Rumi Bora Dutta vs State Of Assam on 24 May, 2013

Equivalent citations: 2013 AIR SCW 3517, 2013 (7) SCC 417, 2013 CRI. L. J. 3260, AIR 2013 SC (CRIMINAL) 1894, (2014) 1 ALD(CRL) 67, (2013) 3 DLT(CRL) 69, (2013) 7 SCALE 535, (2013) 5 GAU LT 1, (2013) 2 CURCRIR 676, (2013) 55 OCR 1030, (2013) 82 ALLCRIC 418, 2013 (3) SCC (CRI) 544, 2013 (127) AIC (SOC) 1 (SC), AIR 2013 SUPREME COURT 2422

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Bench: Dipak Misra, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO 737 OF 2006

Rumi Bora Dutta ... Appellant

Versus

State of Assam ...Respondent

CRIMINAL APPEAL NO 738 OF 2006

Probal Dutta ... Appellant

Versus

State of Assam ...Respondent

J U D G M E N T

Dipak Misra, J.

The factual score from which the present appeals arise has a sad and sordid story to tell reflecting the morbid obsession of the appellants with lust, abandonment of kernel of all human virtues and deep addiction with carnal desires. The deceased- husband, as expected, trusted the wife, Ruma Bora, and such an emotional trust has always been regarded as a great complement to any person. The other appellant, Probal, nephew of the deceased, was shown affection, a beautiful and sacred sentiment in a human being and also charity, the wonder of life without a ceremony, and kept at his home to prosecute his studies but, an obnoxious one, the infidelity of the wife with incurable

sensuality and the monstrous ingratitude of the nephew, brought his tragic end. The falsehood of both the wife and the nephew culminated in the murder of the deceased, an Upper Division Clerk in the office of the Deputy Superintendent of Schools, Jorhat. The wife, a teacher in the school and the nephew, a student of Class-X, ultimately faced trial and being convicted by the learned trial Judge under Section 302 read with 34 of Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment of life and to pay a fine of Rs.10,000/-, in default of payment of fine, to suffer further rigorous imprisonment for three months, preferred Criminal Appeal No. 16 of 2002 before the Gauhati High Court which affirmed the conviction and the sentence. Hence, they have preferred the present appeals by special leave.

2. Shorn of details, the prosecution case is that on 4.6.1997 about 4.30 a.m. the police came to know that at 1.30 a.m. one Naren Dutta had been hospitalized on being hit by a bullet by the unknown miscreants. The police rushed to the hospital and found him dead. A general diary entry was made on 4.6.1997 and thereafter the police moved to the house of the deceased at Gajpuria Village. When the Investigating Officer reached the house, wife of the deceased lodged a written FIR, Ext.-2, stating that about 1.30 a.m. three unknown persons with their faces covered with black clothes had entered into the house, tied her up with the point of pistol and while one guarded her, two others entered their bed room and after 15 minutes they came out. As alleged, they lifted their child, Pranjal, and took him out. When she shouted, her nephew Probal Dutta, who was inside the house, came out and both of them looked for the child first and found him from the road. Thereafter, they proceeded to the bed room where the deceased was lying on the bed and a rope had been fastened around his neck. They moved him to the civil hospital where he was declared brought dead by the doctor. The Investigating Officer on enquiry found the story narrated, vide Ext. P-2, to be absolutely false, concocted and incredible and, accordingly, arrested the accused persons. In course of investigation Probal Dutta confessed before the police that he along with his aunt had strangulated the deceased and he had stabbed him on his chest. Similar confession was made by the wife. Thereafter a case under Section 302/34 IPC was registered and during investigation Probal Dutta, in pursuance of his disclosure statement, Ext.-6, led to discovery of the two pieces of handle of the skipping rope and the knife hidden inside the house. The wife led to the discovery of the skipping rope that was used for strangulation. Thereafter, the investigating agency got the post mortem done, recorded the statements of the witnesses and after completing all the formalities placed the charge-sheet before the competent court which, in turn, committed the matter to the court of Session.

3. The accused persons abjured their guilt and claimed to be tried.

4. The prosecution, in order to bring home the charge, examined nine witnesses and two witnesses were examined as court witnesses. The defence chose not to adduce any evidence.

5. The trial court, appreciating the material brought on record, came to hold that death was homicidal in nature; that there was no bullet injury on the chest but a stab injury with the knife that had been seized; that though the confession made before the police officer was not admissible in evidence, yet the statement that provided information pertaining to recovery was admissible; that the recovery made by the prosecution was absolutely believable; that the story put forth by the wife

being disowned by her was a circumstance against the accused to be taken note of; and that there was motive as the evidence on record would show existence of illicit relationship between the accused persons and, accordingly, found them guilty and imposed the sentence as has been stated hereinbefore.

6. On an appeal being preferred the High Court re-appreciated the evidence, took note of all the circumstances and opined that the prosecution had proven the charge to the hilt and consequently declined to interfere with the impugned judgment of conviction.

7. We have heard Ms. Kiran Bhardwaj, learned counsel for the appellant, and Mr. Navnit Kumar, learned counsel for the respondent-State.

8. First we shall refer to the post mortem report conducted by Dr. Narayan Bardoloi, PW-6. The relevant part of the report is as follows: -

> "(1) The dead body was in stout condition. One stab wound on the right side of the chest wall, size 5 c.m. lateral to the sternum, measuring 1 c.m. in length and 1.5 c.m., in length and 1.5 c.m. in depth. The wound is gapping. Clotted blood seen at the external margin and at the level of the rib. Underlying bony cage is intact.
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> (2) One transverse, continuous ligature mark seen around the neck at the level of thyroid cartel edge. The breadth of the mark is about 4 m.m. The base of the mark is redid and there is achymosis at the edges of the ligature mark. On dissection – the subcutenous tissue is found acchymosed.

The head and the facre are congested. The tongue is swelled.

The scalp, membrance and brain are all congested Pleaurae, lungs, pericardium and heart are all congested (affected) Paritonium, stomach, intestine are also congested.

The injuries were ante mortem."

9. In his report he has opined that the cause of death is due to asphyxia following strangulation and the same was caused with a rope. It is further opined that the injury on the chest of the deceased was caused with some pointed weapon like dagger. Thus, from the post mortem report it is manifest that the FIR lodged by the wife was a maladroit attempt to save her skin. It was totally false. It is interesting to note that she in her statement under Section 313 of the Code of Criminal Procedure has disowned the same. We would advert to the effect of the same at a later stage.

10. It is seemly to state here that the whole case of the prosecution rests on the circumstantial evidence. The learned trial Judge as well as the High Court has referred to certain circumstances. When a case is totally hinges on the circumstantial evidence, it is the duty of the Court to see that the circumstances which lead towards the guilt of the accused have been fully established and they must lead to a singular conclusion that the accused is guilty of the offence and rule out the

probabilities which are likely to allow the presumption of innocence of the accused.

11. More than six decades back this Court in Hanumant Govind Nargundkar v. State of M.P.[1], had laid down the principles as under:-

> "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 be 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."

12. In Sharad Birdhichand Sarda v. State of Maharashtra[2], the five golden principles which have been stated to constitute the panchsheel of the proof of the case based on circumstantial evidence are (i) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established, (ii) 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, (iii) the circumstances should be of a conclusive nature and tendency, (iv) they should exclude every possible hypothesis except the one to be proved, and (v) 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.

13. In C. Chenga Reddy and others v. State of A.P.[3], it has been held that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

14. Keeping the aforesaid principles in view the circumstances that have been established in the present case are required to be scrutinized.

15. The principal criticism advanced against the analysis in the impugned judgments by the learned counsel, appearing for the appellant, is that the trial court and the High Court have misdirected themselves in accepting the factum of recovery as admissible in evidence. It is her further submission that the recovery part being a part of the confession before a police officer should have been discarded and once the said fact is kept out of consideration, the dents into other circumstances would be manifest and the chain of circumstances would be incomplete to establish the charge against the accused-appellants.

16. In this context, we may refer with profit to the ruling in State of Maharashtra v. Damu S/o Gopinath Shinde and others[4] wherein it has been observed that the basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence, the legislature has permitted such information to be used as evidence by restricting the admissible portion to the minimum. Thereafter, the two learned Judges proceeded to state as follows: -

> "It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in Pulukuri Kottaya v. Emperor[5] is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

17. In State of Punjab v. Gurnam Kaur and others[6], it has been laid down that if by reason of statements made by an accused some facts have been discovered, the same would be admissible against the person who had made the statement in terms of Section 27 of the Evidence Act.

18. In Aftab Ahmad Anasari v. State of Uttaranchal[7], after referring to earlier decision in Pulukuri Kotayya (supra), a two-Judge Bench opined in the context of the said case that when the accused was ready to show the place where he had concealed the clothes of the deceased, the same was clearly admissible under Section 27 of the Evidence Act because the same related distinctly to the discovery of the clothes of the deceased from that very place.

19. In Bhagwan Dass v. State (NCT) of Delhi[8], relying on the decisions in Aftab Ahmad Anasari (supra) and Manu Sharma v. State[9], the Court opined that when the accused had given a statement that related to discovery of an electric wire by which the crime was committed, the said disclosure statement was admissible as evidence.

20. In the case at hand, both the accused have led to discovery of the knife and the skipping rope used in the crime. It was within their special knowledge. The medical evidence corroborates the fact that the deceased died because of strangulation and further there was a stab injury on his chest. Thus, the weapon and the other articles have direct nexus with the injuries found in the post mortem report.

21. At this juncture, as mentioned earlier we proceed to advert to the issue pertaining to falsehood. In this context we may fruitfully refer to the authority in State of Maharashtra v. Suresh[10], wherein it has been held that a false answer offered by the accused when his attention is drawn to the circumstances, it renders the circumstances can be of inculpating nature. In such a situation a false answer can also be counted as providing "a missing link" for completing the chain. In the case at hand, the factum of recovery through the witnesses has been proven that the accused-persons had

led to recovery. When it was put to them they had given an answer in the negative in a non-challant manner. The incriminating materials were concealed and they were discovered being led by the accused persons. In the case of Suresh (supra) it has been held that there are three possibilities when an accused points out the place where the incriminating material is concealed without stating that it was concealed by himself. Elaborating on the three possibilities the Court proceeded to state as follows: -

> "One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is well-justified course to be adopted by the criminal court that the concealment was made by himself"

22. Tested on the anvil of the aforesaid principle the factum of recovery is proven beyond reasonable doubt by the prosecution.

23. Presently to the cumulative effect of the circumstances brought by way of evidence. The prosecution witnesses have clearly deposed that the deceased was lying on the bed and they were told about the arrival of the miscreants and causing the injury. It is also brought in evidence that apart from the appellants the old mother of the deceased was in the house. The learned trial Judge as well as the High Court has rightly disbelieved the attack by any miscreant. It is also interesting to note that the child was immediately recovered by the accused Probal from the road. All probabilities thought to be covered by the accused-appellants gradually melted and their complicity in the crime and the criminality of the mind stood revealed. On a studied scrutiny of the evidence on record, we are convinced that the circumstances that have been proven are that (i) occurrence took place about 1.30 a.m.; (ii) the deceased was found lying dead on his bed;

(iii) the accused appellants lived with him in his house and were present at the time the incident took place; (iv) accused Probal made a statement under Section 27 of the Evidence Act and led the police to recover the knife, the weapon of assault and the missing handle of the skipping rope; (v) the skipping rope was found in the bed room and was recovered at the instance of the wife; (vi) the accused-appellant Rumi Bora gave a false information and tried to mislead the police; (vii) the wife had disowned the information in her statement under Section 313 Cr.P.C; (viii) that the accused persons had not offered any explanation with regard to recovery of weapons from their house except making a bald denial; (ix) there is evidence on record that the wife had developed an illicit relationship with the nephew of the deceased, which provides a motive; (x) nothing had been stated in their examination under Section 313 that any one had any animosity with the deceased; (xi) nothing was stolen from the house; and (xii) the child was immediately found from the road.

24. The aforesaid circumstances clearly establish that the prosecution has proved the guilt of the accused-appellants and the circumstances are conclusive in nature to exclude every hypothesis but the one proposed to be proved. The chain of evidence is absolutely complete. Thus, we have no hesitation in affirming the judgment of conviction and order of sentence passed by the learned trial Judge that has been given the stamp of approval by the High Court.

25. Consequently, the appeals, being devoid of merit, stand dismissed.

.....J. [Dr. B.S. Chauhan] .....J. [Dipak Misra] New Delhi;

May 24, 2013.

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[1] AIR 1952 SC 343
[2] (1984) 4 SCC 116
[3] (1996) 10 SCC 193
[4] (2000) 6 SCC 269
[5] AIR 1947 PC 67
[6] (2009) 11 SCC 225
[7] (2010) 2 SCC 583
[8] AIR 2011 SC 1863
[9] AIR 2010 SC 2352
[10] (2000) 1 SCC 471
