2024 INSC 560

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 818/2019

MANHARAN RAJWADE APPELLANT(S)

VERSUS

STATE OF CHHATTISGARH RESPONDENT(S)

J U D G M E N T

ABHAY S. OKA, J.

1. Heard the learned counsel appearing for the parties.

FACTS

2. The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, “the IPC”), and he has been sentenced to undergo life imprisonment. According to the prosecution’s case, the appellant murdered his wife, Geeta. Her body was found in the house of the appellant at about 5:00 p.m. on the date of the incident. The case of the prosecution is that the appellant strangulated her.

3. The prosecution's case is based on the theory of last seen together. Consequently, the prosecution contends that the appellant had not discharged the burden on him under Section 106 of Indian Evidence Act, 1872 (for short, “the Evidence Act”). The prosecution examined two witnesses, Sonawati (PW-1) and Hirmaniabai (PW-2).

SUBMISSIONS

4. The learned counsel appearing for the appellant submitted that this is a case of no evidence as the theory of last seen together has not been established, and no evidence has been adduced to prove the motive.

5. On the other hand, the learned counsel appearing for the State submitted that the presumption under Section 106 of the Evidence Act would apply. As the appellant has not discharged the burden on him, the order of conviction deserves to be confirmed. He also relied upon the answer to question no.27 given by the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973 (for short, "the Cr.PC"). He pointed out that the appellant admitted that he came back around 4:00-5:00 p.m.; and therefore, the presence of the appellant is established.

CONSIDERATION OF SUBMISSIONS

6. We have carefully perused the evidence of PW-1 and PW-2. PW-1 did not support the prosecution. She stated that in the evening, at around 5:00 p.m. on the date of the incident, her *Jethani* Harmania had gone to the house of the deceased to bring a stabilizer. She saw that the deceased was sleeping on a bed. She tried to wake her up, but there was no response. After that, a doctor was called who declared that the deceased had died. The witness stated that on that day, the appellant had gone to crush the stones, and he returned home at 7:00 p.m. PW-1 was declared

hostile and was cross-examined by the Public Prosecutor. Unfortunately, the Public Prosecutor did not confront PW-1 with the relevant part of her statement under Section 161 of the Cr.PC. PW-2 has not deposed anything about the presence of the appellant in the house close to the time at which the dead body of the deceased was found. Even PW-2 was declared hostile.

7. For invoking Section 106 of the Evidence Act, the prosecution ought to have discharged the burden on it by adducing cogent evidence to prove the appellant's presence at the relevant time in his house. In this case, going by the evidence of PW-1, the deceased had already died before 5:00 p.m., and the said witness stated that the appellant came back home at 7:00 p.m. There is no evidence to prove the theory of the last seen together. Therefore, the prosecution has not discharged the burden on it to prove that the appellant was last seen together with the deceased wife. Thus, Section 106 of the Evidence Act cannot be invoked to shift the burden on the appellant.

8. Even the appellant's answer given to question no.27, if taken in its entirety, does not support the prosecution. The appellant vaguely stated that he came back around 4:00-5:00 p.m. when PW-1 and PW-2 were in the house and told him that the deceased was not talking and moving. Thus, he reached home after the death of his wife. The allegation was that the death was caused due to strangulation by the appellant.

9. Therefore, the prosecution has miserably failed to prove the

only circumstance it relied upon, namely, that the appellant and the deceased were last seen together. Therefore, the prosecution has failed to bring home the charge of the offence of murder punishable under Section 302 of the IPC.

10. Hence, the impugned judgments and orders are set aside, and the appellant is acquitted of the offence alleged against him. The appellant shall be forthwith set at liberty unless his detention is required in any other case.

11. The Appeal is, accordingly, allowed.

.....J.
(ABHAY S. OKA)

.....J.
(PRASHANT KUMAR MISHRA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
JULY 25, 2024.