A HARISHCHANDRA LADAKU THANGE

v.

STATE OF MAHARASHTRA

AUGUST 30, 2007

B [DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Penal Code, 1960—Sections 302 and 394—Conviction under, on basis of circumstantial evidence—Correctness of—Held: Prosecution case failed to establish the complete chain of circumstances to hold accused guilty—Hence, conviction set aside—Evidence—Circumstantial evidence.

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According to prosecution case, D did not return home from her field. Her son-PW 1 and others searched for her but she was not found. Then on the fifth day, FIR was lodged of accidental death. Subsequently, appellant-accused was arrested and on basis of his disclosure statement, sickle-weapon of assault and some ornaments belonging to D were recovered. The shirt of the accused and also the cloth in which the ornaments were tied had blood stains of blood group of D. It is alleged that three days prior to the incident, accused had threatened D for not paying his dues and left his job with D. On the date of incident, the accused and D were last seen together in D's field. Trial court relying on the circumstances highlighted by the prosecution, convicted the appellant for offence punishable under sections 302 and 394 IPC. High Court upheld the order. Hence the present appeal.

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Allowing the appeal, the Court

F **HELD: 1.1. It cannot be said that the complete chain of circumstances to hold the accused guilty has been established by the prosecution. The conviction cannot be maintained and is set aside. [Para 18]**

1.2. In the instant case, with regard to the last seen plea, it is to be noted that PW-4 had not actually seen the accused and the deceased together. What he had said was that the accused was present at some distance nearby the field. That actually does not bring in the concept of accused and the deceased being seen together last. If that was so, the logic equally applied to PW-4 also. Regarding recovery of sickle-weapon of assault, the High Court itself had discarded the plea of recovery. The alleged incident took place on

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1.7.89. Till 5.7.89 the dead body was not seen by anybody. According to PW-1, he and others had searched for the dead body. Curiously, the dead body was found in the field next to the one where the deceased was purportedly working. Even on 5.7.89 the case of accidental death was reported by the informant PW-1. [Paras 16 and 17] [569-C-E]

2.1. For a crime to be 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 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 form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. [Para 7] [566-B-C]

2.2. In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should 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. [Para 14] [568-C-E]

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 and Ors.,* AIR (1985) SC 1224; *Balwinder Singh alias Dalbir Singh* v. *State of Punjab,* AIR (1987) SC 350; *Ashok Kumar Chatterjee* v. *State of M.P.,* AIR (1989) SC 1890 and *Hanumant Govind Nargundkar and Anr.* v. *State of M.P.,* AIR (1952) SC 343, relied on.

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.,* AIR (1990) SC 79; *State of U.P.* v. *Ashok Kumar Srivastava,* (1992) Crl. LJ 1104; and *Sharad Birdhichand Sarda* v. *State of Maharashtra,* AIR (1984)

A **SC 1622, referred to.**

Wills by Sir Alfred Wills, **referred to**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 624 of 2001.

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From the final Judgment and Order dated14.07.1999 of the High Court of Bombay in Criminal Appeal No. 151 of 1995.

D.N.Goburdhan, Pinky Anand and Geeta Luthra for the Appellant.

C Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of the Bombay High Court upholding the conviction of accused appellant for D the offences punishable under Sections 302 and 394 of the Indian Penal Code, 1860 (in short the 'IPC').

2. The trial Court i.e. learned Sessions Judge, Thane in Sessions Case No.586/89 found the accused guilty of the aforesaid offences and sentenced the accused to undergo rigorous imprisonment for life and 5 years respectively E with default stipulation.

3. Background facts in a nutshell are as follows:

On 1.7.1989 Dwarkabai (hereinafter referred to as the 'deceased') had gone to her field alongwith Sulbha (PW-2). As the latter was fasting as it F happened to be a Monday, she was asked by the deceased to return home. Her son (PW-1) and his brother had gone out for some other work. When they returned they did not find their mother around 6.00 p.m. and therefore PW-1 asked his wife (PW-2) as to where their mother was. She replied that deceased had asked her to return home. Then PW-1 and others searched for his mother but did not find her that day and on the next two days and on G 4.7.1989 he went to his sister's house and returned on 5.7.1989 when the FIR was lodged of accidental death. Subsequently, on 6.7.89 the accused was arrested and recoveries of sickle, the weapon of assault and some ornaments were made on the basis of the alleged disclosure made by the appellant.

H After completion of investigation charge sheet was filed and the accused

faced trial. There was a motive indicated for the commission of the crime i.e. threat given by the accused to teach the deceased a lesson for not paying his dues. Certain circumstances were highlighted by the prosecution to substantiate its accusations. The trial Court found the circumstances to be sufficient to fasten the guilt on the accused and accordingly the conviction was recorded.

4. In appeal, the High Court affirmed the conviction and sentence as afore-noted.

5. In support of the appeal, learned counsel for the accused-appellant submitted that there was no evidence to link the accused with the crime. Recovery of the sickle was discarded by the High Court. As the blood group of the deceased and that of the accused was same, mere presence of blood on the clothes of the accused was not sufficient to fasten the guilt on the accused.

6. Learned counsel for the respondent-State on the other hand submitted that not only the recovery of sickle made but also the accused and the deceased were last seen together around 12.30 p.m. Thereafter, the deceased was not seen alive. According to him, circumstances highlighted by the trial Court were sufficient to hold the accused guilty. The circumstances highlighted by the trial Court are as follows:

(i) Deceased Dwarkabai has met with a homicidal death and the ornaments which she was wearing on her person at the time of her death were stolen and found missing when her dead body was discovered.

(ii) The accused had left his job with Dwarkabai on 27th June, 1989 but he was found present in her field on 1st July, 1989 at 13.00 hours when Dwarkabai was alone in the field and Dwarkabai was not seen alone any time after 1.7.1989.

(iii) The accused shirt is having the blood stains of blood group of deceased.

(iv) The recovery of the ornaments belonging to deceased Dwarkabai at the instance of accused and they were tied in the piece of cloth having blood stains of the blood group of the deceased as per the Chemical Analyser's report at Exh. 36.

A (v) The accused had demanded Rs.3,000/- on 27.6.89 and on refusal to pay the said amount by Dwarkabai and P.W. 1-Dnyanadeo, the accused had threatened them that he would see how they did not pay the same and they would come to know about the same within four days.

B 7. Before analysing factual aspects it may be stated that for a crime to be 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 C or 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 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.

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

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

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

10. 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:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; C

(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 D

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis 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." E

11. In *State of U.P.* v. *Ashok Kumar Srivastava,* (1992) Crl. 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. F

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) G H

A 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.

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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 this Court as far back as in 1952.

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14. In *Hanumant Govind Nargundkar and Anr.* 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 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."

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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 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 :

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> (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;
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> (2) the facts so established should be consistent only with the

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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; A

(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 B

(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. C

16. So far as the last seen plea of the prosecution is concerned, it is to be noted that PW-4 had not actually seen the accused and the deceased together. What he had said was that the accused was present at some distance nearby the field. That actually does not bring in the concept of accused and the deceased being seen together last. If that was so, the logic D equally applies to PW-4 also.

17. So far as the recovery is concerned, the trial Court itself had discarded the plea of recovery so far as the alleged weapon of assault i.e. sickle is concerned. Interestingly, the alleged incident took place on 1.7.89. Till 5.7.89 the dead body was not seen by anybody. According to PW-1 he and others E had searched for the dead body. Curiously, the dead body was found in the field next to the one where the deceased was purportedly working. Even on 5.7.89 the case of accidental death was reported by the informant PW-1.

18. Above being the position, it cannot be said that the complete chain of circumstances to hold the accused guilty has been established by the F prosecution. The conviction cannot be maintained and is set aside. The accused-appellant is acquitted of the charges. The bail bonds executed to release him on bail stand discharged.

19. The appeal is allowed. G

N.J. Appeal allowed.