

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1969 OF 2008
(Arising out of SLP (Crl.) No. 3164 of 2007)

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Arun Bhakta @ Thulu

...Appellant

Versus

State of West Bengal

...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court dismissing the appeal filed by the appellant and upholding the conviction for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for life and fine of Rs.1,000/- with default stipulation.

3. Prosecution version as unfolded during trial is as follows:

Jyotsna (hereinafter referred to as the 'deceased') was married to the appellant. They were blessed with a child. Satish Mallick, PW 8 was the father of the deceased and Kulu Mallick, PW 9 was the mother of the deceased. On the fateful day the deceased and the accused were sleeping together i.e. on 5.4.1999. At about 5 O' clock on 5.4.1999 Malati Mallick, the elder sister of the deceased reported to the complainant and told him that his elder sister was lying in a pool of blood. Thereafter he went to the bedroom of Jyotsna and found that she was lying dead on a pool of blood and there was a cut mark in the right side of her neck. At that time the accused was not present. Since the accused and the deceased were sleeping together after taking their food, the de-facto complainant concluded that the accused had killed his wife. Matter was reported at the police station. After investigation charge sheet was placed and the accused faced trial. In his cross examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') the accused took the plea of alibi. Since it was a case of circumstantial evidence the trial court referred to certain

circumstances to find the accused guilty. The appellant preferred an appeal before the High Court which as noted above was dismissed.

4. Learned counsel for the appellant with reference to the evidence of witnesses submitted that though 11 circumstances were highlighted to hold the appellant guilty, none of them can really be called to be a circumstance to fasten the guilt on the accused. It was submitted that though the so called last seen aspect was highlighted by the trial court and the High Court, the evidence of the witnesses clearly show that the factual scenario was totally different.

5. Learned counsel for the State on the other hand supported the order of the High Court.

6. The circumstances highlighted by the trial court to find the appellant guilty are as follows:

“(a) The appellant and Jyotsna @Mithila were married to each other.

(b) The couple had a little child.

(c) The appellant used to reside for quite some time in his in-laws’ house and used to earn his living by plying a rickshaw.

- (d) Between the nights of 4/5-4-1999 the dead body of Jyotna was found in her house with her throat slit with profuse bleeding.
- (e) There was a recovery of the axe by PW 6 after being led by the appellant from the house of PW 8 along with a blood stained shirt of the appellant on 5.4.1999 at 20.15 hours in the presence of PW 2 Sushil Bhakta and one Muchiram Soren (not examined).
- (f) Both the axe and the shirt contained bloodstains
- (g) PW 7 Uma kanta Singh sent the same to the Forensic Laboratory for examination.
- (h) The report marked as Exh.5 shows that insufficient blood for serological test was detected in the shirt and in the handle of the axe and the serological Test Report shows as the bloodstains on the axe were disintegrated its origin could not be detected.
- (i) The seizure List (Exh.2) leading to the recovery of the axe and the shirt of the appellant was also signed by the appellant himself.
- (j) The sketch Map (Exh.7) prepared by PW 7 Uma Kanta Singh also shows that the place of occurrence has been described as the house of PW 8.
- (k) The Post Mortem Report was marked as Exh.9. However, the doctor was not examined and the same would be admissible for whatever worth it is for.”

7. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, i.e., the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the facts in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrapa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors.

(AIR 1985 SC 1224); Balwinder Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

9. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus:

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....”.

10. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

11. In State of U.P. v. Ashok Kumar Srivastava, (1992 CrLJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been

fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

12. Sir Alfred Wills in his admirable book “Wills’ Circumstantial Evidence” (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum*; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted”.

13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law

relating to circumstantial evidence laid down by this Court as far back as in 1952.

14. In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343), wherein it was observed thus:

“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 be 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.”

15. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions

precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (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.”

16. In State of U.P. v. Satish [2005(3) SCC 114] it was noted as follows:

"22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last

seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."

17. In Ramreddy Rajesh Khanna Reddy v. State of A.P. [2006(10) SCC 172] it was noted as follows:

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration."

(See also *Bodhraj v. State of J&K* (2002(8) SCC 45).)"

(Also see Jaswant Gir v. State of Punjab (2005(12) SCC 438).

18. So far as the evidence relating to the last seen aspect is concerned PW 1 stated that the accused and the deceased slept together in the room. Strangely PW 9 stated that the deceased slept alone and the appellant had not come to his house. PW 1 is the sister of the deceased. PW 8 the de-

facto complainant i.e. the father of the deceased resiled from the statement made during investigation and stated that he had not told anybody that appellant was sleeping with the deceased. In view of the diametrically opposite version as to whether the accused and the deceased were seen together in the house it would be unsafe to direct his conviction. The prosecution has failed to prove the accusations. That being so, the conviction of the appellant is set aside and he is acquitted of the charges. Since he is in custody let him be released forthwith unless required to be in custody in any other case.

19. Appeal is allowed.

...J.

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(Dr. ARIJIT PASAYAT)

.....J.
(P. SATHASIVAM)

New Delhi:
December 5, 2008

