

RAJU @ RAJENDRA PRASAD

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v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1559 of 2022)

SEPTEMBER 19, 2022

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**[M. R. SHAH AND KRISHNA MURARI, JJ.]**

*Penal Code – ss.302, 34 – Murder – Circumstantial evidence – As per FIR, the appellants-accused (wife of the deceased and co-accused) had illicit relations – It was further stated that on account of disputes, the accused started residing in her paternal house – That the deceased went to his in-law's house to bring her and the children back, however, on the next day his body was found hanging from tree – Appellants convicted u/s.302 r/w s.34 – On appeal, held: Case of the prosecution is based on circumstantial evidence – There is no direct evidence that the appellants killed or committed the murder of the deceased – In a case of circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else – Circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused – Such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence – There is no evidence that the accused were last seen together with the deceased – Prosecution failed to prove the guilt and complete chain of events leading to the only conclusion that the appellants alone committed murder and/or killed the deceased – Order of conviction passed by Trial Court and High Court set aside – Accused acquitted – Evidence.*

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**Allowing the appeals, the Court**

**HELD:** The case rests on the circumstantial evidence. There is no direct evidence by which it can be said that the appellants killed or committed the murder of the deceased. There is no direct evidence recorded indicating involvement of the appellants in the crime; the case of the prosecution is based on the circumstantial evidence. In case of a circumstantial evidence,

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- A the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. On considering the deposition of PW-6 (daughter of the deceased), who can be said to be the star witness and on whose deposition the appellants - accused are held guilty for the offence punishable under Section
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- C 302/34 IPC, even it cannot be said that the prosecution has established and proved that the accused were last seen together with the deceased. In the examination-in-chief, PW-6 has stated that after some quarrel, the grandmother took the deceased to the room where the deceased went to sleep. That thereafter she
- D also gone to sleep and when in the morning she woke up, she came to know that her papa was found hanging on the tree. In the cross-examination, she has specifically stated that she has not seen anybody beating her father. Thus, there is no evidence that the accused were seen last together with the deceased. There is no evidence what happened after the deceased went to the room
- E and had gone to sleep. Under the circumstances, the prosecution has failed to prove the guilt and complete chain of events, which may lead to the only conclusion that the appellants - accused alone committed murder and/or killed the deceased. The Trial Court as well as the High Court have committed a very serious error in convicting the appellants – accused for the offence under Section
- F 302/34 IPC based on such circumstantial evidence. The judgment and order of conviction passed by the Trial Court as well as the High Court convicting the appellants – original accused for the offence punishable under Section 302/34 IPC are quashed and set aside and the accused are acquitted for the offence for which
- G they are convicted. [Paras 7.1, 7.7 and 8][246-F-H; 249-H; 250-A-E]

*Babu v. State of Kerala (2010) 9 SCC 189 : [2010] 9 SCR 1039; G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593 : [2010] 10 SCR 377 – relied on.*

*Mohd. Younus Ali Tarafdar v. State of West Bengal,*  
**(2020) 3 SCC 747 : 2020 (2) JT 456; Anwar Ali and**  
**Anr. v. State of Himachal Pradesh, (2020) 10 SCC 166**  
**: [2020] 9 SCR 878 – referred to.**

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Case Law Reference

<b>(2020) 3 SCC 747</b>	<b>referred to</b>	<b>Para 4.3</b>	B
<b>[2020] 9 SCR 878</b>	<b>referred to</b>	<b>Para 4.3</b>	
<b>[2010] 9 SCR 1039</b>	<b>relied on</b>	<b>Para 7.2</b>	
<b>[2010] 10 SCR 377</b>	<b>relied on</b>	<b>Para 7.3</b>	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. C  
1559 of 2022.

From the Judgment and Order dated 11.07.2019 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Criminal Appeal (DB) No. 106 of 2018.

With

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Criminal Appeal No. 1560 of 2022

Ms. Sangeeta Kumar, Ms. Chitrangda Rastravara, Manvendra Singh, Dashrath Singh, Abhijeet Singh, Ms. Gunjan Negi, Shiv Autar Singh Sengar, Aditya Pratap Singh Chauhan, Aishwarya Mishra, Gp. Capt. Karan Singh Bhati, Advs. for the Appellant.

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Ms. Gurkirat Kaur, Ms. Asiya, Milind Kumar, Advs. for the Respondent.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

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1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Rajasthan at Jaipur in D.B. Criminal Appeal Nos. 106 of 2018 and 107 of 2018 by which the High Court has dismissed the said appeals preferred by the appellants herein – original accused convicting them for the offence under Section 302 IPC, the original accused Raju @ Rajendra Prasad and Smt. Suman Devi have preferred the present appeals.

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2. The original complainant Prakash – brother of the deceased lodged a complaint/F.I.R. against the accused persons for having killed his brother Narendra @ Goliya. It was stated in the complaint/F.I.R.

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- A that his brother Narendra was married to his sister-in-law Suman Devi. There were some differences between his brother and his wife. It was alleged that accused Suman Devi was having illicit relations with the co-accused – Raju @ Rajendra Prasad. That because of the dispute and differences, accused Suman Devi had started residing in her paternal house. On 26.09.2016, his brother – deceased went to his in-law's house to bring back his wife and children. However, on the next day in the morning, he came to know that his brother had committed suicide and his body was found hanging from a tree. That it was alleged that his brother had been murdered by Suman Devi, father-in-law Moti Ram, mother-in-law Lakhpati Devi, brother-in-law Vikram and Raju @ Rajendra Prasad in conspiracy with each other. Thereafter, on completion of the investigation, charge sheet was filed against the appellants herein. The charge was framed against the appellants – accused for the offence under Section 302 IPC or in the alternative under Section 302/34 IPC. The appellants – accused did not plead guilty and therefore they came to be tried by the learned Trial Court for the aforesaid offence.
- D 2.1 To bring home the charge against the accused, the prosecution examined as many as 15 witnesses including PW-6, Shiwani, daughter of the deceased and the accused Suman Devi and PW-7, Sunita, sister of Suman Devi. That after close of the prosecution evidences, further statement of the accused under Section 313 Cr.P.C. were recorded.
- E That on appreciation of evidence and relying upon the depositions of PW-6, Shiwani, daughter of the deceased and the accused Suman Devi and PW-7, Sunita, sister of Suman Devi by judgment and order dated 22.01.2018, the learned Trial Court convicted the appellants - accused for the offence punishable under Section 302 read with Section 34 IPC
- F and sentenced them to undergo imprisonment for life and fine of Rs. 20,000/-.
- G 2.2 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned Trial Court, the accused preferred the present appeals before the High Court. By the impugned common judgment and order, the High Court has dismissed the said appeals and has confirmed the judgment and order of conviction and sentence passed by the learned Trial Court convicting the accused for the offence punishable under Section 302 read with Section 34 IPC.
- H 2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the appeals and confirming

the judgment and order of conviction, the original accused have preferred A  
the present appeals.

3. Ms. Sangeetha Kumar and Ms. Chitrangda Rastravara, learned B  
counsel have appeared on behalf of the respective appellants and  
Ms. Gurkirat Kaur, learned counsel has appeared on behalf of the  
respondent – State of Rajasthan.

4. Learned counsel appearing on behalf of the respective appellants C  
- accused have vehemently submitted that in the facts and circumstances  
of the case, both the learned Trial Court as well as the High Court have  
committed a very serious error in holding the appellants guilty for the  
offence under Section 302/34 IPC.

4.1 It is vehemently submitted by the learned counsel appearing D  
on behalf of the appellants – original accused that the case rests on  
circumstantial evidence. There is no direct evidence at all. It is submitted  
that there is not an iota of evidence against the appellants by which it  
can be said that the appellants killed and/or committed the murder of the  
deceased.

4.2 It is vehemently submitted by the learned counsel appearing E  
on behalf of the appellants – original accused that as such PW-6, Shiwani,  
daughter of the deceased and the accused Suman Devi can be said to  
be the ‘star witness’, who, in her deposition, has categorically stated  
that she has not seen the appellants having killed her father. It is submitted  
that even from the deposition of PW-6, the prosecution has not established  
and proved that the appellants - accused herein were last seen together  
with the deceased. It is submitted that the prosecution has failed to  
establish and prove the complete chain of events. It is submitted that  
therefore the conviction of the appellants – accused for the offence  
under Section 302/34 IPC is unsustainable.

4.3 Learned counsel appearing on behalf of the accused have G  
vehemently relied upon the decision of this Court in the case of **Mohd.  
Younus Ali Tarafdar Vs. State of West Bengal, (2020) 3 SCC 747**  
as well as **Anwar Ali and Anr. Vs. State of Himachal Pradesh, (2020)  
10 SCC 166** in support of their submissions that as the circumstances  
relied upon by the prosecution to prove the guilt of the accused is not  
complete and the said circumstances are not leading to the conclusion  
that in all human probability, murder must have been committed by the  
appellants- accused and, therefore, the appellants ought not to have been  
convicted on the basis of such circumstantial evidence.

- A        5. Present appeals are vehemently opposed by the learned counsel appearing on behalf of the State.
- 5.1 It is submitted that in the present case, the prosecution has established and proved that there were differences and disputes between Suman Devi and the deceased. It is submitted that by leading cogent evidence and examining the daughter of the deceased and the accused Suman Devi and by examining other witnesses, the prosecution has established and proved that on the earlier day/night, there were quarrels and that the accused Raju and others gave threats to the deceased. It is submitted that therefore in the facts and circumstances of the case, when the prosecution has established the motive and the circumstances which led to the conclusion that the accused committed the murder of the deceased, both the learned Trial Court as well as the High Court have rightly convicted the accused for the offence under Section 302/34 IPC. It is submitted that the medical evidence – postmortem report proves that the deceased was murdered/killed.
- D        5.2 Making above submissions, it is prayed to dismiss the present appeals.
6. Heard the learned counsel for the respective parties at length.
7. We have gone through the judgment and order passed by the learned Trial Court as well as the impugned judgment and order passed by the High Court. We have also re-appreciated the entire evidence on record.
- 7.1 At the outset, it is required to be noted that the case rests on the circumstantial evidence. There is no direct evidence by which it can be said that the appellants killed or committed the murder of the deceased. There is no direct evidence recorded indicating involvement of the appellants in the crime and as observed hereinabove, the case of the prosecution is based on the circumstantial evidence. As held by this Court in a catena of decisions, in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

7.2 In the case of **Babu v. State of Kerala, (2010) 9 SCC 189**, A it is observed and held in paras 22 to 24 as under :

“22. In Krishnan v. State [(2008) 15 SCC 430], this Court after considering a large number of its earlier judgments observed as follows : (SCC p. 435, para 15)

‘15. ... This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra [(1982) 2 SCC 351].)’

23. In Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116] while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are : (SCC p. 185, para 153)

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned “must” or “should” and not “may be” 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;

- A                             (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
- B                             (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.
- C                             A similar view has been reiterated by this Court in State of U.P. v. Satish [(2005) 3 SCC 114] and Pawan v. State of Uttaranchal [(2009) 15 SCC 259].
- D                             24. In Subramaniam v. State of T.N. [(2009) 14 SCC 415], while considering the case of dowry death, this Court observed that the fact of living together is a strong circumstance but that by alone in absence of any evidence of violence on the deceased cannot be held to be conclusive proof, and there must be some evidence to arrive at a conclusion that the husband and husband alone was responsible therefor. The evidence produced by the prosecution should not be of such a nature that may make the conviction of the appellant unsustainable. (See Ramesh Bhai v. State of Rajasthan [(2009) 12 SCC 603].”
- E                             (emphasis supplied)”
- F                             7.3 In the case of **G. Parshwanath Vs. State of Karnataka, (2010) 8 SCC 593** in paras 23 and 24, it is observed and held as under:
- “23. In cases where 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. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not
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essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

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24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

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7.4 A similar view is taken by this Court in the subsequent decisions in the case of **Mohd. Younus Ali Tarafdar (supra)** and **Anwar Ali and Anr. (supra)**.

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7.5 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, it is to be considered, whether in the facts and circumstances of the case, the High Court and the Trial Court are justified in convicting the accused for the offence punishable under Section 302/34 of the IPC ?

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7.6 On considering the deposition of PW-6, who can be said to be the star witness and on whose deposition the appellants - accused are held guilty for the offence punishable under Section 302/34 IPC, even it

- A cannot be said that the prosecution has established and proved that the accused were last seen together with the deceased. In the examination-in-chief, PW-6 has stated that after some quarrel, the grandmother took the deceased to the room where the deceased went to sleep. That thereafter she also gone to sleep and when in the morning she woke up, she came to know that her papa was found hanging on the tree. In the cross-examination, she has specifically stated that she has not seen anybody beating her father. Thus, there is no evidence that the accused were seen last together with the deceased. There is no evidence what happened after the deceased went to the room and had gone to sleep.
- B 7.7 Under the circumstances, the prosecution has failed to prove the guilt and complete chain of events, which may lead to the only conclusion that the appellants - accused alone committed murder and/or killed the deceased. Under the circumstances and applying the law laid down by this Court in the aforesaid decisions on circumstantial evidence, we are of the opinion that the Trial Court as well as the High Court have committed a very serious error in convicting the appellants – accused for the offence under Section 302/34 IPC based on such circumstantial evidence. The conviction of the appellants - accused for the offence under Section 302/34 IPC is not sustainable.
- C 8. In view of the above and for the reasons stated above, both the appeals succeed. The judgment and order of conviction passed by the learned Trial Court as well as the High Court convicting the appellants – original accused for the offence punishable under Section 302/34 IPC are hereby quashed and set aside and the accused are acquitted for the offence for which they are convicted. The appellants accused be released forthwith, if not required in any other case.
- D Present appeals are accordingly allowed.

Divya Pandey  
(Assisted by: Roopanshi Virang, LCRA)

Appeals allowed.