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ROOP SINGH @ RUPA

v.

THE STATE OF PUNJAB  
(Criminal Appeal No.1307 of 2005)

JUNE 20, 2008

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[DR. ARIJIT PASAYAT AND G.S. SINGHVI, JJ]

*EVIDENCE:*

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*Circumstantial evidence – HELD: Conviction can be based on circumstantial evidence, but it should be tested by the touchstone of the law relating to circumstantial evidence – On facts, the circumstances highlighted by High Court while upholding the conviction of accused do not present a complete chain of circumstances to rule out the possibility of any other person being assailant and/or to unerringly point to the accused as being guilty of the offences charged – Conviction u/ss 302/34 and 449/34 IPC set aside – Penal Code, 1860 – ss. 302/34 and 449/34.*

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The appellant alongwith two others was prosecuted for murder of the brother-in-law of PW-7. The deceased was found dead in his house. The prosecution case rested on circumstantial evidence. The four factors, which weighed with the trial court were: (1) presence of left foot print of the appellant on the spot of occurrence, (2) finger print on the bottle of liquor found near the place of occurrence matched with right index finger of the appellant, (3) extra-judicial confession before PW 2 and (4) evidence of PW3 that he saw all the three accused together. The trial court convicted all the three accused of the offences punishable u/ss. 302/34 and 449/34 IPC. On appeal, the High Court did not find the evidence of PWs. 2 and 3 as credible and cogent and acquitted two of the accused. It, however, held the chain of circumstances as complete so far as the appellant was concerned and accordingly upheld his conviction.

**Allowing the appeal, the Court**

**HELD: 1.1 There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence. [para 10] [59-E]**

*Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh AIR 1952 SC 343; and Sharad Birdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622 - relied on.*

**1.2 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. 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. [Para 5] [57-D-G]**

*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 SC1224; Balwinder Singh v. State of Punjab AIR1987 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 A.P. and Ors. AIR 1990 SC 79; and State of U.P v. Ashok Kumar Srivastava 1992 Crl.LJ 1104 – relied on.*

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

**1.3. In the instant case, the two circumstances – presence of left foot print of the appellant on the spot and the finger print on the bottle of liquor found near the place of occurrence – highlighted by the High Court while uphold-**

A ing the conviction of the appellant do not present a complete chain of circumstances to rule out the possibility of any other person being the assailant and/or to unerringly point to the accused appellant as being guilty of the offences charged. There was no evidence led by the prosecution to show that the prints in question came into existence at the time the alleged incident took place. Conviction as recorded by the High Court cannot be maintained and is set aside. [para 2, 13-14] [56 F; H; 60 G-H; 61 A-B]

C CRIMINALAPPELLATE JURISDICTION : Criminal Appeal  
NO. 1307 of 2005

From the Judgment and Order dated 28.9.2004 of the High Court of Punjab and Haryana at Chandigarh in CrI. Appeal No. 80-DB/2004

D Rana Ranjit Singh for the Appellant.

Kuldip Singh, R.K. Pandey, T.P. Mishra and H.S. Sandhu for the Respondent.

The Judgment of the Court was delivered by

E Dr. **ARIJIT PASAYAT, J.** 1. In this appeal challenge is to the judgment of a Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellant for offence punishable under Section 302 read with Section 34 and Section 449 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The co-accused persons who were similarly convicted were acquitted by the High Court.

2. Background facts in a nutshell are as follows:

G Jarnail Singh (hereinafter referred to as the 'deceased') and his wife Nasib Kaur immigrated to Canada about 12 years earlier but had both returned to Kotla about two months before Jarnail Singh's murder on April 10, 2001. Pala Singh (PW 7) was deceased's brother in law being the husband of Nasib Kaur's sister. He also belonged to Kotla. Jarnail Singh lived in H his house in the fields, about half a kilometre from the village,

on the passage leading to Baghapurana. According to Pala Singh, he and Jarnail Singh used to sleep at night at Jarnail Singh's farm house while Nasib Kaur would sleep with her sister in Pala Singh's house.

On the evening of April 10, 2001 Nasib Kaur and Pala Singh's son Darshan Singh had gone to visit Jarnail Singh's sister in Bukhanwala. Pala Singh's grand son Jaswant Singh had taken food for Jarnail Singh to his house at about 7.30 P.M. But Jarnail Singh was not there. Later at about 9 P.M. Gurnam Singh (PW 5) came to Pala Singh and told him that someone had inflicted injuries on Jarnail Singh. Gurnam Singh had learnt about this from Assa Singh, who was employed as a guard at Jarnail Singh's house. Pala Singh alongwith Lambarder Gurmit Singh of the village went to Jarnail Singh's house and found Jarnail Singh's dead body lying on a cot. Assa Singh told Pala Singh that Jarnail Singh had come home at about 8 P.M. on a scooter and about half an hour later Jarnail Singh had come to him and told him that he had been stabbed.

Pala Singh went to the courtyard and saw Jarnail Singh's chappals lying there and a trail of blood from the courtyard to Assa Singh's cot where Jarnail Singh's dead body lay. Pala Singh immediately went to Bukanwala to fetch Nasib Kaur and his son. According to Pala Singh, Jarnail Singh was fond of drinking and would indulge even in this habit during day time.

The matter was reported by Pala Singh to Inspector Joginder Singh and his statement was recorded by the Investigating officer at Rajeana bus stand at 6 A.M. on April 11, 2001. The statement was sent to the Police Station, Baghapurana, and on its basis F.I.R. was registered at 6.30 A.M. under Section 302 IPC. Special report of the case was received by Judicial Magistrate, Moga at 10 A.M. on the same day.

Immediately thereafter Inspector Joginder Singh (PW 19) set out for the spot, which was inspected whereafter inquest report was prepared in the presence of Ajaib Singh and Lambardar Gurmit Singh. The statements of these two wit-

A nesses were also incorporated in the inquest report. After completion of the inquest proceedings, the dead body of Jarnail Singh was sent for post-mortem examination which was conducted by Dr. Navraj Singh (PW4), Civil Hospital, Moga at 12.45 PM.

B After sending the dead body for post-mortem examination, Inspector Joginder Singh continued his investigation at the spot. He lifted bloodstained earth from the spot, blood stained quilt, mattress and bed sheet were also taken into possession from the cot on which Jarnail Singh's dead body was lying. The  
C Investigating officer had actually cut the blood stained portions of the above items before taking them separately into possession. A bottle containing 100 ml of liquor, which was lying up stairs, was also recovered and taken into possession. Three  
D foot prints moulds were prepared of the foot prints found at the spot. One of these was of a right shoe and the other two were of left bare feet. Moulds were separately taken into possession. A pair of chappals was also picked up from the spot. The site plan of the place of the occurrence was prepared.

E On completion of the investigation, charge sheet was filed and since the accused persons abjured guilt, they faced trial. The trial court, as noted above, directed conviction and imposed sentence. According to the trial court the case rested on circumstantial evidence and four factors weighed with the trial court to record conviction. They were (a) finding of the left foot print of  
F the appellant on the spot of occurrence, (b) finger print on the bottle of liquor which was found near the place of occurrence matched with the right index finger of the appellant (3) there was extra judicial confession before PWs 2 and 4 evidence of  
G Wazir Singh (PW3) having seen all the three accused persons together.

H The High Court did not accept the conclusions of the trial court relating to the relevance of the evidence of PWs 2 & 3. The High Court found the same was not credible and cogent. However, relying on the other two circumstances, the High Court

upheld the conviction of the appellant while directing acquittal of the co-accused persons. The High Court noted that the chain of the circumstances was not complete so far as PWs 2 & 3 are concerned, but it is complete so far as the present appellant is concerned. A

3. Learned counsel for the appellant submitted that the conclusions of the High Court are based on surmises and conjectures and having held that the evidence of PWs 2 & 3 so far as the alleged confession, or to have seen the accused persons altogether, to be unreliable, should not have directed conviction. B C

4. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

5. 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. D E F G

6. 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 H

A SCC 193, wherein it has been observed thus:

B “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....”

C 7. 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:

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

E (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

F (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.”

G 8. 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

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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.

9. 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".

10. 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.

11. 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

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."

B 12. 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:

- D (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;
- E (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;
- F (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
- G (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.

H 13. As rightly contended by the learned counsel the appellant that the two circumstances highlighted by the High Court

while upholding the conviction of the appellant do not present a complete chain of circumstances which ruled out the possibility of any other person being the assailant and/or unerringly points to the accused appellant as being guilty of the charged offences. There was no evidence led by the prosecution to show that the prints in question came into existence at the time the alleged incident took place.

14. We, therefore, find merit in this appeal, which is allowed. Conviction as recorded by the High Court cannot be maintained. The appellant is in custody. He be released forthwith unless required to be in custody in connection with any other case. We record our appreciation for the able manner in which learned Amicus Curiae assisted the court.

15. Appeal is allowed.

R.P.

Appeal allowed