

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

22nd FEBRUARY, 2021

CRIMINAL APPEAL NO.199 of 2015

Between:

Sachin Rana. ...Appellant

and

State of Uttarakhand. ...Respondent

Counsel for the : Mr. M.S. Pal, learned Senior
appellant. Advocate assisted by Mr.
Sachin, learned counsel.

Counsel for the State : Mr. J.S. Virk, learned Deputy
of Uttarakhand. Advocate General assisted by
Mr. Rakesh Kumar Joshi,
learned Brief Holder for the
State.

The Court made the following:

JUDGMENT: (per Hon'ble Sri Justice Alok Kumar Verma)

The present appeal has been filed by the
appellant against the judgment dated
01.06.2015/03.06.2015, passed by the learned Sessions
Judge, Udham Singh Nagar, in Sessions Trial No.367 of

2013, "State vs. Sachin Rana", by which, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short, "IPC") and has been sentenced to undergo imprisonment for life along with a fine of Rs. 50,000/- in default of payment of fine, the defaulter convict is directed to undergo further simple imprisonment for a period of two years. The appellant has been further convicted and sentenced to undergo rigorous imprisonment for a period of five years along with a fine of Rs. 20,000/- in the offence punishable under Section 201 IPC in default of which, the convict is directed to undergo further simple imprisonment for a period of one year. Both the sentences are directed to run concurrently.

2. Briefly stated the prosecution story as it emerges from re-appreciation of the evidence on record is that on 24.08.2013 at 8:34 hrs, on receipt of an information from a mobile phone of Govind Rai (PW 10) regarding death of Smt. Purnima, wife of Sachin Rana, the present appellant, by hanging, Sub-Inspector Marry Peeter (PW 6) along with constable Kanchan Chaudhary reached the house of Virendra Manjhi (PW 5) and found that the dead body of Smt. Purnima was lying on the floor of a room. At that time, the appellant was tenant in the house of Virendra Manjhi (PW 5). Sub-Inspector Marry Peeter (PW 6) prepared an inquest report (Ext. Ka

2), took photographs (Ext. 3 to 6) and a sari (Ext. 1) of the deceased and sent the dead body of the deceased to the hospital for post-mortem examination.

3. The post-mortem examination of the dead body of the deceased was conducted by Dr. Yatendra Singh (PW 9) at 4:30 p.m. on 24.08.2013.

4. An FIR (Ext. Ka 12) was registered by Head Constable Rajendra Prasad Tamta (PW 8) against the present appellant on the same day i.e. 24.08.2013 at 20:40 p.m. for the offence under Sections 302, 201 and 498 A of IPC.

5. The said FIR was lodged by the informant Sushant Rai (PW 1), brother of the deceased, through his written information (Ext. Ka 1) that his sister, Smt. Purnima was married with the appellant in the year 2003. After marriage, the appellant used to harass her for demand of dowry. He used to beat her. He (appellant) and his family members were requested not to harass her, but, the appellant's behavior became more and more cruel towards his sister. The appellant used to taunt her that she has four daughters, and used to say that she did not have any son. Thus, he would marry again and kill her (deceased). She was also assaulted a week before her death. The informant's brother-in-law, Amal Mandal (PW 2), had requested the

appellant and his family members. On 23.08.2013 at 10:30 night, Purnima sent an information through Indra Rai (PW 4), brother-in-law of Amal Mandal (PW 2), that her husband was beating her a lot, and that he will kill her. On 24.08.2013 at around 6:30 a.m., Amal Mandal (PW 2) got a call that Purnima had died, then he (informant) was informed by Amal Mandal. After receiving the information, he reached the spot along with Amal Mandal (PW 2) and others. He saw that a noose of the sari was wrapped around the neck of his sister and that sari was tied to a skylight, whose height would be 5 feet. Her sister was sitting by the door and her mouth, face and back were injured.

6. The matter was investigated by Vikram Rathore (PW 7). The appellant was arrested on 26.08.2013. The Investigating Officer prepared a site plan of the place of occurrence (Ext. Ka 7). After completion of the investigation, the charge-sheet (Ext. Ka 10) was filed by Vikram Rathore (PW 7).

7. The case was committed to the Court of Session.

8. The charges under Section 498 A, Section 302 and Section 201 of IPC were framed. The appellant pleaded not guilty and claimed to be tried. The learned

trial court recorded the statements of ten prosecution witnesses.

9. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973. He denied all the incriminating evidence against him. The appellant has taken a plea of *alibi*. He pleaded that he was away from the scene of the crime. He pleaded that he went to Lalkuwan. When he reached home in the morning, he came to know about the death of the deceased. He further pleaded that he did not know who had killed his wife. He also stated that he has no enmity with the prosecution's witnesses. The appellant has suggested Virendra Manjhi (PW 5) in his cross-examination that the deceased was upset and stressed because she had four daughters but no son. The appellant has suggested the prosecution witnesses that the deceased had committed suicide.

10. The appellant has not adduced any defence evidence.

11. The learned trial court appraised the evidence adduced before it and held that the prosecution has successfully proved its case against the appellant under Section 302 and Section 201 of IPC.

12. Aggrieved by the judgment and order of conviction and sentence awarded by the learned trial court, the appellant appealed to this Court.

13. Mr. M.S. Pal, the learned Senior Advocate appearing for the appellant, would submit that there was no eye-witness of the alleged offence; the appellant was not present at the scene of the crime; the prosecution witnesses Amal Mandal (PW 2), Smt. Maheswari (PW 3), Indrajeet Rai (PW 4) and Virendra Manjhi (PW 5) did not support the prosecution story; they have been declared hostile by the prosecution; there are certain contradictions in the evidence of the prosecution witnesses; the chain of the circumstances of the incident is broken, and not so complete as to infer the involvement of the appellant in the alleged offence; the deceased had committed suicide; the case of the prosecution is highly improbable; the marriage of the appellant with the deceased was solemnized in the year, 2003 and since then neither the deceased, nor her family members had lodged any complaint whatsoever against the appellant; the prosecution has failed to assign any motive for the alleged commission of offence by the appellant.

14. As per contra, Mr. J.S. Virk, the learned Deputy Advocate General for the State, argued in

support of the impugned judgment and submitted that the prosecution has proved its case beyond all reasonable doubt.

15. We have carefully assessed the evidence, adduced by the prosecution.

16. This case rests on circumstantial evidence. For, no one had seen the assault by the appellant on the deceased.

17. It is a well established law that in cases of the circumstantial evidence, all circumstances relied upon by the prosecution must be established by cogent and reliable evidence and all the proved circumstances must provide a complete chain. The chain of evidence should be 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.

18. In **Sharad Birdhi Chand Sarda vs. State of Maharashtra, (1984) 4 SCC 116**, the Hon'ble Supreme Court held that when a case rests on circumstantial evidence, such evidence must satisfy these tests:-

(i) The circumstances from which the conclusion of guilt is to be drawn, should be fully established.

(ii) The facts so established should be consisted only with the hypothesis of the guilt of the accused, that it is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of a conclusive nature and tendency.

(iv) They should exclude every possible hypothesis except the one to be proved.

(v) There must be a chain of evidence to show 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 probabilities, the act must have been done by the accused.

19. On the basis of the above well-settled principles, we proceed to examine whether the appellant can be held to be guilty.

20. PW 9 Dr. Yatendra Singh Brijwal conducted the post-mortem of the dead body of the deceased on 24.08.2013. He proved the post-mortem report (Ext. Ka

14). He stated that at the time of the post-mortem examination, he found the following anti-mortem injuries on the body of the deceased:-

(1) A ligature mark of 4 cm. was found on the front of the neck, the upper end of which was present above the thyroid cartilage and the lower end was present below the thyroid cartilage. Hyoid bone and thyroid cartilage bone were fractured.

(ii) A contusion of 5x3 cm. was present over right forehead just near right eye.

(iii) Multiple contusions (2 cm. x 2 cm., 2 cm. x 1 cm., 1 cm. x 1 cm., 1 cm. x 2 cm., 1.5 cm. x 2 cm.) were present over right side of face.

21. According to Dr. Yatendra Singh Brijwal (PW 9), the cause of death of the deceased was asphyxia due to anti-mortem strangulation. He also stated that the death of the deceased was possible after 10:30 p.m. on 23.08.2013, if somebody would have pressed the neck of the deceased. It may be pointed out, that there was no dispute that the said injuries were present on the body of the deceased, and the testimony of the doctor on this account is not under challenge.

22. Dr. Yatendra Singh Brijwal (PW 9) has rejected the appellant's suggestion in his cross-examination that the deceased had committed suicide by hanging. According to the Dr. Yatendra Singh Brijwal (PW 9), such injuries are not possible on suicide, as were found on the body of the deceased.

23. Mr. M.S. Pal, the learned Senior Advocate appearing for the appellant, argued that the prosecution witnesses, namely, Amal Mandal (PW 2), Smt. Maheswari (PW 3), Indrajeet Rai (PW 4) and Virendra Manjhi (PW5) did not support the prosecution case and they have been declared hostile by the prosecution, therefore, the chain of circumstantial evidence had failed. The said submission of the learned counsel for the appellant is not acceptable. It is well settled that merely because a witness is declared hostile, his/her evidence cannot be rejected in toto. The testimony of such a witness is to be assessed for whatever value it is. If any part of the evidence of a hostile witness is found truthful, the Court can rely on such part of his/her evidence. In **Rajendra vs. State of U.P., (2009) 13 SCC 48**, the Hon'ble Supreme Court held that merely because a witness, deviates from his statement, his evidence cannot be held to be totally unreliable. In **Govindappa vs. State of Karnataka, (2010) 6 SCC 533**, the Hon'ble Supreme Court has held that

deposition of a hostile witness can be relied upon at least up to the extent he supported the case of the prosecution.

24. This fact is not disputed that at the time of the incident, the appellant was residing with the deceased.

25. The prosecution case is that the deceased was married with the appellant in the year, 2003. The appellant used to harass her for demand of dowry. He used to beat her. He used to taunt the deceased that she has four daughters, and used to say that she did not have any son, so he would marry again and kill her. She was assaulted a week before her death. On 23.08.2013 at 10:30 p.m., the deceased sent an information through Indrajeet Rai (PW 4), brother-in-law of Amal Mandal (PW 2), that her husband was beating her a lot, and that he will kill her. On 24.08.2013 at around 6:30 a.m., Amal Mandal (PW 2) got a call that the deceased had died. Then, he informed the informant, Sushant Rai (PW 1), brother of the deceased. After receiving the information of the death of the deceased, the informant Sushant Rai (PW 1) along with Amal Mandal (PW 2) reached the spot. The informant saw that a noose of the sari was wrapped around the neck of the deceased and that sari was tied to a skylight, whose height would be 5 feet. At that time,

the deceased was sitting by the door and her mouth, face and back were injured.

26. The informant Sushant Rai (PW 1), brother of the deceased, deposed that the appellant used to harass the deceased for demand of dowry. He used to beat her. He used to taunt her that she has four daughters, and used to say that she did not have any son. So he would marry again and kill her. He stated that when the appellant demanded money, he gave money to him several times. He stated that the deceased was assaulted a week before her death, then he along with Amal Mandal (PW 2) went to the house of the deceased and requested him not to harass his sister. He further deposed that on 23.08.2013, his brother Indrajeet went to the deceased's house. The deceased told him (PW 4 Indrajeet) that her husband was beating her a lot and he will kill her.

27. The examination-in-chief of the prosecution witness Amal Mandal (P.W.2) was recorded on 10.07.2014. In his examination-in-chief, he supported the prosecution case. After completion of the examination-in-chief, an adjournment was moved on behalf of the appellant. On the next day i.e. 28.07.2014, he (Amal Mandal) became hostile. In his examination-in-chief, he clearly stated that the deceased was harassed

by the appellant for demand of dowry. The appellant used to beat her. His brother-in-law, Sushant Rai (PW 1), gave money to the appellant several times. He further stated in his examination-in-chief that the deceased was assaulted a week before her death, then, he along with Sushant Rai (PW 1) went to the house of the deceased and had requested the appellant not to harass her.

28. Smt. Maheswari (PW 3) is the wife of Amal Mandal (PW 2). She did not support the prosecution case. Though the prosecution witness, Indrajeet Rai (PW 4), did not support the prosecution case, but he clearly stated in his examination-in-chief that he went to the house of the deceased on 23.08.2013. Amal Mandal (P.W.2) has stated in his examination-in-chief that his brother-in-law, Indrajeet (PW 4), went to the house of the deceased on 23.08.2013. At that time, his sister told him (Indrajeet Rai) that her husband was beating her and he will kill her.

29. According to the prosecution witness Virendra Manjhi (P.W.5), the landlord of the appellant, he had never seen any quarrel between the appellant and the deceased. He stated that on 24.08.2013 at 6 a.m., the appellant told him that the deceased had committed suicide by hanging.

30. Sushant Rai (P.W.1) was consistent in his testimony. His testimony is fully corroborated by the hostile witness, Amal Mandal (PW 2). There is no such circumstance on the record that why the statement of the witness Sushant Rai (PW 1) should not be accepted. The statement of this witness is found natural, reliable, true and correct version of events.

31. The prosecution case is corroborated by the evidence of Dr. Yatendra Singh Brijwal (PW 9). He has clearly rejected the appellant's suggestion that the deceased had committed suicide by hanging. According to him, such injuries are not possible in suicide, the type of injuries were found on the body of the deceased. Turning hostile by one set of witness by itself cannot be permitted to destroy the other set of dependable prosecution evidence which is otherwise sufficient enough to hold the accused guilty for the offence alleged against him. Hence, there is no reason to doubt the evidence adduced by the prosecution, which conclusively links the appellant with the offence.

32. The prosecution case is further corroborated by the false plea of "*alibi*", which was taken by the appellant.

33. According to the appellant, he was away from the scene of the crime. He went to Lalkuwan. When he reached home in the morning, he came to know about the death of his wife. But, after availing sufficient opportunity to adduce defence evidence, he did not adduce any evidence in support of his plea of *alibi*. According to him, he did not know who had committed murder of his wife.

34. Plea of *alibi* is only a rule of evidence recognized in Section 11 of the Indian Evidence Act, 1872 that facts which are inconsistent with the fact in issue are relevant. The Latin word "*alibi*" means "elsewhere". The word "*alibi*" is used when an accused takes recourse to a defence that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the offence. Though, it is a basic rule that in a criminal case, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. But, once the prosecution succeeds in discharging its burden, the burden shifts on the accused to show that he was somewhere else other than the place of occurrence at the time of the incident. Hence, it is incumbent on the accused to prove the plea of *alibi* with absolute certainty

so as to exclude the possibility of his presence at the place of occurrence.

35. In **Dudh Nath Pandey vs. State of Uttar Pradesh, (1981) 2 SCC 166**, the Hon'ble Supreme Court held that the plea of *alibi* postulates the physical impossibility of the presence of the accused at the scene of the offence by reason of his presence at another place. The plea can, therefore, succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed.

36. In **State of Maharashtra vs. Narsingrao Pimple, (1984) SCC (1) 446**, the Hon'ble Supreme Court held that it is well settled that the plea of *alibi* must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence.

37. In **Dhananjay Chatterjee vs. State of West Bengal, (1994) 2 SCC 520**, the Hon'ble Supreme Court has held that the plea of *alibi* must be proved by cogent and satisfactory evidence completely excluding the possibility of the presence of the accused at the scene of occurrence at the relevant time.

38. In **Binay Kumar Singh vs. State of Bihar, AIR 1997 SC 322**, the Hon'ble Supreme Court has held that strict proof is required for establishing the plea of *alibi*.

39. In **Babudas vs. State of Madhya Pradesh, 2003 Cri.L.J. 2536 (SC)**, the Hon'ble Supreme Court held that a false plea of *alibi* can be a link in the chain of circumstances.

40. The appellant, after availing sufficient opportunity to produce evidence regarding his plea of *alibi*, but, he did not produce any evidence. In these circumstances, the only reasonable inference that can be drawn that evidence regarding the plea of *alibi*, which could be and is not produced would, if produced, be unfavourable to him.

41. The argument of Mr. M.S. Pal, the learned Senior Advocate for the appellant, is that in absence of motive on the part of the appellant to cause death, benefit of reasonable doubt should be given to the appellant.

42. In **Bhimapa Chandappa Hosamani vs. State of Karnataka, (2006) 11 SCC 323**, the Hon'ble Supreme Court observed that it is well settled that in order to bring home the guilt of an accused, it is not

necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. The law on this aspect is well-settled.

43. In **G. Parashwanath vs. State of Karnataka, 2011 (1) CCSC 157 (SC)**, the Hon'ble Supreme Court has held that in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the Court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 of IPC. Effect of absence of motive would depend on the facts of each case.

44. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with crime because truth suffers some infirmity when projected through human processes. Any possibility of bias or

predetermined conclusion has to be excluded. A fact is said to be proved when, after considering the matter, the Court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of a particular case, to act upon the supposition that it exists.

45. In Mahendra Pratap Singh Vs. State of Uttar Pradesh, (2009)11 SCC 334, the Hon'ble Supreme Court referred to the earlier judgment in **Inder Singh and another Vs. State (Delhi Administration), (1978)4 SCC 161**, wherein it has been held, "Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect."

46. In State Represented by Inspector of Police Vs. Saravanan and another, (2008)17 SCC 587, the Hon'ble Supreme Court held that it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the

evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies.

47. It is, therefore, the duty of the court to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

48. In **Krishna Mochi Vs. State of Bihar, (2002)6 SCC 81**, the Hon'ble Supreme Court ruled that the Court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case, discrepancies pointed out are in the realm of

pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that society suffers by wrong convictions and it equally suffers by wrong acquittals.

49. The chain of circumstances proved on the record against the appellant is as under:-

(i) The dead body of the deceased was found in the house, where the appellant was residing with his wife (deceased) at the time of the incident.

(ii) The appellant used to beat her. He used to taunt her that she has four daughters but no son.

(iii) The cause of the death of the deceased was asphyxia due to strangulation.

(iv) Dr. Yatendra Singh Brijwal (PW 9) conducted the post-mortem examination of the dead body of the deceased and according to him, the death of the deceased was possible after 10:30 p.m. on

23.08.2013, if someone would have pressed the neck of the deceased.

(v) Dr. Yatendra Singh Brijwal (PW 9) has ruled out any possibility that the death of the deceased could have been due to suicide.

(vi) The appellant has taken a false plea of *alibi*.

50. The aforesaid chain of circumstances against the appellant is of conclusive nature. There is a complete chain of circumstances which show that in all human probabilities, the offence has been committed by the appellant. Therefore, having re-appreciated the entire evidence on record, we concur with the learned trial court. It is not a fit case where impugned judgment requires any interference.

51. For the reasons, as discussed above, this appeal is liable to be dismissed, and the same is dismissed accordingly.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 22nd February, 2021
Neha