deceased. There is consistent evidence that the appellant had an illicit relation with one Janki Devi, who is the wife of the brother of the appellant, and as the deceased was complaining of such illicit relations of the appellant with that lady, she was subjected to torture. Some letters were written by the deceased to the PW-8 complaining of such ill-treatment, one of which has been made an exhibit (Exhibit 1).

Now coming to the question of the defence version which has been taken by the appellant, we find that the defence of the appellant that the deceased was suffering from jaundice has not been proved at all. There is no evidence on record that the deceased was treated for jaundice. There is no pathological report nor is there any medical subscription of any drug being administered on the

deceased for treatment of jaundice. The only evidence on

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which the defence relies in support of the defence case that the deceased was suffering from jaundice and was given some treatment is the evidence of PW-12 Mohd. Naseem. PW-12, in his evidence, did not claim that he is a medical practitioner. He did not give any evidence of his qualification. He merely claims that he is an in-charge Medical Officer of primary health centre, Khagania. In his evidence also, PW-12 did not depose that the deceased was suffering from jaundice. He merely stated that, for treatment, the deceased was referred to Patna on 02.09.1993. These being the sum total of the evidence adduced by the appellant in support of the defence, we reach the same conclusion which was reached by the High Court that such defence is not at all worthy of any credence.

As against that, there is clear evidence on record of Doctor Raja Rajeshwar Prasad Singh(PW-9), the post-mortem doctor and from the postmortem report which is Exhibit-4, the following injuries appear on the dead body of the deceased: -

> "(i) Incised injury in the front of neck at the level of Thyroid Cartilage-4"X2"X2". Trachea has been completely cut. Right and left internal (illigible) and external (illigible), internal (illigible) vein were cut.
> (ii)Incised injury on the upper part of right

side of abdomen through which small intestine was out. Size injury 3″X2″ communicating with the abdomen.″ (Quoted from the paper book)

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These injuries are sufficient to cause death.

Judging the said material on record as against the so-called defence case of the accused, the High Court opined, in our view rightly, that the defence case is wholly inconsistent with the material on record and it is a case of homicidal death in the matrimonial home.

Dealing with the question of identification of the dead body, we find that the High Court concluded that there was positive evidence of identification, not only by the father of the deceased woman (PW-8) but also by her cousin and her own brother, that is PWs 5 and 7. The High Court has noted that it may be true that there was patrification in the dead body having regard to the time gap between the death and the postmortem report but there is nothing in the postmortem report to suggest that the body was beyond identification. The High Court has noted that there is no such suggestion given to the doctor in his cross examination on behalf of the appellant. The High Court has noted the fact that the hospital authority gave the custody of the dead body to the father of the girl and thereafter the body was cremated. In view of such clear finding based on the materials on record, we do not find that there is

any inconsistency in the evidence about the identification of the dead body.

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Now coming to the question of reliance by the prosecution on witnesses who are related to the deceased, we find that the law is well-settled that merely because the witnesses are related is not a ground to discard their evidence. On the other hand, the court has held that in many cases, the relations are only available for giving evidence, having regard to the trend in our present society, where other than relations, witnesses are not available. It is of course true that the evidence of the interested witnesses have to be carefully scrutinised. We find that the High Court has scrutinised the evidence of the relations with due care and caution.

In this connection, the learned counsel for the appellant has relied on a few decisions of this court. Reliance was placed on the decision of this Court in the case of *Rajendra and Another* v. *State of Uttar Pradesh* [(2009) 13 SCC 480]. In that case, though in the F.I.R., throttling was alleged and no injury mark was found on the neck of the deceased and the Doctor in cross examination suggested the possibility of suicide, this Court held that in such a case holistic approach should be taken (Para 10)

and ultimately dismissed the appeal. We are of the view that the said decision does not, in any way, render any assistance to the appellant in this case.

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Two other decisions which have been cited by learned counsel for the appellant were rendered in the case of *Namdeo* v. *State of Maharashtra* [(2007) 14 SCC 150] and in the case of *State of Maharashtra v. Ahmed Shaikh Babajan and Others* [(2009) 14 SCC 267] which dealt with the question of appreciation of evidence of interested witnesses. Both those decisions follow the well-settled principle that just because evidence is given by the interested persons that is no ground for discarding the same. We have already held that in the instant case, the evidence given by PWs 5, 6, 7 and 8 is quite cogent and clearly established the prosecution case.

We, therefore, do not discern any error in the appreciation of their evidence either by the trial court or by the High Court. That being the position, we find no reason to interfere with the concurrent finding referred to above.

The appeal is, therefore, dismissed.

....., J.
[ASOK KUMAR GANGULY]

....., J.
[DEEPAK VERMA]

NEW DELHI;
MAY 16, 2011.