BAIJU KUMAR SONI & ANR. A

v.

STATE OF JHARKHAND

(Criminal Appeal No.42 of 2018)

AUGUST 01, 2019 B

[UDAY UMESH LALIT AND VINEET SARAN, JJ.]

Penal Code, 1860:

ss. 364A, 201 and 302/34 – Prosecution under – Reliance on circumstantial evidence – Conviction by courts below – Appeal to Supreme Court – Held: In a case based on circumstantial evidence, every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused – The circumstances relied on in the present case do not form a chain so complete as not to leave any reasonable doubt or exclude every possible hypothesis except the one to be proved – The circumstances are also not sufficient and adequate to hold that the prosecution had established its case beyond any reasonable doubt – Thus, the prosecution failed to establish its case against the accused – Therefore, the accused are acquitted – Evidence – Circumstantial Evidence. C D E

Allowing the appeal, the Court

HELD: 1. In a case based on circumstantial evidence, every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused.[Para 14] [1116-E] F

Sharad Birdhichand Sarda v. State of Maharashtra **(1984) 4 SCC 116 : [1985] 1 SCR 88;** *Nizam and Another v. State of Rajasthan* **(2016) 1 SCC 550 : [2015] 10 SCR 786 – relied on.** G

2. From the facts and circumstances it is evident: that a) Though PW7 stated that two calls were made from his STD Booth on 12.01.2006 at about 1327 Hours and 1338 Hours to specified mobile numbers, nothing has been brought on record that those two mobile numbers either belonged to PW4 and PW10 or were H

in any way under their control. In order to establish as a circumstance that on the relevant day threatening calls were received by the said PWs 4 and 10 from the appellants, the important fact which ought to have been established was that those two mobile numbers either belonged to or were under the control of said PWs 4 and 10. Even if it is accepted that said PW7 had identified the appellants to be the ones who had made two calls, that does not lead to infer that the calls must have been made to PWs4 and 10. This circumstance has not been fully established which could be read against the appellants.b) Though drawing book had been received from the house of appellant No.1 and it was the case of the prosecution that the threatening letter (Exhibit-II) was written on a piece of paper from said drawing book, no attempts were made either to have any forensic analysis or examine handwriting expert to establish that the writing in the threatening letter was either of the appellants or could be associated with them. [Para 16] [1119-B-F]

3. The dead body was found ten days later on 18.01.2006. The post mortem, conducted thereafter, indicated time of death to be between 3 to 7 days. Even if the outer margin is considered to be the limit, the circumstance by itself does not fit in, assuming it to be completely against the appellants. [Para 17] [1119-G-H]

4. The circumstances viz. recovery of scarf and chocolate wrappers and biscuits and recovery of dead body in the rexin bag, do not form a chain so complete as not to leave any reasonable doubt or exclude every possible hypothesis except the one to be proved, nor are the circumstances sufficient and adequate to hold that the prosecution had established its case beyond any reasonable doubt. [Para 18] [1119-G; 1120-A-B]

Case Law Reference

[1985] 1 SCR 88	**relied on**	**Para 14**
[2015] 10 SCR 786	**relied on**	**Para 15**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 42 of 2018

From the Judgment and Order dated 14.07.2017 of the High Court of Jharkhand at Ranchi in Criminal Appeal No. 887 of 2009

Shree Prakash Sinha, Rakesh Mishra, Ms. Mohua Sinha, Ms. Jagrati Bharti, Shekhar Kumar, Advs. for the Appellants. A

Merusagar Samantaray, Adv. for the Respondent.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J. B

1. This appeal challenges the judgment and final order dated 14.07.2017 passed by the High Court of Jharkhand at Ranchi dismissing Criminal Appeal No.887 of 2009 preferred by the appellants herein and thereby affirming their conviction as recorded by the Trial Court in respect of offence punishable under Sections 364-A, 201, 302 read with 34 IPC. C

2. According to the prosecution, a minor girl aged about 3½ years went missing on 08.01.2006 while she was playing in front of her house. PW10 Anil Prasad Soni, father of the girl searched for the girl on the first day and thereafter lodged an information vide Sanha No.142/06 dated 09.01.2006 at 9.00 a.m. with the Officer In-charge of Bhurkunda Police Station, based on which a crime was registered vide FIR No.11/06 dated 13.01.2006 under Sections 364 and 365 IPC with Police Station Bhurkunda, S. Div. Ramgarh, District Hazaribagh. D

3. According to the prosecution, a call was received by said PW10 on 11.01.2006 at about 1236 Hours, from Ramgarh STD Booth, from an unknown person threatening him that his brother was getting smarter for which said PW10 may have to pay the price. The caller told PW10 that his daughter would reach by the evening and told him not to tell the administration. E

4. On the next day i.e. on 12.01.2006 at about 1335 Hours, PW10 again received a call from another STD booth i.e. from Patratu STD Booth, but it was a missed call. It appears that around the same time, another call was received by PW4 Uday Soni, brother of said PW10. The caller threatened said PW4 and told him that the caller had kidnapped his niece. When the caller was asked about the proof of the fact, the caller stated that PW4 could get the proof on the roof of the temple near their house. Thereafter, a poly bag was found on the roof of the temple in which there was one red top and slippers of the girl as well as a threatening letter (Exhibit-II with Mark X – Written Paper of a copy for Identification) F G

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A 5. It appears that a dead body of the girl was recovered in a black coloured rexin bag from the Dam on or about 18.01.2006 by Khelari Police Station.

Postmortem Report indicated:

B "Nylon cloth (make like rassi), red in colour, is tied around the neck. The knot is present on left side of neck which is a fixed knot. After removing the ligature material there is a ligature mark ½ cm width situated around the neck. It is transverse and continues with contusion of soft tissue underneath.

C Opinion-(1) Above noted ligature mark is ante-mortem.

(2) Death is due to Asphyxia as a result of strangulation.

(3) Time of Death – Between 3 days to 7 days."

The dead body of the girl was identified to be that of the daughter of PW10 and thereafter Sections 302 and 201 IPC were also added in D respect of the crime already registered.

6. During the course of the investigation, the appellants were arrested. It is not clear from the record how and by whom the role of the appellants in the crime was suspected to cause their arrest. The appellants were neither named in the FIR nor any person had named E them in any statement to the police. Pertinently, the FIR had named somebody else as suspect. Soon after their arrest, the confessional statements of the appellants were recorded by the police pursuant to which following items were recovered:

(i) A Scarf of the girl was recovered from the house of appellant F no.2;

(ii) A drawing book was recovered from the house of appellant no.1 from which a piece of paper was torn on which threatening letter (Exhibit II) was stated to have been written.

7. After completion of investigation, charge-sheet for the offences G punishable under Sections 364-A, 201, 302 read with 34 IPC was submitted against the appellants and they were tried for having committed said offences.

8. The evidence unfolded by the prosecution mainly comprised of:

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(i) PW10, his brother PW4 who deposed having received telephone calls but the witnesses could not identify the caller from the voice;

(ii) The prosecution also placed reliance on the testimony of PW7 Vikas Kumar who used to run Vikas STD Booth at Patratu produced two bills (Exhibit-I) indicating that on 12.01.2006 two calls were made from his STD booth at 1327 Hours and 1338 Hours to two Mobile Nos.9934152854 and 9431336988 respectively. PW7 identified the appellants to be the persons who had come to his STD Booth on the relevant date and made those two calls.

(iii) PW5 Uttam Kumar Kharbar deposed that on 09.01.2006, when he boarded a train from Bhurkunda Railway Station, he had seen the appellants carrying a stuffed rexin bag which they had carried along with them. According to the prosecution, it was that rexin bag in which the dead body of the girl was ultimately found in the Dam.

9. The following circumstances were thus relied upon by the prosecution:

(1) On 12.01.2006 PW7 who was running the STD Booth had seen both the appellants at his telephone booth and two calls were made by them to mobile numbers indicated above at 1327 Hours and 1338 hours.

(2) A Scarf was found in the house of the second appellant.

(3) A drawing book was found in the house of first appellant which could be associated with the threatening letter (Exhibit II).

(4) PW5 had seen both the appellants with a stuffed rexin bag on 09.01.2016 boarding a train at Bhurkunda Railway Station.

(5) The dead body of the girl was ultimately found in a rexin bag at a distance about 50 kms. from the house of PW10.

(6) Some wrappers of Chocolates and Biscuits were found near the house of the appellants.

10. On the basis of these circumstances, the prosecution contended that the offences in question were established against the appellants.

A The case of the prosecution was accepted by the Trial Court, which by its judgment and order dated 17-20.04.2009 convicted both the appellants and sentenced them to suffer 10 years of imprisonment for the offence under Section 364-A IPC and to suffer life imprisonment for the offence under Section 302 read with Section 34 IPC. Though convicted, no B separate order of sentence was recorded in respect of offence under Section 201 read with Section 34 IPC. All the sentences were directed to run concurrently.

11. The appellants being aggrieved approached the High Court of Jharkhand at Ranchi by filing Criminal Appeal No.887 of 2009, which came to be rejected by the High Court.

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12. According to the High Court, the recovery of the Scarf of the deceased, recovery of the drawing book, pages of which were used for writing threatening letter as well as the fact that PW5 had seen the appellants with the same rexin bag in which dead body was found, were circumstances sufficient to convict the appellants.

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13. In this appeal, we heard learned counsel for the appellants as well as the learned counsel for the respondent-State and with their assistance, we have gone through the entire record.

14. The law on the point is very well settled that in a case based E on circumstantial evidence, every circumstance must be fully proved and all the circumstances must form a chain of evidence so complete as to exclude every hypothesis other than the guilt of the accused. It was stated by this Court in *Sharad Birdhichand Sarda v. State of Maharashtra*[1]:

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"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.

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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*

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[1](1984) 4 SCC 116

Maharashtra, (1973) 2 SCC 793, where the following observations were made:

"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."

15. In Nizam and Another vs. State of Rajasthan[2], the law on the point was reiterated while acquitting the accused of the charges under Sections 302 read with 201 IPC. Paragraphs 9 and 10 of the decision were:-

"9. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In *Bodhraj* v. *State of J&K* (2002) 8 SCC 45, wherein this Court quoted a number of judgments and held as under: (SCC pp. 55-56, paras 10-11)

10. 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* (1977) 2 SCC 99, *Eradu* v. *State of Hyderabad* AIR 1956 SC 316, *Earabhadrappa* v. *State of Karnataka* (1983) 2 SCC 330, *State of U.P.* v. *Sukhbasi* (1985)

[2](2016) 1 SCC 550

A Supp SCC 79, *Balwinder Singh* v. *State of Punjab* (1987) 1 SCC 1 and *Ashok Kumar Chatterjee* v. *State of M.P.* (1989) Supp (1) SCC 560). 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 B 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 negative the innocence of the accused and bring home the offences beyond any reasonable C doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy* v. *State of A.P.* (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

D '*21*. 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 E consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.'"

10. In *Trimukh Maroti Kirkan* v. *State of Maharashtra* (2006) 10 SCC 681, this Court held as under: (SCC p. 689, para 12)

F "*12*. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should G be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of

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explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence."

The same principles were reiterated in *Sunil Clifford Daniel* v. *State of Punjab* (2012) 11 SCC 205, *Sampath Kumar* v. *Inspector of Police* (2012) 4 SCC 124 and *Mohd. Arif* v. *State (NCT of Delhi)* (2011) 13 SCC 621 and a number of other decisions."

16. In the light of these settled principles, from the facts and circumstances it is evident:

a) Though PW7 stated that two calls were made from his STD Booth on 12.01.2006 at about 1327 Hours and 1338 Hours to specified mobile numbers, nothing has been brought on record that those two mobile numbers either belonged to PW4 and PW10 or were in any way under their control. In order to establish as a circumstance that on the relevant day threatening calls were received by the said PWs 4 and 10 from the appellants, the important fact which ought to have been established was that those two mobile numbers either belonged to or were under the control of said PWs 4 and 10. Even if we accept the theory that said PW7 had identified the appellants to be the ones who had made two calls, that does not lead us to infer that the calls must have been made to PWs4 and 10. This circumstance has not been fully established which could be read against the appellants.

b) Though drawing book had been received from the house of appellant no.1 and it was the case of the prosecution that the threatening letter (Exhibit-II) was written on a piece of paper from said drawing book, no attempts were made either to have any forensic analysis or examine handwriting expert to establish that the writing in the threatening letter was either of the appellants or could be associated with them.

17. Circumstance No.4 as stated above suggests that the dead body of the deceased was carried by the accused in a rexin bag on the day after the girl went missing. The dead body was found ten days later on 18.01.2006. The post mortem, conducted thereafter, indicated time of death to be between 3 to 7 days. Even if the outer margin is considered to be the limit, the circumstance by itself does not fit in, assuming it to be completely against the appellants.

A 18. We are then left with circumstances at Serial Nos.2, 5 and 6. These circumstances do not form a chain so complete as not to leave any reasonable doubt or exclude every possible hypothesis except the one to be proved, nor are the circumstances sufficient and adequate to hold that the prosecution had established its case beyond any reasonable doubt.

B 19. Considering the totality of the circumstances, in our view, the prosecution has failed to establish the case against the appellants. Consequently, the appellants are entitled to benefit of doubt. We, therefore, allow this appeal and acquit the appellants of the charges levelled against them.

C The appellants be released immediately, unless their custody is required in connection with any other offence.

Kalpana K. Tripathy Appeal allowed.