

A STATE OF HIMACHAL PRADESH

v.

RAJ KUMAR

(Criminal Appeal No. 31 of 2018)

B JANUARY 08, 2018

[R. BANUMATHI AND UDAY UMESH LALIT, JJ.]

C *Penal Code, 1860 – ss.302, 201 r/w.34 – Case based on circumstantial evidence – Deceased was residing with PW1 (son), PW2 (daughter) and accused-respondent (brother-in-law) – On the fateful night, PW1 heard the cries of deceased on being beaten by respondent who then took her towards the house of another accused – Later, dead body of deceased was found hanging from a tree – Trial court convicted the respondent – Appeal by accused allowed by High Court on the ground that PW-1 had made improvements in his deposition and hence, was not a reliable witness – Held: Prosecution case is based on circumstantial evidence – In the present case, the circumstances relied upon by the prosecution are proved by cogent and reliable evidence cumulatively forming a complete chain pointing out that the murder was committed by the respondent and none-else – Further, evidence of PW-1 was cogent, natural and consistent with the prosecution case – High Court entertained fanciful doubts and rejected the credible evidence of PW-1 on ground of alleged improvements – Reasonings of the High Court for acquitting the respondent are unsustainable – Conviction of respondent by trial court is affirmed.*

F *Evidence Act, 1872 – s.106 – Burden of proving fact especially within knowledge – Deceased was living with her 2 children and accused-respondent (brother-in-law) – On the fateful day, the respondent had beaten the deceased before taking her towards the house of another accused – Later, dead body of deceased was found hanging from a tree – Held: In view of s.106, burden was cast upon the respondent, being the inmate of the house to give a cogent explanation as to how the deceased died – No reasonable explanation was forthcoming from him as to why he had neither lodged the complaint nor informed the police about the missing of deceased – Accused not throwing light on the fact which*

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was within his knowledge, his failure to offer any explanation is a strong militating circumstance against him. A

Criminal law – Last seen theory – Deceased was last seen alive in the company of accused – Accused did not satisfactorily explain the missing of deceased – Held: This is a strong militating circumstance against the accused – Deceased who was residing in the same house with the accused and was last seen alive with the accused, it was for him to explain how the deceased died. B

Allowing the appeal, the Court

HELD: 1.1 Prosecution case is based on circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances must be conclusive in nature unerringly pointing towards the guilt of the accused. Moreover all the circumstances taken cumulatively should form a complete chain 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. [Para 9][107-D-E] C D

1.2 The deceased was living with her brother-in-law/accused along with her children. If the deceased was so missing, the natural conduct of the accused was to inform the police and also PW-3 (deceased's brother). But that was not done. In view of Section 106 of the Evidence Act, 1872 burden is cast upon the accused, being the inmate of the house to give a cogent explanation as to how the deceased died. The respondent-accused being inmate of the house cannot get away by simply keeping quiet and offering no explanation. This is a strong militating circumstance against the respondent indicating that he might be responsible for the commission of the offence. [Para 12]108-G-H E F

2. The motive attributed to the accused is that he had frequently quarrelled with the deceased and also assaulted her. Evidence of PW-15 as to the motive attributed to the accused was not properly appreciated by the High Court. [Para 13][109-A, D] G

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A 3. PW-1 is the son of the deceased residing with her and
the accused in the same house, and a natural witness to speak
about the occurrence. Evidence of PW-1 was cogent and natural
and is consistent with the prosecution case. The High Court was
not right in doubting the evidence of PW-1 on the ground of
alleged improvements made and rejecting his evidence on the
B premise that there were certain improvements. [Para 15][110-
D-E]

C 4. The deceased who was residing in the same house with
the accused and was last seen alive with the accused, it is for him
to explain how the deceased died. The accused has no reasonable
explanation as to how the body of the deceased was found hanging
from the tree. It is for the accused to explain as to what happened
to the deceased. [Para 16][110-F]

State of Rajasthan v. Kashi Ram (2006) 12 SCC 254 :
[2006] 8 Suppl. SCR 501 – relied on.

D 5. In the present case, the circumstances relied upon by
the prosecution are proved by cogent and reliable evidence. The
circumstances cumulatively taken form a complete chain pointing
out that the murder was committed by the accused and none-
else. [Para 18][111-D]

E *Trimukh Maroti Kirkan v. State of Maharashtra* (2006)
10 SCC 681; [2006] 7 Suppl. SCR 156; *Ganesh Lal v.*
State of Rajasthan (2002) 1 SCC 731 : [2001] 4 Suppl.
SCR 619; *State of Maharashtra v. Suresh* (2000) 1 SCC
471 : [1999] 5 Suppl. SCR 215; *State of Tamil Nadu v.*
F *Rajendran* (1999) 8 SCC 679 : [1999] 3 Suppl. SCR 89
– relied on.

Case Law Reference

	[2006] 7 Suppl. SCR 156	relied on	Para 10
	[2006] 8 Suppl. SCR 501	relied on	Para 10
G	[2001] 4 Suppl. SCR 619	relied on	Para 10
	[1999] 5 Suppl. SCR 215	relied on	Para 10
	[1999] 3 Suppl. SCR 89	relied on	Para 10

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.

31 of 2018.

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From the Judgment and Order dated 19.08.2014 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 559 of 2008. A

D. K. Thakur, AAG, Shariq Ahmed, Varinder Kumar Sharma, Advs. for the Appellant.

Jose Abraham, Ruchir Batra, Advs. for the Respondent. B

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. This appeal preferred by the State challenges the judgment of the High Court of Himachal Pradesh in Criminal Appeal No.559 of 2008 acquitting the respondent under Section 302 IPC by setting aside his conviction and the sentence of life imprisonment imposed upon him by the trial court. C

3. Husband of deceased Meena Devi passed away about eleven years ago prior to the incident. Meena Devi was residing with her son Jeewan Lal (PW-1), daughter Rekha Devi (PW-2) and accused Raj Kumar (brother-in-law) in the joint family house. On 23.08.2007 at 08.30 p.m., while Meena Devi was taking meal along with her family, respondent-accused came there in drunken condition and started abusing Meena Devi and her children PW-1 and PW-2 without any reason and threatened to kill them. Barfi Devi-grandmother of PW-1 who was present in the house took Jeewan Lal (PW-1) to adjoining sleeping room and bolted the room from outside. She asked Rekha Devi (PW-2) daughter of deceased to go to the house of her maternal uncle Anant Ram (PW-3). While being inside the room, PW-1 heard the cries of his mother Meena Devi and from the window saw the respondent-accused taking her mother towards the house of another accused Om Prakash. After few hours, accused opened the door and told him that his mother had run away from the house and that he should tell the same to his maternal uncle Anant Ram (PW-3). Under such threat from respondent-accused and another accused Ramesh Kumar, PW-1 told his maternal uncle (PW-3) that his mother had run away from the house. On 24.08.2007 at about 02.00 a.m., Anant Ram (PW-3) came to the house of accused. Thereafter, PW-1 and PW-3 went to Dharampur Police Station and informed the police about missing of Meena Devi. On 25.08.2007, they again went to the police station Dharampur and at about 11.00-11.30 a.m; at the time Anant Ram (PW-3) received a phone call from Nek Ram informing that D

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A the dead body of deceased Meena Devi was found hanging from a tree at Ghat Bahu forest. Thereafter, PW-1 and PW-3 along with police party went to the spot and found that the dead body of Meena Devi was hanging from the branch of a pine tree with a plastic rope, tied around her neck. Statement of PW-1 was recorded, based on which, case in
B FIR No.250 of 2007 was registered under Section 302 IPC and Section 201 read with Section 34 IPC.

4. Initial investigation was conducted by Sub-Inspector of Police Sat Prakash (PW-20) and further investigation was conducted by Inspector of Police LR Thakur (PW-22). PW-22 prepared spot map, inquest and conducted further investigation. Dr. Vivek Banyal (PW-
C 24) conducted autopsy and opined that “....*death was because of haemorrhagic shock due to rupture of spleen and anti-mortem injuries suggesting gagging. Hanging was post-mortem*”. Accused Raj Kumar was taken to custody on 25.08.2007 and he was interrogated. Confession statement of accused was recorded on 27.08.2007 which
D led to the recovery of a lady shirt from the room of the house of accused Ramesh Kumar which was under construction. Upon completion of investigation, chargesheet was filed against accused Raj Kumar, Ramesh Kumar, Om Prakash and Barfi Devi under Section 302 IPC and Section 201 read with Section 34 IPC.

E 5. To bring home the guilt of the accused, in the Sessions Court, prosecution has examined as many as twenty four witnesses and marked number of exhibits and material objects. In the questioning under Section 313 Cr.P.C., the accused denied all the incriminating circumstances and evidence and pleaded that he is innocent. The accused has not offered
F any explanation on the death of deceased Meena Devi.

6. Based upon the evidence of Anant Ram (PW-3) and Bhindra Devi (PW-15), the trial court held that Meena Devi suffered harassment at the hands of her brother-in-law (respondent-accused). The trial court held that Jeewan Lal (PW-1) son of the deceased had spoken about the overt act of the accused in beating the deceased and that the accused
G taking away Meena Devi from the house. The trial court held that no reasonable explanation was forth coming from the accused for the death of the deceased Meena Devi who was living jointly with the respondent-accused. On those findings, the trial court convicted the respondent-accused under Section 302 IPC and Section 201 IPC read with Section
H 34 IPC and sentenced him to undergo imprisonment for life. Other

accused Ramesh Kumar and Om Prakash were acquitted. Accused A
Barfi Devi remained absconding.

7. In the appeal preferred by the accused, the High Court observed
that Jeewan Lal (PW-1) son of the deceased, while deposing as witness
before the court in narrating the whole incident, had made improvements
and hence, PW-1 is not a reliable witness. The High Court further held B
that there were bald assertions regarding dispute, but no specific motive
was attributed to the accused for committing murder of the deceased
Meena Devi. Observing that the case of prosecution suffers from serious
infirmities, the High Court allowed the criminal appeal filed by the
respondent-accused thereby setting aside the conviction and the sentence C
of life imprisonment imposed upon him. Being aggrieved, the State is
before us.

8. We have heard the learned counsel for the parties and perused
the impugned judgment and materials on record.

9. Prosecution case is based on circumstantial evidence. It is D
well settled that in a case based on circumstantial evidence, the
circumstances from which an inference of guilt is sought to be drawn
must be cogently and firmly established and that those circumstances
must be conclusive in nature unerringly pointing towards the guilt of the
accused. Moreover all the circumstances taken cumulatively should E
form a complete chain 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.

10. In a case, based on circumstantial evidence, the inference of
guilt can be drawn only when all the incriminating facts and circumstances F
are found to be incompatible with the innocence of the accused. In
Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC
681, it was held as under:-

“12. The normal principle in a case based on circumstantial
evidence is that the circumstances from which an inference of G
guilt is sought to be drawn must be cogently and firmly established;
that those circumstances should be of a definite tendency
unerringly pointing towards the guilt of the accused; that the
circumstances taken cumulatively should form a chain so complete
that there is no escape from the conclusion that within all human H

A probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

B The same principle was reiterated in *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254, *Ganesh Lal v. State of Rajasthan* (2002) 1 SCC 731, *State of Maharashtra v. Suresh* (2000) 1 SCC 471 and *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679.

C 11. After death of her husband, Meena Devi was living with her children viz. Jeewan Lal (PW-1) and Rekha Devi (PW-2) along with the accused Raj Kumar in the joint family. In their evidence, PW-1 and PW-2 clearly stated that on 23.08.2007, respondent came in drunkard condition and threatened to kill them. Jeewan Lal (PW-1) who is the son of deceased Meena Devi clearly stated that he had heard the cries of his mother and also seen accused taking his mother towards the house of accused Om Parkash. On 25.08.2007, body of Meena Devi was found hanging from a pine tree in the nearby forest. PW-24-Dr. Vivek Banyal who conducted the autopsy has clearly said that “*anti-mortem injuries were caused due to gagging and hanging process of dead body was post-mortem*”.

E 12. In his evidence, Jeewan Lal (PW-1) stated that he was threatened by the accused Om Parkash to make telephonic call to his maternal uncle Anant Ram (PW-3) that Meena Devi had run away from the house and under such threat Jeewan Lal (PW-1) informed Anant Ram (PW-3) accordingly. After Anant Ram (PW-3) came to the village at 02.00 a.m. on 24.08.2007, PW-1 and PW-3 went to P.P. Dharampur and informed them about missing of Meena Devi. Meena Devi was living with her brother-in-law/accused along with her children. If Meena Devi was so missing, the natural conduct of the accused was to inform the police and also Anant Ram (PW-3). But that was not done. In view of Section 106 of the Evidence Act, burden is cast upon the accused, being the inmate of the house to give a cogent explanation as to how Meena Devi died. No reasonable explanation is forthcoming from the accused as to why he had neither lodged the complaint nor informed the police about the missing of Meena Devi. The respondent-accused being inmate of the house cannot get away by simply keeping quiet and offering no explanation. This is a strong militating circumstance against the respondent indicating that he might be responsible for the commission of the offence.

13. The motive attributed to the accused is that he had frequently quarrelled with the deceased and also assaulted her. A dispute is also suggested pertaining to the land of one Swami who wanted to give his property solely to the deceased Meena Devi which was not acceptable to the accused. Yet another motive attributed to the accused was his greed for the fixed deposit of Rs.1,20,000/- which had become due payable to the deceased on 13.08.2007. PW-15 Bhindra Devi, sister-in-law of the deceased in her evidence had clearly stated that as and when Meena Devi visited her house, Meena Devi used to tell her about the suffering meted out to her by the accused Raj Kumar. Further, Bhindra Devi (PW-15) had clearly spoken about the motive attributed to the accused. From the evidence of PW-15, it is brought out that the accused Raj Kumar is a chronic drunkard. On previous occasion, respondent-accused had beaten Meena Devi and he had entered into compromise with Meena Devi by assuring her that he would not beat her in future. Evidence of PW-15 as to the motive attributed to the accused was not properly appreciated by the High Court.

14. Jeewan Lal (PW-1) has clearly spoken as to the attack on Meena Devi by the accused on the night of 23.08.2007 and the subsequent threat to PW-1 by the accused and one Om Prakash. The trial court which had the opportunity of seeing and observing demeanour of the witnesses held that Jeewan Lal (PW-1) is a trustworthy witness. While so, the High Court was not right in doubting the version of Jeewan Lal (PW-1) on the ground that PW-1 made improvements in his version. In his statement (Ex.P/A) dated 25.08.2007, Jeewan Lal (PW-1) did not disclose the participation qua accused Nos. 2 and 3 namely Ramesh Kumar and Om Parkash in the commission of the offence. Evidence of Jeewan Lal (PW-1) cannot be doubted simply because names of Ramesh Kumar and Om Prakash were not mentioned in his statement recorded on 25.08.2007 immediately after bringing down the hanging body of Meena Devi from the tree. The circumstances in which PW-1 was placed at that time, is to be kept in view. PW-1 was only aged nineteen years. On the night of 23.08.2007, he had heard the cries of his mother at the time when she was beaten. PW-1 and PW-3 had been searching for Meena Devi for more than twenty four hours that is from 24.08.2007 to 25.08.2007, only to find her dead. PW-1 was already threatened by accused Om Parkash to inform Anant Ram (PW-3) that Meena Devi

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- A had run away. On 25.08.2007, when PW-1's statement was recorded, he must have been in trauma and fear psychosis. In such circumstances, omission to mention the names of Om Parkash and Ramesh Kumar in his statement (Ex.P/A) does not render PW-1's evidence untrustworthy. Upon proper appreciation of the evidence, the trial court observed that evidence of PW-1 inspires confidence of the court. While so, in our view, the High Court ought not to have doubted the version of PW-1 and his credibility.

15. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to be truthful in the given circumstances of the case. Once that impression is formed, it is necessary for the court to scrutinize the evidence more particularly keeping in view the drawbacks and infirmities pointed out in the evidence and evaluate them to find out whether it is against the general tenor of the prosecution case. Jeewan Lal (PW-1) is the son of the deceased Meena Devi residing with her and the accused in the same house, and a natural witness to speak about the occurrence. Evidence of PW-1 is cogent and natural and is consistent with the prosecution case. The High Court was not right in doubting the evidence of PW-1 on the ground of alleged improvements made by Jeewan Lal (PW-1) and rejecting his evidence on the premise that there were certain improvements.

16. As pointed out by the Sessions Judge, deceased Meena Devi was last seen alive in the company of accused Raj Kumar and the accused did not satisfactorily explain the missing of deceased Meena Devi and the same is a strong militating circumstance against the accused. Meena Devi who was residing in the same house with the accused and was last seen alive with the accused, it is for him to explain how the deceased died. The accused has no reasonable explanation as to how the body of Meena Devi was found hanging from the tree. As held in *Kashi Ram* case, it is for the accused to explain as to what happened to the deceased. If the accused does not throw light on the fact which is within his knowledge, his failure to offer any explanation would be a strong militating circumstance against him.

17. As pointed out earlier, in his questioning under Section 313 Cr.P.C., the accused simply denied the evidence of incriminating circumstance put to him and pleaded that he is innocent. A feeble attempt

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was made by the defence to suggest that the deceased consumed poison and committed suicide. Viscera of deceased Meena Devi was sent to FSL Tungand. As per FSL report, no poison was detected in the viscera of the deceased. In our considered view, the trial court rightly rejected the plea suggested by the defence. A

18. As pointed out earlier, in a catena of judgments, this Court held that when conviction is based on circumstantial evidence, there should not be any gap in the chain of circumstances; the accused is entitled to the benefit of doubt. In the present case, by cogent and convincing evidence, prosecution has established the circumstances:- (i) Motive (evidence of PW-15); (ii) accused beating the deceased and taking her away (Evidence of PW-1); (iii) Death of Meena Devi is homicidal (evidence of PW-24); (iv) Conduct of accused in not reporting to the police about missing of the deceased Meena Devi; and (v) Absence of explanation from the accused as to the death of the deceased. The circumstances relied upon by the prosecution are proved by cogent and reliable evidence. The circumstances cumulatively taken form a complete chain pointing out that the murder was committed by the accused and none-else. B C D

19. In the appeal, the High Court has not properly appreciated the evidence and intrinsic worth of testimony of prosecution witnesses and the formidable circumstances established by the prosecution against the accused. The High Court entertained fanciful doubts and rejected the credible evidence of Jeewan Lal (PW-1) on slender grounds. Due to mis-appreciation of evidence, the High Court set aside the conviction and caused a miscarriage of justice. Reasonings of the High Court for acquitting the accused are unsustainable and the impugned judgment cannot be sustained. E F

20. In the result, the impugned judgment is set aside and the appeal is allowed. The conviction of the respondent under Section 302 IPC and the sentence of life imprisonment imposed on him by the trial court are affirmed. The respondent shall be taken into custody to serve the remaining sentence. G