NIKHIL CHANDRA MONDAL
v.
STATE OF WEST BENGAL

(Criminal Appeal No. 2269 of 2010)

MARCH 03, 2023

[B. R. GAVAI* AND SANJAY KAROL, JJ.]

Evidence – Extra-judicial Confession – Evidentiary value – Lady found murdered by a sharp cutting weapon – During investigation, revealed that the appellant-husband of the deceased had confessed before the prosecution witness that he had murdered the deceased with the murder weapon at that very spot where the body of the deceased was found – However, the trial court found the evidence of the witnesses contradictory to each other and not trustworthy, and acquitted the appellant – In appeal, the High Court convicted and sentenced the appellant u/s. 302 – Interference with – Held: Not called for – However, strong suspicion may be, it cannot take place of a proof beyond reasonable doubt – Extra–judicial confession is a weak piece of evidence – Where an extra–judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance – Trial court found the testimonies of prosecution witnesses not to be reliable so as to base the conviction solely on the basis of such testimonies – Trial court disbelieved the recovery of clothes and weapon – Approach adopted by the trial court was in accordance with law – Unless such a finding is found to be perverse or illegal/impossible, it is not permissible for the appellate Court to interfere with the same – View taken by the trial court could not be said to be either perverse or illegal/impossible to warrant interference – Thus, High Court erred in interfering with the well-reasoned judgment and order of acquittal passed by the trial court - Penal Code, 1860 - s. 302.

Allowing the appeal, the Court

Held :

1.1. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond

* Author

reasonable doubt. In the light of these guiding principles, we will have to consider the present case. [Para 11]

1.2. The trial court observed that where the prosecution case is entirely based on extra–judicial confession and the prosecution seeks conviction of the accused on that extra–judicial confession, the evidence of the witnesses before whom the alleged confessional statement was made, requires a greater scrutiny to pass the test of credibility. [Para 13]

1.3 The trial court found that the evidence of PWs 10 to 12 were contradictory to each other. The trial court had the benefit of witnessing the demeanour of these witnesses. It found the evidence of these witnesses not to be trustworthy. [Para 14]

1.4 Extra–judicial confession is a weak piece of evidence. Where an extra–judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra–judicial confession. There is no doubt that conviction can be based on extra–judicial confession, but in the very nature of things, it is a weak piece of evidence. [Para 15]

1.5 The trial court found the testimonies of PWs 10 to 12 not to be reliable so as to base the conviction solely on the basis of such testimonies. Unless such a finding was found perverse, an interference therewith would not be warranted. [Para 16]

1.6 The Division Bench of the High Court has relied on the recovery of the blood–stained clothes and the weapon which is alleged to have been used by the appellant in commission of the crime. The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open

place accessible to one and all. The approach adopted by the trial court was in accordance with law. However, this circumstance which could not have been used, has been employed by the High Court to seek corroboration to the extra–judicial confession. [Paras 17, 18]

1.7 The scope of interference in an appeal against acquittal is very well crystalised. Unless such a finding is found to be perverse or illegal/impossible, it is not permissible for the appellate Court to interfere with the same. The view taken by the trial court could not be said to be either perverse or illegal/impossible to warrant interference. The High Court grossly erred in interfering with the well–reasoned judgment and order of acquittal passed by the trial court. Thus, the impugned judgment and order passed by the High Court convicting the appellant for the offence punishable under Section 302 of the IPC is quashed and set aside. [Para 19, 22]

Sharad Birdhichand Sarda v. State of Maharashtra **(1984) 4 SCC 116 : [1985] 1 SCR 88;** *Sahadevan and Another v. State of Tamil Nadu* **(2012) 6 SCC 403 : [2012] 4 SCR 366;** *Rajesh Prasad v. State of Bihar and Another* **(2022) 3 SCC 471 – referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2269 of 2010.

From the Judgment and Order dated 15.12.2018 of the High Court at Calcutta in Govt. Appeal No. 38 of 1987.

Ms. Rukhsana Choudhury, Adv. for the Appellant.

Ms. Astha Sharma, Srisatya Mohanty, Sanjeev Kaushik, Ms. Mantika Haryani, Shreyas Awasthi, Himanshu Chakravarty, Bhanu Mishra, Devvrat Singh, Ms. Muskan Surana, Advs. for the Respondent.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. The appeal challenges the judgment and order dated 15th December 2008 passed by the High Court at Calcutta in Government Appeal No. 38 of 1987, thereby reversing the judgment and order dated 31st March

1987 passed by the Additional Sessions Judge, 4th Court, Burdwan (hereinafter referred to as "the trial court"), vide which the trial court had acquitted the appellant for the charge under Section 302 of the Indian Penal Code, 1860 (for short, "IPC"). Vide the impugned judgment and order, the Division Bench of the High Court convicted the appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life and a fine of Rs.2,000/- and in default of payment of fine, to undergo further imprisonment for a period of six months.

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

On 11th March 1983, UD Case No. 7/83 was registered at PS Ketugram that the dead body of an unknown married woman aged about 25 years was lying in a field on the side of the railway track at Ambalgisan Railway Station. The lady appeared to have been murdered by a sharp cutting weapon. On the basis of the aforesaid, Police had begun the investigation. During investigation, it was revealed that the appellant, accompanied his wife (the deceased) and their son had gone to attend the Fullara Mela organised in Lavpur Gram Panchayat and thereafter, the deceased was alleged to be missing from the said Mela. During the investigation, it was also revealed that the appellant had confessed before Manick Pal (PW-10), Pravat Kumar Misra (PW-11) and Kanai Ch. Saha (PW-12) that he had murdered the deceased with a bhojali (the murder weapon) at that very spot where the body of the deceased was found.

3. Upon completion of the investigation, a charge-sheet came to be filed before the Chief Judicial Magistrate, Burdwan under Section 302 of the IPC against the appellant. The case was committed to the Court of Sessions. The appellant pleaded not guilty and claimed to be tried. At the conclusion of the trial, the trial court vide judgment and order dated 31st March 1987 acquitted the appellant from the charges levelled against him. Being aggrieved thereby, the State preferred an appeal before the High Court. By the impugned judgment and order, the High Court allowed the appeal and convicted and sentenced the appellant as aforesaid. Hence, the present appeal.

4. We have heard Ms. Rukhsana Choudhury, learned counsel appearing on behalf of the appellant and Ms. Astha Sharma, learned counsel appearing on behalf of the State.

5. Ms. Choudhury submits that the High Court has grossly erred in reversing the well-reasoned judgment and order of acquittal passed by the trial court. She submits that the trial court had rightly disbelieved the testimonies of Manick Pal (PW-10), Pravat Kumar Misra (PW-11) and Kanai Ch. Saha (PW-12) being inconsistent with each other. It is therefore submitted that the finding of the trial court disbelieving the extra-judicial confession alleged to have been made to these three witnesses could not be said either to be perverse or illegal/impossible. She further submits that in any case the interference in a finding of acquittal would not be warranted unless the finding is found to be perverse or illegal/impossible. She therefore submits that the impugned judgment and order is liable to be set aside.

6. Ms. Sharma, on the contrary, submits that the High Court has rightly found that the extra-judicial confession made before PWs 10 to 12 is trustworthy, reliable and cogent. She therefore submits that the High Court has rightly reversed the judgment and order of acquittal which was recorded disbelieving the cogent and reliable testimonies of these three witnesses. She further submits that, apart from the extra-judicial confession, the prosecution has also established the recovery of the blood-stained clothes and the weapon used by the appellant in commission of the crime. This circumstance corroborates the testimonies of PWs 10 to 12.

7. With the assistance of the learned counsel for the parties, we have scrutinized the entire evidence.

8. Undisputedly, the present case rests on circumstantial evidence. The law with regard to conviction in the case of circumstance evidence is very well crystalised in the judgment of this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[1]***.***

9. We may gainfully refer to the following observations of this Court in the case of ***Sharad Birdhichand Sarda*** (supra):

> "***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 (1984) 4 SCC 116

(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 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] 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."

10. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be" established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that 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. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so 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.

11. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of these guiding principles, we will have to consider the present case.

12. The prosecution case rests basically on the extra-judicial confession alleged to have been made by the appellant before Manick Pal (PW-10), Pravat Kumar Misra (PW-11) and Kanai Ch. Saha (PW-12).

13. The trial court observed that where the prosecution case is entirely based on extra-judicial confession and the prosecution seeks conviction of the accused on that extra-judicial confession, the evidence of the witnesses before whom the alleged confessional statement was made, requires a greater scrutiny to pass the test of credibility.

14. The trial court found that the evidence of PWs 10 to 12 were contradictory to each other. It is further to be noted that the trial court had the benefit of witnessing the demeanour of these witnesses. It found the evidence of these witnesses not to be trustworthy.

15. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence. Reliance in this respect could be placed on the judgment of this Court in the case of ***Sahadevan and Another v. State of Tamil Nadu***[2]**.** This Court, in the said case, after referring to various earlier judgments on the point, observed thus:

2 (2012) 6 SCC 403

"**16.** Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(*i*) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(*ii*) It should be made voluntarily and should be truthful.

(*iii*) It should inspire confidence.

(*iv*) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(*v*) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(*vi*) Such statement essentially has to be proved like any other fact and in accordance with law."

16. As already discussed hereinabove, the trial court found the testimonies of PWs 10 to 12 not to be reliable so as to base the conviction solely on the basis of such testimonies. Unless such a finding was found perverse, an interference therewith would not be warranted.

17. The Division Bench of the High Court has relied on the recovery of the blood-stained clothes and the weapon which is alleged to have been used by the appellant in commission of the crime.

18. The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law. However, this circumstance which, in our view,

could not have been used, has been employed by the High Court to seek corroboration to the extra-judicial confession.

19. The scope of interference in an appeal against acquittal is very well crystalised. Unless such a finding is found to be perverse or illegal/ impossible, it is not permissible for the appellate Court to interfere with the same.

20. Recently, a three-Judges Bench of this Court in the case of ***Rajesh Prasad v. State of Bihar and Another***[3] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.

21. We find that the view taken by the trial court could not be said to be either perverse or illegal/impossible to warrant interference. The High Court has grossly erred in interfering with the well-reasoned judgment and order of acquittal passed by the trial court.

22. In the result, we pass the following order:

    (i) The appeal is allowed;

    (ii) The impugned judgment and order dated 15th December 2008 passed by the High Court at Calcutta in Government Appeal No. 38 of 1987 convicting the appellant for the offence punishable under Section 302 of the IPC is quashed and set aside; and

    (iii) The judgment and order dated 31st March 1987 passed by the trial court acquitting the appellant from the charges levelled against him is affirmed.

3 (2022) 3 SCC 471

23. The appellant is directed to be set at liberty forthwith if not required in any other case.

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

Headnotes prepared by: Nidhi Jain
(*Assisted by:* Tamana, LCRA)

Result of the case: Appeal allowed.