

SUDAMA PANDEY AND ORS.

v.

STATE OF BIHAR

DECEMBER 5, 2001

[UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

*Criminal Trial—Circumstantial evidence—Conviction on basis of—Circumstances should be such as to form a chain leading to inference of the guilt of the accused.*

*Constitution of India, 1950—Article 136 :*

*Concurrent findings of facts—Normally not interfered with—However could be interfered with when there is substantial miscarriage of justice.*

*Reappraisal of evidence—Not normally done—But could be resorted to when assessment of evidence is vitiated by error of law or procedure or if there is misreading of evidence.*

**Appellants allegedly caused the death of 12 years old girl. Trial Court, relying upon various circumstantial evidence, found the appellants guilty and sentenced them to death. High Court confirmed the conviction but commuted the death penalty to imprisonment for life. Hence the present appeal.**

**Allowing the appeals, the Court**

**HELD : 1. The various circumstances relied on by the Trial Court and the High Court did not point to the guilt of the accused and there are various circumstances which throw serious doubts that the victim must have died not in the manner alleged by the prosecution. Thus, the appellants could not be found guilty of the offence charged against them.[469-F]**

**2. It is settled principle that in the case of circumstantial evidence, the various circumstances should form a chain pointing to the guilt of the accused. In cases where there is only circumstantial evidence, the Court has to consider the evidence adduced by the prosecution and decide whether**

A the evidence proves particular facts relevant for the purpose of the case  
 and when such facts are proved question arises whether the facts are  
 capable of giving rise to any inference of the guilt of the accused person or  
 not. An inference of guilt can be drawn only if the proved fact is wholly  
 consistent with the guilt of the accused and if the proved fact is consistent  
 B with his innocence he is entitled to benefit of doubt. [468-D-E]

*Tanviben Panikaikumar Divetia v. State of Gujarat*, [1997] 7 SCC 156  
 and *Sharad Birdhichand Sarda v. State of Maharashtra*, [1984] 4 SCC 116,  
 referred to.

C 3. The entire evidence adduced by the prosecution only shows that  
 the prosecution witnesses found the appellants in the vicinity of the place  
 where the dead body was found. Even if it is presumed that the appellants  
 were found sitting together or found walking along the road, that by itself  
 is not an incriminating circumstantial evidence pointing to the guilt of the  
 D accused unless it was very near to the scene of occurrence or that they were  
 found in suspicious circumstances. The evidence to the effect that some of  
 the appellants teased the deceased is also not satisfactorily proved. Apart  
 from this flimsy suspicion, there is no other evidence to connect the appel-  
 E lants to the crime. Further, the Investigating Officer could not lay his  
 hands on any incriminating material to connect the appellants to the  
 crime, such as recovery of any weapon allegedly used by them for commit-  
 ting crime or any blood stained clothes worn by them which would have  
 been of some assistance to prove the guilt of the appellants. The appellants  
 were arrested immediately after the incident. None of them had injuries on  
 F their body. It is also suspicious whether the incident itself had occurred in  
 the places alleged. The Investigating Officer deposed that he did not notice  
 in the mahazar that there were foot marks or the trampling of the plants  
 near the area where the dead body was found. Further, the prosecution  
 witnesses examined by the prosecution were accused in other criminal  
 cases whose evidence should have been considered by the trial court with  
 G extreme care and caution. [472-C-F; 472-B]

4. Under Article 136 of the Constitution this court seldom interferes  
 with the factual findings recorded by two concurring Courts but if this  
 Court is satisfied that the High Court has committed a serious error of law  
 and that there was substantial miscarriage of justice, this court could  
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interfere with the concurring findings of the High Court and that of the Trial Court. This Court also does not normally enter into a reappraisal or review of the evidence unless the assessment of the evidence by the High Court is vitiated by an error of law or procedure or there was misreading of evidence. [469-G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 654-655 of 2000.

From the Judgment and Order dated 28.4.2000 of the Patna High Court in CrI. A. No. 200 of 1999:

Sushil Kumar, Rishi Malhotra and Prem Malhotra for the Appellants.

Saket Singh for B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

**K.G. BALAKRISHNAN, J.** The five accused persons along with two others were tried by the Third Additional Sessions Judge of Bhojpur in Bihar. The Sessions Court acquitted the other two accused persons and convicted these appellants for the offences punishable under Section 302 read with Section 34, Section 376/511 and Section 201/34 I.P.C. and sentenced all the appellants to death. On appeal, the Division Bench of the High Court of Bihar confirmed the conviction of all the five appellants, but commuted the death penalty to imprisonment for life.

The appellants were tried on the allegation that they had caused the death of a 12 years old girl by name Gudia Kumari. Gudia Kumari was a student of Class VIIth. On 6.11.1996, at about 9.30 A.M., she left the house for the school but did not return home till evening. The members of her family started searching her but they could not find out her whereabouts, on that day. On the next morning, PW1, Satendra Singh, the brother of Gudia Kumari came to know that her dead body was lying in the field of one Ravi Shankar Pandey. PW9, the Sub-Inspector of Police also came to know that the dead body was lying in the field and he went there along with the Deputy Superintendent of Police. PW 8, Dadan Singh gave statement to the police and on the basis of that statement, a case was registered against Bhushan Mahto, Madan Pandey

A and Bhuchai Mahto. PW9 conducted further investigation in the matter and Inquest was held over the dead body, and the dead body of Gudia Kumari was sent for post-mortem examination.

B PW-9 took statements of the witnesses and finally laid charge sheet against seven accused persons. On the prosecution side, 10 witnesses were examined and on the defence side, 3 witnesses were examined. There is no direct evidence to show as to how Gudia Kumari was done to death by the assailants. The learned Sessions Judge relied on the various circumstantial evidence and found these appellants guilty of the offences and the said finding was confirmed by the High Court.

C We heard Shri Sushil Kumar, learned Senior Counsel for the appellants and Mr. Saket Singh, learned Counsel on behalf of the State. On a careful analysis of various items of evidence relied on in this case, we are of the view that the Sessions Judge seriously flawed in coming to the conclusion that these appellants were guilty of the offence of murder. It is a settled principle that in the case of circumstantial evidence, the various circumstances should be able to form a chain pointing to the guilt of the accused. In cases where there is only circumstantial evidence, the Court has to consider the evidence adduced by the prosecution and decide whether the evidence proves particular facts relevant for the purpose of the case and when such facts are proved the question arises whether the facts are capable of giving rise to any inference of the guilt of the accused person or not. An inference of guilt can be drawn only if the proved fact is wholly consistent with the guilt of the accused and certainly he is entitled to the benefit of doubt if the proved fact is consistent with his innocence.

F The law relating to circumstantial evidence, in clear and unmistakable terms, has been laid down by this Court in various decisions and it is sufficient to quote statement of law made by this Court in *Tanviben Pankajkumar Divetia v. State of Gujarat*, [1997] 7 SCC 156:-

G "The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from

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which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and must be true" and the same divides conjectures from sure conclusions."

These principles have been elaborately dealt with in *Sharad Birdhichand Sarda v. State of Maharashtra*, [1984] 4 SCC 116 and in various other decisions and reference to such cases is not necessary.

In the instant case, it can be easily demonstrated that the various circumstances relied on by the Sessions Court and the High Court did not point to the guilt of the accused and there are various circumstances which throw serious doubts that Gudia Kumari must have met with her death, not in the manner alleged by the prosecution and these appellants cannot be found guilty of the offence charged against them. We are not unmindful of the fact that this Court under Article 136 of the Constitution seldom interferes with the factual findings recorded by two concurring Courts but if this Court is satisfied that the High Court has committed a serious error of law and that there was substantial miscarriage of justice, this Court could interfere with the concurring findings of the High Court and that of the Trial Court. This Court also does not normally enter into a reappraisal or review of the evidence unless the assessment of the evidence by the High Court is vitiated by an error of law or procedure or there was misreading of evidence.

A The dead body of Gudia Kumari was found in the field of Ravi Shankar Pandey. On examination of the dead body, the Doctor found that there were series of injuries on the body. Both the eyes were found disorged and the nose was chopped off and there was an incised wound on the right side of the neck and right carotid artery and vein were found cut. There were injuries on the hands of the deceased also. The hymen was found entirely ruptured. The expert opinion was to the effect that there was no indication that rape was committed on her. The Doctor also noticed on examination of the dead body that the digested food materials of about 3 onz were found in the stomach and was of the opinion that the deceased might have taken the meals 6 to 7 hours before the death.

C The various incriminating circumstances based on which the court drew the inference of guilt of the accused are enumerated in paragraph 55 of the Judgment by the Sessions Judge. These are as follows:-

- D 1. The accused persons have evil eye upon the deceased, moreover, apart from this, have got grudge.
- E 2. On 6.11.96 at 9.30 A.M. when the deceased was proceeding towards Karisath for attending class in a way, accused Bhuchai Mahato, Aasami @ Anil Deka and Anil Pandey were seen sitting on a ridge at P.O. field, lying by the side of way.
- F 3. Gudiya, deceased was seen proceeding on that way, towards Karisath.
- G 4. Bhushan Mahato, Sudama Pandey and Kanhaiya were seen following her.
5. From the P/C field, Bhushan Mahato, Sudama Pandey, Madan Pandey, Bhuchai Mahato and Anil Deka were seen coming out.
6. Gudia had not attended her school on 6.11.96.
7. They have been apprehended by the police on different dates.

H On a bare perusal of the circumstances, it can easily be found that these circumstances are not sufficient to prove that these appellants are guilty. The evidence in support of these circumstances is that of PW4 Ekram Singh, PW5

Suryadev Pandey, PW1 Satendra Singh and PW8 Dadan Singh.

PW1 is the brother of the deceased Gudia Kumari. He went in search of Gudia in the evening of 6.11.96. He could not trace out Gudia. He had gone to the school where she was studying but the school was found closed. While he was returning, he saw all the seven accused persons sitting together and murmuring something and on seeing the witness, they maintained silence. He had also deposed that one week before the death, his sister Gudia Kumari had told him that these seven accused persons had teased her. It is important to note that PW1, when questioned by the Police, did not inform that the deceased was teased by the appellants a week prior to the incident. It is also important to note that this witness had also not informed the police that on the evening of 6.11.1996, he saw Anil Deka, Ramnath Pandey and Jhinur Pandey talking among themselves near the house of Balmiki Pandey. Even if it is assumed that he had seen the accused together, that by itself is not an incriminating circumstantial evidence unless it was very near to the scene of occurrence or that they were found in suspicious circumstances.

The evidence of PW-4 Ekram Singh was relied on by the Sessions Court. It is alleged that he had seen all the five appellants herein at about 10'o clock in the morning coming from the field of Ravi Shankar Pandey. The witness has no case that they were found under suspicious circumstances. They had no weapons with them nor their clothes were blood stained. The witness has also no case that these appellants had shown any anxiety on seeing the witness. The Sessions Judge placed implicit reliance on PW4 on the assumption that these appellants were seen by PW4 immediately after the incident. It is important to note that Gudia Kumari must have taken food before she left for school and according to the evidence of the Doctor, the death must have happened about 6 to 7 hours after the consumption of the last meal. Therefore, even if it is assumed that PW4 had seen these appellants near the field of Ravi Shankar Pandey, it is not an incriminating circumstantial evidence, which would, in any way, advance the case of the prosecution.

Another witness is PW5 Suryadeo Pandey. He deposed that he had seen Madan Pandey and Anil Deka sitting on the ridge near the field where the incident had taken place. He saw them at about 9.30 a.m. on 6.11.1996. He also saw Gudia Kumari going to school and according to him, Sudama Pandey, Kanhaiya alias Jhingur Pandey and Bhushan Mahato were following her. It is

A important to note that PW5 Suryadeo Pandey did not state before the Police that he had seen Anil Deka and Madan Pandey sitting on the ridge. It is also to be noticed that this witness was an accused in a criminal case where one Nageshwar Pandey, the father's brother of the accused Madan Pandey, had been murdered. This witness was found guilty and was sentenced to imprisonment for life. Evidence of such a witness should have been considered by the Court of Sessions with extreme care and caution. In this case, all the witnesses examined on the side of the prosecution had strong enmity towards the appellants. Two persons were previously murdered and both of them were related to the appellants. PW5 and PW8 examined on the side of the prosecution were the accused in these criminal cases.

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The entire evidence adduced by the prosecution would only go to show that the prosecution witnesses found these appellants in the vicinity of the place where the dead body was found. These appellants were not found under any suspicious circumstances. All the appellants belong to the same village. If they were found sitting together or found walking along the road, that by itself is not an incriminating circumstance pointing to the guilt of the accused. The evidence to the effect that some of the appellants teased the deceased Gudia Kumari is also not satisfactorily proved. Apart from this flimsy suspicion, there is no evidence to connect these appellants to the crime. Had there been any cogent and convincing item of evidence to connect these appellants to the crime, such as recovery of any weapons allegedly used by them for committing crime or any blood stained clothes worn by them, it would have been of some assistance to prove the guilt of the appellants. The Investigating Officer could not lay his hands on any such incriminating material. The appellants were arrested immediately after the incident. None of them had any injuries on their body. It is also suspicious whether the incident itself had occurred in the field of Ravi Shankar Pandey. The Investigating Officer deposed that he did not notice in the mahazar that there were footmarks or the trampling of the plants near the area where the dead body was found. The learned Sessions Judge found the appellants guilty on fanciful reasons based purely on conjectures and surmises and it is unfortunate that the High Court also did not properly scan the evidence. It is all the more painful to note that the learned Sessions Judge, on the basis of the scanty, discrepant and fragile evidence, found the appellants guilty and had chosen to impose capital punishment on the appellants.

H We are of the view that Sessions Court as well as the High Court

committed serious error in appreciating the circumstantial evidence in this case and it resulted in miscarriage of justice. Therefore, we are constrained to interfere with the finding of the High Court and hold that the prosecution failed to prove that the appellants had committed any of the offences charged against them. The appellants are found not guilty and they are acquitted of all the charges framed against them. They are directed to be released forthwith from the jail, if their detention is not required in any other case. A B

The appeals are allowed accordingly.

N.J.

Appeals allowed.