
(2009) 04 SC CK 0103

In the Supreme Court Of India

Case No : Criminal Appeal No. 744 of 2009 (Arising out of SLP (Criminal) No. 1073 of 2008)

Gamparai Hrudayaraju

APPELLANT

Vs

State of A.P. thr. Public Prosecutor

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174
Penal Code, 1860 (IPC) — Section 203, 302, 306, 498A

Citation : (2009) 2 ACR 1588 : AIR 2009 SC 2364 : (2009) 2 ALD(Cri) 19 :
(2009) 3 ALT(Cri) 126 : (2009) CriLJ 2845 : (2009) 5 JT 475 : (2009) 5 SCALE
595 : (2009) 13 SCC 740 : (2009) 6 SCR 396

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Madhu Moolchandani, for the Appellant; I. Venkatanarayana D. Bharathi Reddy and Altaf Fatima, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court dismissing the appeal filed by the present appellant who was found guilty of offence punishable under Sections 302 and 203 of the Indian Penal Code, 1860 (in short the 'IPC'). Appellant was found guilty by VII Additional Sessions Judge, Fast Track Court, Visakhapatnam.

3. Background facts in a nutshell are as follows:

One Kuda Ammaji (hereinafter referred to as the 'deceased') married one Samareddy Surayanarayana (PW-6). They were blessed with a son and a daughter. Subsequently, the deceased secured employment as A.N.M. and shifted her residence to Munchingput. Thereafter, the appellant who is a neighbour developed illicit intimacy with the deceased and started living with her. As the

appellant did not allow the children of deceased to stay with her, PW-1 the sister of the deceased brought them to Serivayalu village and was looking after them.

While so, on 21.6.2001, at 06.00 p.m., one Gampari Baburao told P.W. 5 that the deceased was seriously ill and asked him to bring ambulance of Primary Health Center, immediately. When P.W. 5 brought the same, the deceased sent him back saying that she was not ill. Thereafter, within ten minutes, the appellant and Baburao asked P.W. 5 to come with the ambulance on the ground that the deceased was sick. The deceased was shifted into the ambulance by the appellant in his arms and taken to Primary Health Center. At about 09:00 p.m., on the same day, she was declared dead.

On 22.6.2001, at about 7.30 a.m. based on the report presented by the appellant, the Sub Inspector of Police (P.W. 10) registered a case in crime No. 26 of 2001 u/s 174 of Code of Criminal Procedure, 1973 (in short the 'Code'). Later, during the inquest on the report given by P.W. 1, the sister of the deceased, P.W.10 altered the sections of law to Sections 498A and 306 IPC and issued altered First Information Report. On 23.6.2001, on his surrender before P.W.10, the appellant was arrested and remanded to judicial custody. On 30.6.2001, the Sub Inspector of Police, P.W. 9, based on the questionnaire, Ex. P6, given by the Civil Assistant Surgeon (PW-8) altered the section of law to Section 302 IPC and after completion of investigation, PW-11 filed the charge sheet. As accused pleaded innocence, trial was held.

4. In support of its case the prosecution examined PWs 1 to 11 and marked Exs. P1 to P11. On behalf of defence Exs. D1 and D2 (relevant portions in the statements of PWs and 2) recorded u/s 161 of Code were marked.

5. The Trial Court came to the conclusion that though the prosecution failed to establish a strong motive for the appellant to cause the death of the deceased, in view of the circumstantial evidence held that the death of the deceased was homicidal. Since only the appellant and the deceased were staying in the house at the relevant point of time, it found the appellant guilty, convicted him and sentenced him to undergo imprisonment for life and SI for three months for the offences punishable under Sections 302 and 203 respectively.

6. Before the High Court it was stated that there was no material to show that the death of the deceased was homicidal. It was pointed out that in case of smothering, the death would have been instantaneous. But the trial Court recorded a finding that the deceased was alive till 9.00 p.m. and, therefore, it cannot be said that the death was homicidal. It was also pointed out that the doctor who treated the deceased was not examined. The stand of the State was that there was a fracture to thyroid cartilage and this certainly was not due to the natural death. The High Court held that the case was one of circumstantial evidence. Strangely, the High Court did not analyse the evidence of PWs 4 and 5. The High Court found that the prosecution case although rested on circumstantial evidence, it clearly established the guilt of the accused.

7. In support of the appeal, learned Counsel for the appellant submitted that the circumstances highlighted do not in any way fasten the guilt of the accused.

8. Learned Counsel for the respondent on the other hand supported the judgment.

9. We find that the High Court has not referred to any circumstance which could fasten guilt on the accused. PWs 1 and 2 i.e. sisters of the deceased stated that the ill feelings prevailed in between the appellant and the deceased with regard to the children of the deceased born through her first husband (PW-6). PWs 4 and 5 stated that the deceased came to the house of PW-4 and just wished her and left the house. Ten minutes thereafter the appellant came to her and informed that he was going to Primary Health Centre to bring ambulance to attend to the deceased. Then she went to the house of the appellant and found that the deceased was all right and when the ambulance came the deceased sent the same back saying that she was doing well. After some time, ambulance came and the appellant and the deceased went in it. The evidence of PWs 5 and 6 cannot constitute sufficient evidence against the accused to fasten the alleged offences.

10. 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 Vs. State of Rajasthan*, ; *Eradu and Others Vs. State of Hyderabad*, ; *Earabhadrapa v. State of Karnataka* : 1983CriLJ846 ; *State of U.P. Vs. Sukhbasi and Others*, ; *Balwinder Singh alias Dalbir Singh Vs. State of Punjab*, ; *Ashok Kumar Chatterjee Vs. State of M.P.*,). 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 Vs. State of Punjab*, , 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.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Others Vs. State of Andhra Pradesh*, , wherein it has been observed thus:

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....

12. In *Padala Veera Reddy Vs. State of Andhra Pradesh and others*, , 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;
- (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
- (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.

13. In *State of U.P. Vs. Ashok Kumar Srivastava*, , 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.

14. 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".

15. 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 laid down by the this Court as far back as in 1952.

16. In *Hanumant Vs. The State of Madhya Pradesh*, , 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.

17. A reference may be made to a later decision in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, . 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:

(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.

18. These aspects were highlighted in *State of Rajasthan Vs. Raja Ram*, , *State of Haryana Vs. Jagbir Singh and Another*,

19. That being so, the prosecution has failed to establish the accusations, and the conviction cannot be maintained and is set aside. The appellant shall be set at liberty forthwith unless required to be in custody in connection with any other case.

20. The appeal is allowed.