

RAJU

V.

THE STATE BY INSPECTOR OF POLICE
Criminal Appeal No. 334 of 2009

FEBRUARY 19, 2009

(DR. ARIJIT PASAYAT, DR. MUKUNDAKAM SHARMA
AND H.L. DATTU, JJ.)

Penal Code, 1860:

S.302, 341 Part I – Trial Court convicting the appellant-accused under s.302 IPC – High Court altering it to one under s.341 Part I IPC- Correctness of – Held : Trial Court and High Court rightly held the appellant to be the author of the crime – High Court rightly altered the conviction from s.302 to s.341 IPC – Hence no interference called for – Circumstantial evidence.

The appellant-accused was convicted under s.302 IPC by the trial court. High Court altered the conviction to one under s.341 Part I IPC. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1. 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. [Para 7] [789-H; 780-A]

Hukam Singh v. State of Rajasthan AIR 1977 SC 1063; Eradu and Ors. v. State of Hyderabad AIR 1956 SC 316; Earabhadrapappa 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 and Ashok Kumar Chatterjee v. State of M.P. AIR 1989 SC 1890 – relied on.

A 2. 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 7] [790-C]

B *Bhagat Ram v. State of Punjab* AIR 1954 SC 621 – relied on.

C 3.1 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 laid down by the this Court as far back as in 1952. [Para 12] [792-B]

D 3.2 In the instant case, PW-7's evidence is clear and cogent. His presence at the spot has been established. He used to have business transactions with the deceased. He stated about the present appellant holding a handle of soil cutter. Though the deceased and the present appellant were engaged in exchange of hot words, that could not have given an impression to PW-7 that accused would take the life of the deceased.

E Therefore, the fact that he left the place on being told by the deceased to do so cannot be a ground to dis-believe his evidence. According to him he had seen the deceased and the accused engaged in wordy tussle around 9.00 p.m. The wife of the deceased PW-1 found his dead body

F at about 9.30 p.m. The time gap when the deceased was last seen alive in the company of the accused and when his dead body was seen is not very large. Admittedly, the bone of contention between the deceased and the accused was non payment of the commission on account of which they were quarreling. The trial Court and the High

G Court have rightly held the appellant to be the author of the crime. No infirmity is found in the conclusion of the High Court to warrant interference. [Para 16] [793-F-H; 794-A-B]

H *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 Crl.LJ 1104; *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*, AIR 1952 SC 343; *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622; *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. (Criminal Appeal No.185/2005 disposed of by S. C. on 7.7.2008)* and *Manivel and Ors. v. State of Tamil Nadu (Criminal Appeal No.473 of 2001 disposed of by S.C. on 8.8.2008)* – relied on.

Sir Alfred Wills: "Wills' Circumstantial Evidence" (Chapter VI) – referred to.

Case Law Reference

AIR 1977 SC 1063	relied on	Para 7	D
AIR 1956 SC 316	relied on	Para 7	
AIR 1983 SC 446	relied on	Para 7	
AIR 1985 SC 1224	relied on	Para 7	
AIR 1987 SC 350	relied on	Para 7	E
AIR 1989 SC 1890	relied on	Para 7	
AIR 1954 SC 621	relied on	Para 7	
(1996) 10 SCC 193	relied on	Para 8	
AIR 1990 SC 79	relied on	Para 9	F
1992 Crl.LJ 1104	relied on	Para 10	
AIR 1952 SC 343	relied on	Para 13	
AIR 1984 SC 1622	relied on	Para 14	G
2003 (8) SCC 180	relied on	Para 15	
2003 (11) SCC 261	relied on	Para 15	

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 334 of 2009

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A From the final Judgement and Order dated 12.02.2008 of the Madurai Bench of Madras High Court in Criminal Appeal (MD) No. 625 of 2007.

B K.K. Mani, CKR Lenin Sekar, Mayur R. Shah, for the Appellants.

V. Kamagaraj, S. Thananjayan for the Respondents.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

C 1. Leave granted.

D 2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court altering the conviction of the appellant from offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') to Section 341 Part I IPC and sentencing him to undergo rigorous imprisonment for seven years.

E 3. By the common judgment two Criminal Appeals were disposed of. Appeal filed by K. Periyapandian, the co-accused, was allowed and he was acquitted.

4. Background facts in a nutshell are as follows:

F PW-1 is the wife of Virupachi Gounder @ Palanichami Gounder (hereinafter referred to as the 'deceased') and PWs 3 and 4 are the sons of the deceased. PWs 3 and 4 were living in Virupachi. PW-1 and the deceased were living in Balassamudhram. The deceased was doing money lending business and accused Nos. 1 and 2 were actually working as brokers for commission under the deceased and they were G aggrieved that proper commission was not paid to them. The accused complained to P.Ws.3 and 4 about the conduct of the deceased and in turn P.Ws.3 and 4 have informed P.W.1 that their father should take care since both the accused might do mischief.

H While the matter stood thus, P.W.7, who had got financial

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transactions with the deceased, on the date of occurrence, i.e. 05.04.2005, went to Balasamudhram to get some amount from the deceased, got down from the bus, went to the nearby tea shop and enquired about the deceased. He was informed that the deceased, along with both the accused, was proceeding to his place and when P.W.7 went over there he found accused Nos.1 and 2 and the deceased were quarreling over the payment of commission and at that time P.W.7 was asked by the deceased what was the reason for his visit. P.W.7 answered that he had come to get some money and P.W.7 was informed by the deceased that he had no money and he was asked to come after four days and P.W.7 in turn returned leaving the deceased and accused 1 and 2 there.

Till 9.00 p.m. on 05.04.2005 the deceased did not return home and hence at about 9.30 p.m. P.W.1 went in search of her husband and she found at the place of occurrence the dead body of her husband. Immediately she informed to P.W.2, who in turn informed to P.Ws.3 and 4 who, also came there and saw the dead body. Thereafter, P.W.1 proceeded to the Police Station, gave a complaint, (which is marked as Ex.P-1) to P.W.13, the Head Constable, at about 4.00 a.m. on 06.04.2005. On the strength of Ex.P-1, P.W.13 registered a case in Crime No.293/2005 under Section 302 IPC and prepared Ex.P-12, the First Information Report and the same was despatched to the Court through PW-11, the Head Constable.

The Inspector of Police (PW-15) received the copy of the FIR, proceeded to the place of occurrence, made an observation in the presence of witnesses and prepared Ex.P-5, the observation mahazar and also drew Ex.P-17, the rough sketch. He caused the place of occurrence to be photographed in different angles by P.W.8, the photographer and Ex.P-2 series are the photographs and their negatives. He recovered M.O.1, the torch light, M.O.2, the umbrella, M.O.3, the bloodstained dhoti, M.O.4, the bloodstained Shawl, M.O.5, the bloodstained earth and M.O.6, the sample earth from the place of occurrence under

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A a cover of mahazar, attested by P.W.10 and another, marked as Ex.P-6. Thereafter, he conducted inquest on the body of the deceased between 7.30 am. and 9.30 am. in the presence of panchayatdars and witnesses and prepared Ex.P-18, the inquest report. Thereafter, he sent the body for the purpose of
B autopsy through P.W.12, the Head Constable.

The doctor (PW-9) attached to Government Hospital, Palani, on receipt of Ex.P-3, the requisition, from the Investigator conducted postmortem on the body of the deceased and gave
C Ex.P-4, the postmortem certificate, opining that the deceased appeared to have died of shock and haemorrhage due to head injury, 14 to 18 hours prior to autopsy. After postmortem, PW.12, the Head Constable, recovered M.Os. 10 to 13, the personal wearing apparels and ornaments of the deceased, from the
D dead body and handed them over to the Inspector of Police.

Pending investigation, P.W.15, the Investigator, arrested both the accused on 07.04.2005 and at that time both the accused came forward to give voluntary confessional statements and the same were recorded in the presence of witnesses.
E Ex.P-7 is the admissible portion of the confessional statement given by accused No.1, pursuant to which accused No.1 produced M.O.7, the spade handle, which was recovered under Ex.P-9, the mahazar. Accused No.1 also produced M.O.9 the bloodstained full shirt and the same was recovered under Ex.P-
F 11, the mahazar. Ex.P-8 is the admissible portion of the statement given by A-2 pursuant to which A-2 produced M.O.8 the bloodstained shirt and the same was recovered under Ex.P-10, the Mahazar attested by witnesses. Thereafter, both the accused were sent for judicial remand. P.W.15 continued the
G investigation, examined some witnesses and recorded their statements. He gave Ex.P-13, the requisition, to the Court to subject the material objects for chemical analysis.

P.W.14 is the Magisterial Clerk and on receipt of Ex.P-13
H requisition, the material objects were sent to Forensic

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Department for chemical analysis under Ex.P-14, the letter of the Court, which resulted in two reports, namely Ex.P-15, the Chemical Examiner's report and Ex.P-16, the Serologist's Report. A

On completion of the investigation, P.W. 15, the Investigator, filed the charge sheet against both the accused under Section 302 read with Section 34 IPC before the concerned Magistrate's Court. As the accused persons pleaded innocence, trial was held. B

Fifteen witnesses were examined to further the prosecution version. The trial Court found that the evidence adduced by the prosecution was substantial in nature. Placing reliance on the evidence of PW-1, the widow and PW-7 the trial Court held the appellant guilty of offence punishable under Section 302 IPC. The co-accused was found guilty of offence punishable under Section 302 read with Section 34 IPC and Section 341 IPC. In appeal, it was submitted that the circumstances highlighted do not form a complete chain of circumstances and in any event PW-7's evidence is not acceptable. The High Court did not find any substance in the appeal filed by the appellant and found him guilty but the conviction as noted above was altered. C D E

5. In support of the appeal, learned counsel for the appellant submitted that the occurrence allegedly took place at 10'o clock in the night and the complaint was filed on 6.4.2005 around 4.00 a.m. The presence of PW-7 according to him is highly doubtful. It is submitted that it is unusual that if he had found the accused persons in angry mood and appellant No.1 was holding a weapon he should have waited to see whether there was any further trouble. F G

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

7. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the H

A 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);
 B *Earabhadrappa 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
 C 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
 D 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.

8. 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
 E 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
 F 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....”.

G 9. 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:

H “(1) the circumstances from which an inference of guilt is

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sought to be drawn, must be cogently and firmly established; A

(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 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

10. 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 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. D E

11. 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 F G H

A 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 of the right to be acquitted”.

B 12. 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.

C 13. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*, (AIR 1952 SC 343), wherein it was observed thus:

D “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.”

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G 14. 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.

H 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; 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; C

(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. D

15. 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), *Kusuma Ankama Rao v State of A.P.* (Criminal Appeal No.185/2005 disposed of on 7.7.2008) and *Manivel and Ors. v. State of Tami Nadu* (Criminal Appeal No.473 of 2001 disposed of on 8.8.2008). E

16. PW-7's evidence is clear and cogent. His presence at the spot has been established. He used to have business transactions with the deceased. He stated about the present appellant holding a handle of soil cutter. Though the deceased and the present appellant were engaged in exchange of hot words, that could not have given an impression to PW-7 that accused would take the life of the deceased. Therefore, the fact that he left the place on being told by the deceased to do so cannot be a ground to dis-believe his evidence. According to him he had seen the deceased and the accused engaged in F

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- A wordy tussle around 9.00 p.m. The wife of the deceased PW-1 found his dead body at about 9.30 p.m. The time gap when the deceased was last seen alive in the company of the accused and when his dead body was seen is not very large. Admittedly, the bone of contention between the deceased and the accused
- B was non payment of the commission on account of which they were quarreling. The trial Court and the High Court have rightly held the appellant to be the author of the crime. We find no infirmity in the conclusion of the High Court to warrant interference.

17. The appeal is accordingly dismissed.

G.N.

Appeal dismissed.