Shivaji Chintappa Patil vs The State Of Maharashtra on 2 March, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1249, AIRONLINE 2021 SC 97

Author: B.R. Gavai

Bench: Rohinton Fali Nariman, B.R. Gavai, Hrishikesh Roy

REPORTAB

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1348 OF 2013

SHIVAJI CHINTAPPA PATIL …Appellant(s)

VERSUS

STATE OF MAHARASHTRA
…Responden

JUDGMENT

B.R. GAVAI, J.

This appeal assails the judgment and order delivered by the Division Bench of the High Court of Judicature at Bombay in Criminal Appeal No. 46 of 2005, thereby dismissing the appeal of the appellant and maintaining the conviction and sentence of the appellant as passed by the Additional Sessions Judge, Islampur in Sessions Case No. 39 of 2003 for offence punishable under Section 302 of the Indian Penal Code (For short 'IPC').

2. The prosecution case in brief as could be gathered from the material placed on record is as under:-

> 16:50:07 IST Reason:
>
> Deceased Jayashree was married to the accused prior to about 8 or 9 years from the date of the incident. They were blessed with two issues. PW-3-Anandibai is the

mother of deceased. PW-5-Ramchandra Chintappa is the brother of the appellant, who was residing separately in different part of the same house. It is the case of the prosecution, that the appellant was addicted to liquor and used to abuse and beat the deceased forcing her to get money from her mother. On the fateful night of 23 rd March 2003, the accused and deceased went to sleep in their house. At the dawn of 24th March 2003, PW-5 gave a call to the appellant, so that they could go to their field for harvesting jawar crop. The accused opened the door and expressed his inability to accompany him to the field stating, that Jayashree had committed suicide by hanging. PW-4-Ramchandra Shankar resides near the house of the appellant as well as PW-5. PW-5 informed PW-4 about the incident. PW-5 went to the village Panumbre to inform the mother of deceased and other relatives about the incident. PW-5 went to Kokrud Police Station and gave information about death of the deceased. On the basis of information received from PW-5, initially Ad No.13/2003 came to be registered. Subsequently, crime came to be registered for the offence punishable under Section 302 IPC. As per the advance death certificate, the probable cause of death was asphyxia due to strangulation. The charge-sheet came to be filed before the jurisdictional Magistrate, First Class.

3. The case was committed to the learned Sessions Judge. Charge was framed for the offence punishable under Section 302 IPC. The appellant pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned trial judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to imprisonment for life. Being aggrieved thereby, the appellant preferred an appeal before the High Court, which came to be dismissed. Hence, the present appeal.

4. We have heard Shri M. Qamaruddin, learned amicus curiae appearing on behalf of the appellant and Shri Sachin Patil, learned counsel appearing on behalf of the State.

5. Shri Qamaruddin, learned counsel for the appellant submitted, that the case rests entirely on the circumstantial evidence. He submitted, that unless and until the prosecution proves its case beyond all reasonable doubt, conviction in a case of circumstantial evidence would not be warranted. The learned counsel submitted, that merely on the basis of suspicion, conviction would not be sustainable. He relies in this respect on the judgment of this Court in the case of G. Parshwanath v. State of Karnataka1.

6. The learned counsel submitted, that in the present case, the prosecution has not been in a position to establish, that the death of the deceased was homicidal. He submitted, that if the evidence of PW-6-Dr. Kishor Patki is considered, it would reveal, that the evidence is inconsistent with the theory of homicidal death. In this respect, the learned counsel relies on the judgment of this Court in the case of Eswarappa alias Doopada Eswarappa v. State of Karnataka2.

7. Insofar as the finding of the learned trial court and the High Court with regard to the burden of the accused in view of Section 106 of the Evidence Act is concerned, the learned counsel submitted, that unless the initial burden is discharged by the prosecution, the burden would not shift on the

appellant. Reliance in this respect is placed on the judgments of this Court in Subramaniam v. State of Tamil Nadu and Another 3 and Gargi v. State of Haryana4.

1 (2010) 8 SCC 593 2 (2019) 16 SCC 269 3 (2009) 14 SCC 415 4 (2019) 9 SCC 738

8. The learned counsel submitted, that in the case of circumstantial evidence, motive plays an important role and the prosecution has utterly failed to prove the case as to motive. Reliance in this respect is placed on the judgment of this Court in the case of Babu v. State of Kerala5.

9. Lastly, the learned counsel submitted, that when two views are possible, one leaning towards acquittal and another towards conviction, the benefit should be given to accused. Reliance in this respect placed on the judgment of this Court in the case of Devi Lal v. State of Rajasthan6.

10. Shri Sachin Patil, learned counsel appearing on behalf of the State submitted, that no interference is warranted in the concurrent findings of the trial court and the High Court. He submitted, that the trial court as well as the High Court have rightly relied on the judgment of this Court in the case of State of Rajasthan v. Kashi Ram7 for convicting the accused.

11. The law with regard to conviction on the basis of circumstantial evidence has been very well crystalised in the 5 (2010) 9 SCC 189 6 (2019) 19 SCC 447 7 (2006) 12 SCC 254 judgment of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra8 :-

> "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 (1973) 2 SCC 793 where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] "19. .....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.

8 (1984) 4 SCC 116

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

12. In the light of these guiding principles, let us examine the facts in the present case.

13. In the present case, PW-6-Dr. Kishor Patki has been examined as a medical expert. He has conducted the autopsy along with his senior medical officer Dr. Tamboli. In the advance death certificate (Exh.-15), issued on 24 th March 2003, under the signature of PW-6, the probable cause of death was 'asphyxia due to strangulation'. However, in the Post-Mortem Report (Exh.-16) which is signed by Dr. Kishor Patki as well as Dr. Tamboli on 19 th June 2003, the cause of death was 'cardio respiratory arrest due to asphyxia due to hanging'. The only explanation for inordinate delay of almost 3 months in signing the Post-Mortem Report as given in his evidence by PW-6 is, that he was busy in some other work.

14. It will be relevant to refer to cross-examination of PW-6:-

> "It is correct that in both cases of suicidal or homicidal hanging the ligature mark around the neck shall go upwards ears. It is correct that while issuing advance death certificate it did not consult senior medical officer and after consulting of senior medical officer and going through the books I concluded that it was a case of hanging. Article No. 1 can be used for suicidal hanging and in case of homicidal hanging or homidic strangulation the bodily resistance would have reflected other recorded in my presence wise."

15. It is thus clear, that the medical expert has admitted, that in both the cases of suicidal or homicidal hanging, the ligature marks around the neck shall go upwards ears. He has further admitted, that after consulting his senior medical officer and going through the books, he concluded that it was a case of hanging. He has further admitted, that Article No. 1 which is a rope, which is found on the spot, can be used for suicidal hanging. He has further admitted, that in case of homicidal strangulation, the bodily resistance would have been reflected.

16. It will be apposite to refer to the judgment of this Court in the case of Eswarappa alias Doopada Eswarappa (supra), wherein this Court relied on Modi's Medical Jurisprudence and Toxicology and observed thus:-

> "7. In Modi's Medical Jurisprudence and Toxicology, 23rd Edn., p. 572 it is observed as follows:
>
> "Homicidal hanging, though rare, has been recorded. Usually, more than one person is involved in the act, unless the victim is a child or very weak and feeble, or is rendered unconscious by some intoxicating or narcotic drug. In a case, where resistance has been offered, marks of violence on the body and marks of a struggle or footprints of several persons at or near the place of the occurrence are likely to be found." None of the well-known signs referred to by the learned author are present in

this case."

17. In the present case also, admittedly, there are no marks on the body which would suggest violence or struggle. In any case, the medical expert himself has not ruled out the possibility of suicidal death. On the contrary, the Post-Mortem Report shows, that the cause of death was 'asphyxia due to hanging'.

18. In the light of this evidence, we find, that the trial court as well as the High Court have erred in holding, that the prosecution has proved that the death of the deceased was homicidal.

19. That leads us to the reliance placed by the High Court as well as the trial court on the provisions of Section 106 of the Evidence Act. In the case of Subramaniam (supra), this Court had occasion to consider the similar case of the husband and wife remaining within the four walls of a house and death taking place. It will be relevant to refer to the following observations of this Court:-

> "23. So far as the circumstance that they had been living together is concerned, indisputably, the entirety of the situation should be taken into consideration. Ordinarily when the husband and wife remained within the four walls of a house and a death by homicide takes place it will be for the husband to explain the circumstances in which she might have died. However, we cannot lose sight of the fact that although the same may be considered to be a strong circumstance but that by alone in the absence of any evidence of violence on the deceased cannot be held to be conclusive. It may be difficult to arrive at a conclusion that the husband and the husband alone was responsible therefor."

20. In the case of Subramaniam (supra), reliance was placed on behalf of the State on the judgments of this Court in Trimukh Maroti Kirkan v. State of Maharashtra 9 and Ponnusamy v. State of Tamil Nadu10. This Court observed thus:-

> "26. In both the aforementioned cases, the death occurred due to violence. In this case, there was no mark of violence. The appellant has been found to be wholly innocent. So far as the charges under Section 498-A or Section 4 of the Dowry Prohibition Act is concerned, the evidence of the parents of the deceased being PW 1 and PW 2 as also the mediators, PWs 4 and 5 have been disbelieved by both the courts below. That part of the prosecution story suggesting strong motive on the part of the appellant to commit the murder, thus, has been ruled out....."

21. It will also be relevant to refer to the following observations of this Court in the case of Gargi (supra):-

> "33.1. Insofar as the "last seen theory" is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt

> of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act directly operates against the appellant. In our view, such an approach has also not 9 (2006) 10 SCC 681 10 (2008) 5 SCC 587 been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in Sawal Das v. State of Bihar, (1974) 4 SCC 193 in the following: (SCC p. 197, para 10) "10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.""

22. It could thus be seen, that it is well-settled that Section 106 of the Evidence Act does not directly operate against either a husband or wife staying under the same roof and being the last person seen with the deceased. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused.

23. In the present case, as discussed hereinabove, the prosecution has even failed to prove beyond reasonable doubt, that the death was homicidal.

24. Another circumstance relied upon by the prosecution is, that the appellant failed to give any explanation in his statement under Section 313 Cr.P.C. By now it is well-settled principle of law, that false explanation or non-explanation can only be used as an additional circumstance, when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain. Reference in this respect could be made to the judgment of this Court in Sharad Birdhichand Sarda (supra).

25. The High Court and the trial court have then relied on Section 8 of the Evidence Act about the conduct of the accused. It will be relevant to note, that PW-5-Ramchandra Chintappa who was the first informant, has stated in his evidence, that when he went to call the accused for going to the field for harvesting the crop of jawar, he informed him, that the deceased had committed suicide by hanging. Not only this, but on the basis of the report of the said witness, initially Ad No.13 of 2003 came to be registered. The evidence of this witness is also duly corroborated by the evidence of PW-4-Ramchandra Shankar. Both these witnesses are prosecution witnesses. We find, that the High Court and the trial court have failed to take into consideration the evidence of these witnesses.

26. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive relied on by the prosecution is the ill-treatment by the appellant meted out to the deceased for not arranging the money from her mother. In this respect, the prosecution relies on the evidence of

PW-3-Anandi, mother of the deceased. It will be relevant to refer to the cross-examination of the said witness:-

> "....The accused and deceased had been to my house and stayed for four days few days prior to the incident....."

27. PW-3-Anandi, mother of the deceased has stated, that the accused and deceased had been to her house and stayed for four days few days prior to the incident. It would thus show, that the relations between the deceased and accused were cordial. It will not be safe to rely on the uncorroborated evidence of such a witness.

28. The prosecution has sought to rely on the evidence of PW-1- Nivrutti. However, his evidence is full of improvements and omissions. Even the trial court and the High Court have disbelieved his evidence.

29. It will be relevant to refer to a recent judgment of this Court in the case of Anwar Ali and Another v. State of Himachal Pradesh11:-

> "24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in Suresh Chandra Bahri v. State of Bihar 1995 Supp (1) SCC 80 that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu [Babu v. State of Kerala, (2010) 9 SCC 189, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under: [Babu v. State of Kerala, (2010) 9 SCC 189], SCC pp. 200-01) "25. In State of U.P. v. Kishanpal, (2008) 16 SCC 73, this Court examined the importance of motive in cases of circumstantial evidence and observed: (SCC pp. 87-88, paras 38-39) '38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not 11 (2020) 10 SCC 166 weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.'

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused.

(Vide Pannayar v. State of T.N., (2009) 9 SCC

152.""

30. In the present case, we are of the considered view that the prosecution has utterly failed to prove motive beyond doubt. As such, an important link to complete the chain of circumstances is totally absent in the present case.

31. Insofar as the reliance placed by the learned counsel for the State on the judgment of Kashi Ram (supra) is concerned, it would reveal, that this Court had used the factor of non-explanation under Section 313 Cr.P.C. only as an additional link to fortify the finding, that the prosecution had established chain of events unquestionably leading to the guilt of the accused and not as a link to complete the chain. As such, the said judgment would not be applicable to the facts of the present case.

32. It is more than settled principle of law that if two views are possible, the benefit shall always go to the accused. It will be apposite to refer to the following observations of this Court in the case of Sharad Birdhichand Sarda (supra):-

> "163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808, this Court made the following observations : [SCC para 25, p. 820 : SCC (Cri) p. 1060] "Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.""

33. This Court, recently, in the case of Devi Lal (supra) observed thus:-

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

34. In the present case, we are of the considered view that let alone establishing chain of events which are so interwoven to each other leading to no other conclusion than the guilt of the accused, the prosecution has failed even to prove a single incriminating circumstance beyond reasonable doubt. As such, the appeal is allowed and the conviction and sentence passed by the trial court as affirmed by the High Court is set aside. The appellant is acquitted of all the charges and he is directed to be released forthwith if not required in any other case.

.....J. [R.F. NARIMAN] .....J. [B. R. GAVAI] NEW DELHI;

MARCH 02, 2021.