Mannu Sao vs State Of Bihar on 22 July, 2010

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Bench: Swatanter Kumar, B.S. Chauhan

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1165 of 2009

Mannu Sao ... Petitioner

Versus

State of Bihar ...Respondent

JUDGMENT

Swatanter Kumar, J.

1. On 14th December, 1985 at about 11.00 A.M. a fardbeyan was recorded by Sub-Inspector of the Police Station, Nalanda at the behest of Manu Sao who informed that he is living with his wife Bimla Devi in his cabin at his agricultural lands in village Mohanpur. He was carrying on agricultural activity as he was possessed of agricultural land. On that very date at about 9.00 A.M., he had gone over to Nalanda for some personal work and after he returned to his cabin at about 10.00 A.M., he found his wife Bimla Devi lying in burnt condition in amidst chilly plantation in front of his cabin. There were serious burn injuries on her body, however, Manu Sau found her somewhat alive at that time and he asked one Bhola Babu for help to take her to a doctor for treatment. By the time, she could be lifted to be taken for treatment, she died. In these circumstances, while he was planning to go to the police station, the Sub-Inspector Hirdya Narain Singh came there who was subsequently examined as PW4. The Investigating Officer started the inquest proceedings and the dead body was sent for postmortem to Sadar Hospital, Biharsharif. The postmortem was conducted and the report

Ex.4 was prepared on 14th December, 1985. It was noticed that she had suffered from burn injuries, both her eyes were closed and the tongue was protruding. Keeping in view the postmortem report, the Investigating Officer had a suspicion in mind and thereafter an FIR was recorded with reference to the postmortem report, it was found that Bimla Devi had died on account of throttling and ante-mortem injuries and, with an intention to cause disappearance of evidence, the body was burnt. The F.I.R. was Ext.5 and a case under Section 302 and 201 of the Indian Penal Code (herein after referred to as `IPC') was registered. The suspect of commission of this crime was found to be Mannu Sao himself, the appellant herein. The Investigating Officer recorded the statement of the witnesses including that of the doctor and presented the charge-sheet before the Court of competent jurisdiction. The appellant was charged with both the afore-stated offences. He pleaded innocence and was subjected to trial. The prosecution only examined four witnesses PW1 and PW2 co-villagers, PW3 Dr. Bidhu Bhushan Singh and PW4 Hirdya Narain Singh, Investigating Officer. The learned Trial Court, vide its judgment dated 21st December, 1987, convicted the accused for both the offences and awarded the punishment rigorous imprisonment for life under Section 302, IPC and three years rigorous imprisonment under Section 201 IPC. Both the sentences were ordered to run concurrently. This judgment of the Trial Court was challenged before the High Court of Patna, though unsuccessfully. The High Court concurred with the finding of facts recorded by the Court and it sustained the finding of guilt as well as order of sentence awarded by the Trail Court. Vide judgment of the High Court dated 11th September, 2008 thus giving rise to the present appeal.

2. While impugning the judgment under appeal, the contention raised before us is that the case being that of circumstantial evidence, the prosecution has not established complete chain of events and circumstances leading to the commission of the crime and involvement of the appellant. It was further contended that there was no motive as to why the appellant should have committed the crime and lastly, that it was a clear case of suicide by the deceased and there was no material evidence on record to arrive at the conclusion stated in the judgments under appeal.

3. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence, provided, the prosecution is able to prove beyond reasonable doubt, complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye-witness to the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of accepted principles in that regard.

4. Three Judge Bench in the case of Sharad v. State of Maharashtra, [AIR 1984 SC 1622] held as under:

> "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh1. This case has been uniformly followed and applied by this Court in a large number of later decisions

> up-to-date, for instance, the cases of Tufail (alias) Simmi v. State of Uttar Pradesh and Ramgopal v. State of Maharashtra. It may be useful to extract what Mahajan, J.

has laid down in Hanumant case:

> "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 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."

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."

5. In the cases of circumstantial evidence, this Court has even held accused guilty where the medical evidence did not support the case of the prosecution. In Anant Lagu v. State of Bombay [AIR 1960 SC 500] where the deceased died of poisoning, the Court held that as there were various factors which militate against a successful isolation of the poison and its recognition. It further noticed that while circumstances often speak with unerring certainty, the autopsy and the chemical analysis taken by them may be most misleading. No doubt, due weightage must be given to the negative findings at such examination which the man of medicine performs and the limitations under which he works, his failure should not be taken as an end of the case, for on good and probative circumstances an irresistible inference of guilt can be drawn.

6. Similar view was taken by a Bench of this Court in the case of Dayanidhi Bisoi v. State of Orissa, [AIR 2003 SC 3915], where in a case of circumstantial evidence the Court even confirmed the death sentence as being rarest of rare cases. The Court clearly held that it is not a circumstance or some of the circumstances which by itself, would assist the Court to base a conviction but all circumstances put forth against the accused once are established beyond reasonable doubt then conviction must follow and all the inordinate circumstances would be used for collaborating the case of the prosecution.

7. It is of similar significance for the Court to examine whether the requirements to be established in a case of circumstantial evidence are satisfied in the case before it or not. The cases of circumstantial evidence have to be dealt with greater care and by microscopic examination of the documentary and oral evidence on record. It is then alone that the Court will be in a position to arrive at a conclusion upon proper analysis of the evidence in relation to the ingredients of an offence. In the case of circumstantial evidence, particularly, besides the entire case of the prosecution, even the statement of the accused made under Section 313 of Cr.P.C. can be of substantial help.

8. Let us examine the essential features of this Section 313 Cr.P.C. and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Code. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or in the alternative to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross- examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has

to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put as evidence against the accused in any other enquiry or trial for any other offence for which such answers may tempt to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Code as it cannot be regarded as a substantive piece of evidence. In the case of Vijendrajit Ayodhya Prasad Goel v State of Bombay, [AIR 1953 SC 247], the Court held as under:

> "3. .....As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under Section 342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement under Section 342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

9. On similar lines reference can be made in quite a recent judgment of this Court in the case of Ajay Singh v. State of Maharashtra, [(2007) 12 SCC 341] where the Court held as under:

> "11. So far as the prosecution case that kerosene was found on the accused's dress is concerned, it is to be noted that no question in this regard was put to the accused while he was examined under Section 313 of the Code.
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> 12. The purpose of Section 313 of the Code is set out in its opening words - "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In Hate Singh Bhagat Singh v. State of Madhya Bharat it has been laid down by Bose, J. (AIR p. 469, para 8) that the statements of the accused persons recorded under Section 313 of the Code "are among the most important matters to be considered at the trial". It was pointed out that:

> "8...The statements of the accused recorded by the committing Magistrates and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box [and that] they have to be received in evidence and treated as evidence and be duly considered at the trial."

This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.

13. The object of examination under this section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus."

10. The statement made by the accused is capable of being used in the trial though to a limited extent. But the law also places an obligation upon the Court to take into consideration the stand of the accused in his statement and consider the same objectively and in its entirety. This principle of law has been stated by this Court in the case of Hate Singh Bhagat Singh v. State of Madhya Bharat [AIR 1953 SC 468].

11. Let us now examine the relevant part of the statement made by the accused under Section 313 of the Code as it would to some extent narrow the controversy before the Court. The appellant had clearly and in unambiguous terms admitted that the deceased was his wife and she died of burn injuries. The questions put to the accused were very few and the two important questions which were put to the accused by the Court and his answers read as under:

> "Question:- It is the case of the prosecution that after committing murder you in order to disappear the evidence of the murder set the dead body on fire and also tried to disappear the same to screen yourself from punishment.
>
> Ans:- No. Question:- You had stated in the information that your wife Bimla Devi had died being burnt due to fire. In postmortem examination it has been found that her death has been caused by throttling her neck. What have you to say?
>
> Ans:- I had given information to the police regarding burning. She has not been murdered. Her death has been caused due to throttling her neck is wrong."

12. As already noticed from the above answers, it is clear that the appellant does not dispute the factum of the deceased being his wife and had died because of burn injuries. However, his version is that she committed a suicide by pouring kerosene on her and burning herself. While according to the prosecution primarily relying upon the statement of PW3, it was a case of causing death of the deceased by strangulating and then burning the body of the deceased. Even the learned Trial Court had noticed and discussed these facts and as well as noticed the admission and argument of the learned Counsel appearing for the accused before that Court. It will be useful to refer to those

findings in paragraph 8 and 9 of the Trial Court Judgment:-

> "8. This case is based on circumstantial evidence as there is no eye witness of the occurrence, which had taken place in the cabin belonging to the accused. So far the occurrence is concerned, the stand of the accused had been in the beginning that his wife Bimla Devi had committed suicide during his absence by sprinkling K.Oil. Before I proceed to discuss the evidence brought on the record by the prosecution as well as the circumstances, I find it necessary in the outset to mention some of the facts which are not denied nor disputed in this case. The learned defence counsel has not disputed the fact that the deceased, Bimla Devi was the wife (concubine) of the accused, Manu Sao, and that the accused was living with her in his cabin at village Mohanpur. It is also not disputed that the woman had died and had burnt injury on her person. U.D. case on the statement of Manu Sao as informant, was institute which was converted into a case under section 302/301 I.P.C. on the written report of the officer-in-charge on the receipt of the post-mortem report (Ext.2) on the dead body of Bimla Devi.
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> 9. From Ext.6, it appears that the officer-in-charge, P.W.4, had gone to the place of occurrence on hearing rumour after making station diary entry regarding a woman lying burnt at village Mohanpur near the cabin of the accused. P.W.4 Hirdya Narain Singh, the officer-in-charge, who had gone to the place of occurrence had found the dead body of a woman lying in a chilly field near the cabin of the informant and she had burnt injury. Manu Sao, accused, had maintained that till 9.30 A.M. and when he returned at 10.30 A.M. he found his wife Bimla Devi lying burnt in a chili field near his cabin and had also seen trace of K. oil. extending from well near the cabin up to the door of the cabin....."

13. In light of the above undisputed position, now let us proceed to examine whether complete chain of events has been established by the prosecution beyond reasonable doubt.

14. This aspect of the case was also squarely dealt with by the learned Trial Court which had the benefit of recording the entire evidence noticed the demur and conduct of the witnesses as well as the expert witnesses satisfactorily. In para 19 and 20, these circumstances have been noticed by the Trial Court in an appropriate manner. We may refer to them:

> "19. It is true that there is no eye witness account but there are circumstances which prove beyond doubt that the accused had killed his wife and in order to escape punishment and in order to disappear the evidence of death set fire to the dead body and gave out that his wife committed suicide by burning in between 9 A.M. to 10.30 A.M. on 14.12.1985.
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> 20. The following circumstances clearly show that the accused committed the crime:

(1) He was found in the cabin with his wife when the throttling was done. The evidence of throttling according to P.W.3 taken place in the right (sic) of 13/14.12.1985.

(2) The accused furnished false information in his fardbeyan propounding a case of suicide of his wife by setting fire, on the basis of which an U.D. case was instituted.

The deceased Bimla Devi had died due to throttling which can be attributed to the accused and not due to burn injury which was post-mortem.

(3) The accused did not give any information to the police about the occurrence and police on its own information had gone to the place of occurrence where Manu Sao (accused) gave out that his wife has committed suicide. If this be so, then he ought to have immediately informed the police. The fact that he had informed one Bhola Paswan about it also cannot be believed because he has not been examined to prove this part of the defence version.

(4) From the inquest report as well as from the evidence of the doctor, P.W. 3 it is clear that tongue of the deceased was found protruding and swollen. There was fracture of right parietal skull bone and the Larynx and treachea congested. There was no possibility of pressing of neck by the deceased herself as P.W. 3 has negatived such a situation.

(5) The motive for the occurrence is also not far to seek. It is in the evidence that the castmen of the accused were against the keeping of Bimla Devi by the accused. It is urged by the learned counsel for the defence that the possibility of the hand of the father of the deceased woman and his family member cannot be ruled out. There is nothing on the record to show that there was at any time protest by the father of the deceased rather there is evidence on record to show that the accused conduct was constantly opposed by his own castmen.

(6) If the woman had burnt herself for which evidence created by the husband (accused) then how could she inflict injury on her person and how there could be trolling (sic) which the doctor had found during the post-mortem examination.

(7) The learned defence counsel urged that the fard-beyan of the accused recorded by police inadmissible and this cannot be used against him as this statement was made to a police officer. This case has not been instituted on the basis of the fardbeyan of the accused rather on the statement and written information of the P.W. 4. The written report of the U.D. case and the information given by Manu Sao cannot be equated with first information of confession by the accused. I his (sic) statement was made by him when he was not accused rather an informant. Therefore, I find no substance in the above argument. Moreover, accused has also not denied his earlier statement and has even in this statement under section 313 Cr.P.C. admitted to have given information regarding suicide by his wife by setting fire."

15. These findings of facts and appreciation of evidence by the Trial Court was not interfered by the High Court and in fact, it recorded its occurrence by reiterating these findings.

16. Some emphasis was placed on the fact that PW2 a co- villager, in his evidence, had said that he did not know about the occurrence and he had signed on the report Ext.1/1 at the behest of the Investigating Officer. The accused can hardly derive any advantage from this because this witness was to primarily prove the death of the deceased after she had been burnt. Even according to the prosecution he was not an eye- witness and there was nothing much which he would contradict, as the prosecution had mainly relied upon the statement of PW3 and PW4. The most important witness of the present case was PW3 Dr. Bidhu Bhushan Singh who had performed the postmortem upon the deceased's body and had written that she had been killed by throttling or strangulating and thereafter she suffered the burn injuries. In the cross-examination of this witness, nothing material could be pointed out which would help the case of the accused. The accused has admitted the deceased was his wife and was living with him in the cabin. On the basis of the record, the High Court has also noticed the fact that deceased had separated from her earlier husband and was living with the accused who was also staying away from his family. The villagers had objected to the accused living with the deceased in that manner. In these circumstances, the onus to explain the cause of death of the deceased was upon the husband. He did offer an explanation that she had committed suicide by burning herself but this explanation has been disbelieved. Another very material factor is that as per his own statement when he noticed that the deceased was still alive and her burnt body was lying just outside cabin in the chilly plantation, he had taken the help of Bhola Babu. The name of this person he neither referred in his statement under Section 313 Cr.PC. nor he examined this person as a witness. In the normal course, thus, it will have to be presumed that if this witness was produced and examined in Court, he might have spoken the truth which was not suitable or favourable to the accused. For reasons best known and which remained unexplained, this witness was not examined though in his statement under Section 313 of Cr.P.C. in answer to the last question he had stated that he was innocent and would give in writing whatever he wanted to say. Despite this, no defence was led by the appellant. PW1 stated in his examination-in- chief that the tube well of the accused Manu Sao was located north of his khalian in village Mohanpur and that Bimla Devi was living with the accused and when about 10.00 A.M. on the date of occurrence, he had gone there he had seen Bimla Devi in a burnt condition. According to him, the police had come and prepared an inquest report which was signed by him. The statement of this witness is that of the truthful witness and he has not tried to add or subtract anything in his statement what he stated before the police during investigation. In face of his statement, the relevancy of PW2 being declared hostile is hardly of any consequence. Strangely, even to this witness even a question was not posed in his cross examination that one Bhola Babu was present at the site from whom the accused had sought help to take the deceased to the hospital.

17. Resultantly and in any case nothing worth noticing much less favourable to the accused came in his cross- examination. PW3 Dr. Bidhu Bhushan Singh expressed his opinion as to the accused of death as follows:

> "In my opinion death was due to xphyxia (sic) shock and haemarrage (sic) as a result of throttling (sic) and above mentioned injuries. Time elapsed since death was 12 to 16 hours. The bruise on the right forehead region was possible by hard blunt substance."

18. The above evidence clearly satisfies the conditions stated by this Court, which need to be satisfied in a case of circumstantial evidence in the case of Sharad (supra). The circumstances proved by the prosecution are of a conclusive nature and they do exclude the possibility of any other view which could be taken rationally and reasonably. The fact of the matter is that the deceased died while living with the appellant and he ought to explain his conduct and he was expected to render some explanation which was reasonably possible in the facts and circumstances of the case in regard to cause of her death.

19. Lastly, now we should revert to the discussion on as to what was the motive of the appellant to kill the deceased. It has come in evidence that the deceased had left her earlier husband and was living with the appellant, who was also staying away from his family in the cabin in his agricultural fields, where that incident occurred. There was definite protest raised by the villagers to their living together. The statement of PW4 in this regard is of relevance. Besides this, even the medical evidence had shown that the deceased was strangulated or throttled before her body was burnt. The social embarrassment could be a plausible motive for the appellant to commit the crime. Furthermore, the appellant took an incorrect, if not a false stand before the Court that the incident occurred in his absence. His conduct in naming Bhola Babu from whom he had sought help to take the deceased to the hospital also does not appeared to be correct. Appellant made no effort whatsoever to examine any witness to establish this fact. The appellant has admitted that the deceased died in front of his eyes and he did nothing except reporting the matter to the police at a subsequent stage. With the development of law, now it is a settled principle that motive is not absolutely essential to be established for securing conviction of an accused who has committed the offence, provided the prosecution has been able to prove its case beyond any reasonable doubt. In the present case, the motive suggested by the prosecution appears to be reasonable and is in consonance with the behaviour of a person placed in a situation like the appellant and it is also difficult to believe that a person would commit suicide without any provocation or incident immediately preceding the occurrence. The explanation rendered by the appellant has correctly been disbelieved by both the Courts as we see no reason to take a different view. Furthermore, in the case of Bhimapa Chandappa Hosamani v. State of Karnataka, [(2006) 11 SCC 323], this Court has taken the view that it is not always mandatory for the prosecution to establish motive as it is just one of the ingredients for convicting an accused, the Court held as under:

> "13. The trial court as well as the High Court have not accepted the evidence regarding existence of motive as alleged by PW 1 in the first information report. In fact she herself in the course of her deposition denied the existence of such a motive. The High Court has agreed with the view of the trial court on this issue. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. The law on this aspect is well settled."

20 In view of the above reasoning, we do not find any infirmity in law or otherwise in the judgment under appeal. The finding of guilty as well as the order of sentence also do not call for any interference. Hence, the appeal is dismissed.

.....J. [DR. B.S. CHAUHAN] .....J. [SWATANTER KUMAR] New Delhi July 22, 2010