

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.2019-2021/2012

ARCHANA TULSIYANI

APPELLANT(S)

VERSUS

AJAY PRAKASH MISHRA, ETC. ETC.

RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS. 2016-2018 OF 2012

STATE OF UTTAR PRADESH

APPELLANT(S)

VERSUS

AJAY PRAKASH MISHRA, ETC. ETC.

RESPONDENT(S)

O R D E R

The present appeals arise from an order of acquittal passed by the High Court, reversing the conviction of respondent-accused under Section 302, IPC sentencing them to imprisonment for life.

The appellant is the wife of the deceased. The accused are the husband and wife. The occurrence is stated to have taken place in the night intervening between 24th and 25th April, 2005 in the house of the accused. The deceased died of a fire arm injury. The acquittal is premised on that the possibility of the deceased having committed suicide could not be ruled out.

Ms. Rebecca M. John, learned senior counsel appearing on behalf of the appellant, submits that the High Court has proceeded

on a completely erroneous presumption that the deceased committed suicide. There is no evidence on record that the accused had made any calls to the appellant while her husband was at their residence, much less the content of any conversation that may have taken place. On the contrary, the appellant had made more than one call to the deceased while he was at the residence of the accused asking him to return. The deceased had told her that the accused had held him back for drinks.

There is absolutely no evidence of any strained relations between the appellant and the deceased, and because of which he may have committed suicide, as sought to be suggested by the accused. It is only a figment of the imagination of the accused and a false defence, which only aggravates their culpability. There is no evidence that the suicide may have been triggered by the phone calls of the appellant. No details of the conversation are even available. It was next submitted that merely because the deceased had sustained injury on the right temporal bone from a very close range and there may have been blackening, it cannot lead a conclusion of suicide as if the weapon is fired from a distance of even 5 to 8 centimeters from the target there can be flame, burning, scorching or singeing. Therefore, merely on basis of the blackening around the wound to presume that the firing was done at a close range and therefore it was a case of suicide is unsustainable. Referring to the evidence of PW-2 the treating doctor, it was submitted that the doctor was not in a position to confirm that the nature of the bullet injury was suggestive of suicide. Likewise, referring to the evidence of PW-3, the doctor

who conducted the postmortem he also apart from mentioning that there was blackening around the wound and finding that the right temporal and occipital bone was broken expressed no opinion of the injury being suggestive of suicide.

The defence taken by the accused that the deceased was consuming alcohol at their place and may have committed suicide in an inebriated state is falsified from the evidence of both PW-2 and PW-3 who did not find any smell or presence of alcohol. Reference was then made to Section 106 of the Indian Evidence Act, 1872(hereinafter referred to as 'the Act') to submit that if the occurrence had taken place in the mid of night, and within the confines of a room in the house of the accused, and the death had been caused by fire arm injury, the onus is on them to offer an explanation of the circumstances under which the death may have taken place. The accused have not placed any materials with regard to what may have transpired immediately before the occurrence and as to under what circumstances the deceased, if at all, shot himself. The accused were obliged to lead some credible evidence to rebut the presumption that the law raises in such circumstances. Reliance was placed on "*Trimukh Maroti Kirkan vs. State of Maharashtra*" reported in (2006) 10 SCC 681, in support of the submission.

Mr. Divyesh Pratap Singh, learned counsel for the State in the connected appeal adopted the arguments of Ms. John, more particularly, with regard to section 106 of the Evidence Act.

Mr. Tripurari Ray, learned counsel appearing on behalf of the accused, submitted that the presumption under section 106 of the

Act cannot be invoked straightaway. It was for the prosecution to first establish a prima facie case of a homicidal death and only thereafter the onus shifted to the accused. In the facts and circumstances of the case the prosecution had failed to establish prima facie case of homicidal death. The licensed pistol of the deceased seized from the place of occurrence was not subject to any finger print report, and which could have been conclusive in the matter. He also referred to the Ballistic Report supporting the possibility of suicide. It was the accused who took the deceased to the hospital immediately and informed the appellant. The accused remained present at the hospital throughout and they have co-operated fully with the investigation. If they were the assailants, surely their conduct was completely inconsistent.

We have considered the submissions on behalf of the parties and also the evidence available on record. The place of the occurrence is the house of the accused at about midnight. The appellant was aware that her husband was at the house of the accused. Not much turns on the issue as to whether the deceased had consumed alcohol or not.

The trial court held that it was a homicidal death and convicted the accused persons. The High Court had found it to be a probable case of suicide. The question before us is whether the view taken by the High Court is a possible view in the nature of the evidence available. If it is so, the acquittal does not merit interference. But if the view taken by the High Court can be said to be perverse in the sense that there are absolutely no materials for taking such a view or that on the basis of the materials

available, such a view was clearly inconsistent, then conviction must follow. This Court in exercise of its jurisdiction under Article 136 of the Constitution of India will not normally enter into the re-appreciation of the entire evidence unless it finds that the consideration of the evidence was wholly unsustainable amounting to complete misappreciation or ignoring relevant evidence and coming to a completely erroneous decision on the basis of the available evidence.

The deceased was carrying his licensed pistol. The bullet ejected from the gun has been found at the place of occurrence. Some cartridges have also been found. It has come in the evidence that the finger prints of the deceased was also taken in the mortuary along with the finger prints of the accused persons. The pistol was seized immediately. Unfortunately, the prosecution has not placed any evidence with regard to the finger prints that may have been available on the pistol.

The postmortem report proved by PW-3 with regard to the fire arm injury is as follows:

"1. One stitched wound in the size of 1 cm was present there in front of the right ear exact adjoining to the Pinna. In which one stitch was present there. When the stitch was opened then the wound caused with firearm was found in the size of 0.5 X 0.5 cm deep bone in the head in the size of bullet was found. Blackness was present there in the skin around the wound.

2. Stitched wound in the size of 2 cm which was there in the left side of the scull. When the stitch was opened then the exit would cause with firearm was found in the size of 2 cm X 1 cm X Cavity deep was found. It was situated in the Pinna of left ear at 11 cm distance. The wound was bleeding. Both the above-mentioned injuries were related to each

other. I had proved both these by piercing a rod of steel in it.

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Internal examination

Right temporal and occipital bone were broken. The layer of the brain was broken and the brain was also cut and broken and the base was fractured."

The High Court reasoned it conclusion why the possibility of suicide could not be ruled out as under :-

"Another explanation of the appellants that deceased had committed suicide and pointed out that injury on the person of the deceased is suicidal in nature. From the medical examination report, it is clear that deceased had sustained injury on the right temporal bone from a very close range and he committed suicide by his licensed pistol. In this connection, we would like to cue from medical jurisprudence. In the Reddy's Medical Jurisprudence at page 224, it has been mentioned that a suicide using a revolver or pistol usually shoots himself in the right temporal region, the bullet passes almost horizontally or upward or backward through the head and making its exit in the left parietal region. Another important fact supporting the theory of suicide is the ballistic expert report which shows that ballistic expert had, after examining the medical evidence and route of the bullet hitting the roof opined that injury of the deceased could be caused in the manner given by the accused persons."

In the nature of the evidence available, that the deceased committed suicide remains a distinct possibility. The view taken by the High Court cannot be termed as either erroneous or perverse. It is a reasonably possible view. It was for the prosecution to first establish why and how it was a clear case of homicide, before the presumption against the accused under section 106 of the Act could be invoked. Merely because the accident may have taken place in the

house of the accused, in the facts and circumstances of the present case, the presumption against the accused cannot be attracted straightaway discarding any responsibility of the prosecution to establish a prima facie case. At this stage, it becomes crucial and relevant to notice that the accused had taken a defence of strained relations between the appellant and the deceased coupled with the fact that the deceased has shot himself with his own licensed pistol which he was carrying. The accused had also taken a defence that the deceased had come to their house after making three phone calls requesting them to open the door and let him in.

In *Shambu Nath Mehra v. State of Ajmer*, AIR 1956 SC 404 this court observed as follows :

"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not....."

The conduct of the accused is also relevant to be noticed at this stage. Immediately after the occurrence, the accused not only informed the appellant but also took the deceased to the hospital and remained present there when the appellant arrived also.

In the entirety of the evidence and the materials available on

record, we find it difficult to hold that the view taken by the High Court far from not being a possible view is perverse so as to warrant interference with the order of acquittal.

Resultantly, we find no merit in the appeals. The appeals are accordingly dismissed.

.....J.
(NAVIN SINHA)

.....J.
(AJAY RASTOGI)

New Delhi;
April 08, 2021.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2019-2021/2012

ARCHANA TULSIYANI

Appellant(s)

VERSUS

AJAY PRAKASH MISHRA

Respondent(s)

WITH

CrI.A. No. 2016-2018/2012 (II)

(READY)

Date : 08-04-2021 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Ms. Rebecca M. John, Sr. Adv.

Mr. Chinmay Kanojia, Adv.

Mr. Aakarsh Kamra, AOR

Mr. Ardhendumauli Kumar Prasad, AOR

Mr. Divyesh Pratap Singh, Adv.

For Respondent(s)

Mr. Tripurari Ray, Adv.

Mr. Balwant Singh Billowria, Adv.

Mr. Nityanand Murthy P., Adv.

Mr. Vivekanand Singh, Adv.

Ms. Bhanuprabha, Adv.

Mr. Vishnu Sharma, AOR

Ms. Anupama Sharma, Adv.

Mr. Ardhendumauli Kumar Prasad, AOR

UPON hearing the counsel the Court made the following

O R D E R

Appeals are dismissed in terms of signed order.

Pending application (s) shall stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed order is placed on the file)