
(1993) 08 SC CK 0054

In the Supreme Court Of India

Case No : Criminal Appeal No. 610 of 1990

Gokaraju Venkatanarasa Raju

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 24-08-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1993) 3 Crimes 235 : (1993) 5 JT 71 : (1993) 3 SCALE 495 : (1993) 4 SCC 191 Supp : (1993) 1 SCR 737 Supp

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Advocate : K.K. Gupta, for the Appellant; G. Prabhakar, for the Respondent

Final Decision : dismissed

Judgement

G.N. Ray, J.—This appeal is directed against the conviction of the appellant, Shri Gokaraju Venkatanarasa Raju, under Sections 302, 404 and 201 I.P.C. and sentence to suffer imprisonment for life u/s 302 IPC, rigorous imprisonment for a period of one year u/s 404 I.P.C. and rigorous imprisonment for two years u/s 201 I.P.C. passed by the learned Sessions Judge, Guntur Division on March 31, 1981 in Sessions Case No. 35 of 1981, since affirmed by the Division Bench of Andhra Pradesh High Court by its judgment dated April 27, 1984 in Criminal Appeal No. 767 of 1981.

2. The prosecution case in short is that the deceased Ramabhadra Raju was aged 21 years and was the son of PW. 1 Ramaraju. The accused, Gokaraju Venkatanarasa Raju and his brother were making their living by tending ducks. In the month of October, 1970 he was living as a tenant in a portion of the house belonging to the sister of PW. 11 at Kakinada. The accused became acquainted with PW.5 who was an employee in Gokul biscuit works at Kakinada and also with PW.8 who was an employee in a shop. The deceased, Ramabhadra Raju, was married on April 10, 1980 and the wife did not join him after the marriage before his death. The deceased received a gold chain and a gold ring with a figure of

Lord Venkateswara embossed on it from his parents-in-law as presents in the marriage. He also received a wrist watch from his parents-in-law, which he exchanged with his father, PW. 1 for a H.M.T. Kohinoor watch. In the year 1980 the deceased and PW.2 joined first year class of B.A. Degree and PW.3 jointed first year class of B.Sc. degree in a college at Nidubrolu. For some time PWs.2 and 3 and the deceased used to go to Nidubrolu every day by bus from distant places, they started living in a room in the house of PW. 1 at Nidubrolu on rent. The deceased and the said two friends were cooking their own food where they were staying. On October 27, 1980, at about 7 or 7.30 P.M., the accused went to the deceased in his room and had told him that he had come to Ponnur to witness a cinema show. The deceased, PWs.2 and 3 accompanied the accused. After reaching the railway level crossing, the accused and the deceased went in the direction of the railway track to answer call of nature and PWs. 2 and 3 proceeded towards Ponnur for purchase of notebooks. After some time, PWs.2 and 3 came back and thereafter the accused and deceased also returned to the room where they had been living. While the accused was taking leave from the deceased, the deceased addressed the accused in a language which could be understood by the accused only and the accused replied that not on that day but day after. After saying so, the accused left the place. On October 29, 1980, P.W.2 had seen the deceased with the shirt (M.O.1), white lungi (M.O.2) and also a pair of sleepers (M.O.3) which belonged to P.W.3. The deceased told to P.W.2 that he was going to bazar and that he would be returning soon. A little later PW.3 returned from Khajipalem and enquired about the whereabouts of the deceased when PW.2 informed PW.3 that the deceased had gone to the bazar. On October 29, 1980, at about 8.30 P.M., while P.W.17 was at, the bus stop waiting for a bus to go to Cherukuplalli, he found the accused and the deceased near a bund close to the bus stop. The said witness, PW.17 had a/so seen both of them going together crossing the road and smoking cigarettes. The deceased informed PW.17 that as his father had asked him to go urgently, he was going to the village along with the accused by bus which was ready to start. PW.17 however, noted that instead of boarding the bus, the deceased and the accused were seen proceeding towards the drainage channel bund. PW.17 became curious and questioned the accused and the deceased as to why they had been going on the other side when they should board the bus but. the accused and the deceased moved away without answering such question. In the early hours of October 30, 1980, PW.18 while proceeding alongside the drainage channel bund, saw the accused coming from the opposite direction near Venkataraju Pump. The said PW.18 accosted the accused and the accused replied that he had been returning from Ponnur after seeing a cinema. As the deceased did not return to the room even on October 31, 1980, PWs.2 and 3 went to Khajipalem in the afternoon and apprised PW. 1 and 4, namely, the father and the brother of the deceased about the disappearance of the deceased from October 29, 1980. Thereafter, enquiries were made by PWs. 1 and 4 with the relations residing in the neighbouring villages about the whereabouts of the deceased. On October 31, 1980 at about 2.00 P.M., the accused met PW.5 at Kakinada near Raju's hotel. The accused

went to the shop of PW.8 and informed him that he was in some financial difficulty due to loss in the business of ducks. The accused then sought the help of PW.8 in disposing of the gold ring (M.O.5) to PW.9. The accused was taken to PW.9 who was a Pawan broker. PW.8 and the accused got the gold ring (M.O.5) weighed at Dharamakata. PW.9 purchased, the gold ring (M.O.5) from the accused for Rs. 950/-. In the evening on the same day when PW.5 met the accused again, the accused showed him the gold chain (M.O.4) and sought for his help in disposing of the gold chain (M.O.4). Next day, the accused went along with PW.6 who was the owner of the silver ware shop and he sold the gold chain (M.O.4) for Rs. 1450/-. The accused along with PW.5 went to the cloth shop where he purchased cloth for pant and shirt and gave them to the tailor, PW.12, for stitching. The same evening the accused went along with PW.5 and purchased a suitcase (M.O.7). The accused took delivery from PW.12 of the pant (M.O.8) and the shirt (M.O.9). On November 3, 1980, the accused along with P.W.5 went to the bus stand saying that he would return back to the village. He purchased a ticket for Bhimavaram and boarded the bus. Before leaving, the accused handed over a bag (M O.6) to PW.5 saying that he would come back within 15 days and would take the bag from him. On November 5, 1980, the accused pledged M.O. 6 and borrowed a further sum of Rs. 55/- from PW.7 by keeping the said bag (M.O.6) as security.

3. On November 2, 1980, some colleagues of the deceased met the father of the deceased and informed him that they had been searching for their missing classmate but they could not trace him, On November 3, 1980, PW.1, father of the deceased went to the police station and submitted a report and a case being Crime No. 208/80 under the heading 'Man Missing' was registered. Ex.P-21 is the F.I.R. for the said case. PW.21 the police officer examined PWs.2 and 3 and recorded their statements, On November 5, 1980, PWs. 2 and 3 informed PW.1 about what happened on the night of October 27, 1980. On November 6, 1980, the accused met PW.16 at night at his house and requested PW.16 to got two of his shirts for wash. The accused told PW.16 that he would come back on November 8, 1980 and collect the shirts. The accused went away, leaving the suitcase with PW.16. On the very same day, PWs. 1 and 2 went to PW.16 and enquired about the accused." The accused having come to know that PW.1 was in search of him went ,to PW.16 and told him that PW.1's son was reported to have been murdered and that he was being suspected in that connection. The accused requested PW.16 that he should inform the people enquiring about him that he had stayed with him but PW.16 expressed his reluctance to speak falsely. On November 17, 1980, PW. 1 located the accused in his house and questioned him as to the whereabouts of the deceased. The accused pleaded ignorance of the matter. When PW.4 went to Tenali and met PW.16 on November 7, 1980 and questioned him, PW.16 informed PW.4 as to what happened and handed over M.Os 7 to 12 to him. PW.4 apprised his father, PW.1 about what PW.16 had told him. Thereafter, he proceeded to Kakinada and met PWs. 5 to 12. He showed the photograph of the deceased to PW.5 and to the tailor, and asked the tailor

whether the person in the photograph had come to his shop. The tailor replied that no such person had come to his shop. PW.4 handed over M.Os. 7 to 12 at the Ponnur Police Station and the said articles were seized. On the evening of November 18, 1980, PW.16 sent a phone message to PW.1 to go over to Tenali since the accused was apprehended at Tenali. He immediately proceeded to Tenali and brought the accused to his village. On November 19, 1980, the accused was interrogated at the house of PW.1 in the presence of PWs.1 and 24 and several others. The accused made a statement to the effect that on the night of October 28, 1980 when he met the deceased at Chandole, he promised to bring a prostitute for him and both of them went to the sand heaps between Chandole and their villages and sat there for some time waiting for the call girl to turn up. The accused also told that on the pretext of urinating he went aside and loosened the cycle chain which was tied round his waist and that he approached the deceased from behind and strangled him to death. He removed the gold chain, ring and the watch (M.Os. 4 to 6) from the body of the deceased, and thereafter dragged the deceased to a nearby palmyrah tree and tied his neck with the hands of the deceased behind his back with palmyrah leafs and later he threw away the cycle chain. Thereafter he dug a pit at the scene of offence, pushed the dead body into the pit and covered it up with sand leaving M.Os 2 and 3 in the pit itself. He also told them that he went to Kakinada and disposed of M.Os. 4 and 5 with the assistance of PW.5 and he purchased a new suitcase and got new clothes stitched at Kakinada and went to Tenali where he met PW.16 and he left the clothes for being ironed after telling PW.16 that he would come back and collect the clothes. On such statement of the accused, PW.1 called for the village Munsif, PW.19, who also questioned the accused and the accused admitted that he had murdered Ramabhadrarain in the fields near Chandole and buried the dead body. The accused led PWs. 1, 2 and 19 and others to the sand mounds where the dead body of the deceased was found in the pit. PW.1 identified the dead body as that of the deceased, Ramabhadraraju. PW.19 thereafter recorded the statement of PW.1 and prepared the Crime Report, PW.22 on receipt of the report, altered the crime as one u/s 302 IPC and sent the reports to all the authorities concerned. PW.22 after inquest recorded the statements of material witnesses and after completion of investigation lodged the chargesheet against the accused. On November 26, 1980, PW. 19 and another conducted an identification proceedings during which PWs.1 to 4 identified M.Os. 4 to 6 as the articles belonging to the deceased. When questioned u/s 313 Cr. P.C., the accused pleaded innocence. The learned Sessions Judge on a consideration of the facts and circumstances of the case, came to the finding that the prosecution had proved the case beyond all reasonable doubts. Accordingly, he convicted and sentenced the accused as stated hereinbefore.

4. At the hearing of the appeal, the learned Counsel for the appellant submitted that the learned Sessions Judge erred in believing the prosecution evidences which were discrepant and the circumstances were quite insufficient to base the conviction of the appellant. It may be indicated here that the learned Sessions

Judge after consideration of the evidences came to the following findings:

- i) that the accused committed the murder of the deceased for gain and that there was a strong motive for the commission of the offence.
- ii) that the deceased, Ramabhadra-raju, was last seen in the company of the accused on which occasion he was having M.Os. 4 to 6 on his person and the accused was found in possession of these M.Os. within a couple of days after he was seen in the company of the deceased. The accused sold M.Os. 4 and 5 to PWs. 6 and 9 with the assistance of PW.5 on October 31, 1980 and he pledged M.O.6 to PW.7 on November 6, 1980.
- iii) when the dead body was discovered at the instance of the accused in pursuance of the statement made by him in presence of PWs. 1, 2, 4 and 10, M.Os. 4 to 6 were found to be missing on the dead body.
- iv) the accused made the statement on November 19, 1980 in the presence of PWs. 1, 2, 4, 6 and 19 which was in the nature of confessional statement, admitting to have committed the murder of Ramabhadraraju in the manner recorded in the statement, Ex.P-2. The accused also made an extra judicial confession as recorded in Ex.P-10 by PW.13.

5. It may be indicated here that after the dead body was found from the pit in a highly decomposed condition, the postmortem examination was held on the dead body and the doctor, PW.14's evidence was to the effect that the death of the deceased was due to homicidal violence. According to the doctor, the hyoid bone was broken into pieces which suggested that a stronger force than mere application of hands was applied and such injuries were possible by the use of a cycle chain or a stick and if the hyoid bone is fractured as in the instant case, the wind pipe would automatically be closed leading to instantaneous death. The doctor opined that the death of the deceased must have occurred on account of strangulation and such death had occurred within three hours after the last meal. According to the doctor, the deceased had died about 20 days prior to the post mortem examination.

6. The High Court accepted the finding made by the learned Sessions Judge and came to the finding that although there was no eye-witness of the actual occurrence but on the basis of the materials on record, and various circumstances referred to by the learned Sessions Judge the guilt of the accused was established beyond reasonable doubt, It is the specific finding of the High Court that the cumulative effect of all the circumstances which the prosecution had established conclusively proved the guilt of the accused. The High Court also accepted the extra judicial confessions made by the accused made before PWs. 1, 2, and 4 and on another occasion before PW.9 and thereafter before PW.13. The High Court agreed with the learned Sessions Judge that the extra judicial confessions were voluntary in nature and were true and such statements were made without any inducement or threat from any person in authority. In that view of the matter, the High Court dismissed the appeal by upholding the

conviction and sentence passed against the accused.

7. At the hearing of this appeal, the learned Counsel for the appellant has contended that the circumstantial evidence on the basis of which the complicity of the accused was found by the learned Sessions Judge and the High Court, were not absolutely clinching. The learned Counsel has further contended that even the identity of the dead body was highly doubtful because the dead body was found in a highly decomposed state and that the identity of the deceased was beyond recognition. He has contended that simply because some wearing apparel could be recognised by the relations lying near the dead body, it cannot be held beyond all reasonable doubts that the dead body of the deceased was recognised. The learned Counsel has contended that in the advertisement for the missing person, Ramabhadraraju, the description of the gold ornaments were not properly given, He has submitted that it was reasonably expected that such description should have been given in the advertisement very accurately so that the identification was possible. In the absence of such description it is not at all improbable that the articles M.Os.4 to 6 were later on connected with the articles stated to have been missing, from, the person of Ramabhadraraju when he was last seen. The learned Counsel has contended that the missing person, namely, Ramabhadraraju, had been staying with two classmates in a room and the room-mates immediately did not inform the father about the disappearance of their room-mate. Their conduct was far from being satisfactory and was quite doubtful. It is not unlikely that they were involved in the commission of murder for some material gain or for any other reason. The learned Counsel has contended that although in the facts and circumstances of the case, there may be occasions for a strong suspicion against the accused, such suspicion cannot take the place of requirement of proof. He has contended that law is well settled that for sustaining a conviction on the basis of circumstantial evidence, the circumstantial evidence must be convincingly established and such circumstantial evidence must be such as would complete the chain so as to leave no room for doubt against the complicity of the accused. In the instant case, according to the learned Counsel for the appellant, there are missing links. As such, no conviction can be based on the alleged circumstantial evidence. He has, therefore, submitted that the appeal should be allowed and the conviction and sentence should be set aside.

8. Such contention, however, was opposed by the learned Counsel for the State. It has been submitted that in the instant case the circumstantial evidences are so clear and specific that there was no room for doubt about the complicity of the accused and both the learned Sessions Judge and the High Court have accepted such circumstantial evidence as clinching and firm thereby establishing the guilt of the accused and have convicted the accused. The learned Counsel for the State has submitted that the appeal should be dismissed.

9. The principles for convicting a person on circumstantial evidence have been indicated in a number of decisions of this Court. In *Deonandan Mishra Vs. The*

State of Bihar, , this Court has indicated that in order to convict a person on circumstantial evidence, the circumstances relied upon in support of the conviction must be fully "established and the chain of evidence furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. It has been further held that in such cases, not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated by this Court in *Vidyasagar v. State* 1977 Cr.LJ. 950 (SC) that where the evidence against the accused is circumstantial, in order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. In various decisions, this Court has put a note of caution that the circumstances should be of conclusive nature and must not remain in the realm of suspicion, however grave it may be. The charge of murder like any other charge of an offence, can be established by inferences but when there is extremely little by way of direct evidence, it is due to the accused that there should be no exaggeration of minor incidents in the case and that each inference should be verified with scrupulous accuracy. It should be remembered that circumstantial evidence in order to furnish a basis for conviction requires a very high degree of probability, that is, so sufficiently high that a prudent man considering all the facts and ruling that the life or liberty of the accused depends upon the decision, feels justified in holding that the accused has committed the crime. In a very recent judgment in *Jaharlal Das Vs. State of Orissa*, , this Court has very succinctly summarised the principles governing the conviction on circumstantial evidence. It has been indicated in the said decision that (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, (iii) 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 it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

10. In the said decision, this Court has also struck a note of caution that in cases depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. But it has been indicated that the gravity of the offence cannot by itself overweigh so far as legal proof is concerned. It has also been indicated that when the main link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable doubts. It is at this juncture, the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof. At times, it can be a case of 'may be true' and not 'must be true' and the same divides

conjectures from sure conclusions.

11. Keeping the above principles in mind, it is to be ascertained as to whether in the instant case, the circumstantial evidence has clearly proved the guilt of the accused beyond all reasonable doubts, and the conviction does not lie in the realm of suspicion, however grave it may be. We have taken into consideration the facts established in the instant case and the reasonings given by the learned Sessions judge and the High Court and it appears to us that the prosecution has established beyond all reasonable doubts that the accused was guilty of the offence charged against him. The circumstances established in the instant case clearly establish the chain so complete that there is no escape from the conclusion that the crime had been committed by the accused and none else and it is incapable of explanation or any other hypothesis consistent with the innocence of the accused. That apart, there are extra judicial confessions in this case as indicated hereinbefore and it has been held by the learned Sessions Judge and by the High Court that such confessions had been voluntarily made without any threat, inducement or promise from any person in authority. Both the Courts have held that the extra judicial confessions made by the accused were not only voluntary but the same were true. Hence, apart from the circumstantial evidence, the extra judicial confessions fully consistent with the circumstantial evidences establish the guilt of the accused. We are not inclined to accept the submissions made by the learned Counsel for the appellant that the factum of murder could not be established beyond reasonable doubt because the body exhumed was highly decomposed and could not be properly identified. The father and near relations had identified the body and it appears to us that despite the decomposition it was possible to be identified by the near and dear ones. In the aforesaid circumstances, we find no merit in this appeal and the same is, therefore, dismissed.