

A

VITHAL EKNATH ADLINGE

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 662 of 2007)

FEBRUARY 27, 2009

B

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Penal Code, 1860:

C

s. 302 – Murder – Conviction on basis of circumstantial evidence – HELD: The cumulative effect of the circumstances, when considered in the background of legal principles enshrined in the decisions of the Court, make it clear that the accusations have been established by the prosecution –

D

Circumstances highlighted by the trial court and the High Court to find the accused guilty cannot be termed as perverse – Conviction and sentence as recorded by trial court and affirmed by High Court, upheld – Circumstantial evidence.

E

The accused-appellant was convicted u/s 302 IPC on the evidence establishing the circumstances that he was last seen with the victim, the victim was lying dead in the pool of blood and accused was not there, previous enmity and, therefore, intention to commit the murder

F

was proved; and the witnesses clearly referred to the conduct of the accused for ill-treating and harassing the victim prior to the date of incident. The High Court having upheld the conviction, the accused filed the appeal.

G

Dismissing the appeal, the Court

HELD: The cumulative effect of the circumstances, when considered in the background of legal principles enshrined in the decisions of the Court, it is but clear that the accusations have been established by the

H

prosecution. The finding recorded by the trial court and the High Court, on the basis of the circumstances highlighted holding the accused guilty, cannot be termed as perverse. Though the High Court's judgment is not very elaborate, but that cannot take away the effect of elaborate discussions made by the trial court to find the accused guilty. The conduct of the accused also cannot be lost sight of. He was absconding for 7 days. The appeal has no merit. [Para 18] [541-E-G]

Sharad Birdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622, relied on.

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; *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. and Ors.* AIR 1990 SC 79; *State of U.P. v. Ashok Kumar Srivastava*, 1992 CrI.LJ 1104; *Hanumant Govind Nargundkar and Anr. Vs.. State of Madhya Pradesh* AIR 1952 SC 343; *State of Rajasthan v. Raja Ram* 2003 (8) SCC 180; *State of Haryana v. Jagbir Singh and Anr.* 2003 (11) SCC 261; *Kusuma Ankama Rao v State of A.P.* 2008 (10) SCR 89; *State of U.P. v. Satish* 2005(3) SCC 114; *Ramreddy Rajeshkhanna Reddy v. State of A.P.* 2006 (10) SCC 172 and *Jaswant Gir v. State of Punjab* 2005 (12) SCC 438; *Manivel and Ors. V. State of T.N.* 2008 (11) SCR 1036, referred to.

"Wills' Circumstantial Evidence" (Chapter VI) by Sir Alfred Wills, referred to.

Case Law Reference:

AIR 1977 SC 1063 referred to para 6

A	AIR 1956 SC 316	referred to	para 6
	AIR 1983 SC 446	referred to	para 6
	AIR 1985 SC 1224	referred to	para 6
B	AIR 1987 SC 350	referred to	para 6
	AIR 1989 SC 1890	referred to	para 6
	AIR 1954 SC 621	referred to	para 6
C	(1996) 10 SCC 193	referred to	para 7
	AIR 1990 SC 79	referred to	para 8
	1992 CrLJ 1104	referred to	para 9
D	AIR 1952 SC 343	referred to	para 12
	AIR 1984 SC 1622	relied on	para 13
	2003 (8) SCC 180	referred to	para 14
E	2003 (11) SCC 261	referred to	para 14
	2008 (10) SCR 89	referred to	para 14
	2005(3) SCC 114	referred to	para 14
F	2006 (10) SCC 172	referred to	para 16
	2005 (12) SCC 438	referred to	para 17
	2008 (11) SCR 1036	referred to	para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 662 of 2007.

G From the Judgment & Order dated 20.10.06 of the High
Court of Judicature of Bombay in Criminal Appeal No. 324/
2002.

Sushil Karanjakar and K.N. Rai for the Appellants.

H

Anjani Kumar Mishra and Ravindra Keshavrao for the Respondent. A

The Judgment of the court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). B

2. Prosecution version in a nutshell is as follows: C

On 13.2.1986 Police Head Constable Dinkar Shankar Dumbre (PW-1) was attached to Railway Police Head Quarters at Ghatkopar. At the relevant time, his nature of work was to receive the telephonic message from outside and convey the said message to the Railway Reserve Inspector. On 13.2.1986 at about 1845 hrs. Mr. Gavade Head Constable came and informed Dinkar Dumbre (PW1) that in Room No.41 of building No.24, one lady is lying in injured condition in a pool of blood. The said constable also informed that he came to know about the said fact from the ladies residing in the said building. On receipt of this message Dinkar Dumbre (PW1) proceeded to the place of incident. He noticed one lady lying in pool of blood in the bath room of the house. Dinkar Dumbre (PW1) appointed one police constable to guard the said place of incident and he proceeded to inform the said fact to RSI, Caze. Dinkar Dumbre (PW1) also informed the above said fact to Tilak Nagar police station. The police from Tilak Nagar police station arrived at the place of incident. The statement of PW1 was recorded by Tilak Nagar police which was treated as First Information Report. After investigation, charge sheet was filed. D E F G

Prosecution examined 12 witnesses to substantiate its accusations and the trial was held as the accused pleaded innocence. H

A The trial Court found the evidence to be sufficient to fasten the guilt on the accused. Questioning the conviction and the sentence of imprisonment for life as awarded by learned Additional Sessions Judge, Greater Bombay, an appeal was
B dismissed by the impugned judgment. As the case rested on circumstantial evidence the trial Court and the High Court analysed the evidence with great detail and held the accused guilty. The appeal did not bring any relief.

C 3. In support of the appeal, learned counsel for the appellant submitted that the circumstances have not been established to find him guilty.

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

D 5. The circumstances highlighted by the trial Court and the High Court to find the accused persons are as follows:

(i) That the accused and the victim were last seen together;

E (ii) The victim was lying dead in the pool of blood and the accused was not there.

(iii) Previous enmity and therefore intention to kill is proved;

F (iv) PWs 6 and 7 clearly refer to the conduct of the accused for ill treating and harassing the victim prior to the date of incident.

G 6. 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);
H *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.

7. 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 SCC 193, 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....”.

8. 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:

“(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;

A (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

B (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.

C 9. 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.

E 10. 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".

H

11. 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. A

12. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*, (AIR 1952 SC 343), wherein it was observed thus: B

“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.” C D E

13. 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: F G

(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;

- A (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;
- B (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
- C (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.
- D 14. These aspects were highlighted in *State of Rajasthan v. Raja Ram* (2003 (8) SCC 180), *State of Haryana v. Jagbir Singh and Anr.* (2003 (11) SCC 261) and *Kusuma Ankama Rao v State of A.P.* (Criminal Appeal No.185/2005 disposed of on 7.7.2008).
- E 15. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In *State of U.P. v. Satish* [2005 (3) SCC 114] it was noted as follows:
- F "22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases
- G to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it

H

would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

16. In *Ramreddy Rajeshkhanna Reddy v. State of A.P.* [2006 (10) SCC 172] it was noted as follows:

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration".

(See also *Bodh Raj v. State of J&K* (2002(8) SCC 45).)"

17. Similar view was also taken in *Jaswant Gir v. State of Punjab* [2005(12) SCC 438], Kusuma Ankama Rao's case (supra) and *Manivel and Ors. v. State of T.N.* (Crl.A. No. 473 of 2001 disposed of on August 8, 2008),

18. The cumulative effect of the circumstances, as highlighted above, when considered in the background of legal principles stated supra it is but clear that the accusations have been established by the prosecution. The circumstances highlighted by the trial Court and the High Court to find the accused guilty cannot be termed as perverse. Though the High Court's judgment is not very elaborate, but that cannot take away the effect of elaborate discussions made by the trial Court to find the accused persons guilty. The conduct of the accused cannot be also lost sight of. He was absconding for 7 days. Above being the position, there is no merit in this appeal which is accordingly dismissed.