REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 308 OF 2001

Venkatesan ....Appellant

Versus

State of Tamil Nadu ....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Appellant, who was described as A2 in Sessions Case No. 117 of 1990, had filed an appeal to challenge his conviction for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') before the Madras High Court. Judgment dated 3.7.2000 in Criminal Appeal No. 741 of 1990. The appeal was dismissed. Appellant

faced trial alongwith one Doraiswamy who has described as A1. It was alleged that both of them were responsible for murder of Rajendran (hereinafter referred to as the 'deceased') on 19.4.1988 at about 10 PM. Trial court acquitted A1 while holding appellant guilty of offence punishable under Section 302 IPC. Background facts as projected in a nutshell are as follows:

PW.2 is the father and PW.3 is the younger brother of the deceased Rajendran. They were residents of Valluvampakkam. The accused were also residing in the same village. The deceased was having illicit relationship with the wife of A1 and PW.2 took his son to task and advised him not to have any relationship with the wife of A1. It is also the case of the prosecution that the deceased tried to molest PW.5 the wife of A2. This is said to be the motive for the occurrence.

On 19.4.1988, PW.2 left Vallugampakkam for Madras to see his daughter and when returned at 8.00 p.m. on

21.4.1988 to the house he found his son Rajendran missing from the house. He questioned his other son PW.3 who then told him that the deceased left in the company of A2 for Ranipet and did not return. PW.2 thereafter advised PW.3 to go and search for the deceased at Ranipet. Accordingly, PW.3 went to Ranipet and searched for the deceased, but could not trace him.

Meanwhile, on 22.4.1988 at 7.0 a.m. PW.1, the Village Administrative Officer of Bagaveli, was informed by his menial that a body is lying in a field. PW.1 went to the spot and found the body. Around the neck of the body, a torn lungi, M.O.5, was seen tied. PW.1 thereafter went to Kaveripakkam Police Station where he gave a complaint to PW.14, the Sub-Inspector of Police, at 11.45 a.m. and the same stands marked as Ex.P1 in this case. PW.14 on the basis of Ex.P-1, registered a case in Crime No.160 of 1988 under Section 174 Cr.P.C. Ex. P-14 is a copy of printed First Information Report. P.W.14 reached the scene of occurrence where at 12.10 p.m. he prepared an observation mahasar, Ex.P-2 in the presence

of PW.1 and also drew a rough sketch, Ex.P-15. the dead body was caused to be photographed and M.O.4 series are the photographs. He also seized M.Os 1 to 3, a shirt, a lungi, and a banian respectively, from the scene under a mahasar Ex. P-3. He has converted the crime to one of suspicious death and sent copies of express report, Ex. P-16, to the court and to the higher officials. He conducted inquest between 12.30 p.m. and 2.30 p.m. over the dead body of Rajendran in the presence of Panchayatdars during which he examined and recorded the statements of PW.1 and others. Ex. P-17 is the inquest report. After the inquest, PW.14 sent the dead body with his requisition through PW.12 for post-mortem.

On completion of investigation the charge sheet was filed, case was committed to the court of Sessions for trial. Accused persons pleaded innocence. Undisputedly the case at hand is a case of circumstantial evidence. While finding that the evidence is inadequate to fasten the guilt on A1, the trial court held A2, the appellant herein guilty based on the evidence of PWs 3,4,8& 9 who claimed to have seen the deceased last in

the company of the appellant. The conviction, as noted above, was challenged before the High Court. By the impugned judgment the appeal was dismissed.

In support of the appeal learned counsel for the appellant submitted that the evidence of PWs 3, 4, 8 & 9 should not have been relied upon. It is pointed out that all these witnesses were examined after considerable length of time. Further there was considerable gap between the time the witnesses alleged to have seen the accused appellant in the company of the deceased and the discovery of the dead body on 22.4.1988. The Doctor PW 11 who examined the dead body found that the same was in an extremely decomposed state. There was no reason for PWs. 8 & 9 to remember that appellant was in the company of the deceased on a particular day. PW 4 did not also speak of the date but only said that he had seen the appellant and the deceased on a Tuesday. It is pointed out that in view of the nature of the evidence adduced the trial court and the High Court should not have convicted the appellant.

2. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

3. 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); 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 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.

4. 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....".

5. 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."

6. 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.

7. 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".

8. 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.

9. 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."

10. 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 the 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 compete 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.

11. Coming to the factual scenario it is to be noted that as rightly contented by learned counsel for the appellant, that PW 4 did not say that he had seen the appellant and the deceased on any particular date. He had merely stated that he had seen them on a Tuesday. The trial court and the High Court without anything further came to hold that he meant 19.4.1988, because he stated that he saw them on Tuesday. Similarly PW 9 has stated that he did not know as to which of the accused i.e. whether A1 or A2 came with the deceased. Interestingly he stated that only after an enquiry by the inspector, he came to know the name of the appellant. He has also stated that on a Tuesday night he had seen him. He does not speak of any date. He also admitted in cross examination that he does not remember who comes for taking drinks as several persons were coming for taking drinks. It

was not explained as to how he remembered at the time of his examination in Court which was after about 2 ½ years of the alleged date of occurrence to have seen accused and the deceased together. So far as the PW 8 is concerned he had identified A2 for the first time in Court. In his cross examination he accepted that he saw the appellant for the first time after the day on which he had seen him. Before that he did not see A2 and he did not give any identification mark of A2 to police.

12. He has further admitted that after pointing out the appellant, the police enquired as to whether he had seen the person.

13. 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:

> "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 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 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."

14. In Ramreddy Rajesh Khanna 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.
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> **28.** In *State of U.P.* v. *Satish [2005(3)SCC 114]* this Court observed: (SCC p. 123, para 22)
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> "*22*. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen 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 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 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."
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> (See also *Bodhraj* v. *State of J&K (2002(8) SCC 45).*)"

15. A similar view was also taken in Jaswant Gir v. State of Punjab [2005(12) SCC 438].

16. Above being the position, the inevitable conclusion is that the trial court and the High Court were not justified in directing conviction of the appellant. He is acquitted of the charges. The bail bonds executed pursuant to the order granting bail shall stand discharged.

17. The appeal is allowed.

.....J.

(Dr. ARIJIT PASAYAT)

.....J.
(P. SATHASIVAM)

.....J.
(AFTAB ALAM)

New Delhi,
May 16, 2008