

rITEM No.1-D
(For Judgment)

Court No.3

SECTION IIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.320 OF 2007

Baldev Singh

Appellant (s)

VERSUS

State of Haryana

Respondent (s)

Date : 01/12/2008 This Petition was called on for judgment
today.

For Appellant (s) Mr. Jagjit Singh Chhabra,Adv.

For Respondent(s) Mr. T.V. George,Adv.

Hon'ble Dr. Justice Arijit Pasayat pronounced Judgment of
the Bench comprising His Lordship and Hon'ble Dr. Justice
Mukundakam Sharma.

The appeal is allowed in terms of the signed judgment.

The appellant, who is in custody, shall be released forthwith
unless required to be in custody in connection with any other case.

(Shashi Bala Vij)
Court Master

(Neena Verma)
AR-cum-PS

Signed Reportable judgment is placed on the file.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTON
CRIMINAL APPEAL NO. 320 OF 2007

Baldev Singh

...Appellant

Versus

State of Haryana

...Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellant for offences punishable under Sections 302 and 354 of the Indian Penal Code, 1860 (in short the 'IPC'). The accused faced trial for alleged commission of offences punishable under Sections 302, 376 or in the alternative 376/511 IPC. However, he was convicted by learned Additional Sessions Judge, Jagadhari, as noted above and the appeal filed by the appellant before the High Court was dismissed.

2. Background facts in a nutshell are as follows:

Balwinder Kaur alias Rani (hereinafter referred to as the 'deceased') was the daughter of Lal Singh. Both the deceased and the present appellant accused belonged to the same village. On 20.3.1993 at about 4 PM, deceased went to the fields to serve tea to her parents who were working in the fields as labourers. Around 5 PM deceased left for her home. Her parents reached home at around 6PM and found that their daughter had not returned till then. Therefore, Lal Singh (PW 12), his wife left for the fields to look for their daughter. They found Dolu (steel container), glasses (tumblers) and chappals of their daughter in the field. They sent Parsa Ram who was with them to ask for a tractor. Around mid night, in the tractor head light they found the body of their daughter in the fields of one Sheo Ram with her salwar removed. One part of the salwar was around her neck and the other was stuffed to her mouth. At about 2 pm in the night First Information Report (in short the 'FIR') was registered at the Radaur Police Station. According to the appellant he was apprehended on 21.3.1993, whereas the prosecution claimed that he was arrested on 24.3.1993. On 24.3.1993 accused is stated to have made extra judicial confession to Ram Dia (PW11) and Punnu Ram ex Sarpanch of the village who was not examined as witness. On the same day he was

produced before the police by PW11 and Punnu Ram at the Police Station, Radaur. Medical examination of the accused was conducted by the Doctor PW3. On 10.6.1993 the accused was sent for trial. After completion of investigation charge sheet was filed. It is to be noted the accused's father Sher Singh was sent up for trial for alleged commission of offence punishable under Section 201 IPC. Since the accused's case was not one of direct evidence and rested on circumstantial evidence, the trial court analysed various circumstances and held the appellant guilty as noted above and the appeal before the High Court did not bring any relief.

3. Learned counsel for the appellant submitted that the trial court and the High Court found that; (1) the rape was not proved; (2) extra judicial confession was not proved; (3) last seen evidence as projected by prosecution through the evidence of Inder Raj (PW9) was not sufficient to hold the appellant guilty. But having so held, the trial court found the presence of injuries on the accused to be sufficient to hold the appellant guilty. Thus it is submitted that it is by no stretch of imagination the determinative factor to hold the appellant guilty.

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

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); 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); 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 negate the innocence of the accused and bring the offences home beyond any reasonable doubt.

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 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....".

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:

"(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."

8. 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.

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 touch-stone 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 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."

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:

- (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.

13. 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).

14. In the background of what has been stated above relating to the law on circumstantial evidence, only question to be examined is whether the presence of the injuries on the accused can be held to be sufficient to hold appellant guilty. The trial court held that the accused was examined on 24.3.1993 by the doctor PW 3 who found abrasions on the thighs and hip joints of the accused, as the injuries must have been received in a scuffle. This circumstance found supported from the finding of chappals and other articles. It was held that recovery of utensil and chappals of the deceased does not lead to the guilt of the accused but that circumstances show the involvement of the accused who was found to have injuries on the persons corresponding with the injuries on the deceased. The High Court noted as follows:

"In our considered view, a very strong circumstance which connects the appellant with the commission of offence is the presence of injuries on his person especially thigh and hip joints."

"This certainly is a very strong circumstance which by itself can be said to be conclusive in its nature pointing towards the guilt of the accused."

"The recovery of chappals, Dolu (steel container) and certain other articles from the fields of the appellant speak volumes of the fact of a strong corroborative circumstance against the appellant."

"The aforesaid strong circumstances can very well be taken in to account for upholding the conviction of the appellant."

15. Circumstances on which the trial court and the High Court had relied to hold the accused guilty by no stretch of imagination can be determinative of the fact that accused was responsible for the commission of rape. Even if it is accepted that the chappals and the utensils were found in the fields of the appellant, the dead body was found by another place i.e. in the field of Sheo Ram.

16. Above being the position that the judgment of the trial court affirmed by the High Court cannot be maintained and are set aside. The appeal is allowed. The appellant who is in custody shall be released forthwith unless required to be in custody in connection with any other case.

J.

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(Dr. ARIJIT PASAYAT)

.....J.

(Dr. MUKUNDAKAM

SHARMA)
New Delhi:
December 1, 2008