Parubai vs The State Of Maharashtra on 10 August, 2021

Equivalent citations: AIR 2021 SUPREME COURT 3784, AIRONLINE 2021 SC 482

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Bench: A.S. Bopanna, Hemant Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1154 OF 2018

Parubai .…Appellant(s)

Versus

The State of Maharashtra …. Respondent(s)

JUDGMENT

A.S. Bopanna,J.

1. The appellant is before this Court in this appeal assailing the judgment dated 12.10.2017 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No.488/2007. By the said judgment the High Court has dismissed the appeal filed by the appellant herein and the judgment dated 16.11.2007 passed by the Learned Sessions Judge Parbhani in Sessions Case No.27/2007, convicting the appellant in respect of the offence punishable under Section 302 and 436 of the Indian Penal Code ('IPC' for short) is confirmed.

2. The appellant was charged of the offence as accused No.1 while her husband Gulab and his mother i.e., mother-in-law of the appellant were charged as accused Nos. 2 and 3. The accused Nos. 2 and 3 were acquitted by the Sessions Court. In that view, the appeal before the High Court and the present consideration is limited to the conviction of the appellant herein who is accused No.1. The case of the prosecution is that Gulab son of Gajanan Watane was married to the deceased Mandabai and they had two children namely Akash, a son aged 5 years and Nikita, the daughter aged 2 years. The said Gulab had an extra marital affair with the appellant and ultimately married her on 02.01.2006 and got their marriage registered on 18.02.2006. Thereafter the appellant was also living with her husband and Mandabai, the wife from the first marriage. The parents of Gulab were also living with them and were residing in the small house which consisted of three rooms. One of the rooms in the house was occupied by their servant named Piraji Mankari. When this was the

position the husband of the appellant Gulab had gone to Jalna on 02.08.2006 to procure tyres for the tractor. The mother-in-law had gone to her daughter's place to assist her for delivery.

3. When this was the position, on the intervening night of 2/3.08.2006 at about 2.30 to 3.00 am an incident of fire occurred and the house in which the appellant and her family were residing was engulfed in flames. The appellant who was also in the house had come out of the house unscathed while Mandabai the first wife of Gulab and their daughter Nikita rushed out of the house with burn injuries, while their son Akash got burnt to death inside the house. The father-in-law of the appellant was stated to be sleeping outside the house on a cot and having woken up in the confusion, noticing the injuries suffered by his daughter-in-law Mandabai and granddaughter Nikita had instructed the servant Piraji Mankari to secure a jeep and shift them to hospital. Accordingly, they were shifted to the hospital where on the next day the said Mandabai and her daughter Nikita died due to the burn injuries suffered by them.

4. The father-in-law of the appellant namely Gajanan had lodged a complaint and had also implicated the appellant. In that light, keeping in view the allegation made by Chhaya, the sister of the deceased, the husband of the appellant and mother-in-law were also included and charged for the offence as accused No.2 and 3. The prosecution had examined PW-1 to PW-9 and the trial court on taking note of the evidence had arrived at the conclusion that the case against the accused No. 2 and 3 had not been proved and the evidence of PW-2 to implicate them was not trustworthy. However, insofar as the appellant herein, the Sessions Court had taken note of the evidence tendered by PW-1 and PW-3 that the appellant was also sleeping along with the deceased and in that circumstance was of the opinion that if the house caught fire accidently then the appellant also should have suffered burn injuries. Since she had come out of the house without any injuries it was held that she is guilty. The other circumstances noticed by the trial court was that the spot Panchnama indicated that the frock of the deceased Nikita had been seized from the place of occurrence and the Chemical analysis report was that it had kerosene stains. The recovery of a can which smelt of kerosene from the bushes as stated by PW-8 Kerba Balajirao Phad, P.S.I., was taken into consideration with reference to the recovery Panchnama at Exhibit 41.

5. The Sessions Court was of the opinion that the appellant had a strong motive and had the opportunity of committing the act. It held that if the appellant is to be excluded, there should have been a reasonable possibility of anyone else being the real culprit, as such the chain of evidence can be considered to be complete as to show that in all probabilities the crime must have been committed by the appellant. For this the appellant sleeping in the same room as the deceased was sleeping and that the appellant did not suffer any injuries were held as the circumstances to rule out the possibility of accidental fire. Since the appellant had not explained how she came out of the room without any burn injuries and deceased Mandabai had suffered injuries, coupled with the kerosene residues traced on the frock of Nikita, the Sessions Court held that adverse inference can be drawn that the appellant set fire to the house. The fact that she was the second wife and the husband of the appellant had executed an agreement transferring his land in favour of deceased Mandabai was held as the motive to commit the offence, more particularly since she wanted to establish her dominance in the house.

6. The High Court while considering the matter and reappreciating the evidence had discarded the extra-judicial confession and further disbelieved the evidence of PW-1 which had been relied upon by the Sessions Court. The High Court was of the view that Gajanan (PW-1) the father-in-law who was the informant could not have happily accepted the appellant as the second wife of his son when he had already got married to deceased Mandabai. This was the reason for the High Court for not finding it worthy of placing reliance on the extra-judicial confession stated to have been made to him that she had sprinkled kerosene and set fire. In that regard, the High Court had appropriately taken note from the decision rendered by this Court indicating that extra-judicial confession is a weak evidence by itself.

7. The High Court has thereafter taken note of the evidence tendered through Vijay (PW-4) and the Police Sub-Inspector Phad (PW-8) with regard to the recovery of the kerosene can at the instance of the appellant when she was in police custody. The recovery was disbelieved since the said can had not been sent for chemical analysis. As such the said circumstance accepted by the Sessions Court was also discarded. Further, the oral dying declaration said to have been made to a sister of the deceased Chhaya (PW-2) had been disbelieved by the trial court which was also approved and was noted as not reliable, by the High Court. The dying declaration recorded by the police head constable was taken note. The High Court ultimately arrived at its conclusion that the appellant is guilty of committing the offence since admittedly the appellant had not sustained the slightest injury due to the fire which means that she left the house well in advance to the spreading of fire. The circumstance held against the appellant is that she did not try to alarm the deceased Mandabai and her children to leave the house so as to save them from fire, nor did she try to bring the small children out of the house to save their lives. The High Court further assumed that she did not shout immediately and waited until the deceased Mandabai and her children were fully caught by flames.

8. After referring to the abovesaid circumstance, the High Court ultimately recorded its conclusion as hereunder: -"26. All the above circumstances speak volumes about the guilty mind of the appellant. It is only after she saw the deceased Mandabai coming out of the house along with her burning daughter, that she raised shouts to make a show that she was totally innocent. In the circumstances, the absence of any injury on her person also would be a material circumstance to prove the guilty mind of the appellant. If that be so, only because the deceased Mandabai stated that she had no suspicion against anybody and particularly did not raise suspicion against the appellant behind the incident, it cannot be said that the dying declarations (Exhs. 37 and

38) would be helpful to the appellant to establish her innocence.

27. The burnt frock of the deceased Nikita was seized vide panchnama (Exh. 34). PSI Phad (PW 8) (Exh.48) deposes that he sent the said frock to the C.A. for analysis and report vide letter (Exh.50). The C.A. report (Exh.50) shows that kerosene residues were detected thereon. It is, thus, clear that kerosene was used for setting the deceased Nikita on fire.

28. The marriage certificate (Exh.29) shows that the marriage of the appellant and accused No.2 was registered on 18.02.2006. The agreement (Exh.31) has been executed on 17.02.2006 i.e. one day prior to registration of marriage of the appellant with accused no.2. From the contents of this

agreement, it seems that the deceased Mandabai was rather skeptic about her future after the marriage of the appellant with accused no.2. Therefore, she obtained a written assurance from accused no.2 that after his marriage with the appellant, he would maintain the deceased Mandabai and her children properly. Accused no.2 further assured to transfer certain land in the name of the deceased Mandabai. The appellant started residing in the house of accused no.2 after the marriage. It was quite natural on the part of the appellant as well as that of the deceased Mandabai to dominate each other to have control over the family matters. The deceased Mandabai and her children certainly would have come in the way of the appellant in establishing her primacy in the house. It is difficult to establish motive by any direct evidence. It has to be inferred on the basis of the attending circumstances. From the facts and circumstances emerging from the evidence, it is clear that in order to have the dominating position in the house, the appellant finished the deceased Mandabai and her children.

29. The appellant alone was inside the house in the night of the incident besides the deceased Mandabai and her children. As stated above, she went out of the house much prior to spreading of the fire, In view of Section 106 of the Evidence Act, she was under an obligation to explain the circumstances, which were within her special knowledge, under which the fire erupted. She did not at all discharge this burden by giving any explanation behind eruption of fire. All these circumstances clearly show that it is the appellant, who poured kerosene around the persons of the deceased Mandabai and her children and set them on fire.

30. The prosecution established beyond reasonable doubt that it is the appellant only, who set the deceased Mandabai and her children on fire with a view to remove them from her marital life with accused no.2. If that be so, in view of the medical evidence, the deaths of the deceased Mandabai and her children would certainly be homicidal. The appellant set the dwelling house on fire. The learned trial Judge rightly convicted the appellant of the offences punishable under Sections 302 and 436 of the I.P.C.

We concur with the findings recorded by the learned trial Judge holding the appellant guilty of the said offences. We further concur with the order of sentence passed by the learned trial Judge against the appellant. The appeal is devoid of substance. It is liable to be dismissed."

9. In the above background, having heard Mr. Sudhanshu S. Choudhari, learned counsel for the appellant and Mr. Sachin Patil, learned counsel on behalf the respondent-State of Maharashtra we have perused the material on record.

10. As noted, the conclusion as reached by the High Court would indicate that the evidence tendered on behalf of the prosecution has been discarded as not trustworthy but ultimately the conclusion has been reached on the assumption made only due to the fact that the appellant had not suffered injuries in the fire accident. It is no doubt true that the incident which occurred in this case, if caused by any person with an intention to cause death, is certainly gruesome as it resulted in the death of three persons of which two were small children and is unpardonable. However, in a case where the appellant was proceeded against mainly based on the extra-judicial confession said to have been made to her father-in-law namely Gajanan (PW-1) and the said evidence has been

disbelieved by the High Court as not being trustworthy, the issue would be as to whether the chain of circumstances to convict the appellant is complete.

11. We have extracted the reasons assigned and conclusion reached by the High Court in the earlier portion of this order only to note that the High Court has held the appellant guilty more on preponderance of probability rather than reaching a conclusion beyond reasonable doubt. Though it has employed the phrase 'beyond reasonable doubt' in its concluding paragraph, the reasoning preceding the same are only conjectures and surmises. The sole circumstance noted by the High Court with reference to the evidence is that the burnt frock of deceased Nikita was seized, vide a Panchnama (Exhibit 34) and the evidence of PW□8 that the frock had been sent for chemical analysis and the report as per Exhibit 50 shows that Kerosene residues were detected thereon. In that circumstance, the High Court has held that kerosene was used for setting the deceased Nikita on fire. Even if that was taken as a circumstance in the chain, the same was insufficient unless the other circumstances in the chain were connected to point at the appellant. In that regard, what is relevant to be noted is that the High Court has in its earlier part of the reasoning disbelieved the recovery of the can which is stated who have smelt of kerosene since the said can had not been sent for chemical analysis and also the circumstance under which it was said to have been recovered.

12. If that be the position, even if the chemical analysis report referring to the frock is accepted there is nothing on record to connect that the appellant was responsible for the sprinkling of the kerosene or for the kerosene to have come in contact with the frock of Nikita which is said to have been recovered from the place of occurrence. That apart, the declaration of Mandabai, the deceased on 03.08.2006 discloses that since there is no electricity in the agricultural field, they sleep in the house and keep a lantern light in the night for which kerosene is obviously used. Further, it has come in evidence that in the said house cooking is also done and the material pertaining to the tractor including diesel can was also kept therein. Therefore, the circumstance that the appellant was not injured in the incident cannot be the basis to rely on the presence of kerosene stains on the frock as a circumstance that she had set fire by sprinkling kerosene.

13. The position of law is well settled that the links in the chain of circumstances is necessary to be established for conviction on the basis of circumstantial evidence. This has been articulated in one of the early decisions of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116. The relevant paragraphs are as hereunder: □"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 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.

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

> (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus: [SCC para 30, p. 43: SCC (Cri) p. 322] "Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unfailingly to the guilt of the accused."

14. Further the mere suspicion would not be sufficient, unless the circumstantial evidence tendered by the prosecution leads to the conclusion that it "must be true" and not "may be true". In that regard, it is necessary to take note of the decision of this Court in the case of Devilal Vs. State of Rajasthan (2019) 19 SCC 447, wherein this Court on noting the decision of the case Sharad Birdhichand Sarda (supra) has held as hereunder;

"17. It has further been considered by this Court in Sujit Biswas v. State of Assam 2013(12) SCC 406 and Raja v. State of Haryana 2015(11) SCC 43. It has been propounded that while scrutinising the circumstantial evidence, a court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straightjacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of

the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.

18. On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution and noticed by the High Court in the impugned judgment, to prove the charge is visibly incomplete and incoherent to permit conviction of the appellants on the basis thereof without any trace of doubt. Though the materials on record hold some suspicion towards them, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

19. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge, we find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same."

15. In that backdrop, a perusal of the judgment passed by the Session's Court as well as the High Court in the instant case, for its ultimate conclusion has made suspicion the reason for rendering conviction without there being any strong basis. The suspicion, however strong, cannot take the place of proof. Unfortunately, with the nature of observations made by the High Court as extracted above, it has ultimately held that the prosecution has established beyond reasonable doubt that it is the appellant only who has set the deceased Mandabai and her children on fire with a view to remove them from her marital life with accused No.2. If the facts as noted by the High Court lead to such suspicion, equally there are also circumstances which raise a doubt whether the appellant can be held guilty only because she was not injured in the incident. In that regard, what is to be noted is that the natural human conduct is that when there is any incident or accident the immediate reaction is to get away from the scene and save oneself. If in the middle of the night for whatever reason there was fire and if the appellant had woken up and noticed it a little earlier, the natural conduct is to run out of the house instead of going into the house which is burning to check on the other inmates. It takes a person lot of courage or be overdriven with compassion to get back into the house to save somebody else and not doing so may be considered as morally wrong for not coming to the aid of fellow human being in distress, but it cannot be a circumstance to hold a person guilty of a crime which is as serious as murder unless the other circumstances in the chain point to the accused so as to lead to an irresistible conclusion of being guilty.

16. If the appellant was responsible for causing the fire with the intention to kill Mandabai, would not she have closed the door after coming out of the house to ensure that she does not come out. On the other hand, Mandabai who came out alive and lived for a day has not blamed or suspected anybody including the appellant. She would have stated about the overt act if any was indulged in by the appellant. Her declaration is clear that the house caught fire and she and her children were caught in the fire. She did not state that the fire set on her had spread to the house. Further even as

per the statement of PW-1, that is Gajanan, the father-in-law, he was sleeping just outside the house and on hearing the appellant shouting he woke up and the deceased had stated that he was awake when she came out. Neither has he stated of the efforts made by him to save the deceased. But it is only after the deceased and the granddaughter came out, steps were taken. One other circumstance is also that the admitted position is that the house had three rooms, one of which was occupied by PW-3 Piraji Mankari and his family, the fire accident was of the nature which had destroyed the entire house and also the adjoining cowshed etc. Even in that position the said Piraji Mankari and others were also not injured. Therefore, not being injured alone cannot be held as a circumstance to hold one guilty of having set fire to the house.

17. The High Court has further held the second marriage; the desire for domestic dominance and the execution of document for maintenance on 17.02.2006, that is, a day before registration of the marriage as a circumstance and motive, which we are unable to accept. This is for the reason that the marriage had been registered after an arrangement for maintenance was made in favour of the first wife for only a portion of the property which is a normal thing in such circumstance and it cannot be held as a strong motive for an alleged crime of the present nature where the appellant would destroy her own house and that too without there being any other incident when they have lived together in the same house and the fire incident has occurred after more than six months from the date of marriage. Therefore, if all these aspects are taken into consideration the doubts which arise in the mind would outweigh the reasons given by the High Court for pointing to the suspicion on the appellant and in that circumstance certainly the benefit of doubt should go in favour of the appellant.

18. The High Court holding the appellant guilty of pouring kerosene around the deceased and her children and setting them on fire since the appellant had failed to explain the reason for eruption of fire in view of such obligation to explain under Section 106 is also not sustainable in the present circumstance. As held in Sharad Birdhichand Sarda (supra) the failure to explain can only be held as an additional link to complete the chain of circumstance. In the instant case, since the other circumstances in the chain are not established, the same cannot be held against the appellant. On the other hand, the case itself is that the fire had erupted at midnight when the appellant and others were sleeping and she come out shouting. The explanation for the cause of fire by the appellant would have arisen only if there was any other evidence to the effect that the appellant was already awake and was outside even before the fire erupted.

19. Thus, taking into consideration all these aspects in the facts and circumstance of this case we are of the opinion that the appellant is entitled to be acquitted as the benefit of doubt weighs in her favour. We are therefore, unable to sustain the order of conviction of the appellant.

20. In the result, the judgment dated 12.10.2017 passed by the High Court affirming the conviction and sentence ordered by the Sessions Court is set aside. The appellant Parubai who is on interim bail is set at liberty and her bail bond shall stand discharged.

21. The appeal is, accordingly, allowed.

22. Pending applications, if any, shall stand disposed of.

.....J. (HEMANT GUPTA) .....J. (A.S. BOPANNA) New Delhi, August 10, 2021