2024 INSC 211

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 918 OF 2024

RAVINDER KUMAR ... APPELLANT(S)

VERSUS

STATE OF NCT OF DELHI ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. This appeal arises against the judgment and order passed by the Division Bench of the High Court of Delhi at New Delhi on 12th October, 2015 in Criminal Appeal No.287 of 2015, thereby dismissing the appeal filed by the appellant herein.

2. The facts in brief leading to the filing of the present appeal are as under:

2.1 Deceased-Meena, daughter of Mani Ram (PW.3) and Gyanwati (PW.6), got married to the appellant-Ravinder Kumar (accused No.1) on 20.06.1999. A male child named

Harry was born out of the said wedlock on 26.08.2000. On 27.04.2001, at 0055 hours, a First Information Report ("FIR" for short) bearing No.129/2001 (Ext. PW-9/A) was registered at the instance of deceased-Meena in the Police Station Civil Lines, Delhi for investigation into the offence under Section 498-A of the Indian Penal Code, 1860 (for short. 'IPC'). In the said FIR, deceased-Meena made allegations with regard to cruelty made by her husband-Ravinder Kumar (accused No.1) and his two brothers, namely, Pushpender Singh (accused No.2) and R. Harshinder (accused No.4) during her stay at the matrimonial home at H.No.252, Old Chandrawal, Civil Line, Delhi. In the said FIR, after completion of the investigation a Report under Section 173 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') was submitted. However, it appears that there was a compromise between the parties and she made a statement before the Metropolitan Magistrate (Mahila Court), Delhi that she does not want to proceed with the case any further. She further stated that she has no grievance against the accused persons and that the complaint had been made by her out of frustration and anger. She had also stated that she was

living separately with her husband and child happily, as such criminal proceedings were terminated and the accused were discharged vide judgment dated 21.10.2003.

2.2 On the morning of 29.05.2004, dead body of Meena was discovered at about 0820 hours lying in a pool of blood on the floor of the room on the ground floor, her throat slit with a sharp edged weapon and her son Harry aged about three and a half years was found sitting nearby.

2.3 The FIR No.211/04 (Ext. PW-1/A) came to be registered for the offence punishable under Section 302 IPC on the basis of *rukka* (Ex.PW-15/B) sent by Sub Inspector Ram Chander (PW.15). The FIR was later converted into a case involving for offence punishable under Section 304-B/498-A/34 of the IPC on the basis of the statements made by Mani Ram (PW.3), Shiv Kumar (PW.4) and Gyanwati (PW.6), father, brother and mother of deceased Meena respectively.

2.4 On conclusion of the investigation, charges were framed against Ravinder Kumar (accused No.1), the husband of the deceased, Babu Lal (accused No.4), who is the father-in-law of the deceased, Phoolwati (accused No.3), who is the mother-in-law of the deceased and Pushpender (accused No.2) and R.

Harshinder (accused No.5), who are the brothers-in-law of the deceased. At the conclusion of the trial, by judgment and order dated 25.11.2014/08.01.2015, the Addl. Sessions Judge-02, North District, Rohini Courts, Delhi (hereinafter referred to as "trial court") convicted the appellant herein for the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment with a fine of Rs.25,000/-. All the accused were sentenced to undergo rigorous imprisonment for ten years with fine of Rs.20,000/- for the offences punishable under Section 304B/34 IPC and rigorous imprisonment for three years with fine of Rs.25,000/- each for offence under Section 498A/34 IPC with further direction that in case of default in payment of fine they would undergo rigorous imprisonment for six months and three months respectively.

2.5 Being aggrieved thereby, two criminal appeals came to be preferred by the convicted persons. Mani Ram (PW.3), the father of the deceased also filed an independent appeal being Criminal Appeal No.569 of 2015, being aggrieved by the acquittal of accused Nos.2 to 5 for the offences punishable under Section 302/34 IPC. The appeals were heard together.

The High Court, vide impugned judgment and order dated 12th October 2015, held the appellant herein and Pushpender (accused No.2) guilty for the offence punishable under Section 302 read with Section 34 IPC. The conviction and sentence of the appellant herein and Pushpender (accused No.2) was set aside for the offence punishable under Section 304B read with Section 34 IPC while maintaining the sentence awarded by the trial court to the appellant for the offence punishable under Section 302/34 IPC. The High Court also sentenced Pushpinder (accused No.2) to undergo life imprisonment with fine of Rs.25,000/- for the offence punishable under Section 302/34 IPC. In case of default in payment of fine, he was directed to undergo rigorous imprisonment for three months. The conviction of Phoolwati (accused No.3), Babu Lal (accused No.4) and R. Harshinder (accused No.5) for the offence punishable under Section 304-B read with Section 34 IPC and conviction of all accused for offence under Section 498-A read with Section 34 IPC and sentences awarded thereagainst were maintained.

2.6 Babu Lal (accused No.4), who is the father-in-law of the deceased had preferred Criminal Appeal No.2025 of 2017

before this Court. Since Phoolwati (accused No.3), who is the mother-in-law of the deceased died during the pendency of the appeal, the appeal came to be abated against her. In the said appeal, insofar as Babu Lal (accused No.4) is concerned, though this Court did not find any ground to interfere with the conviction passed by the trial court and the High Court, it reduced the sentence for the period already undergone by accused No.4-Babu Lal.

2.7 Pushpender (accused No.2) had preferred Criminal Appeal Nos.938-939 of 2016. This Court, vide order dated 15th February 2022 partly allowed the appeals and set aside the conviction and sentence recorded against Pushpender (accused No.2) for offence punishable under Section 302 IPC, however it restored the conviction and sentence in respect of offences under Sections 304B and 498A read with Section 34 IPC.

2.8 Insofar as R. Harshinder (accused No.5) is concerned, he had preferred Criminal Appeal No.244 of 2022. His appeal was also partly allowed by reducing the sentence to the period already undergone by him, vide order dated 15th February 2022.

2.9 After the aforesaid appeals were decided, the appellant herein has preferred the present appeal in October, 2023. Leave was granted in this matter on 13.02.2024.

3. We have heard Ms. Neha Kapoor, learned counsel for the appellant and Mr. Rajan Kumar Chourasia, learned counsel for the respondent.

4. Ms. Kapoor submits that the conviction is based on circumstantial evidence. She further submits that no incriminating circumstances have been proved against the appellant beyond reasonable doubt. She submits that insofar as recovery of the bloodstained clothes is concerned, it is found at a place accessible to one and all and she further submits that the recovery panchnama also does not mention the date of recovery. She therefore submits that, the conviction under Section 302 IPC is not at all tenable.

5. Ms. Kapoor further submits that even the conviction under Section 304B and 498A would not be tenable. She submits that the matter was compromised between the deceased and the accused. It is submitted that taking into consideration the above aspect, the amended charge came to be framed on 14.03.2007, restricting the claim with regard to

cruelty only for the period between 21.10.2003 and 29.05.2004 i.e. from the date of the discharge by the learned Magistrate in the earlier proceedings till the date on which Meena was found dead. Ms. Kapoor further submits that during this period there is no allegation against the appellant herein, which would attract the provisions of Section 498A IPC. It is submitted that the prosecution fails to prove the guilt. The conviction under Section 304B IPC would also not be tenable.

6. Shri Rajan Kumar Chourasia, learned counsel appearing for the respondent, on the contrary, submits that both the Courts, upon correct appreciation of evidence, have concurrently found the appellant herein guilty for the offence punishable under Section 302 IPC. It is, therefore, submitted that no interference is warranted with the conviction recorded under Section 302 IPC. It is submitted that insofar as conviction under Section 498A and 304B IPC are concerned, the same has been affirmed by this Court in the case of three co-accused persons, as such the said finding has attained finality.

7. With the assistance of the learned counsel for the

parties, we have scrutinized the evidence.

8. Undoubtedly, the case of the prosecution rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[1], wherein this Court held thus:

> "**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal* v. *State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :
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> > "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 in the first instance be fully established, and all the facts so established should be consistent only

[1]**(1984) 4 SCC 116 : 1984 INSC 121**

> 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."

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* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the 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. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say,

they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

10. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

11. In the light of the aforesaid judgment, we have examined the present case. In the present case, the trial court and the High Court have basically convicted and affirmed the conviction under Section 302 IPC, finding the plea of the alibi to be without substance. It is a settled proposition of law that before the burden shifts on the

accused under Section 106 of the Evidence Act, the prosecution will have to prove its case. No doubt that in view of the law laid down by this Court in the case of ***Trimukh Maroti Kirkan v. State of Maharashtra***[2], which is a case like the present one, where husband and wife reside together in a house and the crime is committed inside the house, it will be for the husband to explain how the death occurred in the house where they cohabited together. However, even in such a case, the prosecution will have to first establish that before the death occurred, the deceased and the accused were seen in the said house. In the present case, the incident had occurred on the intervening night of 28th/29th May, 2004. It was necessary for the prosecution to lead some evidence to establish that on the night of 28th/29th May 2004, deceased and accused were together in the house. This will be more necessary in view of the specific plea of the defence of alibi.

12. We will have to consider as to whether the prosecution has established other circumstances beyond reasonable doubts, which led to no other conclusion than the guilt of the

[2] **(2006) 10 SCC 681 : 2006 INSC 691**

accused.

13. The prosecution has relied upon the CDRs with regard to mobile phone of the Saroj, Pushpender (accused No.2) and Ravinder Kumar (accused No.1). However, both the Courts found the said evidence to be inadmissible as it was not proved in terms of Section 65A of the Evidence Act. The circumstances relied upon by the prosecution is with regard to the seizure of the bloodstained clothes allegedly used by the appellant at the time of commission of the crime beneath the double bed from his parental home at Chandrawal. We find that the said recovery cannot be relied for more than one reasons. For a recovery to be admissible on the statement made under Section 27 of the Evidence Act, it has to be from such a place which is exclusively within the knowledge of the maker thereof. Indisputably, the recovery is from a place accessible to one and all and the recovery panchnama also does not mention the date regarding such a recovery. Apart from that, there is no entry in malkhana register with regard to the deposit of the said articles and sending them to the FSL for chemical examination. We, therefore, find that the said circumstances cannot be said to be proved beyond

reasonable doubt.

14. Apart from that, the prosecution has not been in a position to prove any other circumstance beyond reasonable doubt. The trial court and the High Court have heavily relied on the circumstance that an English calendar (Ex. PX) was found to be hanged in the room. On one side, two sheets of paper both similar computer print outs has been pasted. On one of the sheets, on the left top corner, the name Ravinder followed by mobile telephone number 9818419048 preceded by a drawing of mobile phone with arrow sign, all written in hand can be noticed. On the other sheet pasted on the top, above the calendar, it was printed thus:-

> "In-Laws: 2791 3334
> Self: 9818419048
> My Home: 55153285"

15. It has been held that the appellant had hung calendar (Ex.PX) on the wall of the house, where he was residing and the calendar (Ex.PX) would catch the attention of anybody entering the house. It was held that it was deliberate and had an objective. It was also held that Chandrawal house was qualified by the expression "my home" and the house

where the other phone was functional as that of his "in-laws". The High Court observed thus:-

> "...The phone number of Chandrawal house was qualified by the expression "my home" and the house where the other phone (27913334) was functional as that of his "In-laws"

16. With this finding and coupled with the finding that in the house the appellant has created a scene so as to make it seem like a robbery, it was held that it was only the appellant who was guilty for commission of murder of his wife.

17. We are of the considered view that the High Court has failed to draw a distinction between the "may have committed the crime" or "must have committed the crime", as held by this Court in the case of ***Sharad Birdhichand Sarda*** (supra). As held by this Court, the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. We, therefore, find that the prosecution has failed to prove any incrimination circumstance beyond reasonable doubt and in any case failed to establish a chain of events intertwined with each other, which leads to no other conclusion than the guilt of the accused.

18. Considering the facts and circumstances, the appeal is partly allowed and the conviction and sentence imposed upon the appellant herein for the offence punishable under Section 302 IPC is set aside. However, the conviction and sentence in respect of the offences punishable under Sections 304B, 498A read with Section 34 IPC are restored.

19. In the present case, the appellant has undergone incarceration for a period of more than fifteen years. In that view of the matter, we direct that it will not be necessary for the appellant to deposit the fine amount. The appellant is directed to be set at liberty forthwith, if not required in any other case.

20. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
MARCH 06, 2024