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SYED HAKKIM AND ANR.

V.

STATE REP. BY DY. SUPERINTENDENT
OF POLICE, KARUR DISTRICT, TAMIL NADU
Criminal Appeal No. 365 Of 2009

B

FEBRUARY 23, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

C

Penal Code, 1860 – ss.302 and 498A – Death of wife – Allegedly due to strangulation by husband and in-laws on account of non-fulfillment of dowry demand – Conviction by Courts below under ss.302 and 498A, on basis of circumstantial evidence – Held: No infirmity in conclusion of Courts below that dowry demand was made, particularly in view of evidence of prosecution witnesses – Conviction in terms of s.498A confirmed – However, as circumstances highlighted by prosecution to bring in application of s.302 IPC were insufficient and scanty, conviction under s.302 set aside – Crime against Women.

D

E

Evidence – Circumstantial evidence – Appreciation of.

F

According to the prosecution, the husband and the in-laws of PW1's daughter strangled her to death as their dowry demand was not met. Both the Trial Court and the High Court convicted the husband and the brother-in-law of the deceased i.e. the appellants under ss.302 and 498A IPC. Hence the present appeal.

Partly allowing the appeal, the Court

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HELD:1. Both the trial Court and the High Court having regard to the evidence of relatives concluded that the dowry demand was made. There is no infirmity with the conclusions arrived at more particularly in view of the evidence of PWs 1 and 2 and therefore there is no scope for interference with the conclusions relating to Section 498-A IPC. [Para 6] [1066-C-D]

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2.1. Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [Para 8] [1066-E-G]

2.2. In the present case, the circumstances highlighted by the prosecution to bring in application of Section 302 IPC are insufficient and scanty. That being so, the conviction as recorded in terms of Section 302 IPC cannot be maintained and is set aside. [Para 17] [1070-B-C]

Hukam Singh v. State of Rajasthan AIR (1977) SC 1063; Eradu and Ors. v. State of Hyderabad AIR (1956) SC 316; Earabhadrapa v. State of Karnataka AIR (1983) SC 446; State of U.P. v. Sukhbasi and Ors. AIR 1985 SC 1224; Balwinder Singh v. State of Punjab AIR (1987) SC 350 and Ashok Kumar Chatterjee v. State of M.P. AIR (1989) SC 1890; Bhagat Ram v. State of Punjab AIR (1954) SC 621; C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193; Padala Veera Reddy v. State of A.P. and Ors. AIR (1990) SC 79; State of U.P. v. Ashok Kumar Srivastava (1992) CrI. LJ 1104; Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh AIR (1952) SC 343 and Sharad Birdhichand Sarda v. State of Maharashtra AIR (1984) SC 1622; State of Rajasthan v. Raja Ram (2003) 8 SCC 180; State of Haryana v. Jagbir Singh and Anr. (2003) 11 SCC 261; Kusuma Ankama Rao v State of A.P. (Criminal Appeal No.185/2005 disposed of on 7.7.2008 – relied on.

Circumstantial Evidence by Alfred Wills – referred to.

3. In the ultimate result, the conviction in terms of Section 302 is set aside while that under Section 498A stands confirmed. [Para 17] [1070-D]

| | Case Law Reference | | |
|---|--|-----------|---------|
| A | AIR (1977) SC 1063 | relied on | Para 8 |
| | AIR (1956) SC 316 | relied on | Para 8 |
| B | AIR (1983) SC 446 | relied on | Para 8 |
| | AIR 1985 SC 1224 | relied on | Para 8 |
| | AIR (1987) SC 350 | relied on | Para 8 |
| | AIR (1989) SC 1890 | relied on | Para 8 |
| C | AIR (1954) SC 621 | relied on | Para 8 |
| | (1996) 10 SCC 193 | relied on | Para 9 |
| | AIR (1990) SC 79 | relied on | Para 10 |
| D | (1992) Cri. LJ 1104 | relied on | Para 11 |
| | AIR (1952) SC 343 | relied on | Para 14 |
| | AIR (1984) SC 1622 | relied on | Para 15 |
| | (2003) 8 SCC 180 | relied on | Para 16 |
| E | (2003) 11 SCC 261 | relied on | Para 16 |
| | CRIMINAL APPELLATE JURISDICTION : Criminal Appeal | | |
| | No. 365 of 2009 | | |
| F | From the Judgement and Order dated 22.03.2007 of the High Court of Judicature at Madras in Criminal Appeal (MD) No. 283 of 2004. | | |
| | S. Ravi Shankar, Yamuna Nachiar, for the Appellant. | | |
| | S. Thananjayan, for the Respondent. | | |
| G | The Judgement of the Court was delivered by | | |
| | DR. ARIJIT PASAYAT, J. | | |
| | 1. Leave granted. | | |
| H | 2. Challenge in this appeal is to the judgment of a Division | | |

Bench of the Madras High Court dismissing the appeal filed by the appellants. Seven accused persons faced trial. Appellants-accused were numbers as A-1 and A-2 respectively in the trial Court and before the High court. Out of seven accused persons who faced trial A-1 to A-5 and A-7 were convicted for offence punishable under Section 498-A of the Indian Penal Code, 1860 (in short the 'IPC') while A-1 to A-5 were also convicted for offence punishable under Section 302 IPC. In appeal the High Court set aside the conviction so far as A3, A4 and A5 are concerned in respect of offence punishable under Section 302 IPC.

3. Prosecution version in a nutshell is as follows:

The marriage between the first accused and the Syed Ali Fathima (hereinafter referred to as 'deceased') took place on 22.4.2001. A2 is the brother of AI. A3 and A4 are the sisters of AI and AS is the mother and A6 is the father of AI. A7 is the aunt of AI. P.W.1 is the mother of the deceased. At the time of marriage, P.W.1 paid Rs.5,000/- and three sovereigns of gold jewels and after a period of two months, the first accused went to Mumbai seeking for a job. All the other accused ill-treated the deceased stating that the dowry demand was not met. Prior to the occurrence, the first accused came from Mumbai. PW-1 was summoned. At that time, there was a demand from accused Nos. 1, 2 and 7 that 10 sovereigns of gold and a sum of Rs.5,000/- towards "Seevarisai" for Ramzan must be paid immediately. A-7 who was present at that time informed PW-1 that she can pay the said demand within a period of two months.

P.W.2 is closely related to P.W.1. On 6.3.2000, he came to Pallapatti and went to the house of P.W.1. P.W.2 was informed by P.W.1 that there was a dowry demand from the side of the accused. A marriage was scheduled to take place in the house of a resident which is next to the house of the first accused and hence on 8.3.2002, P.W.2 came to the house between 11 am and 12 noon. He was talking to the said neighbour. Since P.W.2 knew that there was a dowry demand, he decided to meet the

A deceased in her house for that purpose. When he was just getting down through the staircase, he was able to see the house of the deceased Fathima. A window was kept open through which he was able to see within 10 feet. At that time, A1 and A2 strangled the deceased Fathima with a rope and A3 and A4 caught hold of both the arms. On seeing this, P.W.2 was shocked. When he was witnessing the occurrence, A2 saw P.W.2. Immediately, P.W.2 went to the place of PW-1. But he could not meet anybody and he went to his native place, Salem and returned on the next day i.e. 9.3.2002.

C On the day of occurrence, i.e., 8.3.2002, the son of the 2nd accused proceeded to the house of P.W.1 and informed her that she was to be taken to the house of the accused and took her in a two wheeler. When P.W.1 went to the house of the accused, the wife of A2 informed that the deceased Fathima was upstairs. When P.W.1 went to upstairs, she found only the dead body of her daughter and P.W.1 was able to see a ligature mark around the neck of the deceased. When P.W.1 enquired, nobody gave any answer, but all laughed. P.W.1 immediately came back and informed to the relatives and proceeded to the police Station. P.W.13, the Sub-Inspector of Police was on duty on the day of occurrence. P.W1 gave a complaint at about 17.30 hours which is marked as Ex.P.1 on the strength of which a case came to be registered in Crime No.49/2002 under Section 174 of the Code of Criminal Procedure, 1973 (in short the 'Code') was dispatched to the Court. On receipt of the copy of the F.I.R., P.W.14 the Deputy Superintendent of Police took up investigation, proceeded to the scene of occurrence, made inspection and prepared Ex.P.2- the observation Mahazar and Ex.P.12- the rough sketch. He also sent a copy of the FIR to PW-10, the Revenue Divisional Officer who on receipt of the copy of the FIR proceeded to the place and also conducted inquest on the dead body in the presence of witnesses and prepared Ex.P-9, the Inquest Report wherein he opined that it was not a case of suicide but it was the death by homicide. He also made enquiries from witnesses and the accused. Following

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the same, the dead body was subjected to postmortem by P.W.9, the doctor attached to Govt. Headquarters Hospital, Karur, who opined that the deceased would appear to have died of Asphyxia due to strangulation about 24-36 hours prior to autopsy.

Originally, the case was registered under section 174 of Code. Later, it was converted into one under Sections 498-A and 302 IPC and the Express F.I.R. Ex.P.13 was dispatched to the court.

Pending investigation, accused Nos.1 to 6 were arrested. A2 came forward to give confessional statement voluntarily and the same was recorded by P.W.13, the Deputy Superintendent of Police in the presence of witnesses, pursuant to which A2 has produced M.O.1-Nylon rope which was recovered under a cover of Mahazar, Ex.P.4. All the accused were sent for judicial remand.

On completion of investigation, the investigating officer filed the final report. The case was committed to the Court of Sessions. Necessary charges were framed in order to substantiate the charges leveled against the accused. The prosecution examined 16 witnesses and relied upon 13 exhibits and 3 material objects. On completion of evidence on the side of the prosecution, the accused were questioned under section 313 of Code.

PW-2 was projected to be an eye witness. But he resiled from his statement made during investigation. The trial Court and the High Court proceeded on the basis as if the prosecution version rested on circumstantial evidence. Two circumstances were highlighted to fasten the guilt on the accused. The plea of alibi set up by A-1 having been dis-believed it must be presumed that he was guilty. Similarly, in respect of A-2 plea of suicide was ruled out by the evidence of doctor (PW-9). A-2 was held to be guilty. On the aforesaid ground the trial Court convicted the present appellants and the High Court concurred with the view of the trial Court.

A 4. Learned counsel for the appellants submitted that from the stage of trial, the prosecution case was that there was only one eye witness i.e. PW-2 but since he did not support the prosecution case, the prosecution proceeded to rely on the certain circumstances. It is submitted that the circumstances highlighted do not present a complete chain of circumstances to warrant the conclusion of guilt on the accused persons.

5. Learned counsel for the respondent-State on the other hand supported the judgment.

C 6. So far as Section 498-A is concerned according to learned counsel for the appellants the evidence is scanty but it is to be noticed that both the trial Court and the High Court having regard to the evidence of relatives concluded that the dowry demand was made. We do not find any infirmity with the conclusions arrived at more particularly in view of the evidence of PWs 1 and 2 and therefore there is no scope for interference with the conclusions relating to Section 498-A IPC.

7. The residual question is about the conviction in terms of Section 302 IPC.

E 8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* (AIR 1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); *Earabhadrappa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukbasi and Ors.* (AIR 1985 SC 1224); *Balwinder Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Kumar Chatterjee v. State of M.P.* (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* (AIR 1954 SC 621), it was laid down

that where the case depends upon the conclusion drawn from
circumstances the cumulative effect of the circumstances must
be such as to negate the innocence of the accused and bring
the offences home beyond any reasonable doubt.

9. We may also make a reference to a decision of this
Court in *C. Chenga Reddy and Ors. v. State of A.P.* (1996) 10
SCC 193, wherein it has been observed thus:

“In a case based on circumstantial evidence, the settled
law is that the circumstances from which the conclusion of
guilt is drawn should be fully proved and such
circumstances must be conclusive in nature. Moreover, all
the circumstances should be complete and there should
be no gap left in the chain of evidence. Further the proved
circumstances must be consistent only with the hypothesis
of the guilt of the accused and totally inconsistent with his
innocence....”.

10. In *Padala Veera Reddy v. State of A.P. and Ors.* (AIR
1990 SC 79), it was laid down that when a case rests upon
circumstantial evidence, such evidence must satisfy the following
tests :

- (1) the circumstances from which an inference of guilt is
sought to be drawn, must be cogently and firmly
established;
- (2) those circumstances should be of a definite tendency
unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively should form a
chain so complete that there is no escape from the
conclusion that within all human probability the crime
was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain
conviction must be complete and incapable of
explanation of any other hypothesis than that of the
guilt of the accused and such evidence should not

A only be consistent with the guilt of the accused but
 should be inconsistent with his innocence."

B 11. In *State of U.P. v. Ashok Kumar Srivastava*, (1992
 CrI.LJ 1104), it was pointed out that great care must be taken in
 evaluating circumstantial evidence and if the evidence relied
 on is reasonably capable of two inferences, the one in favour of
 the accused must be accepted. It was also pointed out that the
 circumstances relied upon must be found to have been fully
 established and the cumulative effect of all the facts so
 established must be consistent only with the hypothesis of guilt.

C 12. Sir Alfred Wills in his admirable book "Wills'
 Circumstantial Evidence" (Chapter VI) lays down the following
 rules specially to be observed in the case of circumstantial
 evidence: "(1) the facts alleged as the basis of any legal inference
 must be clearly proved and beyond reasonable doubt connected
 with the factum probandum; (2) the burden of proof is always on
 the party who asserts the existence of any fact, which infers legal
 accountability; (3) in all cases, whether of direct or circumstantial
 evidence the best evidence must be adduced which the nature
 of the case admits; (4) in order to justify the inference of guilt,
 the inculpatory facts must be incompatible with the innocence
 of the accused and incapable of explanation, upon any other
 reasonable hypothesis than that of his guilt, (5) if there be any
 reasonable doubt of the guilt of the accused, he is entitled as of
 right to be acquitted".

F 13. There is no doubt that conviction can be based solely
 on circumstantial evidence but it should be tested by the touch-
 stone of law relating to circumstantial evidence laid down by
 the this Court as far back as in 1952.

G 14. In *Hanumant Govind Nargundkar and Anr. V. State of
 Madhya Pradesh*, (AIR 1952 SC 343), wherein it was observed
 thus:

H "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 be in the first instance be fully established and all the facts so established should be consistent only 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.”

15. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must’ or ‘should’ and not ‘may be’ 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

A consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

B 16. These aspects were highlighted in *State of Rajasthan v. Raja Ram* (2003 (8) SCC 180), *State of Haryana v. Jagbir Singh and Anr.* (2003 (11) SCC 261) and *Kusuma Ankama Rao v State of A.P.* (Criminal Appeal No.185/2005 disposed of on 7.7.2008).

C 17. The circumstances highlighted by the prosecution to bring in application of Section 302 IPC are insufficient and scanty. That being so, the conviction as recorded in terms of Section 302 IPC cannot be maintained and is set aside. The sentences imposed in respect of Section 498-A IPC does not warrant interference. In the ultimate result, the conviction in terms of D Section 302 is set aside while that under Section 498-A stands confirmed.

18. The appeal is allowed to the aforesaid extent.

B.B.B.

Appeal party allowed.