SUPREME COURT OF INDIA

Inspector of Police, Tamil Nadu

Vs

Balaprasanna

Criminal Appeal No of 2008(Arising out of SLP (Crl.) No.3814 of 2006)

(Dr. Arijit Pasayat and P. Sathasivam)

21/07/2008

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order of a Division Bench of Madras High Court allowing the appeal filed by the respondent (hereinafter referred to as the `accused'). The accused was convicted for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the `IPC') and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- with default stipulation by Principal District Judge, Madurai. He was also convicted for offences punishable under Section 392 read with Section 397 IPC and sentence to undergo rigorous imprisonment for 10 years and to pay a fine.

3. Background facts in a nutshell are as follows:

The deceased is one Mayurani, a Sri Lankan student, who was residing in the first floor of the house belonging to one Solsimalai (P.W.1). The Accused is also a Sri Lankan student studying in a different college, but staying in the second floor of the same premises. The occurrence allegedly took place in the afternoon of 22.4.2003. The First Information Report was lodged by P.W.1 on 24-4-2003 at about 9.30 A.M. It was indicated in the First Information Report that on 24.4.2003 at 9.00 A.M., while the informant had gone to perform pooja in the first floor of the house, he got foul smell in the last room of the first floor and found blood seeping through the front door. On opening the window he noticed that Mayurani was lying in a pool of blood with her face covered with a bag. On the basis of the aforesaid F.I.R., investigation was taken up initially by P.W.40. Subsequently on the basis of the order of the High Court, such investigation was completed by P.W.42.

The accused is stated to have been arrested on suspicion on 26.4.2003. On the basis of the statement of the accused, prosecution discovered many materials including a knife and a log allegedly used for killing.

Initially, P.W.40 suspected the role of P.W.1, his wife P.W.2, P.W.3, from whose house certain incriminating material were recovered allegedly on the basis of statement of the accused as well as P.W.4, who was working as a cleaner in the vehicle of P.W.1. Subsequently, however, P.W.42, who took over investigation from P.W.40, filed charge-sheet only against the present appellant on the footing that P.Ws. 1 to 4 had n role to play in the crime.

4. The prosecution relied upon only circumstantial evidence, namely, confessional statements of the accused leading to recovery of various incriminating materials. Ex.P-6 is the statement leading to recovery of Travel bags (M.Os. 2 & 3), knife (.M.0.5), wooden log (M.0.28), rubber gloves (M.0.29 series) cotton rope with human hair (MN.O.30 series), two sponges soaked with blood (M.0.31 series), bloodstained blue clolour jean pant (M.0.32), bloodstained white banian (M.0.33), colour banian (M.0.34), bloodstained grey colour pant (M.0.35), bloodstained pillow (M.0.36), plastic bucket (M.0.37) from the house of P.W.3. Ex-P-8 is the statement leading to recovery of computer and its accessories (M.Os. 6 to 17) from the house of P.W.15, a classmate of the accused. Ex.P-10 is the statement relating to jewelleries, ultimately leading to recovery of gold ingots (M.O.18 series) from the house of P.W.19 on the basis of other connecting statements of P.W.17 and P.W.18. These three statements, Exs. P-6, P-8 and P-10 dated 26-4-2003, were made before P.W.40 in the presence of P.W.22 and C.W.1. The other confessional statement Ex.P-12 dated 22-9-2003 made before P.W.42 and Subbiah and P.W.24, led to recovery of "M" dollar (M.0.38) and key chain with key chain in (M.0.39) from the toilet in the room of the accused. The prosecution has also relied upon the alleged motive to the effect that the accused urgently wanted money with a view to increase his marks in Mathematics and, therefore, the accused had stolen articles belonging to the deceased.

5. The trial court found the respondent guilty and recorded conviction and imposed sentence as aforestated. The trial court found that the prosecution version rested on circumstantial evidence. The following circumstances were highlighted to find the accused guilty.

(a) The death is homicidal;

(b) The accused was in need of money to chase mathematics paper and for the aforesaid purpose he has killed the deceased to take away the valuable articles like computer and gold ornaments to sell such articles in the market.

(c) At the time of occurrence, only the accused, deceased and PW 9 were available in the premises and there was no other person.

(d) Statement of the accused leading to recovery of incriminating materials such as knife, rope, clothes, wooden log and other valuable articles such as computer, gold ornaments, "M" Dollar and the key chain with key belonging to the deceased.

6. The High Court found that the circumstances highlighted were not sufficient to fasten the guilt on the accused, and directed acquittal. Learned counsel for the appellant submitted that the High Court failed to notice that the circumstances highlighted clearly establish the chain of circumstances which established the prosecution version and the High Court was not justified in directing acquittal.

7. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

8. The conviction based on circumstantial evidence has been highlighted by this Court in various orders of this Court.

9. 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); Earabhadrappa 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.

10. 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....".

11. 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."

12. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 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.

13. 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 inculcators 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".

14. 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

the this Court as far back as in 1952.

15. 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."

16. 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 compete 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.

17. These aspects were highlighted in State of Rajasthan v. Rajaram (2003(8) SCC 180), State of Haryana v. Jagbir Singh & Anr. (2003(11) SCC 261).

18. The main circumstances relied upon by the prosecution relates to the statements of the accused leading to discovery of materials facts, admissible under Section 27 of the Indian Evidence Act, 1872 (in short the 'Evidence Act').

19. Law is well settled that the prosecution while relying upon the confessional statement leading to discovery of articles under Section 27 of the Evidence Act, has to prove through cogent evidence that the statement has been made voluntarily and leads to discovery of the relevant facts. The scope and ambit of Section 27 of the Evidence Act had been stated and restated in several decisions of this Court. However, in almost all such decisions reference is made to the observation of the Privy Council in Pulukuri Kotayya v. Emperor (AIR 1947 PC 67). It is worthwhile to extract such quoted observation:

"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user or the past history, of the object produced is not related to his discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of the knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which stabbed A', these words are inadmissible since they do not related to the discovery of the knife in the house of the informant (p.77)".

20. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kottaya's case (supra).

21. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

22. As observed in Pulukuri Kottaya's case (supra) it can seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be forged in a manner allowed by law. To similar effect was the view expressed in K. Chinnaswamy Reddy v. State of A.P. (AIR 1962 SC 1788).

23. The above position was highlighted in Anter Singh v. State of Rajasthan (AIR 2004 SC 2665).

24. In Rammi alias Rameshwar v. State of Madhya Pradesh (AIR 1999 SC 3544) the scope and ambit of Section 27 of the Evidence Act was analysed in great detail and it was concluded in para 12 as follows:

"12. True, such information is admissible in evidence under Section 27 of the Evidence Act, but admissibility alone would not render the evidence, pertaining to the above information, reliable. While testing the reliability of such evidence the court has to see whether it was voluntarily stated by the accused."

25. Significantly, the prosecution has relied upon the evidence of PW 40 who was investigating initially. His evidence has to be considered in the background of hat has been stated by PW 22 and CW 1. It has been accepted by the prosecution that great efforts were made by PW 40 to falsely implicate to PWs 1 to 4 and for that purpose a departmental proceeding was initiated. Even according to the statement of the subsequent investigating officer (PW 42), several blank papers with the signature of PW 22 and CW 1 had been by PW 40 and such documents had been used to create false records to implicate PWs 1 to 4. It is to be noted that PW 2 himself as one of the suspected person at the initial stage of investigation.

26. That apart, materials on record such as the statement of P.W.22 recorded under Section 164 of the Code of Criminal Procedure, 1973 (in short `Code') and the statement of C.W.1, raise a reasonable doubt relating to voluntariness of the alleged confession. P.W.22, who is a close relation of the deceased (cousin) has stated that two days after the occurrence after the information that Bala Prasanna was roaming near LIC Colony, Anna Nagar Police brought him to the Police Station and

Bala Prasanna was arrested at 5.00 P.M. and was taken to the police station and a witness was present there. It is further stated that at the time of nquiry,the accused was beaten up by the police and they have seized a gold ring and Rs.5000/- cash from him. If this is the statement of P.W.22 recorded under Section 164 of the Code a witness in whose presence the confessional statement leading to discovery of articles from the house of Hajeeali, P.W.3 had been made, it raises serious doubt regarding the voluntariness of the statement. In this context, it is also note worthy to indicate that C.W.1 in his evidence has stated that the accused was in police station on 24-4-2003 itself. Similar statement is made by P.W.4. That apart, C.W.1 has stated that no statement has been made in his presence. The prosecution version to the effect that even some signatures on blank papers had been taken from P.W.22 and C.W.1 thus assumes great importance.

27. The alleged statement made by the accused led to discovery of knife, bloodstained clothes, rope, etc. Unfortunately, for the prosecution there is no evidence to show that in fact the wearing apparels containing bloodstains belonged to the accused, save and except the alleged confessional statement. No witness has spoken that those clothes were worn by the accused at any time far less at or about the time of occurrence. It is also to be kept in view that those articles were recovered from the house of P.W.3 and at the initial stage of investigation, P.W.3 himself was one of the suspected person and he was arrested. Therefore, the statement of P.W.3 and his mother that those articles were brought by the accused and left in the upstairs room is to be considered with a pinch of salt. Moreover, there is nothing to indicate that in fact the bloodstained clothes and rope had tallied with the blood grouping of the deceased. The knife did not contain any bloodstain. Therefore, the aspect relating to recovery of articles from the house of P.W.3 and his mother cannot be considered as a link to complete the chain of circumstantial evidence.

28. The next recovery relates to recovery of computer and accessories. Apart from the fact that there is niggling doubt about the so called confession, in view of statement under Section 164 of the Code of P.W.22 and the statement of C.W.1, a further doubt is raised regarding such aspect in view of evidence of C.W.1 to the effect that he had seen such computer in the room of the deceased when they had gone to the room after the offence was reported. The fact that C.W.1 is a close relation of the deceased adds weight to his evidence rather than taking it away. Even accepting that the computer had been given to P.W.15 by the accused, such circumstance by itself does not unerringly points towards the guilt of the accused either in respect of offence of murder or even robbery. It is quite possible that such articles might have been borrowed by the accused from the deceased and not necessarily stolen by the accused from the deceased after killing her. The fact that P.W.9 had not initially stated anything before P.W.40 about the accused coming down with computer at 3.30 P.M. and stated so for the first time when she was re-examined after 5 months cannot be lost sight of. As a matter of fact, P.W.9 who was examined on the very date when police started investigation did not inform the police that she had seen the accused coming down from upstairs or that the accused had threatened her. Her statement to the following:

"I did not tell anyone that Balaprasanna took away the computer and threatened me. I did not tell this even to the Inspector of Police after going to the police station. I do not tell this even to P.W.1...".

29. The next recovery relates to the ingots. For the aforesaid aspect, the evidence of P.Ws. 17, 18 and 19 is relevant. Since the golden jewellery had been molten and were recovered in the shape of ingots, it would be very hazardous to come to the conclusion that in fact the golden jewellery belonged to the deceased. If the accused had killed the deceased and stolen those golden jewellery, there is no reason as to why he had also not taken ear rings from the deceased. The fact that ear rings were on the dead body is admitted by the prosecution.

30. The prosecution has strongly relied upon the fact that "M" Dollar belonging to the deceased and a chain with key of the room of the deceased were discovered from inside the toilet in the room which was previously occupied by the accused. For the aforesaid urpose, they have relied upon the evidence of P.W.42 and the seizure witness P.W.24. The accused had allegedly made earlier confessional statement before P.W.40 on 26-4-2003 leading to discovery of several articles. The subsequent statement spoken to by P.W.42, the subsequent Investigating Officer, is alleged to have been made only in September, 2003, after about five months. So far as the first confession statement made before P.W.40 is concerned, admittedly the accused was under physical custody, at that time, whereas at the time of last confession stated to have been made before P.W.42, the accused was on bail and e had been summoned by P.W.42 for further examination and, therefore, technically in custody. If the accused had not made such a statement at such first instance, when he had confessed about other articles, it is not understood as to how after 5 months when he was on bail he would make such a statement. Such alleged confession made belatedly thus creates doubt regarding its authenticity or voluntariness. In this context, it is to be noted that C.W. 1 states that "M" Dollar was taken from him by P.W.42 for the purpose of facilitating investigation. Keeping in view the fact that C.W.1 is a close relation of the deceased and obviously interested in punishing the real culprit, such a statement coming from C.W.1 cannot be slightly brushed aside.

31. The fact that there had been a statement allegedly made by P.W.1 leading to recovery of a parallel key from the dash board of the car of P.W.1, cannot be lost sight of. It is of course true that the prosecution has tried to exonerate P.W.1 by adducing evidence through P.Ws. 36 and 39 to the effect that immediately after recovery of the dead body, P.W.40 had taken two such keys, thus contradicting the alleged confession of P.W.1. However, the very suspicious role of P.W.40, who apparently was in possession of at least two keys of the same lock creates suspicion regarding recovery of another key after 5 months.

32. Law is well settled that when the prosecution relies upon circumstantial evidence, all the links in the chain of circumstances must be complete and should be proved through cogent evidence.

33. When the judgment of the High Court is analysed in the background of what has been stated by this Court as regards circumstantial evidence, the inevitable conclusion is that the impugned judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed.