

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 507 OF 2008

Tulshiram Sahadu Suryawanshi & Anr. Appellant(s)

Versus

State of Maharashtra Respondent(s)

J U D G M E N T

P.Sathasivam,J.

1) This appeal has been preferred against the final judgment and order dated 09.04.2007 passed by the High Court of Judicature at Bombay, Bench at Aurangabad, in Criminal Appeal No. 238 of 2005 whereby the Division Bench of the High Court dismissed the appeal filed by the appellants herein.

2) **Brief facts:**

(a) The present appeal pertains to the death of one Ashabai, resident of Chanda Taluk, Karjat District, Ahmednagar. She was married to one Nitin Tulshiram Suryawanshi-Accused No. 3 herein (special leave petition with respect to this accused has already been dismissed on 02.11.2007). Tulshiram Sahadu Suryawanshi (A-1) and Sindhubai Suryawanshi (A-2) are the parents of A-3. At the relevant time, A-3 was working as a driver.

(b) Sampat Madhavrao Suryawanshi (PW-2) is the relative of Kisan Bhanudas Sule (PW-1)-the father of the deceased and was the mediator of the said marriage. On 28.02.2003, the dead body of Ashabai was found to be floating in the well of one Sarjerao Suryawanshi with both the legs and hands tied by means of the border of a Saree. PW-2 lodged a complaint against the appellants herein with regard to the above incident with the Karjat P.S., Ahmednagar, alleging the ill-treatment meted out to the deceased in order to fulfill the demand of Rs. 50,000/- for the purchase of a Jeep.

(c) On 28.02.2003, on the basis of the said complaint, Accidental Death No. 3 of 2003 and, after investigation, Crime No. 24 of 2003 was registered at the said police station.

(d) After filing of the charge sheet, the case was committed to the Court of Sessions and numbered as Sessions Case No. 102 of 2004. On 03.08.2004, the 5th Adhoc Additional Sessions Judge, Ahmednagar, framed charges against the appellants under Sections 302, 498-A read with Section 34 of the Indian Penal Code, 1860 (in short 'the IPC'). Again, on 28.09.2004, an additional charge of Section 304-B read with Section 34 of the IPC was also framed against the appellants.

(e) By order dated 10.01.2005, the 5th Adhoc Additional Sessions Judge, convicted all the accused persons and sentenced them to undergo rigorous imprisonment under various heads mentioned above including life sentence and all the sentences were to run concurrently.

(f) Being aggrieved, the appellants preferred an appeal being Criminal Appeal No. 238 of 2005 before the High Court of Bombay. By impugned order dated 09.04.2007, the Division Bench of the High Court while confirming the order of conviction and sentence passed by the Sessions Court, dismissed the appeal filed by the appellants herein.

(g) Aggrieved by the decision of the High Court, the appellants herein have filed this appeal by way of special leave before this Court.

3) Heard Mr. Harinder Mohan Singh, learned *amicus curiae* for the appellants-accused and Mr. Shankar Chillarge, learned counsel on behalf of the Respondent-State.

4) It is not in dispute that the conviction of the appellants A-1 and A-2 is based on circumstantial evidence, hence, we have to see how far the prosecution has established the chain and able to prove its case beyond reasonable doubt.

Circumstantial Evidence:

5) In ***Sharad Birdhichand Sarda vs. State of Maharashtra***, (1984) 4 SCC 116, this Court after referring to various earlier decisions, formulated the following conditions to be fulfilled before a case against an accused can be said to be fully established based on circumstantial evidence:-

(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* 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.”

6) Keeping these principles in mind, let us analyze the circumstances relied on by the prosecution.

7) As mentioned earlier, the case of the prosecution is that A3-husband of the deceased and A-1 and A-2 – parents of A3 killed the deceased by throwing her into the well by tying her hands and legs with the border of a Saree because of the non-fulfillment of the demand of Rs.50,000/- made by the accused

persons for the purchase of a Jeep as A3 was a driver. The father of the deceased was examined as PW-1. PW-2 acted as a mediator in the settlement of marriage of the deceased with A3. The doctor, who performed the *post mortem* on the deceased, was examined as PW-6.

8) The **circumstances** relied on by the prosecution are:-

- i) all the accused ill-treated the deceased;
- ii) the well in which the body of the deceased was recovered is situated at a distance of 400 ft. from the house;
- iii) legs and hands of the deceased were tied using a border of a saree; and
- iv) recovery of the said border of the saree.

9) Kisan Bhanudas Sule (PW-1) – the father of the deceased, in his evidence, has stated that the deceased-Ashabai was his only daughter and she was married to A3. A-1 and A-2 are parents of A3. According to him, after marriage, Ashabai went to reside with the accused and she was treated decently for a period of 5 months but, thereafter, they started ill-treating her by beating and by not providing sufficient food. He also stated that A-3, on the instigation of A-1 and A-2, was demanding Rs.50,000/- for the purchase of a jeep. According to him, at

the relevant time, A3 was employed as a driver and Ashabai had disclosed the demand as well as the ill-treatment to PW-1 whenever he had gone to her house to meet her. When PW-1 brought her daughter to his home on the occasion of Sakrant, she informed him that she would not go back to her matrimonial home as her husband had threatened her not to come back without Rs. 50,000/-. A perusal of the evidence of PW-1 shows that her daughter Ashabai was treated well only for a period of 5 months from the date of her marriage and after the said period, all of them started ill-treating her by way of beating and by not providing sufficient food. In his Chief-examination, he has implicated all the three accused by stating that “they started ill-treatment.....”

10) PW-2, who acted as the mediator in the marriage of the deceased with A3, lodged a complaint (Exh. 26) and explained about the ill-treatment meted out to the deceased at her matrimonial home. It was he who intimated the police that the dead body of the deceased-Ashabai was seen floating in a well belonging to one Sarjerao Suryawanshi. On the basis of the said information, on 28.02.2003 at 4.15 p.m., Accidental Death No. 3 of 2003 was registered. After investigation and on

the basis of the Post Mortem Report (Exh. 35), Police Inspector Shinde (PW-8) attached to Karjat P.S. registered a case being Crime No. 24 of 2003 under Sections 302 and 498-A read with Section 34 of IPC. PW-2 has also stated that all the 3 accused were living together and his house is at a distance of 2 kms. away from the house of the accused and he asserted that he was the mediator for the performance of marriage between the deceased and A3. He also deposed that the deceased was treated well for 4-5 months after the marriage and, thereafter, all the accused started ill-treating her. He also stated that all the accused used to demand Rs.50,000/- from her and they also used to beat and abuse her.

11) From the evidence of PWs 1 and 2, the first circumstance that all the 3 accused ill-treated the deceased is clearly established and rightly relied on and accepted by the trial Court and the High Court.

12) The second circumstance heavily relied on by the prosecution is the distance between the house of the accused and the well wherein the body of the deceased was found to be floating. It was PW-2, who first noticed the dead body of the deceased in the well and filed a complaint to the police. PW-2

has stated that A-3 and one Prahlad came to his house and reported about missing of Ashabai (the deceased) and enquired whether she had come to his house. Thereafter, PW-2, along with others, started searching her for the whole night in order to verify her whereabouts. He also stated that when he attempted to go near the well, the accused prevented him from going to the well belonging to one Sarjerao Suryawanshi. It further shows that only on the next day, when PW-2 carried out further search for Ashabai, he came to know from his nephew that the body of Ashabai was found lying in the well and after seeing the dead body, he filed a complaint to the police. The assertion of PW-2 that he was prevented from going to the side of the well by the accused fully establish another circumstance which shows that all the accused were responsible for the death of the deceased. Further, without the support and assistance of A-1 and A-2, it would not be possible to carry the deceased by A3 alone to the well which is at a distance of 400 ft.

13) Another important circumstance relied on and proved by the prosecution is that the legs and hands of the deceased were tied at the time of throwing her into the well. PW-1, in

his evidence has stated that, after coming to know of her absence in the matrimonial home, based on the complaint of PW-2, the dead body of the deceased was removed from the well by means of a wooden cot. He further noticed that the hands and legs of Ashabai were tied by means of the border of a saree. PW-1 further proved Article Nos. 5, 6 and 7 as the pieces of the border of the saree with which the hands and legs of the deceased-Ashabai were tied. This fact was also strengthened by the evidence of PW-2. After getting information from his nephew that body of Ashabai was found lying in the well of Sarjerao, PW-2, after verification, made a complaint to the police and, because of the same, police came to the spot and carried on further formalities. He further deposed that “her hands and legs were tightly tied. The hands and legs were tied by means of the border of a saree.....” He also affirmed that after seeing the body of Ashabai with her legs and hands tied, he went to Karjat P.S. and filed a complaint therein.

14) In addition to the evidence of PWs 1 and 2 about tying of the legs and hands of the deceased by use of the border of a Saree, Dr. Rajashri Pagaria (PW-6), who conducted the Post

Mortem (Exh. 35) on the dead body of the deceased found that the lower extremities and ankle joints were tied by means of a piece of saree and the upper extremities were found to be tightened by means of a cloth at the wrist joint. She further opined that the tying of the hands and legs was not possible by the victim herself. She explained that external injuries were post mortem and aquatic injuries. Her stomach was found to be containing about 200 ml. of water. The large intestine contained fecal matter. She also opined that the death was due to drowning. From the evidence of PWs 1, 2 and 6, it is clear that the legs and hands of the deceased were tied by the use of the border of a saree. It has also come in evidence that it would not be possible for A-3 alone to tie both the legs and hands without the assistance of A1 and A2 who were present in the house. It has been further noticed that except the three accused and the deceased, none were residing in their house.

15) Another circumstance relied on and proved by the prosecution is the recovery of the border of the saree which is an important piece of evidence and the same was established by Amrut Akhade (PW-7) - panch witness for the memorandum. PW-7, in his evidence, stated that on

05.03.2003, he was called at P.S. Karjat for the recording of panchnama. He further deposed that all the accused were present there and A-2 gave a statement before him that all the accused tied the legs and hands of the deceased and threw her into the well. After taking down the statement, the police obtained thumb impression of A-2 and signature of PW-7. According to him, she also disclosed that she would give out the clothes by means of which her hands and legs were tied. PW-7 also proved Exh. 40 as the panchnama recorded for the said purpose which bears his signature. Another pancha to the said panchnama was Hanumant Shelke and the same was also read over to him. He further deposed that he along with police and another Pancha went to the basti of Sindubai (A-2) in a police jeep. Sindubhai (A-2) asked the police to stop the jeep and then she handed over the border of the saree which was kept in a chapper (top portion). The Police recorded the panchnama of the seizure of the border of the saree and PW-7 also admitted his signature therein.

16) In addition to the evidence of PW-7, one Dada S. Suryawanshi, resident of Rehkuri, Tal. Karjat, Dist. Ahmednagar, was examined as PW-5. In his evidence, he

deposed that the dead body was taken out from the well in his presence with the help of a wooden cot. He further noticed that hands and legs of the deceased were tied by means of a red colour border of a saree. The police drew inquest in his presence. He also signed the memorandum which is Exh. 29. He denied the suggestion that Sampat and other persons got into the well, tied the hands and legs of the deceased and then the dead body was taken out.

17) This Court, in **Anter Singh vs. State of Rajasthan**, (2004) 10 SCC 657, held that even if panch witness turned hostile, the evidence of the person who effected the recovery would not stand vitiated. After considering the scope and ambit of Section 27 of the Evidence Act, 1872 this Court enumerated the following principles to be adhered to.

“16. The various requirements of the section can be summed up as follows:

- (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- (2) The fact must have been discovered.
- (3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.”

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.”

From the evidence of PW-1, PW-2, PW-6 – the Doctor, who conducted the *post mortem*, PWs-5 and 7 – the panch witnesses and in the light of the principles enumerated above, we are satisfied that the material object, namely, the border of the saree used for tying legs and hands of the deceased was correctly identified and marked and the same has been rightly relied on by the prosecution and accepted by the courts below. The evidence of both PWs 5 and 7 fully support the contents of memorandum which is Exh. Nos. 29 and 40 respectively.

18) The evidence led in by the prosecution also shows that at the relevant point of time, the deceased was living with all the 3 accused. In other words, the appellants, their son-A3 and the deceased were the only occupants of the house and it was, therefore, incumbent on the appellants to have tendered some explanation in order to avoid any suspicion as to their guilt. All the factors referred above are undoubtedly circumstances which constitute a chain even stronger than the account of a

eye-witness and, therefore, we are of the opinion that conviction of the appellants is fully justified.

19) It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such

facts, failed to offer any explanation which might drive the Court to draw a different inference. It is useful to quote the following observation in **State of West Bengal vs. Mir Mohammed Omar**, (2000) 8 SCC 382:

“38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In *Shambhu Nath Mehra v. State of Ajmer* the learned Judge has stated the legal principle thus:

“This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are ‘especially’ within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word ‘especially’ stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.”

20) In the light of the above principles, in the present case, we have not come across any serious flaw in the investigation which had affected the case. On the other hand, we are satisfied that the prosecution has established all the circumstances by placing acceptable evidence. We are also satisfied that the chain is complete and without the involvement and assistance of A-1 and A-2, A3 alone could not have tied the hands and legs of the deceased with the border of

the saree and threw her into the well which is at a distance of 400 ft. from their house.

21) In the light of the above discussion, we fully agree with the conclusion arrived at by the trial Court and the High Court, consequently, the appeal fails and the same is dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
SEPTEMBER 14, 2012.

JUDGMENT