REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1206 OF 2006

Munigadappa Meenaiah ...Appellant

Vs.

The State of Andhra Pradesh ...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of the Division Bench of the Andhra Pradesh High Court upholding the conviction recorded by III Additional District and Sessions Judge, Ranga Reddy District, holding the appellant guilty for the offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'IPC') and sentencing him imprisonment for life.

2. Background facts in a nutshell are as follows:

The accused Munigadapa Meenaiah is native of Thimmapuram, Bommalaramaram of Nalgonda District. He was doing fruit business at Medchal. Ten years back, his younger brother Mallaiah died. After demise of Mallaiah, his wife Yellamma (hereinafter referred to as the 'deceased'), along with her two sons took shelter at the house of the accused. During that period, he developed illegal intimacy with the deceased and both were living together and her sons were living separately. Suspecting the fidelity of the deceased, the accused used to pick up quarrels with her, as a result of which, he separated and took another portion at Medchal.

While so, the accused hatched up a plan to liquidate the deceased. On 3.6.2001 at about 9.00 A.M. the accused went to the house of deceased and invited her to house to consume toddy and both of them went to the toddy shop of PW 2, purchased two bottle of toddy and brought the same to his house in a tumbler and both of them consumed toddy. While consuming toddy, the accused picked up quarrel with the deceased on the ground of her chastity. As a consequence of which the deceased grew wild and abused him by denying

the allegations of illegal contacts with others. On that, the accused brought a pestle and murdered the deceased by hitting the same on her head and laid the body on the road in front of his house, cleaned the blood stains in the room and tried to obliterate the scientific evidence so as to throw the suspicion on other persons. On the report given by P.W.1, a case in Cr. No.117 of 2001 of Medchel Police Station was registered for the offence under Section 302 IPC and after completion of investigation, charge sheet was filed.

Accused abjured guilt and demanded trial. The prosecution examined 10 witnesses, and marked Exs P 1 to P 21 and Mos 1 to 5. On the other hand, no oral evidence was adduced on behalf of the accused, Ex. D1 contradiction was marked.

After scrutinizing the entire material on record and after hearing the learned counsel on both sides, the learned District Judge found the accused guilty of the offence punishable under Section 302 IPC, convicted and sentenced him to suffer imprisonment for life.

3. The Trial Court placed reliance on the evidence of

PWs. 1 and 10 who spoke to have seen the deceased last in the company of the appellant. Reference was also made to the evidence of PW5 relating to certain recoveries by PW. 19. PW 2 also deposed to have seen accused and deceased together when they purchased toddy and thereafter the dead body of the deceased was found in front of the house of the accused with injuries on her head and other parts of the body. As noted above, the learned Trial Court found the accused guilty.

4. Before the High Court the stand was that PWs. 1 and 10 are sons of the deceased and are interested witnesses and should not have been believed. It was also submitted that the circumstances highlighted do not make a complete chain of circumstances. The High Court did not find any substance in the plea and dismissed the same by the impugned judgment.

5. In support of the appeal learned counsel for the appellant reiterated the stands taken before the High Court.

6. In response, learned counsel for the State supported the judgment of the Trial Court and the High Court.

7. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

8. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under:-

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and

> there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

9. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.

10. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent

witnesses. Speaking through Vivian Bose, J. it was observed:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – 'Rameshwar v. State of Rajasthan' (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

11. Again in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) this Court observed: (p, 209-210 para 14):

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be

accepted as correct."

12. To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76).

13. As observed by this Court in State of Rajasthan v. Teja Ram and Ors. (AIR 1999 SC 1776) the over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house or nearby the most natural witnesses would be the inmates of that house.

14. 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.

15. 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....".

16. 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.

17. 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.

18. 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".

19. 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.

20. 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."

21. 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.

22. These aspects were highlighted in State of Rajasthan v. Rajaram (2003 (8) SCC 180) and State of Haryana v. Jagbir Singh (2003 (11) SCC 261).

23. In the instance PWs 1 and 10 as well as PW2 saw the deceased and the accused together in the night of the occurrence. In the morning, dead body of the deceased was found in front of the house of the accused. Additionally, on the basis of information given by the accused certain articles were recovered and one of them was the pestle used for inflicting the injury on the head. That being so, the judgment of the Trial Court and the High Court do not suffer from any infirmity.

24. The appeal is without merit, deserves dismissal, which we direct.

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

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
July 23, 2008