Suresh Chandra vs State Of Uttar Pradesh on 30 January, 2025

Author: B.R. Gavai

Bench: B.R. Gavai

2025 INSC 156 NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1283 OF 2024

SURESH CHANDRA AND ANOTHER …APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH …RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. This appeal challenges the judgment and order passed by the Division Bench of the High Court of Judicature at Allahabad dated 29th October 2021 in Criminal Appeal No.3036 of 1983, vide which the learned Judges of the Division Bench of the High Court have dismissed the appeal filed by the accused persons (including the appellants herein), arising out of the judgment and order passed by the Special Judge (E.C.Act)/Additional Sessions Judge, Farrukhabad (hereinafter referred to as "trial court") in NARENDRA PRASAD Date: 2025.02.07 16:45:24 IST Sessions Trial No. 347 of 1982, thereby convicting all the Reason:

> accused persons for the offences punishable under Section 302 read with Section 149 and Sections 147 of the Indian Penal Code, 1860 (for short, 'the IPC') and sentencing them to undergo life imprisonment and one year rigorous imprisonment respectively. Sentences to run concurrently.

2. The facts, in brief, giving rise to the present appeal are as follows:

> 2.1 The deceased/Ram Dulari was married to the accused No.3/Umesh Chandra. On 14th of July 1981 at around 6:00 A.M., PW.1/Chhote Lal who is the uncle of the deceased lodged a complaint stating therein that, Nand Kishore and Ram Prakash, residents of village Rasoolpur came to his house and informed him that Ram Dulari had died due to burn injuries. The complainant and others rushed to the house of the accused persons where they found that the body of Ram Dulari was kept on a cot and

she was burnt from top to bottom. It is the case of the prosecution that the deceased was ill-treated on account of non-fulfillment of demand of dowry. Another motive that is attributed to the accused persons is that the deceased had not given birth to a child though a period of three years of marriage had been over.

2.2 On the basis of the oral complaint lodged by PW.1/Chhote Lal, an First Information Report (FIR) came to be registered for the offences punishable under Sections 302/149 and 147 of the IPC. Upon completion of the investigation, charge-sheet came to be filed against six accused persons and since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Judge.

Vide judgment and order dated 8th December 1983, the trial court convicted and sentenced all the six accused persons, as aforesaid. Being aggrieved thereby, the accused persons preferred a Criminal Appeal before the High Court which was dismissed vide impugned judgment and order. 2.3 Being aggrieved thereby, the appellants, who are original accused Nos.1 and 4, have approached this Court.

3. We have heard Shri Rajul Bhargava, learned senior counsel appearing for the appellants, assisted by Shri Jasir Aftab and Shri Kartikeya Bhargava, learned counsel, and Shri Vikas Bansal, learned counsel appearing for the respondent-State, assisted by Shri Suryaansh Kishan Razdan, learned counsel.

4. Shri Bhargava, learned senior counsel for the appellants submits that the present is a case which is without any evidence. It is submitted that the learned Judge of the Trial Court has convicted the appellants and learned Judges of the High Court have confirmed the same only on the basis of conjunctures and surmises. It is submitted that in the house there were twelve persons residing, however the investigating agency, for the reasons best known to them, have only chosen to proceed against the six accused persons. He further submits that even the prosecution has failed to prove that the death was homicidal. It is submitted that the possibility of the death being accidental cannot be ruled out. Learned counsel for the appellant further relied on the judgment of this Court in the case of Shivaji Chintappa Patil v. State of Maharashtra1. He, therefore, submitted that the appeal deserves to be allowed.

5. Shri Bansal, learned counsel appearing on behalf of the State, on the contrary, submits that both the learned Trial Court as well as the High Court have concurrently, on the basis of correct appreciation of evidence, convicted the 1 (2021) 5 SCC 626 : 2021 INSC 136 appellants. He submits that the conduct of the appellants is also important, inasmuch as they were absconding after the incident had taken place. He, therefore, submits that this Court shall not interfere with concurrent findings of the courts below.

6. With the assistance of the counsel for the parties, we have perused the evidence on record.

7. The present case rests basically on the evidence of PW.1/Chhote Lal and PW.2/Hari Narain, uncle and father of the deceased respectively. No doubt that the prosecution has examined one

independent witness i.e., PW.3/Raja Ram to establish that there was commotion in the house of the accused persons and that he had heard about the same when he was passing by the house. However, both the trial court as well as the High Court has found that he is a chance witness and his testimony was not trustworthy. As such his testimony has been discarded.

8. The present case occurred prior to Section 304-B of the IPC, being brought on the statute book. As such, the present case would fall only within the parameters of Section 302 IPC.

9. For this Court to uphold the conviction of the appellants for the offence punishable under Section 302 IPC, the prosecution will have to prove beyond reasonable doubt that it is the appellants who have committed the offence. No doubt that in view of Section 106 of the Indian Evidence Act, 1872 the burden would shift upon the accused. However, for the burden to shift upon the accused, the initial burden will have to be discharged by the prosecution. In a case such as the present one, the prosecution will have to show that before the death occurred it is only the appellants who were in the company of the deceased. The issue would have been different if it was only the husband and the wife who were residing together and the death had occurred in suspicious circumstances. In such an event, the issue would have been covered by the case of Trimukh Maroti Kirkan v. State of Maharashtra2.

10. However, in the present case there were around twelve persons residing along with the deceased. In such circumstances, it was necessary for the prosecution to establish as to which of the accused persons was in the 2 (2006) 10 SC 681 : 2006 INSC 691 company of the deceased prior to her death being noticed. Unfortunately, in the present case the prosecution has chosen to proceed against all the male members of the family and the mother-in-law of the deceased. Only the other women in the family i.e. the wives of the other brothers of the accused/Umesh have not been proceeded against.

11. Indisputably, the present case rests on circumstantial evidence. The law on conviction in the case of circumstantial evidence has been very well crystallized by this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra3. It will be relevant to refer to the observations made by this Court in the aforesaid case:

> “151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.
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> 3 (1984) 4 SCC 116 : 1984 INSC 121 .....

> 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:

> "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."

12. As such, the prosecution will have to prove beyond reasonable doubt that it is the appellants and the appellants alone, who have committed the crime. Every hypothesis except the guilt of the appellants will have to be ruled out. As held by this Court in the case of Sharad Birdhichand Sarda (supra), there is not only a grammatical distinction between 'may' and 'must' but also a legal distinction.

13. In the present case we find that no such chain of circumstances has been established by the prosecution, which proves beyond reasonable doubt that it is appellants and the appellants alone who have committed the crime.

14. The motive that is alleged is non-fulfillment of the demand of dowry. However, from the perusal of the evidence of PW.2/Hari Narain, it would reveal that the relationship between appellants and the family of PW.2/Hari Narain was cordial. His evidence would show that the appellants used to visit Hari Narain's house. He has further admitted in his examination that he had not made any complaint to anyone with regard to ill-treatment of the deceased on account of demand of dowry. His evidence further shows that the deceased was an educated person. He has also admitted that there is no letter addressed by the deceased to her family members regarding demand of dowry and ill-treatment on account of non-fulfillment thereof.

15. As such, in the present case, we are of the view that the conviction is based only on suspicion. As held by this court in Sharad Birdhichand Sarda (supra), however strong the suspicion, it cannot take place of proof beyond reasonable doubt.

16. We are further amazed with the approach adopted by the High Court. The High Court has observed that the motive for killing the deceased was a plausible one. The High Court has further observed that the prosecution case that the appellants set the deceased on fire was a possible and acceptable view. The approach in the criminal trial has to be of proof beyond reasonable doubt and not the probability or a possibility.

17. We are, therefore, of the considered view that the conviction of the appellants is not sustainable. The judgment and order of the High Court as well as of the Trial Court are not sustainable in law. The appeal is, therefore, allowed and the impugned judgment and order passed by the High Court as well as the judgment and order passed by the trial court are hereby quashed and set aside. The appellants are acquitted of all the charges they were charged with.

18. The appellants are directed to be released forthwith, if their detention is not required in any other case.

19. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI) .....J. (AUGUSTINE GEORGE MASIH)
.....J. (K. VINOD CHANDRAN) NEW DELHI;

JANUARY 30, 2025.