A HARENDRA NARAIN SINGH ETC.

v.

STATE OF BIHAR

JULY 17, 1991

B [K.N. SINGH AND P.B. SAWANT, JJ]

Indian Evidence Act, 1872. Section 3. Criminal Trial—Evidence —Circumstantial evidence—Nature and proof of—Conditions precedent for conviction—Two views possible on circumstantial evidence—One pointing to the guilt of the accused and the other to his innocence—
C *Court should adopt latter—Circumstantial evidence—Onus of proof— Prosecution must adduce its own evidence—It cannot rely on the absence of defence—Infirmity or lacuna in the prosecution cannot be cured by false explanation of accused.*

Indian Penal Code, 1860: Sections 302 and 34 Murder—Conviction based on circumstantial evidence—Validity of.
D

Appellants 1 and 2, along with other co-accused, were prosecuted for the offence of murder. The entire evidence was circumstantial: (a) The murder was committed by Appellant-2 in the dispensary of the Appellant-1, a doctor, with his connivance; (b) the dead body was taken
E **out of the dispensary of the appellant-1 and the same was kept on an ekka and carried to a village Dibbi where it was placed in the courtyard of one of the co-accused; and (c) Recovery of the dead body from the courtyard of a co-accused.**

The Trial Court acquitted the accused from whose house the
F **dead body was recovered but convicted the remaining four accused for the offences under section 302/34 of the Indian Penal Code. On appeal by the accused persons the High Court acquitted the other two co-accused but upheld the conviction of the two appellants. Against their conviction, the appellants filed appeals in this Court, By an order dated 3.5.1991, this Court allowed their appeals and set aside their conviction.**

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Giving reasons in support of its judgment, this Court,

HELD: 1. It is a cardinal principle of criminal jurisprudence that circumstantial evidence must be fully established from which there should be inevitable conclusion of the guilt of the accused beyond any
H **reasonable doubt and the facts so established should be consistent only**

with the hypothesis of the guilt of the accused, ruling out any hypothesis of innocence of the accused. [58B] A

2. There is yet another basic rule of criminal jurisprudence that if two views are possible on the evidence adduced in a case of circumstantial evidence, one pointing to the guilt of the accused and the other to his innocence, the Court should adopt the latter view favourable to the accused. [59C] B

3. The prosecution has to succeed on the basis of its own evidence and it can not rely on the absence of defence to sustain the guilt as there is no justification for raising such assumption against the appellants. [63B] C

Hanumant v. *The State of Madhya Pradesh,* [1952] 3 S.C.R. 1091; *Shivaji Saheb Rao Bobde & Anr.* v. *State of Maharashtra,* [1973] 2 S.C.C. 793: [1974] 1 S.C.R. 489 and *Sharad B. Chand* v. *Maharashtra,* [1985] 1 S.C.R. 88, referred to. D

4. In the instant case, there are glaring circumstances which are fatal to the prosecution case. The prosecution has produced evidence only to the effect that a dead body was taken out of the dispensary of Appellant-1 by Appellant-2 and other accused persons and the same was carried on the ekka to village Dibbi. The prosecution witnesses have merely deposed that they had seen a dead body being placed on the ekka and taken to village Dibbi. None of the prosecution witness has however, deposed that he had seen the face of the dead body or identified the same. In the absence of such evidence it would not be reasonable to assume that the dead body which was taken out from the dispensary and placed on the ekka was that of the deceased. In the absence of identification of dead body by the witnesses it is not legitimate to hold that the dead body which was taken out from the dispensary of Appellant-1 was that of deceased. [62E-F, G] E F

4.1 There is another vital defect in the prosecution case. The prosecution failed to produce any evidence that the deceased was taken to the dispensary for treatment by Appellant-2 and other accused persons while she was alive and that she was admitted to the dispensary of Appellant-1 for treatment, at a time when she was alive. In the absence of any such evidence there are various possibilities and probabilities, one of them being that the deceased may have been brought to the dispensary for medical assistance after she was found to be strangulated by some one. Further there is no evidence of the fact G H

that when the deceased was inside the dispensary no other person had access to her except the appellants. In the absence of any such evidence it would not be legitimate to assume that the deceased was strangulated in the dispensary by Appellant-2 with the connivance of Appellant-1. Therefore, the prosecution failed to prove the necessary facts and the circumstances established by it are not sufficient to conclusively point to the appellants as the perpetrator of the crime or to rule out the hypothesis of their innocence. Accordingly, the High Court and the Trial Court both committed error in convicting the appellants. The High Court was also not justified in drawing adverse inference for completing the chain of circumstances to uphold the appellant's conviction merely on the appellant's false explanation in defence. [62G-H, 63A-C-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 578/88 & 728/89.

From the Judgment and Order dated 15.7.1986 of Patna High Court in Crl. A. Nos. 97 & 87 of 1983.

A. Sharan for the Appellants.

D. Goburdhan for the Respondent.

The Judgment of the Court was delivered by

SINGH, J These appeals were heard on 3.5.1991 and after hearing learned counsel for the parties we had pronounced the operative portion of the judgment allowing the appeals and setting aside the judgment and order of the High Court convicting the appellants for offences under Section 302/34 I.P.C. We had observed that the reasons for the judgment would be given later and now we are giving reasons for the same.

These two appeals are directed against the judgment and order of the High Court of Patna dated 15.7.1986 upholding the conviction of Dr. Harendra Narain Singh and Ram Nath Singh, appellants for the offences under Section 302/34 of the I.P.C.

Briefly, the facts as disclosed by the prosecution are that Smt. Jagia Devi, a widow having two sons was carrying four months pregnancy. She was taken to the dispensary of Dr. Harendra Narain Singh, the appellant who was a Homeopathic doctor on the pretext of treatment of pain in her stomach though the real purpose for taking

her to the dispensary was for aborting foetus which she was carrying. She was murdered in the dispensary and her dead body was taken to Village Dibbi in an Ekka and placed in the courtyard of the house of Smt. Tileshwara Kuar. Teg Bahadur Singh PW 11 came to know from a young boy that a dead body was kept in the courtyard of Smt. Tileshwara Kuar. He went to the house of Smt. Tileshwara Kuar and on interrogation she told him that some persons after committing murder of Jagia Devi had kept her dead body inside her house. The door of the house was locked. Smt. Tileshwara handed over the key to Teg Bahadur Singh who unlocked the door and entered the house and found the dead body of Jagia lying on the ground in the courtyard. He rushed to the Police Station and reported the matter to the police which was reduced in writing. The police registered a case and proceeded to the spot. The Investigating Officer recovered the dead body from the house of Tileshwara Kuar and made inquest and sent the dead body for post-mortem. On completion of investigation the police submitted chargesheet against seven accused persons, namely, Tileshwara Kuar, Ram Nath Singh, Bishwanath Roy s/o Dip Roy, Ishwar Shah, Dr. Harendra Narain Singh, Smt. Jota Kuar w/o Dip Roy and Bishwanath Singh alias Bissu. During the pendency of the case before the Trial Court Bishwanath Roy and Jota Kuar died, therefore, the trial proceeded only against the remaining five accused persons.

Before the Trial Court, the prosecution produced 14 witnesses in support of its case but there was no direct evidence or eye witness to support the charge of murder. Entire case of the prosecution is founded on circumstantial evidence. The Trial Court acquitted Smt. Tileshwara Kuar who had been charged for offences under Section 302/34 and 201 of the IPC but it convicted the remaining accused Ram Nath Singh, Ishwar Shah, Harendra Narain Singh & Bishwanath Singh alias Bissu for the offences under Section 302 of the IPC read with Section 34 of the IPC and also under Section 315/34, IPC. On appeal by the accused the High Court acquitted Ishwar Shah, Bishwanath Singh alias Bissu but it upheld the conviction of Dr. Harendra Narain Singh and Ram Nath Singh for offences under Section 302/34 of the IPC. Aggrieved Dr. Harendra Narain Singh and Ram Nath Singh have preferred these two appeals.

The entire case of the prosecution rests on the circumstantial evidence as no prosecution witness has given any direct testimony against the appellants for the commission of the offence for which they have been convicted. The Trial Court as well as the High Court both have relied on circumstantial evidence in convicting the appellants for

A the offences under Section 302/34 of the IPC. Since the entire case rests on circumstantial evidence it is necessary to refer to the principles which should guide the Court in considering the conviction of an accused resting on circumstantial evidence. It is a cardinal principle of criminal jurisprudence that circumstantial evidence must be fully established from which there should be inevitable conclusion of the B guilt of the accused beyond any reasonable doubt and the facts so established should be consistent only with the hypothesis of the guilt of the accused, ruling out any hypothesis of innocence of the accused. In *Hanumant* v. *The State of Madhya Pradesh,* [1952] 3 SCR 1091 this Court laid down fundamental and basic principles for appreciating the circumstantial evidence. Mahajan, J, speaking for the Court observed:

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> "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 in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of D 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 E and it must be such as to show that within all human probability the act must have been done by the accused."

These principles were reiterated by this Court in *Shivaji Saheb Rao Bobde & Anr.* v. *State of Maharashtra,* [1973] 2 SCC 793 wherein it was emphasised that where the prosecution rests merely on circum- F stantial evidence, the facts 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. The Court further observed that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one to be proved and the chain of evidence G should be so complete as to rule out any reasonable ground for the conclusion consistent with the innocence of the accused and the circumstances must show that in all human probability the act must have been done by the accused. These principles have been consistently laid down by this Court in several decisions, it is not necessary to refer to all these decisions. However, we would like to refer to the H decision in *Sharad B. Chand* v. *Maharashtra,* [1985] 1 SCR page 88 as

this case has been relied upon by the High Court in upholding the conviction of the appellants. In *Sharad B. Chand's* case this Court while considering the absence of explanation or a false explanation of the accused for the circmstances and the facts proved against him, struck a note of caution that before a false explanation is used as additional link against the accused the Court should satisfy itself that (1) Various links in the chain of evidence led by the prosecution have been satisfactorily proved. (2) The circumstances point to the guilt of accused with reasonable definiteness; and (3) The circumstances are in proximity to the time and situation where all these conditions are fulfilled only then a Court can use a false explanation or a false defence of an accused, as an additional link to lend an assurance to the Court and not otherwise. There is yet another basic rule of criminal jurisprudence that if two views are possible on the evidence adduced in a case of circumstantial evidence, one pointing to the guilt of the accused and the other to his innocence, the Court should adopt the latter view favourable to the accused. We have reminded ourselves of these principles with a view to ascertain as to whether the High Court has correctly applied these principles in convicting and sentencing the appellants.

The evidence produced by the prosecution relates to establish the circmustances that (1) Smt. Jagia Devi, a widow (brother's daughter of Smt. Tileshwara Kuar, the accused) died on 22.9.1973. (2) Death of Jagia Devi was caused due to throttling leading to asphyxia as deposed by Dr. Anand Mohan PW 6. The Doctor who carried on the postmortem of the dead body was of the opinion that Jagia Devi killed by strangulation in the neck. (3) In the night between 22.9.1973 and 23.9.1973, a dead body was taken out of the dispensary of Dr. Harendra Narain Singh by the accused Ram Nath Singh and Bishwanath Singh alias Bissu and placed on an ekka in the presence of Ishwar Shah and Dr. Harendra Narain Singh. Smt. Jota Kuar (mother of Ram Nath Singh, the appellant) was also present there. (4) The dead body was placed on the ekka af Amanat Khan PW 10 and the same was carried to village Dibbi. Ram Nath Singh, Bishwanath Singh and Jota Kuar also accompanied the dead body to village Dibbi. (5) Recovery of the dead body of Jagia Devi from the courtyard of Smt. Tileshwara Kuar, an accused.

On the basis of these circumstances, the High Court upheld the conviction of Ram Nath Singh and Dr. Harendra Narain Singh, the appellants, as in its opinion Ram Nath Singh had motive to murder Jagia Devi as she being a widow was carrying pregnancy of four

A months. The murder was committed in the dispensary of Dr. Harendra Narain Singh where she had been taken for medical aid for pain in stomach. The Trial Court had acquitted Smt. Teleshwara Kuar, from whose house dead body was recovered. In appeal the High Court acquitted Ishwar Shah and Bishwanath Singh alias Bissu also. The prosecution evidence and the circumstances on the basis of which Ram B Nath Singh and Dr. Harendra Narain Singh have been convicted are the same as applicable to the case of Ishwar Shah and Bishwanath Singh alias Bissu, but the High Court acquitted them and at the same time it upheld the conviction of Ram Nath Singh and Dr. Harendra Narain Singh on the same set of the evidence and circumstances without there being any distinction. The main circumstances which C weighed with the High Court in upholding the conviction of Ram Nath Singh and Dr. Harendra Narain Singh was that the dead body of Jagia Devi was taken out of the dispensary of Dr. Harendra Narain Singh and placed on the ekka of Amanat Khan PW 10 by Ram Nath Singh. In view of this proved circumstance the High Court concluded that in all likelihood Jagia Devi was murdered in the dispensary of Dr. D Harendra Narain Singh with his connivance and thereafter the dead body was taken on ekka to village Dibbi and placed in the courtyard of Smt. Teleshwara Kuar. The presumption that Ram Nath Singh committed murder of Jagia Devi by strangulation in the dispensary of Dr. Harendra Narain Singh with his connivance is based on conjecture without there being any conclusive circumstance justifying such E presumption.

The High Court has placed strong reliance on the evidence of PW 10 Amanat Khan in holding the appellants Dr. Harendra Narain Singh and Ram Nath Singh guilty of murder. PW 10 Amanat Khan was an ekkawala who plied passengers on hire, he was resident of village F Bagaura, where the dispensary of Dr. Harendra Narain Singh was situate. Amanat Khan testified that at about 2 a.m. in the night the appellants Ram Nath Singh, Dr. Harendra Narain Singh and Bishwanath Singh alias Bissu awakened him and requested him to carry a patient to village Dibbi. At first he refused to ply his ekka at that odd hour of the night but after some time they again returned and put G pressure on him to take his ekka to the dispensary of Dr. Harendra Narain Singh for transporting the patient to Village Dibbi. On their pursuasion he took his ekka to the dispensary of Dr. Harendra Narain Singh where he found Ishwar Shah, Jagannath and Smt. Jota Kuar (mother of appellant Ram Nath) present at the dispensary. According to him Ram Nath and Bishwanath, deceased brought a dead body from H the dispensary of the appellant Harendra Narain Singh and placed the

same on the ekka. Ram Nath Singh, Bishwanath Singh alias Bissu and Smt. Jota Kuar also sat in the ekka. On their request he carried them to village Dibbi Where Ram Nath and Bishwanath alias Bissu unloaded the dead body from the ekka at the house of Smt. Teleshwara Kuar. Amanat Khan's testimony is supported by PW 3, Dukhan Majhi, PW 4 Bisheshwar Chowkidar and PW 5 Shiv Dutt. Their testimony is merely to the fact that the appellants Ram Nath Singh and Bishwanath Singh were sitting on the ekka which was carrying a dead body from the dispensary of Dr. Harendra Narain Singh. Placing reliance on the testimony of these witnesses the High Court and the Trial Court concluded that Smt. Jagia Devi, the deceased was murdered in the dispensary of Dr. Harendra Narain Singh and the dead body was carried by them on the ekka to village Dibbi and placed in the courtyard of Smt. Tileshwara Kuar. The High Court and the Trial Court both failed to notice that the prosecution produced no evidence to show that Smt. Jagia, the deceased was brought to the dispensary of Dr. Harendra Narain Singh while she was alive. There is further no evidence as to who brought her to the dispensary in what condition. The only evidence which the prosecution has produced in this respect is that a dead body was taken out from the dispensary of Dr. Harendra Narain Singh and placed on the ekka by Ram Nath Singh and others and taken to village Dibbi.

The High Court was conscious of the weakness of the prosecution case, even then it upheld the conviction of the appellant perhaps on moral grounds. In para 3 of its judgment the High Court observed:

> "although 14 witnesses have been examined on behalf of the prosecution there is no direct evidence or eye witness account of murder. The witnesses however are not all relevant even for proving the circumstances and other collatoral matters".

After making the aforesaid observations ordinarily the High Court should have rejected the prosecution case which was based on circumstantial evidence but strangely enough the High Court inspite of the aforesaid observations, upheld the conviction of the appellants.

While dealing with the case of Dr. Harendra Narain Singh the High Court observed that he was a man of shaky character. This observation was made on the basis that even though he was a homeopathic doctor but allopathic medicines were recovered from his dispensary. In our opinion, mere recovery of allopathic medicines from the dis-

A pensary of Dr. Harendra Narain Singh does not necessarily show that he was a man of shaky character. It is a matter of common knowledge that even a homeopathic doctor sometimes refer the patients to allopathic treatment. The fact of recovery of allopathic medicines has no connection or relation to the commission of the offence for which Dr. Harendra Narain Singh has been convicted. The High Court B further observed that when the dead body of the deceased was taken out from the dispensary by Ram Nath Singh and other accused persons Dr. Harendra Narain Singh was present at the spot, therefore he was so closely connected with the affairs taking place at his house that none could without his assistance do anything. Apart from this there was no other evidence or circumstance against Dr. Harendra Narain Singh. It C is significant to note that according to the prosecution when the dead body of the deceased was taken out of dispensary and placed on ekka Ishwar Shah and Bishwanath Singh alias Bissu accused were also present at the dispensary along with Dr. Harendra Narain Singh yet they have been acquitted by the High Court. The High Court failed to give any cogent reason for upholding the conviction of Dr. Harendra D Narain Singh.

We have carefully gone through the evidence on record and considered the various circumstances and the facts of the case. In our opinion, there are two glaring circumstances which are fatal to the prosecution case. The prosecution has produced evidence only to the E effect that a dead body was taken out of the dispensary of Dr. Harendra Narain Singh by Ram Nath Singh and other accused persons and the same was carried on the ekka to village Dibbi. The prosecution witnesses have merely deposed that they had seen a dead body being placed on the ekka and taken to village Dibbi. None of the prosecution witness has however, deposed that he had seen the face of the dead F body or identified the same. In the absence of such evidence it would not be reasonable to assume that the dead body which was taken out from the dispensary and placed on the ekka was that of the deceased Jagia Devi. In the absence of identification of dead body by the witnesses it is not legitimate to hold that the dead body which was taken out from the dispensary of Dr. Harendra Narain Singh was that of Jagia G Devi. There is another vital defect in the prosecution case. The prosecution failed to produce any evidence that the deceased Jagia Devi was taken to the hospital for treatment by Ram Nath Singh and other accused persons while she was alive and that she was admitted to the dispensary of Dr. Harendra Narain Singh for treatment, at a time when she was alive. In the absence of any such evidence there are H various possibilities and probabilities, one of them being that the

deceased may have been brought to the dispensary for medical assistance after she was found to be strangulated by some one. There is further no evidence of the fact that when the deceased was inside the dispensary no other person had access to her except the appellants. In the absence of any such evidence it would not be legitimate to assume that the deceased was strangulated in the dispensary by Ram Nath Singh with the connivance of Dr. Harendrá Narain Singh. Merely because the appellants failed to raise any such plea in their defence does not lend any support to the prosecution case. The prosecution has to succeed on the basis of its own evidence and it can not rely on the absence of defence to sustain the guilt as there is no justification for raising such assumption against the appellants. The circumstances established by the prosecution are not sufficient to conclusively point to the appellants as the perpetrator of the crime or to rule out the hypothesis of their innocence. Since the prosecution failed to prove the necessary facts showing that the deceased while alive was last seen in the company of the appellants or that the dead body which was carried on the ekka was that of the deceased Jagia Devi, the High Court was not justified in drawing adverse inference for completing the chain of circumstances to uphold the appellant's conviction merely on the appellant's false explanation in defence.

In view of the above discussion, we are of the opinion that the High Court and the Trial Court both committed error in convicting the appellants. We accordingly allow the appeals and set aside the judgment and order of the High Court convicting the appellants.

T.N.A. Appeals allowed.