State Of U.P vs Dr. Ravindra Prakash Mittal on 28 April, 1992

Equivalent citations: 1992 AIR 2045, 1992 SCR (2) 815, AIR 1992 SUPREME COURT 2045, 1992 (3) SCC 300, 1992 AIR SCW 2417, 1992 ALL. L. J. 898, 1992 CRIAPPR(SC) 343, (1992) 2 SCR 815 (SC), 1992 (2) SCR 815, (1992) 3 JT 114 (SC), (1992) 2 RECCRIR 25, (1992) 2 ALL WC 1105, (1992) 2 CRICJ 85, (1992) MAD LJ(CRI) 742, (1992) SCCRIR 564, (1992) 2 ALLCRILR 57, (1992) 2 CURCRIR 71, (1992) 2 SCJ 549, (1992) 2 CRIMES 664, (1992) ALLCRIR 346, 1992 SCC (CRI) 642

Author: S.R. Pandian

Bench: S.R. Pandian, M. Fathima Beevi

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
DR. RAVINDRA PRAKASH MITTAL

DATE OF JUDGMENT28/04/1992

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
FATHIMA BEEVI, M. (J)

CITATION:
1992 AIR 2045 1992 SCR (2) 815
1992 SCC (3) 300 JT 1992 (3) 114
1992 SCALE (1)937

ACT:
Penal Code, 1860-Sections 302, 201-Appeal against acquittal by High Court-Circumstantial evidence-Ingredients-Links of chain of circumstances established-Offences proved.
Penal Code, 1860-Sections 302, 201-Conviction of accused by Trial Court-Aquittal by High Court-Appeal against High Court's judgment suffering from illegality-Delay in disposal of appeal-Whether a ground for non-interference of the findings of High Court.

HEADNOTE:

The prosecution's case was that the accused-respondent was a private medical practitioner and the deceased was his second wife. He married her on 30.7.1971, when his first marriage was dissolved by an ex parte decree in a suit for dissolution filed by his first wife.

The respondent and his widowed mother and his two married brothers and one unmarried younger brother were living under a common roof having common mess, but in separate rooms in the first floor of their house.

The accused was a chronic alcoholic addict and he was having a large circle of friends. He used to come to his house in odd hours in drunken state. This was resented by his wife, the deceased. She insisted the accused to return home early. On account of this, there were frequent quarrels between them. Accused, disliking his wife's interference in his private affairs, even started suspecting the fidelity of his wife. It was said that the accused had on more than one occasion unleashed threats to shoot and kill the deceased.

On the night of 11.10.1971 the accused and the deceased took their bed inside their room. On the next morning, on seeing smoke out of the bed room of the accused, a large number of people gathered at the house of the accused.

816

At about 7.30 a.m., PW-2 and another, the two brothers of the deceased arrived there with `Ahoi Bayna' in baskets. Seeing the crowd in front of accused house, they entertained a suspicion. When they were told that the accused's wife had set fire to herself, throwing the `Bayna' baskets in the courtyard, they went up to the first floor and saw the dead body of their sister lying on the floor with extensive burns all over her body. When they confronted the accused, the accused told them that when he had gone to the latrine in the early morning, the deceased committed suicide, for no visible reason. The deceased's brothers did not believe the version of the accused. They shouted that the accused murdered their sister. While they were quarrelling, PW-4, a Head Constable came to the scene found the accused standing in his night-gown. P.W.4 was informed by the accused that the decreased had burnt herself.

The S.P.(PW-3) was informed over telephone by the accused that his wife committed suicide and he instructed the accused to inform the local police. He come to the scene at about 9.15 a.m., after directing the local police to come to the scene. After inspection, the S.P. left, giving instructions to the Investigating Officer.

The Investigating Officer (PW-4) examined the inmates of the house and made an entry in the General Diary and registered a case against the accused.

The accused was charged u/ss.302 and 201, IPC for the committing the murder of his wife and for causing the evidence of the offence of murder to disappear with an

intention of screening himself from legal punishment, by burning the dead body by sprinkling kerosene oil.

The Trial Court convicted the accused-respondent u/ss.302 and 201 IPC and sentenced him to suffer imprisonment for life and rigorous imprisonment for a period of 3 years, respectively with a direction that the sentences were to run concurrently.

The High Court allowed the appeal and acquitted the accused-respondent.

Against the acquittal passed by the High Court, the present appeal was directed by the State, contending that the cumulative effect of all the pieces of circumstantial evidence brought on record by the prosecution

817

justified the conviction of the respondent.

The respondent submitted that the circumstances relied upon by the prosecution were not clinching the issue; that the presence of the respondent at the scene house at the time of the occurrence was disproved by CWs-1 and 2 and also by the evidence of PWs-6 and 9 did not support the prosecution case; that in the early hours of 12.10.1971 he at the request of PW-9 paid a visit to one Shashi's house as the latter was suffering from some ailments and he returned at about 7.45 or 8.00 a.m. to his house and came to know about the incident; that the brothers of the deceased came to his house only at 11.15 a.m. and that too on his telephonic information to them; that the deceased herself had created a hell of her own in the family and ultimately committed suicide by pouring kerosene on her and setting fire; that on the advice and prescription given by a Doctor, the deceased was put on medicine containing barbiturates, the traces of which were found in her visra; that the symptoms found by PW-1, the Medical Officer were not in support of the conclusion arrived at by PW-1, whose opinion was only attributable to his inexperience or negligence; that the bones could have been fractured due to excess heat and the death could have been on account of shock due to the burn injuries; that the cause of death could not have been due to strangulation, but it was due to suicide by pouring kerosene and setting herself on fire and the fractures of the bones and other symptoms found on the body should have been due to the intensity of the heat and that the evidence of PW-1 supporting the prosecution version should not be accepted, as the Medical Officer gave false evidence on account of some heated exchanges between him and PW-1 over an election held among the medicos which took place about 2 or 3 days before occurrence;

Allowing the appeal of the State, this Court,

HELD:1.01 . There is no direct evidence to connect the respondent with this offence of murder and the prosecution entirely rests its case on circumstantial evidence. [827 C]

1.02. The essential ingredients to prove guilt of an accused person by circumstantial evidence are:

(1) the circumstances from which the conclusion is drawn should be fully proved;

818

(2) the circumstances should be conclusive in nature;

(3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;

(4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.

[827 D-F]

1.03. The circumstances which are established as having closely linked up with one another are as follows:

(1) The motive for the occurrence.

(2) The room in which this tragic and pathetic incident took place was in the exclusive possession and occupation of the respondent and the deceased.

(3) The occurrence had happened in the wee hours of 12th October 1971 when nobody would have got an ingress into the room wherein the husband and wife admittedly slept.

(4) The evidence of PW-2, swearing that the respondent was found in the scene house at 7.15 a.m.

(5) The presence of the respondent inside the room wearing night-gown when PW-4 went to the scene room.

(6) The position of the dead body lying on the ground within a cot frame with extensive burns except on the back and lumbar regions.

(7) The presence of the traditional external visible features of strangulation as well as the internal injuries establish the use of violence.

(8) The positive opinion of PW-1 who conducted the autopsy on the dead body of the deceased, stating that the death was due to strangulation and the burns were post mortem.

(9) False plea of alibi and the conduct of the respondent feigning innocence.

819

(10) The intrinsic value of the inviolable and impregnable evidence let in by the prosecution completely and conclusively establishing the links of the entire chain of circumstances as a whole and not in fragments proving the guilt of the respondent/accused. [828 B-H]

1.04. The conclusion arrived at by the Trial Court is logical, tenable, and reasonably sustainable and that the High Court after holding that the death of the deceased was homicidal has gone wrong in recording the impugned order of acquittal on erroneous and incredulous reasons.

[835 G-H]

Rama Nand v. State of Himachal Pradesh, [1981] 1 SCC 511; Gambir v. State of Maharashtra, [1982] 2 SCC 351;

Earabhadrappa v. State of Kamataka, [1983] 2 SCC 330; Ram Avtar v. State of Delhi Administration, [1985] (supp.) SCC 410 and Chandra Mohan Tiwari v. State of Madhya Pradesh, JT (1992) 1 SC 258, followed.

Modi's Medical Jurisprudence and Toxicology, 21st Edition at page 23; Taylor's Principles and Practice of Medical Jurisprudence, referred to.

2.01. The plea of the respondent that since the occurrence took place in the year 1971 and that more than 14 years have now elapsed since the delivery of the judgment by the High Court in October 1977, this Court be pleased not to disturb the finding the acquittal at this length of time has to be summarily rejected when the facts and the impelling circumstances surrounding the present case cry for justice which in turn demands for awarding proper punishment according to law, is fervent and inexorable.

[836 A-B]

2.02. If the High Court's judgment of acquittal reversing the well reasoned judgment of the Trial Court, convicting the respondent is affirmed, it will be nothing but a mockery of justice and will also amount to perpetration of gross and irreparable injustice. Moreover, when a judgment appealed against, suffers from illegality or manifest error or perversity, warranting an interference at the hands of an Appellate Court in the interest of justice on substantial and compelling reasons, the mere delay in the disposal of the appeal will never serve as a ground for non-interference and on the other hand, the Appellate Court is duty bound to set at naught the miscarriage of justice. [836 C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 124 of 1979.

From the Judgment and Order dated 11.10.1977 of the Allahabad High Court in Criminal Appeal No. 2370 of 1972.

R.K. Singh and A.S. Pundir for the Appellant. R.L. Kohli and J.M. KHanna for the Respondent. The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. This appeal is preferred by the State of U.P. on being aggrieved by the judgment dated 11.10.1977 rendered by the High Court of Allahabad in criminal Appeal No. 2370 of 1972 whereby the High Court has allowed the appeal, preferred by the respondent/accused, namely, Dr. Ravindra Prakash Mittal.

The respondent took his trial on the allegations that on the intervening night of 11/12th October 1971 inside the house in Mohalla Moreganj Police Station Kotwali, Saharanpur committed the murder of his wife Smt. Kamlesh; burnt the dead body by sprinkling the kerosene oil and thereby caused the evidence of the offence of murder to disappear with an intention of screening himself from legal

punishment. On the above allegations, he stood charge under two heads, that is under Sections 302 and 201 IPC.

Adumberated in brief, the facts of the prosecution case can be summarised as follows:

> The respondent Dr. Ravindra Prakash Mittal aged about 29 years in 1971 was a private medical practitioner at Saharanpur city. He married one Smt. Mithlesh, but the marriage was dissolved by an ex-parte decree in a suit for dissolution filed by the wife. The respondent thereafter married on 30th July 1971 the deceased Smt. Kamlesh, aged about 20 years who was a resident of Jagadhri. The family of the respondent consisted of his widowed mother Smt. Darshnadevi (CW-1), and three brothers, namely, Bhupendra Prakash (CW-2), Narendra Prakash and Virendra Prakash, of whom the first two brothers were married while Virendra Prakash was unmarried. It is stated that his father had died of heart attack a few months before his second marriage.

They all lived under common roof, having common mess but in separate rooms in the first floor of their house with their respective wives and children. Smt. Darshnadevi and her younger son Virendra Prakash had occupied a separate room. The respondent had his clinic in the ground floor. PW-6, by name, Mohd. Aslam alias Chini was working as a Compounder in the clinic, occasionally doing domestic work.

Smt. Kamlesh had two brothers, by name, Mamchand and Suresh Chand (PW-2). Her elder sister's husband is one Nagesh Agarwal (PW-7). It transpires from the evidence that after her mother's death she had mostly lived in her elder sister's house till her marriage. After the marriage, she visited her parents and brother-in-law twice or thrice in quick succession and wrote some letters, two of which are marked as Exts. Ka-3 dated 18.9.1971 and Ka-4 dated 19.9.1971. The case of the prosecution is that some time after the marriage the relationship between the deceased and the respondent became strained. It is said that the respondent had on more than one occasion unleashed threats to shoot and kill the deceased. While it was so, on the fateful night the respondent and the deceased after taking their dinner slept in a room which was in their exclusive possession. In the morning the dead body of the deceased Smt. Kamlesh smelling of kerosene was found by the inmates of the house inside the bed room lying within a cot frame of the floor. The respondent and his family members came out with a statement that deceased had committed suicide by sprinkling kerosene and setting herself on fire. The respondent telephoned to the Superintendent of Police, Saharanpur (PW-3) and informed that his wife Smt. Kamlesh had committed suicide. PW-3 asked the respondent to inform the local police and told that he would himself soon reach the spot. Meanwhile, PW-4, Ram Krishan, a Head constable attached to the outpost Mali Gate came to the scene place on his way to Kotwali. He on receipt of the information about the death of Kamlesh telephoned to Kotwali Police Station and informed PW-13, another Head Constable about the incident. This piece of information passed on by PW-4 was entered in the General Diary (Ext. Ka-28) at 8.00 a.m. reading that PW-4 had informed over telephone that the wife of the respondent had died of burns. The Sub Inspector of Police, Ganga Ram Nagar (PW-10) in whose presence the telephonic message from PW-4 had been received at Kotwali, immediately proceeded to the scene

accompanied by another S.I. Asthan and Inspector Wajid Ali Khan (PW-14). They all reached the scene at about 8.30 A.M. and found a crowd of about 150 to 200 persons at the scene house. On reaching the scene house, PW-10 found a basket with some snacks and sweets lying scattered in the court-yard. The police party went to the upstairs and found the respondent and other members of the family present. Insides the bed room the dead body of the deceased was found lying on the floor within the frame of the cot with extensive burns. An inquest was held over the dead body. Certain photographs (Exts. A-D, F and G) were caused to be taken with the help of PW-11, a photographer. The inquest report is filed as Ext, Ka-8. After sending the dead body for post-mortem, PW-10 inspected the scene place and prepared the site plan (Ext. Ka-10). The room in which the dead body was lying had its door opening to the inner balcony towards east. Adjacent to this room there was a small kitchen containing utensils and other articles. The wooden frame of the cot was scorched. About two steps away from the dead body a match box containing a large number of burnt match sticks was found lying. A thin layer of smoke was present on the walls and ceiling of the room. A plastic bucket with water was found two or three steps away from the dead body, but there were no signs of water having been poured either on the dead body or in the scene room. A medicine box was found inside the room with an injection syringe fitted with a needle. A five litre kerosene oil tin was in the room containing about a litre of kerosene. All the articles (Exts. 4 to 22) which were found inside the room were recovered under Memos (Exts. Ka-11 to Ka-17). Meanwhile, the Superintendent of Police (PW-3) reached the spot by about 9.15 a.m. He also inspected the place of incident and left the scene after giving instructions to the Investigating Officer. The Investigation Officer after examining the inmates of the house came to the station; made an entry in the General Diary (Ext. Ka-18) and registered a case against the respondent under Section 302 IPC on entertaining a suspicion against him on the materials that he had collected.

PW-1, the Medical Officer attached to the District Hospital, Saharanpur, conducted necropsy on the dead body of the deceased on the following day i.e. 13.10.1971. The dead body with blackening of the skin was smelling kerosene. The hands of the deceased were clenched. The eyes were congested and the eye-balls were prominent. The tongue was swollen and protruding out and also compressed between the teeth. Blood mixed with froth was coming out through nostrils. On internal examination, the Medical Officer found the 6th and 7th ribs fractured. The right cornua of the Hyoid bone was also fractured. The brain was congested; the thorax had extensive burns in the upper region. There was a contused area measuring 5 cm. X 4 cm. on the side of th fracture. On the right side of the neck there was clotted blood in an area of 4 cm. X 3 cm. and the muscles at that place were lacerated. The larynx and trachea and both the lungs were all congested and they contained dark fluid blood. The inner layers of the right carotid artery was congested. The bladder was empty. The Medical Officer is of the opinion that death was due to strangulation and that the fractures on the body were ante-mortem. His report is marked as Ext. Ka-1. In the cross-examination, the Medical Officer has stated that the deceased could have died on 12.10.1971 between 7.00 a.m. and 8.00 a.m. in the morning, which he has clarified in his re-examination stating that this opinion is subject to a margin of 2 to 4 hours on either side. He gave a supplementary report, stating that the fractures of the bones were ante-mortem but the burns were-post-mortem. The supplementary report is marked as Ext. Ka-2. The report of the Chemical Examiner (Ext. Ka-38) revealed traces of barbiturates in the portions of the viscera of the deceased.

The Investigating Officer searched for the respondent/accused, but he could not secure him as he was not available. He examined the inmates of the house, and the compounder (PW-6) and some others. Further investigation was taken up by the Inspector of Police (PW-

14) on 14.10.1971. PW-14 received the two letters (Exts.Ka- 3 and Ka-4) on being handed over by PW-7. At about 11.00 p.m. on that day the respondent was arrested when the latter was proceeding in a car towards Dehradun and interrogated. After completing the investigation the charge sheet (Ext.Ka-

33) was laid.

The respondent denied his complicity with the offence in question and gave a lengthy statement. According to him, he was having cordial relationship with his wife and he did not cause the death of his wife or he sprinkled kerosene on her dead body. On the early morning of the date of the occurrence he, leaving his wife in the kitchen, went outside to examine a patient accompanied by one Jageshwar (PW-9) and returned only at about 7.45 or 8 a.m. and found his wife lying dead. He further adds that he immediately informed the Superintendent of Police (PW-3) about this tragic incident.

There is no direct evidence to prove to charges levelled against the respondent and the prosecution endeavours to establish the guilt of the respondent only on the circumstantial evidence - both oral and documentary. 14 witnesses were examined on the side of the prosecution of whom PW-6 (the Compounder) and PW-9 (Jageshwar) were declared as hostile witnesses. In addition to the prosecution witnesses, the Trial Court examined the mother and a brother of the respondent as Court Witnesses 1 and 2. The substance of the evidence of the Court Witnesses is to the effect that the deceased was found dead inside the room; that they both threw water evidently to extinguish the fire and that the respondent was not in the house in the early morning. The Trial Court after analysing the evidence in extenso found thus:

> "In any case, the circumstances established are so patent and most of them are even accepted by the accused, that latches of the investigation, if any, have little bearing on their proof. The truthfulness of the evidence leading to them cannot, therefore, be questioned for any such reason..... ..... In the background of their strained relations and the suspicion lurking on the mind of the accused, it may be that on the deceased uttering something to his dislike, he suddenly jumped upon her and throttled her to death. Such an opportunity could scarcely be available to anyone else in the house with the result that the possibility of anyone else committing the murder can on the established facts and circumstances, be reasonably excluded in this case..... ..... In the circumstances, the chain of evidence, to my mind, can be considered to be so complete against him as to show that within all human probability the murder of Kamlesh must have been committed by him and none else. He can, therefore, be safely held guilty on the basis of these circumstances alone."

On the basis of the above findings, the Trial Court convicted the respondent under Sections 302 and 201 IPC and sentenced him to suffer imprisonment for life and rigorous imprisonment for a period of 3 years respectively with a direction that the sentences are to run concurrently.

Challenging the judgement of the Trial Court, the respondent filed criminal Appeal No. 2370 of 1972 before the High Court which for the reasons mentioned in its judgement allowed the appeal, set aside the conviction and sentences awarded by the Trial Court and acquitted the respondent holding that:

> "The prosecution has, therefore, not been able to establish the chain of circumstances. The circumstances as proved are not incompatible with the innocence of the appellant."

The present appeal is directed by the State on being aggrieved with the judgement of the High Court.

Before adverting to the rival contentions, adduced by the respective parties, we shall give a prelude to this incidence which in our opinion has become necessary to narrate since it serves as a strong motive for this heinous crime executed in an extremely cruel manner.

The father of the deceased had married thrice. His third wife was the deceased's mother, who died about 4 years before the occurrence. The deceased's father was working at Karatpur Sahab in Punjab. The deceased's sister Urmila is given in marriage to PW-7 and she had two brothers, namely, PW-2 and Mamchand. As Urmila had loved the deceased, Kamlesh, too much she brought Kamlesh with her while Kamlesh was 10 years old and educated her. At that time, the parents of the deceased were in Calcutta.

The respondent previously married one Mithlesh, daughter of one Ram Kishan, resident of Shamali. This marital tie did not serve long and ended in a divorce. The respondent married the deceased Kamlesh on 30.7.1971 and the marriage was celebrated in the house of PW-7 at Jagadhari. After the marriage, the deceased Kamlesh was living with her husband, respondent, occupying a separate room in the first floor of their house allotted to them.

The respondent, his widowed mother and three brothers were all living under a common roof having common mess. It is stated by PW-2 that the respondent was a chronic alcoholic addict and used to come to his house in odd hours in drunken mood. The respondent was also having a large circle of friends inclusive of one Mahesh Goyal, an Engineer with whom he used to spend his evenings. This was resented by the deceased who insisted the respondent to return home early. On account of this, there used to be frequent quarrels between the spouses.

PW-5, who is an independent and disinterested witness has testified to the fact that while he was in service as a bearer in Victoria Bar at Saharanpur serving liquor to the customers, he had seen the respondent often visiting that bar and taking wine. He further states that on the previous night, that is on the night of 11th October 1971 the respondent came to the Bar at about 8 or 9 p.m. and was there for half an hour drinking wine served by him and on the next early morning he heard about

the occurrence. It is the evidence of PW-7 that after the marriage, the deceased used to visit his house and also sent letters. As per the evidence of PWs 2 and 7 some time after the marriage, the relationship between the deceased and the respondent became strained and discordant and on account of that, the deceased was separately cooking her food on being compelled by the respondent.

The prosecution has marked two letters written by the deceased Exts. Ka-3 and Ka-4 dated 18.9.71 and 19.9.71 through PW-2. In both these letters, the deceased had given a brief note of the circumstances which ultimately led to her death stating that the respondent used to come to the house in odd hours in sozzled condition and threaten her life; that she would not resort to do anything to her life whatever the harassment might be at the hands of her husband and that if at all anything would happen to her life, it would be only at the hands of her husband. Of the two letters, Ext. Ka-3 was addressed to PW-2 and Ext.Ka-4 was addressed to PW-7. Besides, the respondent disliking the interference of his wife in his private activities and affairs, went to the extent of even suspecting the fidelity of his wife.

It was only in the above tragic circumstances, this shocking and horrifying incident took place in the wee hours of 12th October 1971. Admittedly, on the night of 11.10.1971 both the husband and wife (i.e. the respondent and the deceased) took their bed inside the room, allotted to them in the first floor of the house. On the next morning, on seeing smoke coming out of the bed room in the scene house a large number of neighbours and passers-by had gathered at the scene house. At about 7.30 a.m. PW-2 and his brother Mamchand arrived there with `Ahoi Bayna' in baskets from Jagadhri. PW-2 and his brother on seeing the crowd in the courtyard entertained a suspicion. They were told that the respondent's wife had set fire to herself. Thereupon PW-2 and his brother threw the `bayna' in the courtyard, went up to the first floor and found the respondent standing inside the room and the dead body of their sister lying on the floor with extensive burns all over her body. When they confronted the respondent as to what had happened, the respondent stated that they both had slept well on the previous night and that when he had gone to the latrine in the early morning, the deceased had committed suicide for no visible reason and that she by such act not only ruined herself but also spoiled his life. PW-2 and his brother did not believe the version of the respondent and shouted that the respondent had killed their sister. A quarrel ensued between them. By that time PW-4 who came to the up-stairs found the respondent standing in his night-gown. PW-4 was informed by the respondent that the deceased had burnt herself.

PW-3 who was the S.P. of that District came to the scene spot at about 9.15 a.m., after directing the local police to come to the scene and found the respondent at the scene.

As pointed out supra, there is no direct evidence to connect the respondent with this offence of murder and the prosecution entirely rests its case only on circumstantial evidence. There is a series of decisions of this Court so eloquently and ardently propounding the cardinal principle to be followed in cases in which the evidence is purely of circumstantial nature. We think, it is not necessary to recapitulate all those decisions except stating that the essential ingredients to prove guilt of an accused person by circumstantial evidence are:

(1) The circumstances from which the conclusion is drawn should be fully proved;

(2) the circumstances should be conclusive in nature. (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;

(4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.

Vide Rama Nand v. State of Himachal Pradesh, [1981] 1 SCC 511; Gambir v. State of Maharashtra, [1982] 2 SCC 351; Earabhadrappa v. State of Karnataka, [1983] 2 SCC 330 and Ram Avtar v. State of Delhi Administration, [1985] (Supp.) SCC

410. Now let us formulate the impelling circumstances attending the case and examine whether the cumulative effect of those circumstances negatives the innocence of the respondent and serves as a definite pointer towards his guilt and unerringly leads to the conclusion that within all human probability the offence was committed by the respondent alone and none else.

The circumstances which are established as having closely linked up with one another are as follows:

(1) The motive for the occurrence.

(2) The room in which this tragic and pathetic incident took place was in the exclusive possession and occupation of the respondent and the deceased;

(3) The occurrence had happened in the wee hours of 12th October 1971 when no body would have got an ingress into the room wherein the husband and wife admittedly slept.

(4) The evidence of PW-2, swearing that the respondent was found in the scene house at 7.15 a.m. (5) The presence of the respondent inside the room wearing night-gown when PW-4 went to the scene room.

(6) The position of the dead body lying on the ground within a cot frame with extensive burns except on the back and lumbar regions.

(7) The presence of the traditional external visible features of strangulation as well as the internal injuries establish the use of violence. (8) The positive opinion of PW-1 who conducted the autopsy on the dead body of the deceased, stating that the death was due to strangulation and the burns were post-mortem.

(9) False plea of alibi and the conduct of the respondent feigning innocence.

(10) The intrinsic value of the inviolable and impergnable evidence let in by the prosecution completely and conclusively establishing the links of the entire chain of circumstances as a whole and not in fragments proving the guilt of the respondent/accused.

While the learned counsel appearing for the appellant strenuously contended that the cumulative effect of all the pieces of circumstantial evidence brought on record by the prosecution justifies the conviction of the respondent, Mr. R.L. Kohli, the learned senior counsel appearing for the respondent took much pain in advancing his argument that the circumstances relied upon by the prosecution are not clinching the issue; that the presence of the respondent at the scene house at the time of the occurrence is disproved by CWs 1 and 2 and also by the evidence of PWs 6 and 9 who have not supported the prosecution case and that the symptoms found by PW-1,the Medical Officer are not in support of the conclusion arrived at by PW-1 whose opinion is only attributable to his inexperience or negligence. In support of his submission, with regard to the medical evidence, the learned counsel drew our attention to some passages from the test book of Taylor's Medical Jurispurdence and Modi's Medical Jurisprudence, about which we will deal infra.

We have already elaborately discussed the evidence relating to the motive part of the occurrence and found that the respondent who had married the deceased as his second wife had not only entertained a suspicion about her fidelity, but also was repelling the conduct of the deceased for her finding fault with his activities, affairs and association with his friends.

It is not in dispute that on the ill fated night both the husband and wife (that is the respondent and the deceased) took their bed in the room, which was in their exclusive use and that barring the duo no one was in their room and that the deceased was found dead in the early morning notwithstanding the reasons for her death. The case of the prosecution is that the respondent caused several anti-mortem injuries to the deceased and ultimately strangulated her resulting in her death. It was only thereafter the respondent sprinkled kerosene on the dead body and burnt it to cause disappearance of the evidence of the offence of murder in order to screen himself from the legal punishment and that all the burn injuries were only post-mortem injuries.

Seriously opposing the prosecution version, the respondent has abjured his guilt stating that he and his wife were having a happy marital life occupying and using the room allotted to them in the first floor and that the deceased who was a woman of an arrogant, obstinate and irritable temperament with frequent fluctuations of mood was displeased with their mother-in-law, that is respondent's mother, who did not like her independent way of moving in the family and frequently visiting cinema halls. The deceased had made complaints not only against his mother-in

-law, but also against her unmarried brother-in-law stating that her brother-in-law misbehaved with her, and that she was writing letters to PWs 2 and 7 at the instance of PW-7, who had once in his letter addressed her as `Dear Kamlesh' and incited her to write letters accusing the respondent. It is the further case of the respondent that in the early hours of 12.10.1971 he at the request of PW-9 paid a visit to one Shashi's house as the latter was suffering from some ailments and that he returned at about 7.45 or 8.00 a.m. to his house and came to know about this incident. According to

him, his brothers poured water into the room to extinguish the fire. It is his further case that the brothers of the deceased came to his house only at 11.15 a.m., that too on his telephonic information to them. He continues to state that the deceased used to feel pain during the period of menses, that he took her on 6.10.1971 to Dr. Mrs. Anstin and that on the advice and prescription given by the Doctor Ext. Ka-9 the deceased was put on medicine containing barbiturates, the traces of which were found in her visra. As regards the medical evidence he has given an explanation that the bones could have been fractured due to excess heat and the death could have been on account of shock due to the burn injuries and that PW-1, the Medical Officer has given false evidence on account of some heated exchanges between him and PW-1 over an election held among the medicos which took place about 2 or 3 days before the occurrence. The totality of the defence of the respondent is that the deceased herself had created a hell of her own in the family and ultimately committed suicide by pouring kerosene on her and setting fire.

The above defence version of the respondent is clearly borne out from his statement given before the Trial Court on 6.10.1972.

We shall at the threshold proceed to deal with rival contentions of the parties regarding the cause of death which is a vital link in the chain of circumstances serving as a definite pointer tending to prove the guilt or otherwise of the respondent. PW-1 who conducted necropsy on the body of the deceased has found the positive symptoms of suicide and the fracture of the 6th and 7th ribs and the right cornua of the hyoid bone as well as the presence of clotted blood on the right side of the neck in an area of 4cms. X 3cms. He also found the congestion of larynx, trachea and both the lungs. It is his definite opinion that the death was due to strangulation and the fractures on the body were ante-mortem. In the supplementary report (Ext. Ka

2), he has given his opinion that the burns were post- mortem. As regards the time of death he has stated in the cross-examination that the death could have occurred on 12.10.1971 between 7.00 A.M. and 8.00 A.M.. However, on re- examination he clarifies his answer stating that the probable time of death was subject to a margin of 2 to 4 hours on either side. Though we have extracted the evidence of the Medical Officer in the preceding part of this judgment, we would like, at the risk of repetition to reproduce the evidence of PW-1 hereunder for better appreciation of his opinion with regard to the cause of death:

> "Hands were clenched. Eyes and conjunctive were congested and eye-balls were prominent. Blood mixed forth was coming out from nostrils. Tongue was swollen and protruding and was compressed between the teeth..... ..... Sixth and seventh ribs were fractured. The right cornua of hyoid bone was fractured."

Though PW-1 has been subjected to incisive and searching cross-examination and questioned with reference to various Text Books on Medical Jurisprudence, nothing tangible has been brought out to discredit the testimony of PW-1. The cross-examination was directed suggesting that the fracture of the hyoid bone and the fracture of the ribs could have been due to the intensive heat of the fire and by mishandling of the body when it was taken to downstairs. In fact, PW-1 has withstood the

cross-examination and affirmed his conclusion that the death was only due to strangulation and the burn injuries were post-mortem. He based his opinion on the innumerable symptoms found on the dead body, such as the internal contusions, non-vomitting which is usually the symptom in a case of burning of a victim while alive and the involuntary non-movements of the deceased even under the agony of fire etc. etc. The learned defence counsel drew our attention to certain hypothetical opinions, given by PW-1 in the cross-examination, the report of the Chemical examiner, revealing the presence of the traces of barbiturates in the visra and the pugilistic posture of the dead body as revealed from the photographs of the dead body marked as Exts. A, B,C and D and contended that the cause of death could not have been due to strangulation, but it was due to suicide by pouring kerosene and setting herself on fire and the fractures of the bones and other symptoms found on the body should have been due to the intensity of the heat and that the evidence of PW-1 supporting the prosecution version cannot and should not be accepted. According to the learned counsel, the erroneous opinion, expressed by PW-1 on the available data exposes his inexperience or negligence. In support of his argument, he relied upon certain passages found in the textbooks on Medical Jurisprudence by renowned authors. In Modi's Medical Jurisprudence and Texicology (21st Edition) at page 93 the following passage is found:

> "When exposed to very high temperature characteristically curved fractures may be produced in long bones and skull. A bone becomes so brittle and friable on prolonged exposure of fire victim to such intense heat that it is readily fractured incident to transport of body or its being moved or under examination. A hyoid bone may similarly break on manipulation."

In Taylor's Principles and Practice of Medical Jurisprudence', a detailed opinion is recorded by giving the symptoms for determining whether the burns were sustained before or after the death of a victim which are of considerable medical legal importance in cases of death by fire. After examining the evidence on record in the light of the opinion of the authors of the two textbooks on Medical Jurisprudence, we are unable to agree with the submissions of the defence counsel that all the symptoms found in the dead body could have been due to the intensity of heat of the fire. In fact, the opinion in the Taylor's Medical Jurisprudence is rather in support of the prosecution case than that of the defence, which opinion reads thus:

> "Not uncommonly the victim who inhales smoke also vomits and inhales some vomit, presumably due to bouts of coughing, and plugs of regurgitated stomach contents mixed with soot may be found in the smaller bronchi, in the depths of the lungs."

In the Present case, PW-1 has asserted that there was no symptom of vomiting at all, which fact lends assurance to the prosecution case that the burning was after the death of the victim. According to the defence, water was poured to extinguish the fire inside the room, but the medical evidence shows that there was no blister on the body of the deceased, which fact disproves the defence version. Moreover, all external and internal symptoms in addition to the fractures unmistakably go to show that the death was by homicidal violence, but not due to suicidal one. We have no compunction in holding on the materials available that the death could have been only due to strangulation as opined by PW-1. In fact, the Trial Court after examining the evidence in detail has

recorded its finding thus:

> "The result, therefore, is that Smt. Kamlesh died an unnatural death as a result of violence and was in fact murdered and did not commit suicide."

Though the High Court has acquitted the respondent on the ground that "the circumstances as proved are not incompatible with innocence of the appellant", it has agreed in toto with the finding the Trial Court so far as the cause of death is concerned and the finding of the High Court reads thus:

> "We are, therefore, inclined to accept the statement of Dr. B.G. Mathur that the death of the deceased was due to strangulation and that she was set to fire after her death."

The High Court has rejected the submissions of the defence relating to the cause of death similar to those addressed before us as devoid of any substance. There are two important features appearing from the medical evidence which would go in support of our conclusion. They being:

> (1) that the dead body was found inside the scorched cot frame, (2) the back portion of the body was not burnt indicating that the deceased could not have poured the kerosene over her body. Further, had the deceased put her to death by burning herself she should have involuntarily moved hither and thither under the agony, and would not be lying on her back motion-less. A careful scrutiny of the evidence reveals that there was no sign of involuntary movement or any evidence of screaming and shrieking by the victim while she was reeling under the terrible shock and agony on being engulfed in flames which are not the normal symptoms in a case of this nature, leaving apart the question of homicide or suicide. The traces of the barbiturates in the visra does not in any way militate against the prosecution case and from that no adverse inference could be drawn.

As regards the motive, the High Court has held that there was nothing to aggravate the situation on the day of the occurrence for the respondent to take this extreme measure of putting her to death. This reasoning of the High Court is quite inconceivable, for the simple reason that there could be no evidence as to what had happened during the night of 11/12th October 1971 as the victim herself is dead. However, as we have discussed in the earlier part of this judgment, all was not well with the spouses and their strained relationship had been gaining momentum day by day and ultimately on the ill fated night it had culminated to this occurrence.

The next point for our consideration is whether the respondent was present in the house in the early morning of the day of occurrence or whether he had gone out of the house to treat a patient. In other words, whether the defence of alibi is true or not. PW-2 states that he saw the respondent even at 7.15 a.m. when he had been to the scene house carrying snacks in a basket. PW-4, the Head Constable was the first official to go to the scene house by chance on seeing a crowd which was attracted by the acrid smoke, emanating from the bed room. He testifies to the fact that at the time when he went to the house at about 8.00 a.m. he found the respondent standing inside the room in

his night dress and quarrelling with PW-2 over the death of the deceased. PW-3, the Superintendent of Police, arrived at the scene at about 9.15 a.m. and found the respondent present. Thus, the evidence of PWs 2 to 4 positively establishes the fact that the respondent was very much present in the scene house, even in the early morning, falsifying his plea of alibi.

The case of the respondent that PW-2 and his brother arrived at the scene only at 11.15 a.m., that too on his information is belied by the testimony of PWs 4 and 10. The evidence of PW-4 is that PW-2 and his brother were found in the scene house even at 8.00 a.m. PW-10 has deposed that baskets containing snacks and sweets were lying scattered in the courtyard even at 8.30 a.m. which basket is stated to have been brought by PW-2.

If the respondent had returned from home after paying a visit to his patient by 8.00 a.m., as he now claims, he would not have been found in his night dress. The very fact that he was standing in his night dress at 8.00 a.m. demonstrably shows that the respondent had not left the house on his professional visit but he was very much present in the house. PW-6 (who was in service under the respondent for 4 year) and PW-9 who claims to have taken the respondent to attend on one Shashi have been treated as hostile witnesses. CWs 1 and 2, who support the defence theory are none other than the mother and brother of the respondent whose testimony is highly tainted. On a careful scanning of their evidence, we hold that no safe reliance could be placed on their testimony especially in view of the overwhelming circumstantial evidence falsifying their statements supporting the plea of alibi.

On an overall survey of the evidence, we are in full agreement with the observation of the Trial Court, holding that "his explanation that he was not present in the the house at the time is patently false". The High Court has placed much reliance on the evidence of not only CWs 1 and 2 but also of the hostile witnesses PWs 6 and 9 for holding that the respondent was not in the house in the early morning, which finding of the High Court is absolutely untenable and in utter disregard of the evidence. Even though we are not finding the respondent guilty solely on his false explanation, yet that explanation assumes much significance because it is for the respondent to come forward with an acceptable and plausible explanation explaining the circumstances under which the deceased had met with her end, since, in our considered opinion, the respondent was in the company of his wife on the previous night and was found in the bed room in the early morning.

Though the respondent has deliberately feigned ignorance and incredibly denied his complicity, the overwhelming persuasive circumstances attending the case and the crucial inculpatory evidence bear chilling testimony unmistakably proving the gruesome offence of murder and its diabolical execution and unerringly establishing the guilt of the respondent beyond all reasonable doubts.

For all the reasons stated above, we, on our independent appraisal and evaluation of the evidence in accordance with the principle laid down in Chandra Mohan Tiwari v. State of madhya Pradesh, JT(1992) 1 SC 258 unhesitatingly hold that the conclusion arrived at by the Trial Court is logical, tenable, and reasonably sustainable and that the High Court after holding that the death of the deceased was homicidal has gone wrong in recording the impugned order of acquittal on erroneous and incredulous reasons. Hence the judgment of the High Court has become liable to be set aside.

Mr. Kohli, the learned counsel finally made a fervent but inexorable plea, submitting that since the occurrence took place in the year 1971 and that more than 14 years have now elapsed since the delivery of the judgment by the High Court in October 1977, this court be pleased not to disturb the finding of acquittal at this length of time. We gave our anxious consideration to the above submission, but we feel that this plea has to be summarily rejected when the facts and the impelling circumstances surrounding the present case cry for justice which in turn demands for awarding proper punishment according to law. In our view, if the impugned judgment of acquittal reversing the well reasoned judgment of the Trial Court, convicting the respondent is affirmed, it will be nothing but a mockery of justice and will also amount to prepetration of gross and irreparable injustice. Moreover, when a judgment appealed against suffers from illegality or manifest error or perversity, warranting an interference at the hands of an Appellate Court in the interest of justice on substantial and compelling reasons, the mere delay in the disposal of the said appeal will never serve as a ground for non- interference and on the other hand, the Appellate Court is duty bound to set at naught the miscarriage of justice.

In the result, we set aside the judgment of the High Court by allowing the State appeal and restore the judgment of the Trial Court convicting the respondent under Section 302 and 201 IPC and sentencing him to imprisonment for life and rigorous imprisonment for 3 years respectively with a direction that the sentences are to run concurrently.

In the result, the appeal is accordingly allowed.

V.P.R. Appeal allowed.