[2024] 11 S.C.R. 906 : 2024 INSC 905

Vijaya Singh & Anr.
v.
State of Uttarakhand

(Criminal Appeal No. 122 of 2013)

25 November 2024

[Bela Trivedi and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Whether the Criminal Appeal filed by the Appellants challenging the conviction under Section 302/201 IPC can be entertained in the facts and circumstances of the case.

Headnotes†

Penal Code, 1860 – Section 302 – Criminal Procedure Code, 1973 – Section 164 – Principles governing circumstantial evidence reiterated – On facts and circumstances, held that the Trial Court and the High Court have correctly appreciated the evidence, and the conviction of the Appellant upheld:

Held: It is a well settled principle of law that when a case is based on circumstantial evidence, the circumstances proved must point unequivocally to the guilt of the accused and must be incompatible with any theory of being innocent – There are no material contradictions in the versions of the witnesses – The evidence of every witness cannot be subject to the same level of scrutiny and the Court must be alive to the social position of the witness – Further, it is trite law that mere presence of minor variations is not fatal to the case of the prosecution – It is so because natural testimony is bound to have variations – The question is whether the variations or contradictions could be termed as fatal to the case of the prosecution – The evidence adduced before the Court is to be examined as a whole and not in isolation – This principle assumes greater importance in cases which are based on circumstantial evidence as in the absence of direct evidence of the offence, the Court is required to analyze the proved circumstances in a collective sense to arrive at a reasonable finding – In such cases, the finding of the Court is essentially an irresistible inference which is drawn from the proved material on record. [Paras 11, 25, 39]

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Jurisprudence concerning statements under Section 164 CrPC – Discussed:

Held: Statement under Section 164 CrPC is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination – However, Section 157 of Indian Evidence Act, 1872 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction – It could be used to corroborate the testimonies of other witnesses – The need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence – Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration – A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer – A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC – Therefore, it must be considered on a better footing – However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence – The weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. [Paras 27, 28]

List of Acts

Penal Code, 1860; Criminal Procedure Code, 1973.

List of Keywords

Circumstantial evidence; 164 statement.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 122 of 2013

From the Judgment and Order dated 29.08.2012 of the High Court of Uttarakhand at Nainital in CRLA No. 148 of 2004

Appearances for Parties

Sachin Patil, Satyajit A Desai, Siddharth Gautam, Abhinav K. Mutyalwar, Sachin Singh, Ms. Anagha S. Desai, Advs. for the Appellants.

Sudarshan Singh Rawat, Ms. Saakshi Singh Rawat, Ms. Rachna Gandhi, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

1. In April, 2002, Devaki got married to Vijaya Singh. More than an year after the wedding, on the fateful day of 14.09.2023, Devaki died an unnatural death at the house of her in-laws. Vijaya Singh, appellant no. 1 herein, was accused of murdering her along with his mother, namely Basanti Devi, appellant no. 2 herein. The case was registered as FIR No. 04/2003 at PS R.P. Jakholi, Rudraprayag, District Garhwal, Uttarakhand. After the conclusion of investigation and trial, the Trial Court found the appellants guilty. In appeal, the High Court of Uttarakhand also found them guilty and upheld the decision of the Trial Court. The appellants, by way of instant appeal, have assailed the Judgment and Order dated 29.08.2012 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No. 148 of 2004, whereby the said appeal preferred by the appellants was dismissed.

2. The appellant No.1 happened to be the husband and the appellant No.2 happened to be the mother-in-law of the deceased Devaki. After the incident, the FIR was registered at the instance of the complainant Shankar Singh (brother of the deceased Devaki), against the present appellants and Shri. Matbar Singh (father-in-law of the deceased).

It was alleged *inter alia* in the said complaint that on 14.09.2003 at about 9 P.M., he had received one phone call from the in-laws of his sister at Gram Sabha Dangi (Village Hariyali) informing him that his sister had poured kerosene oil over her person at about 6 P.M. and had set herself ablaze. According to the complainant, he along with his two brothers went to the place of occurrence, where they saw that their sister was lying in almost naked condition with green grass having been put over her body and they suspected that their sister was murdered and she had not committed suicide.

3. The Investigating Officer, after completing the investigation, filed the chargesheet against the appellants for the offences under Sections 302 and 201 of Indian Penal Code, 1860.[1] The case was committed for trial to the Sessions Court and the District & Sessions Judge, Rudraprayag, vide the Judgment and Order dated 14.05.2004, convicted both the appellants for the commission of offence under Section 302 of IPC and sentenced them to life imprisonment and fine of Rs.5,000/- each, and in default thereof, to further undergo imprisonment for a period of 6 months. The said Court also convicted them for the offence under Section 201 of IPC and sentenced them to undergo imprisonment for a period of 2 years with payment of fine of Rs. 2000/- each, and in default thereof to further undergo imprisonment for a period of 3 months. Being aggrieved by the said Judgment and Order passed by the Trial Court, the appellants had preferred an appeal being Criminal Appeal No.148 of 2004 before the High Court, which came to be dismissed by the High Court vide the impugned Judgment and Order dated 29.08.2012.

4. The Trial Court acknowledged that the entire case of the prosecution was based on circumstantial evidence and further, that the entire chain of evidence consistently pointed in the direction of guilt of the appellants. It found that the testimonies of the witnesses were credible and the retraction of their statements by PW-3 and PW-4, sisters of appellant no. 1, was a result of tutoring. Thus, the statements of the said witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973[2] were found to be truthful and natural.

5. The decision of the Trial Court was assailed before the High Court and the High Court, in the impugned order/judgment, found that the

1 Hereinafter referred as "IPC"

2 Hereinafter referred as "CrPC"

Trial Court had correctly analyzed the evidence on record and no infirmity was found in the findings of the Trial Court.

6. While assailing the judgement of the High Court, learned counsel for the appellants submitted that there was a delay in the registration of FIR as the same was registered after 24 hours from the incident and the said period led to the fabrication of the entire story by the complainant. It is further submitted that there was no allegation of harassment at the time of registration of FIR and the versions put forth by PW-1, PW-2, PW-5 and PW-6 are inherently contradictory and there is no corroboration between the same. It is further submitted that PW-1 was not the real nephew of the deceased but was a distant relative belonging to the same community and therefore, he could not have possessed any direct knowledge of cruelty or harassment. It is further submitted that the statements of PW-1 and PW-5 appeared to be contrary to each other as PW-5 has not deposed regarding any bodily injury to the deceased at any point of time and has deposed that the relationship between the appellants and the deceased was cordial.

7. It is further submitted that the statements of PW-3 and PW-4 recorded under Section 164 CrPC are liable to be rejected as the said statements were recorded in the presence of the Investigating Officer under threat, and could not be considered as voluntary statements. It is further submitted that the said statements could not be termed as substantive evidence and could only be used to corroborate or contradict the testimony of a witness in the Court. It is further submitted that the primary witness of the prosecution is PW-7/doctor and his testimony is fundamentally flawed. It is submitted that the concerned doctor initially deposed that he could not definitively state whether the death of the deceased was homicidal or suicidal, however, the witness later opined that 100% percent burn injuries were uncommon in suicide cases. It is submitted that in case of suicide, the act of burning is a voluntary act and therefore, 100% burn injuries are completely possible. To buttress, it is contended that the evidence of an expert is not the evidence of fact and is only advisory in nature. It is added that medical jurisprudence is not an exact science and in the expert testimony cannot be considered as a conclusive proof of the fact.

8. Learned counsel has also submitted that the trial court and the High Court have failed to analyze the circumstances of the case in an

objective manner and the findings of the said courts are based more on conjectures and less on evidence.

9. *Per contra*, it has been contended on behalf of the respondent State that the circumstances of the present case have proved the guilt of the appellants beyond reasonable doubt. It has been submitted that the chain of circumstances is complete and falls within the parameters laid down by this Court with respect to circumstantial evidence. Learned counsel appearing on behalf of the respondent has placed reliance upon the decision of this Court in ***Prabhudayal and Ors. v. State of Maharashtra***[3] to contend that in bride burning cases, the absence of cries or shouts from the victim is suggestive of the fact that it was not a case of suicide. Learned counsel has also laid emphasis on the false plea of *alibi* taken by appellant no. 2, and has submitted that if a false plea is taken by the accused in the course of a trial, it could be considered as an additional circumstance against the accused.

10. We have heard the respective parties and we may now proceed to answer the seminal issue whether the findings arrived at by the High Court are based on a correct appreciation of the evidence on record and are sustainable in the eyes of law.

DISCUSSION

11. At the outset, it may be noted that the entire case of prosecution hinges on the circumstantial evidence, in as much as there was no eye witness to the incident in question. It is a well settled principle of law that when a case is based on circumstantial evidence, the circumstances proved must point unequivocally to the guilt of the accused and must be incompatible with any theory of his being innocent. The principles governing the appreciation of circumstantial have been laid down by this Court in unequivocal terms in ***Sharad Birdhichand Sarda v. State of Maharashtra***.[4] The principles, termed as the *Panchsheel* or five principles of circumstantial evidence, are traceable in the following para:

> *"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:*

3 [1993] 3 SCR 878 : (1993) 3 SCC 573

4 [1985] 1 SCR 88 : (1984) 4 SCC 116

(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] where the 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."

12. So far as the facts of the present case are concerned, it is not disputed that deceased Devaki and the Appellant No.1 got married in April, 2002 and the Appellant No.2 happened to be the mother-in-law of the deceased. It is also not disputed that the tragic incident occurred on 14.09.2003 i.e. within 17 months of the marriage, when deceased Devaki succumbed to the burn injuries at her matrimonial home i.e. at the home of the appellants.

13. The Prosecution had examined as many as 8 witnesses to prove the charges levelled against the appellants, out of whom PW-1 Vinod Singh happened to be the nephew of the deceased who had

inter alia stated that he used to go to leave his aunt Devaki at her matrimonial home and used to feel that the behaviour of appellant no. 2 was not good with her. He also stated that in the month of August, 2002 when he had visited the matrimonial home of his aunt to bring her back home, her mother-in-law (appellant no.2) had indulged into a quarrel with him saying that if he wanted to take his aunt with him, then he should keep her permanently with him. He also deposed that the appellant no. 2 had threatened him by saying that he had not seen her anger till that point of time. On that day, PW-1 came back home with his aunt/deceased. He also stated that in the year 2003, when his aunt i.e. the deceased Devaki had visited her parental home, she was found to have an injury on her eye and on his asking about the injury, she had confidentially told him that the said injury was caused by her husband - Vijaya Singh (appellant no.1), however he had not disclosed the same to anyone so that the matter may not aggravate further.

14. In cross-examination, PW-1 deposed that he used to go to his aunt's matrimonial house frequently as her brothers were not residing in the maternal village. He also deposed that appellant no. 1 was working in Chandigarh and used to come home in 3-4 months. He further deposed that the deceased used to insist for going to Chandigarh and the appellant had promised her that he would take her soon. He further deposed that appellant no. 2 used to quarrel with the deceased regarding household work and about her desire of going to Chandigarh.

15. PW-2 (Shankar Singh), brother of the deceased Devaki had stated before the Court that on 14.09.2003, a call was received at about 12.00 - 1.00 o'clock in the midnight from the village of his sister that his sister had poured kerosene oil on her person and put herself ablaze. He, therefore, managed to go to the village of his sister along with 5-6 people and when he reached the matrimonial home of his sister, the appellants were sitting outside the verandah and he was told that his sister had committed suicide by pouring kerosene oil on herself. He further stated that when he went inside the room, he saw that the dead body of his sister was lying on the floor between two coats in naked condition and green grass was put over her dead body. A quilt was lying there in burnt condition along with water. He further stated that at the time of incident, his sister was pregnant and he had felt that his sister had not committed suicide but she was

murdered by her in-laws. He deposed that his sister used to tell them about the harassment of her in-laws regarding non-performance of household work. In the cross-examination, he admitted that his sister wanted to accompany her husband Vijaya and stay at Chandigarh instead of staying at village and that prior to the death of his sister, the relationship between his sister and the accused Vijaya Singh was quite cordial.

16. PW-3 Saroj happened to be the sister of the appellant no.1 and daughter of appellant no.2, whose statement was recorded under Section 164 of Cr.P.C. during the course of investigation. She admitted about the recording of her statement before the Magistrate under Section 164 of Cr.P.C and admitted her signatures on the statement. In cross- examination, she stated that she was not present at home at the time of incident and that the relationship between her sister-in-law Devaki and her mother and brother was cordial. She further admitted that when the Patwari brought her to the Magistrate for recording her statement, he had threatened her, and had also remained present before the Magistrate when her statement was being recorded. PW-3 denied any statement regarding quarrel between the deceased and appellant no. 2. PW-4 Preeti is also the sister of appellant no.1 and daughter of appellant no.2, and she also deposed to the same effect as her sister Kumari Saroj/PW-3.

17. PW-5 examined by the prosecution was Kamal Singh, who happened to be the cousin brother of the deceased Devaki. He stated that on receiving the telephone call on 14.09.2003 at 8:00 PM about the incident, he had gone to the house of the deceased and saw that the dead body of his sister Devaki was lying on the floor in naked condition and some green grass was put over her body. One bedding was also lying in the room and water was put all over it. He also stated that on inspection of the room, he felt that Devaki had not committed suicide but her mother-in-law and husband had murdered her by setting her ablaze. He further deposed that quarrels used to take place between the deceased and the appellants over her desire of going to Chandigarh with her husband.

18. During cross-examination, PW-5 deposed that the deceased had told him that her mother-in-law was not allowing her to visit Chandigarh.

19. PW-6 Sunita Devi, was the sister-in-law of the deceased Devaki. She stated that as and when Devaki used to visit her parental

home, she used to tell her about the harassment caused by her mother-in-law and husband. She used to tell her that she (Devaki) was kept terrorized and threatened, and was not given proper food at her matrimonial home and that her in-laws would go out locking her in the house.

20. The expert witnesses regarding the cause of death, examined by the prosecution, was PW-7 Dr. Shailendra Kumar, who had carried out post-mortem of the deceased Devaki. He stated that the deceased had sustained 100% burn injuries and the whole body was burnt from top to bottom. The cause of death was 'Death due to shock' and semi digested food was found in her stomach. No smell of any kind was felt from her person. He further stated that a male womb measuring 10 cm having weight 200 gm was found in the uterus of the deceased. In the cross-examination, he had stated that it was not possible to give opinion whether the deceased had got herself burnt or somebody had burnt her after pouring kerosene. However, in his opinion, sustaining 100% burn injuries was not possible in case of self-inflicting burns and that some percentage would have been left. In the cross-examination, he had explained that 100% burns would mean the body was lying burnt from top to bottom. He also admitted that if the size of the room was very small, then entering the room from outside would not be probable due to smoke.

21. The Investigating Officer, Shyam Lal Patwari examined as PW-8 had deposed about the investigation carried out by him after receiving the complaint from PW-2 on 15.09.2003. He deposed that he had seized the articles from the place of occurrence, which included semi burnt bedding, two cans of kerosene measuring 5 litre each, having half litre of kerosene available in each can at that time, one burnt wood etc. and had prepared a seizure memo. He further stated that when the accused Vijaya Singh was arrested, he had found fresh abrasion injury marks on his face and Vijaya Singh had told him that he had sustained those injuries due to scorching. Similarly, accused Basanti Devi at the time of her arrest was found to have fresh abrasion mark on her forehead and she also stated that the said marks were due to scorching. He also stated that he had made arrangement for recording of statements of witnesses Kumari Saroj and Kumari Preeti under Section 164 Cr.P.C. before the Judicial Magistrate. In the cross-examination, he had admitted that he had not made any

arrangement for the medical examination of the injuries sustained by the accused Vijaya Singh and Basanti Devi.

22. The statements of the appellants were recorded under Section 313 of Cr.P.C. Both of them denied the allegations made against them by the witnesses examined by the prosecution. The appellant no.1-Vijaya Singh further stated that the deceased was adamant to accompany him at Chandigarh, however, he had said that it would take one to two months and therefore, she committed suicide. The appellant no.2-Basanti Devi stated in her further statement that at the time of incident, she had gone to a flour mill which was located at the distance of 5 kms from her village along with her sister Pitambari Devi, and when they came back, the incident had already taken place.

23. The appellants had examined a defence witness Pitambari Devi. She had stated that on the date of incident in the morning, she along with Basanti Devi had gone to Dharat (Flour Mill) situated in Bajaira which was 5 kms away and had come back home together in the evening at about 5.00 PM by bus. She further stated that people told her that the incident of fire had taken place in the house of the accused, however, she had not seen the dead body of the deceased.

24. On a careful appreciation of the evidence on record, it could be seen that the appellant no. 1 was working in Chandigarh and used to visit his village once in 3-4 months. During these intervals, the deceased used to live alone with her in-laws in the village. The witnesses have invariably deposed that the deceased was desirous of going to Chandigarh along with her husband and appellant no. 2 had an objection regarding the same. The basis of that objection becomes clear from the testimony of PWs as the appellant no. 2 wanted the deceased to help with the domestic chores at home.

25. The story of the prosecution begins much before the commission of the alleged offence. PW-1 and PW-6 have deposed in no uncertain terms that the deceased used to share with them her agony at her matrimonial home. They have deposed regarding the desire of the deceased to go to Chandigarh as well as regarding the harassment caused by appellant no. 2 for that reason. PW-1 has also deposed regarding the presence of an injury on the body of the deceased when she once visited her parental house soon after her wedding. Their versions have largely remained unrebutted despite elaborate cross-examination. The appellants have raised questions regarding

their versions stating that they are contradictory. We are unable to find any material contradiction in their versions and the Trial Court and the High Court have correctly appreciated their evidence in light of their background. For, the witnesses were essentially villagers and their testimonies cannot be subjected to mathematical precision. The evidence of every witness cannot be subject to the same level of scrutiny and the Court must be alive to the social position of the witness. Further, it is trite law that mere presence of minor variations is not fatal to the case of the prosecution. It is so because a natural testimony is bound to have variations. The question is whether the variations or contradictions could be termed as fatal to the case of the prosecution. The said question needs to be answered in light of the other evidence on record by examining whether the oral testimonies have found corroboration from other evidence or have remained isolated testimonies.

26. In the present case, the testimonies of PW-1 and PW-6 are supported by the testimonies of PW-3 and PW-4, who are the sisters of appellant no. 1 and daughters of appellant no. 2. They are not interested witnesses and their testimonies must be given due credence. The statements of PW-3 and PW-4 were recorded before the Judicial Magistrate under Section 164 of CrPC in the aftermath of the incident. However, the issue with respect to their evidence is that they have sought to retract from their statements recorded under Section 164 CrPC and have denied a material part of their statements before the Sessions Court. The reason for retraction is that the statements were recorded under threat of the concerned Patwari who was present before the Judicial Magistrate along with the witnesses. The weight to be attached to such a statement during appreciation of evidence is the question that arises before us at this juncture.

27. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of Indian Evidence Act, 1872[5] makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the

5 Hereinafter referred as "Evidence Act"

testimonies of other witnesses. In ***R. Shaji v. State of Kerala***,[6] this Court discussed the two-fold objective of a statement under Section 164 CrPC as:

> *"15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted …"*

The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence. The relevant para reads thus:

> *"16. … During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced …"*

28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does

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not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record.

29. In the present case, the statements of PW-3 and PW-4 were recorded by the Judicial Magistrate on 09.10.2003 i.e. almost 25 days after the incident. Thus, their statements were recorded after the passage of a considerable time and could not be termed as hasty statements as there was sufficient cooling period for the witnesses to think over and contemplate the consequences of their statements. During this entire period, both PW-3 and PW-4 remained with their family and it is not their case that they were kept under influence or were tutored during this period. Pertinently, PW-1 has also deposed that on certain occasions, PW-3 had accompanied the deceased Devaki to her maternal home, which indicates that PW-3 had a sense of attachment with the deceased and the same could have been the reason for giving a statement against her own brother and mother. In fact, the retraction of these statements by PW-3 and PW-4 before the Court appears to be a result of tutoring and manipulation as the said witnesses could have easily been won over by their family members during the intervening period. Furthermore, the witnesses have admitted that the statements were signed by them and there is no suggestion to the effect that the witnesses could not have understood the statements. The statements have been certified by the concerned Magistrate to the effect that they have been read by the witnesses and their consequences have been explained to the witnesses.

30. PW-3 and PW-4 have deposed that they were under threat from the concerned Investigating Officer who was present along with

them before the Magistrate. The concerned Investigating Officer has been examined as PW-8 in the present case and during his examination, there is not even a suggestion from the appellants to the effect that he was present along with PW-3 and PW-4 at the time of recording their statement under Section 164 or to the effect that he had threatened them to give incriminating statements against the appellants. Furthermore, the concerned Magistrate could have been examined as a witness in the present matter to clear the controversy on this aspect and for unexplained reasons, he was never called for examination especially when a completely hostile version was being provided by the witnesses qua the proceedings which were conducted before him. The appellants failed to place any material on record to justify the allegation of threat and as discussed above, the statements of PW-3 and PW-4 recorded under Section 164 CrPC reflected the correct version of the events that transpired on the fateful day.

31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below.

32. Thus, it stands proved from the testimonies of PW-3 and PW-4 that on the fateful day, the deceased and appellant no. 1 had proceeded to the bus stand to leave for Chandigarh but they returned back as they could not find any bus. Naturally, despite the disappointment of not finding a bus, the deceased must have been happy to have finally found a way to go to Chandigarh along with her husband. However, after she came back, a quarrel took place between the appellant no. 2 and the deceased. This was at around 4 PM, after the return of appellant no. 2 from Dharat. Thereafter, PW-3 and PW-4 left for

picking grass and when they returned around 6 PM, the deceased was found dead due to burning. During this interval, only the appellants were at home along with the deceased. The presence of appellant no. 2 at the place of occurrence is duly established and the testimony of DW-1 stands falsified in light of the versions put forth by PW-3 and PW-4. Even otherwise, as per DW-1, appellant no. 2 came back at 5 PM and incident is stated to be of 6 PM. The courts below have correctly analyzed this aspect and no case for *alibi* is made out.

33. The appellants have urged that the death of the deceased was suicidal and not homicidal. The reason given for suicide is that the deceased was frustrated as she could not go to Chandigarh along with her husband. The reason does not inspire confidence at all. For, there is no proportionality of this reason with the drastic act of suicide and even otherwise, on the date of incident, the deceased and appellant no. 1 had left for Chandigarh and had to return due to non-availability of bus. Thus, the deceased had no reason to be frustrated about it as things were finally moving as per her desire. Furthermore, the deceased was pregnant at the time of incident and she could not have taken a drastic step of suicide with a womb in her stomach. On the contrary, it is not difficult to accept that appellant no. 2 must have been angry with the deceased for going to Chandigarh and the quarrel which took place between the deceased and appellant no. 2, as per PW-3 and PW-4, was consistent with the natural course of events on the fateful day.

34. So far as the possibility of suicide is concerned, it is difficult to believe that the deceased managed to procure two cans of kerosene (5 litres each) on her own for committing suicide within a time bracket of two hours, that too in the presence of the appellants in the house. It is equally difficult to believe that the deceased poured almost 9 litres of kerosene on herself, put herself on fire and kept on burning till her body suffered 100% burns, without the appellants getting a whisper about the same despite being present in the same house. If it was indeed a case of self-immolation, the appellants must have done something to save her and her body would not have suffered 100% burns. This fact assumes greater gravity when it is seen that the room was not bolted from inside and was open for access. Thus, the conduct of the appellants, previous to and at the time of the incident, pointed in an incriminating direction. Furthermore, as per the testimonies of PWs, no smell of kerosene could be detected at

the place of occurrence or in the body of the deceased which is not consistent with the allegation of self-immolation using an enormous quantity of kerosene.

35. Yet another circumstance which merited an explanation, and could not be explained by the appellants, was the presence of fresh injury and abrasion marks on the faces of the appellants at the time of their arrest. Both the appellants tried to explain away the presence of injuries/marks by stating that they occurred due to scorching. Although, the investigating officer ought to have ensured the conduct of medical examination of the fresh injuries/marks, however, the reason stated by the appellants is completely incredible. The appellants were residing in the same area and if at all the marks were due to scorching, they could not have been fresh marks. The only inference which could be drawn from the presence of fresh injuries is that there was physical resistance from the deceased when she was being set ablaze. It could not have been explained away in this manner.

36. Equally questionable was the subsequent conduct of the appellants. The conduct of the appellants in the aftermath of the incident was unnatural and does not exonerate them in any manner. The deceased, as per the versions of PW-3 and PW-4, was dead by the time they returned i.e. around 6 PM. As per DW-1, the deceased had put herself on fire when she returned with appellant no. 2 from Dharat at around 5 PM. Irrespective of whether the time of death is taken as 5 PM or 6 PM, the fact remains that intimation of death was not given to the family members of the deceased before 8 PM (as per PW-5 and 9 PM as per the FIR), and in the interim, no complaint whatsoever was given by the appellants to the local police. Moreover, no effort was made by the appellants to provide medical attention to the deceased or to take her to any nearby hospital. The appellants were found to be sitting outside the house when PW-2 and PW-5 reached. That the appellants chose to remain silent in their house for over two hours, despite witnessing that the deceased had completely succumbed to burn injuries, goes on to show a completely unnatural conduct and points in the direction of their guilt. Moreover, instead of taking measures to take legal or medical assistance without loss of time, the appellants were actually tampering with the scene of crime, as discussed in the following para.

37. The evidence has revealed that the scene of crime was actually found to be altered by the time the Investigating Officer and the PWs reached the spot. The presence of two kerosene jars of 5 litres each, presence of grass on the body of the deceased, sprinkling of water on the quilt, placement of body between two unburnt coats etc. are the circumstances which indicate the alteration of the crime scene by the appellants in order to shield themselves from suspicion. Since the deceased had suffered 100% burns, the water could not have been poured to save the deceased from burns and must have been poured afterwards to demonstrate that they had made efforts to save her. If water was indeed poured at the time of burning, the deceased ought not have suffered 100% burns from top to bottom and the act of pouring the water later on the quilt clearly amounts to manipulation of evidence. The findings on this count also remain unchallenged and are not open to any doubt.

38. Thus, we may observe that the circumstantial evidence available on record appears to be consistent and does not leave much scope for the innocence of the appellants. The circumstances overwhelmingly point in the direction of guilt of the appellants and the cumulative effect of the circumstances has been analyzed correctly by the courts below. An alternate possibility is not in sight. To add to it, the evidence of PW-7 also states that it was not possible for the body to sustain 100% burns in the case of suicide or self-immolation and this opinion finds support from other evidence on record. Therefore, this opinion has been appreciated by the High Court and Trial Court in correct context.

39. Once the entire evidence led by the prosecution is examined collectively and comprehensively, the only possibility that emerges is of the guilt of the appellants. The appellants have attempted to raise questions regarding the evidence of PW-7 and PW-3/PW-4 for various other isolated reasons. However, as discussed above, in order to arrive at the true picture, the evidence adduced before the Court is to be examined as a whole and not in isolation. This principle assumes greater importance in cases which are based on circumstantial evidence as in the absence of direct evidence of the offence, the Court is required to analyze the proved circumstances in a collective sense so as to arrive at a reasonable finding. In such cases, the finding of the Court is essentially an irresistible inference which is drawn from the proved material on record.

40. We have also examined other grounds such as the delay in registration of FIR, however, we are unable to find any merit in the same. PW-2 was informed about the incident at night on 14.09.2003 and as soon as he received the information, he travelled to the appellants' village. Thereafter, he went to lodge a complaint, but the Patwari was not available at night, which is quite understandable as it was late. The complaint was lodged the very next day. Even otherwise, it could take a reasonable time for a family member to process the news of a tragic death and as long as the delay is not unreasonable or suspicious, any delay in the lodging of complaint would not be of much consequence, especially when other evidence is of incriminating value.

41. In light of the foregoing discussion, we are of the considered view that the Trial Court and High Court have correctly appreciated the evidence on record. We are unable to find any infirmity in the findings of the courts below and the impugned order is sustainable in the eyes of law. In the absence of a finding of illegality or perversity or impossibility of the impugned findings, consistent views taken by two courts cannot be disturbed on mere conjectures or surmises. Accordingly, the present appeal is dismissed.

42. The appellants, if enlarged on bail, shall surrender before the concerned Jail Superintendent within two weeks from the date of this judgment for serving their sentence. Registry to communicate the order forthwith.

43. The present appeal stands disposed of in terms of this judgment. Interim application(s), if any, shall also stand disposed of. No costs.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Mukund P Unny, Hony. Associate Editor
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