**IN THE SUPREME COURT OF INDIA**

 **Criminal Appeal No. 729 of 2011**

**IN THE MATTER OF:**

H. D. Sikand (D) through LRs : APPELLANT

VERSUS

Central Bureau of Investigation & Ors. : RESPONDENTS

**WRITTEN NOTE ON BEHALF OF Respondent No. 2**

**Reliefs Claimed:**

1. To set aside the judgment and final order dated 15.05.2009 of the High Court of Delhi whereby the high court set aside the judgment and order of the Additional sessions judge and acquitted the 2nd Respondent of the charge of murder and of charges under Section 3 & 4 of the Explosives Act.

**ISSUES:**

1. Whether an accused can be convicted for an offence, solely on the basis of circumstantial evidence, when the tests laid down in the case of **Sharad Biwichand Sarda vs. State of Maharashtra** have not been met?

**LIST OF DATES**

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| **DATE** | **EVENT** | **Submissions**  |
| 31.03.1971 | Rani Chaudahry (wife) got married to Lt. Col S. J. Chaudhary (husband) (R-2) and out of this wedlock one daughter was born on 24.08.1972. From May 1976 the wife started living separately. As per the wife, the husband continued to harass her even after she moved into a different house.  |  |
| 06.12.1979 | Rani Chaudhary filed a petition for divorce under section 13(1)(1a) of the Hindu Marriage Act and on 06.12.1979 an ex parte decree of divorce was granted in her favour.  |  |
| 05.03.1980 | After her husband (R-2) found out about the ex parte order, a challenge to the same was made by him before the Delhi High Court. He also filed petitions for setting aside the ex parte decree and for restraining his wife from marrying Kishan Sikand. The Ld. Judge passed an order restraining the wife from marrying kishan Sikand pending the decision of the divorce petition.  |  |
| 06.01.1981  | The Additional District judge dismissed the application for setting aside of the ex parte order and the injunction against the wife was also vacated.  |  |
| 09.01.1981 | The accused got another order from the Delhi High Court restraining his wife from remarrying. This order was vacated on 17.03.1981 while the appeal against the ex parte order was also dismissed. Further, the appeal of the Col chaudhary was heard and the previous ex parte divorce decree was vacated and the parties were directed to appear before the district court for hearing of a fresh divorce petition.  |  |
|  | The order of the high court was challenged by rani Chaudhary before the SC and SC set aside the order of the high court and restored the ex parte decree of divorce.  |  |
| 29.09.1981 and 30.09.1981 | The husband started filing complaints with at PS lodhi colony and PS hazarat nizamuddin against kishan Sikand that he is illegally keeping his wife with him.  |  |
| 02.10.1982  | The case of the prosecution is that S.J. Chaudhary, having lost the plot to get back his wife, the accused ( R-2) procured raw material to manufacture a bobby trap bomb. This was converted into a parcel addressed to Kishan Sikand and on 02.10.1982 the said parcel was kept at the stairs leading to house no 98, sunder nagar, New Delhi. When opened, the explosion caused immediate death of Kishan Sikand.  |  |
| 02.10.1982 | The FIR was registered on the very same day and the investigation of the case was eventually handed over to CBI on 19.03.1983. The Respondent no. 2 was arrested on 31.07.1983 by the CBI.  |  |
| 24.04.2008 | The Respondent no. 2 was convicted by the Ld. Additional sessions judge under section 302 IPC and section 3 and 4 of the Explosives substances Act.  |  |
| 28.04.2008 | The said order of the Trial court was challenged by way of a criminal appeal before the high court and it was contended that there existed only circumstantial evidence against the Respondent no 2 and the same is not sufficient for his conviction.  | In case of circumstantial evidence, the tests laid down in 1984 (4) SCC 116 have to be satisfied for conviction of an accused person.  |
| 15.05.2009 | The High Court of Delhi set aside the judgment of the Trial court and acquitted the respondent no. 2 against charges of murder and under section 3 and 4 of the Explosives Substances Act.  |  |
|  | The said acquittal was challenged by way of special leave petitions.  |  |

**Contentions of the Appellant:**

1. That after the explosion took place in the house of Kishan Sikand, the Delhi Police took over the investigation but except recording some statements and formal actions, did not do any worthwhile investigation.

2. That even after the Court’s order and search warrant issued for search of the house of Respondent No.2, only search was conducted by the police and thereafter the Investigating Officer did not do anything except collecting 75 type prints of different typewriters or specimens, which had no relevance with the crime.

3. That the police did it only to pretend that they were doing some investigation. According to the Investigating Officer himself, it came to his knowledge that a parcel was spotted on the staircase on 25.09.1982 for the first time, but even after such fact came to his notice, he did not make any investigation and did not even record the statement of the person giving such information.

4. That there was no proper investigation by the Crime Branch and the criminal remained undetected, on the request of the appellant, the case was transferred to the CBI and only thereafter the real investigation started and, in this manner, the precious time for collection of evidence was lost.

**5.** That there were strained relations between Rani Chaudhary and accused Respondent No.2 and despite best efforts to maintain her matrimonial ties with the accused Respondent, the accused Respondent continued to ill-treat her and even tortured her both mentally and physically, forcing her to shift to Delhi. She was beaten to the extent of causing fractures of three bones. The accused Respondent threatened the deceased and Rani Chaudhary with dire consequences to the extent of bodily harming and killing Kishan Sikand on a number of occasions. The accused Respondent had the grudge and motive to kill Kishan Sikand.

**Submission of the Respondent no. 2.**

**1.** Thatthe Trial Court has convicted him for the offence of murder only on the basis of circumstantial evidence and the conviction has been overturned by a Division Bench of the Delhi High Court. It is further submitted that the circumstances relied upon by the prosecution have not been satisfactorily established against him and the circumstances said to have been established against him do not provide a complete chain that is required to prove his guilt. The standard of proof required to convict a person in a case of circumstantial evidence, has not been met either.

**2.** That any allegation that the Crime Branch of Delhi Police did not investigate the case properly and with promptitude due to the influence of the father of Respondent No. 2 who was a former I.G. in Delhi Police, is ex facie baseless and unfounded allegation and has not been supported by any material evidence.

3. That the prosecution’s whole case is not based on any concrete evidence or eye- witness testimony but on presumption and imputation of motive to Respondent no. 2 that he had an animus towards the deceased Kishan Sikand due to his ex-wife Rani Chaudhary living with Kishan Sikand.

4. That the delay in recording the statements of the eye-witnesses casts a serious doubt about they being eye-witnesses to the occurrence. In support of this submission, he relies upon a recent judgment of this Court in [Shahid Khan v. State of Rajasthan](https://indiankanoon.org/doc/104240276/), (2016) 4 SCC 96, wherein this Court reversed the conviction for murder as statements of eye-witnesses were recorded after 3 days of incident and no explanation regarding the same was given.

**Relevant Sections/provisions of law:**

**1. Section 302 IPC.**

Punishment for murder:

Whoever commits murder shall be punished with death, or 1[imprisonment for life], and shall also be liable to fine.

**2. Section 3 and 4 Explosives Substances Act.**

3. Punishment for causing explosion likely to endanger life or property.—Any person who unlawfully and maliciously causes by— (a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than (ten years, and shall also be liable to fine; (b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.—Any person who unlawfully and maliciously— (a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires lo cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India, shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,— (i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; (ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Principals of law and judgments:**

1. **Test to be satisfied while convicting a person only on circumstantial evidence.**

In the case of ***Sharad Birdhichand Sarda v. State of Maharashtra*, (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.

**157.** This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. *Horry case* [1952 NZLR 111] was approved by this Court in *Anant Chintaman Lagu* v. *State of Bombay* [AIR 1960 SC 500: (1960) 2 SCR 460: 1960 Cri LJ 682]. *Lagu case* [AIR 1960 SC 500: (1960) 2 SCR 460: 1960 Cri LJ 682] as also the principles enunciated by this Court in *Hanumant case* [AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129] have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases — *Tufail case* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] , *Ramgopal case* [(1972) 4 SCC 625 : AIR 1972 SC 656] , *Chandrakant Nyalchand Seth* v. *State of Bombay* [ Criminal Appeal No 120 of 1957, decided on February 19, 1958] , *Dharambir Singh* v. *State of Punjab* [ Criminal Appeal No 98 of 1958, decided on November 4, 1958 printed on green papers in bound volumes] . There are a number of other cases where although *Hanumant case* [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed* v. *Delhi Administration* [(1974) 3 SCC 668, 670 : 1974 SCC (Cri) 198, 200 : (1974) 2 SCR 694, 696] , *Mohan Lal Pangasa* v. *State of U.P.* [(1974) 4 SCC 607, 609 : 1974 SCC (Cri) 643, 645 : AIR 1974 SC 1144, 1146] , *Shankarlal Gyarasilal Dixit* v. *State of Maharashtra* [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] and *M.G. Agarwal* v. *State of Maharashtra* [AIR 1963 SC 200 : (1963) 2 SCR 405, 419 : (1963) 1 Cri LJ 235] — a five-Judge Bench decision.

The most fundamental and basic decision of this Court is *Hanumant* v. *State of Madhya Pradesh* [AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]. 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* [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and *Ramgopal* v. *State of Maharashtra* [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case* [AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]:

“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.”

While noting the above pronouncements, the court in the present case proceeded to hold that on examination of the evidence and on considering the test laid down in 1984 (4) SCC 116, the prosecution in the present case has failed to bring home the guilt of the accused and hence the judgment of the HC was affirmed.