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CASE COMMENT ON SHARAD BIRDHI CHAND SARDA VS STATE OF MAHARASHTRA ON 17 JULY, 1984

AUTHORED BY- AFIYA PARVEEN A
Student, School Of Excellence In Law

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Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A. Varadarajan, Sabyasachi Mukharji

INTRODUCTION

Evidence plays a crucial role in the criminal justice system as it serves as a primary means in determining the guilt or the innocence of the accused. The evidences need to be assessed with utmost care, diligence, fairness and precision especially in the cases where the outcome of which has a direct impact on the personal liberty and status of the person. Evidences are of various types, among which circumstantial evidence occupies a delicate position which is challenging as well as difficult to prove. It is within this legal context revolving around circumstantial evidence, the case of Sharad Birdhichand Sarada v. State of Maharashtra is a very important landmark judgement. It placed greater emphasis on the evaluation of circumstantial evidence and established the test for circumstantial evidence which is known as Panchsheel. And also reinforced the principle that the accused enjoys the benefit of doubt, thereby adding meaningful contribution to the jurisprudence governing the appreciation of circumstantial evidences.

FACTS

- On February 11, 1982 marriage was solemnised between Manju and the appellant, Sharad Birdhichand Sarada and started residing with the appellant in Takshila apartments at Pune. Being disappointed with the harsh and cruel treatment of her husband and his parents towards her and on finding things unbearable, she narrated her woeful tale through letters also to her friend named Vahini and to her sister Anju.
- Manju went to her parent's house but returned to Pune on being insisted by her father in law to attend the betrothal ceremony of sister of the appellant which was going to be held on 13.6.82 On 11.6.82 near about 11.00 p.m., Manju being accompanied by

Anuradha (wife of A-2) and her children returned to the flat. Her husband was not in the apartment at that time but it is alleged that he returned soon after and administered potassium cyanide to Manju.

- On the fateful morning of June 12, 1982, Manju was found dead in her bed. After that, appellant visited his brother, Rameshwar and brought Dr. Lodha. At the suggestion of Dr. Lodha, Dr. Gandhi was also called both of them found that Manju was dead and her death was an unnatural one and advised the body to be sent for postmortem in order to determine the cause of death.
- The trial court on appreciation of the circumstantial evidences found all the three accused namely the appellant, Rameshwar Birdhichand Sarda, Ramvilas Rambagas Sard guilty as charged, convicted them and sentenced the appellant to death under s.302 I.P.C. and all the three accused to imprisonment for two years and a fine of Rs. 2,000 each under s.120B I.P.C. but did not award any sentence under s.201 read with s.120B.
- The appellant and the other two accused file Criminal Appeal and on the other hand the State filed a Criminal Revision application for enhancement of the sentence awarded to accused 2 and 3. The Bombay High Court heard together Criminal Revision Application with the appeal and confirmed the conviction and sentence of death of accused no.1 but acquitted accused no. 2 and 3. Hence the appellant has come up before the Supreme Court after obtaining Special Leave.

ISSUES FOR DETERMINATION

Whether Manju's death was a result of suicide or murder by forceful administration of poison (potassium cyanide)?

Whether the statements contained in the letters written by the deceased and oral evidence of the witnesses are admissible under section 32 of the Indian Evidence Act?

Whether the conviction of the appellant be set aside on the ground that the guilt of the accused has not been proved beyond all reasonable doubt?

ARGUMENTS ADVANCED:

APPELLANT

- There's strong possibility of the deceased having committed suicide due to the circumstances mentioned in her own letters. Manju being a sensitive in nature committed suicide out of sheer depression and frustration due to ill treatment by her husband and his parents.

- The statements contained in the written and oral dying declarations are admissible neither under Section 32 nor under Section 8 of the Evidence Act. The case in hand is not at all covered by clause 1 of s. 32 of the Evidence Act.
- The oral evidence of those five witnesses is inadmissible under s. 32(1). Circumstances must have some proximate relation to the actual occurrence and must be of the transaction which resulted in the death of the declarant but there's no such proximity in the case in hand. The alleged oral statements of Manju and what she has stated in her letters, Exs 30, 32 and 33 have a very remote bearing on the cause or the circumstances of her death. The actual event that led to her death from potassium cyanide poisoning does not have any proximity to those circumstances.
- A number of interpolations in the postmortem report including postmortem note of Dr. Banerjee has clearly written that it "can be a case of suicidal death" and also inference needs to be regarding position of tongue.
- It is highly improbable that if the betrothal ceremony of appellant's sister, which was going to be performed on the 13th of June, would the appellant choose a day before that for murdering his wife and thereby bring disgrace and destruction not only to his family but also to her sister.

RESPONDENT

- Written dying declaration by the deceased in her letters, two of which were addressed to her sister Anju and one her friend Vahini are admissible under section 32 of the Evidence Act.
- The oral statements made by the deceased to (PW 2), (PW 20), (PW 6), (PW 3) and also to (PW) 4 and 5 showing her state of mind shortly before her death and the complaints which she made regarding the ill- treatment by her husband must be admitted.
- A clear motive for the accused to murder her can be traced from the ill treatment of Manju by her husband at Pune from the statements made by the deceased regarding the same to the witnesses.
- The evidence shows that the appellant was last seen with the deceased in the room until the matter was reported to the police. The conduct of the appellant was unnatural and incriminating.
- The medical evidence taken along with the Report of the chemical examiner

demonstrably proves that it was a case of homicide, completely rules out the theory of suicide as alleged by the appellant.

- Since the Deceased was 4–6 weeks pregnant the appellant realised that unless the deceased was murdered at the behest it would become very difficult for him to murder her, even if he had got an opportunity, if a child was born and then he would have to maintain the child also which would affect his illicit connections with Ujvala

JUDGEMENT

The Hon'ble court was of the view that the five golden principles enunciated by this Court in Hanumant's decision (supra) have not been satisfied in the present case. And the prosecution has failed to satisfy the court with the essential requirement of criminal case which rest purely on circumstantial evidence. Since the evidence clearly shows that two views are possible-one pointing to the guilt of the accused and the other leading to his innocence on this ground alone the benefit of doubt can be enjoyed by the appellant. The Hon'ble Court held that the fundamental error of law has been committed by the High Court as it has not only misappreciated the evidence but also has completely overlooked the well-established principles of law. However, agreed with the views of the High Courts on the following points i.e. evidence of Dr. Banerjee (PW 33) which shows that poison was forcibly administered by the process of mechanical suffocation is unsafe to rely upon and there is no manifest defect in the investigation by the police. As a result of the failure on the part of the prosecution to prove the case against the appellant beyond reasonable doubt, the appeal was allowed and the court set aside the judgements of the courts below and acquitted the appellant.

ANALYSIS

Manju's Death – Is it Murder or is there possibilities for Suicide

The central question that revolves is that whether Manju's death was a result of murder or is there any possibility for the commission of suicide by her. On this point, the Hon'ble court rightly disagreed with the findings of the High Court and the trial court which was of the view that the deceased died as a result of murder committed by the appellant in the present case and that witnesses are strongly dependable which helps in exclusion of any possibility for the commission of suicide.

A closer view of the letters written by Manju to her Sister Anju and her friend Vahini regarding

the ill treatment by her husband and in laws, frustration or desperation experienced by her and about the description of the atmosphere as a dirty one taken as a whole gives so much gap for reasonable possibility to arise for the commission of suicide by Manju. In general, sensitive and sentimental natured women often get affected by the ill behaviour and the action of their close ones i.e. Kith and Kin towards them which in result makes them so desperate and helps them to develop a spirit of revenge in order to destroy the life of them or in certain extreme case it may also lead them to end their by life by commission of suicide.

The prosecution being failed on their part to exclude the possibility of the commission of suicide by Manju beyond reasonable doubts. Further, the letters written by Manju and the evidence of PWs 2, 3, 4, 6 and 20 is central for there to be a reasonable possibility for commission of suicide. This brings to the conclusion that it is not definite to hold that it was not a case of murder but at the same time it is also necessary to stress on the point that there's also reasonable possibility for the commission of suicide by Manju.

Test of Proximity and Admissibility of written letters and oral evidence under Section 32 of the Indian Evidence Act

As far as the dying declarations are concerned the Indian law is distinct from that of the English Law where the statements which directly relates to the cause of death are alone admissible. Further, the circumstances around the transaction that led to his demise, especially situations when the cause of that person's death is uncertain in clause 1 of section 32 cannot be found in the English law. Under Section 32, irrespective of whether the death is homicide or suicide the statements which are made by the deceased are admissible especially if the statement is in relation to cause of death or circumstances that has connection with the death. And this section, falls as an exception to the hearsay rule.

There can be no straightjacket formula for the application of the Test of proximity as the distance of time varies with the circumstances of each case. But however, if the statement does not bear any proximity or if it is irrelevant then the same would not be admissible. The second part of clause 1 of section is an exception to the rule in criminal law that the evidence of person not subjected or given an opportunity to be cross examined by the accused becomes valueless. The statement and the letters written by the deceased which are in direct connection with or related to her death plays a major role and are considered to be main evidence. And this clearly brings the above statements within Section 32 thereby making it admissible.

As far as the present case is concerned, the alleged oral statements and statements made by Manju in the letters written by her brings into light the fear or suspicion experienced by her. But in no way these bear proximity in the occurrence of her death due to potassium cyanide poison. And it is also not the case of the prosecution that the case in hand is one of prolonged poisoning.

Five Golden Principles of Circumstantial Evidence (Known as Panchsheel)

In the absence of direct evidence, the circumstantial evidence comes into picture which helps in determining the guilt of the accused. It is a very established point that the prosecution must stand on its own legs and in no-way they can take any advantageous position from the disadvantageous situation of defence. The Hon'ble court heavily relied on the case of Hanumant v. The State of Madhya Pradesh. Since it is very challenging to prove the circumstantial evidence in the court of law, it's the need of the hour to establish the standards to be laid down in the proving the same. The Hon'ble Court in recognition of this situation laid down the five golden principles of circumstantial evidence which is otherwise known as the Panchsheel.

The Five Golden Principle of Circumstantial Evidence are as follows firstly, the circumstance should be fully proved which helps in drawing conclusion in regards to the guilt of the accused. Secondly, there should not be any inconsistency with the so established facts pointing towards the hypothesis of the guilt of the accused. Thirdly, the nature of the circumstance should be very conclusive. Fourthly, except the hypothesis to be proved it should exclude every other possible hypotheses. Lastly, the chain of evidence must be complete in nature which should not leave any gap for any reasonable possibility to arise regarding the innocence of the accused and it must reflect that the act was committed by the accused. In the present case, the hon'ble court was of the view that the five golden principles of circumstantial evidence have not been satisfied in the present case. It is not possible to state that in all human probability accused committed murder as there is other possibility such as the commission of suicide by Manju. Ultimately, the Prosecution failed to establish the key elements of the rule laid in respect of circumstantial evidence.

Accused entitled to the Benefit of Doubt

The law is well settled on the point that if there two possibilities available i.e. one in favour of the prosecution and the other one in favour of the accused, it is of no doubt that the accused

would be entitled to the benefit of doubt. It is the duty of the court to ensure the presence of four circumstance which helps in the way of justifying a conviction. They are as follows firstly, accused must have the motive to administer poison to the deceased. Secondly, death should occurred as result of the poison administered. Thirdly, poison should be in possession of the accused. Lastly, presence of opportunity to administer the poison.

In the present case, though two essentials have been proved but other two ingredients have not been proved. As there is no evidence to prove the possession of poison by the accused. On the other hand, there is no evidence to show that the potassium cyanide could have been procured by the accused from any available source, though the evidence suggests the possibilities for the availability of the same from the plastic factory. The Hon'ble court in the present case where two possibilities are available i.e. it may be a suicide or it may be a murder followed the well settled law which resulted in allowing the appeal and holding that the appellant is entitled to the benefit of doubt which ultimately resulted in his acquittal.

Possibility To Interfere with the concurrent findings of the courts below – Supreme Court under Article 136

In general, the court does interfere with the concurrent findings of the court below except special circumstances exists warranting the interference of this court. Article 136 of the constitution which deals with the special leave petition allows the supreme the court to interfere with findings of the court if substantial question of law is involved, if there is any gross miscarriage of justice or errors of law committed by the Courts below. Further, in criminal cases if the High Court fails to apply the well settled law and principles of criminal jurisprudence. It places duty upon the court to step in and correct the errors committed in order to uphold the criminal justice system.

In the present case, the hon'ble allowed the appeal as the High Committer fundamental errors of law, failed to apply principles of circumstantial evidences and principles which allows the accused to enjoy the benefit of doubt. This resulted in serious and gross miscarriage of justice to the accused. Therefore, the court stepped in to performs its duty in upholding justice whereby allowed the appeal, allowed the accused to enjoy the benefit of doubt and acquitted the appellant.

CONCLUSION

The case gained greater significance and became a corner stone of the Indian criminal law for evaluating the circumstantial evidence which laid down high standards for convicting a person particularly in murder cases. The case turned out to be landmark precedent as it established the golden principle of circumstantial evidence known as "Panchsheel" (Test for Circumstantial Evidence) which ultimately emphasizes that the circumstantial evidence needs to be proved fully, consistent, conclusive in nature, exclude all other hypothesis and form complete chain leaving no reasonable doubt. Further, the case stressed on the most important principle that when the prosecution fails to prove the case beyond the reasonable doubt, the accused would be entitled to the benefit of doubt. The case stands a pivotal reference in the criminal legal system assuring that when two views are possible one pointing towards the guilt of the accused and the other one pointing towards his innocence the court will presume innocence of the accused and would place higher level of burden of proof on the prosecution.

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