2023 INSC 674

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1922-1923/2017

WAZIR KHAN ..... APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND ..... RESPONDENT(S)

O R D E R

These appeals are at the instance of the appellant/convict – Wazir Khan and is directed against the judgment(s) and order(s) dated 25.07.2017 (conviction) and 09.08.2017 (sentence) resply passed by the High Court of Uttarakhand at Nainital in Government Appeal No. 10 of 2011, by which the High Court allowed the appeal filed by the respondent – State of Uttarakhand and thereby reversed the judgment and order of acquittal passed by the trial court.

The deceased – Bushra was the wife of the appellant/convict – Wazir Khan. The appellant/convict – Wazir Khan was put to trial in the Court of Additional Sessions Judge, Roorkee, District Haridwar, Uttarakhand in Sessions Trial No. 158 of 2007 for the offence punishable under Section 302 and 201 of the Indian Penal Code, 1860 (for short "IPC"). It is the case of the prosecution that the appellant/convict – Wazir Khan committed murder of his wife – Bushra by inflicting injuries all over her body with a knife.

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Date: 2023.08.05 10:57:15 IST
Reason:

It appears that one, Mohd. Hayyat informed the police on telephone on 23.07.2007 that the deceased/wife of the appellant had

been murdered in her house. This incident appears to have occurred during the intervening night of 22.01.2007 and 23.01.2007. The inquest panchnama of the dead body of the deceased was drawn. The body of the deceased was, thereafter, sent for post-mortem. The post-mortem report on record reveals that there were as many as 17 incised wounds on all over the body. The appellant – Wazir Khan was arrested by the police and taken into custody. Upon completion of the investigation, charge sheet was filed. The appellant – Wazir Khan pleaded not guilty to the charge and claimed to be tried.

The prosecution examined as many as 10 witnesses, and also led documentary evidence in support of its case. In the statement of the appellant – Wazir Khan recorded under Section 313 of the Cr.P.C., he stated that on the date of the incident, his wife was killed by the robbers. In his further statement, he also stated that while the robbers killed his wife, he too suffered injuries at the hands of the robbers.

The trial court upon appreciation of the oral as well as the documentary evidence came to conclusion that the prosecution had failed to prove its case beyond reasonable doubt and accordingly acquitted the appellant – Wazir Khan of all the charges.

The respondent – State, being aggrieved and dissatisfied by the judgment and order of acquittal passed by the trial court, went in appeal before the High Court. The High Court found the judgment and order of the trial court to be perverse, and accordingly reversed the acquittal and held the appellant – Wazir Khan guilty of the offence of murder of his wife.

In such circumstances referred to above, the appellant –

Wazir Khan is here before this Court by way of present appeals.

Dr. Rajesh Pandey, the learned senior counsel appearing for the appellant, vehemently submitted that the High Court committed a serious error in disturbing a well reasoned judgment of acquittal passed by the trial court. He submitted that the High Court would be justified in reversing the acquittal only upon satisfaction that the trial court's judgment is perverse or based on no evidence. He would also submit that the entire case hinges on circumstantial evidence. He submitted that there are no incriminating circumstances emerging on the record of this case, so as to connect the appellant with the crime. He would submit that just because the deceased happened to be the wife of the appellant and the incident occurred in his house, by itself, is not sufficient to hold the appellant guilty of the offence of murder.

He submitted that none of the prosecution witnesses who have been examined could be termed as reliable witnesses.

He also submitted that the weapon of offence, clothes etc., though collected during the course of investigation yet were not sent to the Forensic Science Laboratory (FSL) for chemical analysis. He pointed out that there is no serological test report on record.

In such circumstances referred to above, the learned senior counsel appearing for the appellant prays that there being merit in the present appeals and same may be allowed and the appellant – Wazir Khan may be acquitted of all the charges.

On the other-hand, Mr. Abhishek Atery, the learned counsel appearing on behalf of the respondent – State vehemently opposed

the present appeals and submitted that there is no error, not to speak of any error of law said to have been committed by the High Court in reversing the judgment and order of acquittal passed by the trial court. He would submit that the accused has not disputed his presence in the house at the time of the incident. He submitted that it is for the appellant/accused to explain what exactly happened on the date of the incident. He would submit that if something happens within the four walls of the house, then only the appellant/accused can explain, as it could be said to be something within his special knowledge.

He further pointed out that the weapon of offence i.e. the bloodstained knife, was also recovered from the house itself at the instance of the appellant/accused. The learned counsel took support of Section 106 of the Evidence Act, 1872 (for short "the Act, 1872") and submitted that where some facts are within the knowledge of any person, the burden of proving that fact is upon him. If the defence taken by the accused is found to be false then it would be an additional circumstance going against the convict.

In such circumstances referred to above, he prays that there being no merit in the present appeals, the same may be dismissed.

ANALYSIS: -

Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

We take into consideration the following circumstances emerging from the record of the case :-

1. The deceased was the wife of the appellant – Wazir Khan. It appears that the marital relations of the appellant – Wazir Khan with the deceased were strained.

2. The appellant – Wazir Khan has not disputed his presence in the house at the time of the incident. However, he has put forward a defence that robbers got into his house and killed his wife. He has also gone to the extent of saying that while his wife was being attacked by the robbers, he too suffered injuries.

3. In the aforesaid context, we may only say that there is nothing on record to indicate that the appellant – Wazir Khan had suffered any injuries. The entire defence put forward by the appellant – Wazir Khan , could be termed as false defence.

4. There were as many as 17 incised wounds on the body of the deceased. On the next day, when the police brought the appellant – Wazir Khan at the scene of the occurrence, he pointed out the place where the knife was left behind. The weapon of offence was recovered from the place of incident itself.

Here is a case, wherein the prosecution could be said to have laid the legal foundation for the purpose of invoking Section 106 of the Act, 1872. Undoubtedly, the burden is on the prosecution to prove the guilt of the appellant – Wazir Khan beyond reasonable doubt. If the prosecution fails to discharge its initial burden beyond reasonable doubt, the appellant – Wazir Khan has to be acquitted. It is settled law that the prosecution cannot take recourse of Section 106 of the Act, 1872 without laying any foundational facts. However, in the case on hand, we are convinced that the foundational facts laid by the prosecution are sufficient to invoke Section 106 of the Act, 1872.

On the other hand, the defence of the appellant – Wazir Khan of robbery and the robbers attacking his wife, is completely falsified.

The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in the case of State of West Bengal v. Mir Mohammad Omar and ors., reported in (2000) 8 SCC 382.

In the State of West Bengal (supra), the assailants forcibly dragged the deceased Mahesh from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2:30 in the night. The next day in the morning, his mangled body was found lying in the hospital. The trial Court convicted the accused under Section 364, read with Section 34 of the IPC, and sentenced them to ten years rigorous imprisonment. The accused pre-

ferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to Mahesh after he was abducted by them. The learned Sessions Judge, after referring to the law on circumstantial evidence, had observed that there is a missing link in the chain of evidence after the deceased was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt.

This Court took note of the provisions of Section 106 of the Evidence Act, and laid down the following principles in paragraphs 31 to 34 of the report:

> ***"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.***
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> ***32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.***
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> ***33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evi-***

dence 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 principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the court what else happened to Mahesh at least until he was in their custody."

Applying the aforesaid principles, this Court while maintaining the conviction under Section 364 read with Section 34 of the IPC, reversed the order of acquittal under Section 302 read with Section 34 of the IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.

In a case based on circumstantial evidence where no eye witness is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court, namely, Nika Ram v. State of Himachal Pradesh, AIR 1972 SC 2077, Ganesh Lal v. State of Rajasthan, (2002)

1 SCC 73, and State of U.P. v. Dr. Ravindra Prakash Mittal, AIR 1992 SC 2045.

When the attention of the convict appellant – Wazir Khan was drawn to the incriminating circumstances that inculpated him in the crime, he failed to offer appropriate explanation or gave a false answer. The same can be counted as providing a missing link for completing a chain of circumstances.

Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show, like in the present case, that shortly before the commission of the crime they were seen together or the offence took place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not dispute his presence at home at the relevant time and does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

A great deal of argument was canvassed on behalf of the accused on the point of proof beyond reasonable doubt. According to the learned advocate appearing for the accused, the case at hand is one which could not be said to have been proved by the prosecution beyond reasonable doubt and, therefore, the accused is entitled to the benefit of doubt.

In the aforesaid context, we may profitably quote the following observations made by this Court in para 13 in the case of Dharm Das Wadhwani v. The State of Uttar Pradesh, AIR 1975 SC 241:

> ***"13. The question then is whether the cumulative effect of the guilt pointing circumstances in the present case is such that the court can conclude, not that the accused may be guilty but that he must be guilty. We must here utter a word of caution about this mental sense of 'must' lest it should be confused with exclusion of every contrary possibility. We have in S.S. Bobade v. State of Maharashtra, AIR 1973 SC 2622, explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts weakening the credibility of the judicature. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time, it may be affirmed, as pointed out by this Court in Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773, that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him."***
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> **(emphasis supplied)**

Cases are frequently coming before the Courts where the husbands, due to strained marital relations and doubt as regards the character, have gone to the extent of killing the wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. Like the present case, no member of the family, even if he is a witness of the crime, would come forward to depose against another family member.

If an offence takes place inside the four walls of a house and in such circumstances where the assailants have all the

opportunity to plan and commit the offence at the time and in the circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence, is insisted upon by the Courts. Reference could be made to a decision of this Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, reported in 2007 Criminal Law Journal, page 20, in which this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. This Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

In such circumstances referred to above, we are of the view that we should not disturb the impugned judgment and order passed by the High Court.

Accordingly the appeals are dismissed.

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

.....J.
(J.B. PARDIWALA)

.....J.
(MANOJ MISRA)

NEW DELHI;
AUGUST 02, 2023.