RUKIA BEGUM A

v.

STATE OF KARNATAKA

(Criminal Appeal No. 1519 of 2008)

APRIL 4, 2011 B

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860: s.302, 201 r.w. s.34 – Murder and causing disappearance of evidence – Strained relations C *between the victims and the accused party – Assault on the victims resulting in their death – Trial court acquitted 'R' and 'N' and two other accused holding that circumstances did not point guilt towards them – However convicted 'I' and 'M'* D *holding that the circumstantial evidence i.e. motive, presence of blood, recoveries and abscondence immediately after the occurrence pointed towards their guilt – High Court set aside the acquittal of appellants 'R' and 'N' and also upheld the conviction of appellants 'I' and 'M' – On appeal, held: The* E *circumstantial evidence against appellants 'R' and 'N' were not such which would lead towards their guilt – Trial court, on appraisal of the evidence came to the conclusion that the prosecution was not able to prove its case beyond all reasonable doubt, so far as 'R' and 'N' were concerned – The* F *view taken by trial court was justified in the facts and circumstances of the case and a possible view and, therefore, High Court erred in setting aside their acquittal – However, case of appellants 'I' and 'M' stood on an altogether different footing – Trial court had held them guilty – There was* G *overwhelming evidence to prove beyond all reasonable doubt that they shared the motive with other accused persons – Recovery of wheel and tyre of the motorcycle belonging to the victim and knife was made on the statements made by appellants 'I' and 'M' – These two appellants were not found*

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A *at the normal place of their work and their abscondence was proved by the Manager of the firm where they were working – The trial court as also the High Court on the basis of the circumstantial evidence rightly came to the conclusion that the prosecution was able to prove its case beyond all*
B *reasonable doubt so far as 'I' and 'M' were concerned.*

Evidence: Circumstantial evidence – Held: For bringing home the guilt on the basis of the circumstantial evidence, the prosecution has to establish that the circumstances
C *proved lead to one and the only conclusion towards the guilt of the accused – In a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established – It should form a chain so complete that there is no escape from the conclusion, that the crime was committed by the accused*
D *and none else – It has to be considered within all human probability and not in fanciful manner – In order to sustain conviction, circumstantial evidence must be complete and incapable of any explanation than the guilt of the accused.*

E *Appeal against acquittal: Acquittal by trial court – Interference by High Court – Scope of – Held: Where two views on the evidence are reasonably possible and trial court has taken a view favouring acquittal, High Court in an appeal against acquittal should not disturb the same merely on the*
F *ground that if it was trying the case, it would have taken an alternative view and convicted the accused – High court while hearing appeal against the judgment of acquittal is possessed of all the power of appellate court and nothing prevents it to appraise evidence and come to a conclusion different than*
G *that of trial court but while doing so it shall bear in mind that presumption of innocence is further reinforced by acquittal of the accused by the trial court – The view of trial Judge as to the credibility of the witness must be given proper weight and consideration – There must be compelling and weighty*

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reason for the High Court to come to a conclusion different than that of trial court.

The prosecution case was that the victim-deceased had strained relations with his mother-accused and sisters-appellants 'R' and 'N' in relation to the ancestral property. On the fateful day, the accused persons obstructed the passage near the house of the victim. When the victim was coming on a motorcycle, he got hit against the obstruction and fell down from his motorcycle. His wife who was sitting behind also fell down. The appellants and other accused persons attacked the victim and his wife and caused their death and thereafter shifted their bodies and dismantled the motorcycle of the victim. The trial court acquitted appellants 'R' and 'N' and other two accused holding that the circumstances did not point guilt towards them. However, the trial court convicted appellants 'I' and 'M' under Sections 302 and 201 r.w. Section 34 IPC holding that the circumstantial evidence i.e. motive, presence of blood, recoveries and abscondence immediately after the occurrence pointed towards their guilt. The convict-accused and the State filed the appeals. The High Court dismissed the appeal filed by appellants 'I' and 'M'. The appeal filed by the State against the acquittal of the accused persons was partly allowed by the High Court and it set aside the acquittal of 'R' and 'N' and convicted them for the offence under Section 302 and 120-B, IPC and sentenced them to imprisonment for life.The instant appeals were filed by 'R', 'N', 'I' and 'M' challenging their conviction.

Disposing of the appeals, the Court

HELD: 1. The circumstantial evidence brought against appellants 'R' and 'N' were not such which would lead towards their guilt. The recovery from these appellants itself was discarded by the High Court. Motive

A alone, in the absence of any other circumstantial evidence would not be sufficient to sustain the conviction of these two appellants. The trial court on appraisal of the evidence came to the conclusion that the prosecution was not able to prove its case beyond all reasonable
B doubt, so far as 'R' and 'N' were concerned. It is trite that where two views on the evidence are reasonably possible and the trial court has taken a view favouring acquittal, the High Court in an appeal against acquittal should not disturb the same merely on the ground that if
C it was trying the case, it would have taken an alternative view and convicted the accused. The High court while hearing appeal against the judgment of acquittal is possessed of all the power of appellate court and nothing prevents it to appraise evidence and come to a
D conclusion different than that of the trial court but while doing so it shall bear in mind that presumption of innocence is further reinforced by acquittal of the accused by the trial court. The view of the trial Judge as to the credibility of the witness must be given proper weight and consideration. There must be compelling and
E weighty reason for the High Court to come to a conclusion different than that of the trial court. The view taken by the trial court was justified in the facts and circumstances of the case and a possible view and, therefore, the High Court erred in setting aside their
F acquittal. [Para 8] [720-D-G; 721-A-B]

2. The case of appellant 'I' and 'M' however, stood on an altogether different footing. The trial court had held them guilty. There was overwhelming evidence to prove
G beyond all reasonable doubt that they shared the motive with other accused persons. Appellant 'I' during the course of investigation gave statement which led to the recovery of wheel and tyre of the motorcycle belonging to the deceased which was dismantled. It was seized and
H seizure list was prepared. This recovery was proved by

oral evidence as also the seizure list. Further, the statement given by appellant 'M' during the course of investigation led to recovery of the knife and it was proved by PW-25 and seizure memo. These two appellants were not found at the normal place of their work and their abscondence was proved by PW-7, the Manager of M/s. Habeeb Solvent Extract where they were working. He had further stated that 'I' was assigned duty for collection of money due to the company and such a duty was assigned on the 9th June, 1995, the day when the incident took place. PW-33 had also stated that the appellant 'I', as an employee of M/s. Habeeb Solvent Extract, approached him for collection of money and on 9th June, 1995 he paid a sum of ?10,000/- to him. PW-7 had further stated in his evidence that during the month of June, 1995 appellant 'M' left the factory and did not join the duty. From the said evidence, it is clear that the appellants 'I' and 'M' were employees of M/s. Habeeb Solvent Extract and absconded soon after the incident. No doubt, it is true that for bringing home the guilt on the basis of the circumstantial evidence, the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion, that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner. In order to sustain conviction, circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard and fast rule can be laid to

say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case. Here in the instant case, the motive, the recoveries and abscondence of these appellants immediately after the occurrence pointed out towards their guilt. The trial court as also the High Court on the basis of the circumstantial evidence rightly came to the conclusion that the prosecution was able to prove its case beyond all reasonable doubt so far as these appellants were concerned. [Paras 9, 10] [721-C-H; 722-A-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1519 of 2008.

From the Judgment and Order dated 28.05.2007 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 501 of 2004.

WITH

Criminal Appeal No. 698 of 2008.

Criminal Appeal No. 1808 of 2009.

Basava Prabhu S. Patil, B. Subrahmanya Prasad, Ajay Kumar M.R.D. Upadhyay, V.N. Raghupathy and S.N. Bhat for the Appellant.

Anitha Shenoy, Rashmi Nandakumar and B.S. Gautam for the Respondent.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Altogether 8 persons were put on trial for commission of the offence under Section 302 and 201 read with Section 34 as also Section 379 of the Indian Penal Code. Accused Jaibunissa died during the

trial, whereas accused Rukiya Begum, Nasreen, Mansoor and Mohmmed Ghouse were acquitted of all the charges. However accused Issaq Sait, Nasarath and Mujahid were held guilty of the offence under Section 302 and 201 read with Section 34 of the Indian Penal Code and awarded life imprisonment and seven years imprisonment respectively. State of Karnataka, aggrieved by the acquittal of Rukia Begum Nasreen, Mansoor and Mohammed Ghouse preferred appeal whereas appellant Issaq Sait and Mujahid aggrieved by their conviction and sentence also preferred appeal. State also preferred appeal seeking enhancement of sentence. All the appeals were heard together and the High Court by its common judgment dated 28th of May, 2007 dismissed the appeal preferred by the appellants Issaq Sait and Mujahid. The appeal filed by the State against the acquittal of the accused persons was partly allowed by the High Court and it set aside the acquittal of Rukia Begum, Nasreen and Mohammed Ghouse and convicted them for the offence under Section 302 and 120-B of the Indian Penal Code and sentenced them to imprisonment for life.

2. Rukia Begum and Nasreen have filed separate appeals whereas Issaq Sait and Mujahid appealed with the leave of the court. In these appeals we are concerned with Rukia Begum, sole appellant in Criminal Appeal No. 1519 of 2008, Nasreen, appellant in Criminal Appeal No. 1808 of 2009 and Issaq Sait and Mujahid, appellants in Criminal Appeal No. 698 of 2008. It is relevant here to state that convict Mohammed Ghouse joined as Appellant No. 2 in the appeal filed by Nasreen and as he failed to surrender, his appeal stood dismissed.

3. Prosecution commenced on the basis of a written report given by PW-12 Thammaiah to PW-31 G.Jayaraj, the Sub-Inspector of Police in which he disclosed that while he was at his agricultural field near the land of accused Jaibunnisa, his brother-in-law PW-2 Chandrashekar @ Chandru informed him that while he was near Aralikatte, PW-1 Thandavamurthy and appellant Nasreen informed him that the dead bodies of

A Rasheed Sait and his wife Sabeena Sait were lying in the field. The Sub-Inspector of Police G.Jayaraj came to the place of occurrence and found trace of blood from the place of occurrence to the gate of the deceased and the accused. During the course of investigation appellants Rukiya Begum
B and Nasreen were arrested and on their disclosure plastic bucket and plastic pot kept in the bathroom were seized. Appellant Issaq Sait was also arrested and his statement led to the recovery of wheel and tyre of the motorcycle belonging to the deceased. Appellant Mujahid surrendered before the
C Judicial Magistrate and he was taken on police remand for interrogation. During interrogation the statement given by him led to the recovery of the knife. The personal belongings of the deceased Sabeena Begum were also recovered from other accused persons.

D 4. According to the prosecution there was strained relationship between the deceased Rasheed Sait on one side and his mother accused Jaibunnisa, sisters i.e. appellants Rukia Begum and Nasreen and husband of the sister on the other side in relation to the ancestral property. The appellants,
E in fact, had admitted the strained relationship amongst themselves. Further case of the prosecution is that on 9th June, 1995 Rasheed Sait along with his wife Sabeena Begum and daughter Tamanna had gone to Mysore to meet PW-4, Rameeza and reached there at 5.30 P.M. After having meal at
F her house they left for their home. In order to trap the deceased the accused persons tied coconut leaves obstructing the passage near his house. Rasheed Sait while coming to his house hit against the obstruction and fell from his motorcycle. It is the case of the prosecution that all the appellants herein
G besides other accused persons attacked Rasheed Sait and his wife Sabeena Begum and caused their death. Prosecution has alleged that in order to shield themselves from punishment the accused persons shifted the dead bodies and dismantled the motorcycle used by the deceased.

H 5. Police after investigation submitted chargesheet and the

appellants besides four other accused persons, namely, Jaibunnisa, Mansoor, Mohammed Ghouse, and Nasarath @ Musarath @ Nasarathulla Shariff were committed to the Court of Sessions. Appellants denied to have committed any offence and claimed to be tried. There is no eye-witness to the occurrence and the prosecution sought to establish the guilt against all the accused persons, including the appellants by circumstantial evidence. It has brought on record oral evidence as also documentary evidence to prove that there was strained relationship between the deceased and the accused persons in regard to the share in the ancestral property. Presence of blood marks near the house of some appellants was another circumstance relied on by the prosecution to prove the guilt. Recovery of wheel and tyre of the motorcycle of the deceased from appellant Issaq Sait and recovery of knife from appellant Mujahid at their instances was another circumstance which, according to the prosecution pointed towards the guilt of these two appellants. The conduct of these appellants i.e., abscondence immediately after the occurrence was yet another circumstance brought by the prosecution to establish their guilt.

6. The trial court on the appraisal of the evidence came to the conclusion that motive and recovery of bucket and plastic pot at the instance of the appellants Rukia Begum and Nasreen do not pointedly lead towards their guilt and accordingly acquitted them of all the charges. However, the circumstantial evidence brought and proved by the prosecution, i.e. motive; presence of blood; recoveries and abscondence immediately after the occurrence persuaded the trial court to hold that the circumstantial evidence clearly lead towards the guilt of appellants Issaq Sait and Mujahid and accordingly convicted and sentenced them as above.

7. We have heard the learned counsel for the appellants as also the State. It has been submitted by the counsel representing appellants Rukia Begum and Nasreen that the circumstantial evidence brought against them do not

A conclusively point towards their guilt and, therefore, the High Court erred in reversing the well considered judgment of acquittal of the trial court. They point out that the strained relationship between these appellants and their brother Rasheed Sait does not necessarily lead towards the guilt of
B these appellants. Recovery of day to day articles i.e., bucket and plastic pot also do not point out towards their guilt. It has been pointed out that the High Court while convicting these two appellants has not relied on the recovery. Ms. Anitha Shenoy, however, submits that two sisters, i.e., appellants Rukia Begum
C and Nasreen had very serious dispute with the deceased in regard to share of property. According to her this is a strong motive to commit the crime.

8. We have bestowed our consideration to the rival submissions and we are of the opinion that the circumstantial
D evidence brought against these appellants are not such which lead towards their guilt. As stated earlier, recovery from these appellants itself has been discarded by the High Court. In our opinion motive alone, in the absence of any other circumstantial evidence would not be sufficient to sustain the conviction of
E these two appellants. It is worthwhile mentioning here that the trial court on appraisal of the evidence came to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubt, so far as Rukia Begum and Nasreen are concerned. It is trite that where two views on the evidence are
F reasonably possible and the trial court has taken a view favouring acquittal, the High Court in an appeal against acquittal should not disturb the same merely on the ground that if it was trying the case, it would have taken an alternative view and convicted the accused. The High court while hearing appeal
G against the judgment of acquittal is possessed of all the power of appellate court and nothing prevents it to appraise evidence and come to a conclusion different than that of the trial court but while doing so it shall bear in mind that presumption of innocence is further reinforced by acquittal of the accused by
H the trial court. The view of the trial Judge as to the credibility of

the witness must be given proper weight and consideration. There must be compelling and weighty reason for the High Court to come to a conclusion different than that of the trial court. The view taken by the trial court was justified in the facts and circumstances of the case and a possible view and, therefore in our opinion, the High Court erred in setting aside their acquittal.

9. The case of appellant Issaq Sait and Mujahid in our opinion, however, stands on altogether different footing. The trial court has held them guilty. There is overwhelming evidence to prove beyond all reasonable doubt that they shared the motive with other accused persons. Appellant Issaq Sait during the course of investigation gave statement which led to the recovery of wheel and tyre of the motorcycle belonging to the deceased which was dismantled. It was seized and seizure list was prepared. This recovery has been proved by oral evidence as also the seizure list. Further, the statement given by appellant Mujahid during the course of investigation led to recovery of the knife and it has been proved by PW-25 Jakir Ahamad and seizure memo. These two appellants were not found at the normal place of their work and their abscondence has been proved by PW-7 Ashok Kumar, the Manager of M/s. Habeeb Solvent Extract. In his evidence he has stated that appellant Issaq Sait and appellant Mujahid were working in the factory. He has further stated that Issaq Sait was assigned duty for collection of money due to the company and such a duty was assigned on 9th of June, 1995. PW-33 Govindaraju had also stated that the appellant Issaq Sait, as an employee of M/s. Habeeb Solvent Extract, approached him for collection of money and on 9th of June, 1995 he paid a sum of Rs. 10,000/- to him. PW-7 has further stated in his evidence that during the month of June, 1995 appellant Mujahid left the factory and did not join the duty. From the aforesaid evidence it is clear that the appellants Issaq Sait and Mujahid were employees of M/s. Habeeb Solvent Extract and absconded soon after the incident.

A 10. No doubt it is true that for bringing home the guilt on the basis of the circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which B an inference of guilt is sought to be drawn are to be cogently and firmly established The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It C has to be considered within all human probability and not in fanciful manner. In order to sustain conviction circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the D accused but inconsistent with his innocence. No hard and fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case. Here in the present case the motive, the recoveries and abscondence of these E appellants immediately after the occurrence point out towards their guilt. In our opinion, the trial court as also the High Court on the basis of the circumstantial evidence rightly came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt so far as these appellants are F concerned.

11. In the result Criminal Appeal No. 1519 of 2008 filed by Rukia Begum and Criminal Appeal No. 1808 of 2009 preferred by appellant Nasreen are allowed, the impugned G judgment of the High Court is set aside. Appellant Rukia Begum is in jail, she be set at liberty forthwith.

Criminal Appeal No. 698 of 2008 stands dismissed.

D.G. Appeals disposed of.

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