2025 INSC 936

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2189 OF 2017

SHAIL KUMARI **...APPELLANT**

VERSUS

STATE OF CHHATTISGARH **...RESPONDENT**

J U D G M E N T

B.R. GAVAI, CJI

FACTUAL ASPECT

1. The present appeal challenges the judgment and order dated 8th September 2010, passed by a Division Bench of the High Court of Chhattisgarh at Bilaspur (hereinafter referred to as "the High Court") in Criminal Appeal No. 713 of 2004, wherein the Division Bench dismissed the appeal filed by the appellant herein - Shail Kumari. By the said judgment and order, the High Court upheld the judgment and order dated 18th June 2004

rendered by the 2nd Additional Sessions Judge, Durg (hereinafter referred to as "the Trial Court") in Sessions Trial No. 286 of 2003 convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentencing her to undergo rigorous imprisonment for life.

2. Shorn of details, the facts leading to the present appeal are as under:

2.1 The case of the prosecution is that on 11th October 2003, one Santosh Kumar Pandey (PW-2), who was an owner of Beetel Kiosk shop, saw the appellant with her two children (son aged – 2 years and daughter aged – 4 months) going towards Pujari Talab (a water body situated near the Beetel Kiosk shop of PW-2). He observed that the appellant was taking the kids in a disordered condition and grew suspicious. He asked a nearby Rickshaw Puller to go and see where the appellant was going. After five to seven minutes, the Rickshaw Puller came back and stated that two children were floating in the water body.

Thereafter, PW-2 saw the appellant going towards the railway tracks. PW-2 then sat on a motorbike driven by someone else coming from the other side of the water body and he asked the rider to turn around and go towards the train tracks. PW-2 then saw a train coming towards the appellant but somehow, he managed to drag her away from the train tracks.

2.2 On being asked by PW-2 the reason for killing her children, the appellant replied that she had been fighting with her husband. PW-2 informed the Police about the incident and the *Dehati merg* intimation was lodged which was signed by PW-2. Then the First Information Report was lodged.

2.3 The dead bodies of the victims were sent for post-mortem. The post-mortem was conducted by Dr. P. Akhtar (PW-6) and the cause of death for both of the victims was found to be asphyxia due to drowning.

2.4 The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C"). After completion of the

investigation, Charge Sheet was filed against the appellant before the Court of Judicial Magistrate First Class, Durg, who then, committed the case to the trial court.

2.5 Nine witnesses were examined during the trial and the appellant was examined under Section 313 of the Cr.P.C. The appellant, in her statement, denied the circumstances appearing against her. She further stated that she had been in a state of tension, because her husband - Kanhaiya Lal Kharre had performed a second marriage. She lastly stated that she was innocent and that she had been falsely implicated in the case.

2.6 At the conclusion of the trial, the Trial Court *vide* its judgment and order dated 18th June 2004 convicted the present appellant for the offence punishable under Section 302 of the IPC. On the same day, in a separate hearing, the Trial Court sentenced the appellant to undergo rigorous imprisonment for life.

2.7 Being aggrieved thereby, the present appellant preferred a criminal appeal before the High Court challenging the judgment and order of conviction and

sentence awarded by the Trial Court. The High Court *vide* the impugned judgment and order dismissed the appeal and affirmed the conviction and sentence awarded by the Trial Court.

2.8 Being aggrieved thereby, a Special Leave Petition was filed before this Court on 21st July 2017. This Court, vide Order dated 15th December 2017 condoned the delay and granted leave in the matter. The appellant was also directed to be released on interim bail on the conditions which may be imposed by the Trial Court.

SUBMISSIONS

3. We have heard Smt. Nanita Sharma, learned counsel appearing on behalf of the appellant and Shri Prashant Singh, learned counsel appearing on behalf of the respondent - State.

4. Smt. Nanita Sharma, learned counsel appearing for the appellant submitted that the present case is a case of no evidence. The High Court, only on the basis of conjectures and surmises, has convicted the appellant. It

is, therefore, submitted that the present appeal deserves to be allowed and the appellant be acquitted of the charges.

5. Per contra, Shri Prashant Singh, learned counsel appearing on behalf of the respondent would submit that no perversity could be noticed in the concurrent findings of facts, so as to warrant interference of this Court. It is submitted that both the Courts below, upon correct appreciation of evidence, have found that it is the appellant alone who is responsible for committing the crime in question. It is, therefore, submitted that the appeal is liable to be dismissed.

DISCUSSION AND ANALYSIS

6. Indisputably, the present case rests on circumstantial evidence. The law on conviction in the case of circumstantial evidence has been very well crystallized by this Court in the case of ***Sharad Birdhichand Sarda***

v. State of Maharashtra[1]. It will be relevant to refer to the observations made by this Court in the aforesaid case:

> "**151.** It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.
>
> **152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal* v. *State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in *Hanumant*

[1] (1984) 4 SCC 116

case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] 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."

7. The law laid down in ***Sharad Birdhichand Sarda*** (supra) has been consistently followed by this Court in a catena of judgments. In that view of the matter, the conviction in the present case could be sustainable only if the prosecution is in a position to prove the case beyond reasonable doubt and also establish a chain of events which is so connected to each other that it leads to no other conclusion than the guilt of the accused.

8. The perusal of both the impugned judgments and orders passed by the High Court as well as the Trial Court would reveal that though the prosecution has examined nine witnesses, the conviction is based solely on the evidence of PW-2.

9. The perusal of the testimony of PW-2 would reveal that on the day of the incident, after opening his shop, he went to urinate, and while returning from there, he saw that accused was abnormally going towards the Pujari Talab, she was keeping one child in her hands and another child was walking with her. He stated that Pujari Talab is situated at a distance of 10 feet away from his shop. He

stated that in the meantime, he directed a nearby Rickshaw Puller to watch where she was going. He further stated that after one and half hour, the appellant was going alone behind an STD nearby. Rickshaw Puller told him that woman was going empty handed. He asked the Rickshaw Puller where the child was. He said that he didn't know, she took them to pond. He then asked the Rickshaw Puller to go to the pond. After 5-7 minutes, he returned and told him that both the children were floating in the water. Later on, he stated that he saw that the accused was going to lie on the railway track. One Hero Honda motorbike was coming from the other side of the pond. He asked the rider to turn around and he went to the railway track. By the time train had come near, he dragged the accused away from railway track by holding her waist. He stated that he then brought her to his STD and asked her as to why she killed her children to which she replied that she had a fight with her husband.

10. From the cross-examination of this witness, it would reveal that his statement in the examination-in-chief is a

complete improvement than what was stated by him in his police statement. Whatever he narrated before the Court does not find place in his police statement.

11. This Court in the case of ***Vadivelu Thevar v. State of Madras***[2] held thus:

> "**11.** In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a

[2] AIR 1957 SC 614; 1957 SCC OnLine SC 13

particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. **Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:**

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no

reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

(emphasis supplied)

12. This Court in ***Vadivelu Thevar*** (supra) has classified the witnesses into three types: (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. It has been held that in the first category of cases, there is no difficulty inasmuch as if the testimony of such witness is found to be fully reliable, it may convict or may acquit on the basis of his statement. Even in the second category cases, there is no difficulty that if evidence of such a witness is found to be wholly unreliable, the testimony must be discarded. The difficulty arises only in the case of third type of witnesses, where the Court is required to separate the chaff from grain to arrive at a conclusion. The perusal of the cross-examination of PW-2 would reveal that he has fully improved his case in his examination-in-chief. He has narrated what does not find place in his statement under Section 161, Cr.P.C. As such,

his evidence is totally contradictory and therefore totally unworthy.

13. Apart from the testimony of PW-2, there is nothing to connect the present appellant with the crime in question. The prosecution has not even examined the Rickshaw Puller who was stated to have seen the appellant going towards the Pujari Talab and the children floating in the lake. The testimony of PW-2 being unreliable, at the most, can be treated as hearsay evidence.

14. In that view of the matter, we are of the considered opinion that the conviction, as recorded by the Trial Court and affirmed by the High Court is totally based on conjectures and surmises. We are of the considered view that the conviction of the appellant is not sustainable in law at all.

15. In the result, we pass the following order:

i. The present appeal is allowed;

ii. The impugned judgment and order dated 8th September 2010, passed by the High Court in Criminal Appeal No. 713 of 2004 and the judgment

and order dated 18th June 2004 passed by the Trial Court in Sessions Trial No. 286 of 2003 are hereby quashed and set aside; and

iii. The appellant is acquitted of all the charges levelled against her and is directed to be released forthwith, if her detention is not required in any other case.

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

.....CJI.
(B.R.GAVAI)

.....J.
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 06, 2025