REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2128/2014

STATE OF PUNJAB ..APPELLANT(S)

VERSUS

KEWAL KRISHAN ..RESPONDENT(S)

J U D G M E N T

1. Counsel for the appellant is present. None has appeared for the respondent. The office has submitted a report that notice has been served on the sole respondent, yet no one has entered appearance on his behalf.

2. We have heard Mr. Mohit Siwach, learned counsel for the appellant.

3. This appeal assails the judgment and order of the High Court of Punjab & Haryana (for short the High Court) dated 01.05.2012 rendered in Criminal Appeal No. 372 of 2002, whereby the judgment and order of the trial Court convicting and sentencing the respondent (Kewal Krishan) under Section 302, IPC has been set aside and the

appellant (respondent herein) has been acquitted of the charges for which he was tried.

4. The prosecution case rests on evidence in respect of following circumstances:

(a) The deceased was last seen alive in his own house in the company of the accused at about 7.00 p.m. on 10.12.1998 by PW-2.

(b) Dead body of the deceased with multiple injuries was found in his house by PW-6, nephew of the deceased, on 12.12.1998 at around 1.00 pm.

(c) Autopsy conducted on 12.12.1998, at about 4.15 pm, reflected that death of the deceased could have occurred within two days, as a result of shock and haemorrhage, due to ante mortem incised wounds.

(d) Accused made an extra-judicial confession before P.W-3 on 25.12.1998 and was thereafter handed over to the police on the same day.

(e) Accused made a disclosure to the police on 25.12.1998 with regard to the place where he hid the knife used in the crime, which led to the recovery of a Khanjar (knife) (Ex.P-1).

(f) The autopsy surgeon opined that the incised wounds found on deceased’s body could have been caused by use of that Khanjar.

5. The trial Court found those circumstances proved and forming a chain so complete as to conclusively indicate that it was the accused and no one else who committed the murder and thus convicted and sentenced the accused accordingly.

6. Aggrieved by his conviction, the accused went in appeal to the High Court.

7. The High Court noticed that the accused in his statement under section 313 of the Code of Criminal Procedure, 1973 had denied the incriminating circumstances appearing against him in the prosecution evidence and had claimed that he was arrested on 12.12.1998 itself on false implication. Thereafter, the High Court, on a careful analysis of the evidence, more particularly the statement made by PW-2 that on 13.12.1998 he had disclosed to the police about the involvement of the accused, doubted the date of arrest of the appellant (i.e., 25.12.1998), as set up by the prosecution, and opined that the statement of PW-2 probabilizes the claim of the accused that he was arrested on 12.12.1998 itself. The High Court found PW-2's evidence of last seen not convincing and reliable inasmuch as if on 13.12.1998 PW-2 had informed the police about his suspicion in respect of the involvement of the accused, the police would have arrested the

accused forthwith and not waited till 25.12.1998. But the record indicated that the name of the accused came to light for the first time on 25.12.1998. In these circumstances, the High Court found PW-2 unreliable, as being a witness who was set up later. Otherwise also, the High Court found that last seen circumstance did not conclusively point towards the guilt of the accused by excluding all hypotheses consistent with his innocence, inasmuch as there was a huge time gap between the date and time when the deceased was last seen in the company of the accused and discovery of deceased's dead body. Further, the High Court took note of the circumstance that the autopsy conducted on 12.12.1998 at 4.15 pm indicated occurence of *rigor mortis* on lower limbs, which suggested that death could have occurred within 30 hours of the autopsy, thereby throwing open the possibility of death occurring much later than at 7.00 pm on 10.11.1998, when the deceased was allegedly seen in the company of the accused. Taking note of the above and bearing in mind that the accused did not reside with the deceased and no evidence was led that except the accused no one else could have entered the house of the deceased in the interregnum, the last seen circumstance was found inconclusive.

8. In respect of the circumstance of recovery of the knife, the High Court, firstly, doubted the date of arrest, as noticed above, and, secondly,

noticed that there was no serologist report to ascertain whether the knife was stained with human blood as to connect it with the crime.

9. The High Court also discarded the extra judicial confession on the ground that there was no cogent explanation set out in the prosecution evidence to demonstrate as to why the accused would make a confession to P.W.3, particularly, when the accused had no significant relationship with PW-3 and PW-3 could not have helped him. The extra judicial confession was also doubted on the ground that the date of arrest of the accused (i.e., 25.12.1998) appeared doubtful, inasmuch as there was a high probability of the accused being arrested earlier i.e., 12.12.1998, as claimed by him, because from the statement of PW-2 it appeared that the police was informed by him on 13.12.1998 itself in respect of his suspicion regarding the involvement of the accused.

10. After a thorough analysis of the evidence as highlighted above, the High Court found that, firstly, the incriminating circumstances were not proved beyond reasonable doubt and, secondly, they

did not constitute a chain so complete as to conclusively indicate that it was the accused and no one else who, in all human probability, committed the crime. Consequently, the High Court set aside the order of the trial Court and acquitted the accused of the charge.

11. Learned counsel for the State (appellant) has submitted that there was no proven enmity of the witnesses with the accused. In these circumstances, there was no occasion for the High Court to doubt the testimony of the prosecution witnesses in respect of the incriminating circumstances laid out by the prosecution. In such a situation there was no justification to reverse the conviction recorded by the trial Court. It was argued that the deceased was last seen alive, having liquor with the accused, in the evening of 10.12.1998 and thereafter the deceased was not seen alive by anyone. The autopsy report probabilizes death of the deceased at around the same time when he was last seen in the company of the accused. In these circumstances, the burden was on the accused to prove as to when he left company of the deceased. In absence whereof, coupled with other circumstances, accused's conviction was justified. Therefore, the High Court fell in error by setting aside the judgment

of the trial Court and acquitting the respondent.

12. We have considered the submissions of the learned counsel for the appellant and have perused the record carefully.

13. Before we proceed further, it would be apposite to notice the law as to when it would be appropriate for this Court, exercising power under Article 136 of the Constitution of India, to interfere with an order of acquittal passed by the High Court while reversing an order of conviction recorded by the Trial Court. The law in this regard is well settled. Normally, this Court is reluctant to interfere with an order of acquittal. But when it appears that the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, acquitted the respondent and the order of acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice, extraordinary jurisdiction under Article 136 of the Constitution of India may rightfully be exercised (See : *State of U.P. v. Sahai*, (1982) 1 SCC 352).

14. In State of *M.P. v. Paltan Mallah*, (2005) 3 SCC 169 reiterating the same view it was observed:

> **"8…….. This being an appeal against**

acquittal, this Court would be slow in interfering with the findings of the High Court, unless there is perverse appreciation of the evidence which resulted in serious miscarriage of justice and if the High Court has taken a plausible view this Court would not be justified in interfering with the acquittal passed in favour of the accused and if two views are possible and the High Court had chosen one view which is just and reasonable, then also this Court would be reluctant to interfere with the judgment of the High Court."

15. In a recent decision rendered by this Court in *Basheera Begam v. Mohd. Ibrahim*, (2020) 11 SCC 174, it was observed:

"190. ……..Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon

analysis of the evidence on record found the accused to be “not guilty”.”

16. In light of the law noticed above, we would have to examine, firstly, whether the High Court ignored or misread any material piece of evidence which has resulted in miscarriage of justice; secondly, whether there is any perversity in the appreciation of evidence; and, thirdly, whether the view taken by the High Court is a plausible view.

17. This is a case based on circumstantial evidence. It is trite law that to convict an accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards accused’s guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence.

18. In the instant case, we notice from the record that the dead body of the deceased, lying in a naked condition in his house, was first

discovered by PW-6, nephew of the deceased, on 12.12.1998 at around 1.00 pm. Upon discovery of the dead body, on the information provided by PW-6, FIR was registered against unknown accused and inquest etc. was carried out. What is important is that the name of the accused did not surface on the record till 25.12.1998, that is when he was allegedly handed over to the police by PW-3 upon a confession made by him before PW-3. PW-2, the sole witness of the last seen circumstance, in his deposition in court, stated that he had expressed his suspicion in respect of accused's involvement to the police on 13.12.1998. The High Court opined that if PW-2 was aware of the last seen circumstance and had made such a disclosure, there was no reason for the police not to act against the accused till 25.12.1998. Therefore, the statement of PW-2 in respect of imparting knowledge of the last seen circumstance appeared doubtful and it appeared that the witness was set up to create link evidence. The High Court also noticed that the alleged date and time when the deceased was last seen alive was at quite a distance from the date and time when the deceased was found dead. Indisputably the deceased was found dead in his own house where the accused did not reside. The deceased was allegedly last seen

alive in the company of the accused in the evening at around 7 pm of 10.12.1998 whereas the body of the deceased was found 2 days later, on 12.12.1998. Autopsy report, based on autopsy conducted at around 4.15 pm on 12.12.1998, noted occurance of *rigor mortis* in the lower limbs, which gives rise to a possibility of death being within 30 hours of the autopsy, meaning thereby that death might have occurred much after 7 pm of 10.12.1998. In such circumstances, bearing in mind that the deceased was found dead in his own house, where the accused did not reside, and there was no evidence as to when the accused left the house and that no one else could have entered the house in the interregnum, other intervening circumstances including hand of some third person in the crime was not ruled out by the prosecution evidence. For the reasons above, we are of the considered view that the High Court was justified in doubting the testimony of PW-2 and finding the last seen circumstance inconclusive in pointing towards the guilt of the accused by excluding other hypotheses consistent with his innocence.

19. As regards recovery of the Khanjar (knife) is concerned, the same was denied by the accused and there was no serologist report to connect it with the crime. Therefore, it had very little

incriminating value to sustain conviction on its own basis. Moreover, the High Court, on strength of the circumstances appearing in the evidence, doubted the date of arrest and, upon consideration of the circumstances, accepted the possibility of the arrest of the accused being much earlier in point of time, as claimed by the accused, than what was set up by the prosecution. In such circumstances, the recovery, which was made on 25.12.1998, allegedly on disclosure made by the accused on 25.12.1998, becomes doubtful. The view of the High Court in this regard cannot be termed perverse as to warrant interference by this Court.

20. Insofar as the evidence of extra judicial confession made by the accused is concerned, the same was provided by PW-3, a member of the Panchayat wherein the deceased resided. Ordinarily a person makes a confession either to absolve oneself of the burden of guilt or to seek protection under the hope that the person to whom confession is made would protect him. Normally a confession to absolve oneself of the guilt is made to a person on whom the confessor reposes confidence. The High Court noticed that there was no evidence to demonstrate that the accused had any prior relations with PW-3 or that the accused hoped for, or sought, any help from PW-3 and,

therefore, made the confession to him. Notably, the accused denied making any such confession. For the reasons above, including other, which need not be put on record, the High Court discarded the circumstance of the accused making a confession before PW-3 on 25.12.1998. Otherwise also, an extra judicial confession is a very weak type of evidence and solely on its basis a conviction is not ordinarily to be recorded.

21. The argument of the learned counsel for the appellant that since there was no proven enmity between the accused and the witnesses therefore there was no reason to disbelieve them, would not be of much help to the appellant because this is a case based on circumstantial evidence. In a case based on circumstantial evidence not only do each of the incriminating circumstances have to be proved beyond reasonable doubt but those incriminating circumstances must constitute a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused who has committed the crime and further, cumulatively, they must exclude all hypotheses consistent with the innocence of the accused and inconsistent with his guilt. As we have found that the incriminating circumstances were not proved beyond reasonable doubt and

otherwise also the circumstance of last seen was inconclusive, in our view, the High Court was justified in setting aside the order of conviction recorded by the Trial Court.

22. The argument that the accused has failed to discharge his burden under section 106 of the Evidence Act and, therefore, his conviction was justified is misconceived. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a *prima facie* case, the question arises of considering facts of which the burden of proof would lie upon the accused. (See: *Shivaji Chintappa Patil v. State of Maharashtra* (2021) 5 SCC 626). Here, as we have discussed above, firstly, the incriminating circumstances were not proved beyond reasonable doubt and, secondly, they do not form a chain so complete from which it could be inferred with a degree of certainty that it is the accused and no one else who, within all human probability, committed the crime. In these circumstances, there was no occasion to place burden on the accused with the aid of section 106 of the Evidence Act to prove his innocence or to

disclose that he parted company of the deceased before his murder.

23. For all the reasons above, while keeping in mind that the view taken by the High Court is a plausible view and that it was not pointed out that any material evidence was ignored or misread, we do not find a good reason to interfere with the order of acquittal passed by the High Court.

24. The appeal is accordingly, dismissed.

.....J.
[B.V. NAGARATHNA]

.....J.
[MANOJ MISRA]

NEW DELHI,
JUNE 21, 2023.