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STATE OF WEST BENGAL

v.

DIPAK HALDER & ANR.

(Criminal Appeal No. 543 of 2004)

MAY 08, 2009

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**[DR. ARIJIT PASAYAT, D.K. JAIN AND DR.
MUKUNDAKAM SHARMA, JJ.]**

- Penal Code, 1860 – ss. 302 and 498A – Married woman burnt to death – Husband and in-laws of deceased allegedly ill-treated her due to non-payment of dowry by her father – Case based on circumstantial evidence – Defence plea that the incident occurred due to bursting of kerosene stove – Conviction of respondent-husband by trial Court – Reversed by High Court – On appeal, held: Conviction can be based on circumstantial evidence if it is of such a character that the same is wholly inconsistent with the innocence of the accused and is consistent only with his guilt – In the instant case, apart from the fact that the respondent-husband did not make an effort to save the deceased and was shown to have been abusing the deceased and his relatives, he tried to prove his innocence by manipulating records of a nursing home – Obvious attempt on part of accused-husband was to show that he could not have looked after treatment of the wife as he himself was undergoing treatment – There was no material to show that a stove had burst as pleaded by defence – High Court did not even analyse the circumstances and came to an abrupt conclusion that the circumstances did not constitute a complete chain – Circumstances point to only one conclusion, i.e. guilt of the respondent-husband – Judgment of High Court set aside and that of trial Court restored – Evidence – Circumstantial evidence – Appreciation of.*

PW1's daughter was allegedly burnt to death by her

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husband and in-laws. It was alleged that the accused persons ill-treated the deceased due to non-payment of dowry by her father. The prosecution case was based on circumstantial evidence. The defence plea was that the incident occurred due to bursting of kerosene stove. The trial court convicted respondent no.1-husband under s.498A IPC and s.302 IPC. On appeal, the High Court acquitted respondent no.1. Hence the present appeal. A B

Allowing the appeal, the Court

HELD: 1. In a case based on circumstantial evidence, the Court is required to consider whether the cumulative effect of all the circumstances, lead to a conclusion that the same was a case of murder and the accused was responsible for such murder. A conviction can be based on circumstantial evidence if it is of such a character that the same is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. The incriminating circumstances that are being used against the accused must be such as to lead only to a hypothesis to reasonably exclude every possibility of his innocence. To put it differently, the Court should find out whether the crime was committed by the accused and the circumstances proved formed themselves into a complete chain, which clearly points to the guilt of the accused. If on the other hand, the circumstances proved against the accused are consistent either with the innocence of the accused or raise a reasonable doubt about the way the prosecution has alleged the offence is committed, the accused would be entitled to the benefit of doubt. [Para 5] [539-G-H; 540-A-C] C D E F G

2. In the instant case, apart from the fact that the accused did not make an effort to save the deceased but was shown to have been abusing the deceased and his relatives, tried to prove his innocence by manipulating H

- A records of a nursing home. The obvious attempt was to show that he could not have looked after the treatment of the wife as he himself was undergoing treatment. Several other factors throw considerable light relating to the absence of any material to show that a stove had
- B burst which resulted in causing injuries on the body of the deceased. The High Court did not even analyse the circumstances but came to an abrupt conclusion that the circumstances do not constitute a complete chain. The circumstances point to only one conclusion, i.e. guilt of
- C the accused-respondent no.1. The judgment of the High Court impugned in this appeal is set aside and that of the trial Court is restored. [Paras 6 and 7] [540-C-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 543 of 2004.

- D From the Judgment & Order dated 5.8.2003 of the High Court of Calcutta in C.R.A. No. 446 of 1990.

- E Tara Chandra Sharma and Neelam Sharma for the Appellant.

V.K. Sidharthan for the Respondent.

The Judgment of the Court was delivered by

- F DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court directing acquittal of the three appellants before it who are described hereinafter as accused no. 1, 2 and 3 respectively. Respondent No.1-Dipak Halder was married to one Rimu (hereinafter referred to as the 'deceased'). Alleging that
- G deceased Rimu was killed by respondent No.1 and that she was tortured, for non-fulfillment of dowry on demand, prosecution was launched. Charge under Section 498A read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'Code') was framed against all the three accused persons.
- H Charge under Section 302, IPC was framed against respondent

No.1, Dipak Halder while charge under Section 302 read with Section 109, IPC was framed against other two accused persons.

2. Prosecution version in an outset is as follows :

The deceased Rimu, daughter of Bimalendu Ganguly, was married to accused Dipak Halder on 18.2.1986. Bimalendu failed to pay the agreed dowry amount of Rs.10,000/- on the date of marriage. Although the other articles which he agreed to give by way of marriage gift were duly given. Due to non-payment of dowry money of Rs.10,000/-, the bride Rimu had to face ill treatment and torture at the hands of her husband Dipak, her mother - in-law Dipali and also her brother-in-law Pradip. It is alleged that after the marriage Rimu was physically tortured and she was often denied food. The ill treatment and torture, within a short time of marriage compelled the victim girl to return to her father's place along with her husband. On that occasion, the victim Rimu with her husband Dipak stayed for 3 weeks in the-house of Bimalendu Ganguly (P.W.1), the father of the victim. After 3 weeks Rimu was taken back to her in-laws place by her husband. At that time Dipak assured her that there would be no further torture. Again Rimu had to take shelter in her father's place. On that occasion a diary was lodged at the local P.S. by her husband who also accompanied Rimu, to her father's place, and stayed there for sometime with the Victim. This time, she and her husband, started living in the house of Tejendra Nath Bose (P.W. 12), a well wisher of the family, till they got an accommodation, at a nearby place. In this way after 3 months they shifted to a flat of Nazir Bagan Lane within Kasba P.S. At the time Rimu was pregnant and subsequently she gave birth to a daughter on 10th of December 1986. After she returned home, mental torture on her which gradually took shape of physical torture started. It is further alleged that accused Dipak was seen agitated, some times became violent whenever he used to go to his own house at Tanu Pukur and met his mother. The matter reached its climax on 25th October, 1987 when the victim wanted money for Bhratri Ditia. It was

A reported by the maid servant that both the victim and her husband were quarrelling with each other. Half an hour after that some young boys of the locality came running and reported that Rimu had been burnt. Getting this information, the wife of the informant rushed to the spot. Even at that time she was abused and insulted by her husband Dipak before the local people. Rimu was taken to the hospital by the local people in the car of Mrs. Binita Dhar. In spite of request, her husband Dipak refused to accompany the victim when she was taken to the hospital. On the next day, the victim succumbed to her injuries.

C Charge under Section 302 IPC was framed against accused Dipak Haldar for causing the death of the victim Rimu. The other two, Dipali, the mother of the principal accused Dipak and his brother Prodip were charged under Section 302 read with Section 109 IPC for abetting the murder. All the three accused were also charged under Section 498-A read with Section 34 IPC. The trial proceeded when the accused pleaded not guilty to such charge.

E In order to bring home the charge, the prosecution in all examined 46 witnesses. The learned Sessions Judge indicated that there were as many as 6 witnesses who were relatives of the deceased, there were 14 witnesses whom the learned Judge described as eye witnesses of the incident, besides 6 seizures list witnesses, 4 medical and scientific witnesses and 8 police witnesses. Regarding the offence punishable under Section 498A IPC, the learned Judge relied on the evidence of the parents and brother of the victim who have been examined as PWs. 1 to 3. Besides, he heavily relied on a G.D. Entry Ext.30 stated to the lodged by the accused Dipak Halder and also Ext.4 a counter part of pay in slip of Indian Bank which the learned Judge in the judgment has described as bank draft. He also relied on the evidence of Soma Ganguly (PW.4), the sister of the deceased and Dipti Dutta Roy (PW 19) a resident of Nazir Began and a close neighbour of the place where the deceased used to reside with her husband before her death.

H The learned Judge also considered the statement made by the

accused Dipak on being examined under Section 313 Cr.P.C. A
admitting that often he created pressure upon the deceased
for cooking various items of food. Regarding the charge of
murder against the principal accused Dipak Halder, the learned
Judge first of all relied on the background of the incident, as
revealed through the evidence of the prosecution witnesses that B
in the morning of 25.10.1987, the deceased Rimu paid Rs.100/
- towards the cost of Bhaiphota by going to her father's house
without the consent of her husband. For this purpose, he has
placed his reliance on the evidence of her parents and brother
and sisters and also on the evidence of the maid servant of the C
house Shibani Shee (PW7). He also placed reliance on the
evidence of Rita Bose (PW 27), a resident of Nazir Bagan who
met victim Rimu in the morning of 25.10.1987 at the sweet meat
shop where Rimu reported to her that she made a contribution
of Rs.100/- without the knowledge of her husband for which she D
might punished. Coupled with this, the learned Judge also
considered some other circumstances like (i) the wearing
apparels of the victim contained smell of kerosene oil and the
stove of the house did not burst, (ii) there was quarrel between
the couple in the night previous to the incident. Even the quarrel E
was going on immediately before the fire, (iii) the doors and
windows of the house were closed at the time of the fire, (iv)
the post mortem report suggested that Rimu had been
assaulted previous to the fire, (v) deceased Rimu tried to save
herself from the hands of the accused Dipak and for the reason F
came out of the house and took shelter in the house of Tejender
Narayan Bose (vi) there was no evidence that accused Dipak
tried to save deceased Rimu or raised any alarm,
(vii) when the neighbours to put off the fire accused Dipak was
seen hurling abuses to the deceased and her parents. G
Considering all these came to a final conclusion that charge
under Section 302 levelled against the principal accused Dipak
had been proved beyond doubt. But at the same time he also
came to a further finding that charge under Section 302 read
with Section 109 IPC against the other two accused persons H
was not proved as there was no evidence that the other two

A accused aided or abetted the accused Dipak to commit the murder. He, however, held that charge under Section 498A stood proved against all the three accused and passed the order of conviction and sentence.

B An appeal was preferred by the respondents herein questioning correctness of the judgment of the trial Court holding accused persons guilty. By the impugned judgment, the High Court accepted the appeal and directed acquittal. The same is in challenge by the State in the present appeal.

C It is to be noted that in the meantime, accused No.3, Smt. Rupali Halder, has expired. The High Court held that there was no material to sustain the charge under Section 302 IPC, but held that the circumstances on which prosecution placed reliance did not present complete chain of circumstances and, therefore, the accused persons are entitled to acquittal. State's stand in this appeal is that the circumstances which were highlighted were clearly established. Without even analyzing the circumstances, the High Court came to an abrupt conclusion that the prosecution has failed to substantiate the allegations.

E 3. Learned counsel for the respondents supported the judgment.

F 4. The circumstances which were highlighted by the prosecution and on which the trial Court placed reliance are as follows:

G (a) There is nothing on record or even reply to question put to Respondent No.1 in examination under Section 313, Cr.P.C. that he tried to put off the fire and that he made any inquiry in the hospital as to the condition of his burnt wife. The fact remains that he was in a position to make appropriate arrangement of treatment of his wife but he did not do so. No reason has been assigned as to why he did not accompany his deceased wife in the hospital alongwith neighbours.

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(b) There is nothing on record that accused Dipak Halder A
did anything to save the life of his wife from the fire. There
is also nothing that he called the neighbours for help in
such great danger.

(c) Fact remains that the doors and windows were closed B
during the fire. Does it not indicate that the victim Rimu was
not allowed to go out of the house during incident which
was also accompanied by physical assault. The reason of
closing the doors and windows of the house at the time of
the incident may only be that the assailant wanted to assault C
behind the back of others who might be the witness of the
assault and that the victim could not go out of the house
to avoid assault.

(d) The condition of the burning was so severe that the
flashes came out of the bone and such a position in normal D
fire is absolutely impossible unless a combustible
substance like kerosene is given to the body at the time
of fire.

(e) After a careful consideration of the facts, circumstantial E
evidence on record and the attitude and conduct of the
accused persons, it can be held without any hesitation that
the deceased was physically assaulted before fire.

(f) It is apparent from the report Ext. 19 that there was a
smell of kerosene oil on the burnt saree and blouse of the F
deceased and that the kerosene stove was in good
condition and there was no sign of busting or any other
damage to the kerosene stove.

(g) Besides, the burnt injury on the person of the victim- G
deceased there was no other markings of busting of the
stove on any other article in the room even the Dekchi
which contained water was also intact. In the
circumstances, the plea of busting, of stove absolutely fails.

(h) From the evidence on record both oral and H

A documentary and also the circumstantial evidence and in consideration of all the probability of the case it appears that deceased Rimu was in a jolly mood in the morning of the incident. She went to his parents house and to the sweet meet-shop to purchase sweet, prepared breakfast and immediately before the incident she took her breakfast so there is scarcely an possibility of setting fire to herself.

(i) A little fire on the cover of the T.V. set and also the screen of the doors goes to show that immediately after the fire deceased Rimu ran here and there and for this fire set in the cover of the T.V. set and all the screen of the door. Deceased Rimu tried to save herself from the hands of accused Dipak Halder and that led her to go out of the house and take shelter at the house of Tajendra Narayan Bose.

(j) Accused Dipak Halder sustained minor burnt injuries and that might be considered as he tried to put out the fire on the cover of the T.V. set.

(k) There is substantial evidence that when the neighbours were trying to put out the fire, accused Dipak Halder was then calling names to burnt Rimu Halder and her parents. Accused Dipak Halder was still inside his room when the neighbours were making arrangements to take the deceased Rimu at the hospital.

(l) There is no evidence that the accused Dipak Halder performed any of his duties for the treatment of his burnt wife. Rather he tried to go underground. All the facts and circumstances only led to the inevitable conclusion that kerosene oil was pour down on her body and fire was set to her.

(m) After a careful consideration of the evidence of the witness and after perusal of admission register it appears that the admission register commenced from 1st November, 1987 and it has not been made clear how the

name of accused Dipak Halder who was alleged to have been admitted on 25.10.1987 entered into admission register of 1.11.1987. This is absolutely absurd. And that the defence has not been able to prove as to how this irregularity occurred.

(n) The alleged admission of accused Dipak Halder at the Nursing Home, on 25.10.1987 is not beyond suspicion and that there is nothing as to the nature of treatment, given to him. The admission has not been proved. The doctor who made the alleged treatment has not been examined. In the result, the plea that the accused Dipak Halder could not make arrangement of treatment of the deceased due to his admission in the Nursing Home of his own injuries fails.

(o) No reason has been assigned as to why accused Dipak Halder did not explain in his examination under Section 313 Cr.P.C. as to how fire occurred. No reason has been explained as to what led the deceased to come out of the house and seek shelter at the varandah of others.

(p) There is not a single evidence that accused Dipak Halder made any attempt to put off the fire of his wife. Even in the examination under Section 313, Cr.P.C. he does not say that he tried to put off the fire. On the contrary there is sufficient circumstantial evidence that accused Dipak Halder resisted the deceased from going out of the house to save her life. The subsequent conduct of the accused Dipak Halder by calling names to the deceased and her parents was sufficient substantive evidence to prove the charge under Section 302 IPC, beyond all reasonable doubt against accused Dipak Halder.

5. In a case based on circumstantial evidence, the Court is required to consider whether the cumulative effect of all the circumstances, lead to a conclusion that the same was a case of murder and the accused was responsible for such murder. A conviction can be based on circumstantial evidence if it is

- A of such a character that the same is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. The incriminating circumstances that are being used against the accused must be such as to lead only to a hypothesis to reasonably exclude every possibility of his innocence. To put it
- B differently, the Court should find out whether the crime was committed by the accused and the circumstances proved formed themselves into a complete chain, which clearly points to the guilt of the accused. If on the other hand, the circumstances proved against the accused are consistent either
- C with the innocence of the accused or raise a reasonable doubt about the way the prosecution has alleged the offence is committed, the accused would be entitled to the benefit of doubt.

6. In the instant case, apart from the fact that the accused
- D did not make an effort to save the deceased but was shown to have been abusing the deceased and his relatives, tried to prove his innocence by manipulating records of a nursing home. The obvious attempt was to show that he could not have looked after the treatment of the wife as he himself was undergoing
- E treatment. Several other factors throw considerable light relating to the absence of any material to show that a stove had burst which resulted in causing injuries on the body of the deceased. Unfortunately, the High Court did not even analyse the circumstances but came to an abrupt conclusion that the
- F circumstances do not constitute a complete chain.

7. As noted above, the circumstances point to only one conclusion, i.e. guilt of the accused-respondent no.1. The judgment of the High Court impugned in this appeal is set aside and that of the trial Court is restored. The respondent no.1 shall
- G surrender to custody forthwith to serve remainder of sentence if any.

8. The appeal is allowed to the aforesaid extent.

H B.B.B.

Appeal allowed.