



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.313 OF 2020

Sachin S/o Laxmanrao Shendurkar
Age 29 years, Occ: Labour,
R/o Gav (Kolhi), Tah. Hinganghat,
Dist. Wardha.

...APPELLANT

...VERSUS...

State of Maharashtra,
Through PSO Samudrapur,
Tah. Samudrapur, Dist. Wardha.

...RESPONDENT

Mr. D.R. Bhoyar, Advocate for appellant.
Mr. S.S. Doifode, APP for respondent/State.

CORAM :- SMT. M.S. JAWALKAR & M.W. CHANDWANI, JJ.
ARGUMENTS WERE HEARD ON :- 14.11.2024
JUDGMENT PRONOUNCED ON :- 29.11.2024

JUDGMENT: (Per M.W. Chandwani, J.)

. This appeal assails the judgment of conviction dated 13.01.2020 rendered by the learned Additional Sessions Judge, Hinganghat in Special (Atrocity) Case No.4/2017 (Old Special Case No.1/2014), whereby appellant-Sachin has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short “**IPC**”) and sentenced to suffer rigorous imprisonment for life and to a pay fine of Rs.5,000/- and in default to suffer further rigorous imprisonment for six months.

The prosecution unfolded its case before the learned Additional Sessions Judge as under:

2. On 25.10.2013, PW3-Nilkanth Parasram Meshram (informant) alongwith his wife went to their agricultural field for work, whereas his son PW4-Roshan went to his work place at Jam. His daughters namely Priyanka and deceased Karishma were in the house. At about 1.30 pm, grandson Rahul Meshram came to the field and informed the informant that Karishma had suffered burns, therefore, the informant alongwith his wife came to the house where people had already gathered. She was lying in the courtyard of the house in a burned condition. She made a dying declaration to the informant that the appellant had come there and forcibly poured kerosene on her and set her ablaze. Initially, the deceased was taken to the hospital at Hinganghat wherefrom she was referred to Sevagram Hospital. However, while proceeding to Sevagram the deceased died on the same day. On 28.10.2013, PW3-informant lodged an oral report with the Police Station, Samudrapur alleging that the appellant after committing rape, poured kerosene on the deceased and set her on fire. On his report, initially an offence under Section 302 read with Section 376 of the IPC came to be registered. However, since the deceased

belonged to Scheduled Tribe, the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 were also added. It is to be mentioned here that in the meanwhile, an Accidental Death report No.29/2013 was registered with Hinganghat Police Station on the basis of information received regarding Karishma's death and therefore on 27.10.2013 panchanama of the spot of the incident was prepared. From the spot, a plastic can of kerosene, burnt hair, burnt clothes, pieces of burnt skin of the deceased, one red coloured thread and a mobile phone were seized. On 29.10.2013, the appellant came to be arrested. The clothes from the person of the appellant came to be seized.

3. The appellant denied the charge and asked to be tried. The prosecution in all examined 13 witnesses and recorded the statement of the accused under Section 313 of the Code of Criminal Procedure. The defence of the appellant is that the victim poured kerosene on herself. According to him, the brother of the deceased-Rahul saw her talking to the appellant and scolded her due to which the deceased poured kerosene and set herself on fire. The appellant tried to extinguish the fire. The appellant did not examine any witness in his defence. The learned trial Court

convicted the appellant under Section 302 of the IPC whereas the appellant was acquitted from the charge under Section 376 of the IPC. Feeling aggrieved, this appeal came to be filed.

4. We have heard Mr. Bhoyar, learned counsel appearing on behalf of the appellant as well as Mr. Doifode, learned Additional Public Prosecutor for State. We have given anxious consideration to the judgment of the learned trial Court as well as version of the prosecution witnesses.

5. It transpires to us that, the learned Judge did not believe the testimony of PW3-informant regarding dying declaration allegedly made to him by the deceased. The learned trial Court has also discarded the version of PW4-Rahul and PW9-Narayan, the brother and uncle of deceased Karishma who claimed to be eye witnesses of the incident. The learned trial Judge relied on circumstantial evidence such as burn injury on the person of the appellant and the CA report which depicts presence of kerosene on the clothes of the appellant. That apart, the learned Judge also relied on Section 106 of the Indian Evidence Act and has held that the appellant has not explained the burn injuries on him satisfactorily and noted the conduct that the appellant absconded from the spot.

6. The trial Court disbelieved the story of dying declaration made by the deceased to PW3-informant. The trial Court also did not consider the version of the so called “eye witnesses” PW4-Rahul and PW9-Narayan, the brother and uncle of the deceased who claimed that they saw the appellant while he was running away from the spot. Relying on circumstantial evidence, the trial Court convicted the appellant by the impugned judgment.

7. In cases where the evidence is purely of circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt. The facts and circumstances should not only be consistent with the guilt of the accused but they must be such that their effect is entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence.

8. The Apex Court in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***¹ in paras 153 and 154 of the decision has observed as under:

1 (1984) 4 SCC 116

“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 & Anr. v. State of Maharashtra where the following observations were made: [SCC para 19, p. 807 : SCC (Cri) p.1047]

“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.”

9. In light of this well settled principle, let us see whether the learned trial Court was justified in recording the judgment of conviction.

10. Perusal of evidence of the witnesses as well as defence of the appellant before the trial Court shows that the appellant and the deceased were having a love affair. However, due to objection by the family members of deceased Karishma, the marriage of the deceased could not be performed with the appellant. Therefore, marriage of the appellant was performed with another girl. Even after the marriage of the appellant, the deceased used to talk to the appellant. On 25.10.2013, the deceased was found in a burnt condition and she was taken to the hospital. The postmortem report suggests that the deceased died because of cardio respiratory arrest due to 96% burn injuries. The mobile phone of the appellant came to be recovered from the spot of the incident which *prima facie* suggests that the appellant was present at the spot of incident. Apart from the mobile phone, an empty plastic can of kerosene was also recovered. There were burn injuries on both the hands of the appellant. Now, the prosecution is attributing this homicidal death to the appellant by coming up with the case that the appellant committed rape on the

deceased and thereafter poured kerosene on her and set her ablaze.

11. No doubt, through PW11-Dr. Rajendrasingh Bisen it has been brought on record that on 29.10.2013 the appellant was examined by him and he had superficial burns on both the upper limbs, bullae formation at right ankle joint and therefore, he was admitted in the hospital for a day on 29.10.2013. Through this witness, the prosecution has also brought on record that again on 30.10.2013 the appellant was brought before him for examination. He collected the blood and semen sample of the appellant. Thereafter, he also obtained clothes from the person of the appellant which were packed and sealed by him. This witness was again examined on 31.10.2013 and opined that the injuries on both his forearms, right ankle joint bullae formation medial side, noted above, are due to burning. The CA report Exhs.113 to 116 reveals the presence of kerosene on the clothes of the appellant.

12. We cannot ignore the fact that the alleged incident took place on 25.10.2013 whereas, the appellant was called in for interrogation on 28.10.2013 after which he was admitted in the hospital for a day and was discharged on 29.10.2013. He was arrested on 29.10.2013 while his medical examination was being

conducted by PW11-Dr.Rajendrasingh, who seized the clothes from his person. It is highly improbable that the appellant will wear the same clothes for five days after the incident which he had worn at the time of the incident. No evidence has been brought on record suggesting that proper sealing of the clothes of the appellant was done at the hospital as claimed by PW11-Dr. Rajendrasingh. Rather, the seizure panchanama (Exh.36) depicts that those clothes are shown to be seized and sealed at the police station. The evidence regarding recovery of clothes of the appellant is not satisfactory so as to rule out any possibility of tampering with the seized clothes. This assumes more significance particularly, when the conviction is also based on this very incriminating circumstance. Therefore, the circumstance of discovery of kerosene on the clothes of the appellant relied upon by the prosecution is doubtful.

13. No doubt there is presence of burn injuries on the person of the appellant which goes to show that he was present on the spot. From the tenor of cross-examination of material witnesses it reveals that the appellant took a defence that, inspite of his marriage the deceased used to talk to him which was not liked by her brother PW4-Rahul. On the day of the incident, upon

noticing the talk between the deceased and the appellant, PW4-Rahul scolded the deceased and thereafter she poured kerosene and set herself ablaze. The appellant tried to extinguish the fire from the person of the deceased as a result of which he sustained burn injuries. What we find from the record of the case is that the appellant has taken this defence from the very same day when he was called in by the police for interrogation. Therefore, he was sent to PW11-Dr. Rajendrasingh for medical legal examination alongwith the requisition letter to opine whether these injuries can be caused while extinguishing fire as claimed by the appellant. Thus, the defence of the appellant is not an afterthought. The learned trial Judge relied on Section 106 of the Indian Evidence Act which prescribes that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. The appellant, while putting questions during cross-examination has suggested to the witnesses that deceased Karishma set herself on fire and while extinguishing the said fire, the appellant sustained burn injuries. In view of the presence of the appellant on the spot at the time of incident, delay of three days in lodging the complaint with the police station, recording of accidental death by Hinganghat Police Station, doubt over the

version of PW3-informant about the dying declaration; the defence of the appellant that he sustained the injury while he was extinguishing the fire from the person of the deceased appears to probable. Moreover, there were two other witnesses who were not examined by the prosecution who had informed the police that the appellant sustained burn injuries while extinguishing the fire. The learned Judge erroneously recorded the findings that the burn injuries on the appellant are not satisfactorily explained by him for the reason that kerosene residue was detected on the full-shirt, full-pant and underwear of the appellant.

14. To conclude, though burn injuries were appearing on the person of the appellant but this circumstance alone does not exclude the hypothesis of the appellant's defence discussed above which is not only consistent with the innocence of the appellant but also inconsistent with his guilt. Therefore, we are of the opinion that the prosecution failed to prove the guilt of the appellant beyond all reasonable doubt. The circumstance which has been brought on record by the prosecution itself creates doubt. The benefit of doubt always goes in favour of the accused. Therefore, we cannot concur with the findings recorded by the learned trial Court convicting the appellant for the offence

punishable under Section 302 of the IPC. Consequently, we pass the following order:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment and order dated 13.01.2020 passed by the Additional Sessions Judge, Hinganghat, District Wardha in Special Case No.4/2017 (Old Special Case no.1/2014) is quashed and set aside.
- (iii) Appellant – Sachin S/o Laxmanrao Shendurkar is acquitted of the offence punishable under Section 302 of the Indian Penal Code.
- (iv) The appellant who is in jail shall be released forthwith, if not required in any other crime.
- (v) Muddemal articles being useless and worthless be destroyed, if not required in any other case.

The appeal is disposed of in the above terms.

(M.W. CHANDWANI, J.)

(SMT. M.S. JAWALKAR, J.)

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