

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Mangilal

Crl.A.No. 23 of 2002

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

06.03.2009

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of acquittal passed by a Division Bench of the Bombay High Court, Nagpur Bench, allowing the appeal filed by the respondent while answering negatively the reference made by the trial Court for confirmation of death sentence in terms of Section 366 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The respondent was found guilty of offence punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (in short the 'IPC'). Four persons lost their lives in the night between 19th of August 1998 and 20th of August, 1998.

2. The case of the prosecution is that one Mahadeo the husband of the first victim Durgabai lived at Katepurna. His brothers were also living in the same village though in different localities. Mahadeo committed suicide about three years prior to the incident, leaving his widow Durgabai, daughter Yogita aged about 15 years, son Vinod aged about 12 years and the youngest Maroti aged about 10

years, to stay in the house belonging to Mahadeo. The house was situated near an open ground where weekly market is held. In front of the house, there was a Flour Mill and by one side of the house, there appeared to be a row of petty shops, One Laxman Kakad (PW-1) was said to be residing by the side of the Flour Mill. He was a loner and an old man of 75 years of age, living on whatever help which he received from others by doing their petty jobs like taking the children to the school or doing such sundry works to provide him food and living in a small room. After the death of Mahadeo, his widow Durgabai and her three children were living in the house and there appeared to be no clear means of survival to these persons and from the evidence of P. Ramkrishna More (PW-3), the local Police Patil, Durgabai was known in the village as "quarterwali", thereby suggesting her association with dealings in liquor, as could be popularly understood, together with people visiting her house because of such reputation of Durgabai. In this background, the prosecution alleged that the accused Mangilal, of the age of 30 years, developed illicit relations with Durgabai.

The activity did not stop at that stage because of the presence of Yogita, the first daughter of Durgabai. Slowly, during a span of couple of years, he was said to have developed illicit relations with Yogita and this was the aspect, which was alleged to have been a matter of disturbance to Durgabai. Though Durgabai tolerated the access of the accused to her, the aspect of access further extending to Yogita, was unacceptable to her and she protested. It was retaliated by the accused in quarreling with her, which drove her to give a report regarding that sometime on 20th July, 1998 against the accused to the police. Her grievance was that the accused used to visit her house and was unnecessarily creating quarrels and giving threats to her life because of which she was required to give report against him. The presence of Durgabai and her two sons - Vinod and Maroti was a matter for irritation to the accused in maintaining his amorous relations with Yogita. The prosecution also adduced certain material to contend, as its case, that even till the earlier day of the incident, Durgabai had a grievance to make regarding the threats given by the accused to her life and to the lives of her two sons. In this background, the incident of murders in question occurred. During the eventful night, the prosecution alleged, that Durgabai had taken care in asking Laxman Kakad to be present in the 'Chapri' during the night as she needed some support or protection because of apprehension day and accordingly alongwith her children and Laxman they were all sleeping in the 'chapri' covered by the tin shed during that night. Laxman was said to have woken up on hearing the sound of something being heavily struck. He got up, and saw the accused present there.

The accused threatened him with consequences similar to the one in which he was engaged. He was assaulting Durgabai and her children and was killing them. Laxman saw this, however, due to fear and the threats given by the accused, he had left the place and gone away. In the next day morning, around 9.00 a.m., the local Police Patil, who was on his usual way of taking round in the village, came across a crowd gathered in front of the house of Durgabai and villagers were looking in the direction of that house, suggestive of some happening which attracted Ramrkishna More (PW-3), the local Police Patil to approach the place and to see the ghastly scene of the country cot, on which Durgabai must have slept, lying with one of its supporting raft broken and the four dead bodies lying there drenched in blood. The country quilts, which were spread on the bed, were also drenched with blood. The bodies of three children were lying on the floor by the side of the other cot, as there were two cots; nearby them a heavy object like a grinding stone, domestically used in

the kitchen was seen. Neck of Durgabai was seen to have not only suffered incised wound, but almost it was on the verge of getting separated from rest of the body. There were incised wounds on the heads of the children, though Yogita's face also seemed to have been smeared with earth and having sunk in the middle suggestive of a fact that it must have been smashed with heavy object. Having observed this, PW-3, Ramkrishna More, the Police Patil, telephoned by about 9.00 a.m. Police Station at Borgaon Manju, a place of about 8 Kms away from Katepurna. But then by a return response, he was told to go to the police station and lodge his report. Accordingly, the Police Patil went to the Police Station and lodged his report Exhibit-

15. By that time, the investigating officer - Police Inspector Tayde (PW 19) who seems to be the main figure in investigating the crime and playing a role in collecting the evidence, had reached the spot. The Police Patil, after lodging the report returned to the spot. The report was acted upon by the police station, who registered a crime and then from the police station, the original complaint so also the opening of the case diary were despatched to the spot alongwith a Constable. At about 12.30 in the noon, Police Inspector Tayde appeared to have given a direction to his Assistant -P.S.I. Pathan (P.W. 14) to make a search for the accused against whom suspicion was expressed in the F.I.R. Exhibit-15 and to bring the accused before him. P.W.14 - P.S.I. Pathan accordingly had a round in the small village when he came across the accused present at the local bus stand.

The accused was then taken by P.S.I. Pathan before the Police Inspector who directed P.S.I. Pathan to take him to the police station, cause his arrest, get him medically examined and to bring him back to the spot, which P.S.I. Pathan did. The accused was put under arrest by about 1.35 p.m. by taking him to the police station. P.I. Tayde had also given instructions to collect the nail clippings of the accused, which was done by the Medical officer of Borgaon Manju, soon after the arrest of the accused and the nail clippings so collected were then kept in a sealed bottle forwarded by the Medical officer to the Police Station for an eventual chemical analysis. Requisition to get him medically examined by the local Doctor of the Primary Health Centre at Borgaon Manju was given. The doctor examined him, and issued a certificate that there were no marks of any fresh injury on the person of the accused. After the arrest panchnama which was already done and the opinion of Doctor in certifying that no injury mark on the person of the accused was seen by the Doctor, the accused was taken under arrest back to the spot at about 2.00 p.m. The inquest panchanama was done and by the time the requisition sent for a dog squad appears to have worked and the dog squad from Amravati arrived at the spot via police station Borfegaon Manju. The accused was interrogated by Police Inspector Tayde. The dog squad was said to have worked in its own way. Smell of certain articles like a tumbler glass, a liquor bottle, small mirror like piece of glass from the spot was given to the dog and the dog was required to track the culprit.

Accordingly, the dog was said to have tracked upto the house of the accused, entered it and then returned. Since many submissions have been made on the aspect of presence of accused and its effect on the dog squadding, it needs to be mentioned at this stage that the accused was present in the village during the time between 2.00 p.m. to 5.00 p.m. upto which the recording of the memorandum and the seizure of jersey allegedly at the instance of the accused from out of the septic tank adjoining to his house was said to have been duly done. On the Memorandum statement, it was

the case of the prosecution that accused showed the place near his house where he burnt remains of clothes alongwith the metal hook of pant were discovered so also the place of the septic tank adjoining to his house from which a jersey drenched in the water was removed by means of a hook and the rope and that jersey, on observing the same, appeared to have some stains of blood, which came to be seized before the panchas. All this took place on 20th August, 1998. Obviously, the steps were taken to forward the dead bodies for post mortem examination. The accused was then taken under arrest back to the police station. He was produced before the Magistrate and remand was obtained against him for a police custody. During the course of his police custody, he was further said to have disclosed to the police the place where 'Kadbatodi' (Fodder Cutter) was kept/hidden. Since heavy submissions were made on this aspect as to the purpose of Section 27 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') the actual utterances of the accused, the authenticity of what was disclosed and what was discovered and whether the entire process was voluntarily at the instance of the accused or was a foisted affair. What the accused said assumed importance and, therefore, in describing the progress through which the case passed through, investigation steps seemed to have taken place in obtaining police custody, in stating certain grounds for so obtaining the police custody, in getting a clue as admitted by Police Inspector Tayde that during interrogation the accused had given certain information to the police on 21st August, 1998 itself to enlighten the investigating machinery about the place where the weapon was kept hidden, viz. the same septic tank adjoining to the house of the accused. In respect of this information, criticism has been made on behalf of the accused regarding the steps which were taken during the investigation.

But as a fact, the Police Inspector endeavoured to state that he learnt about this on interrogation on 23rd August 1998, whereas a Memorandum under Section 27 of the Evidence Act seems to have been recorded on 24th August 1998 pursuant to which the steps which, by that time were already taken in calling a municipal vehicle with a big ladder to get into it and to drain out the water by means of a motor pump, though in actuality the draining out of the water was not done, but by means of a ladder and by means of assistance of a sweeper P.W.10 Ramesh Saude, the weapon, which was said to be 'Kadbatodi' was recovered from the septic tank, in which there was obviously a drain water of some level. The septic tank had an adequate level of water in which the weapon allegedly recovered was said to be lying and through the help of the sweeper the weapon was taken out. On observation, the prosecution alleges to have collected an evidence regarding traces of the blood stains on the handle at some portion where the blade is fixed to the handle, where there appeared a hole like portion. The weapon was allegedly seized in the presence of panchas and sealed at the spot of the septic tank from where it was recovered. As a part of the further steps during the investigation, the articles observed with stains of blood and seized, namely the jersey, the weapon ('Kadbatodi'), nail clippings, blood stained clothes seized from the bodies of victims, samples of the blood of victims were all sent for chemical analysis on 4th October, 1998. Prior to that, Dr. Nikam (PW9) who had performed the post mort examination on the four dead bodies, was required to forward his opinion on observing the weapon, whether the incised wounds observed by him could be caused by that weapon.

As a matter of fact, having regard to the ordinary observations in relation to the weapon and the description of the injuries which were sustained by the victims, we find the circumstance to be so clean enough, that the weapon if used can cause such injuries. Dr. Nikam, attached to the General

Hospital at Akola, appeared to be on leave for some days although a requisition was said to have been sent to him on 29th August 1998. Dr. Nikam seems to have taken place on 10th September, 1998 and Dr. Nikam opined that the weapon could cause those incised wounds and by this weapon the fatal injuries sustained by the victims were possible. During the course of investigation, it appears that the sample of the accused's blood was also collected so also the sample of his sperms. The blood groups, with which the court is concerned, are of three categories, viz, the blood groups of the victims and the blood group of the accused. The prosecution did not lead any evidence with respect to the blood group of the accused. The accused contended that his blood group was "B" positive and in his examination under Section 313 of the Code, asserted this fact in giving a written statement and also producing some copies of some certificates and the blood group of the victims was classified by the Chemical Analyser to be "B" in relation to victim Durgabai and Yogita and "O" in relation to victims Vinod and Maroti. Chemical Analyser certified that the weapon 'Kadbatodi' was noticed to have stains of blood group "B". The jersey was shown to have stains of blood of blood group "B".

Nail clippings were found to contain remains of blood of blood group "B". On the strength of the collection of evidence of Laxman Kakad, the eye witness and the four circumstances which have been agitated and finally relied upon by the prosecution to bring its case viz, motive to commit murders founded on illicit relations of the accused with Durgabai and later also with Yogita. Quarrels and obstruction or resistance in maintaining relations with Yogita driving the accused to form a motive and then the actual incriminating objects such as nail clippings, jersey and 'Kadbatodi' discovered at the instance of the information given by the accused, about his knowledge and the place where the articles were kept and his conduct together was said to have enabled the prosecution to file charge sheet against the accused for committing the two crimes in question. Eventually, after initiation of the prosecution upon a charge sheet, the committal of the case to the Court of Sessions, framing of a charge for the two offences, trial was held. As the case rested on circumstantial evidence the trial Court analysed the various circumstances and came to the conclusion that the respondent accused was responsible for the murder of four persons and accordingly awarded the death sentence.

The respondent questioned his conviction while reference was made for confirmation of death sentence awarded by the trial Court. As noted above, the High Court found that the circumstances do not make out a case for the conviction. The High Court found that though PW-1 the eye witness resiled from the statement made during investigation the natural presumption was that he on account of the side of the defence must have been subjected to threaten to his life as a result of which he did not ultimately support the prosecution case. The High Court found that once PW-1 did not support the prosecution version the case rests on circumstantial evidence. The High Court found that the circumstances highlighted did not establish a complete chain and, therefore, directed acquittal as noted above.

3. In support of the appeal, learned counsel for the appellant-State submitted that in a case of such gruesome murder the High Court ought not to have interfered when the most important witness did not support the prosecution version. It was writ large that the accused was threatening him and/or

had managed to get him to their side. In that background the trial Court's judgment was justified.

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

5. It is true that four people had lost their lives and the accused does not seem to be a person of high morals, but that itself would not be a ground to record his conviction in the absence of reliable material and evidence. The circumstances highlighted by the prosecution are as follows:

1. Illicit Relations between deceased Durgabai and accused.

2. Illicit relations between accused and Durgabai's daughter Yogita (15 years old).

3. Complaint made by deceased Durgabai on 20.7.1998 against accused regarding threat to kill.

4. Complaint made by deceased Durgabai one day before the incident regarding threat by accused.

5. Statement of PW-1 Laxman recorded under Section 164 of the Code.

6. Beating up of PW-1 Laxman by Prakash Bole to dissuade him from giving evidence in support of prosecution.

7. Police dog traced the scent from the place of incident to the house of the accused thereby connecting the accused to the ghastly murders.

8. Blood stained nail clippings of accused taken upon medical examination immediately upon arrest.

9. Recovery of blood stained jersey of accused from septic tank in the house of the accused and burnt pant at his instance.

6. 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); *shok 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.

7. 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....".

8. 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.

9. 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.

10. 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".

11. 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.

12. 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."

13. 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.

14. These aspects were highlighted in State of Rajasthan v. Raja Ram (2003 (8) SCC 180), State of Haryana v. Jagbir Singh and Anr. (2003 (11) SCC 261), Kusuma Ankama Rao v State of A.P. (Criminal Appeal No.185/2005 disposed of on 7.7.2008) and Manivel and Ors. v. State of Tami Nadu (Criminal Appeal No.473 of 2001 disposed of on 8.8.2008).

15. So far as circumstance No.4 is concerned the trial Court observed that the prosecution failed to produce any evidence about the same. The police dog traced the scent from the place of incident to the house of the accused is really no evidence in the eye of law. So far as the blood stains are concerned medical examination revealed that the ladies had 'B' blood group while boys had 'O' blood group. Merely because blood stains were found on the jersey of the accused from septic tank in the house of the accused and burnt pant, that is inconsequential since as noted above his blood group is also 'B'. The trial Court observed that the weapon used was stone whereas the weapon recovered from the septic tank is stated to be 'Kadbatodi'. Unfortunately, no finger printing was done.

16. It is noted that though the blood of the accused was collected the same was not sent for chemical analyzer.

17. In view of the position in law highlighted above it cannot be said to be a case where the prosecution has established a complete chain of circumstances which rules out possibility of the involvement of any other person and unerringly points fingers at the accused to be the author of the crime.

18. It needs no emphasis that in a case of gruesome murder, police protection should be given to witnesses so that they can depose freely. Unless that is done result would be that justice would be done to the victim. The accused persons with money and power can trample any witness who dares to depose against them. The victor will be injustice and it would be a slur on the criminal justice system if it so happens. In view of the above conclusions, the appeal is dismissed.