

B. VENKAT SWAMY

v.

VIJAYA NEHRU AND ANR.

(Criminal Appeal No.209 of 2001)

AUGUST 25, 2008

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ.]

Criminal Appeal:

Penal Code, 1860; ss. 302, 304 and 498:

Dowry demand – Husband allegedly committed murder of wife – Has conviction based on circumstantial evidence – Correctness of – Held: Inference of guilt can be justified only when incriminating facts and circumstances found to be incompatible with innocence of accused – Conviction based solely on circumstantial evidence provided it should be tested by the touchstone of law relating to circumstantial evidence – High Court has rightly held that prosecution could not establish the accusations – Moreover, examination in terms of s.313 Cr.P.C. have been done as an empty formality – Though the High Court has not deal with the question of applicability of s.498 IPC and s.4 of Dowry Prohibition Act but the evidence adduced does not establish accusations – Dowry Prohibition Act, 1961 – 4 – Evidence – Circumstantial evidence – Code of Criminal Procedure, 1973 – 313.

Respondent-Accused A1 and his mother A2 allegedly harassing the deceased, wife of A1 for demand of more and more dowry. The birthday of the deceased was celebrated on April 27, 1996 at the residence of parents of the deceased at Kurnool. After taking dinner, some of the family members went to a late night movie show at about 12.30 a.m. in the night. After returning from the picture, A-1 and the deceased were sleeping in a bedroom upstairs

A separately. On 28.1.1996 at about 7.00 a.m. PW.3, uncle of
the deceased received a call from the father of A-1 from
his residence at Warnaparthi that A-1 had come to
Wanaparthi and he was weeping and not disclosing
anything. Then PW.1 to 3 went upstairs to the bedroom of
B A-1 and the deceased. The door was bolted from inside.
When they opened the door, they found that the deceased
was hanging by one end of the saree tied to the neck and
the other end of the saree was tied to the ceiling fan.
Their neighbour, a doctor examined the deceased and
declared her dead. PW1 father of the deceased lodged an
C FIR on April 28, 1996 and police registered a case against
accused husband and his mother under Section 498-A
and 306, IPC. After completion of the investigation charge
sheet was filed by the police against accused persons
under ss.302 and 498A IPC and s.4 of the Dowry
D Prohibition Act. Trial court found accused-husband guilty
of committing the offences punishable under ss.498A,
302 IPC and s.4 of the Dowry Prohibition Act but acquitted
the mother of A1 as charges against her were not
established. On appeal, the High Court acquitted the
E accused of all the charges. Hence, the present appeal.

Appellant-father of the deceased contended that the
evidence on record clearly shows a complete chain of
circumstances and, therefore, the High Court should not
have directed acquittal of accused, A1; in any event, the
F High Court has not dealt as to how Section 498A IPC and
Section 4 of the DP Act have no application in the facts
and circumstances of the case.

Dismissing the appeal, the Court

G HELD: 1.1 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
H the guilt of any other person. [Para 9] [696 C-D]

Hukam Singh v. State of Rajasthan AIR (1977) SC 1063; *Eradu and Ors. v. State of Hyderabad* AIR 1956 SC 316; *Earabhadrapappa 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 – relied on. A B

1.2 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. [Para 9] [696 E,F] C

Bhagat Ram v. State of Punjab AIR 1954 SC 621 – relied on.

1.3 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 this Court. [Para 14] [698 E] D

C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193; *Padala Veera Reddy v. State of A.P. and Ors.* AIR 1990 SC 79; *State of U.P. v. Ashok Kumar Srivastava*, 1992 CrLJ 1104; *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*, AIR 1952 SC 343; *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622; *State of Rajasthan v. Rajaram* 2003 (8) SCC 180; *State of Haryana v. Jagbir Singh and Anr.* 2003 (11) SCC 261 and *Kusuma Ankama Rao v State of A.P.* (Criminal Appeal No.185/2005 decided by Supreme Court on 7.7.2008) – relied on. E F

“Circumstantial Evidence” by Alfred Wills (Chapter VI) – referred to. G

2.1 In the instant case, the High Court has noted several factors to hold that prosecution has not established the accusations. Firstly, the evidence of PW 1 goes to show that door of the room where dead body H

- A was found was bolted from inside. Undisputedly, A1 was not inside. Another relevant aspect is the evidence of PW6. It is on record that there was variance in the evidence of the doctor who had earlier given the opinion that the deceased died due to asphyxia resulting from hanging
- B and later on stated that deceased died because of smothering and the dead body was hanged. PW1 in his evidence has stated that when they asked respondent as to why he was demanding gold and motorcycle, he said that he had never asked anything. [Para 18] [700 A,B,C]
- C 2.2 In the cross-examination PW1 categorically admitted that the deceased never personally informed him about the alleged harassment by the respondent; that the respondent-accused never demanded any money or gold from him directly or personally; that he presumed
- D that respondent-accused had killed the deceased. It is of significance that Trial Court accepted that there are lacunae in the case of the prosecution and also that they failed to lead evidence as to where the respondent and deceased slept on 26/27 i.e. the intervening night; that
- E the evidence of the doctor PW.6 is confusing; that it was absurd that the respondent-accused went out to a long distance wearing only banian and underwear but curiously enough wanted the accused to show as to why he did it. The evidence of PW.6 also has more loose ends.
- F According to him, there was a possibility of struggle. If that is so, it is strange that nobody heard the sound of the struggle and as to how the deceased could have struggled without even making a sound. [Para 18] [700 D,E,F,G]
- G 2.3 In his evidence PW.10 stated that the accused would have gone out and bolted the door from inside; that he had demonstrated the same without indicating to whom it was demonstrated and when. The evidence of PW.3 also corrodes the prosecution version. According
- H to him he had locked all the doors including the main

door and thereafter slept in his room. According to him he received a telephonic call from the father of the respondent-accused that A1 was in a disturbed mind. He asked the father of the respondent-accused as to why and how he could be at Wanaparthi as he was at home and he had come home after visiting the second show of the film. It is accepted that Wanaparthi is at a distance of 140 Kms. from Kurnool. If they had returned at about 1.00 a.m. and the telephone came around 6.40 a.m, it has not been explained by the prosecution as to how the respondent-accused could travel the distance. The trial court observed the accused was wearing banian and underwear. If that be so it is strange that no body noticed it. PW 3 has fairly accepted that he presumed that respondent-accused was making demands through his wife-deceased. [Para 18] [700 G,H 701 A,B,C]

2.4 To add to the vulnerability of the prosecution case, the examination in terms of Section 313 Cr.P.C. appears to have been done as an empty formality. The incriminating materials were not put to him. Though the High Court has not dealt with question of applicability of Section 498 IPC and Section 4 of the DP Act, but the evidence adduced does not establish the accusations. [Para 19] [701 D,E]

Case Law Reference

AIR (1977) SC 1063	relied on	Para 9
AIR 1956 SC 316	relied on	Para 9
AIR 1983 SC 446	relied on	Para 9
AIR 1985 SC 1224	relied on	Para 9
AIR 1987 SC 350	relied on	Para 9
AIR 1989 SC 1890	relied on	Para 9
AIR 1954 SC 621	relied on	Para 9
(1996) 10 SCC 193	relied on	Para 10

A	AIR 1990 SC 79	relied on	Para 11
	1992 CrI.LJ 1104	relied on	Para 12
	AIR 1952 SC 343	relied on	Para 15
	AIR 1984 SC 1622	relied on	Para 16
B	2003 (8) SCC 180	relied on	Para 17
	2003 (11) SCC 261	relied on	Para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 209 of 2001

C From the final Judgment and Order dated 16.02.2000 of
the High Court of Andhra Pradesh in Criminal Appeal No. 1239
of 1998

D M.N. Rao, Rita Kumari Gupta, A. Ramesh and Annam
D.N. Rao for the Appellant.

D. Rama Krishna Reddy and T. Anamika for the
Respondents.

D. Bharathi Reddy for the State.

E The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to
the judgment of the Division Bench of the Andhra Pradesh High
Court directing acquittal of respondent no.1 who was convicted
F for alleged commission of offences punishable under Section
498A and 302 of the Indian Penal Code, 1860 (for short 'IPC').
Respondent (hereinafter referred to as the 'accused') and his
mother faced trial for alleged commission of offence punishable
under Section 498A IPC. In addition, respondent-accused was
G found guilty of offence punishable under Section 302 IPC and
Section 4 of the Dowry Prohibition Act (in short 'DP Act'). The
learned Sessions Judge, Kurnool, found that the accusations
against A2 i.e. mother of the respondent - accused were not
established and she was acquitted of the charges. However,
H respondent-accused was found guilty of the offence punishable

under Sections 498A, 302 IPC and Section 4 of the DP Act. A

2. Prosecution version in a nutshell is as follows:

Prosecution witnesses are the residents of Kurnool. A-1 is the resident of Hyderabad. PWs. 1 and 2 are the parents of Shreelakshmi (hereinafter referred to as the 'deceased'). PW3 B the brother of PW.1 and PW.7 is the sister of PWs. 1 and 3. A-1 was the husband of the deceased and A-2 is the mother of A-1.

On 12.11.1995 the marriage of A-1 and the deceased was celebrated. At the time of marriage PW.1 gave a sum of rupees one lakh in cash, 15 tolas of gold and one Yamaha Motor Cycle to A-1. At the time of marriage 15 tolas of additional gold were put on the body of the deceased. After the marriage, A-1 and the deceased set up a new home at Hyderabad as A-1 was working in the Defence on daily wages basis. After the marriage, he was permanently appointed as Junior Scientific Officer in D.R.D.A. As they had set up a new establishment, PWs. 2, 3 and 7 purchased some household articles worth Rs.25,000/- and presented those to them. After one and half month of stay at Hyderabad, it is alleged, A-1 and A-2 started harassing the deceased to get more money and additional 15 tolas of gold jewellery which were put on the deceased at the time of the marriage. After some time A-1 lost his Yamaha Motor Cycle at Tank Bund. A-1 asked the deceased to ask PW.1 and other members of the family to purchase a new Motor Cycle for him. A-1 and the deceased were visiting Wanaparthi frequently on weekends as A-1's parents were residing at Wanaparthi. On such occasions A-2 used to harass the deceased to get additional gold of 15 tolas and a new motor cycle as she was the only daughter of her parents. PW.1 and others asked A-1 as to why he was demanding more gold and another motor Cycle. A-1 used to answer that he never asked his wife to demand such articles. C D E F G

On 18.4.1996 PWs.1 and 2 went to Hyderabad and PW.1 dropped PW.2 at Hyderabad as the birthday of the deceased H

A was on 27.4.1996, PW1 advised PW.2 to stay there and get the deceased and A-1 to Kurnool on 26.4.1996 to celebrate the birth day of the deceased. PW.2, the deceased and A-1 went to Kurnool at midnight on that day.

B They celebrated the birthday of the deceased at Kurnool on 27.4.96. After taking dinner, some of the family members went to a late night movie show at about 12.30 a.m. in the night. After returning from the picture, A-1 and the deceased were sleeping in a bedroom upstairs separately. On 28.4.1996 at about 7.00 a.m. PW.3 received a call from Wanaparthi. The call was made by the father of A-1 named V. Anjaneyulu. The said Anjaneyulu told PW.3 that A-1 had come to Wanaparthi and he was weeping and not disclosing anything and asked him as to what happened at Kurnool. Then PW.1 to 3 went upstairs to the bedroom of A-1 and the deceased. The door was bolted from inside. With force they opened the door. The door bolt gave a way for them to enter into the room. They found that the deceased was hanging by one end of the saree tied to the neck and the other end of the saree was tied to the ceiling fan. The deceased was in a kneeling position. A neighbour Dr. Venkata Ramana examined the deceased and declared her dead.

On 28.4.96 at about 10.00 a.m. PW.11 the Inspector of Police received the first information report given by PW.1 which is Ex.P-1. On the strength of Ex.P-1, the offence was registered by PW.11 in Cr.71/96 under Section 498-A and 306 IPC. He prepared the copies of first information report and dispatched to all concerned. Ex.P-13 is the copy of the FIR received by the Court.

G On 28.4.1998 PW.4 the Mandal Revenue Officer, on a requisition conducted inquest over the dead body of the deceased in the presence of PW.5.

On 29.1.1996 PW.11 prepared the observations report of the scene of offence in the presence of panch witnesses. Ex.P-10 is the observations report. Ex.P-14 is the rough sketch of

the scene of offence. PW.11 seized M.Os. 5 to 11 from the scene of offence. On 29.4.1996 PW.9 examined PW.7 and two others and recorded their statements. A

On 28.4.1996 PW.6 the Professor and Head of Department, Kurnool Medical College, Kurnool on requisition conducted autopsy over the dead body of the deceased. Ex.P-6 is the postmortem certificate. B

On 15.5.1996, PW.10 the Deputy Superintendent of Police, Kurnool on receiving intimation altered the section of law in Cr. No.71/1996 of Kurnool II town Police Station from Sections 498-A and 306 IPC to Section 304-B IPC PW.10 visited the scene of offence and prepared the observation panchnama. Ex.P-11 is the Panchnama. On 14.5.1996 PW.11 arrested A-1 and A-2. On completion of investigation, charge sheet was filed by PW.11 against A-1 and A2 under Sections 302 and 498-A IPC and Section 4 of the DP Act. C D

3. Accused persons denied the allegations. It was suggested that the accused persons were falsely implicated because the deceased was found dead in the house of the PWs 1 & 2. E

4. The trial court recorded conviction as noted above in respect of A1 while directing acquittal of A2. A1 preferred an appeal before the High Court.

5. The High Court on analysis of the evidence found that the respondent was not responsible for causing the death of the deceased. He was acquitted of the charge relating to offence punishable under Section 302 IPC. The High Court also noticed that the prosecution did not prove that the deceased was subjected to cruelty immediately before her death. Therefore, the accused could not be convicted for offence punishable under Section 304 B IPC. Accordingly, the High Court directed acquittal of the respondent. F G

6. The present appeal is filed by the informant. In support of the appeal learned counsel for the appellant submitted that H

- A the High Court ought to have noticed that the evidence on record was sufficient to fasten the guilt on the accused persons. The evidence on record clearly shows a complete chain of circumstances and, therefore, the High Court should not have directed acquittal. In any event, the High Court has not dealt as
- B to how Section 498A IPC and Section 4 of the DP Act have no application.

7. Learned counsel for the respondent-accused supported the judgment of the High Court.

- C 8. The law relating to circumstantial evidence has been highlighted by this Court in a large number of cases.

9. 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
- D 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);
- E *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
- F 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
- G the offences home beyond any reasonable doubt.

10. 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.....".

11. 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.

12. 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

A established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

13. 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".

14. 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 the this Court as far back as in 1952.

15. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*, (AIR 1952 SC 343), wherein it was observed thus:

F "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

16. 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: B C

- (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; D
- (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; E
- (3) the circumstances should be of a conclusive nature and tendency; E
- (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. F

17. 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 *Kusuma Ankama Rao v State of A.P.* (Criminal Appeal No.185/2005 disposed of on 7.7.2008) G H

A 18. In the instant case, the High Court has noted several factors to hold that prosecution has not established the accusations. Firstly, the evidence of PW 1 goes to show that door of the room where dead body was found was bolted from inside. Undisputedly, A1 was not inside. Another relevant aspect
B is the evidence of PW6. It is on record that there was variance in the evidence of the doctor who had earlier given the opinion that the deceased died due to asphyxia resulting from hanging and later on stated that deceased died because of smothering and the dead body was hanged. PW1 in his evidence has
C stated that when they asked respondent as to why he was demanding gold and motorcycle, he said that he had never asked anything. In the cross-examination PW1 categorically admitted that the deceased never personally informed him about the alleged harassment by the respondent. He has also admitted
D in the cross-examination that the respondent-accused never demanded any money or gold from him directly or personally. It is also accepted in the cross-examination that he presumed that respondent-accused had killed the deceased. It is of significance that Trial Court accepted that there are lacunae in the case of the prosecution and also that they failed to lead
E evidence as to where the respondent and deceased slept on 26/27 i.e. the intervening night. It is also accepted by the Trial Court that the evidence of the doctor PW.6 is confusing. Trial Court also accepted that it was absurd that the respondent-accused went out to a long distance wearing only banian and
F underwear but curiously enough wanted the accused to show as to why he did it. The evidence of PW.6 also has more loose ends. According to him, there was a possibility of struggle. If that is so, it is strange that nobody heard the sound of the struggle and as to how the deceased could have struggled
G without even making a sound. The evidence of PW.10 is more interesting. He says that the accused would have gone out and bolted the door from inside. He said that he had demonstrated the same without indicating to whom it was demonstrated and when. The evidence of PW.3 also corrodes the prosecution
H version. According to him he had locked all the doors including

the main door and thereafter slept in his room. According to him he received a telephonic call from the father of the respondent-accused from Wanaparthi that A1 was in a disturbed mind. He asked the father of the respondent-accused as to why and how he could be at Wanaparthi as he was at home and he had come home after visiting the second show of the film. It is accepted that Wanaparthi is at a distance of 140 Kms. from Kurnool. If they had returned at about 1.00 a.m. and the telephone came around 6.40 a.m, it has not been explained by the prosecution as to how the respondent-accused could travel the distance. As noted above the trial court observed the accused was wearing banian and underwear. If that be so it is strange that no body noticed it. PW 3 has fairly accepted that he presumed that respondent-accused was making demands through his wife-deceased.

19. To add to the vulnerability of the prosecution case, the examination in terms of Section 313 Cr.P.C. appears to have been done as an empty formality. The incriminating materials were not put to him. Though the High Court has not dealt with question of applicability of Section 498 IPC and Section 4 of the DP Act, but the evidence adduced does not establish the accusations.

20. In view of the aforesaid, there is no merit in this appeal which is dismissed.

S.K.S.

Appeal dismissed.