

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No. 157 of 2005

Jadumani Dehury

....

Appellant

Mr. Tukuna Mishra, Advocate

-versus-

State of Orissa

....

Respondent

Mr. Janmejaya Katikia

Additional Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

Order No.

ORDER
24.09.2022

Dr. S. Muralidhar, CJ.

09. 1. This appeal is directed against the judgment dated 15th September 2005, passed by the learned Additional Sessions Judge, Talcher in S.T. Case No.20 of 2003 convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him to undergo Rigorous Imprisonment (RI) for life.

2. At the outset, it requires to be noticed that apart from the present Appellant, four others were sent up for trial and for the offences under Sections 498-A, 302, 304-B read with 34 of IPC and Section 4 of the Dowry Prohibition Act, 1961 (DP Act). However, by the impugned judgment of the trial court, the other four co-accused have been acquitted of all the offences and the Appellant himself has been acquitted of the

offences under Sections 498-A, 304-B read with 34 IPC as well as Section 4 of the DP Act. In effect, therefore, the Appellant alone has been convicted for the offence punishable under Section 302 IPC for the death of his wife, Nandini.

3. The case of the prosecution is that about two years prior to the date of the occurrence i.e., 15th October 2002, the deceased, the daughter of Akshaya Sahu (P.W.1) was married to the present Appellant. Although it was the case of the prosecution that the deceased was being ill-treated by the present Appellant and her in-laws on account of dowry, the trial court has disbelieved that part of the evidence. The fact, however, is that the deceased was six months pregnant at the time of her death.

4. Relevant to the case on hand is the statement of P.W.1, the father of the deceased, in his deposition that on account of quarrel among the family members of her matrimonial home as regards the partition of the family properties, the deceased came to live in her parents' house. It is further transpired that P.W.1 left the deceased back in the matrimonial house but after 10 to 15 days, she again returned to her parents' house. One day after she had returned, the present Appellant i.e., the husband of the deceased came to the house of P.W.1 and insisted on taking the deceased back to his house. According to P.W.1, he refused to permit the deceased to return with her husband since there was a quarrel in his family. However, the Appellant took the deceased back to the matrimonial home assuring P.W.1 that he would live separately from the other members of the family if necessary.

5. Two days thereafter, P.W.1 received information from one Butu Sahoo (not examined) that his daughter had been killed.

6. According to P.W.1, he then proceeded to the house of the accused and found the dead body of the deceased in the bedroom with a cut injury on the left side of her head. The FIR was registered on the report made by P.W.1 to the police.

7. According to the Investigating Officer (IO), Suresh Chandra Setha (P.W.16), he received the information about the death of the deceased on 16th October, 2002 and proceeded to the spot. He held an inquest on the dead body of the deceased and later sent the body for post mortem examination. He seized one iron barishi (weapon of offence) on production by the accused and this was done in the presence of Maguni Sahu (P.W.3) and Arjuna Behera (P.W.9). He, apparently, handed over the investigation at one stage to the S.I. Rabindranath Sahoo (P.W.17). It must be mentioned here that the wearing apparels of the accused as well as one napkin was seized and sent to the State Forensic Science Laboratory (SFSL), Rasulgarh along with the weapon of offence for examination. On completion of investigation, a charge sheet was laid against the present Appellant as well as the co-accused for the offences aforementioned. They pleaded not guilty and claimed trial. On behalf of the prosecution, 17 witnesses were examined. One Karunakar Sahu (D.W.1) was examined by the defence.

8. On an analysis of the evidence, the trial court found that the prosecution had not been able to prove its own prior to her death that the deceased had

been subjected to cruelty concerning demands of dowry and therefore found that the prosecution had failed to prove the case against the accused for the offences under Section 498-A and 304-B IPC. According to the trial Court, among the circumstances that proved the case of the prosecution against the present Appellant, was that the deceased was found dead in the bedroom having gone away with the Appellant from her parental house and further that the weapon of offence was got recovered on the statement of the Appellant to the Police in the presence of the two witnesses i.e., P.Ws.3 and 9. The forensic evidence also proved the presence of the human blood of Group-A, which belonged to the deceased, on the napkin produced by the Appellant. These circumstances, according to the trial court, formed a continuous chain and pointed unerringly to the guilt of the Appellant.

9. This Court has heard the submissions of Mr. Tukuna Mishra, learned counsel appearing for the Appellant and Mr. J. Katikia, learned AGA for the State.

10. The Court would like to begin by recapitulating the law governing a case of circumstantial evidence. In ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116***, the Supreme Court explained 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 observations were made: [SCC para 19, p. 807]

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.

154. These five golden principles, if we may say so, constitute the *panchsheel* of the proof of a case based on circumstantial evidence.

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in

the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus: [SCC para 30, p. 43]

“Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unflinchingly to the guilt of the accused.”

11. Again in ***Devilal v. State of Rajasthan (2019) 19 SCC 447***, it was held as under:

“17. It has further been considered by this Court in ***Sujit Biswas v. State of Assam 2013(12) SCC 406 and Raja v. State of Haryana 2015(11) SCC 43***. It has been propounded that while scrutinising the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete

or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straight jacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.

18. On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution and noticed by the High Court in the impugned judgment, to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of “may be true” to the plane of “must be true” as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

19. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge, we find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same.”

12. In the present case, one of the first circumstances put forth by the prosecution is that the Appellant had gone to the house of his in-laws, i.e.,

the parental house of the deceased, just two days prior to the occurrence and brought the deceased back with him to the matrimonial house. This is being proved in the evidence of P.W.1, the father of the deceased. This has been corroborated by Pankaja Sahu (P.W.2), the brother of the deceased. The second circumstance is that the deceased was found dead in the bedroom of the house of the accused-Appellant. This has been spoken to by P.W.1 as well as P.W.2.

13. The third circumstance concerns the recovery of weapon of offence i.e., the barishi at the instance of the Appellant. This was witnessed by two independent witnesses i.e., P.Ws.3 and 9. Their cross-examination has not been able to shake them as far as they are confirming the production of the weapon of offence by the Appellant to the Police. This circumstance also has convincingly been proved by the prosecution.

14. With the death of the deceased taking place in the house of the Appellant and more particularly, in his bedroom, it was incumbent on the Appellant to explain the circumstances under which the death took place as it is presumed to be specially within his knowledge in terms of Section 106 of the Evidence Act. The law in this regard is fairly well settled. In ***Rajkumar v. State of M.P. (2014) 5 SCC 353***, in the context of Section 106 of the Indian Evidence Act, 1872 it was held that Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. Reference was made

to the decision in *State of W.B. v. Mir Mohammad Omar AIR 2000 SC 2988* where it was held as under:

“..... if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

15. In *Trimukh Maroti Krikan v. State of Maharashtra (2006) 10 SCC 681* it was held:

“12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 ▪ quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of

the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

16. Again in *Gian Chand v. State of Haryana AIR 2013 SC 3395* the Supreme Court reiterated the above principles. In the present case, in the questions put to him under Section 313 Cr PC, the Appellant has no explanation to offer for the discovery of the dead body of the deceased in the bedroom of his house with the presence of the accused being established at that time.

17. It may be noted here that before the trial court a plea of *alibi* was sought to be set up by all the accused to show that that they were not present when the death of the deceased took place. However, as noted by

the trial Court, no evidence was laid by the defence in support of such plea and therefore it was rightly disbelieved by the trial Court. The only witness examined by the defence was on the aspect of the demand for dowry on which aspect the trial Court accepted the plea of the defence and acquitted them of the offences under Section 498-A as well as 304-B of the IPC. Consequently, the defence evidence also did not support their plea of *alibi*.

18. On the aspect of motive for the commission of the crime, the fact that there was a quarrel in the matrimonial home of the deceased over property has been proved by P.W.1. There has been no inconsistencies or contradictions brought out on this aspect of his evidence in his cross-examination. It is possible therefore to visualize that on account of the quarrels in the matrimonial house of deceased there could have been differences that cropped up between the Appellant and the deceased.

19. In any event, when all other circumstances clearly point to the guilt of the Appellant, the fact that the motive may not be clearly established would not weaken the case of the prosecution. It was explained in ***Bikau Pandey v. State of Bihar (2003) 12 SCC 616*** that absence of motive “is of no consequence and pales into insignificance when direct evidence establishes the crime.” Again, in ***State of U.P. v. Kishanpal (2008) 16 SCC 73*** it was held as under:

"The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the

motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

20. The above legal position was reiterated in *Bipin Kumar Mondal v. State of West Bengal (2010) 12 SCC 91* where it was held:

"It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance."

21. In the present case, the Court is satisfied that the prosecution has been able to establish each of the above circumstances which form a continuous chain and taking collectively the point unerringly to the guilt of the Appellant and to no one else. Consequently, the trial Court was justified in convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him the manner indicated hereinbefore.

22. Consequently, the Court finds no merit in the present appeal and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera

