2024 INSC 298

NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1186 OF 2022

ARUN SHANKAR **...APPELLANT**

VERSUS

THE STATE OF MADHYA PRADESH **...RESPONDENT**

J U D G M E N T

ABHAY S. OKA, J.

1) The Sessions Court has convicted the appellant/accused for the offences punishable under Sections 302 and 201 of the Indian Penal Code vide the judgment dated 13th March 1995. He has been sentenced to undergo life imprisonment. The decision of the Sessions Court has been confirmed by the High Court by the impugned judgment and order dated 5th December 2017. The case is based on circumstantial evidence.

FACTUAL ASPECTS

2) The case of the prosecution will have to be briefly stated. The appellant and deceased (Sushildhar Dubey) were related and were residents of village Amgoan. They used to go together to drink liquor. On 29th September 1993, in the evening, around 7.00, the appellant went to the house of the deceased and asked the deceased to accompany him to drink liquor.

They both went to the house of PW-2 (Ramdas) in village Kohaka. They consumed liquor in PW-2's house, and they left after consuming the liquor. Nobody saw the deceased alive thereafter, and his dead body was found on the morning of 30th September 1993 on the road leading to Village Bijholidhar Amgoan. The prosecution case is based on circumstantial evidence. The circumstances are:

a) Recovery of the knife at the instance of the appellant, which is the instrument of assault on the deceased;

b) Last seen together;

c) Medical opinion on the injury sustained by the deceased and cause of death; and

d) Habit of the deceased of drinking liquor with the appellant.

SUBMISSIONS

3) Learned senior counsel appearing for the appellant has taken us through the notes of evidence of material prosecution witnesses and other documents on record of the Trial Court. His submission is that last seen together is a very weak circumstance as there is evidence on record to show that the appellant and the deceased were related. Very often, they used to consume liquor together. He submitted that the recovery of the knife at the appellant's instance had not been proved. He submitted that even the existence of motive has not been pleaded and proved by the prosecution. He submitted that if the oral evidence of PW-7 (Virendradhar Dwivedi) and PW-15 (Dr. Mahendra Kumar Ahirwal) is considered together, the

theory that the death occurred due to an accident of motorcycle cannot be ruled out. Therefore, the benefit of the doubt must be extended to the appellant. He submitted that every circumstance constituting a chain of circumstances has not been established.

4) The learned counsel appearing for the State supported the impugned judgment. She submitted that the dead body of the deceased was found within a few hours from the time at which the appellant and the deceased were last seen together. She submitted that recovery of the weapon used by the appellant to attack the deceased had been duly proved, and all circumstances forming part of the chain of circumstances have been established.

CONSIDERATION OF SUBMISSIONS

5) This case is based on circumstantial evidence. The law governing cases involving circumstantial evidence is no longer *res integra.* Paragraph 153 of the decision of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[1] lays down the well-settled principles. Paragraph 153 reads thus:

> **"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

[1] (1984) 4 SCC 116

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."

(emphasis supplied)

6) We have carefully perused the evidence of PW-2, who deposed that on 29th September 1993 till 9.00 pm, the

appellant and deceased consumed liquor in his house. He deposed that the appellant and deceased left his house after consuming liquor. He stated that the appellant and the deceased had gone towards Amgoan. The body of the deceased was recovered on the next day. In the cross-examination, the PW-2 stated that two to four times, the appellant and the deceased had come to his place to drink liquor. He stated that the deceased used to consume a lot of liquor. PW-6 (Smt. Anjana Devi) is the wife of the deceased, who deposed that the appellant came to her house and gave a currency note of Rs. 50/- to the deceased and forcibly took him for drinking. After that, the deceased did not come back. She stated that she deputed her elder son to the appellant's house, where the sister-in-law of the appellant informed the elder son of the deceased that the appellant was sleeping in the house. Thereafter, the appellant himself visited the house of PW-6 and enquired whether his brother-in-law (deceased) had come back. She deposed that at 12.00 noon, one Kotewar informed her that the dead body of her husband had been found. She admitted that her husband used to drink alcohol occasionally. Sometimes, he used to get drunk, and people used to bring him back home. She stated that when her husband went with the appellant, she knew that they were going to drink liquor.

7) PW-7 stated that the deceased was his nephew. In the cross-examination, he accepted that the deceased and appellant always used to be together. Thus, this was not the first occasion when the deceased and the appellant went together to consume liquor. Apart from being closely related,

they had a close contact, and they used to be together for drinking. The prosecution has not come out with a case that there was some motive on the part of the appellant for killing the deceased. Neither PW-2 nor PW-6 stated that on 29th September 1993, there was any dispute or altercation between the appellant and the deceased. Thus, the deceased being in company of the appellant on 29th September 1993 was not an unusual circumstance. This makes the case based on the theory of last seen together very weak in absence of motive.

8) Now, we come to the evidence of recovery of the weapon of offence at the instance of the appellant. The first witness to the recovery memorandum under Section 27 of the Indian Evidence Act, 1872, is PW-2. In the examination-in-chief, he said that he was not aware who told the police that the knife was lying in a particular place. He stated that the police had said they were trying to find out the place the accused was telling. He stated that soil and knife were recovered from different locations. He stated that he signed on papers on which something was written, which was not read over to him. He further stated that he was illiterate.

9) PW-4 (Arjun) stated that the police personnel had taken them to the place where the knife was found. The witness said that he saw the knife first, and thereafter, the police picked it up. He stated that he was not aware who had told police that the knife would be found at that place. On plain reading of the evidence of these two witnesses, it is apparent that the recovery of the knife at the instance of the appellant has not been duly proved. They have not stated that the discovery was made from

a place disclosed by the appellant in their presence. Moreover, memorandum recording the statement of the appellant has not been duly proved. So, one part of the chain of circumstances has not been established.

10) PW-7 stated in the cross-examination that he had gone to the place of incident. He stated that there were pieces of glass lying there. He stated that the pieces of glass may be of the light of a motorcycle. He stated that he had informed the police that the deceased may have sustained injury due to an accident involving a motorcycle.

11) PW-15 is the doctor who performed a postmortem of the body of the deceased. In the cross-examination, he admitted that if the glass pieces were small and sharp, the injury sustained by the deceased could have been caused by small pieces of glass.

CONCLUSION

12) Thus, the recovery of the weapon at the instance of the appellant has not been proved. Therefore, it cannot be said that all the circumstances forming part of the chain of circumstances have been duly proved. Moreover, the evidence of PW-7, who deposed that pieces of glass were found at the place of the incident, and the opinion of the doctor who performed postmortem creates a doubt about the prosecution story. There is no explanation by the prosecution for the presence of a large number of glass pieces at the place where the body of the deceased was found. The circumstance of last seen together is a very weak circumstance in the facts of the case. The circumstances brought on record are not conclusive

in nature. The circumstances are not consistent only with the hypothesis of the guilt of the appellant.

13) In the circumstances, the appellant's conviction cannot be sustained. We allow the appeal and set aside the impugned judgements, and the appellant is acquitted of the offences alleged against him. The appellant is on bail. His bail bonds are cancelled.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
April 10, 2024