

NON-REPORTABLEIN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO.1000 OF 2021SATHISH KUMAR A @ SATHISHKUMAR ANAND
@ SATHISH KUMAR GUPTA

Appellant

VERSUS

STATE OF KARNATAKA

Respondent

JUDGMENT

1. This appeal by special leave is directed against the judgment and order dated 27.09.2018 passed by the High Court of Karnataka at Bengaluru in Criminal Appeal No.1586 of 2017.
2. The appellant was tried in Sessions Case No.1387 of 2010 on the file of the Principal City Civil and Sessions Judge at Bengaluru for having committed the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (“IPC” for short) and was sentenced by the Trial Court to rigorous imprisonment for life under the first count and to rigorous imprisonment for five years under the second count.

3. According to the prosecution, the appellant committed the murder of his wife, namely, Smt. Priyanka Gupta in the early hours of 10.08.2010 and thereafter sought to create an impression that while he had gone out for jogging alongwith his jogging partner PW-2 Kishan Gupta, a call was received from his wife stating that two persons had come to their residence whereupon the appellant conveyed to his wife that they be asked to come later. After the appellant reached the residence, he found that his wife was not opening the door of the apartment. He, therefore, went to the office, collected the spare key and opened the door. He found that his wife was tied to a chair and that her throat was slit. The appellant then made a complaint with Hulimavu Police Station, Bengaluru City at about 9.45 a.m.

4. Upon postmortem conducted by PW38 Dr. Suresh, the deceased was found to have sustained following external injuries: -

“1. A Transverse, deep incised wound just above the ligature mark measuring 16cm x 3cm x neck structures deep over front and sides of middle part of neck from left to right side of neck situated 9cms. below left ear lobule.

2. Transverse, deep incised wound measuring 15cm x 3cm x neck structures deep over front and sides of middle part of neck from left to right side of neck coinciding with the above injury and is situated 10cm below left ear lobule directing backwards, upwards with tailing measuring of 6cm x 0.2cm over right side upper part of neck situated 5cm below right ear lobule.

3. Superficial incised would measuring 5cm x 0.5cm x subcutaneous deep over left side upper part of neck situated 7.5cm below left ear lobule.

4. Superficial incised wound measuring 3cm x 0.2cm x subcutaneous deep over right side upper part of neck situated just below right jaw.

5. Contusion measuring 1cm x 1cm over outer aspect and middle third of left arm.”

Even though there were incised injuries on her body, according to the Post-Mortem Report, the deceased had died due to asphyxia as a result of strangulation.

5. During the course of investigation, the appellant was suspected to be the culprit and as such, he was arrested and later tried for the offences as stated above.

6. Though the case of the prosecution depended purely on circumstances, some of the crucial and relevant circumstances which the prosecution was able to establish were:

a. The appellant had called his jogging partner PW2 Kishan Gupta around 5.24 a.m. on the relevant day.

According to PW2 Kishan Gupta, the appellant had stated that he would be there at the house of PW2 shortly.

b. Since the appellant had not arrived within the expected time period, PW2 called him at 5.31 a.m. when PW2 was told by the appellant that he would be there at the house of PW2 very soon.

c. At about 5.38 a.m., a call was received by the appellant (going by the call records which have been placed on record) from the mobile of his wife.

The communication lasted for 40 seconds.

- d. At about 5.41 a.m. again a call came from PW2 asking the appellant why he had not yet reached the house of PW2.
- e. Thereafter, the appellant reached the house of PW2, who then took the motorcycle of the appellant to drop his mother for yoga classes. After he came back, the appellant and PW2 went for jogging.
- f. While the appellant and PW2 were at the jogging track, the appellant statedly received a call from his wife and going by the conversation, the impression received by PW2 was that there were two persons at the residence of the appellant who were directed to come later.
- g. According to PW2, at the relevant time the appellant was not in his jogging shoes but was in black leather shoes.
- h. According to PW1 i.e. the mother of the deceased, she had received a call from the deceased few days before the occurrence that the appellant had given her a surprise gift and that when the gift was so given, the appellant had tied her to the chair, blind-folded her and then placed the gift in her hands.
- i. The body of the deceased was found sitting in a chair with her hands tied to the arms of the chair.
- j. The deceased died of strangulation but there were incised injuries on her body.

- k. There were gold ornaments on the person of the deceased which was not consistent with the theory of robbery by third person(s).
- l. Pursuant to the statement made by the appellant, sports shoes with bloodstains were recovered from the residence of the appellant.

7. Considering these and other circumstances on record, the Trial Court found the prosecution case to be proved and convicted and sentenced the appellant as stated above vide its judgment and order dated 28.7.2017.

8. The relevant circumstances were considered in detail by the High Court which affirmed the view taken by the Trial Court and dismissed the appeal by its decision which is presently under challenge.

9. We have heard Mr. Anil V. Katarki, learned Advocate in support of the appeal, and Mr. Ashish Yadav, learned Advocate for the State.

10. In *Sharad Birdhichand Sarda v. State of Maharashtra*¹ this Court stated: -

“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

¹ (1984) 4 SCC 116

proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabroo 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."

11. The circumstances stated hereinabove were not only proved individually but they formed a clear chain which was consistent only with the hypothesis of the guilt of the appellant. The call records established that the call from the mobile of the deceased was received much before the appellant had reached the house of PW2 but an impression was sought to be created that the deceased had called when the appellant and PW2 were at the jogging track. Further, the fact that the appellant was on the jogging track in black leather shoes while his sports

shoes were at the residence and had bloodstains was a very crucial and relevant circumstance, for which no explanation was forthcoming from the appellant.

12. We, therefore, do not see any reason to take a different view in the matter. Consequently, we dismiss this appeal. The appellant shall serve out the sentence awarded to him.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi,
February 23, 2022.