REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.108 OF 2012

GUNA MAHTO ...APPELLANT

VERSUS

STATE OF JHARKHAND ...RESPONDENT

JUDGMENT

SANJAY KAROL, J.

1. The present criminal appeal is filed by appellant Guna Mahto, found guilty of murdering his wife Smt. Deomatiya Devi under Section 302 of the Indian Penal Code, 1860 by the Ld. Trial Court, Daltonganj in Sessions Trial Case No. 50 of 1989 titled as State vs. Guna Mahto vide judgement dated 10.05.2001. The Ld. Trial Court sentenced the appellant to a term of life imprisonment under Section 302 of the Indian Penal Code and two years rigorous imprisonment in relation to the offence punishable under Section 201 of the Indian Penal Code.

2. On appeal, in the impugned judgment delivered by the High Court of Jharkhand in Criminal Appeal No. 214 of 2001 dated 23.07.2004 titled as Guna Mahto v. State of Jharkhand and findings in respect to the conviction and sentencing arrived at by the Ld. Trial Court were affirmed, despite observing that the Investigation Officer was not examined by the prosecution. Be that as it may, the High Court solely relied upon the ocular evidence of Banaudhi Mahto (PW-2), Samodhi Yadav (PW-9) and Nandish Yadav (PW-10).

3. Hence the present appeal filed by the appellant Guna Mahto.

4. It is the case of the prosecution that the accused had committed the murder of his wife and thereafter dumped her dead body in the well of the village with an intent to cause disappearance of the evidence related to the crime. Later, the accused approached the Police with unclean hands by fabricating a false story, wherein he reported his wife to be 'missing'.

5. On 13.8.1988, the dead body of the deceased was found in the well of the village pursuant to which the matter was brought to the notice of the police and P.S. Case No. 35/1988 (Ex.P-3)

registered at Manika Police Station, Jharkhand. Accordingly, the investigation was conducted and challan presented before the Court for Trial. The prosecution examined ten witnesses out of whom, testimonies of Murari Ram (PW-1), Mithu Pd. Sahu (PW-4), Musafir Yadav (PW-5), Munni Mistry (PW-6), Chitranjan Pandey (PW-8) and Sukhru Mahto (PW-7) are merely formal in nature. We find their testimonies, when considered independently or even collectively, not to point anything towards the guilt of the accused.

6. Before we deal with the merits of the case, we deem it appropriate, at this stage, to state the facts that are not in dispute: (a) the identity of the deceased, (b) the body of the deceased recovered from the well of the village, (c) the Post Mortem Report prepared by Dr. Narendra Kumar Misar (PW-3) stating the cause of the death being haemorrhage and shock with injuries on the neck of the deceased.

7. It is a settled principle of criminal jurisprudence that in a case revolving around circumstantial evidence, the prosecution must prove the guilt of the accused beyond reasonable doubt and the circumstances relied upon must point out only towards one

hypothesis, that is, the guilt of the accused alone and none else. On various occasions, this Court has stated essential conditions that must be fulfilled before conviction of an accused can take place based on circumstantial evidence. In the landmark case of **Sharad Birdhichand Sarda v. State of Mahrashtra, (1984) 4 SCC 116** it has been held as under:

> "**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]
> "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
> (2) the facts so 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,
> (3) the circumstances should be of a conclusive nature and tendency,
> (4) they should exclude every possible hypothesis except the one to be proved, and
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

8. In the instant case, as we have noted earlier, the Investigation Officer was not examined. We find that there is no evidence, ocular or documentary, relating to the factum of the accused having caused the disappearance of evidence by giving information to the police in order to prevent himself from being prosecuted in relation to the murder of his own wife.

9. When we examine the testimony of Banaudhi Mahto (PW-2), father of the deceased, we notice him not to have stated anything against the accused in relation to the crime. He states that two days prior to the recovery of the dead body, father of the accused had informed him that the deceased had eloped with someone. But with whom? He does not mention. He admits that the deceased and the accused were living together and when he discovered that his daughter had not returned home, he lodged the report with the Police.

10. Samodhi Yadav (PW-9), uncle of the deceased, residing in village Maran, only states that Ram Brijesh Yadav (co-villager) informed him that his daughter-in-law (the deceased) had eloped with someone residing in village i.e. Maran. Since he doubted such statement, he went to village Janho, the place of the matrimonial house of the deceased and was informed that since previous

evening, none had seen the deceased. The body of the deceased was found only on the date of recovery from the well of the village. He expressed his doubt, "...that accused had killed his wife and had thereafter thrown her into the well". This being the only statement that he made against the accused. But what is his source of such information, he does not disclose. In any event such a deposition is only in the nature of hearsay and no more, which is also uncorroborated. However, significantly, he admits that the accused had already reported the matter to the Police and that no case of ill-treatment of the deceased was ever registered against the appellant.

11. Perusal of the testimony given by Nandish Yadav (PW-10), son of the maternal brother of PW-2, in our considered view, is also of no consequence in advancing or establishing the case of the prosecution. He only states that, "we suspected" the role of the accused "for he used to beat her often". Elaborating further, he states that such fact was disclosed to him by the villagers. We find that this statement, apart from being in the nature of hearsay, is vague and unspecific with regard to time, place and manner of alleged cruelty. It is on such counts that he suspected the accused to have murdered the deceased. Significantly, in the

cross-examination part of his testimony, we notice all these facts to have been deposed for the first time in the Court and as we have noticed in the testimony of PW-9 that no complaint of ill-treatment was ever reported to anyone. Hence, therefore, the case of the prosecution stands unproven.

12. The Trial Court in its judgment, while convicting the accused, heavily relied upon the statement of PW-9 and the purported statement of the Investigating Officer which is termed as UD Exhibit marked as Exhibit 3/1. The relevant findings in the judgment is extracted as under :

> "The deceased's death as the post mortem report discloses was not due to drowning. From the evidence of P.W.9 and I.O. it appears that while the deceased was found missing then on the next day the villagers tried to search her dead body in the said well by means of Jhagar but it was not found and on the next day the dead body was found in the same well. So, these facts indicate that the deceased did not commit suicide rather she was murdered and her dead body was thrown in the well and the fardbeyan of the accused regarding the death of the deceased is due to suicide does not appear to be probable."

13. Similarly, the High Court, based its findings primarily on the UD, in arriving at the factum of guilt of the accused. The Court proceeded to add that:

> "The medical evidence suggests that the death took place 48 to 96 hours prior to post mortem. Autopsy on the body of the deceased was done on 14th August, 1988 at about 3 P.M. as per medical evidence, if calculation is made, the deceased died sometime between 12th August, 1988 (about 3 P.M.) and 10th August, 1988 (about 3 P.M.) that is why the I.O. suspected that the deceased was murdered at least two days before the post mortem. At least one day prior to the date of recovery of body, she was murdered and her body was thrown in the well."

14. It is in this backdrop, that non-examination of the Investigating Officer attains significance. It is not that the Investigating Officer was not available or that the factum and manner of investigation was deposed by his colleague who was also associated with the same. Non-examination of the Investigation Officer has, in the attending circumstances rendered the prosecution case to be doubtful if not false. The offence under Section 201 IPC could not have been proven without his examination.

15. The Courts below presumptively, proceeded with the acquired assumption of the guilt of the accused for the reason that he was lastly seen with the deceased, and lodged a false report, forgetting that as per the version of the father of the deceased, father of the accused had himself apprised him of his missing daughter, at least two days prior to the incident. Doubt and suspicion cannot form basis of guilt of the accused. The

circumstances linking the accused to the crime are not proven at all, much less beyond reasonable doubt.

16. We may reiterate that, suspicion howsoever grave it may be, remains only a doubtful pigment in the story canvassed by the prosecution for establishing its case beyond any reasonable doubt. **[Venkatesh v. State of Karnataka, 2022 SCC OnLine SC 765; Shatrughna Baban Meshram v. State of Maharashtra, (2021) 1 SCC 596; Pappu v. State of Uttar Pradesh, (2022) 10 SCC 321].** Save and except for the above, there is no evidence: ocular, circumstantial or otherwise, which could establish the guilt of the accused. There is no discovery of any fact linking the accused to the crime sought to be proved, much less, established by the prosecution beyond reasonable doubt.

17. It is our bounden duty to ensure that miscarriage of justice is avoided at all costs and the benefit of doubt, if any, given to the accused. **[Hanumant Govind Nargundkar v. State of M.P. (1952) 2 SCC 71].**

18. In normal course of proceedings, this Court does not interfere with the concurrent finding of facts reached by both the courts below. It is only in exceptional cases where we find the concurrent findings to be absurd, leading to travesty of justice, it is our duty to rectify miscarriage of justice. **[Ramaphupala Reddy v. State of Andhra Pradesh, (1970) 3 SCC 474, Balak Ram v. State of U.P., (1975) 3 SCC 219, Bhoginbhai Hirjibhai V. State of Gujarat, (1983) 3 SCC 217].**

19. Hence, in our considered view, the courts below have seriously erred in passing the order of conviction based on incorrect and incomplete appreciation of evidence, causing serious prejudice to the accused, also resulting into travesty of justice.

20. In view of aforesaid, we find that the order of conviction and sentence passed by 5th Additional Sessions Judge, Palamau, Daltonganj in Sessions Trial Case No.50 of 1989 dated 10.05.2001 as affirmed by the High Court of Jharkhand at Ranchi in Criminal Appeal No.214 of 2001 dated 23.7.2004 titled as Guna Mahto v. State of Jharkhand needs to be interfered with.

21. We set-aside the orders passed by both the courts below. Since the appellant is already on bail, his bail bond shall stand discharged.

22. Appeal stands allowed.

.....J.
(B.R. Gavai)

.....J.
(Sanjay Karol)

Dated: 16th March, 2023
Place: New Delhi