CASE NO.:
Appeal (crl.) 1003 of 2007

PETITIONER:
Shaik Mastan Vali

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 03/08/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1003 OF 2007
(Arising out of SLP (Crl.) No. 2692 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court dismissing the appeal filed by the appellant questioning his conviction or offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment of life and fine of Rs.30,000/- with default stipulation.

3. Background facts in a nutshell are as follows:

Adivamma (PW-1) is the mother and Mandapate Rullaiah (PW-2) is brother of Nagandla Pichamma (hereinafter referred to as the 'deceased') brother of the deceased. The deceased, the accused and the other material witnesses lived in Martur. The deceased belonged to Byneedi Madiga by caste, whereas the accused belongs to Muslim community. The deceased was a deserted lady and she developed illicit intimacy with the accused and gave birth to a female child. She was residing in a thatched house situated adjacent to her parents' house. During the life time of deceased, the accused used to harass and beat the deceased suspecting her fidelity. On 31.10.1998 at about 9 p.m., while the deceased was watching the T.V. programme in the house of Venkata (PW3), the accused came there and on seeing her the accused became wild and brought the deceased by beating with hands and took up to his house. On the next day morning, PW1 went to the house of the deceased and found that the deceased dead and she was lying on the cot. PW1 found ligature marks on her throat and around the neck of the deceased. On hearing the hue and cry of PW 1, the neighbours gathered at the scene of offence. Thereafter, late M. Polaiah, father of the deceased, went to the police station and gave an oral report to the S.1. of Police at about 3.30 p.m., which was reduced in writing under Ex. P5. On the basis of Ex. P-5, PW6 registered a case in Cr. No. 102 of 1998 under Section 302 IPC and issued FIR Ex.P6. Thereafter, PW6 visited the scene of' offence, prepared scene of observation report Ex. P2 and seized MO.1 to MO.3 in the presence of PW4 and another. Then PW6 examined PWs 1 to 3, 5 and others and recorded their statement. On 02.11.1998

at about 8 AM, PW8 C.I of Police conducted the inquest over the dead body of the deceased in the presence of PW4 and another. Ex, P-3 is the inquest report. On 02.11.1998 itself, Civil Assistant Surgeon at Government Hospital, Addanki (PW 7) conducted the autopsy over the dead body of the deceased and opined that the cause of death was due to asphyxia caused by strangulation with ligature. Ex. P-8 is the post mortem report. On 11.11.1998, the accused surrendered before the court. After completion of investigation, PW 8 filed the charge sheet.

On receipt of the committal order by the learned Additional Judicial Magistrate of First Class, Addanki, the learned Special Sessions Judge for Cases under SCs and STs (P.A.) Act, 1989, Ongole took the case on file in SC No.71/99 on its file and ultimately the accused was put up for trial before the learned Sessions Judge, charged of the offence under section 302 I.P.C. or alternatively under Sec. 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short the SCST Act).

The prosecution, in order to substantiate its case, examined PW 1 to PW 8 and marked Exs. P1 to P8 and MOs. 1 to 8. No oral or documentary evidence was adduced on behalf of defence. Accused pleaded innocence.

Placing reliance on the evidence of PWs. 1& 2 i.e. mother and the brother of the deceased respectively, the trial court recorded his conviction. Since it was a case which was based on circumstantial evidence, the trial court took note of several circumstances to fasten the guilt on the accused. Though he was found not guilty of offence under Section 3, he was acquitted of charges for commission of offence punishable under Section 3(2)(5) of the SCST Act. In appeal the High Court affirmed the conclusions. The High Court took note of the fact that the witnesses have seen accused dragging the deceased to the hut in the night. Next day morning the deceased was found dead. This, according to the prosecution version, is sufficient to fasten the guilt in the absence of any explanation by the accused at about his absence thereafter. This stand was accepted by the trial court.

4. In support of the appeal learned counsel for the appellant submitted that this being a case of circumstantial evidence, the prosecution has not established its accusations. Learned counsel for the respondent-State supported the order of the trial court and the High Court.

5. 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.

6. 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."

7. 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."

8. 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.
9. 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.

10. 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.

11. 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."

12. 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.

13. The above position was highlighted in State of U.P. v. Satish (2005 (3) SCC 114).

14. When the evidence on record is analysed in the background of principles highlighted above, the inevitable conclusion is that the prosecution has established its accusations.

15. In the instant case the deceased has intimacy with the accused and used to live in a hut and the accused frequently visited the house of the deceased and lived there as husband and wife. During night time on the previous day of the occurrence while the deceased was watching T.V. in the house of PW 3, the accused came to the house of PW 3 and started beating the deceased and dragged her to hut. On the next day morning PWs. 1& 2 found her dead. The police found one towel of the accused which was tied around the waist of the deceased and the rope was lying near the cot. The trial Court and the High Court have rightly relied upon the circumstances to hold the accused guilty. We find no substance in the appeal.

16. Appeal fails and is dismissed.