

MULA DEVI & ANR. A

v.

STATE OF UTTARAKHAND

(Criminal Appeal No. 1722 of 2008)

NOVEMBER 4, 2008 B

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Penal Code, 1860 – ss.302 r/w 34 and 201 – Conviction under, by Courts below – Case resting on circumstantial evidence – Conditions precedent for conviction on basis of circumstantial evidence, elucidated – Held: On facts, both Trial Court and High Court came to abrupt conclusions about the guilt of accused – Circumstances indicated by Trial Court did not present a complete chain of circumstances to implicate the accused-Appellants – Hence conviction of the Appellants not justified. C D

The prosecution case was that while Appellants, i.e. the mother-in-law and sister-in-law of the deceased held the leg of the deceased, her father-in-law caused her death. E

Placing reliance upon the circumstantial evidence, the Trial Court convicted the Appellants under s.302 r/w s.34 and s.201 IPC and 'D', the father-in-law of the deceased under s.302 and s.201 IPC. F

The various circumstances highlighted by the Trial Court to fasten the guilt on the accused were: i) that the deceased lived with the Appellants and the incident occurred in the house they lived in; ii) that the father and uncle of the deceased gave statements to the effect that Appellants used to harass the deceased and whenever she visited her parental house she expressed G

A apprehension that she might be killed by them; iii) that
the medical evidence indicated that the cause of death
was asphyxia as a result of *ante-mortem* strangulation
and there were *post mortem* burn injuries on the body of
the deceased and iv) that no FIR was lodged regarding
B the death of the deceased from the side of the accused.

On appeal, High Court acquitted the father-in-law of
the deceased but upheld the conviction of the Appellants.
Hence the present appeal.

C Allowing the appeal, the Court

HELD:1.1. Where a case rests squarely on
circumstantial evidence, the inference of guilt can be
justified only when all the incriminating facts and
D 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
E closely connected with the principal fact sought to be
inferred from those circumstances. [Para 8] [326-D, F]

1.2. The conditions precedent, before conviction
could be based on circumstantial evidence, must be fully
established. They are: (1) the circumstances from which
F 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
G 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

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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. [Para 15] [329-C-H]

1.4. In the present case, the Trial Court and the High Court came to abrupt conclusions about the guilt of the Appellants. None of the circumstances indicated by the Trial Court really present a complete chain of circumstances to implicate the accused-Appellants. The circumstances referred to by the Trial Court and the abrupt conclusions arrived at by the Trial Court and the High Court does not justify the conviction of the appellants. Therefore, conviction cannot be maintained and is set aside. [Paras 6, 7 and 17] [325-D; 326-C; 330-B]

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; *Bhagat Ram v. State of Punjab*, AIR (1954) SC 621; *C. Chenga Reddy and Ors. v. State of A.P.*, [1996] 10 SCC 193; *Padala Veera Reddy v. State of A.P. and Ors.*, AIR (1990) SC 79; *State of U.P. v. Ashok Kumar Srivastava*, (1992) Crl.LJ 1104; *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. Rajaram*, [2003] 8 SCC 180 and *State of Haryana v. Jagbir Singh and Anr.*, [2003] 11 SCC 261, relied on.

Circumstantial Evidence by Alfred Wills (Chapter VI), referred to.

	Case Law Reference :		
A	AIR (1977) SC 1063	relied on	Para 8
	AIR (1956) SC 316	relied on	Para 8
	AIR (1983) SC 446	relied on	Para 8
B	AIR (1985) SC 1224	relied on	Para 8
	AIR (1987) SC 350	relied on	Para 8
	AIR (1989) SC 1890	relied on	Para 8
C	AIR (1954) SC 621	relied on	Para 8
	[1996] 10 SCC 193	relied on	Para 9
	AIR (1990) SC 79	relied on	Para 10
D	(1992) CrI.LJ 1104	relied on	Para 11
	AIR (1952) SC 343	relied on	Para 14
	AIR (1984) SC 1622	relied on	Para 15
E	[2003] 8 SCC 180	relied on	Para 16
	[2003] 11 SCC 26	relied on	Para 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1722 of 2008.

F From the final Judgment and Order dated 7.3.2008 of the High Court of Uttarakhand at Nainital in CrI Appeal No. 773 of 2001.

G Fakhruddin, A.K. Gautam, and Ashok Mathur for the Appellants.

Jatinder Kumar Bhatia for the Respondent.

The Judgment of the Court was delivered by

H **DR. ARIJIT PASAYAT, J. 1.** Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Uttarakhand High Court upholding the conviction of the appellants for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 201 IPC. However, the appeal of the co-accused Dayal Singh, who was convicted for offence punishable under Sections 302 and 201 IPC, was allowed.

3. Background facts in a nutshell are as follows:

Puola Devi (hereinafter referred to as 'deceased') daughter of PW 3 Amar Singh was married to Kamal Singh, son of accused Dayal Singh in Village Jaikot, District Tehri Garhwal. Accused / appellant Mula Devi is mother-in-law and accused / appellant Rajmati is sister-in-law of the deceased. Puola Devi, always complained about the harassment being made to her by the accused/appellants whenever she visited her parental house. She often told that her in-laws used to ask her to give her jewellery to them else they would kill her. On 30.05.1990, Amar Singh (P.W.3) (father of the deceased), who used to work in Delhi, received a message there that his daughter Puola Devi has died. On the next day, at about 5.00 P.M, he proceeded for his home Village Kulpi, District Tehri Garhwal, and reached there on 01.06.1990. He went to the Patwari and came to know that dead body of his daughter has already been taken to Narendra Nagar. It needs to be noted that in the interior hills of Uttarkhand, certain Revenue Officials are given the police powers. Meanwhile, Lal Singh (P.W.1), uncle of the deceased, had already lodged the first information report on 30th of May 1990, after he received information that Puola Devi had died in her in-laws house. In the first information report (Ext. A-1), Lal Singh (P.W.1) had mentioned that Puola Devi was married to son of Dayal Singh in Village Jaikot, where she used to get harassment at the hands of her in-laws. He had also stated in his report that whenever Puola Devi used to come to her parental village she complained of the harassment meted out to her by the accused /appellants. She had apprehended that

A she would be killed in her in-laws house. Lal Singh (P.W.1) at
the end of the first information report expressed suspicion that
after committing murder of his niece Puola Devi, kerosene oil
was poured over her body and it was set on fire to conceal the
fact of murder. On the basis of the first information report, Crime
B No.02 of 1990 was registered against all the three accused
persons under Sections 302 and 201 of IPC by Patti Patwari,
Baman Gaon. The dead body of the deceased was taken into
possession by Kapur Singh *Payal* (P.W.5), Patwari, who initially
investigated the crime. He prepared the check report (Ext. A-
C 3) on the basis of the first information report received from Lal
Singh and made necessary entry in the general diary, copy of
extract of which is Ext. A-4. He inspected the spot, took the
dead body in his possession, prepared the inquest report (Ext.
A -2) and other necessary papers including sketch of the dead
D body (Ext. A -6), police form No. 13 (Ext. A-7), sample of seal
(Ext. A-8). He also prepared the site plan (Ext. A-5). The dead
body was sent for postmortem examination. Dr. P.P. Raturi
(P.W.7) Medical Officer, Narendra Nagar conducted the autopsy
on the dead body of Puola Devi on 01.06.1990, at 10:00 A.M.,
and prepared the postmortem examination report (Ext. A-11).
E The cause of death in the opinion of the Medical Officer was
asphyxia as a result of ante mortem strangulation. He also found
postmortem burn injuries. Subsequently, the investigation was
taken up by, Bachchan Singh (P.W.6), Patwari, who further
interrogated the witnesses and arrested the accused persons.
F After completion of the investigation, he submitted charge sheet
(Ext.A -10) against all the three accused for their trial in respect
of the offences punishable under Section 302 and 201 IPC.

G Since the accused persons pleaded innocence, trial was
held after commitment to the Court of Sessions. Since the case
was based on circumstantial evidence the trial court referred
to various circumstances to hold the three accused persons
guilty. In appeal, as noted above, appeal of Dayal Singh was
accepted while that of present appellants was dismissed.

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4. Learned counsel for the appellants submitted that the prosecution version was specific that it was Dayal Singh who was responsible for the homicidal death of the deceased. The role ascribed to the appellants was that they held the legs of the deceased. Since the High Court accepted the appeal of the co-accused Dayal Singh who was supposed to be the main culprit, on the self same evidence, the appellants could not have been convicted. It is submitted that the circumstances highlighted by the trial court and concurred with by the High Court do not make out any case against the appellants.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the trial court and the High Court.

6. It is to be noted that the trial court and the High Court have come to abrupt conclusions about the guilt of the appellants. The circumstances highlighted by the trial court to fasten the guilt on the appellants were as follows:

(i) It established on record that Puola Devi (deceased) was daughter-in-law of Mula Devi and sister in law of Rajmati and she used to live with them.

(ii) It is established on record from the statement of P.W. 1, Lal Singh, uncle of the deceased and P.W.3, Amar Singh, father of the deceased that accused Mula Devi and Rajmati used to harass puola Devi (deceased), and whenever she visited her parental house she always expressed apprehension that she might be killed on any day by them.

(iii) It is established on record from the medical evidence that cause of death of Puola Devi was asphyxia as a result of ante mortem strangulation.

(iv) It is established from the oral evidence that there were burn injuries on the body of the deceased and from

A the medical evidence it is also established that the burn injuries were postmortem.

(v) It is also established on the record that incident had occurred inside the house where accused Mula Devi and Rajmati used to live. It is not the case of the defence that anyone else was there in the house at that juncture.

(vi) No FIR was lodged regarding death of Puola Devi from the side of the accused.

C 7. None of the circumstances indicated above really present a complete chain of circumstances to implicate the accused appellants.

D 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); *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). 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 G 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.

H 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

(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*, (1992 Cri.LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied

A 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.

B 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".

E 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.

F 14. In *Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh*, (AIR 1952 SC 343), wherein it was observed thus:

G "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

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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

(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.

A 16. These aspects were highlighted in *State of Rajasthan v. Rajaram*, [2003] 8 SCC 180, *State of Haryana v. Jagbir Singh and Anr.*, [2003] 11 SCC 261.

B 17. Circumstances referred to by the trial court and the abrupt conclusions arrived at by the trial court and the High Court does not justify the conviction of the appellants. Therefore, conviction cannot be maintained and is set aside. The appellants be set at liberty forthwith unless required to be in custody in any other case.

C 18. Appeal is allowed.

B.B.B.

Appeal is allowed.