

CASE NO.:
Appeal (crl.) 841 of 2008

PETITIONER:
Krishnan

RESPONDENT:
State represented by Inspector of Police

DATE OF JUDGMENT: 08/05/2008

BENCH:
S. B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

1
REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 841 OF 2008
[Arising out of S.L.P. (Crl.) No.5799 of 2007]

Krishnan
Appellant

.....

Versus

State represented by Inspector of Police Respondent

JUDGMENT

Lokeshwar Singh Panta, J.

1. Leave granted.
2. Krishnan has filed this appeal against the judgment and order dated 07.02.2006 passed by the Division Bench of the Madurai Bench of the High Court of Madras in Criminal Appeal No. 826/1996, confirming the conviction and sentence

for life in respect of the offence committed under Section 302²
read with Section 34 of the Indian Penal Code [for short "the
IPC"] in Sessions Case No. 41/1996 dated 30.08.1996
awarded by the learned Sessions Judge, Sivaganga.

3. Three accused - Krishnan [A-1], Tamilarasi [A-2] and her
husband Muthuraman [A-3] were charged in Sessions Case
No. 41/1996 on the file of the Court of Principal Sessions
Judge, Sivaganga. A-1 and A-2 were tried under Section 302
read with Section 34 of the IPC and Section 380 of the IPC. A-
3 was tried under Section 414 of the IPC. The learned trial
Judge held A-1 and A-2 guilty under Section 302 read with
Section 34 of the IPC and sentenced them to imprisonment for
life. All the accused were acquitted of the charges under
Sections 380 and 414 of the IPC. A-1 challenged his
conviction and sentence before the High Court in Criminal
Appeal No. 816/1996 whereas A-2 preferred Criminal Appeal
No. 249/1998.

4. Briefly stated, the case of the prosecution is as under:-

Siddiq (P.W.-1) was residing with his wife Rasitha
Begum, sisters - Amsath (Hamsath) Begum, Sabeetha Begum

(P.W.-4), Faritha Begum (P.W.-5) and brother Aliyar in a rental house at Mehbobapalayam, Minachipuram, Karaikudi. P.W.-1 is working as a Cleaner in Kalakai Vadivel Murugan Lorry. On the southern side of the house of P.W.-1, Muthuraman (A-3), an auto-driver, and his wife Tamilarasi (A-2) are residing. It is the case of the prosecution that the family members of P.W.-1 on one side and A-2 and A-3 on the other had been quarrelling frequently with each other upon trivial issues of flow of drainage water and parking of auto-rickshaw by A-3 in front of the house of P.W.-1. On 28.03.1995 at about 9:45 p.m., P.W.-4 went to the lorry shed where P.W.-1 is working and informed the latter that since morning hours of 28.03.1995 Rasitha Begum was missing from the house. He along with P.W.-4 came to his house at about 11:00 p.m. and started enquiring the whereabouts of his wife in the neighbourhood, but he could not locate her. Later on, Amsath, the second sister of P.W.-1, told him that in the morning at about 9:30 a.m. her sister-in-law (Rasitha Begum) had gone to the shop of a tailor master to get her blouse from him and at that time she was wearing a new saree. P.W.-1

4

went in search of Rasitha Begum to the shop of tailor master, Katinivaasal, New Road, and house of his in-laws at Devakotai, but she could not be located at any place. On 29.03.1995 at about 9:30 a.m., P.W.-1 returned home and again made an enquiry from Smt. Mumtaz (P.W.-3) - a neighbour, in regard to the reason of his wife missing from the house. P.W.-3 alleged to have told him that on 28.03.1995 at about 10:30 a.m., she saw Rashita Begum and A-2 were quarrelling with each other, but she did not think it proper to intervene since it was practically their daily habits to enter into heated exchanges upon petty issues. P.W.-3 also disclosed that on 29th morning when she along with Faritha Begum (P.W.-5), Fathima Beevi, and Rakhumat Biwi had peeped through the eastern side window of the house of A-2 and A-3, they could notice Rasitha Begum lying on the floor of their house and her both legs and hands were tied. They also noticed one rice bag and some household materials found placed upon her dead body. Thereafter, P.W.-1 went to the Police Station and lodged complaint [Ex. P-1], on the basis of which Sub-Inspector Murugan (P.W.-17) registered Crime No.

5

145/95 [Ex. P-14] under Section 302, IPC in Karaikudi (North) Police Station.

5. Balakrishnan (P.W.-18), Inspector of the Police Station, went to the spot of incident and prepared Mahazar [Ex. P-4] and Death Investigation Report [Ex. P-15] in the presence of Panchayatraras. He prepared spot map [Ex. P-16] and

recorded the statements of P.W.-1, P.W.-4, P.W.-5 and other material witnesses. On the same day, he sent the dead body of Rasitha Begum to the Government Hospital, Karaikudi, with requisition [Ex. P-2] for conducting post-mortem. On

10.04.1995, P.W.-18 arrested A-2 and A-3 near Karaikudi

Water Tank. The Investigating Officer recorded the confessional statement of A-2 in the presence of Govindam (P.W.-12) leading to the recovery of 22 carat black beads golden Karukumani. He took A-3 to Thirumurugan Amman

Sannidi Jewellery Shop and recovered M.O.M. 02 [Ex. P-7]

from there in the presence of Saminathan (P.W.-13). On

18.05.1995, A-1 was taken to the Police custody from judicial custody.

6. Dr. Seenivasan (P.W.-2) on 29.03.1995 conducted the post-mortem on the dead body of Rasitha Begum and as per Post-Mortem Report [Ex. P-3], he noticed the following injuries:-

"External Injuries:-

1. Signs of decomposition present whole body edematous except limbs.
2. Foul smelling discharge from the nostril and mouth.
3. Rope mark in both forearms.
4. Left side of the face blackish with contusion and oedamatus
5. Eye lids closed. Tongue outside.
6. A handkerchief seen in the mouth.

Teeth 8/8"

Internal Injuries:

Abdomen distended with gas. Thorax - Ribs normal; Lungs congested; Heart empty; Neck - Echymosis and congested present in anterior aspect of neck; Hyoid bone - fracture, send for H.P.E.; Stomach contains 50 ml of digested food particles; Intestine distended with gas; liver

7
congested 'spleen congested; kindly congested; bladder
empty; Uterus - gravid 10 weeks size; skull contains in
the left parietal region 6cm X 4 cm in size. No evidence
fracture of skull. Brain partially liquefied. Specimen
preserved - stomach, intestine, liver, spleen, kidney,
hyoid bone."

In the opinion of the doctor, cause of death was as a result of
strangulation of the neck of the deceased and asphyxia within
duration of 24 - 30 hours prior to the post-mortem.

7. After completion of the investigation and on receipt of the
Post-Mortem Report [Ex. P-3] and other documents, charge
sheet was laid by P.W.-18 against A-1, A-2 and A-3 for
commission of the alleged crime. The learned Judicial
Magistrate, Karaikudi, committed the trial to the learned
Sessions Judge, who framed the charges against A-1, A-2
under Section 302 read with Section 34 of the IPC and under
Section 380, IPC, for removing 14 gms. gold ornaments from
the body of the deceased and A-3 was charged under Section
414, IPC. The accused denied the charges and claimed to be
tried. The prosecution examined as many as 18 witnesses in

support of its case. In their statements recorded under⁸ Section 313 of the Code of Criminal Procedure, the accused persons denied their involvement in the commission of the offence and stated that they have been implicated in a false case at the instance of the Police and lastly they pleaded innocence. However, no defence evidence has been led by them.

8. It is the admitted case of the parties that there is no direct evidence connecting A-1, A-2 and A-3 in the commission of the crime. The prosecution case entirely rests upon circumstantial evidence. The learned Sessions Judge relied upon the evidence of P.Ws.-1, 3, 4, 5, 17 and 18 and held A-1 and A-2 guilty of the murder of Rasitha Begum and, accordingly, sentenced them imprisonment for life whereas they were acquitted under Section 380, IPC. A-3 has been acquitted for offence under Section 414 of the IPC for lack of cogent and convincing evidence against him. A-1 and A-2 filed the above mentioned two separate appeals under Section 374 of the Code of Criminal Procedure before the High Court against their conviction and sentence. The Division Bench of

the High Court dismissed both the appeals by common order and confirmed the conviction and sentence imposed upon A-1 and A-2 under Section 302 read with Section 34 of IPC.

9. Krishnan (A-1) is the appellant before us in this appeal.

10. We have heard the learned counsel for the parties and examined the material on record.

11. Shri Yogesh Kanna, learned counsel appearing on behalf of A-1 assailed the judgment of the High Court inter alia contending:

- (i) that the trial court as well as the High Court have committed gross error in convicting the appellant on the basis of highly unbelievable, insufficient and unconvincing evidence led by the prosecution;
- (ii) that there is not an iota of evidence on record to prove that on the day of occurrence, A-1 had gone to the house of A-2 and A-3 before the alleged incident of death of Rasitha Begum,

whose dead body was found lying in their house
on 29.03.1995.

- (iii) that P.W. 1 has not named A-1 in the complaint
Exhibit P-1 on the basis of which FIR [Ex. P-14]
was recorded by P.W. 18.
- (iv) That A-1 has been falsely implicated in the
commission of the crime by Sub-Inspector
Murugan - P.W.-17 and Inspector Balakrishnan
- P.W.-18 against whom A-1, being a Secretary of
Silver Labour Association, had filed complaint in
the year 1994 for unnecessarily harassing the
workers of Silver Patrai who joined the
demonstrations and agitations held against the
owner of the Silver Patrai. According to the
learned counsel, A-1 is an active member and
office bearer of Communist Party of India and in
the year 1994 he along with other party fellows
staged demonstrations against the Police and
Executive authorities regarding insufficient and

11
inadequate supply of drinking water facilities to
Karaikudi and Tirupattur areas and for the acts
of commission and omissions of A-17 and A-18,
they were transferred from Police Station,
Karaikudi (North), but again they were posted
back at the same Police Station.

12. Shri V. G. Pragasam, learned counsel for the
respondent-State, on the other hand in support of the
judgment, submitted that the reasons given by the trial court
as well as the High Court for recording the order of conviction
against A-1 are based upon proper appreciation of evidence
led by prosecution in the case. He submitted that the
evidence of P.Ws.-1, 3, 4 and 5 coupled with the versions of
P.Ws.-17 and 18, is clear, satisfactory and with the hypothesis
of the guilt of the appellant and this Court normally should be
slow to interfere with the well-reasoned and well-merited
judgment of the High Court upholding the judgment of the
trial court.

13. Before advert¹²ing to the above-stated arguments advanced by the learned counsel for the parties, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the commission of the offences and the prosecution case entirely rests on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- (iii) 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
- (iv) 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. [See Gambhir v. State of

Maharashtra (1982) 2 SCC 351 : (AIR 1982 SC 1157)]

See also Rama Nand v. State of Himachal Pradesh (1981) 1 SCC 511 : (AIR 1981 SC 738), Prem Thakur v. State of Punjab, (1982) 3 SCC 462 : (AIR 1983 SC 61), Earabhadrapa v. State of Karnataka, (1983) 2 SCC 330 : (AIR 1983 SC 446), Gian Singh v. State of Punjab, 1986 Suppl. SCC 676 : (AIR 1987 SC 1921), Balvinder Singh v. State of Punjab (1987) 1 SCC 1 : (AIR 1987 SC 350).

As far back as in 1952 in Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 3443], 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 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."

A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC

116 : (AIR 1984 SC 1622).¹⁴ Therein, while dealing with circumstantial evidence, it has been held that the 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 (SCC pp. 185, para 153) :

- (i) 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;
- (ii) 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;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) 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.

14. We may also make a reference to a decision of this Court¹⁵ in C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp.206-207, para 21)

"21. 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."

In Sashi Jena & Ors. v. Khadal Swain & Anr. [(2004) 4 SCC 236], this Court again reiterated the well-settled principle of law on circumstantial evidence.

15. Bearing the above principles of law enunciated by this Court, we have scrutinized and examined carefully the circumstances appearing in this case against A-1. P.W.-1, the husband of Rasitha Begum-deceased had not named A-1 as an assailant of the murder of his wife in the complaint [Ex. P-1] lodged by him in the Police Station on the basis of which FIR [Ex. P-14] came to be registered by P.W.-18. It is his

16
evidence that he disclosed the names of the assailants and other material details of the crime to P.W.-6, who scribed the complaint at his instance. P.W.-1 went to the Police Station with his brother, brother-in-law and P.W.-6 and reported the matter to P.W.-18, but he again did not name A-1 as an accused along with A-2 and A-3 against whom complaint was made. The testimony of this witness has not established that A-1 was present in the house of A-2 and A-3 at the time and on the day of the murder of his wife.

16. P.W.-6 in his deposition stated that at about 10:00 or 10:30 a.m. on the day of incident of murder of Rasitha Begum, he was standing near Ambedkar statue at Karaikudi when P.W.-1 and his brother-in-law Jagir Hussain came to him and told that his wife was dead and her dead body was lying in the house of A-2 and A-3. He scribed complaint [Ex. P-1] at the instance of P.W.-1 in the latter's house. He admitted in his cross-examination that after writing complaint [Ex. P-1], the same was read over to P.W. 1 who after accepting the contents thereof as correct signed it. This witness is a member of

17

Jammat. He admitted that in the year 1994 the Communist Party leaders and workers staged demonstrations and agitations against the administration for not arranging proper and timely supply of drinking water from Karaikudi to Tirupattur in which many party workers were assaulted by the police officials of Police Station, Karaikudi, where P.Ws.-17 and 18 at the relevant time were posted. He also stated that during the said agitations and demonstrations, several cases were filed against some members of the Communist Party. It has come in his evidence that complaint [Ex. P-1] was written by him in the house of P.W.-1, whereas it was the specific case of P.W.-1 that Ex. P-1 was got scribed by him from P.W.-6 on the way when he along with his brother Aliyar and brother-in-law Jagir Hussain was going to the Police Station to lodge the complaint. Both these witnesses are not consistent and have given different and contradictory version in regard to the place of scribing of the complainant, on the basis of which the police machinery swung into action.

18

17. The evidence of P.W.-3 - Mumtaz would show that the family members of P.W.-1 on one side and A-2 and A-3 on the other had been quarrelling frequently with each other over flow of drainage water and parking of auto-rickshaw by A-3 in front of the house of P.W.-1. Her evidence would also reveal that at about 10:00 a.m. on the day of incident of murder, the deceased and A-2 had heated exchanges over throwing of drainage water in front of the house of A-2 and it was on the intervention of A-3 that the matter was got settled. She stated that around 3:00 p.m., it came to the notice of the family members of P.W.-1 that Rasitha Begum was not found present in her house. The intimation about the missing of Rasitha Begum was sent to P.W.-1, who was away from his house in connection with his employment at the lorry shed. It is her evidence that on the morning of 29.03.1995, dead body of Rasitha Begum was found lying inside the house of A-2 and her both hands and legs were tied with ropes and one rice bag and other household materials were found placed upon her body. She along with P.W.-Faritha, Fathima Bibi and some more persons informed P.W.-1 about the incident, who rushed

19

to the place of occurrence and on seeing the dead body of his wife inside the house of A-2, he went to police station for reporting the incident of murder. In cross-examination, she admitted that P.W. 1 is her cousin. This witness admitted that the death of Rasitha Begum was discussed in Jammatt meeting. She admitted having joined the demonstration and procession on the leadership of Palani Baba. On close

scrutiny of the testimony of P.W.-4, we find that she has not proved the presence of A-1 in the house of A-2 and A-3 when this witness saw Rasitha Begum going to their house in the morning at about 10:30 a.m. on the day of incident of murder.

18. P.W.-4 stated to have informed her brother P.W.-1 at about 9:00 p.m. on 28.03.1995 about missing of her sister-in-law from their house. She claimed to have seen A-1 in his Silver Workshop on the day of incident of murder. P.W.-5

Faritha Begum is residing nearby the house of P.W.-1 and her house is adjacent to the house of A-3. She also stated that A-1 is running a workshop nearby her house. On the morning

20

of 29.03.1995, she noticed dead body of Rasitha Begum in the house of A-2 and A-3.

19. P.W.-17-Sub Inspector and P.W.-18-Inspector of Police in their testimony stated that A-1 being a member of Indian Communist Party, was involved in several demonstrations and agitations staged in Karaikudi area by the Communist Party against the administration. It is the evidence of P.W.-18 that in the year 1994 all political parties had demonstrated against the civil administration for inadequate and improper supply of drinking water facility from Karaikudi to Tirupattur and in the said agitation, members of Indian Communist Party including A-1, had also participated in which one Kannan, a member of Congress Party, received beatings. He admitted that a case was registered against him regarding handcuffing of Kannan and in the said case A-1 appeared as a witness and deposed against him. P.W.-18 then stated that RTO also held enquiry about the same incident in which one Ramachandran, a member of Indian Communist Party, Karaikudi, deposed against him. P.W.-17 has admitted in cross-examination that

21

during strike staged by all political parties in 1994, some demonstrators received injuries at the hands of Police Force. For the said incident, an inquiry was held by RTO against him and PW-18, who at the relevant time were Incharge of the Police Station and later on they were transferred from the Police Station, Karaikudi. He then stated that a criminal case was also registered against him and PW-18 for the same incident, in which A-1 appeared as a witness and deposed against them. In the teeth of the evidence of PW-17 and PW-18, undoubtedly they are hostile witnesses deposing against A-1, who appears to have been framed later on in the crime by these witnesses mainly on suspicion and improbability. The learned trial Judge observed that even though there was no direct evidence to prove that A-1, in connivance with A-2, committed the murder of Rashita Begum, but since A-1 had illicit relations with A-2 and on the day of incident of murder, after A-3 had left his house, A-1 was seen by the deceased going to the house of A-2 and out of curiosity, the deceased went to the house of A-2 where she was jointly killed by A-1 and A-2. This finding of the learned trial Judge and as

22

accepted by the High Court, in our view, is wholly untenable and cannot be sustained. There is absolutely no evidence appearing on the record to establish that A-1 had illicit relations with A-2 and in the absence of any cogent, believable and satisfactory evidence, A-1 could not be held guilty of the murder of the deceased only on hypothesis and suspicion. If the entire incident was narrated by PW-4 to her brother PW-1 before lodging a complaint (Ext. P-1) by him, it was but natural for PW-1 to have disclosed the name of A-1 in the complaint as an assailant, on the basis of which FIR (Ext. P-14) was registered by PW-18. The evidence of P.W.-3, P.W.-4 and P.W.-5 regarding removing of jewellery from the dead body of Rasitha Begum by A-1 and A-2 coupled with the version of P.Ws.-14 and 18 and the confessional statement allegedly made by A-1, was not found believable and reliable by the learned trial Judge and accordingly they were acquitted of the charge under Section 380, IPC. On the same set of evidence, no acceptable evidence was found against A-3 for holding him guilty of offence under Section 414, IPC, and he has been given benefit of doubt.

23

20. On independent analysis of the entire evidence on record, we find that the prosecution has failed to prove the charge of murder of Rasitha Begum against A-1 beyond reasonable doubt. As noticed in the earlier part of the judgment, we find material discrepancies, inconsistency and vital improvements in the testimony of P.Ws.-1, 3, 4 and 5 in regard to the presence of A-1 at the house of A-2 and A-3 at the relevant time on the day of occurrence. Having given our careful consideration to the submissions made by the learned counsel for the parties and in the light of the evidence discussed above and tested in the light of principles of law highlighted above, it must be held that the evaluation of the findings recorded by the trial court and affirmed by the High Court suffers from manifest error and improper appreciation of evidence on record. Thus, on the basis of the evidence appearing on record, two views are possible, A-1 is entitled to the benefit of doubt.

21. In the result, the appeal is allowed. The conviction and sentence of A-1 is set aside and he is acquitted of the charge

of murder of Rasitha Begum by giving him benefit of doubt.

Appellant-Krishnan is in custody and he is directed to be released forthwith if his detention is not required in any other case.

.....J.
(S. B. Sinha)

.....J.
(Lokeshwar Singh Panta)

New Delhi,
May 08, 2008