

KRISHNA GHOSH

v.

STATE OF WEST BENGAL
(Criminal Appeal No. 597 of 2009)

MARCH 31, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Penal Code, 1860 – 498-A and 302/34 – Subjecting the wife to cruelty and her murder – Within 1 year 4 months of marriage – Circumstantial evidence – Prosecution witnesses proving that body of deceased found from matrimonial home; injuries on her body; accused absconding at the relevant time – Evidence regarding injuries corroborated by autopsy report – Conviction by courts below – On appeal, held: In view of the evidence of PWs and autopsy report accused-husband liable to be convicted.

Evidence – circumstantial evidence – Reliance on – Held: Conviction can be based on such evidence – Condition precedent for reliance before conviction, discussed.

Appellant-accused was prosecuted alongwith two co-accused (his wife and sister) for having killed his wife and for subjecting her to cruelty. Trial court directed his conviction u/ss. 498-A and 302 IPC. High Court confirmed the conviction. Hence the present appeal by the accused-husband.

Dismissing the appeal, the Court

HELD:1. The evidence of PWs 1, 2, 4, 7, 8 and 14 clearly establish that the body was found in the matrimonial home of the deceased with injuries noticed by them which fit in with the evidence of the Autopsy

A Surgeon (PW-15). The death took place within one year and four months of the marriage in the house of the accused persons and the dead body was found with injuries. The injuries on the dead body were noticed by several witnesses e.g. PWs 1, 2, 4, 7 and 8. At the relevant time the accused persons were absconding which is of considerable importance. From the evidence of PWs 2, 4, 7 and 8, it is seen that the accused persons were absconding since the date of incident when the dead body of the deceased lay in her matrimonial home. The Investigating Officer's evidence was to that effect. The plea of alibi set up by the appellant has been discarded because there was no material to substantiate such plea. Above being the position, there is no merit in this appeal. [Paras 15 and 17] [342-G-H; 343-A, F]

D 2.1. Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. [Para 6] [338-G-H; 339-A]

E 2.2. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [Para 6] [339-B-C]

F 2.3. Before conviction could be based on circumstantial evidence, the conditions which must be fully established, are: (1) 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; (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. [Para 13] [341-G-H; 342-A-D]

Hukam Singh v. State of Rajasthan AIR 1977 SC 1063; *Eradu and Ors. v. State of Hyderabad* AIR 1956 SC 316; *Earabhadrapa v. State of Karnataka* AIR 1983 SC 446; *State of U.P. v. Sukhbasi and Ors.* AIR 1985 SC 1224; *Balwinder Singh v. State of Punjab* AIR 1987 SC 350; *Ashok Kumar Chatterjee v. State of M.P.* AIR 1989 SC 1890; *Bhagat Ram v. State of Punjab* AIR 1954 SC 621; *C. Chenga Reddy and Ors. v. State of A.P.* 1996 (10) SCC 193; *Padala Veera Reddy v. State of A.P. and Ors.* AIR 1990 SC 79; *State of U.P. v. Ashok Kumar Srivastava* 1992 CrLJ 1104; *Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh* AIR 1952 SC 343; *Sharad Birdhichand Sarda v. State of Maharashtra* AIR 1984 SC 1622; *State of Rajasthan v. Raja Ram* 2003 (8) SCC 180; *State of Haryana v. Jagbir Singh and Anr.* 2003 (11) SCC 261; *Kusuma Ankama Rao v. State of A.P.* 2008 (10) SCR 89 and *Manivel and Ors. v. State of Tamil Nadu* 2009 (9) JT 31, relied on.

"*Wills Circumstantial Evidence*" by Sir Alfred Wills (Chapter VI), referred to.

Case Law Reference:

AIR 1977 SC 1063	Relied on.	Para 6
AIR 1956 SC 316	Relied on.	Para 6
AIR 1983 SC 446	Relied on.	Para 6

A	AIR 1985 SC 1224	Relied on.	Para 6
	AIR 1987 SC 350	Relied on.	Para 6
	AIR 1989 SC 1890	Relied on.	Para 6
B	AIR 1954 SC 621	Relied on.	Para 6
	1996 (10) SCC 193	Relied on.	Para 7
	AIR 1990 SC 79	Relied on.	Para 8
C	1992 CrI. LJ 1104	Relied on.	Para 9
	AIR 1952 SC 343	Relied on.	Para 12
	AIR 1984 SC 1622	Relied on.	Para 13
	2003 (8) SCC 180	Relied on.	Para 14
	2003 (11) SCC 261	Relied on.	Para 14
D	2008 (10) SCR 89	Relied on.	Para 14
	2009 (9) JT 31	Relied on.	Para 14

E **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 597 of 2009.**

From the Judgment & Order dated 7.11.2006 of the High Court at Calcutta, in Criminal Appeal No. 266 of 1998.

F **Vijay Kumar (SCLSC) for the Appellant.**

Avijit Bhattacharjee, Saurmya Kundu and Subrata Biswas for the Respondents.

G **The Judgment of the Court was delivered by**

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court upholding the conviction of

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the appellant for offence punishable under Sections 498-A and 302 read with 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The present appeal is filed by the appellant, husband of Yogmaya (hereinafter referred to as the 'deceased'). A single appeal was filed by the present appellant and his mother-Gita Ghosh and unmarried sister Kalyani Ghosh A-3. A B

3. Prosecution version in a nutshell is as follows:

One Jiten Ghosh happens to be the de facto complainant of the instant case who lodged one written complaint with the local P.S. at Ranaghat on 24.07.1987 at 11.05 hours with a plea C that his niece (sister's daughter) Yogmaya was married about 1 year 4 months ago with accused Krishna Ghosh after giving proper dowry. Krishna Ghosh, his mother Gita Ghosh and sister Kalyani Ghosh used to rebuke his niece on very trivial household affairs as they did not like his niece as his niece used to intimate her agony to her parents and to him. They went to Yogmaya's in-law's house and used to pacify the matter and ameliorate the same for the benefit of the Yogmaya and thus the conjugal life of Yogmaya was not so peaceful. On 24.07.1987 when he had been to his field one Tentul Mondhal D intimated him that the woman folk were weeping at his house and he came to learn from his daughter-in-law Asha Ghosh that his niece Yogmaya had died. Then he proceeded to the house of Yogmaya which was about one mile away from his house and found the dead body of his niece Yogmaya at the verandah E of the house of the accused covered with a cloth and the in-laws of Yogmaya were absconding at the relevant time. He came to learn from one Badli Ghosh, wife of Rishipada Ghosh, that on 23.07.1987 at about 8 p.m. she heard about the assault F and crying and shouting of his niece Yogmaya but the persons of the locality could not enter into the house of the accused G persons. On the relevant day, the dead body of Yogmaya was taken out by her mother-in-law and sister-in-law and one Brijbala and they fled away after covering the dead body with a cloth. After uncovering the cloth he found that Yogmaya H

- A sustained bleeding injuries on her ear, nose, left eye, back and leg. Yogmaya died due to assault and torture of her in-laws by chain.

- B Upon such complaint, the instant case germinated against the accused persons and the criminal law was set in motion after investigation and they came to the conclusion with the submission of charge-sheet against all the three accused persons under Sections 498A and 302 read with Section 34 IPC. Copies were duly supplied to the accused persons under section 207 of the Code of Criminal Procedure, 1973 (in short the 'Code') and the case was committed by the learned Magistrate to the Court of Sessions and the cognizance of the case was taken under Section 193 of Code and charges were framed in terms of section 228 (1) (b) of Code on 9th February, 1993. Trial was held as the accused persons abjured guilt.
- C
- D Witnesses were examined and accused persons were examined under Section 313 of Code

- E Learned Sessions Judge, Nadia held that the prosecution has established the accusations and directed conviction as noted above. However, no separate sentence was imposed in respect of offence relatable to Section 498-A.

In appeal, the High Court found that the same was without merit and dismissed the same by the impugned judgment.

- F 4. In support of the present appeal, learned counsel for the appellant submitted that the case rests on circumstantial evidence and the circumstances do not establish the guilt of the accused.

- G 5. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

- H 6. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the

innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* AIR (1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); *Earabhadrapa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukhvasi and Ors.* (AIR 1985 SC 1224); *Balwinder Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Kumar Chatterjee v. State of M.P.* (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

7. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Ors. v. State of A.P.* (1996) 10 SCC 193, wherein it has been observed thus:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

8. In *Padala Veera Reddy v. State of A.P. and Ors.* (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

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

A established;

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

B (3) 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

C (4) 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.

D 9. In *State of U.P. v. Ashok Kumar Srivastava*, (1992
Crl.LJ 1104), it was pointed out that great care must be taken
in evaluating circumstantial evidence and if the evidence relied
on is reasonably capable of two inferences, the one in favour
of the accused must be accepted. It was also pointed out that
E the circumstances relied upon must be found to have been fully
established and the cumulative effect of all the facts so
established must be consistent only with the hypothesis of guilt.

F 10. Sir Alfred Wills in his admirable book "Wills'
Circumstantial Evidence" (Chapter VI) lays down the following
rules specially to be observed in the case of circumstantial
evidence: (1) the facts alleged as the basis of any legal
inference must be clearly proved and beyond reasonable doubt
connected with the factum probandum; (2) the burden of proof
is always on the party who asserts the existence of any fact,
G which infers legal accountability; (3) in all cases, whether of
direct or circumstantial evidence the best evidence must be
adduced which the nature of the case admits; (4) in order to
justify the inference of guilt, the inculpatory facts must be
H incompatible with the innocence of the accused and incapable

of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled of the right to be acquitted". A

11. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952. B

12. In *Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh*, (AIR 1952 SC 343), wherein it was observed thus: C

"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 be 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." D E F

13. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are: G H

- A (1) 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;
- B (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;
- C (3) the circumstances should be of a conclusive nature and tendency;
- D (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.

E 14. These aspects were highlighted in *State of Rajasthan v. Raja Ram* (2003 (8) SCC 180), *State of Haryana v. Jagbir Singh and Anr.* (2003 (11) SCC 261), *Kusuma Ankama Rao v. State of A.P.* (Criminal Appeal No.185/2005 disposed of on 7.7.2008) and *Manivel and Ors. v. State of Tami Nadu* (Criminal Appeal No.473 of 2001 disposed of on 8.8.2008).

F 15. The evidence of PWs 1, 2, 4, 7, 8 and 14 clearly establish that the body was found in the matrimonial home of the deceased with injuries noticed by them which fit in with the evidence of the Autopsy Surgeon (PW-15). The evidence of PWs 2, 4, 7 and 8 throw considerable light on the controversy.

G The death took place within one year and four months of the marriage in the house of the accused persons and the dead body was found with injuries. At the relevant time the accused persons were absconding which is of considerable importance.

H The plea of alibi set up by the present appellant has been discarded because there was no material to substantiate such

of combination by agreement. The agreement may be express A
or implied, or in part express and in part implied. The
conspiracy arises and the offence is committed as soon as the
agreement is made; and the offence continues to be committed
so long as the combination persists, that is until the
conspiratorial agreement is terminated by completion of its B
performance or by abandonment or frustration or however it
may be. The actus reus in a conspiracy is the agreement to
execute the illegal conduct, not the execution of it. It is not
enough that two or more persons pursued the same unlawful
object at the same time or in the same place; it is necessary C
to show a meeting of minds, a consensus to effect an unlawful
purpose. It is not, however, necessary that each conspirator
should have been in communication with every other."

11. The High Court has rightly observed that the charges D
have to be established beyond reasonable doubt before the
prosecution can succeed, but at that stage the challenge can
be made. There was no scope for interference. We are in
agreement with the view expressed by the High Court. However,
we make it clear that the observations made by the High Court E
while dismissing the petition before it shall not be considered
to be conclusive and determined. It has been rightly noted that
Manvinder accepted the factum of cancellation but thereafter
executed the special power of attorney. Therefore, we find no
infirmity in the order of the High Court to warrant interference.
However, we request the trial court to explore the possibility of F
early disposal of the case. If any petition for exemption is filed,
needless to say the same shall be considered keeping in view
sub section 2 of Section 205 of the Code of Criminal Procedure,
1973 (in short the 'Cr.PC.').

12. The appeal is dismissed. G

B.B.B.

Appeal dismissed.