

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW**

A.F.R.

Reserved on 04.11.2022

Delivered on 13.01.2023

Court No. - 1

Case :- CRIMINAL APPEAL No. - 530 of 2004

Appellant :- Mohd. Aslam

Respondent :- State of U.P.

Counsel for Appellant :- Mr. R.B.S. Rathaur (Amicus Curiae)

Counsel for Respondent :- Additional Government Advocate.

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Saroj Yadav, J.

(The judgment is pronounced in terms of Chapter VII Sub-rule (2) of Rule (1) of the Allahabad High Court Rules, 1952 by Hon'ble Ramesh Sinha, J.)

Per Mrs. Saroj Yadav, J for the Bench

1. This criminal appeal has been preferred by the sole appellant/convict Mohammad Aslam against the judgment and order dated 30.01.2004 passed by Additional District and Sessions Judge, Fast Track Court No.5, District Hardoi in Sessions Trial No.241 of 2002, Crime No.318 of 2001 under Section 302 of the Indian Penal Code, 1861 (in short IPC), Police Station Mallawan District Hardoi, whereby the appellant has been held guilty under Section 302 of I.P.C. and sentenced with life imprisonment coupled with a fine of Rs.10,000/- and in default of payment of fine further imprisonment of two years.

2. The facts in short necessary for disposal of this appeal are as under:-

(i) A First Information Report (in short F.I.R.) was registered on

22.12.2001 at Case Crime No. 318 of 2001, under Section 302 of I.P.C. at Police Station Mallawan, District Hardoi in pursuance of the order passed by the learned Chief Judicial Magistrate, Hardoi on the application moved by the complainant Abdul Sattar under Section 156(3) Cr.P.C.. It was stated in the application/F.I.R. that Khairunnisa sister of the complainant was married to Mohammad Salis resident of village Purvayan, Police Station Mallawan, District Hardoi. Mohammad Aslam is the real brother of his brother-in-law Mohammad Salis. There was dispute regarding money between his brother-in-law and Salis Mohammad Aslam, because Mohammad Salis lended a sum of Rs.25,000/- to Mohammad Aslam during the season of potato crop. Mohammad Aslam was not returning the money alleging loss. Whenever he (complainant) used to ask about his own Rs.10,000/- from Mohammad Salis, then Mohammad Salis used to reply that whenever Mohammad Aslam would return the money he would pay him (complainant). Mohammad Salis told the complainant that whenever he asked about the money, Mohammad Aslam made excuses and threatened to kill.

(ii) On 13.01.2001 in the noon Mohd. Aslam brought Buffalo meat and gave to Khairunnisa the sister of the complainant to cook. After handing over the meat he went out of the house on pretext of some urgent work. After eating that meat Mohammad Salis brother-in-law of complainant, sister Khairunnisa, nephew Ajmeri and niece Gulshan died. Ajmeri and Gulshan died on way to Mallawan, whereas Mohd. Salis and Khairunnisa died in Hardoi. He (complainant) met his sister and brother-in-law in Mallawan because at that time he was in Mallalawan. It was told by his sister and brother-in-law that Mohammad Aslam mixed poison in the meat for the

reason he did not want to return the money. Before this incident Mohammad Aslam left his wife in her paternal home. He informed about the incident at police station Mallawan but no action was taken. He further informed many higher officers, but no action was taken. Therefore he moved an application under section 156 (3) of Cr.P.C and requested to lodge the FIR.

(iii) It is evident from the record that on 13.01.2001 the police of Police Station Mallawan District Hardoi prepared inquest reports of all the four deceased persons on the information received from District Hospital Hardoi. The name of the persons who gave information is Krishna Kumar the ward boy of District Hospital Hardoi. This fact has been mentioned in the inquest report of all the four persons. After preparing the inquest reports police prepared the necessary documents and sent the dead bodies for postmortem examination. The police also reached at the spot and seized some part of the meat found inside the house of the deceased persons and prepared the recovery memo of the same.

(iv) After registration of the FIR, further investigation started and the Investigating Officer prepared the site plan of the place of incident and recorded the statements of the witnesses and submitted the chargesheet against the accused appellant under section 302 of I.P.C. for killing the aforementioned four deceased persons. The concerned Magistrate after taking cognizance on the chargesheet committed the case to the Court of Sessions for trial, who in turn transferred the case for trial to the Additional Sessions Judge for trial. The Additional Sessions Judge framed charge under section 302 of I.P.C.

The accused person denied the crime and claimed to be tried. The

prosecution in order to prove its case examined the following witnesses:-

- (a) P.W. 1 Abdul Sattar, the complainant.
- (b) P.W. 2 Nafiz Ahmad.
- (c) P.W. 3 Doctor C.P. Rawat, who conducted the postmortem examination.
- (d) P.W. 4 Raees Ahmad.
- (e) P.W. 5 Sirajuddin.
- (f) P.W. 6 Sub Inspector Santosh Kumar Dixit.
- (g) P.W. 7 Sub Inspector S.N. Singh.
- (h) P.W. 8 Sub Inspector C.S Saxena.
- (i) P.W. 9 Sub Inspector S.K. Dixit.
- (v) Apart from above oral evidences, prosecution also proved the relevant documents as Exhibit Ka-1 to Ka-34, which are as under :-
 - (1) Exhibit Ka-1, photo copy of the application under Section 156(3) Cr.P.C.
 - (2) Exhibit Ka-2, postmortem examination report of deceased Salis.
 - (3) Exhibit Ka-3 post-mortem examination report of deceased Khairunnisa.
 - (4) Exhibit Ka-4 postmortem examination report of deceased Gulshan.
 - (5) Exhibit Ka-5 postmortem examination report of deceased Ajmeri.
 - (6) Exhibit Ka-6 inquest report of deceased Salis.
 - (7) Exhibit Ka-7 inquest report of deceased Khairunnisa.
 - (8) Exhibit Ka-8 inquest report of deceased Gulshan.
 - (9) Exhibit Ka-9 inquest report of deceased Azmeri.
 - (10) Exhibit Ka-10 letter to R.I. for postmortem of deceased Salis.
 - (11) Exhibit Ka-11 letter to the Chief Medical Officer for conducting postmortem of deceased Salis.
 - (12) Exhibit Ka-12 Chalan nash of deceased Salis.

- (13) Exhibit Ka-13 Photo nash of deceased Salis.
- (14) Exhibit Ka-14 specimen seal of deceased Salis.
- (15) Exhibit Ka-15 Photo nash of deceased Khairunnisa.
- (16) Exhibit Ka-16 chalan nash of deceased Khairunnisa.
- (17) Exhibit Ka-17 letter to R.I. about deceased Khairunnisa.
- (18) Exhibit Ka-18 letter to the Chief Medical Officer for conducting postmortem of deceased Khairunnisa.
- (19) Exhibit Ka-19 specimen seal of deceased Khairunnisa.
- (20) Exhibit Ka-20 letter to the Chief Medical Officer for conducting postmortem of deceased Gulshan.
- (21) Exhibit Ka-21 letter to R.I. for postmortem of deceased Gulshan.
- (22) Exhibit Ka-22 chalan nash of deceased Gulshan.
- (23) Exhibit Ka-23 photo nash of deceased Gulshan.
- (24) Exhibit Ka-24 specimen seal of deceased Gulshan.
- (25) Exhibit Ka-25 chalan nash of deceased Ajmeri.
- (26) Exhibit Ka-26 photo nash of deceased Ajmeri.
- (27) Exhibit Ka-27 letter to R.I. for postmortem examination of Ajmeri.
- (28) Exhibit Ka-28 letter to the Chief Medical Officer for conducting postmortem report of deceased Ajmeri.
- (29) Exhibit Ka-29 specimen seal of deceased Ajmeri.
- (30) Exhibit Ka-30 site plan of the place of incident.
- (31) Exhibit Ka-31 recovery memo of taking into custody the meat from the house of the deceased persons.
- (32) Exhibit Ka-32 Chargesheet.
- (33) Exhibit Ka-33 Chick FIR.
- (34) Exhibit Ka-34 Nakal Report No.2 of time 14:10 hours dated 22.12.2001.
- (36) Exhibit Ka-36 Viscera examination report of deceased Salis.

(37) Exhibit Ka-37 Viscera examination report of the deceased Khairunnisa.

(vi) After close of prosecution evidence, the statement of the accused Mohammad Aslam was recorded under section 313 of the Code of Criminal Procedure 1973 (in short Cr.P.C.). The accused denied all the allegations leveled against him and stated that Abdul Sattar, the complainant came to him to demand the money and threatened that if money will not be given he will lodge the FIR. He lodged the FIR for the reason that he did not pay the money demanded. In defence one witness DW-1 Mohammad Anis was examined. Thereafter the learned trial court after hearing the arguments of both the sides and analyzing the evidences available on record reached at the conclusion that prosecution has proved all the circumstances which leads to the conclusion that accused Aslam committed the crime. It has also concluded that all the circumstances cumulatively prove that accused has committed the crime and finally concluded that prosecution has established the prosecution story beyond all reasonable doubts by the evidence adduced especially the medical evidence and expert evidence. The learned trial court held the accused guilty under section 302 of I.P.C. and sentenced him with imprisonment for life coupled with a fine of Rs.10,000/- and in default of payment of fine further imprisonment of two years.

(vii) Being aggrieved of this conviction and sentence this appeal has been preferred by the convict/appellant.

(viii) The appellant/convict had challenged the impugned judgment and order mainly on the ground that the occurrence took place on 13.09.2001, but the FIR was lodged on 20.12.2001 at about 14:10 hours, on the application of

Abdul Sattar, who is the real brother of Khairunnisa. None of the close relatives of deceased Mohammad Salis or a person living nearby had lodged the FIR. Abdul Sattar, the complainant has cooked up a story that Mohammad Salis has given Rs.25,000/- to the appellant for potato business in which he has also given Rs.10,000/- who is brother in law of Mohammad Salis and the same was demanded by him but the appellant has not given the same. Among the prosecution witnesses Sirajuddin and Nafis Ahmed had turned hostile and only Abdul Sattar has stated about the incident and that too in contradictory manner which is not reliable. The finding of the learned trial court is against the law and facts both and the impugned judgment and order of the trial court is based on surmises and conjectures.

(3) Heard Mr R.B.S. Rathour, Advocate Amicus Curiae for the convict/appellant and Mr. Umesh Chandra Verma, learned Additional Government Advocate (in short A.G.A.) for the State.

(4) Learned counsel for the convict/appellant argued that this case is based on circumstantial evidence, as there is no eye-witness of the incident. There was no chance to state about the incident by Khairunnisa and Mohammad Salis to Abdul Sattar, as Abdul Sattar reached when all the four persons were dead. P.W.-4 Raees Ahmad and PW-5 Sirajuddin have turned hostile. PW-1 Abdul Sattar, the complainant has given a contradictory statement and is not trustworthy. He further argued that prosecution has failed to prove the chain of circumstantial evidence beyond reasonable doubt. In fact there is no evidence against the convict appellant therefore the impugned judgment and order should be set-aside and the convict/appellant be released.

He relied upon following case laws:-

(1) **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 (SC) 1622.**

(2.) **Ramgopal Vs. State of Maharashtra, AIR 1972 (SC) 656.**

(5) Contrary to it learned A.G.A. opposed the submissions made by learned Amicus Curiae and submitted that the strong motive was there to commit the crime and the poison was found in the meat tested in the Forensic Science Lab and also in the Viscera preserved of the diseased persons. Hence the appeal deserves dismissal and should be dismissed.

(6) Considered the arguments of both the sides, perused the evidence available on record and also the impugned judgment and order, and gone through the case law cited by the learned Amicus Curiae.

(7) This case is based on circumstantial evidence, as there is not eye-witness of the crime. The principle governing the appreciation of evidence based on circumstantial evidence have been summarized by the Hon'ble Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra (supra)** cited by the learned Amicus Curiae and have been reiterated in catena of cases by the Hon'ble Apex Court. Recently the Hon'ble Apex Court in this regard in the case of **Shivaji Chintappa Patil Vs. State of Maharashtra reported in (2021) 5 SCC 626**, has laid down as under (para 12):-

"12. The law with regard to conviction on the basis of circumstantial evidence has been very well crystalised in the judgment of this Court in Sharad Birdhichand Sarda v. State of Maharashtra :- (SCC p.185, paras 153-54)

"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 where the observations were made: [SCC p. 807 : para 19, SCC (Cri) p. 1047]

"19.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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

(8) In short in order to prove the crime based on circumstantial evidence all the circumstances must indicate that the author of the crime is the accused and the accused alone and there is no possibility of being committed the crime by anybody else. The chain of the circumstances should be complete and no shadow of reasonable doubt must be there. In the present matter admittedly there is no eye witness of the crime as nobody has come to say that he saw the accused committing the crime. The FIR of the crime was lodged in pursuance of an order passed on an application moved under Section 156(3) of Cr.P.C. by the brother of deceased Khairunnisa. It is also undisputed that the death of all the four deceased persons resulted due to poison Thayodon (Organochloro) insecticide poison as found in the viscera preserved of Salis and (Fairroom) Khairunnisa. The viscera reports of Salis as Exhibit Ka-36 and Exhibit Ka-37

are on record.

In order to prove the murder by poisoning the prosecution had to establish the following three essentials:-

(a) The person died due to poison.

(b) The accused was in possession of poison.

(c) The accused had opportunity to administer poison to the deceased.

(9) In the case in hand, it is undisputed that all the four deceased persons died of poison as has been reported by the Forensic Science Laboratory in viscera examination reports, hence first ingredient is proved. Now comes the second ingredient, whether Mohd. Aslam the appellant/convict had poison in his possession. In this regard there is no reliable evidence on record. The P.W.1 has only stated that when he met Mohd. Aslam in the bus he was carrying meat and a bottle of medicine. When he asked Mohd. Aslam about bottle he answered that it was a Cough Syrup. No other evidence is there to show that Mohd. Aslam had poison in his possession. There is no evidence on record that bottle which Mohd. Aslam carried on the pretext of cough syrup was containing poison. Even there is no evidence to prove that Mohd. Aslam handed over the meat pieces to Khairunnisa the deceased and mixed that cough syrup in that meat. Hence, the second ingredient is not proved by the prosecution. Now comes the third ingredients, whether Mohd. Aslam had opportunity to administer poison to the deceased person. There is allegation in the FIR lodged by Abdul Sattar brother of the deceased lady Khairunnisa and brother-in-law of deceased Mohd. Salis and maternal uncle of two deceased children, that Mohd. Aslam brought meat and gave the same to Khairunnisa to cook that and when the meat was being cooked he mixed some poison in that

meat and after consuming that meat all the four persons died. Admittedly the complainant Abdul Sattar was not present at the time of alleged bringing of meat and mixing the poison or handing over the meat to the deceased lady. None other witness could be produced who saw the accused, handing over the meat to the deceased lady or mixing the poison or atleast saying that he saw the poison in the possession of the convict-Aslam.

(10) Prosecution has emphasized on the statement of Abdul Sattar (P.W.1 Complainant), wherein he has stated that his deceased sister and brother-in-law told him before death, while Abdul Sattar was taking them to Hospital in Hardoi that Mohd. Aslam brought meat and gave it to her deceased sister to cook up alongwith spices. While meat was being cooked, Mohd. Aslam poured some poison in the pot and that was witnessed by his deceased sister. Upon scrutiny of evidence of Abdul Sattar it is surfaced that he received information about the serious condition of his sister, brother-in-law and their two children. On this he went to Mallawan, but the doctors at Mallawan asked to take them to Hospital at Hardoi. When he was carrying them to Hardoi, on the way his sister told him that Mohd. Aslam gave meat alongwith spices to cook and poured some poison in the meat while meat was being cooked. In this regard this witness has given the contradictory statement. At one place he said that his sister and brother-in-law had already died when he reached, at another place he stated that they were alive. Further he said that his brother-in-law was dead but sister was alive. Further more Defence Witness (D.W.1) Mohd. Anis has said that Abdul Sattar was not with him when he carried the deceased persons to Hardoi. Thus the testimony of P.W. 1 Abdul Sattar is not trustworthy. There is nothing on record to establish that

the convict Mohd. Aslam brought meat alongwith spices and handed over to Khairunnisa for cooking and mixed some poison when the meat was being cooked.

(11) Thus the prosecution has failed to prove the circumstances leading towards the conclusion that the appellant/convict killed all the four deceased persons by administering poison in meat. There is no reliable evidence to establish that Mohd. Aslam brought meat and spices and handed over to the deceased lady to cook. There is no reliable evidence that Mohd. Aslam had poison in his possession and there is no trustworthy and cogent evidence to prove that Mohd. Aslam mixed some poison in the meat while the meat was being cooked.

(12) The evidence on record is not of such a quality that we can unhesitatingly hold that the death of deceased persons were result of administration of poison by the convict/appellant. In other words the prosecution has failed to prove that Mohd. Aslam brought meat alongwith spices and handed over to Khairunnisa to cook and mixed the poison in the meat at the time of cooking.

(13) It is painful for this Court to note that four persons of the family were done to death by poisoning but the real culprit of the crime could not be brought to book. So far as the appellant-accused Mohd. Aslam is concerned the prosecution has failed to conclusively establish by cogent evidence that it was the accused/appellant who committed the murder of four deceased.

(14) Hence the impugned judgment and order deserves to be set-aside and is set-aside.

(15) The appeal is **allowed**. The appellant is in jail. He shall be released

forthwith, if not required in any other case.

(16) Appellant Mohd. Aslam is directed to file personal bond and two sureties each in the like amount to the satisfaction of the court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.

(17) Before we part with the case, we must candidly express our unreserved and uninhibited appreciation for the assistance rendered by Mr. R.B.S.Rathaur, *Amicus Curiae* for the convict-appellant, therefore, we deem it appropriate to direct for payment to Mr.R.B.S.Rathaur, learned *Amicus Curiae* for his valuable assistance as per Rules of the Court.

(18) Office is directed to pay remuneration to Mr.R.B.S.Rathaur, learned *Amicus Curiae* as per Rules of the Court within a month.

(19) Let a copy of this order alongwith original record be transmitted to the trial court concerned forthwith for necessary information and follow action.

(Mrs. Saroj Yadav, J.) (Ramesh Sinha,J.)

Order Date :- 13.01.2023

A.K.Singh