USMAN MIAN AND ORS. A

v.

STATE OF BIHAR

OCTOBER 4, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.] B

Penal Code, 1860

Conviction based on circumstantial evidence—Principles restated—Deceased found to have injuries—Not explained properly—Attempt by appellants to bury the body hurriedly—Plea falsified—Appellants absconding—Held, circumstances sufficient to convict the accused—Though falsity of defence plea not enough to convict, it provides additional link to substantiate prosecution case. C

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The deceased was married to appellant no. 1. Appellants 2 and 3 were her step-sons and they were not happy with the marriage. After two months of the marriage deceased started sending information that the appellants used to vex and torture her and had even given threat to kill her. The days prior to the occurrence RH (PW-3), the younger brother of the informant had met her when she asked him to take her lest she might be killed by the appellants. On getting the information about the death of his sister, PW-10 alongwith PW-4, PW-8, PW-3, his sister and PW-7 went to the house of the appellants in village Nasirpur and saw the dead body of the deceased lying on a cot on the southern verandah of the house. The body was covered by cloth. By that time several persons of the two villages, namely, Chatarghat and Nasirpur had gathered there. Marks of scratches and bluish stain on the neck and black stain on the right pareital region were visible. On a suspicion after seeing the said marks that the deceased had been killed by her husband and her step-sons, i.e. present appellant, a complaint was lodged. Appellants were absconding from their house. They were pressing hard to bury the dead body but on seeing the police party they fled away. E F G

The accused defended the trial to the effect that the deceased was ill for 3 to 4 days prior to the date of occurrence and had grown very weak. She has come to fetch water from the well that night and received injuries

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A when she fell down, became unconscious and subsequently died. The trial court found the accused persons guilty by relying on the circumstances which were highlighted, holding that the circumstances were sufficient to bring home the accusations disbelieving the evidence of DW-1.

In appeal the High Court upheld the order of trial court and held B that there was no infirmity in the judgment of the trial court.

On appeal to this Court, it was contended that the case rests on circumstantial evidence that even if the circumstances are accepted *in toto*, they do not form a complete chain of circumstances and, therefore, could not have been relied upon for holding the accused-appellants guilty, and C that the materials relied upon by the prosecution, do not bring home the accusation so far as appellant No.1.

Respondent-State supported the judgment of the courts below and submitted that well reasoned and well discussed judgments of the courts D below have clearly established guilt of the accused persons and no interference is called for.

Dismissing the appeal, this Court

HELD: 1. For a crime to be proved it is not necessary that the crime E must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact of *factum probandum* may be proved indirectly by means of certain inferences drawn from *factum probans*, that is the evidentiary facts. To put it differently, circumstantial F evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue which taken together form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. [27-B, C]

2. Where a case rests squarely on circumstantial evidence, the G 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 H with the principal fact sought to be inferred from those circumstances.

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 home the offences beyond any reasonable doubt. [27-D, E, F, G]

Hukam Singh **v.** *State of Rajasthan,* **AIR (1977) SC 1063;** *Eradu* **v.** *State of Hyderabad,* **AIR (1956) SC 316;** *Earabhadrappa* **v.** *State of Karnataka,* **AIR (1983) SC 446;** *State of U.P.* **v.** *Sukhbasi,* **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 and** *Bhagat Ram* **v.** *State of Punjab,* **AIR (1954) SC 621, referred to.**

3. The trial court has elaborately dealt with the medical evidence and has found that the doctor's opinion was not honest being inconsistent with the objective finding as contained in the post mortem report. One important feature, which has been rightly taken note of by the courts below, is that though initially the accused persons were present, when grievance was made before the police that the case was one of murder and not accidental death, the accused person has absconded. Another feature, which has been rightly taken note of by the courts below, is that there was an attempt to bury the dead body hurriedly. The appellants were the inmates of the house of the deceased. Evidence of the defence witness DW-1, who was examined to substantiate the plea that the deceased has fallen down near the well has been discarded. Though falsity of the defence plea is not enough to bring home. The accusations, it provides additional link to substantiate prosecution's accusations. Circumstances highlighted by the trial court, are sufficient to bring home the accusation as has been rightly held by the trial court and the High Court against the appellants. [30-C, D, E, F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 587 of 1999.

From the Judgment and Order dated 7.8.98 of the Patna High Court in Crl.A.No. 424 of 1986.

U.U. Lalit, Zki Ahmad Khan and Irshad Ahmad for the Appellants.

B.B. Singh and Kumar Rajesh Singh for the Respondents.

The Judgment of the Court was delivered by

A **ARIJIT PASAYAT, J.** Three appellants filed the present appeal questioning correctness of the judgment rendered by a Division Bench of the Patna High Court upholding their conviction for offence punishable under Section 302 read with Section 32 of the Indian Penal Code, 1860 (in short the 'IPC') and the sentence of imprisonment for life as imposed by Learned B Sessions Judge, Gaya, Bihar in Sessions Trial No. 145 of 1983. It was pointed out that during pendency of the appeal before this Court appellant No.2 has died and therefore appeal stands abated so far as he is concerned.

The prosecution version as unfolded during trial is as follows :

C Kalamuddin and Alauddin Mian of village Nasirpur informed Ishteaq Ahmed (PW-10) and other members of the prosecution party at their house in village Chatarghat in the early morning hours on 6.3.1981 that Saista Khatoon (hereinafter referred to as the 'deceased') has expired. He was told that some guests had come to the deceased's house; after serving meal to them she went to bed. In the midnight her cries were heard and subsequently D it was learnt that she had died.

On getting the above information, Ishteaq Ahmed (PW-10) (informant of the case) along with his father Anwarrul Haque (PW-4), mother Nafisa Khatoon (PW-8), brother Rashid Hussain (PW-3), sister (not examined) and aunt Hasmat Khatoom (PW-7) proceeded to the house of the appellants in E village Nasirpur reaching there at about 7 a.m. They saw the dead body of Saista Khatoon lying on a cot on the southern verandah of the house. The body was covered by cloth. By that time several persons of the two villages, namely, Chatarghat and Nasirpur had gathered there. They were talking in whispered tone that Saista Khatoon had been killed. With a view to have the F last glimpse of the deceased the cloth from her face was removed. Marks of scratches and bluish stain on the neck and blacken stain on the right parental region were visible. The prosecution party after seeing the said marks became suspicious that the deceased had been killed by her husband and her step-sons i.e. present appellants.

G In the fardeyan which Ishteaq Ahmed (PW-10) lodged in the evening at 6 p.m. in the courtyard of appellants' house, he further mentioned that deceased had been married to appellant no.1 Usman Mian on 8th March, 1980. Appellants Abrar Ahmed and Iftekhar Ahmed, who were her step-sons were not happy with the marriage. After two months of the marriage deceased H started sending information that the appellants used to vex and torture her.

Once or twice they had even given threat to kill her. Ten days prior to the occurrence Rashid Hussain (PW-3), the younger brother of the informant had met her when she asked him to take her lest she might be killed by the appellants. The informant further mentioned that the appellants were absconding from their house. They were pressing hard to bury the dead body but on seeing the police party they fled away.

On the basis of the above said fardbeyan Chandauti P.S. Case No.34/ 81 was registered on 6.3.1981. The investigation was undertaken and on completion thereof charge sheet was submitted against the appellants. The accused persons pleaded innocence and faced trial.

The accused persons as is evident from the trend of cross examination and suggestions put to the prosecution witnesses and evidence of DW 1, Shuail Ahmed took stand to the effect that the deceased was ill for 3 to 4 days prior to the date of occurrence and had grown very weak. She has come to fetch water from the well in the fateful night and received injuries when she fell down, became unconscious and subsequently died. In order to further its accusations prosecution examined 11 witnesses. Ishteaq Ahmed (PW-10) was the informant and the brother of the deceased. Rashid Hussain (PW-3) was her brother and PWs. 4 and 8, Anwarrul Haque and Nafisa Khatoon were her father and mother respectively. Post Mortem was conducted by Dr. Kapildeo Prasad (PW-9).

It is to be noted that during the examination of the accused persons under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code')they denied the presence of the dead body in the verandah of the house.

The trial court found the accused persons guilty by relying on the circumstances which were highlighted. It is to be noted that the case rested on substantial evidence and there was no eye witness. Trial court came to hold that the circumstances were sufficient to bring home the accusations, disbelieving the evidence of DW-1.

In appeal the High Court examined the evidence on record in detail and came to hold by the impugned order that there was no infirmity in the judgment of the trial Court.

In support of the appeal, Mr. U.U. Lalit learned senior counsel, submitted that the case rests on circumstantial evidence. Even if the circumstances are

A accepted *in toto*, they do not form a complete chain of circumstances and, therefore, could not have been relied upon for holding the accused-appellants guilty. In any event, according to him, the materials relied upon by the prosecution, do not bring home the accusation so far as appellant No.1-Usman Mian is concerned.

B Learned counsel appearing for the State on the other hand supported the judgment of the courts below and submitted that well reasoned and well discussed judgments of the courts below have clearly established guilt of the accused persons and no interference is called for.

C The circumstances which were pressed into service by the prosecution are as follows:

(1) Saista Khatoon was the second wife of Appellant No. 1 Usman Mian @ Ghaso Mian and step-mother of appellant No. 2 Iftekhar Mian Ahmed and appellant No. 3 Abrar Ahmed. This is, in fact, admitted.

D (2) Saista Khatoon died at her husband's house. This also is admitted.

(3) The dead body was found kept on a cot at a verandah of appellant's house.

E (4) The dead body was covered with cloth when the prosecution witnesses reached the place.

(5) The body bore marks of injuries.

(6) The appellants wanted to hurriedly bury the dead body.

F (7) Saista Khatoon was ill-treated by the appellants, particularly appellant nos. 2 & 3.

(8) She was carrying pregnancy of two months at the time of her death.

(9) The possible birth of a male child was likely to affect the extent of G inheritance of appellant nos. 2 and 3.

(10) The appellants particularly, appellant nos. 2 and 3 had a very strong motive to kill the deceased.

(11) When the police reached the place, the appellants were found to H

be absconding. A

Out of these circumstances some were of general nature. Circumstances (5) (6) and (11) are important. Circumstances 7, 9 and 10 are additional factors in relation to appellant nos. 2 and 3.

Before analysing factual aspects it may be stated that for a crime to be B proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or *factum probandum* may be proved indirectly by means of certain inferences C drawn from *factum probans*, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue which taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

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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* v. *State of Hyderabad,* AIR (1956) SC 316, *Earabhadrappa* v. *State of* E *Karnataka,* AIR (1983) SC 446, *State of U.P.* v. *Sukhbasi,* AIR (1985) SC 1224, *Balwinder Singh* v. *State of Punjab,* AIR (1987) SC 350 and *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 F 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 home the offences beyond any reasonable doubt. G

We may also make a reference to a decision of this Court in *C. Chenga Reddy* v. *State of A.P.,* [1996] 10 SCC 193, wherein it has been observed thus:

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A "21. 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
B guilt of the accused and totally inconsistent with his innocence."

In *Padala Veera Reddy* v. *State of A.P.,* AIR (1990) SC 79 it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

C (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;

D (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
E than that of 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."

In *State of U.P.* v. *Ashok Kumar Srivastava,* (1992) Crl. LJ 1104 it was
F 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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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
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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; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

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 this Court as far back as in 1952.

In *Hanumant Govind Nargundkar* v. *State of M.P.,* AIR (1952) SC 343 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."

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 the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a 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

A 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 B 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.

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It is to be noted that the trial court has elaborately dealt with the medical evidence and has found that the doctor's opinion was not honest being inconsistent with the objective finding as contained in the post mortem report. One important feature, which has been rightly taken note of by the courts below, is that though initially the accused persons were present, when D grievance was made before the police that the case was one of murder and not accidental death, the accused person has absconded. Another feature, which has been rightly taken note of by the courts below, is that there was an attempt to bury the dead body hurriedly. The appellants were the inmates of the house of the deceased. Evidence of the defence witness DW-1, who E was examined to substantiate the plea that the deceased has fallen down near the well has been discarded, and in our view rightly. Though falsity of the defence plea is not enough to bring the home accusations, it provides additional link to substantiate prosecution's accusations. In *State of Karnataka* v. *Lakshmanaiah,* [1992] Supp 2 SCC 420, conduct of accused's abscondence from the date of occurrence till his arrest was considered to be a vital F circumstance.

Circumstances highlighted by the trial court, as noted above, are sufficient to bring home the accusation as has been rightly held by the trial court and the High Court against the appellants.

G Above being the position, we do not find any infirmity in the conclusions arrived at, by the trial court and confirmed by the High Court, to warrant any interference.

The appeal fails and is dismissed accordingly.

H V.M. Appeal dismissed.