

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NOS. 868-869 OF 2004

Ramesh Bhai & Anr.

..Appellants

versus

State of Rajasthan

..Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court upholding the conviction of the appellants for offences punishable under Sections 302, 120B and 201 of the Indian Penal Code, 1860 (in short the 'IPC'). Two appeals filed by the appellants were

disposed of by a common judgment. Learned Additional Sessions Judge, Abu Road, Sirohi had convicted the appellant as aforementioned.

2. Prosecution version in a nutshell is as follows:

On 12.01.1996 a missing person report about Purshottam Bhai was submitted by Smt. Jashoda Ben to the Police Inspector, Police Station, Nadiad. On this application, Inspector Arvindbhai Patel (PW 21) started investigation on 16.1.1996. Since in the application the name of Jasbhai r/o Nadiar was mentioned so he reached Nadiad and started investigation of the case. Jasbhai was not found at his home. His son's wife Rekha met him there and she was interrogated. On 18.1.1996, Jasbhai was found at home and he was interrogated. The statement of Jasbhai was recorded. Jasbhai said that Ramesh Patel and Narvar Singh both have cheated him jointly in purchasing his house. On 18.1.1996 the statements of Jashodaben were recorded and copy of the agreement of sale of the house of Jashodaben was submitted. Thereafter the statements of Rameshbhai and Narpat Singh were recorded. Both the accused persons Narvar Singh and Ramesh accepted that they had taken Purshottam Bhai and his wife on a visit to Ambaji at Abu Parvat and in Abu Parvat at sunset point they

made them drink coffee by pouring sleeping pills in it. After drinking coffee, Purshottam Bhai became unconscious and he was given five injections of poison. Jashoda Ben was not unconscious therefore they could not give her injections. After giving him injections of poison, Purshottambhai died and they wrapped his dead body in a sheet and placed it in the room. This room was hired at Raghunath Dharamshala. Therefore Narvat Singh left Dharamshala and Ramesh told Jashoda that Purshottam Bhai had gone to Ambaji alongwith Narvar Singh and he asked her to go to Ambaji. Taking Jashoda with him, Ramesh came to Ambaji. Leaving Jashoda alone at Ambaji, both the accused persons fled away. On 19.01.1996 Inspector Arvind Bhai Patel reached Abu Parvat Police Station taking Jasbhai, Ramesh and Narvar Singh with him and in the morning all the three accused persons were handed over to the Abu Parvat Police.

After completion of investigation, charge sheet was filed. Since accused persons abjured guilt, trial was held.

The trial court found that though the case of the prosecution rested on circumstantial evidence, the circumstances clearly established the accusations.

In appeal the High Court upheld the conviction as recorded.

3. In support of the appeal learned counsel for the appellants submitted that the circumstances highlighted do not establish the accusations.

4. Learned counsel for the respondent-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); 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.

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 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.

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. Rajaram (2003 (8) SCC 180), State of Haryana v. Jagbir Singh and Anr. (2003 (11) SCC 261) and in State of U.P. v. Ram Balak & Anr. [2008 (13) SCALE 541.]

14. The admitted position is that the dead body was found on 20<sup>th</sup> January, 1996 whereas accused persons were stated to have been seen in the company of the deceased on 8<sup>th</sup> and 9<sup>th</sup> January, 1996. PW 9, the wife of the deceased admitted that the parties separated on 9<sup>th</sup> January, 1996. The missing

person's report was lodged on 12<sup>th</sup> January, 1996 by PW 11 the nephew of the deceased.

15. The only evidence which appears to have been pressed into service by the prosecution was that the injections were recovered from a lane near the house of the accused.

16. It is to be noted that the High Court recorded a finding as if it was proved through the prosecution evidence and medical evidence and the report of Doctor that the cause of death of the deceased was 'Organo Phosphorous' which was administered to him. This finding is apparently wrong. The doctor's opinion as is evident from Exh.P15-1 that the cause of death was not possible to be noted because the body was decomposed.

17. According to the FSL report Exh.P4 medicine called Diazepam "Tranquilizer" was found in the stomach intestine, liver, heart, kidney and lungs etc. In view of the shaky nature of the evidence adduced it would be unsafe to convict the appellants. The conviction as recorded by the trial court and upheld by the High Court stand quashed. The appellants be set at liberty forthwith unless required to be in custody in connection with in any

other case. We place our appreciation for the able manner in which Mr. Shiv Kumar Suri, learned Amicus Curiae assisted the court.

18. The appeals are allowed.

.....J.  
(Dr. ARIJIT PASAYAT)

.....J.  
(ASOK KUAMR GANGULY)

New Delhi,  
April 24, 2009