REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1258 OF 2019
(ARISING OUT OF SLP (CRIMINAL) NO. 5597 OF 2019)

SMT. CHINTAMBARAMMA & ANR. .....APPELLANT(S)

VERSUS

STATE OF KARNATAKA .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. Leave granted.

2. Chintambaramma, Mother-in-law and Saraswathi, Sister-in-law of the deceased Sahitya are in appeal against the judgment dated November 20, 2017 maintaining conviction of the appellants for an offence punishable under Section 302 read with Section 34 IPC. The appellants were sentenced to imprisonment for life and a fine of Rs.10,000/- each was imposed upon them.

3. The marriage of deceased Sahitya was solemnised with L. Manjunatha on March 10, 2006. An FIR was lodged on August 25, 2009 by CW 1- Smt. Anjanamma that Sahitya has been killed by the appellants along with L. Manjunatha, Lakshmi, Raghavendra and Arunakumari. On the basis of FIR, the investigation was

conducted by the Investigating Officer Manjunath (PW-18). Dr. S. Venkataraghava (PW-21) conducted postmortem. He noticed multiple nail scratches, abrasions over the face, around the mouth, maxilla, over the right-side neck, nail scratch abrasions over the lower part of the middle of neck and inner aspect of the right-side lower lip. Earlier, Dr. Bhakthavatsala (PW-22) initially examined the deceased when called by the Ramesh (PW-19). He reported that she was dead.

4. Initially, the allegations against the appellants were of demand of dowry and that the assailants were Adinarayana, accused No. 4 and Venkatesna, accused No. 5 who committed the act of murder in conspiracy with the other accused. The relatives of the deceased were examined as Anjanamma (PW-1), Obalesh (PW-3), Shankar (PW-4), Harikrishna (PW-6) and Vijayakumar (PW-7). They have not supported the prosecution case as they turned hostile. There is no evidence of demand of dowry or cruelty on account of demand of dowry. The learned trial court recorded the following findings:

> “34. So, from the evidence on record, there is no cogent and clinching evidence to believe in the case of the prosecution that the accused were ill-treating and harassing the deceased Sahitya demanding her to bring more dowry from her parents house and also A.I had an illicit relation with A.8 and due to this reason, they used to assault and abuse the deceased Sahitya. Therefore, the prosecution has miserably failed to prove the alleged guilt against the accused beyond all reasonable doubts that the accused were ill-treating and harassing the deceased. Hence, I answer point No. 2 in the negative.”

5. However, the learned Trial Court convicted the appellants and L. Manjunatha, husband of the deceased having conspired the murder of Sahitya with accused Nos. 4 and 5 but there is no evidence against accused Nos. 6 to 8. Consequently, accused Nos. 6 to 8 were acquitted by the Trial Court. However, in appeal, the High Court acquitted L. Manjunatha but maintained sentence upon the appellants. While convicting the appellants, the High Court recorded the following findings:

> "16. …The conduct of accused Nos. 2 and 3 going to the house of PW-20 and staying there for two hours has remained a mystery. According to PW.20, accused Nos.2 and 3 returned to their house at about 6.00 p.m. Further, her evidence suggests that two strangers who had come to the house of the accused had gone away at about 5.00 p.m. Thereafter, at about 8.30 p.m., accused Nos. 2 and 3 are stated to have called PW-19 her husband stating that the deceased was not waking up. PW-19 has deposed that he brought PW-22 Dr. Bhakthavatsala who told them that the death might have taken place about three hours earlier to his examination. If this timing is accepted, the death might have taken place only after 5.00 p.m. or 6.00 p.m. that is, after accused Nos. 2 and 3 returned to their house. Thus, from the evidence of PW-19 and PW-20, it could safely inferred that when the deceased met with her death, only accused Nos. 2 and 3 were in the house. Therefore, the theory put forward by the prosecution that accused Nos. 4 and 5 murdered the deceased when accused Nos. 2 and 3 were not in the house, appears to be highly improbable and unbelievable."

6. The High Court further held that the conduct of the appellants pretending that the deceased was sleeping when they informed Ramesh (PW-19) and Saroja (PW-20), throws serious doubts on their conduct and that the subsequent conduct of the appellants also belies the theory of murder having been committed by any

outsider or by accused Nos. 4 and 5 as sought to be made out by the prosecution. The Court observed as under:

> "19. We are conscious of the fact that the conclusion arrived at by us holding only accused Nos. 2 and 3 guilty of the above offence is substantially at variance with the case set up by the prosecution. As already stated above, the specific case of the prosecution is that the actual murder was committed by accused Nos. 4 and 5 pursuant to the criminal conspiracy entered into by all the accused. As a matter of fact, an argument is also advanced by the learned counsel for the accused contending that when the evidence adduced by the prosecution is contrary to its own case, the benefit thereof has to be given to the accused. As a principle, it cannot be disputed that failure of the prosecution to prove the case set up by it, may entail acquittal of the accused, but in the instant case, on careful examination of the entire material on record, we are of the considered opinion that right from the inception a deliberate attempt has been made to introduce a false story by distorting the true facts. On considering the material on record, we find that the theory of criminal conspiracy and the involvement of accused Nos. 4 and 5 is engineered in connivance with the Investigating Officer only to bail out the real offenders namely accused Nos. 2 and 3. On careful consideration of the facts and circumstances brought out in the evidence, we are of the view that the story as projected by the prosecution has taken shape three days after the incident by making use of one of the tenants namely PW.20."

7. Learned counsel for the appellants argued that the High Court has committed patent illegality in convicting the appellants even when there was no allegation of demand of dowry or harassment proved against the appellants or even in the absence of the conspiracy of conspiring with accused Nos. 4 and 5 to cause death of the deceased. In the absence of any evidence of conspiracy and in the absence of any charge against the appellants to have taken life of

the deceased, the appellants could not be convicted on the basis of probabilities. The prosecution has to prove charge beyond reasonable doubt by complete chain of circumstances leading to a firm finding that the appellants and the appellants alone have taken life of the deceased. In the absence of such finding, the conviction of the appellants is not tenable.

8. Learned counsel for the appellants refers to the charges framed against accused Nos. 1 to 6, which read as under:

> "That you A.1 on 10.3.2006 at the time of marriage received Rs.4 lakhs cash and 100 grams of gold as dowry and thereby committed an offence punishable under Section 3 of Dowry Prohibition Act;
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> Secondly, that you A.1 being the husband of the deceased Sahitya, you A.2, 3 and 6 to 8 being the relatives of A.1, with common intention subjected the deceased Sahitya to cruelty by abusing her and demanding to bring money from her parents house and used to force against her by this conduct which is of such nature as is likely to drive Sahitya to cause grievous injury to meet your demand to bring cash and thereby committed an offence punishable under Sections 498-A read with 34 of IPC;
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> Thirdly, that you A.4 and 5 on 24.8.2009 agreed to murder Sahitya and made conspiracy with A.1 to 3 and A.6 to 8 by receiving money from them and thereby committed an offence punishable under Section 120-B IPC;
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> Fourthly, that you A.1 to 8 with common intention on 24.8.2009 at 4.30 p.m., at No. 27, 2nd Cross, New Byappanahalli committed the murder intentionally by pressing the neck of Sahitya and caused her death and thereby committed an offence punishable under Sections 302 read with 34 IPC."

9. The Trial Court has returned findings that Charge Nos. 1, 2 and 4 are not proved. However, the High Court has returned a finding of

lack of conspiracy but on the inference, convicted the appellants.

10. The High Court found that the Investigating Officer has played a dubious role in introducing a theory of criminal conspiracy and this act is calculated to help and save the real offenders. The Investigating Officer botched up the investigation and instituted false charges and convicted the appellants although the prosecution was launched only against accused Nos. 4 and 5 as the assailants with conspiracy against role of the appellants being as of conspirators.

11. The prosecution case is based upon testimony of Ramesh (PW-19) and Saroja (PW-20) who are the tenants and living on the ground floor of the house in which the appellants and the deceased were residing. Ramesh (PW-19) in his examination-in-chief deposed that accused No. 2 Saraswathi sprinkled water on the face of deceased Sahitya when he along with her wife went to their house on the asking of the appellants. In cross-examination, the question asked is about enmity with the husband of the deceased in respect of payment of rent.

12. On the other hand, Saroja (PW-20) deposed that the husband of the deceased came to her house and asked her husband that Sahitya is sleeping and not waking up in spite of her attempts. They went to the house and tried to wake her up. Since she did not respond, her husband called the Doctor. She deposed that Raghavendra, accused No. 6 had quarrel with Sahitya 2-3 times in her presence.

On the date of incident, she had seen the deceased at 3 p.m. when she was drying the clothes. She deposed that two unknown persons came and killed Sahitya by smothering. In cross-examination, she deposed that accused has tortured Sahitya for ten times but she had not seen the parents of the deceased coming to the house. She also reiterated that on August 24, 2009, two unknown persons, who came to the house of the deceased, had earlier visited the house twice. She further deposed that when *Puja* was performed in the house of Sahitya, there were five persons. *Puja* was held for two hours. Sahitya and two *Swamis* were doing *Puja*. She did not notice the time when two *Swamis* came out from Sahitya's house.

13. The statement of Saroja (PW-20), in fact, proves the presence of two other persons on the date of occurrence and that there were *Swamis* performing the *Puja.* Therefore, the findings recorded by the High Court that Investigating Officer botched up the investigation against the appellants are based upon surmises even when the prosecution witness has deposed to this effect.

14. The entire prosecution proceeded on the basis that accused Nos. 4 and 5 were the actual assailants. Accused Nos. 4 and 5 were never apprehended. The charge of conspiracy against the appellants with accused Nos. 4 and 5 has not found favour either with the Trial Court or with the High Court.

15. The conviction of the appellants is probably on the basis of the lack

of explanation of the injuries suffered on the person of the deceased. However, we find from the statement of Saroja (PW-20) that there were five persons who were performing *Puja* and two of them were *Swamis*. Thus, the appellants cannot be held guilty for the offence punishable under Section 302 read with Section 34 IPC. The chain of circumstances has not been completed so as to lead only one conclusion that the appellants and the appellants alone were responsible for committing the crime.

16. In ***Mulakh Raj*** v. ***Satish Kumar***[1], the Court succinctly restated the legal position in paragraph 4 as under:

> "4. ……Undoubtedly this case hinges upon circumstantial evidence. It is trite to reiterate that in a case founded on circumstantial evidence, the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of the accused can be inferred from the proved circumstances, the accused would be entitled to the benefit. What is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the crime comes into question the previous and subsequent conduct are also relevant facts. Therefore, the absence of ordinary course of conduct of the accused and human probabilities of the case also would be relevant. The court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the accused committed the crime, the charge must be held proved and the conviction and sentence would follow."

17. We find that Charge No. 3 against the appellants was that accused Nos. 4 and 5 have conspired with the appellants by receiving money. However, both the Courts have found the charge of

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1 (1992) 3 SCC 43

conspiracy as not proved. Whether, in these circumstances, the appellants could be convicted for an offence under Section 302 IPC even without there being charge to this effect?

18. The question as to whether omission to frame an alternative charge under Section 302 IPC is an illegality that cuts at the root of the conviction and makes not invalid or whether it is a curable irregularity, has been examined by this Court from time to time. One of the first judgments is ***Willie (William) Slaney*** v. ***The State of Madhya Pradesh***[2] where the Constitution Bench explained the concept of prejudice caused to the accused and failure of justice to vitiate trial in terms of present Section 464 of the Code. It was held as under:

> "5. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is *substantial* compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."

19. Later, in ***Main Pal*** v. ***State of Haryana***[3], this Court found the

2 AIR 1956 SC 116
3 (2010) 10 SCC 130

following principles relevant consequent to omission of framing charges. The Court held as under:

> "17. The following principles relating to Sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:
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> (*i*) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.
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> (*ii*) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.
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> (*iii*) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself."

20. In view of the aforesaid judgments, we find that since the prosecution story proceeded on the basis that the role of the appellants is that of conspirators but having failed to prove the

charge of conspiracy, the appellants could not be convicted for the offence under Section 302 IPC. Such conviction has caused not only prejudice but also failure of justice, therefore, conviction cannot be sustained.

21. Consequently, the appeal is allowed. The appellants are acquitted of the charges levelled against them. They shall be released forthwith, if not required in any other case.

...J.
(L. NAGESWARA RAO)

...J.
(HEMANT GUPTA)

NEW DELHI;
AUGUST 22, 2019.