



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1907 OF 2011

SHEIKH WAHID SHEIKH HAMID .....APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA .....RESPONDENT(S)

JUDGMENT

ABHAY S. OKA, J.

1. The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "IPC"). He has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000/-. In default, he has been sentenced to undergo simple imprisonment for a period of six months. The appellant is accused No. 1, who was roped in along with his mother Smt. Ramija Begum Hamid, who was accused No. 2. The allegation against both the accused was of murder of Sabina Begum, who was the wife of the present appellant. The prosecution's case was that the accused poured kerosene on the victim and set her ablaze. The Trial Court acquitted the appellant's mother but convicted the appellant, as aforesaid. By the impugned judgment, the High Court has upheld

the conviction and sentence of the appellant.

2. The case is of circumstantial evidence. The Trial Court and the High Court have relied upon the following circumstances:

a) The post-mortem report records that the deceased had sustained 97% burn injuries;

b) The post-mortem report records that the clothes on the body of the deceased were having smell of kerosene like substance. It was also noticed that burns on the parts of the body was having a similar smell;

c) The report of the Chemical Analyser at Exhibit 44 disclosed that the kerosene was detected in the can and residues of kerosene were detected on the clothes, which were seized on the spot of occurrence; and

d) The deceased sustained burn injuries in the matrimonial home. Admittedly, the appellant was residing with her at that time in the matrimonial home.

3. After having heard the learned counsel appearing for the parties and after having perusing the evidence on record, for the reasons which are recorded hereafter, we have come to the conclusion that the guilt of the appellant was not proved beyond a reasonable doubt.

4. Much emphasis was laid by both the Courts on the report of Chemical Analyser. What was sent to the Chemical Analyser was a paper box containing pieces of clothes of the deceased Sabina, which were lying at the spot of occurrence and one red can having lid and containing kerosene. Admittedly, seizure panchnama showing the seizure of these articles was not placed on record. Even the

deposition of PW7-Yusuf Ali (Investigating Officer) is silent about the seizure of the clothes and can allegedly containing kerosene. Even assuming that the report of the Chemical Analyser was admitted in the evidence by consent of the accused, it is of no significance at all unless the prosecution proves that there was a lawful seizure of the articles which were sent to the Chemical Analyser. In this case, the said evidence is admittedly absent. In the examination of the appellant under Section 313 of the Code of Criminal Procedure, 1973, it is not put to the accused that the clothes and can were seized.

5. The prosecution could have drawn support from the spot panchnama to show that the articles, which were seized, were lying at the spot. However, the finding of the High Court is that even spot panchnama has not been proved.

6. The alleged seizure of the articles and the consequent report of the Chemical Analyser were a very important part of the chain of circumstances pleaded against the appellant. However, this important part has not been established by the prosecution.

7. There is one more aspect. It is an admitted fact that as per the prosecution case, the incident of burning was in the intervening night of 28.02.2003 and 01.03.2003. The discharge card at Exhibit 40 records that the appellant was admitted to a hospital on 01.03.2003 with 17% burns. The appellant admittedly remained in hospital as an indoor patient till 25.03.2003. The prosecution has not explained the burn injuries sustained by the appellant, which led to his hospitalisation for more than three weeks. Only on the basis of surmises and conjectures that the Courts have come to the

conclusion that the burn injuries must have been caused to the appellant while setting his wife ablaze.

8. The doctor who treated the appellant has not been examined who could have given his opinion about the manner in which the burn injuries could have been caused.

9. Thus, what remains is only a presumption under Section 106 of the Indian Evidence Act, 1872 (for short "the Evidence Act"). The law on this aspect is very clear. The prosecution can invoke Section 106 of the Evidence Act when it succeeds in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. In a case based on circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, the falsity of his defence is no ground to hold the accused guilty.

10. In this case, as held earlier, the prosecution has failed to prove that the articles which are sent to the Chemical Analyser, were seized from the spot. Moreover, the spot panchnama was not proved. This is apart from the failure of the prosecution to explain 17% burns sustained by the appellant which required hospitalisation for more than three weeks.

11. Therefore, we are of the considered view that the prosecution has failed to established the guilt of the appellant beyond a reasonable doubt and hence, the appellant is entitled to acquittal.

12. Accordingly, appeal is allowed. The order of the Trial Court to the extent to which the appellant was convicted and the impugned judgment of the High Court are set aside and the appellant-accused No. 1 is acquitted of the offences alleged against him. As the appellant is on bail, the bail bonds stand cancelled.

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

..... J.  
[ABHAY S. OKA]

..... J.  
[PANKAJ MITHAL]

NEW DELHI;  
SEPTEMBER 20, 2023.

ITEM NO.104

COURT NO.11

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1907/2011

SHEIKH WAHID SHEIKH HAMID

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

Date : 20-09-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Mr. Sudarshan Singh Rawat, AOR  
Mr. Sanjay Jain, Adv.  
Mr. S. Sunil, Adv.  
Ms. Saakshi Singh Rawat, Adv.  
Mr. Amitanshu Satyarthi, Adv.

For Respondent(s) Ms. Rukmini Bobde, Adv.  
Mr. Siddharth Dharmadhikari, Adv.  
Mr. Aaditya Aniruddha Pande, AOR  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.  
Mr. Aditya Krishna, Adv.  
Mr. Amlaan Kumar, Adv.  
Ms. Soumya Priyadarshinee, Adv.  
Mr. Ankit Ambasta, Adv.  
Mr. Amit Srivastava, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

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

(POOJA SHARMA)  
COURT MASTER (SH)

(AVGV RAMU)  
COURT MASTER (NSH)

(Signed order is placed on the file)