2022 INSC 608

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 988 OF 2017

SABITRI SAMANTARAY … APPELLANT

VERSUS

STATE OF ODISHA … RESPONDENT

WITH

CRIMINAL APPEAL NO. 860 OF 2022
(arising out of S.L.P (CRL.) No. 3881 OF 2017)

BIDYADHAR PRAHARAJ … APPELLANT

VERSUS

STATE OF ODISHA … RESPONDENT

JUDGMENT

KRISHNA MURARI, J.

Leave granted in Special Leave Petition (Criminal) No. 3881 of 2017.

2. Present appeals are directed against the judgment and order dated 08.11.2016 passed by the High Court of Odisha at Cuttack in Criminal Appeal

No. 202 of 2015. The Appellants herein, namely Sabitri Samantaray and Bidyadhar Praharaj are wife and husband respectively. The two have been arrayed as accused no. 2 and accused no. 1 in FIR No. 120 of 2008. The Appellants herein along with their daughter (accused no. 3) had been charged with offences under Sections 302, 201 read with Section 34 of the Indian Penal Code (hereafter referred to as 'IPC'). Sessions Court Jajpur, in C.T. Case No. 76 of 2010 convicted accused no. 1 and 2 for offences under Sections 302, 201 read with Section 34 IPC, whereby both the appellants were sentenced to rigorous imprisonment for life and a fine of Rs. 10,000/- and further sentence of six months in case of default in payment of fine. Their daughter i.e. Accused No. 3 was convicted under Sections 302, 109 read with Section 34 IPC and was sentenced to rigorous imprisonment for life and a fine of Rs. 10,000/-, and further sentence of six months in case of default in payment of fine. Subsequently, the High Court vide order impugned herein acquitted the daughter of the appellants of all charges, but upheld the conviction of the Appellants. The conviction of the appellants under Section 302 IPC, however, was modified to conviction under Section 304 (II) IPC and, therefore, sentence term was reduced to rigorous imprisonment for a term of five years and a fine of Rs. 10,000/-, and an additional six months of rigorous imprisonment in case of default.

Factual Matrix

3. The accused appellants herein were tenants of one Mayadhar Mohapana. The said landlord on 21.07.2008, lodged an FIR stating that an unknown person had attacked the accused appellants at around 7:30 PM while he was watching television in his house. The landlord stated that he had heard a loud cry from the portion of his house which was rented to the appellants, and as he rushed to inquire what had happened, he saw an unknown person assaulting the appellants with a "Kata". Consequently, the landlord cried for help, and as other people gathered around the house, he rescued the couple through an inter-connected door.

4. This unknown person remained inside the appellants' house. Police arrived at the spot, searched all rooms, whereafter, the person was found dead inside the kitchen of the house. It was initially suspected that he had committed suicide by consuming poison. Subsequently, the body was sent for autopsy, and was thereafter preserved for identification. On 24.07.2008, one Ranjan Rana identified the deceased to be Sanjay Rana. He further disclosed that the deceased had a love relationship with the daughter of the appellants.

5. Post-mortem examination of the body was also conducted and it was opined by the doctor that death was caused by compression on lower part of the neck, resulting in blockage of upper end of the trachea. It was further opined

that the deceased victim was assaulted by two or more persons with acid and blunt objects. Thus, death was homicidal in nature. In consequence thereof, charge sheet was submitted against the accused appellants and their daughter (accused no. 3) for offences under Sections 302, 201, 109 and 34 IPC.

6. The accused appellants on the contrary maintained that the unknown person had forcibly entered into their house and locked it from inside. He first encountered accused no. 1 (i.e. Bidyadhar Praharaj) and threatened to kill him, should he refused to hand over entire money and valuables. Subsequently, both the appellants were assaulted by the deceased, which resulted in injuries. They were eventually rescued, and thereafter police implicated them in a false case.

7. The Sessions Court, vide its judgment dated 30.03.2015, held that the prosecution had successfully established its case beyond reasonable doubt and, therefore, convicted the accused appellants and their daughter under above said Sections. Aggrieved, appellants and their daughter challenged the judgment of the Trial Court before the High Court. Vide impugned judgment, the High Court acquitted the daughter of all charges, as she was not present at the scene of offence. It was observed that she had no role in the actual incident and therefore cannot be termed as an abettor to the crime. On the contrary, the conviction of the accused appellants was confirmed by the High Court. The High Court observed that something had transpired between the appellants and the

deceased, which ensued in an assault. It was further observed that thereafter, it appeared that the deceased was somehow overpowered by the appellants and was unarmed. Thereafter, both the appellants throttled him to death and poured acid on him to impede identification. However, as there was a strong possibility of existence of grave and sudden provocation, which was discernible from adduced evidence, the conviction under Section 302 IPC was modified to conviction under Section 304 (II) IPC, and both the accused were thereby sentenced to undergo rigorous imprisonment for a term of five years.

Contentions made by the Appellants

8. The Appellants herein contend that reliance placed on Section 106 of the Evidence Act is misconstrued, in absence of clear evidence pointing to the guilt of the appellants accused. That the prosecution has failed to prove its case beyond reasonable doubt, and has therefore failed to discharge its burden of proof. In the absence of the prosecution having failed to prove its case beyond reasonable doubt, the High Court cannot supplant Section 106 of the Evidence Act to discharge the burden of proof incumbent upon the prosecution. The judgment impugned herein is therefore in contravention to the law laid down by this Court in ***Shambu Nath Mehra Vs. State of Ajmer***[1]**.**

1. 1956 SCR 199

9. Further, the High Court erred in convicting the appellants by entirely relying upon circumstantial evidence. Additionally, in absence of any eye-witness, the High Court also erred in dismissing the contention of the appellants regarding the disputed time of death of the deceased.

10. It is also contended that the High Court failed to appreciate that as per the post-mortem report submitted by the Doctor, death of the deceased happened when the appellants were admitted to the hospital, because of the injuries they had suffered from being assaulted by the deceased. Moreover, reliance placed upon answers given by the appellants in their statements under Section 313 of CrPC is misplaced, as answers to questions under Section 313 CrPC are inadmissible as evidence and cannot be relied upon by the prosecution.

[See, Devender Kumar Singla v. Baldev Krishnan Singla, (2005) 9 SCC 15 and Mohan Singh v. Prem Singh and Anr., (2002) 10 SCC 236.]

11. Lastly it was submitted that the High Court failed to rely upon any individual incident which would indicate the appellants' participation, resulting in the death of the deceased. Thus, the judgment lacks any *prima facie* finding which would indicate participation of the appellants in the event leading to the death of the deceased.

Contentions made by the Respondent – State

12. It has been submitted by the Respondent herein, that the High Court relying upon admitted facts, creditworthy evidence, relationship between the parties, more specifically relationship between the deceased and daughter of the appellants, their telephonic contacts, exchange of money between the deceased and appellant's daughter, date, place and time of murder of the deceased, and the presence of accused appellants inside the tenanted portion of the house, has rightly observed that the incident did occur at the time and place alleged by the prosecution wherein appellants were definitely involved.

13. Further, it was rightly observed that the claim of the first set of witnesses failed to lay down a complete narration of the events. Additionally, vide judgment impugned herein, it was rightly observed that the version of the second set of witnesses was more convincing as it established the relationship between the deceased and the appellants, which, to an extent was accepted by the appellant's husband herein and the daughter.

14. It is further contended that from a perusal of the facts and material on record it is evident that no one else except the appellants herein were present at the scene of the offence and therefore, on account of the appellants having special knowledge, reference to Section 106 of the Evidence Act, has been

rightly made. The Trial Court, while confirming the reliance placed by the prosecution on the judgment of this Court rendered in ***Rajendra Kumar Vs. State of Rajasthan***[2]**,** has also referred to Section 106 of the Evidence Act. Therefore, contentions made by the appellants that no reliance was placed by the prosecution on Section 106 of the Evidence Act, is incorrect.

15. This Court in its judgment in ***Trimukh Maroti Kirkan Vs. State of Maharashtra***[3] has also observed:-

> *"15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."*

16. Furthermore, it is submitted that as per the deposition of the medical expert (PW 6), it is nowhere mentioned that the deceased had died when the appellants were lying injured in the hospital. Additionally, statements of all witnesses are consistent, and mere minor contradictions cannot form the basis

2. (2003) 10 SCC 21
3. (2006) 10 SCC 681

for rejecting the evidence produced by the prosecution in its entirety. Thus, from a bare perusal of the facts, it can be conclusively established that the prosecution has successfully established the chain of events beyond reasonable doubt. The deceased was strangulated to death by the appellants and upon his death, an attempt was made to conceal his identity by pouring acid over the dead body.

Analysis

17. Having perused the relevant facts and contentions made by the appellants and the respondent herein, in our considered opinion, the key issue which requires determination in the instant case is whether the prosecution has successfully discharged its burden of proof, and that the chain of events has been successfully established so as to attract application of Section 106 of the Evidence Act.

18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the Section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto

the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. [*See* ***Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681]***

20. Coming to the case at hand, vide its judgment, the High Court has convicted both the appellants under Sections 304(II), 201 read with Section 34 of IPC. It was observed that the deceased was strangulated to death by the appellants and an attempt was further made to conceal his identity, by pouring acid over the body. The relevant submissions of the parties and evidence adduced therewith has been discussed as follows:

21. Firstly, reliance was placed on the statement of PW 9 (the landlord) which specifically mentioned that members of the police were the first to enter into the

house of the accused appellants, immediately after the accused appellants were rescued from the inter-linked door, while the deceased had remained inside. From the statement of PW 9, it can therefore be inferred that at the time of death of the deceased, only the accused appellants were present inside the house. Furthermore, the contention of the appellants that the gathered mass of people had in fact assaulted the deceased and destroyed his face, has rightly been rejected by the High Court as being devoid of any material evidence made in support of the claim.

22. Thereafter, further reliance is placed on the testimony of the sister of the deceased – Gitanajali Rana (PW 12), who stated that the deceased was a jeweller having jewellery shop. She further stated that the deceased was in a love relation with the daughter of the appellants, and that he would often visit the house once or twice in a month. It was further stated that the deceased had given an amount of Rs. 70,000/- to the daughter of the appellants (accused no.3) as she had asked for his help. Deceased intended to marry accused no. 3, however upon getting a job at a bank, the daughter started avoiding the deceased and his frustrations grew. Deceased's sister in her statement, further stated that prior to his death, deceased had left the house exclaiming that he would either come back along with the daughter of the appellants or would get his money back. This statement was further confirmed by PW -7 and 8, who

were the friend and cousin brother of the deceased, respectively. It was therefore rightly observed by the High Court that the statement of these second set of witnesses clearly spells out a motive for the commission of offence. It also establishes that the claim made by the accused appellants that the deceased was not known to them is also false, especially considering that their daughter (accused no. 3) has admitted in her deposition that the deceased used to visit the house of the appellants.

23. Furthermore, regard must also be had to the statement of the medical expert (PW 6), which revealed that the cause of death of the deceased was asphyxia due to compression of lower part of the neck resulting in blockage of the upper end of the trachea. It was opined that the deceased was assaulted by two or more persons and that the injuries were homicidal in nature.

24. In the instant case, the prosecution had thus succeeded in establishing intention of the appellants for the commission of the offence. Such an intention, when analyzed in the light of the statements made by all the sets of witnesses, and fatal injuries sustained by the deceased at the relevant place and time, certainly makes out a strong case that death of the deceased was indeed caused by the appellants. Therefore, once the prosecution had successfully established the chain of events, the burden was on the appellants to prove it otherwise.

Thus, the High Court rightly observed that in light of Section 106 of the Evidence Act, the onus was now on the appellants to disclose how the deceased lost his life.

25. Furthermore, this Court in the case of ***Ashok Vs. State of Maharashtra***[4] has observed:-

> *"12. From the study of above stated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non- explanation of death of the deceased, may lead to a presumption of guilt."*

26. Therefore, having regard to the above facts and reasons stated therewith, it can be deduced that the entire sequence of events strongly point towards the guilt of the accused appellants, and that the appellants have failed to offer any credible defense in this regard. The entire chain of events point towards the

4. (2015) 4 SCC 393

guilt of the appellants. Thus, we do not find any error in the impugned judgment passed by the High Court. The appeals, accordingly, stand dismissed.

27. The bail bonds of the two accused stands cancelled and they are directed to surrender before the Trial Court within a period of two weeks from today failing which they shall be taken into police custody for the said purpose.

.......…........................CJI.
(N.V. RAMANA)

…......................................J.
(KRISHNA MURARI)

…....................................J.
(HIMA KOHLI)

NEW DELHI;
20th MAY, 2022