CASE NO.:
Appeal (crl.) 367 of 1999

PETITIONER:
Vilas Pandurang Patil

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 06/05/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Appellant (also described as accused) calls in question legality of the judgment rendered by a Division Bench of the Bombay High Court holding the appellant guilty for the offence punishable under Sections 302 and 404 of the Indian Penal Code 1860 (in short 'the IPC') by reversing the judgment of acquittal rendered by the Trial Court. Sentence of imprisonment of life and two years respectively were imposed for the aforesaid two offences.

Background facts which led to trial of the accused are as follows:

Suman (hereinafter referred to as the 'deceased') was the first wife of the accused. Since her relationship with the accused and her in-laws was strained she along with her 3 daughters Suvarana (PW-2), Vanita (PW-4) and Vaishali and a son Vijay stayed separately in village Sangli. In the said village in another house, accused along with his second wife Sushila, his parents and three brothers lived.

On 17.9.1983, the accused came to deceased's house. At about 11.00 a.m. a quarrel between him and Suman took place. The same was seen by Vanita (PW-4). Thereafter at about 3.00 p.m. the same day, deceased went along with the accused who was having a sickle and a rope to bring fodder. In the evening, the accused returned alone to the house and told Vanita (PW-4) that deceased had gone to Nagaon Kavathe. The same evening at about 8.00 p.m. the accused went to the house of one Yeshwant Pandurang Jadhav (PW-6) and confessed to him that he had murdered his wife. Later around 1.00 to 1.30 a.m. he went to the house of the police Patil, Bhagwan Vithoba Patil (PW-5) and also confessed before him that he murdered his wife and had thrown the corpse into a well. Both Yeshwani Jadhav and Bhagwan Patil are said to have asked the accused to report the matter to the police. In the morning Bhagwan Patil along with village Kotwal and some others went to the well situated in the field of Bhimrao Kadam and found the corpse of Suman floating on the water inside it. He asked the village Kotwal to guard it and himself proceeded to police station Tasgaon with the accused. On 18.9.1983 at about 10.30 a.m. the accused went to Tasgaon Police Station and gave

information that his wife Suman accidentally died and her corpse was floating in the well situated in the land of one Bhimrao Kadam. On the said report (Ex. 29) a case of accidental death was registered and investigation was undertaken. During investigation, several materials were collected and the charge sheet was filed.

In order to further its accusations, during trial prosecution placed reliance on the evidence tendered by ten witnesses. The accused pleaded innocence. Since there was no eye witnesses to the occurrence, prosecution relied on following circumstances in support of its case. They are as follows:

1. Motive.
2. Conduct of the respondent immediately before and after the incident;
3. Extra judicial confession;
4. Discovery of blood stained articles and mangalsutra in the pointing out of the respondents; and
5. Finding of the blood in the nail cuttings of the respondent.

The Trial Court by a cryptic order held that the circumstances were not substantially established and, therefore, directed acquittal.

The State of Maharashtra questioned correctness of the said judgment. By the impugned judgment the High Court held that there was no proper application of mind and that erroneous conclusions have been arrived at by the trial court. Accordingly the conviction was made and sentence imposed as afore-noted.

In support of the appeal, learned counsel for the accused submitted that the Trial Court had analysed the factual position and the evidence on record in detail. Without being conscious of the fact that the appeal was against the judgment of acquittal, the High Court placed reliance on unimportant aspects and reversed the finding of acquittal. It was pointed out that the alleged extra judicial confessions were not admissible in law and the conduct of accused or recoveries of articles or finding of blood on the nail clippings of the accused on which the High Court has placed strong reliance are really of no circumstance.

In response, learned counsel for the State submitted that the High Court has elaborately detailed as to why it felt the conclusions of the Trial Court to be erroneous. No infirmity in the conclusions has been pointed out.

Before analysing 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 which taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

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 v. State of Hyderabad (AIR 1956 SC 316), Earabhadrappa v. State of Karnataka (AIR 1983 SC 446), State of U.P. v. Sukhbasi (AIR 1985 SC 1224), Balwinder Singh v. State of Punjab (AIR 1987 SC 350) and 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 home the offences beyond any reasonable doubt.

We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P. (1996 (10) SCC 193), wherein it has been observed thus :

"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 Padala Veera Reddy v. State of A.P. (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 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."

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.

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; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

In Hanumant Govind Nargundkar v. State of M.P. (AIR 1952 SC 343) 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."

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 the onus was on the prosecution to prove that the chain is

complete and the infirmity of lacuna in the prosecution cannot be cured by a 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.

It was rightly contended by learned counsel for the State that the Trial Court had proceeded in the matter rather casually and there was no proper application of mind or even discussions regarding all the relevant evidence on record. Since the Trial Court had failed to properly analyse the evidence, the High Court was duty bound to examine the matter in greater detail and to record its conclusions. It is true that when on the evidence brought on record two views are possible and the Court has taken a view which is possible interference by the Appellate Court would not be proper. But where the consideration reflects total non-application of mind, interference is not only desirable but proper. We find that extra judicial confession which was claimed to be before PWs 5 and 6, was unjustifiably discarded by the Trial Court. The evidence of PW-6 was discarded on the ground that he was not very close to the accused and not a person on whom the accused could repose confidence. It is brought on record that the accused and PW-6 were in fact at earlier point of time classmates and schoolmates. They also used to live close to each other. Obviously, it is not impossible that the accused could repose confidence on him. The extra judicial confession before PW-6 was clear, cogent and appears to have been made in the normal course without any pressure. The conduct of the accused after the incident and discovery of blood stained articles and the mangalsutra have been established by tendering cogent evidence. The presence of blood in the nail clippings of the accused was also a vital circumstance. As noted by this Court in Dayanidhi Bisoi v. State of Orissa (2003 (9) SCC 310), the presence of blood in the nail clipping may not be sufficient by itself to fasten guilt on the accused; but when it is considered with other evidence and found acceptable can provide additional weightage to the prosecution case. The Trial

Court did not seem to consider objectively the evidence in the right perspective and had merely on surmises and conjectures, without proper application of mind directed acquittal. The High Court analysed the evidence in greater detail and exhaustively having regard to the perfunctory manner of consideration undertaken by the trial Court. We find no infirmity in the reasoning indicated by the High Court to discard the view of the trial Court. The disclosure made in the post mortem examination as to the nature of injuries found on the body of the deceased- head, knee joints etc., would belie the claim of drowning or death by suicide. The cause of death as per medical opinion was stated to be "shock due to big sub-dural hematoma of fracture of base of the skull". Any affirmance of the judgment of the trial Court in this case, by the first appellate Court would have resulted in grave miscarriage of justice. The judgment of the High Court though one of reversal was well merited supported by sound reasons and based on overwhelming evidence and therefore does not warrant interference. Appeal is accordingly dismissed. The bail bonds of the accused are cancelled and he shall surrender to custody to serve remainder of sentence.