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NARAYAN

V.

STATE OF RAJASTHAN

Criminal Appeal No. 386 of 2009

FEBRUARY 25, 2009

B

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]

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Penal Code, 1860 – ss. 302 and 201 – Conviction – On the basis of circumstantial evidence – On appeal, held: Circumstances relied on for conviction, establish the guilt of the accused – Conviction confirmed.

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Evidence – Circumstantial Evidence – Reliance on – Held: Conviction can be based on such evidence – Condition precedent for reliance before conviction, discussed.

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Appellant-accused was prosecuted for offences punishable u/ss. 302 and 201 IPC. Prosecution was based on circumstantial evidence. Courts below convicted him placing reliance on the circumstances. Hence the present appeal.

Dismissing the appeal, the Court

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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 circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. [Para 6] [1205-B]

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1.2 When a case rests upon circumstantial evidence, such evidence must satisfy the following tests, viz. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the

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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 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. [Para 8] [1206-A-D]

1.3 Onus is 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. [Para 13] [1207-G-H]

1.4 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. [Para 9] [1206-E-F]

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. 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 CrI. I.J. 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. 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.* 2008 (10) SCR 89; *Manivel and Ors. v. State of Tamil Nadu* 2008(9) JT 31; *Raju v. State by Inspector of Police* 2009 (3) JT 183 – relied on.

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

B 2. In the instant case circumstances highlighted by
C the trial court and the High Court are that the accused
D was living with the deceased as a couple before the
occurrence; that death of the deceased was committed
by strangulation, and dead body was recovered in a trunk;
that the accused was absconding after selling his all
belongings etc; that he disappeared for a long period (4-
5 years); that the accused had hired a Jeep on rent in
which loaded his all goods and in which a trunk also
contained the dead body of deceased which was
recovered from such trunk. Identification of such trunk
has also been proved by witnesses; and that the motive
of crime has been also proved by evidence of prosecution
that he was keen to take other women, and he has killed
his wife (the deceased) for removing her from the scene.
The circumstances clearly establish the guilt of the accused-
appellant. [Paras 15 and 16] [1208-G-H; 1209-A-D]

E Case Law Reference

E	AIR 1977 SC 1063	Relied on.	Para 6
	AIR 1956 SC 316	Relied on.	Para 6
	AIR 1983 SC 446	Relied on.	Para 6
F	AIR 1985 SC 1224	Relied on.	Para 6
	AIR 1987 SC 350	Relied on.	Para 6
	AIR 1989 SC 1890	Relied on.	Para 6
G	AIR 1954 SC 621	Relied on.	Para 6
	1996 (10) SCC 193	Relied on.	Para 7
	AIR 1990 SC 79	Relied on.	Para 8
	1992 CrI. I.J. 1104	Relied on.	Para 9

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AIR 1952 SC 343	Relied on.	Para 12	A
AIR 1984 SC 1622	Relied on.	Para 13	
2003 (8) SCC 180	Relied on.	Para 14	
2003 (11) SCC 261	Relied on.	Para 14	B
2008 (10) SCR 89	Relied on.	Para 14	
2008 (9) JT 31	Relied on.	Para 14	
2009 (3) JT 183	Relied on.	Para 14	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 386 of 2009

From the Judgement and Order dated 31.01.2007 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. CrI. (Jail) Appeal No. 853 of 2002.

Rajiv Talwar, Parmanand, for the Appellant.

Jatinder Kumar Bhatia, for the Respondents.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court at Jodhpur upholding the conviction of the appellant for offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (in short the 'IPC') and confirmed the judgment and order of conviction and sentence passed by learned Additional District and Sessions Judge, Fast Track, Udaipur.

3. Background facts in a nutshell are as follows:

An unknown dead body was found in an iron barrel drum at bus-stand, Unjha. It is alleged that on 16.10.1995 at the bus-stand, Unjha some unknown person hired handcart of one Malla and instructed the cart man to carry the barrel drum to Railway

A Station and, in the meantime, he assured to reach there. But, the said unknown person did not reach at the railway station and, ultimately, the cart owner Malla brought back the said barrel drum to bus-stand. In the evening the barrel drum began to emit bad smell and, therefore, information was given at the police post. The police opened the barrel drum and found therein the corpse of Mst. Hunji. Whereabouts of the dead body was not known and a photo was published in the newspaper in pursuance of which Babu Meena (PW6) and Chandulal (PW20) came and identified the dead body to be of their sister Hunji, who was living with appellant Narayan as his wife at Kotara. The Unjha police registered the case and since information was given by way of statements of Babu Meena and Chandulal and other relatives of the deceased that the incident took place at Kotara, through the Superintendent of police, the file of the case was sent for investigation to the Police Station, Kotara where regular FIR was registered at No.136/95 under Sections 302 and 201 IPC. Thereafter the investigation commenced. Charge sheet was filed after investigation.

E As the accused pleaded innocence trial was held. As the prosecution version rested on circumstantial evidence the trial court referred to various circumstances to come to the conclusion that the accused was guilty of the charged offences. Accordingly, the conviction and sentence were recorded. The appeal as noted above was preferred before the High Court. F The primary stand was that the circumstances highlighted by the prosecution do not lead unerringly to the guilt of the accused. The High Court did not find any substance in the plea and as noted above the same was dismissed.

G 4. In support of the appeal learned counsel for the appellant submitted that there is no evidence worth the name to connect the appellant with the crime and the circumstances highlighted by the trial court and the High Court do not lead unerringly to the guilt of the accused appellant.

H 5. Learned counsel for the respondent-State on the other

hand supported the judgment of the High Court affirming that of the trial court. A

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); *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. B C D E

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: F

"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.....". G

8. In *Padala Veera Reddy v. State of A.P. and Ors.* (AIR H

A 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

B “(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;

C (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

D (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.

E 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.

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H 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 touchstone 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

A 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) , *Manivel and Ors. v. State of Tami Nadu* (2008(9) JT 31)and *Raju v. State by Inspector of Police* (SLP(Cr) No.4467 of 2008 decided on 4.2.2009)

15. Circumstances highlighted by the trial court and the High Court are as follows:

1. Accused was living with Hunji as a couple before the occurrence.
2. Death of Hunji was committed by strangulation, and dead body was recovery in a trunk at Unjha.

3. Accused was absconding after selling his all belongings cow, buffalo etc. Accused disappeared for a long period 4-5 years. A
4. Accused had hired a Jeep on rent in which loaded his all goods and had gone to Unjha in which a trunk also contained the dead body of deceased which was recovered from such trunk in Unjha. Identification of such trunk has also been proved by witnesses. B
5. Motive of crime has been also proved by evidence of prosecution that he was keen to take other women, and he has killed his wife Hunji from removing him from the scene. C

16. In our considered opinion the circumstances highlighted by the trial court and the High Court clearly establish the guilt of the accused appellant. There is no scope for interference in this appeal which is accordingly dismissed. D

K.K.T.

Appeal dismissed.