2022 INSC 185

**REPORTABLE**

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2374 of 2014

SATYE SINGH & ANOTHER .... APPELLANT (S)

VERSUS

STATE OF UTTARAKHAND .... RESPONDENT(S)

**J U D G M E N T**

**BELA M. TRIVEDI, J.**

**1.** The present appeal filed by the appellants-accused emanates from the Judgment dated 29th August, 2013 passed by the High Court of Uttarakhand at Nainital in Criminal Jail Appeal No. 64/2010, whereby the High Court has dismissed the said appeal and upheld the conviction and sentence awarded by the District & Sessions Judge, Tehri Garhwal in Sessions Trial No. 22/2009. Both the appellants-accused were convicted by the Sessions Court

for the offence under Section 302 read with Section 34 and Section 201 of the IPC and were sentenced to undergo life imprisonment and pay fine of Rs. 20,000/- for the offence under Section 302 read with Section 34 and to undergo rigorous imprisonment for a period of six years and pay fine of Rs.10,000/- for the offence under Section 201 of the IPC.

***2.*** The case in nutshell of the prosecution before the Trial Court was that Smt. Shashi Devi had married the accused-Satye Singh four years prior to the date of incident which had taken place any time between the evening of 27.06.2009 to the morning of 28.06.2009. The accused-Indra Devi happened to be the mother of the accused-Satye Singh. On 28.06.2009 at about 8.40 a.m., Rai Singh (PW-8), Pradhan of the village-Ger of the accused informed Virendra Raj (PW-11), Naib Tehsildar, Revenue Police telephonically that one lady had died due to burns. The Naib Tehsildar -Virendra Raj (PW-11) therefore reached at the spot i.e. Chhan (hut) of the accused, after making an entry of the said information in the G.D. vide Rapat No. 28/42, and saw that the dead body of the deceased was lying_in the room of Chhan in the burnt condition. It was the further case of the prosecution that Sharad Singh,

father of the deceased, on receiving the phone call from the accused-Satye Singh had also arrived on the spot. The said Sharad Singh gave a written complaint to the Naib Tehsildar against the accused-Satye Singh (husband), Indra Devi (mother-in-law), and Sangeeta Devi (sister-in-law) of the deceased, which was registered as the Case Crime No. 16/2009 on 28.06.2009 at about 4.50 p.m., at the Revenue Police Station Bayargaon, District Tehri Garhwal. After the inquest proceedings were conducted, the dead body was sealed and taken to the Baushari Hospital for the post-mortem. The said Naib Tehsildar after drawing the panchnama and other proceedings, arrested the accused-Satye Singh. He also recorded the statement of other witnesses. Thereafter, he having been transferred, the further investigation was handed over to the Naib Tehsildar, Gunanand Bahuguna (PW-10). The said Investigating Officer after completing the investigation filed charge-sheet against the accused- Satye Singh and Indra Devi showing the accused Sangeeta Devi as absconding, for the offences under Sections 302 and 201 of the IPC in the Court of Chief Judicial Magistrate, Tehri Garhwal.

**3.** The said case being triable by the Court of Sessions was committed to the Sessions Court, Tehri Garhwal for trial. Both the accused having denied the charges levelled against them, the prosecution to prove the charges, led oral evidence by examining 11 witnesses and also adduced documentary evidence. After the completion of the evidence of prosecution, the accused-Satye Singh in his further statement before the Trial Court recorded under Section 313 of Cr.P.C. stated *inter alia* that there was no custom of dowry in their society and that he did not know how his wife Shashi died. He further stated that he along with other people of the village had kept on searching Shashi for the whole night but she was not found. According to him, Shashi had possibly committed suicide. The accused- Indra Devi had stated that since she was the mother of Satye Singh, she was falsely implicated in the case. The Trial Court after appreciating the evidence on record convicted and sentenced both the accused as stated hereinabove, vide order dated 11.10.2010, which came to be upheld by the High Court vide the impugned order.

***4.*** The learned Advocate Mr. Shikhil Suri appearing on behalf of the appellants-accused through Supreme Court Legal

Services Committee vehemently submitted that both the Courts i.e., the Trial Court and the High Court had committed gross error in convicting the appellants though there was no cogent evidence adduced by the prosecution to prove the charges levelled against the appellants. According to him, neither the manner in which the alleged incident had taken place was proved nor the place at which the deceased was allegedly killed and burnt was proved by the prosecution. He further submitted that since the appellants happened to be the husband and mother-in-law of the deceased, they were arrested and convicted, merely on the basis of suspicion, conjectures and surmises. Taking the court to the evidence of witnesses recorded during the course of trial, he submitted that the case was based on the circumstantial evidence as there was no eye witness to the alleged incident and the prosecution had failed to prove the entire chain of circumstances leading to the guilt of the accused.

***5.*** However, the learned Advocate Mr. Krishnam Mishra appearing for the respondent-State of Uttarakhand submitted that there being concurrent findings of the facts recorded by the two courts, this Court exercising limited

jurisdiction under Article 136 of the Constitution of India may not re-appreciate the evidence and come to a different conclusion. Mr. Mishra further submitted that the prosecution had examined the witnesses to prove that there was a harassment to the deceased by the accused and on the previous day of the incident also a quarrel had taken place between the deceased and the accused, which had resulted into the deceased Shashi leaving the house. According to him, the accused had tried to mislead the Investigating Officer by propounding the story that Shashi had committed suicide, however, from the evidence of the doctor viz. Sanjay Kavdwal (PW-9) and the injuries mentioned in the post-mortem report, it was duly proved that the injuries found on the dead body of Shashi were ante-mortem, and her death was caused due to Haemorrhage and shock on account of ante-mortem injuries. He, pressing into service Section 106 of the Evidence Act, submitted that there was no explanation given by the accused in their further statement as to why did Shashi leave their home the previous day and what

they did they do for the whole night, when Shashi was not found.

***6.*** Now it may be stated at the outset that undeniably the entire case of the prosecution hinged on circumstantial evidence as there was no eye witness to the alleged incident. Though the accused had tried to propound the story of the deceased having committed suicide, both the courts had rightly not accepted the said story, in view of the clinching evidence of the Dr. Sanjay Kavdwal, who had carried out the post-mortem of the deceased and recorded the injuries found on the dead body of the deceased, which were ante-mortem in nature. The ante mortem injuries recorded in the post-mortem report were as under:

> ***(i) Fracture occipital bone 3CMx3CM***
>
> ***(ii) Fracture left humoorus (compound) lower***
>
> ***(iii) Abdomen was burst and intestine was protruding out, 10CM x 4CM***
>
> ***(iv) Entire body had blackened, charred, peeling, scaring like parchment and the muscles were visible. Hairs of the head had burnt.***

The said doctor had opined that the cause of death was Haemorrhage and shock due to ante mortem injuries. The said doctor was cross-examined at length to prove that the injuries were not ante mortem and were due to burning only, however, the doctor had categorically denied the same and had further explained as to how and when the blisters would develop on the body on account of burning. From the said evidence of the doctor, there remains no shadow of doubt that the deceased Shashi had died a homicidal death.

***7.*** This takes the Court to the next issue as to how and who caused the death of Shashi. The prosecution in order to prove the charges levelled against the accused had examined 11 witnesses. However, none of witnesses had any knowledge about the alleged incident. PW-1 viz. Jontara Devi, aunt of the deceased had deposed, *inter alia,* that on 27th at about 11.00 o'clock Satye Singh had made a phone call to her to enquire whether the Shashi had come to her house, and that on the next day she had come to know that Shashi was burnt to death. In the cross-examination, she had admitted that the accused Satye Singh or all his family members had never made any demand of dowry in her

presence, nor any assault was made by them in her presence.

**8.** The father of the deceased – Sharad Singh (PW-2) of course had stated in his evidence that the accused i.e., husband of the deceased and his family members used to harass his daughter- Shashi for dowry and, therefore, many a times Shashi used to come his house running. He had also stated that one month prior to the incident in question, Shashi had come to his house and told him that she was being assaulted and abused by the accused for the dowry. As regards the incident in question, he had stated that Satye Singh had called him in the morning at about 10-11 o'clock to inform him that Shashi had committed suicide by setting herself ablaze. He therefore along with villagers had gone to the Chhan of the accused and saw that dead body of Shashi was lying there in burnt condition. He had given the written complaint to the police with regard to the incident in question. In the cross examination he had admitted that he had never seen any injuries on her body nor he had lodged any complaint about the alleged harassment by the accused. He had further stated that the Chhan i.e. cowshed of the accused was situated at the distance of half an hour

of the house of the accused at village Ger and that there was a forest of Baanj, Buransh in between the village and the Chhan. He had also stated that the father of the Satye Singh was deaf and dumb. He also admitted that on the previous evening when Jontara Devi informed him about the phone call from Satye Singh enquiring about Shashi, he did not go to the village of the accused, thinking that they keep on quarrelling like that. He also admitted that Satye Singh and all his family members were present when he reached at the spot i.e., the Chhan. He had admitted that he did not know as to how his daughter was burnt, however, had denied the suggestion that Shashi had caught fire from the Chulla (hearth). He also denied that there was no harassment by the accused to his daughter.

***9.*** PW -3 Bhagdeyi Devi, mother of the deceased, PW-5 (Bharat Singh) uncle of the deceased and other villagers PW-4 (Bhagat Singh), PW-6 (Balbir Singh) and PW-7 (Gabbar Singh) were examined by the prosecution, however, none had any knowledge as to how, when and where the deceased was killed and burnt.

***10.*** It is also very pertinent to note that the entire investigation carried out by the Investigating Officers Gunanand

Bahuguna (PW -10) and Virendra Raj (PW-11) was in a very cursory and shoddy manner. On receiving the information from Shri Rai Singh, Pradhan of the village, the Naib Tehsildar (Virendra Raj) had reached to the spot i.e the Chhan and registered the complaint against the accused Satye Singh, Indra Devi and Sangeeta Devi, at the instance of the complainant Sharad Singh, however, had not bothered to investigate as to how the incident had taken place. There was no investigation carried out by either of the Investigating Officers as to at which place the deceased was killed and burnt, and how and by whom her burnt body brought in the Chhan. Though, according to the Investigating Officer, it was suspected that the crime was committed by Atar Singh, father of Satye Singh, he was never implicated in the case. There was no recovery and discovery of any incriminating articles made from the accused during the course of investigation and no attempt was made to collect any evidence much less cogent evidence to connect the accused with the alleged crime.

***11.*** On the totality of circumstances and evidence on record, at the most it could be said from the evidence of the parents of the deceased that there was harassment by the accused

to the deceased, though no charge under section 498A of IPC was framed by the trial court against the accused. It could be further inferred from the evidence on record that the deceased Shashi had left the house on the previous evening of the alleged incident and that she was not found during the whole night, nonetheless such circumstance itself could not be said to be sufficient proof to come to a conclusion that accused had murdered and burnt Shashi as alleged. It is settled position of law that circumstances howsoever strong cannot take place of proof and that the guilt of the accused have to be proved by the prosecution beyond reasonable doubt. At this juncture, let us regurgitate, the golden principles laid down by this Court in ***Sharad Birdhichand Sarda vs. State of Mahashtra*** reported in 1984 (4) SCC 116. This court while drawing the distinction between “must be” and “may be” observed as under in para 153:

> ***“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.***

***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 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] 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.** It was further observed in Para-158 to 160 as under:

***"158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar [AIR 1955 SC 801 : (1955) 2 SCR 570, 582 : 1955 Cri LJ 1647] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:***

***"But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable***

***definiteness and in proximity to the deceased as regards time and situation,. . . such absence of explanation or false explanation would itself be an additional link which completes the chain."***

***159.*** ***It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:***

***(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,***

***(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and***

***(3) the circumstance is in proximity to the time and situation.***

***160.*** ***If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325]***

***where this Court observed thus : [SCC para 30, p. 43 : SCC (Cri) p. 322]''***

***"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unfailingly to the guilt of the accused."***

**13.** The said principles have been restated in catena of decisions. In ***State of U.P. vs. Ashok Kumar Srivastava*** (1992) 2 SCC 86, it has been observed in para 9 that:

***''9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. 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. The circumstance 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. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.''***

14. Again in ***Majendran Langeswaran vs. State (NCT of Delhi) & Anr.*** (2013) 7 SCC 192, this court having found the material relied upon by the prosecution inconsistent and the infirmities in the case of the prosecution, considered number of earlier decisions, and held that the conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to the circumstantial evidence that all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.

15. Applying the said principles to the facts of the present case, the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance

placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused. In ***Shambu Nath Mehra vs. State of Ajmer***, AIR (1956) SC 404, this court had aptly explained the scope of Section 106 of the Evidence Act in criminal trial. It was held in para 9:

> ***"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or***

> ***did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor [AIR 1936 PC 169] and Seneviratne v. R. [(1936) 3 All ER 36, 49]”***

16. In the case on hand, the prosecution having failed to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions contained in section 106 of the Evidence Act. There being no cogent evidence adduced by the prosecution to prove the entire chain of circumstances which may compel the court to arrive at the conclusion that the accused only had committed the alleged crime, the court has no hesitation in holding that the Trial Court and the High Court had committed gross error of law in convicting the accused for the alleged crime, merely on the basis of the suspicion, conjectures and surmises.

17. In that view of the matter, the impugned judgments deserve to be quashed and set aside and are hereby set

aside accordingly. The accused are acquitted from the charges levelled against them and are directed to be set free forthwith.

18. The appeal stands allowed accordingly.

..............................J.
[SANJIV KHANNA]

..............................J.
[BELA M. TRIVEDI]

NEW DELHI
15.02.2022