

Thoothukudi (the “**Trial Court**”) in Sessions Case No.300 of 2009, has been reversed and consequently, Appellant No.1/Accused No.1 has been convicted and sentenced to undergo imprisonment for life under Section 120B and 302 of the IPC together with a fine of Rs.10,000/- (Indian Rupees Ten Thousand); and Appellant No.2/Accused No.3 has been convicted and sentenced to undergo imprisonment for life under Section 120B read with 302 of the IPC together with a fine of Rs.10,000/- (Indian Rupees Ten Thousand). Pertinently, Ravi i.e., Accused No.2 was convicted and sentenced to undergo imprisonment for life under Section 120B and 302 of the IPC together with a fine of Rs.10,000/- (Indian Rupees Ten Thousand) (the “**Impugned Order**”). Ravi i.e., Accused No.2 has assailed the correctness of the Impugned Order before this Hon’ble Court by way of a separate criminal appeal i.e., Criminal Appeal No. 67 of 2016. As the appeal(s) arise out of a common judgement, they have been heard together; are being disposed of by this Judgement.

Case of the Prosecution

2. It is the case of the prosecution that on 23.08.2008, Ms. Rajalakshmi (the “**Deceased**”) was murdered by her husband, Mr. Ravi (Accused No.2) and her aunt & uncle i.e. Ms. Uma (Accused No.1) and Mr. Balasubramanian (Accused No.3).

3. The factual matrix reveals that the marriage between the deceased Rajalaksmi and the Accused No.2 had been solemnized at Arthi Thirumana Mandapam, Vilathikulam on 10.02.2008. At the time of marriage, 50 sovereign of gold jewels; and vessels and other items worth Rs.50,000/- (Indian Rupees Fifty Thousand) were given to the Husband and his family. As revealed by P.W.-1, Mr. Chandrakasan (PW-1), the adoptive father of the deceased in his examination, one week after the marriage, the Deceased had informed him, that Accused No.2 continuously harasses her & treated her like a servant. It was further stated that Accused No.2 used to consume alcohol, play cards, and also had an illegal illicit relationship with his aunt, i.e., Accused No.1. P.W.-1 in the Complaint (Exhibit P-1) and his examination as P.W.-1, stated that on one occasion Accused Nos. 1 and 2 along with Deceased came to his house, and Accused Nos. 1 and 2 slept together in a single bedsheet in the hall while the Deceased slept in the bedroom. It later came to his knowledge through the Deceased that this was not an usual practice at the Appellants' home.

4. On 23.08.2008, one Arunachalam had informed P.W.-1 that the Deceased has consumed paint and had been taken to the local hospital. It was upon receiving the said information, P.W.-1 and his wife (P.W.-2) had come down to Government Hospital, Kovilpatti and found the dead body of the deceased in the

mortuary. Subsequent thereto, P.W.-1 gave a written Complaint to the Sub Inspector of Police (P.W.-15) exhibited as Exhibit P-1, which was registered as Crime No. 183 of 2008 under Section 174 of the Code of Criminal Procedure, 1973. It is highlighted that none of the accused persons i.e., the Appellants, informed the P.W. 1 or the family of the deceased of her death.

5. The contents of the Complaint, reveal glaring details of the disturbing circumstances & troubles that the Deceased was being subjected to, by the Appellants at the time of her marriage and the said details, have been substantiated & corroborated by P.W.-1 in his cross-examination. The wife of P.W.-1 i.e., Ms. Sooriya Kalavathi has also adduced identical circumstances in her evidence, which affirm the allegations of the *de-facto* complainant. Notwithstanding thereto, such evidence needs to be tested on the anvil of consistency with the circumstances.

6. Since the Deceased had passed away within a period of 6 (six) months from the date of her marriage, the Investigating Officer (the “IO”) (P.W.-20) had also made arrangements to conduct enquiry by Revenue Divisional Officer (P.W.-17). Although the Inquest Report marked as Exhibit P.14, stated that the death had not occurred due to demand of dowry, it is the case of the Prosecution, that Accused No.1 and Accused No.2 strangled the neck of the Deceased with a saree. It is further alleged that Accused No.3 poured kerosene into the mouth of the

Deceased. It is the case of the prosecution that with the intention to camouflage the incident, the accused persons i.e., the Appellants poured paint and kerosene into the mouth of Rajalakshmi to make the death appear like suicide.

7. The said assertion of the prosecution is substantiated with medical evidence which reveal ante-mortem injuries sustained by the deceased. The Postmortem Report i.e., Exhibit P-3 prepared by Dr. Venkatesh, P.W.-10 reveals that 3 external injuries over the left upper arm, left shoulder, right shoulder and neck & the hyoid bone was found to be broken. The relevant extract of Postmortem Report is reproduced as under:

- “1. Multiple contusions over left arm upper 1/3rd and left shoulder (anterior aspect) each of size 2 x 2 cms (3 Nos)*
- 2. Multiple contusions right shoulder (anterior aspect)*
- 3. Contusion in front of neck 6 x 2 cm extending from right sternocleidomastoid to left sternocleidomastoid.”*

8. P.W.-10, Dr. Venkatesh, in his examination-in-chief further makes it clear that the fracture on the hyoid bone was found broken before the demise of the Deceased. He disclosed that the death of the Deceased occurred from suffocation in breathing. There was no chance of consuming liquid for a person whose hyoid/*Navaldi* bone had been fractured and the person could have died due to pressure on the neck & problem in breathing. The

relevant extract of his examination-in-chief is reproduced as under:

“I started the Postmortem at 4.15 p.m. Rigor Mortis present in hands and legs. The dead body was kept lying on its back. There are external injuries.

It was broken on the inner side. Food pipe was found callus. At 5.15 p.m., the Postmortem was completed. Internal organs of the dead body were sent to Chemical analysis. Navaldi bone was sent to the professor. In the Navaldi bone investigation, it was found broken before the death. Based on the report, Chemical Analysis Department, there is no poison found on the internal ~ organs, I have stated the said information in the Postmortem Report. I opined the aforesaid person would have died due to the pressure given to aforesaid person on his neck and I issued the Postmortem Report Ex.P.3. Visera Report is Ex.P.4.”

.....

The wounds 1 and 2 noted in the Post Mortem Report would have caused due to the pressure made on his neck. Blood clots in the neck and the congestion in the food pipe due to pressing of the neck. The fracture of Navaldi bone found on the internal side is caused due to the pressure made on the neck. There is no chance of liquid consumption to a person whose Navaldi bone was fractured. There is no chance for demise of a person whose Navaldi bone was fractured. Breathing problem may be caused and then the death may occur.”

9. P.W.-11, Muppidathi, Scientific Assistant, who prepared the Viscera Report, also deposed on 18.09.2008 that there was no

poison found in the internal organs of the deceased and it was her ultimate opinion that the Deceased appeared to have died of compression over neck. The Postmortem Report prepared by Dr. Venkatesh, Assistant Doctor (P.W.-10) as well as Exhibit P-4 (Visera Report) prepared by the Muppudathi, Scientific Assistant, clearly establish that the Deceased had sustained external as well as internal *ante-mortem* injuries, which could not have been a natural consequence of consuming paint, as alleged by the Appellants.

10. A cumulative reading of the medical record along with deposition of P.W.-1 to P.W.-4 create a chain of circumstances, that establish that the death of the deceased is homicidal. It has been submitted by the Prosecution that the injuries sustained by the Deceased are *ante-mortem* in nature, and in view of the fact that the Deceased and the Appellants were related and more importantly, resided together at the time of occurrence it was incumbent upon the Appellants to prove as to how the death of the Deceased occurred in view of the burden contemplated under Section 106 of the Indian Evidence Act 1872 (the “**Evidence Act**”). In this context, it is the Prosecution’ case that the Appellants have not only failed to offer any alternative explanation so as to the cause of death of the Deceased, but also failed to dent to Prosecutions’ version vis-à-vis their sole presence at the scene of the alleged offence, thereby being unable

to negate the contention that no one else could have inflicted the said injuries on the body of the Deceased.

11. It is the case of the Prosecution that the Appellants had a clear motive to eliminate the Deceased i.e., the illicit/incestuous relationship between Accused no. 1, Ms. Uma and Accused No.2, Mr. Ravi, which has subsequently become a stumbling block between the Deceased i.e., Rajalakshmi and the aforementioned Appellants. This naturally, swelled the common intention of the accused persons to murder the Deceased. This factum coupled with the narrative of P.W.-1 and P.W.-2 read together with the medical evidence as well as the deposition of the doctors substantiates the culpability of the accused persons to murder the Deceased. It is urged that the case of the Prosecution does not rest on circumstantial evidence alone and corresponds to circumstances so complete, that they point towards the guilt of the Accused Persons/Appellants.

Findings of the Trial Court and the Appellate/High Court

12. The Trial Court has concluded that the case of the Prosecution is not proved beyond reasonable doubt and hence, the Appellant are entitled to an acquittal. It was observed despite the medical evidence on record, Courts can prefer to accept the eyewitness testimony(ies) in preference to the opinion of a medical expert. In the absence of any direct ocular evidence, the Trial Court did not consider it appropriate to award due to the

medical evidence. The Trial Court, came to the conclusion that the motive alluded to the Appellants i.e., of being embroiled in an illegal/illicit relationship was held to be highly artificial and unbelievable. In these circumstances together, the Trial Court held that the Appellants were not guilty of the offences under sections 120B, 302, 201 IPC and Section 4A of the Tamil Nadu Prohibition of Harassment of Women Act.

13. Aggrieved by the aforesaid decision of the Trial Court, an appeal came to be preferred before the High Court. The High Court has reversed the findings of the Trial Court; and convicted the Appellant(s) for *inter alia* the murder of the Deceased i.e, Rajalakshmi. In its considered opinion, the High Court after a thorough re-appreciation of the entire evidence on record, held that the Postmortem Report supported the case of the Prosecution that the death of Rajalakshmi was homicidal on account of the clear motive ascribed to the Appellants, and the presence of the Appellants at the time of occurrences of incident. The aforementioned conclusion was substantiated on the basis of evidence of P.W-1 to P.W.-4.

Submissions of the Parties

14. It is the case of the Appellant that it is settled law that a judgment by the Trial Court could have only been reversed by the High Court if the view taken was not a plausible view on the evidence on record or there is an error apparent/perversity. The

High Court in the present case has not given any reason why the view taken by the Trial Court was not a sustainable or plausible view as it not commented on any findings of the Trial Court nor has marshaled all evidence before itself before coming to the conclusion of guilt of the Appellants. It was submitted that, in cases where another view is possible, the more liberal outlook ought to be preferred and must not ordinarily be displaced.

15. It was further stressed that the case of the Prosecution is entirely based on a presumption, insofar as there was no material to establish the alleged story of P.W.-1; and there is no evidence on record to establish the motive of the Appellants to murder the Deceased. It was contended that there was nothing on record to establish that the Appellants were residing together and were present at the time of occurrence of the said incident.

16. The Ld. Counsel appearing on behalf of the Appellant(s) submitted that that the presence of the tin of paint is demonstrable from the Observation Mahazar (Ex P.8), however there is also nothing to show that the Appellants had inflicted the injuries on the Deceased. In this respect, it is also stated the observation made by the Hon'ble High Court vis-à-vis the shift of burden of proof under Section 106 CrPC to prove a certain fact, strictly within the knowledge of the Appellants is wholly erroneous.

17. It is further submitted that the entire case of the Prosecution rests upon a confession of the Appellant No.1,

however the same is struck by Section 27 of the Evidence Act and hence cannot be admissible in the court of law in order to bring home the guilt of the present Appellants.

18. *Per contra*, the Ld. Counsel appearing on behalf of the Respondent State defended the Impugned Order, it was submitted that that the Trial Court did not appreciate the evidence in a proper manner; and consequently, this glaring error led to the acquittal of the accused persons i.e., the Appellants. It was further submitted that the testimonies of P.W.-3 and P.W.-4 were incorrectly rejected by the Trial Court as purely circumstantial, whereas the entire set of facts read together with the medical evidence, strictly point towards the guilt of the Appellants. It was further submitted that once a grave error is found in the decision of the Trial Court, the High Court was fully empowered to re-appreciate the entire evidence and reach a different conclusion.

Analysis & Conclusions

19. The case of the Prosecution rests on circumstantial evidence, the testimonies of P.W.-1 to P.W.-4 read with the reports of medical examination (Exhibit P.3), Postmortem Report (Exhibit P.4.) and the evidence of the doctors. Admittedly there are no direct eyewitness to the said incident. In such cases, an inference of guilt must be sought to be drawn from a cogently and firmly established chain of circumstances.

20. This Court in its decision in *Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*, has laid down following five golden principles, which constitutes the *panchsheel of proof*, for a case based on circumstantial evidence: insofar as the facts so established should be consistent only with the hypothesis of the guilt of the accused, and the circumstances should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved; 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.

21. The prosecution has proved its case beyond reasonable doubt, established the complete chain of circumstances including the; (i) motive (ii) presence of the Appellants at the time of incident (iii) false explanation in the statement under Section 313 of the CrPC (iv) the conduct of the Appellants before and after the incident & most pertinently (v) the medical evidence; which in all human probability only correspond to the guilt of the Appellants.

22. At the outset, the medical evidence in the present case, clearly shows that the Deceased i.e., Rajalakshmi had sustained multiple *ante-mortem* injuries, including external injuries over the left upper arm, left shoulder, right shoulder and neck.

Pertinently, the Deceased's hyoid bone was also found to be broken. P.W.-10. in his deposition discloses that the death of the Deceased occurred from suffocation in breathing & there was no chance of consuming liquid for a person whose hyoid/*Navaldi* bone had been fractured. It was deposed that Deceased could have died due to pressure on the neck & problem in breathing. P.W.-11 also noted that no poison found in the internal organs of the Deceased and it was her ultimate opinion that the deceased appeared to have died of compression over neck. The medical record clearly establishes that the Deceased had died due to external injuries, which could not have been a natural consequence of consuming paint, as alleged by the Appellants.

23. The presence of the Appellants at the time and place of incident is demonstrable from their conduct before and after the incident. In their defence under section 313 CrPC, the Appellants have stated that all 3 of them had went to Keela Earal to attend a function in the Tractor Company. They returned home only at 6 P.M. and found the deceased in an unconscious stage and they took her to the hospital. Admittedly, the Appellants had taken the deceased to the local hospital, however, none of the Appellants have been able to establish an *alibi* at the time of the incident. The silence of the Appellants in informing P.W.-1 or the family of the deceased of her death, also speaks volume of their conduct. Undisputedly, the Appellants and the Deceased resided together

since the marriage of the Deceased to Accused No.2, which substantiates their presence at the time of occurrence of the incident; and consequently the invocation of Section 106 of the Evidence Act cannot be faulted.

24. In the case of *Trimukh Maroti Kirkan v. State of Maharashtra, [2006] Supp. (7) S.C.R. 156*, this Court has pointed out that there are two important consequences that play out when an offence is said to have taken place in the privacy of a house, where the accused is said to have been present. Firstly, the standard of proof expected to prove such a case based on circumstantial evidence is lesser than other cases of circumstantial evidence. Secondly, the appellant would be under a duty to explain as to the circumstances that led to the death of the deceased. In that sense, there is a limited shifting of the onus of proof. If he remains quiet or offers a false explanation, then such a response would become an additional link in the chain of circumstances. In terms of Section 106 of the Evidence Act, the Appellants have not discharged their burden that the injuries sustained by the deceased were not homicidal and not inflicted by them.

25. There is also enough evidence adduced by the Prosecution to hold that the Appellants had the clear motive to eliminate the Deceased. An illicit/incestuous relationship between Accused No.-1 i.e., Ms. Uma and Accused No.-2 i.e., Mr. Ravi had become

known to the Deceased Rajalakshmi & her family, and she had become a stumbling block in the relationship, which swelled the common intention of the Appellants to murder her. The factum that the Deceased has passed away within six months of her marriage also becomes a relevant consideration to attribute culpable intent of the Appellants. Although, the motive of Mr. Balasubramanian remains unclear, his aid & assistance in the commission of the crime cannot be ruled out.

26. We are hence of the opinion that the Prosecution has been able to prove its case beyond reasonable doubt that the Accused Nos. 1 and 2, with the aid & support of the Accused No.3 have murdered the deceased Rajalakshmi and strangled her to death.

27. The collusion & motive of the accused person certainly synthesizes with the medical evidence on record, false explanation by the Appellants and the entire chain of circumstances, not leaving any link missing for the Appellants to escape from the clutches of justice. In our considered opinion, the observation of the Trial Court that in absence of a direct occurrence witness, motive to commit the crime and the evidence being purely circumstantial in nature, the medical evidence becomes of less consequences, thus cannot be a fairly plausible view. The Trial Court has simply discarded the consistent testimonies of prosecution witnesses P.W.-1 & P.W.-2 as being

simply based on presumption; whereas the High Court in appeal has extensively dealt with each charge framed against the Appellants, the grounds on which the acquittal had been based and has dispelled those grounds with reasons.

28. Although, this Court is conscious of the fact that an Appellate Court must not ordinarily reverse the finding of acquittal, the High Court has been able to demonstrate perversity and non-appreciation of the materials on record. On a fresh appreciation of evidence, we also find ourselves unable to agree with the findings of the Trial Court and are of the considered view that the circumstances in this case are conclusive and a conclusion of guilt can be drawn.

29. For the reasons mentioned hereinabove, the Appeals stand dismissed. Interim applications, if any, shall also stand disposed of.

.....**J.**
[BELA M. TRIVEDI]

.....**J.**
[SATISH CHANDRA SHARMA]

NEW DELHI
OCTOBER 22, 2024