

A MANIVEL & ORS.
V.
STATE OF TAMIL NADU
(Criminal Appeal No. 473 of 2001)
B AUGUST 8, 2008
[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ]

Evidence:

C *Circumstantial evidence – Deceased last seen in the
company of accused in the evening and in the following morn-
ing found dead in a well – On basis of evidence of prosecution
witnesses and the circumstantial evidence, trial court and High
Court convicting accused u/ss 302 and 201 IPC – HELD:
D Conviction can be based solely on circumstantial evidence if
all the incriminating facts and circumstances are found to be
incompatible with innocence of accused and guilt of any other
person – As regards last seen theory, it comes into play where
E 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 other person
than the accused being the author of the crime becomes im-
possible – On facts, evidence of prosecution witnesses clearly
F established the accusations – Penal Code, 1860 – ss. 302
and 201.*

The appellants were prosecuted for commission of murder of the son of PW-4. The prosecution case was that the deceased and A-1 were not on good terms because of the marriage of the deceased with a girl who had affair with A-1 prior to and even after her marriage with the deceased. On the day of incident, the accused came to the deceased where PW-4 and his daughter PW-5 were also present, and took him along with them on the pretext of hunting. At about 10 P.M. PW-7 saw the deceased in the

company of the accused; they told PW-7 that they were going for hunting. At about 4 A.M. the accused were seen by PW-8 but the deceased was not with them; they told PW-8 that they were returning from hunting. Soon thereafter the body of the deceased was found in a well. The trial court held the accused guilty and convicted them u/ ss 302 and 201 IPC. The High Court affirmed the conviction.

In the instant appeal filed by the accused, it was contended for the appellants that since accused were inimically disposed towards the deceased, the prosecution case that he would have gone out in their company was highly improbable; and that the last seen theory could not be applied in the instant case.

Dismissing the appeal, the Court

HELD: 1.1 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. [para 13] [1044 G]

Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh AIR 1952 SC 343; Sharad Birdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622; State of Rajasthan v. Raja Ram 2003 (8) SCC 180; State of Haryana v. Jagbir Singh and Anr. 2003 (11) SCC 261 – relied on.

1.2 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. 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 the instant case, the High Court found that the evidence of

A PWs 4, 5, 7 & 8 clearly established the accusations and, therefore, found no infirmity in the judgment of the trial Court. [para 5 and 8] [1042 F,G 1043 A,B, 1042 C]

B *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; *Ashok Kumar Chatterjee v. State of M.P.* AIR 1989 SC 1890; *Bhagat Ram v. State of Punjab* AIR 1954 SC 621; *C. Chenga Reddy and Ors.* C v. *State of A.P.* 1996 10 SCC 193; *Padala Veera Reddy v. State of A.P. and Ors.* AIR 1990 SC 79; and *State of U.P. v. Ashok Kumar Srivastava* 1992 Cri.LJ 1104 – referred to.

D “Wills’ Circumstantial Evidence” (Chapter VI) by Sir Alfred Wills – referred to.

E 2. So far as the last seen theory is concerned, it 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. In the instant case, PW 7 an independent witness saw the deceased in the company of the accused persons at 10 P.M. on 10.8.1989 and early next morning his dead body was found in a well. [para 7 and 17] [1042 E,F] [1046-D,E]

F *State of U.P. v. Satish* 2005 (3) SCC 114 ; *Ramreddy Rajeshkhanna Reddy v. State of A.P.* 2006 (10) SCC 172; *Jaswant Gir v. State of Punjab* 2005(12) SCC 438; and *Kusuma Ankama Rao v State of A.P.* 2008(10) SCR 89 – relied on.

G 3. On consideration of the background facts 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. [para 20] [1047 C]

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Case Law Reference:

AIR 1977 SC 1063	referred to	[para 8]	A
AIR 1956 SC 316	referred to	[para 8]	
AIR 1983 SC 446	referred to	[para 8]	
AIR 1985 SC 1224	referred to	[para 8]	B
AIR 1987 SC 350	referred to	[para 8]	
AIR 1989 SC 1890	referred to	[para 8]	
AIR 1954 SC 621	referred to	[para 8]	
(1996) 10 SCC 193	referred to	[para 9]	C
AIR 1990 SC 79	referred to	[para 10]	
1992 CrI.LJ 1104)	referred to	[para 11]	
AIR 1952 SC 343	relied on	[para 14]	D
AIR 1984 SC 1622	relied on	[para 15]	
2003 (8) SCC 180	relied on	[para 16]	
2003 (11) SCC 261	relied on	[para 16]	
2008(10) SCR 89	relied on	[para 16]	E
2005 (3) SCC 114	relied on	[para 17]	
2006 (10) SCC 172	relied on	[para 18]	
2005(12) SCC 438	relied on	[para 19]	

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 473 of 2001

From the final Judgment and Order dated 7.11.2000 of
the High Court of Judicature at Madras in CrI. Appeal No. 588
of 1991

R.D. Upadhyay for the Appellants.

V. Kanakaraj, V.G. Pragasam, S.J. Aristotle and Prabu
Ramasubramaniam for the Respondent.

The Judgment of the Court was delivered by

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A **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 appel-
lants for offence punishable under Section 302 of the Indian
Penal Code, 1860 (in short the 'IPC') and sentence of impris-
B onment for life as awarded by learned Sessions Judge, Trichi.

2. Prosecution version as unfolded during trial was as fol-
lows:

C 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.

D 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
E and A.3. A.1 is related to A.5. The witnesses, the deceased
Magamuni and accused 1 to 5 were residing at Mathagiri vil-
lage.

F The deceased married one Nallangal about four months
prior to the date of incident. Said Nallangal was in illicit relation-
ship 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
G which took place.

H 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 de-

ceased. 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, Mathagrill 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

A 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.

B 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.

C 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.

D 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.

E 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.

F 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* 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.

9. 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....”

10. 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

- A (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.
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C 11. In *State of U.P. v. Ashok Kumar Srivastava*, (1992 Cr.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.

- D 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".
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- F

- G 13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

- H 14. 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."

15. 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

A (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.

B 16. 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) and *Kusuma Ankama Rao v State of A.P.* (Criminal Appeal No.185/2005 disposed of on 7.7.2008)

C 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* [2005 (3) SCC 114] it was noted as follows:

D “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.”

F 18. In *Ramreddy Rajeshkhanna Reddy v. State of A.P.* [2006 (10) SCC 172] it was noted as follows:

G “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

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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". A

(See also *Bodh Raj v. State of J&K* (2002(8) SCC 45).)"

19. A similar view was also taken in *Jaswant Gir v. State of Punjab* [2005(12) SCC 438] and *Kusuma Ankama Rao's case* (*supra*). B

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. C

R.P.

Appeal dismissed.