SUPREME COURT OF INDIA

Manivel

Vs.

State of Tamil Nadu

Crl.A.No.473 of 2001

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

08.08.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the correctness of the judgment rendered by a Division Bench of the Madras High Court upholding the conviction of the appellants for offence punishable under Section 302 of the *Indian Penal Code,1860* (in short the IPC') and sentence of imprisonment for life as awarded by learned Sessions Judge, Trichi.

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

> "Allegation was that between 10 P.M. on 10.8.1989 and 4 A.M. on 11.8.1999, the appellants murdered one Mugamuni(hereinafter referred to as the `deceased') by strangling him to death and threw the dead body into a well to screen themselves from the offence. The appellants hereinafter referred to as A1 to A5 for the sake of convenience.
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> The deceased is the son of PW 4. PW 5 is the younger sister of the deceased and PW 8 is the paternal uncle of PW 4. PW 11 is the cousin of the deceased. PWs. 3 & 10 are also related to the deceased. P.W.2 is the brother of P.W.12. A.2 and A.3 are cousins and A.4 is the son of maternal aunt of A.2 and A.3. A.1 is related to A.5. The witnesses, the deceased Magamuni and accused 1 to 5 were residing at Mathagiri village.
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> The deceased married one Nallangal about four months prior to the date of incident. Said Nallangal was in illicit relationship with A.1 and continued to have the said relationship with A.1 even after the marriage. A.1 questioned the deceased as to why he has married Nallangal and he was also beaten by A.1. The other accused also quarrelled with the deceased for marrying Nallangal. This is said to be the motive for the incident which took place.

When P.W.4 was at the shandy along with his son, Magamuni, the deceased in the case and his daughter P.W.5, accused 1 to 4 went there and asked deceased to accompany them. P.W.4 questioned them as to why they are taking the deceased. The accused told him that they wanted to go for hunting. The deceased in the company of A.1 to A.4 was seen by P.Ws. 4 and 5 at 6 p.m. At about 10 p.m., when PW.7 alighted at Gorimedu from a bus, saw A.1 to A.5 and the deceased proceeding towards south from north and an electric lamp was burning at that place. P.W.7 questioned them as to where they were going, for which A.1 to A.5 replied that they were going for hunting and they were in possession of sticks. The deceased was not seen alive thereafter. At about 4 a.m. on 11.6.1989, P.W.8 was at the bus stop for boarding a bus and he saw A.1 to A.5 coming towards north. When he questioned them, they told him that they are returning after hunting.

PW.2, a resident of Gorimedu went to a well in the village to drink water and to his utter dismay found a body of a male floating in the well. Immediately, he went to the house of his elder brother and informed him who advised him to lay a complaint with the village Administrative Officer. PW.2 went to the house of PW 1 the village Administrative officer, Mathagril village and gave a statement which was reduced into writing which stands marked as Ex.P.1 in the case. P.W.1 prepared Ex.P.2, his report and handed over the same to his servant with a direction to hand over both the documents at the police station. Exs. P.1 and P.2 were handed over to P.W.16, the writer of Balaviduthi Police Station, who registered a case in crime No. 193 of 1989 under Section 174 of the Code of Criminal Procedure, 1973 (in short `Cr.P.C.') by preparing express reports. Ex.P.2 is the copy of the printed First Information Report. The investigation was taken up by PW.18, the Sub Inspector of Police. On taking up the investigation, PW.18 reached the scene of occurrence and prepared an observation mahazar Ex. P.3. He drew a rough sketch Ex. P.25. The body was taken out of the well and in the presence of panchayatdars, he conducted inquest and during the inquest he questioned and recorded the statements of P.Ws. 1, 2, 4, 5 and 12. From the statements, he realised that it is not a case of suspicious death, but it is a case of murder and therefore, altered the crime from one under Section 174 Cr. P.C. to Sections 302 and 201 IPC by sending his express reports, Ex.P.27. After the inquest, the body was handed over to the Inspector of Police, with a requisition to conduct autopsy."

3. After the investigation was completed charge sheet was filed, the accused persons abjured guilt and therefore, they were put on trial.

4. The trial court placed reliance on the evidence of PWs 4, 5, 7 & 9 to hold the accused appellant guilty.

5. In appeal the primary stand was that the concept of last seen theory cannot be applied in the present case. The High Court found that the evidence of PWs 4, 5, 7 & 8 clearly established the accusations and therefore, found no infirmity in the judgment of the trial Court.

6. The primary stand for learned counsel for the appellant in this appeal was that since accused persons were inimically deposed towards the deceased, it is highly improbable that he would have gone out in their company.

7. Learned counsel for the respondent-State on the other hand submitted that though PWs 4 & 5 were relatives of the deceased yet PW 7 is independent witness who saw the deceased in the company of the accused persons on 10.8.1989 in the evening and early next morning his dead body was found in the water of a well. There is no reason why they would falsely implicate the accused.

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]*; Earabhadrappa v. State of Karnataka*[3]*; State of U.P. v. Sukhbasi 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 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 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 Sarda 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. Raja Ram*[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. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In *State of U.P. v. Satish*[15] 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 seen last 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."

18. In *Ramreddy Rajeshkhanna Reddy v. State of A.P.*[16] 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 *Bodh Raj v. State of J&K*[17].)"

19. A similar view was also taken in *Jaswant Gir v. State of Punjab*[18] and Kusuma Ankama Rao's case (supra).

20. When the background facts are considered in the light of evidence on record, it is clear that the trial court and the High Court were justified in holding the appellants guilty. The appeal is therefore without any merit, deserves dismissal, which we direct.

[1]*AIR 1977 SC 1063*	[2]*AIR 1956 SC 316*	[3]*AIR 1983 SC 446*	[4]*AIR 1985 SC 1224*
[5]*AIR 1987 SC 350*	[6]*AIR 1989 SC 1890*	[7]*AIR 1954 SC 621*	[8]*1996 10 SCC 193*
[9]*AIR 1990 SC 79*	[10]*1992 Crl.LJ 1104*	[11]*AIR 1952 SC 343*	[12]*AIR 1984 SC1622*
[13]*2003 8 SCC 180*	[14]*2003 11 SCC 261*	[15]*2005 3 SCC 114*	[16]*2006 10 SCC 172*
[17]*20028 SCC 45*	[18]*200512 SCC 438*		