NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1008 OF 2010

R. DAMODARAN ...APPELLANT(S)

VERSUS

THE STATE REPRESENTED BY THE INSPECTOR OF POLICE ...RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. The accused appellant was charged for offence under Section 302 IPC for the murder of his own wife Nirmala Mary while she was at the advanced stage of her pregnancy. After facing trial, he was held guilty of charge of murder of his wife under Section 302 IPC and was awarded life imprisonment by the learned trial Judge by judgment dated 3rd September, 2007 and confirmed by the High Court by judgment impugned dated 10th July, 2009.

2. The case of the prosecution is that marriage of deceased Nirmala Mary and accused appellant was solemnised on 17th February, 1997. The appellant used to frequently change his rented accommodation and whenever he changed the rented accommodation, he used to quarrel with the deceased and send her to her father to fetch money. Her father extended monetary help to the extent it was possible.

3. Since the date they shifted to Walles Garden area, the accused appellant used to come home after consuming liquor and invariably had a quarrel with the deceased and beat her. Deceased lodged complaint at the Police Station many a times in this regard and in continuation of the occurrence on the fateful night of 28th October, 2005, while he was quarrelling with deceased Nirmala Mary, he picked up a log from the house and beaten deceased Nirmala Mary and caused internal injury in her stomach and murdered her.

4. On the date of the incident, that is 29th October, 2005, Mrs. Glory(PW 2-aunt of the deceased) found her standing in the street. When she called the deceased (Nirmala Mary) and asked her

what had happened, she replied that her husband had beaten her up with a wooden log. Since there was a regular quarrel taking place between husband and wife, Mrs. Glory(PW 2) told the deceased that after she come back, she would take the deceased to the hospital for treatment. After returning from work at home, she was informed that the deceased had been taken to the hospital in a serious condition. At about 4.30 p.m. on the same date, i.e. 29th October, 2005, the accused appellant brought his wife to the Kilpauk Medical College and Hospital, Chennai and complained that she had got cardiac arrest. The Doctor medically examined and found her dead. On receipt of the death intimation, PW 8, the Sub Inspector of Police, attached to the Police Station proceeded to the hospital and prepared the inquest report and FIR, in the first instance, was registered under Section 174 Cr.PC for suspicious death.

5. After the autopsy on the dead body was conducted by PW 7, the Professor of Forensic Medicine, Senior Civil Surgeon, Government Kilpauk Medical College, Chennai, it was opined that the deceased died of shock and haemorrhage due to thoracic

injuries and on the opinion expressed in the post-mortem report, the case under Section 302 IPC was registered.

6. Pending investigation, the appellant was arrested. In order to substantiate the charge, the prosecution marched 11 witnesses and also relied on 17 exhibits and 4 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 CrPC to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false and no defence witness was examined.

7. It is not in controversy that the incident took place on 29th October, 2005 during day hours and the dead body of the deceased was taken by the accused appellant to the hospital where she was declared dead by the Doctor (PW 6). The case of the prosecution was that the appellant attacked with a wooden log and caused her death because of homicidal violence. The defence plea was that it was a cardiac arrest. Even from the evidence of the Doctor PW 6, it would be clear that when the accused appellant brought the deceased to the hospital, she was dead but still

informed the Doctor that she had a cardiac arrest. In the medical opinion canvassed through PW 7 Doctor, it was opined that she died out of shock and haemorrhage due to thoracic injuries because of homicidal violence.

8. It is true that the prosecution had no direct evidence to offer. It rested its case upon circumstances which would indicate that in the past, he was ill-treating her and there were complaints given to the police, and they were enquired by PWs 9 and 10, the police officials, attached to Thousand Light Police Station. On the fateful day, the accused appellant alone was present with his family and they living together.

9. House of Mrs. Glory, the aunt of the deceased is situated just opposite to their house and she had recorded her evidence as PW 2 that on 29th October, 2005, when she was about to start for work in the morning hours, she found the deceased standing in the street and when she called her, the deceased informed that her husband had beaten her. It is further corroborated from the post-mortem report of the deceased who was at the advanced stage of pregnancy at that time.

10. It was the appellant himself who took her to the hospital and made a false statement that she suffered a cardiac arrest but after the autopsy was conducted on the body of the deceased, it was opined that she died out of shock and haemorrhage due to thoracic injuries. In addition to other circumstances, the prosecution was able to establish that it was none other than the appellant who had committed the crime and he wanted to show his innocence by taking the deceased to the hospital and made a false statement that she suffered a cardiac arrest which on receipt of the post-mortem certificate, was found to be false where it was established that the death was caused by homicidal violence.

11. The following injuries were found on the body of the deceased:-

> "(1)Bluish contusion seen over left mid-axillary line from 3-7 ribs level.
>
> (2)Thick layer of reddish contusion seen in the sub cutanious and inter costal region in the left mid-axillary line from 3-10 ribs.
>
> (3)Fracture of 5-6 ribs from mid-axillary line on left side.
>
> (4)Left thoracic cavity contains 1100 gms of clotted blood.
>
> (5)Laceration of left lower iobe of lung(outer border) 3 X 2 X 2 cms
>
> (6)Reddish left temporal contusion in the sub scalp region.

All the above injuries are antemortem in nature."

12. The statement of PW 7 Doctor and the medical evidence brought on record establish that the injury nos. 1 to 6 were caused with blunt weapon which resulted into death of the deceased. Thus, the ocular evidence of Mrs. Glory(PW 2 - aunt of the deceased) is corroborated with the medical evidence of Doctor(PW 7).

13. In a case based on circumstantial evidence, the settled principles of law are that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and such circumstances should be conclusive in nature and moreover the circumstances should be complete and there should be no gap left in the chain of events. However, the circumstances must be consistent only with the hypothesis of the guilt of the accused and inconsistent with the innocence. The principle which has to be kept in mind in a case of circumstantial evidence has been laid down by a three Judge Bench of this Court in the judgment reported in ***Sharad Birdhichand Sarda*** ***Vs.*** ***State of Maharashtra*** (1984) 4 SCC 116 which reads as under:-

"**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 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."

14. It was further followed by a three Judge Bench in ***Padala Veera Reddy* Vs. *State of Andhra Pradesh and Ors.*** 1989 Supp (2) SCC 706 wherein this Court held as under:-

> **"10.** Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:
>
> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir* v. *State of Maharashtra* [(1982) 2 SCC 351]"

15. Taking note of the principles which has been laid down by this Court and the circumstances which the prosecution has established in a chain of events leave no matter of doubt that it is none other than the appellant who had committed the crime of murdering his own wife who was at the advanced stage of pregnancy, and taken the dead body to the hospital and made a false statement that she had got a cardiac arrest. Initially, the FIR was registered on suspicion but after the autopsy on the body of the

deceased was conducted, taking note of the post-mortem report, a case under Section 302 IPC was registered. Such incriminating links of facts could, if at all, have been explained by the appellant and nobody else, they being personally and exclusively within his knowledge. Of late, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed.

16. After we have gone through the record and findings recorded by the learned trial Court and after being revisited by the High Court under the impugned judgment which we have also taken away for our satisfaction, the incriminating circumstances pointed out, in our view, are sufficient with reasonable certainty on the established facts, which connect the accused with the commission of crime of committing the murder of his own wife (Nirmala Mary).

17. Learned counsel for the appellant, in the first instance, tried to persuade this Court that there are missing links in the

circumstantial evidence on the basis of which the charge for offence under Section 302 IPC has been established against him but when this Court was not inclined to interfere with the finding and the guilt which was recorded by the learned trial Court and affirmed by the High Court under the impugned judgment, learned counsel for the appellant submitted that the offence of the nature which has been committed as alleged if is taken at the face value may not fall under Section 302 IPC but may fall under Section 304 Part II IPC.

18. The present case squarely rests on circumstantial evidence where the death has been caused by homicidal violence and the appellant who had himself taken the deceased to the hospital and made a false statement to the Doctor that she had suffered a cardiac arrest which was found to be false after the post-mortem report was received and the nature of injuries which were attributed on the body of the deceased of which a reference has been made clearly establish that it is the case where none other than the accused appellant has committed a commission of crime with intention to commit the murder of his own wife who was at the advanced stage of pregnancy.

19. We find no substance in the appeal and is accordingly dismissed.

20. The appellant was released on bail by this Court by Order dated 6th April, 2018, the bail bonds stand cancelled. The appellant is directed to surrender within four weeks from today and undergo the remaining part of sentence. If he fails to surrender, action may be taken in accordance with law.

21. Pending application(s), if any, stand disposed of.

.....J.
(ASHOK BHUSHAN)

.....J.
(AJAY RASTOGI)

NEW DELHI
FEBRUARY 23, 2021