CASE NO.:
Appeal (crl.) 641 of 1998

PETITIONER:
State of Madhya Pradesh

RESPONDENT:
Sanjay Rai

DATE OF JUDGMENT: 25/03/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

State of Madhya Pradesh calls in question legality of the judgment rendered by a Division Bench of the Madhya Pradesh High Court directing acquittal of the respondent by upsetting judgment of conviction recorded by the Trial Court. The Trial Court found the respondent (hereinafter referred to as 'the accused') guilty of offences punishable under Section 302 of Indian Penal Code, 1860 (in short 'the IPC') and sentenced to undergo life imprisonment and a fine of Rs.200/- in addition to sentence of three years RI imposed for offence punishable under Section 201 IPC and fine of Rs.200/- with default stipulation for fines.

Prosecution version in a nutshell is as follows:

Anita Bai (hereinafter referred to as the 'deceased') was married to the accused on 14.12.1990 at Allahabad (U.P.) whereafter she came to Dhanpuri along with the accused on 15.12.1990. Anita Bai died on 25.12.1990 at Dhanpuri in her room in their house. Written report about the incident (Ex.P-14) was lodged by the accused at P.S. Amlai, District Shahdol on 25.12.1990 at about 11.40 p.m. It was reported in Ex.P-14 by accused Sanjay Rai that he had gone to the house of one Rajendra Sharma and had returned from there at about 9.00 p.m. and went to his room. The room was bolted from inside. On being pushed, the latch fell down and the door opened. He found that his wife, deceased, was hanging from the bolt of the almirah, upon which he caught hold of her by the waist and called his father, who cut the piece of cloth by which she was hanging. Thereafter, Dr. Gautam (PW-1) and Dr. Pathak (PW-2) were called, who advised them to take Anita to the hospital where she was declared dead. On the basis of the above report, FIR (Ex.P-15) was recorded. Inquest report was made and dead body was sent for post-mortem examination which was conducted by two doctors (PW-6 and PW-12). Four injuries were found on the dead body of the deceased.

The investigating officer made a query from the doctor as to whether in case of hanging, ligature marks may be absent. The doctor gave opinion that even in case of hanging ligature marks may be absent and the presence of ligature marks would depend upon the nature of ligature and the time for hanging. It was also found that asphyxia could have resulted even if the body was hanging by a piece of cloth

which was cut immediately after the hanging. During investigation, it came to light that the respondent-accused and his parents who also faced trial with the accused were treating the deceased with cruelty on account of unfulfilled demand of dowry. Initially, the investigation started on the background of offence relatable to Section 306 read with Section 34 IPC. On completion of investigation, charge sheet was placed and the respondent-accused and his parents faced trial. They pleaded innocence.

The accused persons faced trial for alleged commission of offences punishable under Sections 302, 304B and 201 IPC. All the three accused persons including respondent were found not guilty of offences relatable to Sections 302 and 201 IPC. The parents of the respondent were also found to be not guilty of offence relatable to Section 302 IPC. So far as respondent is concerned, the conviction was made, as afore-noted and sentences imposed.

An appeal was preferred by the State before the High Court which by the impugned judgment held the respondent-accused to be not guilty. It was found that the case was based merely on circumstantial evidence and there was no clinching material to substantiate all or any of the continuous link of incriminating circumstances and show that the respondent was guilty of the alleged offences. Several factors were taken note of. Firstly, the respondent-accused and his father immediately after the occurrence called the doctors PW-1 and PW-2. There was no motive for killing as the alleged demand of dowry was not established and for that reason the Trial Court itself had directed acquittal of the accused persons from the allegations relatable to Section 304B. The High Court also noted that there was no evidence of any strangulation, as was held to have been done by the respondent-accused. The Trial Court wile discarding the evidence of the doctor referred to some authorities to discard the evidence of the doctor. Holding the evidence to be not sufficient to fasten the guilt on the accused, acquittal was directed.

In support of the appeal, learned counsel for the appellant-State submitted that the Trial Court had analysed the evidence in its proper perspective and had held the accused to be guilty. The High Court was not justified in holding that the circumstances were not sufficient to establish guilt of the accused. The circumstances presented unerringly pointed out at the guilt of the accused.

In response, Mr. Sushil Kumar, learned senior advocate for the respondent submitted that the Trial Court had proceeded on surmises and conjectures and, therefore, the High Court was justified in directing acquittal.
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.

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....".

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.

In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl. L.J. 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.

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".

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.

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."

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 merely 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 compete 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 only circumstance which the Trial Court relied upon to hold guilt was by referring to some text books on medical jurisprudence. With reference to them it was held that case of strangulation was clearly made out.

It cannot be said that the opinions of these authors were given in regard to circumstances exactly similar to those which arose in the case now before us nor is this a satisfactory way of dealing with or disposing of the evidence of an expert examined in this case unless the passages which are sought to be relied to discredit his opinion are put to him. This Court in Sunderlal v. The State of Madhya Pradesh (AIR 1954 SC 28), disapproved of Judges drawing conclusions adverse to the accused by relying upon such passages in the absence of their being put to medical witnesses. Similar view was expressed in Bhagwan Das and another v. State of Rajasthan (AIR 1957 SC 589). Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given.

Apart from that, even if on the hypothetical basis it is held that doubt could arise on the basis of strangulation, in the absence of any evidence whatsoever to connect the respondent-accused with the act of strangulation, the conclusions of the Trial Court could not have been maintained and the High Court which is entitled to re-appreciate the evidence could and has rightly discarded it.

There is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. No doubt a miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh (2002 (2) Supreme 567). The principle to be followed by Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so in order

to prevent miscarriage of justice resulting therefrom. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it would be a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahebrao Bobade and Anr. v. State of Maharashtra (AIR 1973 SC 2622), Ramesh Babulal Doshi v. State of Gujarat (1996 (4) Supreme 167), Jaswant Singh v. State of Haryana (2000 (3) Supreme 320), Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152), State of Punjab v. Karnail Singh (2003 (5) Supreme 508), State of Punjab v. Pohla Singh and Anr. (2003 (7) Supreme 17) and Suchand Pal v. Phani Pal and Anr. (JT 2003 (9) SC 17). In our view no such error can be said to have been committed by the High Court, nor any other infirmity to undermine the legality and propriety of the findings of the High Court, warranting our interference has been substantiated, in this case.

The inevitable result of this appeal is dismissal, which we direct.