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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 294/2017**

BHUPENDER SINGH

..... Appellant

Through

Mr.R.M.Tufail, Ms. Astha,Mr.Farooq
Chaudhary and Mr. S.S.Tomar,
Advocates

versus

STATE OF DELHI

..... Respondent

Through

Mr. Hirein Sharma, APP for State

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

J U D G M E N T

13.07.2018

Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 23rd December, 2016 passed by the learned Additional Sessions Judge-III, North District, Rohini Courts in Sessions Case No. 58267/2016 arising out of FIR No. 270/2005 registered at Police Station ('PS') Narela convicting the Appellant for the offence under Section 302 IPC and the order on sentence dated 26th December, 2016 whereby he was sentenced to imprisonment for life with a fine of Rs.50,000/-, and in default of payment to undergo simple imprisonment for six months for the said offence.

2. At the outset it requires to be noticed that the charge framed against the Appellant and six other co-accused was that in furtherance of their common intention they had subjected the deceased Smt. Shashi, wife of the

Appellant, to cruelty thereby committing an offence punishable under Section 498A read with Section 34 IPC; that having subjected her to cruelty in connection with demand of dowry within seven years of marriage they had caused her death otherwise than under normal circumstances and hence committed an offence under Section 304 B read with Section 34 IPC; that they had converted the dowry articles of the deceased for their own use and thereby committed an offence punishable under Section 408 IPC read with Section 34 IPC; that they had disturbed the scene of crime to give an impression of suicidal death and thereby committed an offence under Section 201 read with 34 IPC and lastly in the alternative in furtherance of their common intention had committed the murder of the deceased and thereby committed an offence punishable under Section 302 read with 34 IPC.

3. In the impugned judgment, the trial Court has concluded that the evidence led by the prosecution did not prove the offences under Sections 498-A IPC, Section 304 B IPC, Section 408/34 IPC and Section 201 read with Section 34 IPC. However, the trial Court has accepted the alternative charge against the Appellant alone and convicted him for the offence punishable under Section 302 IPC.

Deposition of DW-1

4. The Appellant was a constable of the Delhi Police. He got married to the deceased on 24th May, 2002. A son was born to them on 24th May, 2003 as spoken to by Dr. Nikita Jain (PW-7).

5. Vijay (DW-1), the younger brother of the Appellant, at the relevant time, was staying with the Appellant, the deceased and their child in the official quarters allotted to the Appellant in Narela. He was at that time studying in the 9th standard. According to DW-1, on 28th April, 2005 he returned from his school at around 4 pm. He went out for play and returned home at around 6 pm. He noticed the Appellant and the deceased were having a discussion about his tuitions. The Appellant was insisting that DW-1 should go for tuitions but the deceased stated that they would send him for tuitions only after some money which was loaned to her parents was returned. DW-1 states that on 28th April, 2005 the Appellant left for his duty at around 6pm.

Deposition of PW-8

6. It appears that the Appellant was at duty till the morning of 29th April, 2005. Head Constable Satyawan (PW-8) who is also working in the Delhi Police in his deposition stated that he too was residing in the Police Colony at Narela and was returning from duty on the morning of 29th April, 2005 and when he got down from bus No.131 near the police colony, Narela, the Appellant had just alighted from the bus which had reached prior to the bus taken by PW-8. While the Appellant turned right, PW-8 proceeded straight from there and reached his quarters in about 4-5 minutes. He was informed by a neighbour that a woman had died in the police colony. Then PW-8 along with his neighbour reached quarter No. 427 i.e. the quarters where the Appellant resided and they found a crowd there. The people there informed PW-8 that a lady had committed suicide by hanging, that the quarter belonged to the Appellant and that the deceased was his wife.

7. In his cross-examination PW-8 maintained that the Appellant had alighted from the bus at around 8 am. When he went to the house No. 427 he found the Appellant present there in police uniform.

Deposition of PW-1

8. There are two neighbours of the Appellant, who were examined by the prosecution. Urmila (PW-1) stated that on the morning of 29th April, 2005 at around 7.30 am she saw the deceased cleaning her house. She then stated as under:

“At about 8a.m. I was standing on the door of my house and I saw accused Bhupinder vigorously knocking the door. The accused Bhupinder opened the door and went upstairs and started crying. Hearing his cries I alongwith some neighbours went on the first floor of the house of the accused and saw Shashi hanging from the fan with two chunnies. The accused was trying to bring down Shashi but I asked him not to do so. In the meanwhile somebody informed the police.”

Deposition of PW-14

9. There was no cross-examination of PW-1 by the counsel for the defence. The other neighbour who was examined was Archana (PW-14), who corroborated PW-1 by stating that on 29th April, 2005 at around 7.15 am when her husband had left for work and she was watering the plants, she noticed that the deceased was also watering plants. She noticed DW-1 i.e. Vijay leaving from there. At around 8 am she (PW-14) went inside her quarters. She then stated as under:

“After some time accused Bhupender who was in uniform knocked my door and asked for wooden ladder from me and I

asked him to take the ladder which was kept in the staircase. When I enquired what was the purpose he said that Shashi was not opening the door so he wanted to see her from balcony.. But as the door was closed he came down and went towards back side. After some time I heard weeping noise. I noticed some neighbours in the: house of Bhupender and after some time I came to know that Shashi had died. I was shocked as to how a happy family has been ruined.”

Deposition of PW-33

10. This is another witness who was not cross-examined and, therefore, the above testimony remained unchallenged. Then we have the deposition of Constable Rajbir (PW-33), who states that on 29th April, 2005 at around 8.15 am, he heard some noise in the locality that ‘the wife of accused Bhupender was hanging in the quarter of accused’. He further stated as under:

“I went to quarter no.427 where at the first floor of the said quarter, Shashi wife of Bhupinder was hanging with ceiling and her lower part was lying on the bed. I made a telephone call to the police at 100 No. at about 8.30 PM from telephone no.27783260. The accused Bhupinder was working in Delhi police in the Security Unit.”

11. A reading of all of the above depositions shows that the accused went for his duty on the evening of 28th April, 2005 and returned at around 8 am on the morning of 29th April, 2005. The deceased was seen alive last at around 7.30 am watering the plants. The death of the deceased therefore should have happened somewhere between 7.30 am and 8 am on the morning of 29th April, 2005. It must be noticed at this stage that it was PW-33, who gave information first to the police about finding the deceased hanging inside the house. The PCR form (Ex.PW-22/A) shows that the time when

this information was given was at around 8.30 am.

Suicide or homicide?

12. Whether it was a case of suicidal or homicidal death was the question that engaged the investigation. It must be noted that there is a report of the Sub-Judicial Magistrate (Ex.PW-21/C) in which it is noticed *inter-alia* that the deceased had been living with her *Mausi* and *Mausa* (maternal aunt and uncle respectively) since she was 7-8 months old till the time of her marriage. The statements of her parents and her *Mausi* and *Mausa* were recorded on 29th April, 2005 ‘but no allegation of harassment on account of dowry or any other ill treatment towards the deceased has been levelled by them.’ However, the SJM noted as under:

“The facts emanating from the inspection of the placement of body of the deceased while hanging from the ceiling fan and the presence of broken pieces of her bangles on the bed as well as on the floor do not rule out foul play in this incident. The broken pieces of bangles have been taken into custody by the police.”

13. Therefore what led investigators to the angle of homicide in the present case was the broken pieces of bangles which were found on the bed as well as on the floor. They had dried blood stains. As it transpired, the FSL report did not indicate whether these dried blood stains in fact belonged to the deceased or the accused or anyone else.

14. Adding to the doubt on whether this was a homicide or suicide was the initial medical opinion given by Dr. Anil Shandil (PW-4). According to the prosecution, he was one of the three doctors (the other two being Dr. L.C.

Gupta and Dr. Upender Kishore who conducted the post-mortem of the deceased. This post-mortem took place on 30th April, 2005. The external examination revealed that the eyes were partially opened. The conjunctivae was congested, the cornea was dry and hazy and the mouth was partially opened. The nails were bluish. The following external injuries were noted:-

“External injuries-

(i) multiple crescentic shaped abrasion over dorsum of left hand, proximal wrist, proximal index finger and right dorsum of hand, ulnar boarder of right hand with dried up fresh blood.

(ii) Abrasion 2 cm X 1.5 cm with bruise situated just below left side chin. On incision underneath tissue contused with effusion of reddish blood.

(iii) Irregular ligature mark extending from left side of chin to nap of neck and then right side with bare area over left side mastoid to chin. On incision underneath tissue bloodless, appearance of ligature mark dry parchmented and no line of demarcation in form of congestion present.”

15. As far as the internal examination was concerned, it revealed as under:-

“(i) Head- Dilated and engorged vessels, brain matter congested, edematous with petechials and punctate haemorrhages in bilateral cerebral matter.

(ii) Neck- As already mentioned.

(iii) Chest- bilateral lungs congested, edematous. All chambers of heart full of dark fluidy blood. All coronaries patent, musculature and valves NAD.

(iv) Abdomen- Stomach contains only rusty colour fluid/secretions about 20 to 30 ml. Mucosa congested,

reddened all over with petechials. Unrecognizable smell + .
All abdominal viscera congested.”

16. Final opinion on the cause of death was reserved to be given after the blood and viscera chemical analysis report was received from the CFSL. The initial opinion read as under:

“(iii) Postmortem findings are consistent with postmortem hanging and ante mortem struggle/assault.

(iv) Mode of death homicide where possibility of creation of scene suggestive of suicidal scene exists.”

17. After the viscera report was received on 27th November, 2009 the final opinion was recorded as under:

“(i) The chemical analysis report of viscera and the original PM report submitted to the medical board by police 10 Inspector Jag Ram along with order of Hon'ble Court. In pursuance and in furtherance to compliance of the order dated 17.11.09 of this Hon'ble Court a written request was made to Dr. Upender Kishore and Dr. Anil Shandil.

(ii) Dr. Upender Kishore was not available before the scheduled medical board on that day hence we other two members of the board Dr. LC.Gupta and myself assembled for the needful purpose as ordered by the Hon'ble Court in Subzi Mandi Mortuary.

(iii) The facts available in postmortem report and above said viscera report were considered. The chemical analysis report of viscera report no.FSL-2005/C-2297 gave positive test for the presence of aluminium phosphide (although there was/were no sign of consumption of aluminium phosphide in the dead body of deceased which may be revealed during postmortem examination) and which cannot be given by other party to an adult person and the poison is suicidal in nature, until proven

otherwise. Therefore the opinion concluded in reference to interim opinion expressed on page ante-we are now of the opinion that the cause of death in this case was asphyxia consequent to ante mortem ligature hanging after consuming the aluminium phosphide poison by the deceased. Hence the possibility of suicide cannot be ruled out.”

Deposition of PW-4

18. Dr. Anil Shandil (PW-4) was asked specific questions by the Court on the failure to mention the fact that the post-mortem had been conducted by a team of three doctors. The only answer given was that even though it is normal practice that the order of the Government constituting the medical board is mentioned in the post mortem report, in this case, it was not so mentioned and PW-4 could not say whether there was any such government order in the present case. He volunteered that both he and Dr. L.C.Gupta had visited the spot of occurrence after the post mortem examination but before giving opinion on the post-mortem report. He also mentions that this fact was conveyed to Dr. Upender Kishore (PW-5), ‘but he was not available’. They did not find any digested or undigested food in the stomach. They only found ‘20-30 ml rusty colour fluid’.

19. PW-4 was then asked about the previous opinion where it was suggestive of homicidal death. PW-4 clarified as under:

“The previous opinion on Ex.PW.4/A was an interim opinion based on brief facts and inquest papers, postmortem examination, visit to the scene of spot and for the awaiting the report of blood and viscera. Now after receiving the blood and viscera chemical analysis report testing positive for aluminium phosphide poison, which cannot be given by other party to an adult person, the basic nature and characteristic of poison aluminium phosphide poison

suicidal in nature and postmortem report the final opinion has been concluded upon.

Q. What is the basis of your opining that the poison aluminium phosphide can only be consumed by a, patient himself and it cannot be administered by anyone else?

A. I say so because the smell of aluminium phosphide poison is such a sharp smell that it cannot be given to an adult person.

20. In his cross-examination by counsel for the accused, PW-4 clarified that there was only a single ligature mark on the neck of the deceased. He mentioned further as under:

“The unrecognizable smell observed while postmortem examination, the ante mortem inflicted injuries present over both hands and absence of typical ligature mark of hanging are the cause of our giving such interim report.”

Deposition of PW-5

21. Dr. Upender Kishore (PW-5) was not very helpful either to the prosecution or the defence. Primarily it appeared that he simply signed the post-mortem report without even visiting the scene of the crime. Although according to him he did not agree with the findings, he did not give a dissenting note since at that point of time the post-mortem report was not final.

22. According to PW-5, his findings in the post-mortem report ‘are consistent with ante mortem hanging.’ He also added ‘it is correct that ‘aluminium phosphide is a suicidal poison and not homicidal.’

Trial Court's conclusions

23. At this stage, it is necessary to focus on how the trial Court has approached the whole issue. After concluding that the evidence in the case was insufficient to return a finding of crime against the accused for the offences under Section 498-A and 304 B, the trial Court commenced the discussion of the evidence qua the offence punishable under Section 302 IPC by first noticing that the door was not broken and even 'the bolt of the door was not found broken', meaning thereby that it was not bolted from inside. Although one witness (PW-14) had stated that the Appellant had asked her for a ladder as he had stated that the deceased was not opening the door and he wanted to ascend onto the balcony of their house but that ladder was not found and there was nothing on record that the Appellant had entered the flat from any other place other than the main door. All of this according to the trial Court showed that there was no forced entry in the flat.

24. The trial Court then analysed the photographs which showed that the deceased was lying on the bed with her back and elbow, resting on the bed and the *chunni* i.e. ligature was not tied around. It was noticed that "her neck was resting in *chunni*. Her feet were hanging around the bed." It was also noticed that two *chunnis* have been used. One tied to the fan and the other one passing through the first *chunni* and her neck was resting with face towards roof in the second *chunni* and the noose was not tied. The post mortem report at that time declared there was no congestion of the neck tissue.

25. The trial Court selectively quoted from the opinion of PW-4 that 'merely because aluminium phosphide is found does not by itself make it a case of

suicide.’ The trial Court did not extract the remaining portion of the deposition of PW-4 to the effect that aluminium phosphide “cannot be given by other party to an adult person and the poison is suicidal in nature, until proven otherwise.”

26. The trial Court then surmised that if the deceased had committed suicide by consuming aluminium phosphide, then the container of the aluminium phosphide should have been found in that room, whereas according to the Investigating Officer (IO) Inspector Inderjeet Singh (PW-35), it was not. The trial Court also noticed that ‘there are numerous injuries on the person’ going by the record of the external injuries noticed in the post mortem report. It cannot be said that there were numerous injuries although injuries were found “at the hand and one on the chin.” According to the trial Court since post mortem report showed that hanging is post mortem and not ante mortem, then the deceased herself could not have tied the *chunni* and hanged herself. This again was not a correct extraction of the evidence of the two doctors PWs-4 & 5. The trial Court failed to notice that after the viscera report was received, PW-4 had in the final opinion stated that the hanging was ante mortem. Even PW-5 in his deposition stated likewise.

27. The trial Court concluded that in view of all the above facts, although aluminium phosphide was considered a suicidal poison, ‘it was administered forcibly to the deceased and that is why there were injuries on the person of the deceased and it was staged to show and pass it on as a case of suicide.’

The trial Court’s errors

28. In coming to the above conclusion, the trial Court was indulging in

conjectures and surmises. There was no question put to any of the doctors that in the present case aluminium phosphide could have been forcibly administered by anyone to the deceased. The medical evidence was clearly to the contrary as spoken to by PW-4.

29. The linking of the injuries on the person of the deceased with this forcible administering of poison was also not a possibility put to the doctors. They were not asked what could be the reason for the injuries found on the wrists and how they may have been caused. Thirdly the blood on the bangles was not indicative of the blood type of the deceased or even that of the accused. It was therefore not safe for the trial Court to simply conclude that aluminium phosphide was forcibly administered to the deceased.

30. Next the trial Court proceeded to analyse the events soon prior to the death of the deceased and here made a fatal error. In para 66, the trial Court observed as under:

“66. It is important to note that accused has returned home at around 7.40 AM. As per the evidence coming on record and then the death is around 8:15 AM which clearly shows that he was also present at home but he only managed to show by hanging on the door to show that in fact deceased has bolted the door from inside but that would have been the case then the bolt should have been broken in order to open the door or the door itself would have broken but it is not the case.”

31. With the help of Mr. R.M.Tufail, learned counsel for the Appellant as well as Mr. Hirein Sharma, the learned APP for the State this Court has thoroughly examined the entire record to find if there is any basis for the trial Court to come to the conclusion ‘that accused has returned home at

around 7.40 A.M.’ There is not a shred of evidence to substantiate this statement. This Court is at a loss to find out how the trial Court could have come to the above determination. This was crucial for the entire analysis that would follow. While the time of death was noted by the trial Court as 8.15 am which more or less tallies what the PWs have said, from the trial Court’s point of view it gave the Appellant 45 minutes to forcibly administer the aluminium phosphide and then proceed to stage the hanging. This is where the trial Court went seriously wrong. As already noticed, there are a number of witnesses including PW-8 who talk about noticing the Appellant alight from the bus at around 8 am and also PW-1 and PW-14 who noticed coming at around 8.00 am and knocking at the door.

32. At this stage, the Court would like to refer to the explanation offered by the Appellant in his statement under Section 313 Cr PC. His version reads as under:

“I am innocent I have been falsely implicated. I was married to Shashi on 24.09.2002. There was no demand of dowry either prior or at the time or any time subsequent to marriage. Shashi was never harassed or tortured at any point of time either by me or by any member of my family. After our marriage we stayed at village Kadhera PS: Ram Bhala, Distt. Bhagpat, UP. Shashi was treated very well and was given all love and affection by the family including me. She herself was very respectful towards my family member and me. I was blessed with a son and all expenses in this, regard was borne by me.

In August 2004 I was allotted a flat in police colony, Narela and I along with my wife and younger brother Vijay started residing there. My brother Vijay was got admitted in Maharaja Agrasen School Narela. We were having a very happy and peaceful life with no dispute between husband and wife.

The financial condition of my in laws was very weak and for this reason my wife was brought up by her Mausi. I used to help my in laws financially by giving them friendly loan from time to time. I had also withdrawn handsome amount from my GPF Account and had paid total sum of Rs.75,000/- to them. My in-laws have promised to return the same but was not doing so. After shifting to Delhi we were facing financial crunch. As such my wife requested to her parents to return her money but they were not doing so and for this reason she was in a slight off mood since a few days before death.

I wanted to engage a tutor for my brother but it was objected by my wife Shashi. Since it would further effect the house hold and this led to a petty quarrel between us on the point of managing the house hold expenses.

She made a telephone call to her mother on 28.05.2005 and told her that her position in the family has become awkward as they were not returning the money. She cried on the telephone for return of money. I tried to console her before my leaving for my duty.

I was posted at 10th Batallion DAP, E-Block Security Line near Sena Bhawan, Chanakya Puri, Delhi and my duty timing were 7 pm to 7 a.m. I left my duty from my residence in the evening of 28.04.2005. At midnight I got issued arm from the armory for escort duty of Hon'ble Sh. K.R. Narayanan, Ex. President of India. After return at around 4:20 am on 29.04,2005 I deposited my weapon back in the armoury.

Sometime around 7 am I started back from Security Lines for home and met Ct. Sanjeev Kumar at the bus stand. I changed many buses from my home to reach my house and in last bus I saw HC Satyawar also travelling in the same bus. At around 8 am I reached home and knocked the door but nobody opened despite several knocks and pushes. Thereafter I took the wooden ladder of my neighbours and climbed over the balcony

but the door was closed. I came down and started rigorously knocking and pushing the back door which ultimately opened and rushed up stairs where I found Shashi hanging. I caught hold of her and tried to pull her up on bed and open the knot. The neighbours said that she had died; and I should not disturb the site. I do not remember exactly but it might be possible that few of her bangles might have been broken in that process since I was in very perplexed state. Somebody called the police, inquiries were made from me and I told them that there was no dispute between us and we were happily married couple, and there was only trivial quarrel over the earlier house hold experts. Relatives of Shashi also arrived and they stated that there were no disputes between me and my wife and there was no demand of dowry and we were living happily. They attended the cremation of my wife at my village which was performed by me, however, they were mis-guided and they leveled false and frivolous allegations against me and my family. I had great love and affection for my wife and there was no demand of dowry at any point of time.

33. On his part, the Appellant did examine his younger brother Vijay (DW-1) in whose cross examination by APP was unable to be dislodged from his statement that he noticed the Appellant leaving for work at 6 pm on 28th April, 2005 and that the deceased was alive at the time he left for school on the morning of 29th April, 2005.

34. The time during which the death of the deceased occurred was between 7.30 am and 8.15 am. There is absolutely no evidence led by the prosecution to show that the accused was present at his house at 7.40 am as was concluded by the trial Court. The evidence shows that he reached his house only at around 8 am. The fact that PW-8 states that within 4 or 5 minutes after he left the bus stop and reached his quarters, a neighbour told him that

somebody had committed suicide meant that the death had already occurred by the time PW-8 reached home and that was around the same time that the Appellant must also have reached his house.

Law relating to circumstantial evidence

35. This was a case of circumstantial evidence where the law in that regard by the Supreme Court is fairly well settled and the duties of the Court in evaluating such evidence have been reiterated on a number of occasions. In ***Mahmood v. State of UP (1976) 1 SCC 542***, the Supreme Court observed as under:

“It is well settled that in a case dependent wholly on circumstantial evidence, the Court before recording a conviction on the bias therefore must be firmly satisfied -

- (a) that the circumstances from which the inference of guilt is to be drawn, have fully established by unimpeachable evidence beyond a shadow of doubt;
- (b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and
- (c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.”

36. The Supreme Court, in ***Shankarlal Gyarasilal Dixit v. State of Maharashtra (1981) 2 SCC 35***, explained the law thus:

“Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the

accused is guilty of the crime imputed to him.”

37. In *Tanviben Pankaj Kumar Divetia v. State of Gujarat (1997) 7 SCC 156*, the Supreme Court reiterated the above position and went on to opine:

“The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between normal certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and must be true" and the same divides conjectures from sure conclusions.”

38. Reference may also be made to *Sudama Pandey v. State of Bihar (2002) 1 SCC 679* wherein the Supreme Court stated:

“It is a settled principle that in the case of circumstantial evidence, the various circumstances should be able to form a chain pointing to the guilt of the accused. In cases where there

is only circumstantial evidence, the Court has to consider the evidence adduced by the prosecution and decide whether the evidence proves particular facts relevant for the purpose of the case and when such facts are proved the question arises whether the facts are capable of giving rise to any inference of the guilt of the accused person or not. An inference of guilt can be drawn only if the proved fact is wholly consistent with the guilt of the accused and certainly he is entitled to the benefit of doubt if the proved fact is consistent with his innocence.”

39. In *Gagan Kanojia & Anr. v. State of Punjab (2006) 13 SCC 516*, the Supreme Court opined:

“9. ... Indisputably, charges can be proved on the basis of the circumstantial evidence, when direct evidence is not available. It is well settled that in a case based on a circumstantial evidence, the prosecution must prove that within all human probabilities, the act must have been done by the accused. It is, however, necessary for the courts to remember that there is a long gap between 'may be true' and 'must be true'. Prosecution case is required to be covered by leading cogent, believable and credible evidence. Whereas the court must raise a presumption that the accused is innocent and in the event two views are possible, one indicating to his guilt of the accused and the other to his innocence, the defence available to the accused should be accepted, but at the same time, the court must not reject the evidence of the prosecution, proceeding on the basis that they are false, not trustworthy, unreliable and made on flimsy grounds or only on the basis of surmises and conjectures. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstances. The approach of the court should be an integrated one and not truncated or isolated. The court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on records and analyze and assess the same objectively.

10. We would proceed on the well-known principles in regard to appreciation of the circumstantial evidence which were

noticed by the High Court in the following terms:

- 1) 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.
- 2) Circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.
- 3) There should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.
- 4) On the availability of two inferences, the one in favour of the accused must be accepted.
- 5) It cannot be said that prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.”

40. As explained by the Supreme Court in *Anjan Kumar Sarma v. State of Assam* (2017) 14 SCC 359:

- “(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 of 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 shown that in all human probability the act must have been done by the accused [See: Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116; M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200].”

Analysis of evidence

41. In the present case, there are important links in the chain of circumstances which need to be convincingly proved by the prosecution. One of those links was establishing the presence of the Appellant in the house at around the time that the death of the deceased occurred. This has not been convincingly proved by the prosecution. The trial Court fell in error in surmising that the Appellant was present at his house at around 7.40 am when there was not even a shred of evidence to substantiate it.

42. The second important link is the medical evidence itself which must unmistakeably point to the death being homicidal. Although initially the investigation proceeded as if the death was homicidal and even the initial medical opinion was to that effect, it changed after the receipt of the viscera analysis which indicated the presence of aluminium phosphide in the stomach of the deceased. This changed the scenario completely. The doctors opined at a later stage that the death being suicidal could not be ruled out. PWs 4 and 5 have stood their ground on this analysis. They have not been termed ‘hostile’ by the prosecution. In other words, the medical evidence does not support the prosecution case about the death being homicidal. The

other important link therefore in the chain of circumstances has not been proved by the prosecution.

Motive not proved

43. The third and vital link in the chain of circumstances in a case of this nature would be the motive for commission of the crime. It must be recalled that the Appellant and all other accused have been acquitted for the offences under Sections 498-A and 304-B IPC. In other words, the case of the prosecution that the deceased was being harassed by the Appellant for dowry or being subjected to cruelty soon before the death of the deceased was not believed by the trial Court itself. On the contrary, the prosecution witnesses have spoken about the deceased and the Appellant not having any quarrel whatsoever.

44. In the circumstances the motive for the Appellant to murder his own wife ought to have been probed and proved by the prosecution. No attempt whatsoever has been made in that direction. Here the Court notes that the trial Court completely missed this aspect. The trial Court focussed on the motive, if any, for the deceased to commit suicide by stating in paragraph 67 as under:

“67. Accused has taken the defence that Shashi committed suicide as Rs.75,000/- which he gave to her parents were not returned by them. It is alleged that he gave money after withdrawing from his GPF account. However, this fact is denied by the parents of the deceased. The accused could have very well established this fact by proving his GPF account. However, this fact is denied by the parents of deceased. The accused could have very well established this fact by proving his GPF account

statement to at least show the withdrawal of amount from GPF account but no such evidence has been adduced. Hence it cannot be said that she committed suicide. Even otherwise as discussed above, it is not suicidal death but it is a homicidal death.”

45. Once the case of proving the guilt of the accused for the offence under Section 302 IPC was not established, the burden did not lie on the accused to show the motive for commission of suicide but for the prosecution to show the motive for the commission of murder by the accused. Here, that important link in the chain of circumstances has not even been attempted to be proved.

46. The Court would also like to observe at this stage that the trial Court has not even found the Appellant guilty of the offence under Section 201 IPC, viz., the screening of the evidence. The case of the prosecution, as must be remembered, is that after forcibly administering the poison to the deceased, the Appellant staged her suicide by making it appear that she hung herself. Once he stood acquitted of the offence under Section 201 IPC, even this theory failed.

Conclusion

47. There is a long distance to be travelled between ‘may be guilty’ and ‘must be guilty’ as has been repeatedly stressed by the Supreme Court in several decisions. In the present case, that distance has not been travelled by the prosecution. The important links in the chain of circumstances have not been proved by it.

48. Consequently, the Court is unable to concur with the trial Court and grants the Appellant the benefit of doubt for the offence under Section 302 IPC. Accordingly, the impugned judgment and the consequent order on sentence of the trial Court are hereby set aside. The appeal is allowed. The Appellant will be released forthwith unless wanted in some other case. The trial Court record be returned together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 13, 2018

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