IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.306 of 2024

Arising Out of PS. Case No.-168 Year-2019 Thana- RAMGARH District- Kaimur (Bhabua)

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Ram Lal @ Ram Lal Singh, Son of Late Hari Kishun Singh @ Late Hari Kishan, Resident of Village - Nachap, P.S. - Murar, District - Buxar

... ... Appellant

Versus

1. The State of Bihar
2. Tej Bahadur Singh, Son of Hari Singh, Resident of Village - Mahuar, P.S. - Ramgarh, District – Kaimur.
3. Sumitra Devi, Wife of Hari Singh, Resident of Village - Mahuar, P.S. - Ramgarh, District – Kaimur.

... ... Respondents

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Appearance :

For the Appellant	:	Mr. Rajiv Ranjan Kumar Pandey, Advocate
		Mr. Kritya Nand Jha, Advocate
For the State	:	Mr. Sujit Kumar Singh, Advocate
For Resp Nos. 2 and 3	:	Mr. Amit Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 29-10-2024

Heard learned counsel for the appellant, learned counsel for the Respondent No. 2 (in short ‘R-2’) and Respondent No. 3 (in short ‘R-3’) as also learned Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment dated 07.02.2024 (hereinafter referred to as the ‘impugned judgment’) passed by learned Additional Sessions Judge-XI, Kaimur at Bhabhua (hereinafter referred to as ‘the learned trial court’) in Sessions Trial No. 297 of 2019 (arising out

of Ramgarh P.S. Case No. 168 of 2019). By the impugned judgment, the learned trial court has been pleased to acquit R-2 and R-3 and discharges them from all the charges.

Prosecution Case

3. The prosecution case is based on the written application dated 16.07.2019 (Exhibit '2') submitted by Ram Lal Singh who happened to be the father of the deceased. He has been examined as PW-4 in course of trial. In his written application, the informant (PW-4) has alleged that his daughter Divya Singh was married to Tej Bahadur Singh (R-2) on 26.06.2012. Soon after the marriage, she was being tortured for demand of dowry by her husband Tej Bahadur (R-2), *bhaisur* Vir Bahadur Singh, father-in-law Hari Singh, sister-in-law Babita Kumari and mother-in-law (R-3). They used to assault her and threaten her to oust her from matrimonial house repeatedly. He did go there for conciliation and returned. In the meanwhile, a son was born out of the wedlock on 25.10.2013. Thereafter, he brought his daughter back to his place. Subsequently, the accused persons requested him to send his daughter back promising that she would not be tortured in future. Then her daughter went to her matrimonial home with her husband. In 2018, when he went to bring her daughter, her husband and father-in-law demanded Rs one lakh and a gold chain

which he refused, whereafter they turned down their earlier promise and refused to send her daughter with him. On 03.07.2019, the husband and his family members burnt his daughter alive. Somehow he got to know that his daughter is not at home and after search, he got to know that she is being treated in Ford Hospital, Varanasi. During treatment, his daughter died. On 14.07.2019, all the accused persons fled away. On 15.07.2019, Tej Bahadur (R-2) called from his mobile to his son at 05:43 hours and threatened him to shot them all dead if any case is lodged.

4. On the basis of the written application (Exhibit '2'), a formal F.I.R. was registered being Ramgarh P.S. Case No. 168 of 2019 on 16.07.2019 at 16:45 hours which was received in the court of learned A.C.J.M., Kaimur at Bhabhua on 17.07.2019. The formal F.I.R. has been marked as Exhibit'5'.

5. Upon completion of investigation, police submitted a chargesheet bearing number 123 of 2019 dated 31.10.2019 against two accused persons, namely, R-2 and R-3 of this appeal for the offences under Section 302/34 of the Indian Penal Code (in short 'IPC'). The learned Magistrate took cognizance of the offence on 06.12.2019 and the case was committed to the Court of Sessions on 11.12.2019. It appears from the records that in the learned trial

Court R-2 and R-3 were read over and explained the charges which they denied and claimed to be tried.

6. In course of trial, the prosecution examined altogether eight witnesses and proved some documents which have been marked Exhibits. The list of prosecution witnesses and the documents marked Exhibits on behalf of the prosecution are as under:-

List of Prosecution Witnesses

PW-1	Lalti Devi
PW-2	Manoj Singh @ Yashpal Singh
PW-3	Suman Ajay Singh
PW-4	Ram Lal Singh
PW-5	Nandjee Ram
PW-6	Jay Ram
PW-7	Dr. Manoj Kumar Singh
PW-8	Dr. Rajendra Singh

List of Exhibits produced on behalf of the Prosecution

Exhibit ‘1’	Signature of PW-2 on Inquest Report
Exhibit ‘2’	Signature of Informant on FIR (Fardbeyan)
Exhibit ‘3’	Signature of PW-4 on Inquest Report
Exhibit ‘4’	Signature of PW-4 on Protest Petition
Exhibit ‘5’	Formal FIR
Exhibit ‘6’	Endorsement of Registration of FIR
Exhibit ‘7’	Dying Declaration
Exhibit ‘8’	Post-mortem Report
Exhibit ‘9’	Signature of PW-7 on Inquest Report
Exhibit ‘9/1’	-do-
Exhibit ‘10’	Signature of PW-7 on police form No. 13
Exhibit ‘11’	Signature of PW-7 on police form no. 33
Exhibit ‘12’	Signature of PW-7 on police form no. 379
Exhibit ‘13’	Signature of PW-7 on MLC sent to police

Exhibit ‘14’	Signature of PW-7 on General Diary Detail
Exhibit ‘15’	Signature of PW-8 on Post-mortem Report

List of Defence Witnesses

DW-1	Vinay Kumar Singh
DW-2	Shrikant Tiwari
DW-3	Ramesh Singh

Findings of the learned Trial Court

7. The learned trial court found that there is no eye witness of the occurrence in this case. The sole eye witness was the deceased, who is no more alive. It has been observed that there is a purported dying declaration of the deceased which is to be considered as circumstantial evidence and in case, it is found that the said dying declaration is voluntary, made in fit medical condition, and reliable in the light of attending circumstances, it can form the sole basis of conviction of the accused persons. The learned trial court has discussed the case-laws dealing with the evidences of circumstantial nature. Reference has been made to the judgment of the Hon’ble Supreme Court in the case of Hanumant Govind Nargundkar & Anr. vs. State of Madya Pradesh (AIR 1952 SC 343), M.G. Agrawal & Anr. vs. State of Maharashtra (AIR 1963 SC 200), Pawan Kumar vs. State of Haryana (2001 (3) SCC 628), State of U.P. vs. Ashok Kumar Shrivastava (AIR 1992 SC 840), Shivaji Sahabrao Bobde vs. State of Maharashtra (1973 AIR

2622) and Sharad Birdhichand Sharda vs. State of Maharashtra (AIR 1984 SC 1622).

8. The learned trial court held that in the present case, the prosecution has placed certain circumstances such as:-

(i) the deceased died due to septicemia caused by severe burn injuries on 14th July, 2019 at the Ford Hospital, Varanasi,

(ii) The accused persons had poured Kerosene Oil over deceased and lit the match stick, causing severe burn injury on 03.07.2019 and she had made dying declaration during the course of her treatment, marked as Exhibit-7, before a local Executive Magistrate (P.W.-6) and the deceased has made similar statements to her family members.

(iii) No information was given the accused persons about the burning of the deceased or her treatment

(iv) The accused persons had escaped after the death of the deceased and

(v) Deceased had previously been tortured and harassed for a illegal dowry demand of Rs. 1 lakh, gold chain and watch before the occurrence of alleged murder and non-fulfillment of the demand was the motive for murder.

9. The learned trial court held that so far as the first circumstance is concerned, the same has been proved by the

prosecution. But while dealing with the dying declaration (Exhibit-7) vis-a-vis the objection of the defence, the learned trial court doubted the manner in which the Magistrate had proceeded to record the statement of the victim on oral requisition by local Police Station, he did not take a Doctor to assess the mental condition of the victim for making statement and then he sent the copy of the statement to the learned A.C.J.M., Bhabhua after ten days. The learned trial court noticed the evidence of the elder sister of the victim who has been examined as P.W.-3. She has stated that she arrived Varanasi on 5th July, 2019 and after three or two days of her arrival, her sister had regained her senses. She was not capable to speak or see at that time. The learned trial court, therefore, held that on the date the dying declaration was recorded by the Magistrate (PW-6), the victim was unable to speak or see and was unconscious. The learned trial court, therefore, doubted the conduct of the Magistrate and attending circumstances and held that they are not above the board and cannot be relied upon.

10. In ultimate analysis, the learned trial court held that the second and third circumstance could not be proved by the prosecution beyond reasonable doubts. As regards the circumstance no. (iv), the learned trial court found that the circumstance is irrelevant and would not be taken against the

accused persons. Lastly, a finding has been returned as regards the circumstance no. (v) that this circumstance could not be proved. The learned trial court noticed the various circumstances on which the defence relied upon to show their innocence.

Submissions on behalf of the appellant

11. Mr. Rajiv Ranjan Kumar Pandey, learned Counsel for the appellant has assailed the impugned judgment. It is submitted that the prosecution witnesses are quite consistent in their statement and have proved all the circumstances beyond all reasonable doubts. Learned Counsel has heavily relied upon the dying declaration (Exhibit-7) of the deceased. It is submitted that the dying declaration has been proved by a City Magistrate of Varanasi who has been examined as PW-6. On the point of delay in sending the dying declaration to the jurisdictional Court, the learned Magistrate has not been cross-examined.

12. Learned Counsel submits that so far as the delay in lodging of the First Information Report is concerned, it has come in evidence that the victim was being treated in hospital and she was shifted from one hospital to another, during this period, the family members were waiting for her recovery and they were engaged in the treatment of the victim, therefore, after the death of the victim, the present F.I.R. could be lodged. It is his submission

that delay in lodging of the First Information Report would not create any dent in the prosecution story.

13. Learned Counsel submits that the learned Magistrate who has been examined as P.W.-6 in this case has stated that in Ford Hospital, Varanasi, he had gone to the Burn Unit and met the Ward Boy who took him to the bed of the victim, Divya Singh whereafter knowing her conditions, he asked her, her name, her husband's name and address and only being satisfied with the same, he had questioned her as to how she was burnt. In response, she had made her statements which are recorded in Exhibit-7. P.W.-6 has identified the left hand thumb impression of the deceased on her statement (Exhibit-7). It is submitted that in such circumstance, the identity of the victim is fully established.

14. It is further submitted that the Doctor (P.W.-7) has proved the Postmortem Report of the deceased as Exhibit-8. P.W.-7 has stated about the external injuries- Dermo-epidermal infected burn injury in body (slough present) except top of head, soles with lower legs, lower part of abdomen, upper thigh. P.W.-7 has also stated about the internal examination and from his evidence, it is duly proved that the victim suffered severe burn injuries which were sufficient to cause death.

15. It is his submission that the learned trial court has committed gross error in appreciation of the evidences on the record as a result whereof the R-2 and R-3 have been acquitted.

Submissions on behalf of the R- 2 and R-3.

16. The appeal has been contested by the respondents. It is submitted that admittedly the whole prosecution case is based on circumstantial evidence. The prosecution case has been initiated after death of the victim. The victim was admitted in the Hospital for 12-14 days after the occurrence, according to the prosecution witnesses, the victim had told them that the accused persons had poured Kerosene Oil on her and lit the match stick, as a result, whereof she was burnt. Despite this knowledge of the occurrence, no information was given to police and no case was lodged. The family members of the deceased were very much present with her during her treatment in the Ford Hospital, Varanasi.

17. Learned Counsel submits that the defence has explained the circumstances by suggesting to the mother of the victim who has been examined as P.W.-1 that when her daughter was cooking in her house, in course of cooking she had suffered burn injuries. She was also suggested that she had lodged a false case and her daughter had not told her that she was burnt by pouring Kerosene Oil.

18. It is submitted that the marriage between the parties had taken place more than seven years ago. It has come in evidence that the victim had a son aged about five years out of the wedlock and it has further come in evidence that after her marriage on several occasion, she had visited her *maike* but she had never made any complaint of demand of dowry by her husband or her mother-in-law. It is submitted that so far as the statement of the victim (Exhibit-7) is concerned, the conduct of the City Magistrate (P.W.-6) is not trustworthy. In his course-examination, P.W.-6 has stated that he was not informed by the Ford Hospital, Varanasi. He was informed by Police Station but no letter was given to him. He had not taken permission from his Senior Officer because according to him, he had prior roster, therefore, no permission was required. He could not say the time of his departure for hospital and the time when he reached the hospital. P.W.-6 has stated that prior to reaching the patient, he had not met any hospital authority. He did not remember the name of the Ward Boy. He had enquired about the name of the Doctor from the enquiry window but he did not remember the name of the Doctor. He had not met the Doctor. He had also not taken fitness certificate from any Doctor before recording of the statement of the victim girl. It is submitted that in the recorded statement, he has not mentioned the Bed Number on

which the patient was lying, he had also not asked the age of the patient. He has stated that when he first met to the patient, some of her family members were present there. He did not know the Mohalla in which the Ford Hospital, Varanasi is situated, he did not know under which Police Station it comes. This witness was suggested that he had not recorded the statement of the patient and on the asking of the family of the deceased, he had prepared the document. The patient was not capable of giving her statement and she had not given any such statement. PW-6 denied the suggestions.

19. Learned Counsel submits that so far as the evidence of Doctor (P.W.-8) is concerned, the Doctor has found burn injuries and those were sufficient to cause death but in this case the cause of death is Septicemic shock due to infected injuries and infected lungs.

20. It is submitted that in a case of circumstantial evidence, all the circumstances must be established to complete the chain of criminological events and the Court must come to an irresistible conclusion that the accused is guilty of the offence. In the present case, the conduct of the prosecution is doubtful, the manner in which the F.I.R. has been lodged after death of the victim and then statement of victim (Exhibit -7) has been sent by

Post after ten days of the recording has made the case doubtful. It is evident that the City Magistrate (P.W.-6) had not handed over the statement of the victim (Exhibit-7) to the I.O. of this case.

21. It is submitted that the learned trial court has rightly appreciated the evidences available on the record and no interference would be required with the same. The learned Additional Public Prosecutor for the State has endorsed the submissions of the learned Counsel for R-2 and R-3. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in **(2023) 9 SCC 581** in which the Hon'ble Supreme Court has given the guidelines for dealing with a case of acquittal.

Consideration

22. We have heard learned counsel for the parties and learned Additional Public Prosecution for the State as also perused the trial court's records.

23. We find from the records that in this case the mother of the victim is PW-1. In her examination-in-chief, she has stated that after her marriage, the victim had gone to her *sasural* and returned her *maike* after one year. She was saying that her *sasural* people were not keeping her well and her husband Tej Bahadur, Sasur Hari Singh, *bhaisur* Bir Bahadur and younger *nanad* Sunita

were torturing her. Thus, this happened between the year 2012-2013. Thereafter, she has stated that her daughter again went her *sasural.* People from outside informed her that the condition of her daughter Divya is serious, therefore, they should come and meet her. She, her son, two sons of devar and her daughter went to Ford Hospital, Varanasi where her daughter was admitted. She met her and found that her whole body was burnt. The victim disclosed her that the accused persons had poured kerosene oil on her and lit the matchstick. She died after 12-14 days of the burn injuries, thereafter the *sasural* people of the deceased fled away. In her cross-examination, she has stated that second day of her marriage, the victim had gone to her *sasural,* she returned after about 10 months, that time she was carrying pregnancy of two months. She stayed for a month whereafter her husband came and took her to *sasural* where she stayed for 20-25 days and then when she had some abdominal pain, she was taken to Delhi. The son and husband of PW-1 were serving in Delhi, therefore, after giving birth to a child, his daughter (victim) stayed in Delhi whereafter *sasural* people came and got her *vidai* done for *sasural.* She has stated that before the occurrence, her daughter used to visit her *sasural* and *naihar* and whenever required she was getting her *vidai* and the *sasural* people also getting her *vidai* for *sasural* from time to time. Her daughter was continuously staying in her *sasural* for about a year

prior to the occurrence. Her son had gone for vidai of his sister but the son-in-law said because the school of the child was open, therefore, in holidays, they will come. She has stated in paragraph '12' of her cross-examination that her daughter had been living in town right from the beginning and she did not like living in village. PW-1 also wanted her daughter to stay in town. She has stated in paragraph '14' of her deposition that when she reached the hospital, she found that the husband of her daughter and her elder Nanand were getting her treatment done and were giving her medicines. Her daughter was admitted in emergency ward. The Doctors were not permitting to go inside the ward but sometimes with the permission of the Doctor, she was going to meet her daughter. She has stated that the case was lodged after death. In the aforementioned background of her deposition, she was suggested that one of the reasons behind the lodging of the case is that they did not like that their son-in-law was living in the village and was engaged in agricultural work. From the deposition of PW-1, it appears that after her marriage the victim was regularly visiting her *maike* as and when required. Initially, she had made complaint before PW-1 that her *sasural* people were not keeping her well but thereafter she had settled down in her *sasural* with her husband and there was no regular complaints of torture against her husband and in-laws.

24. Manoj Singh @ Yashpal Singh (PW-2) and Suman Ajay Singh (PW-3) are the brother and sister respectively of the deceased. PW-2 has stated in his examination-in-chief that there was a demand of dowry of Rs. one lakh and a gold chain and finger ring and on non-fulfillment of demand of dowry, the sasural people of Divya were not allowing them to take vidai of her. PW-2 has stated that all the accused persons were assaulting Divya. We find from the evidence of PW-1 that she has not alleged demand of dowry by the husband or any other family member of her husband. She has also not alleged that due to non-fulfillment of the demand of dowry, the sasural people were not allowing vidai. To us, it appears that the evidence of PW-2 is highly exaggerated and is not consistent with the evidence of his mother (PW-1).

25. We also find that PW-3, who is the elder sister of the deceased, has stated that she was married in the year 2004 and thereafter she was living in her sasural at Surat where her husband was posted. She went Surat in the year 2005, Divya was married in the year 2012. She has stated that the husband of Divya was not doing any work and he was living in the village. In paragraph ‘22’ of her deposition, PW-3 has stated that she had reached Ford Hospital after hearing the occurrence. She had found the husband of Divya and his elder sister were present there. Her mother and brother were there. She has stated that her father reached hospital

on 13th whereas she had reached hospital on 5th. In paragraph '24', she has stated that three days' after her reaching, her sister (victim) had regained her consciousness. She has again said that she had regained consciousness after two days. She has stated that her mother had gone to the police station after 2-3 days of knowing about the occurrence and had stayed in the hospital for about 10 days after lodging of the case. From the deposition of PW-3, it appears that the victim was lying unconscious in the hospital and she regained consciousness only after 7th day of the month. In these circumstances, a doubt would arise as to whether she was in a position to record her statement before the City Magistrate on 06.07.2019. This is where learned trial court has also doubted the manner in which the statement (Exhibit '7') has been recorded by PW-6. It further appears that PW-3 is not correct in saying that the case was lodged within 2-3 days after knowing about the occurrence.

26. This would be evident from the deposition of Ram Lal Singh (PW-4) who is the father of the deceased that he had given the written application to Officer In-charge of Ramgarh Police Station which has been marked Exhibit '2'. Exhibit '2' bears a date i.e. 16.07.2019, therefore, while the victim was admitted in the hospital on 03.07.2019 and died on 14.07.2019, the written application for lodging the case was submitted on 16.07.2019. PW-

4 has stated in paragraph ‘22’ of his deposition that second day after the death of his daughter, he had gone to the police station and lodged the case.

27. Nandji Ram (PW-5) is the I.O. of the case who has registered the formal FIR (Exhibit ‘5). He has also proved his endorsement on the written application and the signature thereon which has been marked Exhibit ‘6’. He has proved the place of occurrence. He has stated that he did not mention that who had shown him the place of occurrence. He has, however, stated that all the witnesses were called in the police station and they had recorded their statement in the police station on 19.07.2019. He has further stated in paragraph ‘13’ of his deposition that he had not gone to the hospital where the deceased was being treated and in course of his investigation, he had not recorded statement of any of the employees of the hospital.

28. This Court, therefore, finds that not only two days after the death, PW-4 went to lodge the case, even after the lodgment of the case, the I.O. (PW-5) had not conducted proper investigation, he had recorded the statement of the prosecution witnesses in the police station only. He had not even gone to the hospital where deceased was treated and has not investigated any of the employees of the hospital.

29. We have already discussed the evidence of the City Magistrate (PW-6) hereinabove and the evidence of Doctor (PW-7) while taking note of the submissions of learned counsel for the defence. This Court is of the considered opinion that the conduct of the City Magistrate (PW-6) is not free from doubt. On whose instruction, he had gone to the hospital is still not known. He did not remember the name of the Mohalla in which Ford Hospital is situated. He is a City Magistrate of Varanasi still he does not remember the area in which the hospital is situated. His conduct in not meeting any doctor and not getting a certificate of a doctor about the fitness of the patient either before recording of the statement or after recording of the statement would cause doubt over his conduct. He had not even mentioned bed number in the statement of the victim, he had no prior acquaintance with the victim still he has proved the left thumb impression of her. He did not remember the name of the ward boy. In such circumstances, it is difficult to understand as to how could he enter in the I.C.U. of the hospital, identified the deceased in the hospital and also recorded her statement (Exhibit ‘7’). Why he kept the said Exhibit ‘7’ with him for 10 days and then instead of handing it over to the I.O. for making it a part of the case diary, he chose to send the same by post to the court of learned Magistrate, Kaimur at Bhabhua, the questions remain unanswered.

30. We have also found that the defence had produced three witnesses. Vinay Kumar Singh (DW-1) is the neighbour of PW-4. He has stated that he had never heard about any demand of dowry by the accused persons. The deceased was living with her husband and she died due to burn injuries caused by gas cylinder. She had remained in hospital for 13-14 days whereafter she died. The information as to her death was given to her *maike* people who had come and had performed the last rites. DW-2 and DW-3 have also deposed on the same line.

31. This Court having re-appreciated the entire evidences on the record is of the considered opinion that in this case the chain of criminological events are not getting complete to the extent of reaching to an irresistible conclusion that R-2 and R-3 be held guilty of offence under Section 302/34 IPC. The prosecution case of demand of dowry has not been accepted by police in course of investigation. No charge under Section 304B IPC was framed. In a case of circumstantial evidence, the motive is an important factor which is to be proved but in this case, the prosecution has failed to bring on record any cogent evidence to prove motive behind the alleged occurrence. The evidence of PW-1 who is the mother of the victim rather shows that the victim was regularly visiting her maike and *sasural*, she gave birth to a child within one year after her marriage and the child was studying in school. Dealing with a case

of circumstantial evidence, what are required to be kept in mind have been discussed by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **(1984) 4 SCC 116.** Paragraph '152' of the said judgment is being mentioned hereunder for a ready reference:-

> **"152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh*[1].
> "This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi* v. *State of Uttar Pradesh*[17] and *Ramgopal* v. *State of Maharashtra*[18]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*[1]:"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 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 and it must be such as to show that within all human probability the act must have been done by the accused."

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1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129
17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55
18. AIR 1972 SC 656 : (1972) 4 SCC 625

32. In the case of **Dilavar Hussain and Others versus the State of Gujarat and Another** reported in **(1991) 1 SCC 253,** again the Hon'ble Supreme Court observed in paragraphs '3' and '4' in the following terms:-

> "**3.** All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (*sic*). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.
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> **4.** Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of."

33. In the light of the discussions made hereinabove, we are of the considered opinion that the prosecution could not complete the criminological chain of the events so as to prove the guilt of the R-2 and R-3 beyond all reasonable doubts. In an appeal against acquittal, the High Court need not interfere on mere asking. In the case of **H.D. Sundara** (supra), the Hon'ble Supreme Court has provided the guidelines in paragraph '8' which are being reproduced hereunder for a ready reference:-

> "**8.** In this appeal, we are called upon to consider the legality and validity of the impugned judgment[1] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:
> "**8.1.** The acquittal of the accused further strengthens the presumption of innocence;
> **8.2.** The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;
> **8.3.** The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;
> **8.4.** If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
> **8.5.** The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

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1 *State of Karnataka* v. *H.K. Mariyappa*, 2010 SCC OnLine Kar 5591

34. In ultimate analysis, we find no reason to take a different view. The judgment of the learned trial court is based on proper appreciation of evidences on the record.

35. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.10.2024
Transmission Date	30.10.2024