

A

STATE OF U.P.
v
HARI MOHAN AND ORS.

B

NOVEMBER 7, 2000

[K.T. THOMAS AND R.P. SETHI, JJ.]

Criminal Law:

C

Indian Penal Code, 1860—Sections 302, 34 and 201—Murder—Applicability of circumstantial evidence in conviction of accused when there is no direct evidence—Held, the circumstantial evidence should be consistent with the guilt of the accused and inconsistent with his innocence.

D

Respondent No. 1, the accused, was found convicted for murder of his younger brother's wife. Body of the deceased was found in a gunny bag floating in a pond. The body bore gun shot injuries. The First Additional Sessions Judge convicted the accused under Sections 302 and 34 of the Indian Penal Code, 1860 (IPC) and sentenced him to life imprisonment. Other respondents were convicted under Section 201 of IPC and sentenced to five years rigorous imprisonment. On appeal by the respondents, the High Court acquitted the accused on the assumption that "the possibility of a suicide of the deceased in the house also cannot be denied". The conviction of all the other accused persons was also held not maintainable on that account. The State has preferred the present appeal.

E

F

Partly allowing the appeal, the Court

G

HELD : 1.1. There is no direct evidence connecting any of the accused with the commission of the crime. The case of the prosecution is based upon circumstantial evidence. It is often said that witnesses may lie but the circumstances cannot. To convict a person on the basis of circumstantial evidence all the circumstances relied upon by the prosecution must be clearly established. The proved circumstances must be such as would reasonably exclude the possibility of innocence of the accused. The circumstantial evidence should be consistent with the guilt of the accused and inconsistent with his innocence. The chain of circumstances, furnished by the prosecution, should be so complete as not to lead any reasonable ground for conclusion

H

consistent with the innocence of the accused. Medical evidence in such a case may be an important circumstance giving assurance to the existence of the other circumstances alleged against the culprit. When the evidence against the accused, particularly when he is charged with grave offence like murder consists of only circumstances, it must be qualitatively such that on every reasonable hypothesis the conclusion must be that the accused is guilty; not fantastic possibilities nor freak inferences but rational deductions which reasonable minds make from the probative force of facts and circumstances.

[442-H; 443-A-C]

1.2. On the basis of prosecution evidence led in the case and despite mishandling of the case by the investigation officer, this Court is satisfied that the circumstances have been fully established by the prosecution. The circumstances are a chain, complete in itself and inconsistent with the innocence of the accused. On the touchstone of the tests regarding appreciation of circumstantial evidence, there is no doubt that prosecution had proved its case beyond any reasonable doubt that the accused had caused the death and thus committed the murder of the deceased. He was rightly convicted by the trial court under Section 302 of the IPC and wrongly acquitted by the High Court on erroneous considerations. [448-E-F]

1.3. This Court restores the conviction passed by the trial court against the accused for the offence punishable under Section 302 IPC and sentencing him to undergo life imprisonment. [448-H]

1.4. The prosecution did not succeed in proving the case either under section 302 read with section 34 or section 201 IPC against the other accused persons and their acquittal by the High Court is upheld. [448-G; 449-A]

State of Punjab v. Jagbir Singh, Baljit Singh & Karam Singh, [1974] 3 SCC 277; *Sate of Himachal Pradesh v. Lekh Rai & Sons*, JT (1999) 9 SC 43 and *Rajinder Kumar v. State of Punjab*, AIR (1966) SC 1322, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 484 of 1991.

From the Judgment and Order dated 25.1.91 of the Allahabad High Court in Crl. A. No. 3318 of 1978.

Praveen Swarup and Pramod Swarup for the Appellant.

G. Krishnan, Radhakrishnan, Amitesh Kumar and Gopal Singh for the Respondents.

A The Judgment of the Court was delivered by

SETHI, J. Roop Devi, daughter of Bhagwan Sahai (PW1) was married to Shyam Mohan, respondent No. 2 herein on 6.6.1973. Respondent No. 1 Hari Mohan is the elder brother of respondent No.2. The other respondents are the relations/friends of Shyam Mohan.

B

After receiving the letter on 18.3.1977 which is stated to have been written by Roop Devi, Bhagwan Sahai (PW1), her father, came to village Kurria Kalan on 19.3.1977 to inquire about his daughter. He was told by respondent No. 1 Hari Mohan that Roop Devi had died due to Cholera on 15.3.1977. Apprehending some foul play PW1 lodged the FIR at Police Station Kanth on 20.3.1977 at about 1.30 p.m. On 22.3.1977 the dead body of Roop Devi, bundled in a gunny bag was found floating in a pond in Village Sahwapur, away from the house of the accused- respondents. On opening the gunny bag it was found that dead body was tied in a saree and wrapped in a bed sheet. It also bore gun shot injuries. Post mortem was conducted on 23.3.1977 and the doctor opined that the deceased had died due to shock and haemorrhage as result of the ante mortem injuries noticed on her body.

C

D

Upon conclusion of the trial, the learned First Additional Sessions Judge, Shahjahanpur convicted respondent No.1 under Section 302/34 IPC and sentenced him to life imprisonment. All other respondents were convicted under Section 201 IPC and sentenced to five years rigorous imprisonment.

E

Not satisfied with the judgment of the trial court, the respondents preferred an appeal in the High Court which was allowed vide the judgment impugned in this appeal. The accused were acquitted on the assumption that "the possibility of a suicide of Smt. Roop Devi in the house also cannot be denied". As the occurrence was found to be that of a suicide, the conviction of all the accused persons under Section 201 IPC was held to be not maintainable.

F

We have heard the learned counsel for the parties at length and perused the whole record including the statements of the witnesses produced by the prosecution and the defence.

G

Admittedly, there is no direct evidence connecting any of the accused with the commission of the crime. The case of the prosecution is based upon circumstantial evidence. It is often said that witnesses may lie but the circumstances cannot. To convict a person on the basis of circumstantial

H

evidence all the circumstances relied upon by the prosecution must be clearly established. The proved circumstances must be such as would reasonably exclude the possibility of innocence of the accused. The circumstantial evidence should be consistent with the guilt of the accused and inconsistent with his innocence. The chain of circumstances, furnished by the prosecution, should be so complete as not to lead any reasonable ground for conclusion consistent with the innocence of the accused. Medical evidence in such a case may be an important circumstance giving assurance to the existence of the other circumstances alleged against the culprit. This Court has consistently held that when the evidence against the accused, particularly when he is charged with grave offence like murder consists of only circumstances, it must be qualitatively such that on every reasonable hypothesis the conclusion must be that the accused is guilty; not fantastic possibilities nor freak inferences but rational deductions which reasonable minds make from the probative force of facts and circumstances.

While appreciating the ocular testimony of witnesses and the circumstantial evidence in a criminal case, the criminal courts are expected to keep in mind the observations of this Court in *State of Punjab v. Jagbir Singh, Baljit Singh & Karam Singh*, [1974] 3 SCC 277 wherein it was held:

“A criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures.”

This Court again in *State of Himachal Pradesh v. Lekh Rai & Sons*, JT (1999) 9 SC 43 reiterated the position of law and while reminding the criminal courts of their obligations held:

“The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence

- A of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a Utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the mankind.”
- B
- C
- D
- E Before appreciating the circumstantial evidence in the case, we are at pain to place on record our displeasure regarding the conduct of the investigation in the case. The investigating officer appears to have left no stone unturned to help the accused-respondents. It appears that the valuable evidence, though available, was not collected apparently for ulterior purposes. The conduct of the investigating officer SI D.P. Tiwari (PW7) was even noticed by the trial court. On 30th October, 1978 while recording his statement, the trial court observed that “it appears that the IO was negligent and an irresponsible investigating officer”. It was noticed that “the witness giving aforesaid statement and it appears that he wants to damage the prosecution case”. It is not disputed that during investigation it had come in evidence that respondent No.1 was possessed of a licensed gun which was stated to have been used by him on 15.3.1977, the alleged day of occurrence, yet no effort was made by the IO to seize the gun or get it examined by an expert to ascertain whether any shot was fired from its barrel. He also failed to have taken into custody the letter written by the deceased for a sufficiently long period though its mention was made by the PW1 in the FIR itself. However,
- F
- G
- H the defective investigation cannot be made a basis for acquitting the accused

if despite such defects and failures of the investigation, a case is made out against all the accused or anyone of them. It is unfortunate that no action can be taken against the IO at this stage who, in all probabilities, must have retired by now. A

The trial court in its judgment summarised the circumstantial evidence against the respondents as under: B

1. Hearing of gunshot by Bishran Singh at about 10 a.m. on 15.3.1977.
2. Bishran Singh's arrival near the Chabutra of Hari Mohan and then coming out of accused Hari Mohan with a gun along with Mahadeo. C
3. False assertion of accused Hari Mohan that he fired a blank shot in the air.
4. Hearing of shriek or cry from inside the house by Bishran Singh.
5. Hari Mohan being a gun licensee. D
6. False assertion by accused Hari Mohan to Bhawan Sahai on 19.3.1977 about the death of Smt. Roop Devi due to Cholera.
7. Fresh and plastering of the Kothir 'C' found by the investigating officer.
8. Blood stained earth taken in possession from points A and B shown in the site plan." E

While dealing with Circumstances 1 to 5, the trial court relied upon the testimony of PW3 and held:

"Accused Hari Mohan is the elder brother of accused Shyam Mohan. Their father was not alive at the time of the alleged murder. As such Hari Mohan was to discharge the duties and obligations of the head of the family. Somehow, the matter of dowry had taken an evil turn and since there is evidence that Smt. Roop Devi was not pulling with his mother-in-law and there was constant conflict and dispute, every possibility borders on certainly that Hari Mohan took the law into his hands and committed this murder callously and brutally." F G

Circumstance No. 6 was held proved which, according to the trial court, strengthened the conclusion regarding the guilt of accused Hari Mohan. Regarding circumstance No. 7, it was held that investigating officer had noted H

A the existence of fresh mud plastering at the place of occurrence, obviously with the object of destroying the evidence in the form of blood stains and other marks which could prove the killing of the deceased by a gun shot. Though Circumstance No. 8 was held proved, yet it was not relied, on account of the negligence of the investigating officer as he had failed to get the Chemical Examiner's report about the origin and nature of the blood.

B In appeal the High Court, as noted earlier, has erroneously held that Roop Devi could have died by committing suicide. There was no evidence or any basis to return such finding by the High Court.

C From the evidence placed on record it is established that on the day of occurrence the deceased Roop Devi was living with her in-laws i.e. accused-respondents. We are not inclined to accept the plea of the respondents that before her death the deceased was living with her parents and not with the respondents. Bhagwan Sahai (PW1), who is the father of the deceased, has stated that the deceased, two months prior to her death, was sent to her in-laws house in the company of respondent No.1 Hari Mohan, upon his assurance

D that she would be kept well. Letter Exhibit Ka 1 dated 13.3.1977 is proved to have been sent by the deceased to her parents through Rajinder Prasad PW2. We are not inclined to accept the plea of the defence that the aforesaid letter was not written on 13.3.1977 but on some earlier date. Even if the aforesaid letter is written on an earlier date, it will not make any difference as, admittedly,

E it is proved to have been written by the deceased before her death. The handwriting of the deceased has been proved by the prosecution by examining Arun Kumar, PW4. It may further be noticed that none of the accused except Hari Mohan, respondent No.1 had stated that the deceased was not living with them. Even her husband, respondent No.2, has not pleaded that on the

F date of occurrence she was living with her parents.

Bishran Singh, PW3 stated in the trial court that on the date of occurrence he had heard the noise in the house of the accused as mother of Shyam Mohan, accused, was having a brawl with the deceased. He heard the sound of gun shot coming from the house of the accused and when he inquired from

G Hari Mohan about the gun shot, he was told by the aforesaid respondent that he had fired in the air. Accused Hari Mohan is admittedly possessed of a licensed gun. The deceased is proved to have died on account of a gun shot injury.

H On 13.3.1977 the deceased is proved to have written a letter to his father PW1, stating therein that she should be immediately taken back from the

house of her in-laws otherwise her brother-in-law, respondent No. 1, mother-in-law and the husband would kill her. The letter being in the hand-writing of deceased, as noticed earlier, stands proved by the testimony of PW4, her brother. No effort was made by the accused persons, if they doubted the authenticity of the letter, to get it compared with the admitted hand-writing of the deceased. The mere fact that the prosecution witness did not produce other letters allegedly written by the deceased, could not be made a basis to hold that they had made any attempt to suppress the evidence which the respondent could have utilised for the purposes of comparing the hand-writing of the deceased. In view of the positive evidence of PW4 we have no reason to hold that the letter Exhibit Ka 1 was not written by the deceased. The alleged discrepancy or over-writing on the top of the letter regarding its date in no way helps the accused persons.

The false assertion by the respondent Hari Mohan that deceased had died due to Cholera on 15.3.1977 is such an important circumstance as would leave no doubt in the mind of the court that the death was neither natural nor suicidal but in fact homicidal. Making of contradictory statement on a fact which the accused knew well that it is a wrong statement on a very vital aspect concerning the death of the deceased can also be counted, among other circumstances, as a link in the chain of circumstances to connect the accused with the commission vide judgment in *Rajinder Kumar v. State of Punjab*, AIR (1966) SC 1322. In that case the deceased was last seen with him and later the dead body was found buried in his own house, the court counted the contradictory statement made by the accused (that deceased had gone to the shop of one Baba to fetch a toast) as one of the links in the chain. There is no doubt in our mind that Hari Mohan accused in this case made a false statement about the deceased by telling her father that she had died due to cholera on 15.3.1977. If Roop Devi had died on 15.3.1977 due to Cholera, what prevented the accused persons to intimate her parents about the death. No explanation is tendered by the accused persons. The said accused, however, has taken the contradictory plea in the court that the deceased was not at all living at their residence.

From the prosecution evidence it is established that:

- (i) the deceased Roop Devi was married to respondent No.2 on 6.6.1973;
- (ii) the relations between the deceased and her in-laws were strained on account of the demand of dowry;

- A (iii) two months prior to the incident she was sent to her in-laws' house in the company of accused Hari Mohan where she lived till her death;
- (iv) the deceased wrote a letter Exhibit Ka 1 intimating her parents that she apprehended to be killed by the accused persons;
- B (v) on the date of occurrence gun shot was heard in the house of the accused;
- (vi) respondent No.1 owned and possessed a licensed gun on the date of occurrence;
- C (vii) the dead body of Roop Devi packed in a gunny bag was found floating in a water tank away from the house of the accused;
- (viii) Roop Devi was proved to have died after receiving gun shot injuries which could be fired from a distance of 4-6 ft which excluded the possibility of suicide;
- D (ix) Hari Mohan accused made a false statement to Bhagwan Sahai, the father of the deceased that Roop Devi had died on 15.3.1977 due to cholera.

E On the basis of prosecution evidence led in the case and despite mis-handling of the case by the investigation officer, we are satisfied that the circumstances enumerated hereinabove have been fully established by the prosecution. The circumstances are a chain, complete in itself and inconsistent with the innocence of accused Hari Mohan. On the touchstone of the tests regarding appreciation of circumstantial evidence enumerated hereinabove, we have no doubt in our mind that prosecution had proved its case beyond any reasonable doubt that Hari Mohan, respondent No.1 had caused the death and thus committed the murder of Roop Devi. He was rightly convicted by the trial court under Section 302 of the IPC and wrongly acquitted by the High Court on erroneous considerations.

F We are, however, of the opinion that the prosecution did not succeed in proving the case either under Section 302 read with Section 34 or Section 201 IPC against the other accused persons.

G In the result the appeal is partly allowed by restoring the conviction passed by the trial court against respondent No.1 Hari Mohan for the offence punishable under Section 302 IPC and sentencing him to undergo life imprisonment. Bail bonds of Hari Mohan stands cancelled. The First Additional H

Sessions Judge, Shahjahanpur, will take prompt steps to put Hari Mohan, the first accused, back in jail to undergo the sentence imposed upon him. The appeal against other respondents is dismissed and their acquittal by the High Court is upheld. A

B.S.

Appeal partly allowed.