

# SUPREME COURT OF INDIA

Ramesh Dasu Chauhan

Vs.

The State of Maharashtra

CrI.A.No.1682 of 2012

(Deepak Gupta and Surya Kant,JJ.,)

04.07.2019

## JUDGMENT

**Surya Kant,J.,**

1. The Sessions Judge, Nagpur vide judgment and order dated 26th February, 2003 convicted the appellants under Section 302 read with Section 34 of the Indian Penal Code (for brevity, “the I.P.C.”) and sentenced to undergo life imprisonment besides a fine of Rs.1,500/- each and in default thereof they were directed to undergo Rigorous Imprisonment for six months. They were further convicted under Section 392 read with Section 34, I.P.C. and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- each and in default thereof they were directed to undergo Rigorous Imprisonment for three months.

2. The appellants’ conviction and sentence was upheld by a Division Bench of the High Court of Judicature at Bombay, Nagpur Bench in Criminal Appeal No. 272/2003, decided on 11.04.2008. Both these judgments are under challenge in this 2nd Appeal.

### BRIEF FACTS:

3. Deceased Kamlesh Kumari Trivedi, aged about 79 years used to reside along with her daughter Rani Trivedi and grand daughter Purnima Trivedi in Rajnigandha Apartments, Ambazari, Nagpur. Rani Trivedi was a school teacher and used to leave home for her work around 7.20 a.m. and return back in the evening. Purnima Trivedi was studying in M.A. in a college and she too used to leave for her classes at about 10.00 a.m. and return by afternoon. Deceased Kamlesh Kumari Trivedi, thus, would remain alone in the house during the afore stated period.

4. On the fateful day, i.e., 28th August, 2001, both Rani Trivedi and Purnima Trivedi left for their respective destinations while Kamlesh Kumari Trivedi was all by herself in the house. When Purnima Trivedi returned from College around 1.30 p.m., she found her grandmother (Kamlesh Kumari Trivedi) lying dead in the drawing room with visible signs of strangulation. The Onida T.V. set kept in the drawing room was found missing. Purnima

Trivedi immediately rushed to her neighbours Raisaheb Chourasiya and Baliram Fulari and informed them about the incident. Both of them accompanied Purnima to the apartment. Baliram Fulari, on the request of Chourasiya, informed the police control room about the incident.

5. Raisaheb Chourasiya, noticed on the date of occurrence that two young boys had come on a red coloured motorcycle; stopped it in front of Rajnigandha Apartments; entered the apartment building and after some time vanished from the spot. Mr. Sevakram Thaokar, Inspector of Crime Branch, Nagpur rushed to the spot and on the basis of the information divulged by the neighbours, he carried out search operations and apprehended the appellants from near the Gupta Hotel in village Hingna. On personal search of one of the suspect, some cash amount and a silver coin was recovered; their motor cycle was seized and Onida T.V. was also then got recovered at the instance of first appellant (Ramesh). Crime No. 246/2001 under Section 302, 392/34 was registered. On consideration of the chargesheet, charges under Sections 302, 392/34, I.P.C. were framed to which the appellants pleaded not guilty and claimed trial.

6. The prosecution, in all, examined eleven witnesses to establish the charge, but none by the defence. The appellants in their statement under Section 313, Cr.PC, as well as in the cross-examination of prosecution witnesses, pleaded absolute denial and claimed to have been made a scapegoat by the police in order to cool the public rage down against the heinous crime.

7. Three points fell for consideration of the Learned Sessions Judge, namely,

(i) Whether deceased Kamlesh Kumari Trivedi died homicidal death?

(ii) Whether the prosecution was able to prove that accused Nos. 1 and 2 in furtherance of their common intention committed murder of Kamlesh Kumari Trivedi?

(iii) Whether the prosecution had further succeeded in proving that accused Nos. 1 and 2, in furtherance of their common intention, committed robbery of taking away Onida T.V., silver coin and cash amount of Rs.200/- from the custody of deceased Kamlesh Kumari Trivedi?

8. The Trial Court was alive to the situation that in order to prove a criminal charge by means of circumstantial evidence, it was imperative on the prosecution to establish beyond any doubt that - (i) the circumstances from which the conclusion of guilt is to be drawn must be fully established; (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused; (iii) the circumstances should be of conclusive nature and they should exclude any possible hypothesis except the one to be proved; and (iv) the chain of evidence should be complete leaving no reasonable ground for the conclusion consistent with the innocence of the accused.

9. The Trial Court thereafter scrutinised the entire evidence within the framework of cited

parameters and after an elaborate confabulation, it came to the conclusion that Kamlesh Kumari Trivedi died a homicidal death; the appellants were duly seen entering Rajnigandha Apartments at the most relevant time by Raisaheb Chourasiya (P.W.9), the recovery of Onida T.V., silver coin and a part of currency from the appellants was also a strong circumstance to nail them, who were consequently held guilty of the offence(s) under Sections 302 and 392 read with Section 34 of the I.P.C. and sentenced accordingly.

10. The High Court re-evaluated the prosecution evidence in its entirety and banking upon the statement of the star witness, Raisaheb Chourasiya (P.W.9) coupled with the deposition made by Sevakram Thaokar, Police Inspector, Crime Branch (P.W.11), it concurred with the Trial Court and dismissed the appeal.

11. We have heard Mr. Ekansh Bansal, Learned Counsel for the appellants and Mr. Nishant R. Katneshwarkar, Learned Counsel on behalf of the State and gone through the record with their assistance.

12. It was vehemently urged on behalf of the appellants that no Identification Test Parade was conducted before the Court to establish the presence of appellants at the place of crime, even though the star prosecution witness, Raisaheb Chourasiya (P.W.9) has acknowledged that the two young persons who came on the red coloured motorcycle had covered their faces with mufflers. The version of Raisaheb Chourasiya (P.W.9) was sought to be discredited on the plea that the appellants being in the age group of 30s, could not be roped in as young boys of 20-25 who were allegedly noticed entering Rajnigandha Apartments around the time when the occurrence took place. Learned Counsel further argued that the appellants were never confronted with the alleged stolen items for identification, more so when the panch witnesses of alleged recovery have resiled and declared hostile. He thus, urged that crucial links in the formation of chain of circumstantial evidence are conspicuously missing so as to link the appellants with the offence. The prosecution has, therefore, failed to establish its case beyond reasonable doubt. Counsel for the State contrarily, maintained that its a proven case against the appellants and this Court need not re-appraise the concurrent findings returned by the two Courts.

13. We find that the question which falls for consideration of this Court is whether the circumstantial evidence led in the instant case is so unimpeachable that it establishes the guilt of the appellants beyond the shadow of doubt.

14. The expression 'circumstantial evidence' has been the subject matter of consideration in a catena of decisions wherein it has been precisely defined as a combination of such facts that there is no escape for the accused because the facts taken as a whole do not admit to any inference but of his guilt. It has also been coined as a Complete Chain Link Theory, putting onus on the prosecution to prove beyond reasonable doubt, the chain of events which lead to only one conclusion, namely, the culpability of the accused.

15. This Court in *Sharad Birdhi Chand Sharda v. The State of Maharashtra*<sup>1</sup> elaborately considered the standard of proof necessitated for recording a conviction on the basis of

circumstantial evidence and laid down the five golden principles of standard of proof required to be established in such a case, which are paraphrased as follows:-

- i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;
- ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, these should not be explainable on any other hypothesis except that the accused is guilty;
- iii) The circumstances should be conclusive in nature and tendency;
- iv) They should exclude every possible hypothesis except the one to be proved; and
- v) 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 acts must have been committed by the accused.

16. These precepts have been unvaryingly reiterated by this Court from time to time including recently in *Manoj Kumar v. State of Uttarakhand*<sup>2</sup>.

17. Let us now examine whether the prosecution has successfully established these well-known parameters in the case in hand?

18. The prosecution case foremostly hinges upon the version of Raisaheb Chourasiya (P.W.9). He earlier made a statement under Section 164, Cr.PC on 16.10.2001 and consistent with thereto he has unequivocally deposed that on 28.08.2001 at around 11.45 a.m., he was drying his hair in his apartment when two boys came on a red coloured motorcycle of Hero Honda make, which they parked in front of his neighbour Nag Devi's apartment. The two boys went in the direction of Plot No. 94-95 and he thought that they might have come to see the house which was under construction. He, however, noticed that the two boys opened the front gate of Rajnigandha Apartments and went inside. Meanwhile, Raisaheb Chourasiya got a call on phone and after attending to it for about 20 minutes, when he again looked for the Hero Honda Motorcycle, it was not there. Both the boys were in plain apparels and had put mufflers on their faces. He thereafter went to see one of the neighbours and sat in the verandah of the later's house. After some time, Purnima Trivedi came crying and informed that her grandmother was not speaking and she was lying in a pool of blood. She also informed that someone had stolen their T.V. set. P.W.9 along with Purnima and one Baliram Fulari went inside the apartment and found that the grandmother of Purnima was lying dead and blood was oozing out of her nose. He asked Purnima not to touch anything and let the police come and make the enquiry. He then asked his neighbour, Baliram Fulari to inform the police about the incident. On the same day at about 5.30 p.m., the police brought the two boys with the motorcycle to his house and he identified them as well as the motorcycle, for there were five stickers of 'sindoor' on the mudguard of the motorcycle and he also remembered its Registration

Number. Raisaheb Chourasiya (P.W.9) identified both the boys in Court-room also, namely, the appellants. Pertinently, there is not even a suggestion to the witness in his cross-examination that he was not present in his apartment or that he did not see the appellants entering the Rajnigandha Apartments. The only question put to the witness was apparently to remind him that he could not recognize the boys as they had covered their faces with mufflers, which he has categorically denied. The witness very emphatically says in his cross-examination that, "Incorrect to state that I have identified the accused except they are before the Court". The defence has indeed miserably failed to cause any dent in the veracity or the capability of the witness to identify the two boys who came on the motorcycle and entered the front gate of Rajnigandha Apartments or his assertion that those two boys were none else than the appellants.

19. Baliram Fulari (P.W.3) has testified that on 28th August, 2001 around 1.30 p.m. one of his neighbours Raisaheb Chourasiya (P.W.9) came to his house and informed about the murder of the mother of Rani Trivedi (P.W.1) and the theft of some articles. Purnima Trivedi (P.W.4) was also accompanying Raisaheb Chourasiya. He informed the police about the incident on the request made by Raisaheb Chourasiya and also gave registered number of the red coloured motorcycle to the police. Baliram Fulari (P.W.3) has specifically deposed that he informed Shri Kangle, D.C.P. of Crime Branch about the incident. The only suggestion given in the cross-examination to Baliram Fulari, (P.W.3) is that no information was passed on to him either by Raisaheb Chourasiya or Purnima Trivedi. As against it, the witness has further clarified in his cross-examination that on the same day at about 5.30 p.m., the police brought the suspects to the place of incident. He thus fully corroborates the testimony of Raisaheb Chourasiya (P.W.9) and Purnima Trivedi (P.W.4) to the extent that the police brought two boys at the place of occurrence and both of them were seen by P.W.1, P.W.3, P.W.4 and P.W.9.

20. According to Rani Trivedi (P.W.1), she got an emergency phone call from her daughter around 2.30 p.m. about her mother having been assaulted and the incident of theft in their house. She immediately left for home and saw the bloodstains on the floor; that her mother was throttled and strangulated with her own sari and the police was present on the scene. She found that the cupboards in the room of their apartment were broken and the items were scattered. A silver coin of 'Goddess Lakshmi' along with cash amount of Rs.200/- besides Onida T.V. were missing. The thieves, however, could not break open the Godrej almirah in which valuables were kept. She has indubitably deposed that the police brought two persons in the evening to their flat and she identified them who were present in Court as accused Nos. 1 and 2. Her statement too is totally unruffled in the cross-examination. Rather, she has well-explained that Raisaheb Chourasiya (P.W.9) lives in the third house in row from her house.

21. Purnima Trivedi (P.W.4), grand daughter of the deceased chronically narrated the events which she saw after returning from college at about 1.15 p.m. She has deposed that on reaching the flat, she kept ringing the bell but got no response, therefore, she tried to open the main door and pushed it due to which the pelmet fell down. She found on entering the flat that her grandmother was lying in a pool of blood in the drawing room. She sprinkled water on her face thinking she might be alive. While she was looking around she

found that Onida T.V. was missing. She found that cash amount of Rs.200/- and a silver coin were also missing from the cupboard. She immediately ran to inform her neighbours and rushed to the house of Raisaheb Chourasiya (P.W.9), who stayed two houses away from their apartment. She told him about the incident. No meaningful question was asked to her in the cross-examination to indicate any overcolouring in her version.

22. We may now turn to the statement of Sevakram Thaokar (P.W.11), the Investigating Officer-cum-Inspector of Crime Branch. He along with the staff immediately reached at the spot i.e. Rajnigandha Apartments on receipt of the wireless message and learnt through Raisaheb Chourasiya (P.W.9) about two persons coming on a red coloured motorcycle. He started searching for the suspects without any loss of time and reached upto village Hingna where he found a red coloured motorcycle in front of Gupta Hotel. There were two persons with the motorcycle, who were brought to Gupta Hotel and he called two Panchas so as to interrogate the suspects in their presence. The two suspects, namely, the appellants were eventually arrested and a sum of Rs.231/- and one HMT wrist watch was seized from appellant No. 1 (Ramesh). Another sum of Rs. 142/- with silver coin and one goggle was recovered from appellant No. 2 (Kamlesh). Their Hero Honda Motorcycle was seized vide Ext. P-27. Appellant No. 1 also got recovered Onida T.V. from his residence at Wana Dongri vide recovery Ext. P-25.

23. As per the post mortem report of Kamlesh Kumari Trivedi, the medical officer found following four ante-mortem wounds given in Column 17 of the medical legal report Ext. P-17:-

- “1. Ligature mark present over front of neck, below thyroid cartilage, transversely placed. Completely encircling the neck except over nape of neck at the site of plait, on both side of neck ligature marked 6 cms below tip of both mastoid processes, length of ligature mark 30 Cms, breadth, 2.5 cm. slightly grooved, dry hard.
2. Contused abrasion present over posterior aspect of right forearms 2 cm x 2 cm. reddish brown,
3. Contused abrasion present over left side of neck, 2 cm below left angle of mandible 4 cm away from middle, obliquely placed 2 cm. x 1 cm. Reddish Brown.
4. Contused abrasion present over left side of neck, 2 cm. Lateral to injury No. 3 size 1 cm x 1 cm reddish brown.”

24. The medical officer unambiguously opined that injury No. 1 of Column 17 along with internal damage was sufficient to cause death of the victim in the ordinary course of nature. The cause of death was 'Asphyxia' i.e. due to ligature strangulation.

25. From the nature of ante-mortem injuries suffered by the deceased as described in the inquest panchnama Ext. P-12 read with the post mortem report, it can be safely believed that the death was 'homicidal' within the meaning of Section 299 I.P.C. The medical evidence in this regard is fully corroborated by the statement of Rani Trivedi (P.W.1),

Baliram Fulari (P.W.3), Purnima Trivedi (P.W.4) and Raisaheb Chourasiya (P.W.9) and thus there is no room for doubt that the deceased Kamlesh Kumari Trivedi died a homicidal death.

26. There is clinching evidence on record to establish that the appellants were seen around 11.45 a.m. entering the front gate of Rajnigandha Apartments where the deceased was residing. They left the place after 20 minutes or so. As per the eye-witness's account the appellants were lastly seen nearest to the place of occurrence before they disappeared.

27. There is no gainsaying that confession made to a police officer cannot be proved as against a person accused of any offence and no confession made by a person while in police custody except made in the immediate presence of a Magistrate, can be proved against him in view of embargo created by Sections 25 and 26 of the Evidence Act. Section 27 of the Act nevertheless carves out an exception as it provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence while he is in police custody, "so much of such information", regardless of it being a confession or not, may be proved, if it relates distinctly to the fact thereby discovered. Section 27 of the Evidence Act thus enables the cliched use of a custodian statement made in the ordinary course of events. The statement made by an accused while in police custody can be split in two parts and to the extent of it being a disclosure statement which is the immediate cause of discovering new facts, would be legally admissible in evidence though the remainder of such statement may be liable to be discarded. The Investigating Officer, Sevakram Thaokar (P.W.11) has very emphatically deposed that out of the stolen items, Onida T.V. set was got recovered at the instance of the first appellant from his house. Similarly, the silver coin and a part of the stolen currency was recovered from the second appellant. This is not the appellants' case that they were forced to make the incriminating statements under any threat. They have chosen to defend themselves only on the basis of denial. The revelation made by the Investigating Officer to the limited extent of recovery of the stolen items pursuant to the disclosure statements made by the appellants, therefore, falls within the four-corners of Section 27 of the Evidence Act and has been rightly relied upon by the Courts below.

28. True it is that the statement of a police officer has to be scrupulously scrutinised and the Court would cautiously and suspiciously read the same for evaluating the cumulative effect of the entire evidence on record. If the statement of PW-11 is scanned in its entirety, it stands out that no sooner Raisaheb Chourasiya (P.W.9) gave the description of two young persons who came on a red coloured motorcycle or their entry into Rajnigandha Apartments, the police inspector swung into action and apprehended them within no loss of time. The two persons, namely, the appellants were brought back to Rajnigandha Apartments and they were duly identified by Raisaheb Chourasiya (P.W.9). Baliram Fulari (P.W.3) and Rani Trivedi (P.W.1) also saw and later on identified them in their depositions. Since the appellants have not disputed their identity in the cross-examination of Raisaheb Chourasiya (P.W.9) or of Rani Trivedi (P.W.1), it is too late for them to allege that no Test Identification Parade was conducted.

29. It is no longer debatable that the Identification Parade of the accused before the Court

is not the main substantive piece of evidence, rather it is corroborative in nature. [Please see: (i) *Rafikul Alam v. State of West Bengal*<sup>3</sup> (ii) *Navaneethakrishnan v. State by Inspector of Police*<sup>4</sup>

30. There are more than one reasons to trust P.W.9 (Raisaheb Chourasyia). Firstly, there is no suggestion or even a whisper of any animosity between Raisaheb Chourasyia and the appellants. He had no motive to falsely implicate the appellants. Secondly, the presence of the appellants coming on red coloured motorcycle and their entry to Rajnigandha Apartments, as seen by the witness, has not been expressly denied in his cross-examination. Thirdly, P.W.9 being resident of the same Complex, is a natural and not a 'chance' witness. Fourthly, Raisaheb Chourasyia's version has been fully corroborated by the other prosecution witnesses like Rani Trivedi (P.W.1), Baliram Fulari (P.W.3) and Purnima Trivedi (P.W.4). Fifthly, he is consistent throughout, be it may his statement under Section 164, Cr.PC and/or deposition on oath. Sixthly, the attempt made on the character assassination of the witness has miserably failed. We thus find no ground to suspect P.W.9 for non-existent reasons.

31. The appellants, in all probabilities, were present in Rajnigandha Apartments at the time of occurrence. They have failed to explain any other reason of their presence. They have also not questioned their identity by Raisaheb Chourasyia (P.W.9) and Rani Trivedi (P.W.1). They have not doubted or condemned the police officer (P.W.11) of falsely planting any recovery on them. Further, all the stolen items recovered at the instance of the appellants have been duly identified by Rani Trivedi (P.W.1) and Purnima Trivedi (P.W.4) as their belongings and thus the link between the crime and the recovered items has been conclusively established. The appellants having been lastly seen near the scene of crime, their complete silence and/or evasive statement under Section 313, Cr.PC, does not inspire confidence to discard the prosecution case.

32. Both the Courts below have weighed the evidence to reach a definite conclusion that the appellants and the appellants alone entered the apartment of Kamlesh Kumari Trivedi and committed her murder by strangulation with a motive to commit robbery in the house. There is no factual or legal infirmity in the findings returned by the Courts below, which may call for any interference by this Court. The Appeal is accordingly dismissed.

Judgment Referred.

<sup>1</sup>(1984) 4 SCC 0116

<sup>2</sup>(2019) 5 SCC 0663

<sup>3</sup>(2007) SCC Online Cal. 728

<sup>4</sup>(2018) 16 SCC 0161