2024 INSC 238

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. OF 2024**
**(Arising out of SLP(Criminal) No. 6112 of 2022)**

**RAGHUNATHA AND ANOTHER ...APPELLANT(S)**

**VERSUS**

**THE STATE OF KARNATAKA ...RESPONDENT(S)**

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

**B.R. GAVAI, J.**

**1.** Leave granted.

**2.** This appeal challenges the judgement dated 14th July, 2021, passed by the Division Bench of the High Court of Karnataka at Bengaluru in Criminal Appeal No. 1389 of 2019, thereby partly allowing the appeal filed by the appellants, namely, Raghunatha (Accused No. 1) and Manjunatha (Accused No. 2) and modifying the order of conviction and sentence awarded to them by the Court of III Additional District & Sessions Judge, Kolar (sitting at K.G.F.) (hereinafter referred to as "trial court") in S.C. No. 276 of 2014 on 17th June, 2019.

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Reason:

**3.** Shorn of details, brief facts leading to present appeal are as under:

**3.1.** On 7th July 2014, upon complaint being lodged by Sri R. Lokanathan (PW-1), Kaamasamudram police registered Crime No. 44/2014 for offence punishable under section 302 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC') against unknown persons.

**3.2.** The prosecution case, in a nutshell, is that complainant and his father-Ramu (hereinafter referred to as 'deceased') were running a fertilizer shop and were also involved in agriculture and money lending business. There were misunderstandings in the business run by complainant and accused No.1 on account of which the accused No. 1 bore enmity with the complainant due to loss suffered in the business. Following which, the appellants hatched a conspiracy to murder the deceased. On 7th July 2014, deceased left the house at about 6:45 am on a 'TVS Moped' to go to Tholampalli for recovery of loan amount from Ahmed (PW-12). The appellants were waiting on Bisanathamm-Tholampalli road and attempted to assault the deceased with a chopper from backside. When the deceased tried to escape,

he fell down, after which accused No.1 caught hold of the deceased while accused No.2 assaulted him on the head with the chopper and murdered him.

**3.3.** At about 8 am, complainant's uncle-Babu (PW-6) came and informed the complainant that a TVS Moped was found lying between Bisanathamm-Tholampalli road and took the complainant to the said spot. Complainant identified the Moped and found the deceased lying in prone position in the mud with bleeding injuries on his head. Deceased was not conscious; however, he was alive and his hands were shaking. Thereafter, the complainant and Babu (PW-6) took the deceased to KGF Hospital, where the doctor declared him dead.

**3.4.** The appellants came to be arrested on 23rd July, 2014. On completion of investigation, charge-sheet was filed against the appellants for offences punishable under Sections 120-B and 302 read with Section 34 of IPC. Since the case was exclusively triable by the Sessions Judge, the same was committed to the Sessions Judge vide order dated 10th December, 2014.

**3.5.** On 6th May 2015, charges were framed against the appellants for offences punishable under Sections 120-B and 302 of IPC. Thereafter, on 11th June 2019, altered charges were framed under Sections 120-B and 302 read with 34 of IPC.

**3.6.** The appellants denied the charges and claimed to be tried. Prosecution examined 23 witnesses and 20 exhibits to bring home the guilt of the appellants.

**3.7.** At the conclusion of trial, the learned trial court found that the prosecution had succeeded in proving that the appellants had committed the murder of the deceased. Therefore, the learned trial court convicted the appellants for offences punishable under Sections 120-B and 302 read with 34 of the IPC and were awarded a sentence of life imprisonment. Further, a fine of Rs. 7,500/- for each offence was imposed on both the appellants and out of the said fine amount, Rs. 25,000/- was to be paid as compensation to the complainant.

**3.8.** Being aggrieved thereby, the appellants preferred Criminal Appeal No. 1389 of 2019 before the High Court. The High Court, vide impugned judgment, partly allowed the

appeal and modified the conviction to Section 304 Part-I of IPC and sentenced them to undergo imprisonment for 10 years. Further, the High Court imposed a fine of Rs. 75,000/- on each of the appellants and directed a sum of Rs. 1,40,000/- of the fine amount to be paid to PW-7-Sarla, wife of deceased.

**3.9.** Being aggrieved thereby, the present appeal.

**4.** We have heard Shri Shekhar G. Devasa, learned counsel appearing for the appellants, Shri Aman Panwar, learned Additional Advocate General (AAG) appearing for the respondent-State.

**5.** Shri Devasa, learned counsel appearing for the appellants submits that the trial court and the High Court have grossly erred in convicting the appellants. He submits that the present case is a case based on circumstantial evidence. It is submitted that the prosecution has failed to prove any of the incriminating circumstances. Further, the prosecution has not been in a position to prove the chain of circumstances which leads to no other conclusion than the guilt of the accused. He therefore submits that the appeal

deserves to be allowed and the appellants are to be acquitted of the charges charged with.

**6.** Shri Panwar, learned AAG appearing for the respondent-State submits that both the courts have concurrently held that the prosecution has proved the chain of circumstances which leads to no other conclusion than the guilt of the accused. He therefore submits that no interference is warranted in the present appeal.

**7.** Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[1], wherein this Court held thus:

> "**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969)

[1] **(1984) 4 SCC 116 : 1984 INSC 121**

3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

**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: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> "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.

**154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

**8.** It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused 'must be' and not merely 'may be' proved

guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

**9.** It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

**10.** In the light of these guiding principles, we will have to examine the present case.

**11.** The circumstances on which the prosecution relies are as follows:

(i) Last seen theory;

(ii) Motive; and

(iii) Recovery of the chopper used in the crime.

**12.** Insofar as the 'last seen' circumstance is concerned, the learned Judges of the High Court have relied on the testimonies of Sarla (PW-7) and Shivaraj (PW-8). The testimonies of Sarla (PW-7) and Shivaraj (PW-8) would reveal that they had seen accused Nos. 1 and 2 nearby the place of incident before the incident had occurred. They further stated that they had seen accused No. 1 holding chopper in his hand. The High Court further relied on the evidence of Babu (PW-6) who had noticed the unattended two-wheeler belonging to the deceased and informed about the same to Sri R. Lokanathan (PW-1) and Murthy (PW-5) i.e. son and brother of the deceased. Thereafter, the said witnesses started searching for the deceased and the deceased was found lying injured in the close vicinity. The learned Judges

of the High Court found the said evidence to be sufficient to establish the last seen theory.

**13.** No doubt that where the prosecution proves that the deceased was last seen in the company of the appellants and the death of the deceased has occurred soon thereafter, the burden would shift upon the appellants. However, for that, initially the prosecution will have to discharge the burden. Merely because the appellants were seen nearby the place where the crime occurred and the accused No. 1 was holding the chopper, it cannot be said that the deceased was last seen in the company of the appellants. In our view, this will be nothing but basing the finding of conviction on conjectures and surmises.

**14.** Further, the perusal of evidence of PW-7 would reveal that she has not deposed that the appellants were seen nearby the place where the dead body of the deceased was found.

**15.** The trial court found that the prosecution has proved the motive behind the crime. However, the High Court has reversed the finding on the said issue. It will be relevant to refer to the following observations of the High Court:

> "**21.** .....But what exactly is the financial loss and whether that loss and intervention of deceased resulted in sufficient enmity between the deceased and accused No.1 and the same being nurtured from the date of closure of business till the date of death is not deposed to by prosecution witnesses. Therefore, the case of the prosecution that accused No.1 possessed and nurtured enmity resulting in taking away the life of the deceased by accused No.1 is not established by the prosecution with cogent and convincing evidence on record. Prosecution did not examine none else to establish misunderstanding especially when PW.6 in his cross examination has admitted that there was a panchayath convened in that regard. Investigating agency did not cite the panchaythdar as witness to establish the question of motive. Therefore, the finding recorded by the trial Judge that prosecution has established motive for the incident cannot be countenanced in law and to that extent, the reasoning assigned by the learned trial Judge needs interference at the ends of this Court."

**16.** Now, what is left, is only the third circumstance with regard to recovery. The recovery is from an open place accessible to one and all. In any case, only on the basis of the circumstance of recovery, it cannot be said that the prosecution has proved the case beyond reasonable doubt.

**17.** It is further to be noted that though the High Court has concurred with the trial court that it is the appellants, who have committed the crime but has altered the conviction to Part-I of Section 304 of IPC from Section 302 of IPC. No

discussion for the same has been offered in the impugned judgment.

**18.** In that view of the matter, we find that the impugned judgment is not sustainable.

**19.** In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The impugned judgment dated 14th July 2021 passed by the High Court of Karnataka at Bengaluru in Criminal Appeal No. 1389 of 2019 and the judgment dated 17th June 2019 passed by the trial court in S.C. No. 276 of 2014 are quashed and set aside;

(iii) The appellants are acquitted of all the charges charged with and are directed to be released forthwith, if not required in any other case.

**20.** Pending application(s), if any, shall stand disposed of.

**.....J.**
**(B.R. GAVAI)**

**.....J.**
**(SANDEEP MEHTA)**

**NEW DELHI;**
**MARCH 21, 2024.**