

SUPREME COURT OF INDIA

Devidas Ramsundar Shukla

Vs.

State of Maharashtra

CrI.A.No.23 of 2001

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

06.08.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court, Nagpur Bench, Nagpur upholding the conviction of the appellant for offence punishable under Sections 302 and 202 read with Section 34 of the *Indian Penal Code, 1860* (in short the `IPC'). There were two appellants before the High Court which dismissed the appeal. Only present appellant has questioned the correctness of the judgment.

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

“The appellant (A-2) alongwith co-accused-Santosh Devidas Shukla (A-1) and two others were tried in Sessions Trial No. 81 of 1992 in the Court of the Additional Sessions Judge, Achalpur for offences under Sections 302 and 202 read with section 34 IPC and by the judgment and order dated 17.12.1993 of learned Additional, Sessions Judge, Achalpur, they were convicted for the offences under Sections 302 and 202 read with Section 34 IPC and were sentenced to suffer RI for life and to pay a fine of Rs.1,000/- each with default stipulation. Except these two, others were acquitted by the trial Court. The victim of assault was one Manoja @ Manorama daughter of Tirathraj Tiwari (PW-5) (hereinafter referred to as the `deceased'). A-1 was a resident of Banosa. One Hira was married to A-1 in the year 1989. After the marriage, she was residing with him. A-2 is the father of A-1. It so happened that the matrimonial dispute cropped up between Hira and A-1 and as a consequence thereof she left the matrimonial home. She filed a criminal case against the appellant and co-accused alleging ill treatment and cruelty. While the proceeding was pending, A-1 contracted marriage with deceased Manoja on 8.7.1991 and in consequence brought her to his house and as such she was residing with A-1. It was on 27th May, 1992 that A-2 went to the police station Daryapur and gave the report (Exh.83) informing that the deceased was burning in the house and she was being removed to the hospital. P.S.I. Katkar on arriving at the police station rushed to the hospital. Dr. Shailaja Kale

(PW-1) who was the Medical Officer, after seeing deceased Manoja in the hospital at about 5.35 hours declared that she was brought dead and information was given immediately to the P.S.I. who was present in the hospital. That, information was sent to the police station where A/D of Murg Khabari No. 17/92 under section 174 of the *Code of Criminal Procedure, 1973* (in short the `Cr.P.C.`) was registered on 27.5.1992. P.S.I. Katkar after getting the information of registration of crime prepared the spot panchnama in the hospital where the dead body was lying, vide Exh. 25. In the course of enquiry, he also made the inquest panchnama (Ex. 26) and seized some articles therefrom. He then immediately went to the house of accused No. 1, where deceased Manoja was burnt. He prepared the spot panchnama of the scene of offence, vide Ex. 46. He noticed large pieces of skin, flesh and ashes lying, on the floor of the room, burnt matchsticks, bottle containing kerosene, so also a bowl smelling of kerosene. These articles were seized by making a panchnama (Exh. 47). He recorded the statements of various persons in the course of enquiry. The accused gave different versions in respect of the deceased Manoja. He returned to the police station and lodged the FIR vide Exh.84 on the basis of which the offence was registered at Crime No.101/92. On completion of investigation charge sheet was filed. Since the accused person's abjured guilt, the trial was held.”

3. The case based on circumstantial evidence which according to the prosecution unerringly pointed out the appellant to the author of the crime. The circumstances noted by the trial Court are as follows:

“(1) Hira, wife of A-1 lodged complaint against appellants alleging ill-treatment making specific mention of fact that A-1 contracted second marriage.

(2) A-2 settled marriage of Manoja with A-1 concealing the fact the A-1 was already married with Hira.

(3) A-2 disowned the marriage of Manoja with A-1.

(4) Deceased Manoja was living with A-1 and A-2 till 27.5.1992 in the house under their folds.

(5) Deceased Manoja was burnt in the room of that very house.

(6) Appellant and co-accused saw her burning in the room. However, they did not make efforts to save her.

(7) A-2 though informed police about Manoja's burning, did not disclose as to how she got burnt.

(8) In the report, A-2 did not mention that Manoja was wife of A-1 thereby indicating conduct in suppressing true facts.

(9) A-2 did not state in the report that A-1 tried to extinguish fire, though claimed by him at the trial.

(10) Neither A-2 nor A-1 informed Manoj's father about her getting burnt.

(11) On the other hand, A-1 and A-2 gave deliberately wrong name of father of Manoj as 'Akhilesh Tiwari' to mislead the police.

(12) Manoj sustained 99% burns and it was shown that she struggled for survival.

(13) In the room, bottle contained kerosene was found. The room was having smell of kerosene all over, even felt by P.S.I. Katkar and panch Sk. Raheman on their arrival in the morning is an eloquent circumstance when viewed in the context of room remaining accessible and match box not found in the room.

(14) In the room, burnt match sticks were found which tallied with match sticks in the match box seized from the kitchen. No finding of match box in the room, where she was burnt, positively shows that the act of setting her on fire was not of her own act.

(15) One door of the room was open. This shows that A-1 and A-2 had access to the room and as A-1 and A-2 admitted to have been to the room and seen her burning, and A-1 having burn injuries, indicates that A-1 and A-2 set her on fire.

(16) A-2 at the trial denied that fact Manoj died of burning in the house. This conduct on his part is very relevant to indicate that he must not be innocent as he claimed.

(17) Deceased Manoj was 7-8 weeks' pregnant. There was no exceptional reason for her to put an end to her life. Therefore, this fact that Manoj was carrying, totally rules out the possibility of she committing suicide and there existing to kill her.

(18) Hira complained A-1's marrying Manoj for which A-1 and A-2 faced prosecution in criminal court. A-2 was instrumental for A-1 marrying Manoj, giving rise to a hasty motive to eliminate unprotected girl Manoj.

(19) Mute sufferance of agonies without attracting the neighborhood to rush the spot indicates role played by agency other than the victim herself who could not have kept her mouth shut with extensive injuries.

(20) Evidence and the circumstances do not give rise to doubt regarding old father of (A-2) or the women folk capable of committing the act of burning.”

4. The trial Court placing reliance on the aforesaid circumstances observed that the aforesaid circumstances were a complete chain to establish the guilt of the appellant and A-1 and accordingly found them guilty.

5. In appeal, before the High Court it was submitted that the circumstances were not sufficient to conclude about the guilt of the appellant and co-accused. The High Court did not find any substance in this plea and dismissed the appeal.

6. So far as A-1 is concerned, he has not filed any appeal.

7. In support of the appeal, learned counsel for the appellant submitted that most of the circumstances do not in any way establish the guilt of the accused. Learned counsel for the State supported the judgment of the trial Court and the High Court.

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*¹; *Eradu and Ors. v. State of Hyderabad*²; *Earabhadrapa v. State of Karnataka*³; *State of U.P. v. Sukhvasi and Ors.*⁴; *Balwinder Singh v. State of Punjab*⁵; *Ashok Kumar Chatterjee v. State of M.P.*⁶). 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*⁷, 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.*⁸, 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.*⁹, 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*¹⁰ 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 inculcator 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 the this Court as far back as in 1952.

14. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*¹¹ 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 Sarada v. State of Maharashtra*¹². 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. These aspects were highlighted in *State of Rajasthan v. Rajaram*¹³, *State of Haryana v. Jagbir Singh and Anr.*¹⁴ and *Kusuma Ankama Rao v State of A.P.* (Criminal Appeal No.185/2005 disposed of on 7.7.2008).

17. The circumstances highlighted by the trial Court cumulatively pointed out unerringly the appellant to be guilty of the offence. Additionally, certain factors need to be noted. Presence of blood on the door shows that deceased tried to go out and this is a very vital circumstance. Additionally, the finding of broken bangles on the spot show that there was a struggle. A-1 has taken the stand that he tried to extinguish fire when he went to the room and saw his wife burning there when he entered the room. Statement of witnesses Sk. Raheman and Sk. Munir and P.S.I. Katkar shows that the doors of the room were open. Witness Sk. Raheman and Sk. Munir noticed burnt pieces of clothes and one calendar was found burnt. Additionally, burnt pieces of skin and flesh were lying there. There were two burnt match sticks and there was one bottle containing kerosene and a pot smelling kerosene. Significantly, no match box was found in the kitchen. Smell of kerosene was found on the lungi which was worn by A-1 and which was seized. Some parts of skin and flesh were also found on the lungi giving smell of kerosene. Small pieces of flesh were also found on the doors panel as also on the wooden panel of cot. As rightly noted by the trial Court and the High Court no match box was found at the spot where body was found though some burnt match sticks were found and as noted above the match box was found in the kitchen. If the materials on record are considered in the background of evidence on record, the inevitable conclusion is that the appeal is without merit and deserves dismissal which we direct.

¹*AIR (1977 SC 1063)*
⁵*(AIR 1987 SC 350)*
⁹*(AIR 1990 SC 79)*
¹³*(2003 (8) SCC 180)*

²*(AIR 1956 SC 316)*
⁶*(AIR 1989 SC 1890)*
¹⁰*(1992 Cr.LJ 1104)*
¹⁴*(2003 (11) SCC 261)*

³*(AIR 1983 SC 446)*
⁷*(AIR 1954 SC 621)*
¹¹*(AIR 1952 SC 343)*

⁴*(AIR 1985 SC 1224)*
⁸*(1996) 10 SCC 193*
¹²*(AIR 1984 SC 1622)*