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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.131 of 2014

Pradyumna Sahu

....

Appellant

-versus-

State of Odisha

....

Respondent

Advocates, appeared in this case:

For Appellant

:

Ms. C. Kasturi, Advocate

For Respondent

:

Mr. J. Katikia
Addl. Govt. Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

30.09.2022

Dr. S. Muralidhar, C.J.

1. This appeal is directed against the judgment dated 11th December, 2013 passed by the learned Additional District and Sessions Judge, Jharsuguda in S.T. No.11/10/11 of 2012-13 convicting the Appellant for the offence punishable under Section 302 and 498-A IPC and sentencing him to undergo rigorous imprisonment (RI) for life and pay a fine of Rs.10,000/- and in default to undergo RI for one year for the offence under Section 302 IPC and to RI for two years for the offence under Section 498-A IPC.

2. The case of the prosecution was that the Appellant was working as Labourer under a contractor of Colliery. He was continuously

quarreling with his wife and assaulting her on trivial matters. As per the FIR lodged by Basudev Jadav (PW 9) on 22nd July, 2011 at about 8 a.m., he went to a nearby shop to purchase gutkha and learned that the accused had assaulted his wife (deceased) in the previous night and again in the morning of 22nd July, 2011 by pressing her neck. The deceased became unconscious. Hearing about this PW 9 went to the house of the Appellant and found the deceased lying unconscious on the bed. The female neighbours of the Appellant were massaging oil on her. PW 9 was supposed to have enquired from the Appellant about the occurrence and the Appellant apparently disclosed to PW 9 that the Appellant had assaulted the deceased in the previous night and next morning and left her inside a separate room. After some time when the Appellant went to the said room, he found the deceased hanging from the angle of the ceiling by means of a saree. The Appellant immediately brought down the deceased, lay her on the bed and called one Pandey Doctor of Rampur, who came and declared her dead. Thereafter the deceased was taken to Rampur Hospital, where the doctor declared her dead. PW 9 suspected that due to assault on the deceased by the Appellant, she had committed suicide out of anger.

3. On the above basis, P.S. Case No.164 of 2011 was registered at Brajarajnagar Police Station (PS) under Section 306 IPC and the investigation was taken up. Pradeep Kumar Tandi (PW 20) was working as Sub-Inspector (SI) of Police attached to Rampur Outpost under the Brajarajnagar PS. He took up the investigation, examined PW 9 and other witnesses. He conducted the inquest on the dead body of the deceased in the presence of witnesses and

her parents. He then sent the body for post-mortem examination. On 23rd July, 2011 he arrested the Appellant and interrogated him. PW 20 seized the wearing apparels of the Appellant and sent his blood sample for examination. On completion of investigation, he laid a charge sheet against the Appellant for the aforementioned offence under Sections 498-A and 302 IPC.

4. The Appellant pleaded not guilty and claimed trial. 20 witnesses were examined by the prosecution. One Laxminarayan Sahu was examined as DW 1 for the defence. He disclosed in the Examination-in-Chief that the Appellant was his maternal uncle-in-law and the deceased was his aunt-in-law. He claimed that the deceased was ill-tempered and was always quarreling with the Appellant due to his meager earnings. DW 1 claimed that she had committed suicide by hanging herself with a saree. On an analysis of the evidence, the trial Court came to the conclusion that the prosecution has proved the case against the Appellant for the aforementioned offences and proceeded to sentence him in the manner indicated.

5. Among the circumstances, delineated by the trial Court were the following:

(i) the doctor admittedly did not specifically mention in the post-mortem report that the deceased had died homicidal death. However, medical opinion could not override the eye-witnesses version.

(ii) The opinion of the doctor was categorical that the cause of death was due to asphyxia resulting from manual compression of the trachea as well as injury to the carotid artery.

(iii) On careful scrutiny of evidence available and on perusal of decisions cited by both parties, it was concluded that the deceased had died a homicidal death.

(iv) The two witnesses to the inquest i.e. PW 1 and 6 did not support the case of the prosecution. Likewise, PWs 4, 5 and 7 to 11 and 13 also did not support the case of the prosecution. Even PW 9, the informant, turned hostile. The FIR had been scribed on the instruction of PW 9 who is a Hindi speaking person. Although it was scribed in Odia words and letters, the language was in Hindi.

(v) PW 4 had been gained over by the accused as was evident from his cross-examination. PW 12 the father of the deceased and PW 14 the mother stated that the Appellant had assured them to keep the deceased in a congenial atmosphere and they accordingly let her go with the accused to her in-laws house.

(vi) PW 12 further stated that after fifteen days, when PW 14 and her mother went to the house of the accused they saw the deceased being hale and hearty. Fifteen days after returning from the house of the accused, the sister of the accused (PW 2) informed them that the deceased was seriously ill. Thereafter, they rushed to the house of the accused and then to the hospital and there found the deceased lying on the bed. PW 12 had stated to the IO that the accused had already assaulted the deceased and continued to do so despite the assurance.

(vii) There were no material contradictions in the evidence of PWs 12 and 14. Except the bald statement of DW 1, there was no evidence on record that the deceased had committed suicide. It appeared that the Appellant had taken a false plea to create doubts. Since the deceased was admittedly with the Appellant on the date of occurrence, it was his duty to explain how she sustained the nail mark injuries on her face and on her hyoid bone which was fractured due to strangulation. The nail marks might be sustained by the deceased with her own nails when she was struggling to save herself at the time of occurrence. Thus, the explanation given by the Appellant was false and supplied a vital additional link to the chain of circumstances.

6. This Court has heard the submissions of Ms. C. Kasturi, learned counsel for the Appellant and Mr. J. Katikia, learned Additional Government Advocate for the State-Respondent.

7. This being a case of circumstantial evidence, the law in this regard is well settled. In *Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793*, the Court noted that the circumstances “must or should be” established and not “may be” established. It was stated that:

“19....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.”

8. In *Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116*, five principles were laid down to prove a case based on circumstantial evidence:

“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.

(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.”

9. At the outset, the Court would like to observe that the trial Court judgment fails to properly delineate the various circumstances, which according to the trial Court formed a chain so complete with each of the links in the chain being proved by the prosecution, whereby the guilt of the Appellant is unerringly established. To begin with, even the medical evidence is not categorical that the death of the deceased was homicidal. Dr. Priyadarshi Sahoo (PW 15) who conducted the post-mortem found the condition of the body to be as under:

“The face was congested, the deceased was average body built. Eyes were semi open, Mouth semi open, Tongue inside the mouth, blood tinged froath coming out from both the nostrils. There

was multiple abrasion of finger nail mark seen around face and neck. i.e. on the left side of chin one of size 1.5 cm, (ii) left side chin of size 1.5 cm, (iii) left side neck 2 in numbers of 1 cm each, (iv) right side neck 3 in numbers 1-2 cm each. A faint impression present over front of neck running upto left side angle of mouth of size 2 to 3 cm in breadth and 14 cm in length.”

10. Upon dissection of the neck, PW 15 noticed bruises. There was a fracture of the hyoid bone. The cause of death according to PW 15 was as under:

“The cause of death of deceased was due to asphyxia as a result of manual compression of trachea as well as injury to the common carotid artery.”

11. Importantly, in his cross examination, PW 15 stated as under:

“5. The external injury noticed by me can be possible by self infliction. I did not notice any finger print impression on the neck of the deceased. There is no difference between manual strangulation and throttling. Asphyxial death can also be possible by hanging. It is not a fact that I have not dissected the belly, chest and brain of the deceased during P.M. examination. It is not a fact that I have prepared Ext. 3 to suit the prosecution case. It is a fact that I have not mentioned in Ext.3 as to whether the deceased suffered a homicidal death or suicidal death.”

12. Consequently, PW 15 was unable to form a categorical opinion that the death of the deceased was purely homicidal. In fact, there was no other evidence available on record to indicate that the death was homicidal.

13. PW 9 was the informant, who did not support the prosecution. Even according to the statement made by PW 9 at the stage of the FIR, the Appellant told him that he had found the deceased hanging from the ceiling by her saree; her body was then brought down and later taken to the hospital, where she was declared brought dead. That portion of the so called extra judicial confession made by the Appellant to PW 9 about his having assaulted the deceased on the previous evening and the very morning of her death has not been proved by the prosecution. This was in fact the most crucial link in the entire chain of circumstances.

14. Consequently, two important links in the chain of circumstances i.e. the Appellant subjecting the deceased to cruelty soon prior to her death and the death of the deceased being homicidal, have not been proved by the prosecution.

15. The evidence of PW 12 is also not very helpful to the prosecution. He was the father of the deceased. Although he does say that soon after the marriage was solemnized in 2003 the Appellant was assaulting the deceased, the crucial factor as far as the prosecution was concerned, was what happened immediately prior to the death of the deceased on 22nd July, 2011. When PW 12 says “the deceased when came to my house, I noticed mark of injury of a person”, he does not state when it happened? On the contrary after a fortnight after sending the deceased with the accused to her in-laws’ house, according to PW 12, his mother-in-law and wife came to the accused and “saw the deceased being hale and hearty.”

16. Further 14 days thereafter, Gomati (PW 2) (the sister of the accused) informed them about the deceased being seriously ill. It is then that they came to the hospital and found the deceased dead. In his cross-examination, PW 12 admitted that he did not report the incident of assault to the police and that at the time of her death she had been married for ten years and had three children. He also stated "I cannot say the reason of assaulting the deceased". He also admits as under:

"I have signed on Ext.1 at the Police-station. As the police asked me to sign. I do not know the contents of Ext.1. My statement is hearsay. It is not a fact that the deceased had committed suicide by hanging. I have not seen any injury on the body of the deceased nor noticed any bandage on entire body any parts of the body, at the time of burial."

17. The evidence of PW 12 also therefore does not clearly bring out that soon prior to her death the deceased was subjected to assault by the accused. PW 14, the mother of the deceased also stated that she did not report the assault to the police. She too confirmed that when she and her mother visited the house of accused after the daughter was sent back, she found that the "deceased was hale and hearty". Therefore, the evidence of PW 14 also does not support the case of the prosecution about what happened immediately prior to the date of death of the deceased.

18. There was no forensic evidence that linked the Appellant to the death of the deceased. Importantly, the medical opinion as regards the ligature marks on the neck of the deceased, which could have indicated whether it was indeed a homicidal

death, does not appear to have been examined properly by the doctor i.e. PW 15. In other words, all of the above evidence does not add to the case of the prosecution that it was the Appellant and the Appellant alone who committed the murder of the deceased after subjecting her to cruelty.

19. Having carefully perused the entire evidence, the Court is not satisfied that the prosecution has been able to prove each of the links of the chain of circumstances convincingly. The evidence placed on record does not unerringly point to the guilt of the Appellant.

20. For the aforementioned reasons, the Appellant is acquitted of the offences under Sections 498-A and 302 IPC. His bail bonds shall stand discharged.

21. The appeal is allowed in the above terms, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K.Jena/Secy.