(2008) 01 SC CK 0048

Supreme Court of India

Case No: Criminal Appeal No. 579 of 2005

Sattatiya @ Satish Rajanna Kartalla		APPELLANT
	Vs	
State of Maharashtra		RESPONDENT

Date of Decision: Jan. 16, 2008

Acts Referred:

- Constitution of India, 1950 - Article 136
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: AIR 2008 SC 1184 : (2008) AIRSCW 1136 : (2008) 1 ALD(Cri) 510 : (2008) CriLJ 1816 : (2008) 1 JT 434 : (2008) NCC 315 : (2008) 39 OCR 662 : (2008) 3 RLW 2135 : (2008) 1 SCALE 399 : (2008) 3 SCC 210 : (2008) 1 Supreme 222

Hon'ble Judges: G. S. Singhvi, J; G. P. Mathur, J

Bench: Division Bench

Advocate: Ajit Kumar Pande, A.C, for the Appellant; Sushil Karanjkar and Ravindra Keshavrao Adsure, for the Respondent

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.

This appeal by special leave is directed against the judgment of the Bombay High Court, which upheld the conviction of the appellant u/s 302 I.P.C. and sentence of life imprisonment awarded to him by Additional Sessions Judge, Greater Bombay in Sessions Case No. 28/1995.

2. On 1.10.1994, PW1 Dr. Rasiklal Dwarkadas Dani, a resident of Pratap Building 173, Dadiseth Agyari Lane, Mumbai, telephonically informed Assistant Police Inspector (API), PW14 R.R. Gaekwad of Police Station Tilak Nagar that a man, who was later on, identified as Satish, was lying on the right side of the stairs of the building in a pool of blood. API Gaekwad reached the spot and removed that person to G.T. Hospital,

where he was declared brought dead. PW14 recorded the information given by Dr. Dani as Ex.P6 and treated the same as FIR. He then handed over the investigation to PW13 Shamsherkhan Wazirkhan Pathan, who was acting as night Police Inspector at L.T. Marg Police Station. The latter prepared Panchnama of the dead body. From the papers found in the pocket of the clothes of the deceased, the police contacted his brother, PW3 Rajaiyya Pochyya Bandapalli on 1.10.1994 itself and recorded his statement. After two days, the appellant and one Devabhuma Badapatti were arrested. On the day of his arrest i.e. 3.10.1994, the appellant is said to have made a statement and then took the police to Room No. 45 of the third floor of the building known as ''Ganesh Bhuvan'' Dadiseth Agyari Lane, Mumbai and got recovered his pant and shirt which are said to be having stains of blood. On 4.10.1994, the appellant was medically examined by PW10 Shiv Narain Daund, who found that the thumb and index finger of the appellant''s right hand had been injured sometime back. On the next day i.e., 5.10.1994, the appellant took the police to PW7 Mohd. Farid Abdul Gani, who claims to have sold the handkerchief, which was found near the body of the deceased. On 6.10.1994, the appellant is said to have given some more information to the police and got recovered half blade (marked as Article 7) which was lying under the wooden platform in front of ''Ganesh Bhuvan''. The clothes of the deceased, the pant and shirt belonging to the appellant and blade were sent for chemical examination. As per the Chemical Examiner''s Report, the clothes of the deceased were having human blood of ''O'' group. The pant and shirt, allegedly recovered at the instance of the appellant also had blood stains, but it could not be established whether the same was human blood of ''O'' group. The stain on the blade was also said to be of human blood but its identity could not be established by the chemical examiner.
After completing the investigation, the police submitted challan in the Court of the Metropolitan Magistrate who committed the case to the Court of the Sessions, Greater Bombay.

3. The prosecution examined PW1 Dr. Rasiklal Dwarkadas Dani, PW2 Dinesh Dubey, with whom Devabhuma Badapatti is said to have worked till September 1994, PW3 Rajjaiyya (brother of the deceased), PW4 Hari Oval and PW8 Ranjit Bishram Jaiswal, who acted as panches for recovery of the clothes from Room No. 45 of ''Ganesh Bhuvan'', PW5 Salim Sheikh, who acted as panch for recovery of half blade beneath wooden board in front of ''Ganesh Bhuvan'', PW6 Shankar Shripati Ulalkar, who was engaged in the work of shaving and cutting hair outside shop No. 1 of ''Ganesh Bhuvan'', Dadiseth Agyari Lane, PW7 Mohd. Farid Abdul Gani, who claims to have sold the handkerchief to the appellant, PW9 Balu Shivram Nalwada, who is said to have witnessed the sale of handkerchief by PW7 to the appellant, PW10 Shivraj Narayan Daund, who examined the appellant on 4.10.1994, PW11 Raju Chandu Poojari, who claims to have seen the accused persons with the deceased on the night of the incident i.e. 30.9.1994, PW12 Dr. Avinash Janardan Pujari, who performed the autopsy on the dead body, PW13 PI, Shamsherkhan Vazirkhan

Pathan and PW14 API, R.R. Gaikwad. Thereafter, the statements of the appellant and Devabhuma Badapatti were recorded u/s 313 Cr.P.C. Both of them denied having committed the crime.

4. The motive of the crime, as projected by the prosecution, was that the appellant was having illicit relation with Lakshmi wife of the deceased and Devabhuma Badpatti was having animosity with the latter because of the alleged murder of his father. The prosecution relied on the circumstantial evidence of last scene, recovery of blood stained pant and shirt from Room No. 45, ''Ganesh Bhuvan'' Building, blood stained half blade and handkerchief found near the body of the deceased to prove the appellant''s involvement in the crime.

5. The learned Additional Sessions Judge did not accept the prosecution''s theory regarding motive but relied on the circumstantial evidence and convicted both the accused u/s 302 read with Section 34 I.P.C. and sentenced them to life imprisonment. On appeal, the Division Bench of the High Court upheld the conviction of the appellant and confirmed the sentence of life imprisonment awarded to him, but acquitted Devabhuma Badpatti on the premise that there was no evidence to show that he was a party to the crime.

6. Shri Ajit Kumar Pande assailed the findings recorded by the learned Additional Sessions Judge, which as mentioned, were confirmed by the High Court by arguing that the entire story was fabricated by the police to falsely implicate the appellant. Learned Counsel invited our attention to the serious discrepancies in the statement of PW 11, Raju Poojari, who claims to have seen the appellant with the deceased at 10.45 p.m. on 30th September 1994 and argued that the deliberate attempt made by the witness to conceal the fact that he was engaged in the business of illicit liquor and was arrested by the police in connection with the said business should have been treated by the learned Additional Sessions Judge and High Court sufficient for discarding his testimony. Shri Pande then argued that the recovery of the blood stained pant and shirt from Room No. 45 of ''Ganesh Bhuvan'' and half blade from under the wooden board in front of ''Ganesh Bhuvan,'' are highly suspicious and no credence should have been given to such recoveries for holding the appellant guilty of serious offence like murder because they were not proved to be stained with human blood of ''O'' group. He lastly argued that version of PW7 Mohd. Gani regarding sale of handkerchief to the appellant is unbelievable because there was nothing from which he could identify the handkerchief allegedly sold more than one month before the alleged murder. Shri Sushil Karanjakar, learned Counsel for the State supported the judgment under challenge and argued that the High Court rightly upheld the conviction of the appellant and the sentence awarded to him.

7. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The Court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally

incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt 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.

8. In 280733 , which is one of the earliest decisions on the subject, this Court observed as under:

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.

9. In 273091 , this Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

(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.

10. In 278324 , it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These 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.

11. In 286190 , 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.

12. The above noted propositions have been reiterated in 295898 ; 279938 ; Jaswant Gir v. State of Punjab (2005) 12 SCC 438; 293747 ; 258435 ; 260231 and 302118 .

13. In 260231 , this Court while reiterating the settled legal position, observed:

It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.

14. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court 279938 .

In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime.

15. A careful reading of the judgments of the Additional Sessions Judge and High Court shows that the conviction of the appellant was based on the following circumstances:

(i) that both the accused were with the deceased when he was last seen alive in the night of 30/9/1994.

(ii) the accused had residence in the vicinity of the place where the injured was found while the injured did not reside in the vicinity.

(iii) accused No. 1 had an injury which could be caused by user of the blade (Art.7) and had knowledge where the piece of blade could be found by the Police.

(iv) there was human blood on the piece of blade and stains of human blood on the clothes of accused No. 1 were not explained to be the stains of blood of his own.

(v) the handkerchief purchased by accused No. 1 was found near the injured with stains of blood of the injured indicative of presence of accused No. 1 in the vicinity after the injured had sustained bleeding injuries.

(vi) Accused No. 2 used to be with accused No. 1 many times and had been sleeping at the place of accused No. 1 for three nights and accused No. 2 had borrowed Rs.300/- in the night of 30th September, 1994 and

(vii) they were caught when they were together.

16. We shall first scrutinize the evidence of last scene, which is in the form of statement of PW11 Raju Poojari. In the first instance, the witness denied his acquaintance with Babu Poojari but then volunteered to admit that he knew the latter. He gave out that he was residing in a temporary shed at Sonapur, Chandanwadi, which was used as tailoring shop. Later on, he made an improvement by saying that he was doing work at the tailoring shop. According to him both the accused had passed in front of the shop on 30th September, 1994 at 10.45 p.m. He demonstrated his acquaintance with both the accused by saying that they used to come to the tailoring shop. When two photographs of the deceased (marked as Article 8) were shown to him, PW11 stated that the said person had come with the accused for getting their clothes stitched from the shop. He expressed his ignorance about the time when they came to the shop and then stated that they came at 10.30 p.m. 2-4 days before the police came to make enquiries from him. According to PW11 his signatures were obtained at the police station but nothing was read out to him. He then stated that something was read out at the police station ten days back when he was called there and was shown photographs (marked as Article 8). He admitted the existence of a liquor shop near the tailoring shop, but gave out that the same was owned by one John. He denied his involvement in the business of illicit liquor. At that stage the public prosecutor sought and was granted permission to ask questions in the nature of cross examination. In reply to the querries put by the public prosecutor, PW11 denied the suggestion that he was doing business of illicit liquor and expressed his ignorance about the statement given to the police that he was engaged in such business. He also denied having stated before the police that the accused had come to the liquor shop with the person in the photograph and

that they were offering liquor to him and also asked Babu Poojari to pour more liquor in his glass because he was their guest. PW11 then stated that the person shown in the photograph was totally drunk when he came with two accused and they were supporting him while walking and this happened 4-5 days before when he was called to the police station. He expressed his ignorance about the number of false cases registered against him. In cross examination he denied having indulged in any activity other than tailoring work. He also gave out that he did not know the names of the accused when they passed in front of the tailoring shop.

17. A critical analysis of the statement of PW11 shows that the same is full of contradictions. In the examination-in-chief, he demonstrated his acquaintance with the accused by saying that they used to come to tailoring shop but in cross examination he admitted that he did not know their names when they were passing in front of the tailoring shop. The second important contradiction relates to his recognition of the person shown in the photograph. In the first instance he gave out that the said person had come with the accused for getting their clothes stitched from the shop but, later on, stated that he came with the accused and was heavily drunk and was being helped by the accused. Yet another contradiction which is apparent from the statement of PW11 relates to his acquaintance with Babu Poojari. In the beginning he flatly denied that he knew Babu Poojari and then made a u-turn by voluntarily stating that he knows Babu Poojari. He also denied having stated before the police that he was doing the business of selling illicit liquor in association with Babu Poojari and that the accused offered liquor to the deceased and also asked Babu Poojari to pour more liquor in his glass. These contradictions are evident from the following extracts of the statement of PW11:

I know Satish Bandapalli and Devaanna Bandapalli and they were passing in front of my shop at about 10.45 p.m. I do not know where they were going. I had been knowing those 2 persons as they used to come to the tailoring shop.

These 2 accused had not done anything else when they passed in front of my tailoring shop. I did not know their names at that time.

I had seen the person whose 2 photographs from Article 8 are now shown to me, but I do not know his name. When I last saw the person in this photograph, he had been with the 2 accused before this Court. Those 3 together had come to my shop. Those 3 had come for getting their clothes stitched from the shop where I used to be. I do not remember the time when they had come to the shop. Now I say that they had come at 10.30 p.m. 2-4 days before the police came to make enquiries from me. The police had taken me in the police station. At the police station my signature was obtained and I was permitted to go. The police did not read out anything to me at the time they had taken me to the police station and obtained my signature but something was read out to me 10 days back when I had been called here. At the time my signature was taken I was shown the photographs Article 8.

It did not happen that Babu Poojari came to me and agreed to work with me and we both started doing the business of illicit liquor. I had not stated so to any one at any time. I can not say why portion marked ''A'' to that effect has been so recorded. It did not happen that these 2 accused had come to my illicit liquor business with the person in the photograph. I had not stated so to any one at any time. I can not say why portion marked ''B'' to that effect has been so recorded in my alleged statement dated 5.10.1994. I had not seen these 2 accused offering liquor to the person in the photograph and also asking Babu Poojari to pour more liquor in his glass as he was their guest. I had not stated so to any one at any time. I cannot say why portion marked ''C'' to that effect has been so recorded in my alleged statement dated 5.10.1994. The person in the photograph now shown to me Article 8 was totally drunk when he had come with these 2 accused to our shop. The person in the photograph was so drunk that these 2 accused had to support the person in the photograph Article 8 for making him walk away and in that condition I last saw them walking away from the tailoring shop 4-5 days before police took me to the police station. At present I have been wrongly apprehended by the police in a case when there was a raid on the illicit liquor shop in the neighbourhood. I do not know in how many false cases I have been involved after being wrongly apprehended.

18. It is significant to note that even though PW11 denied having made statements marked ''A'', ''B'' and ''C'' before the police but the investigating officer, PW13 categorically asserted that Raju Poojari did make those statements.

19. The learned Sessions Judge as also the High Court noted contradictions in the statement of PW11 but ignored the same by describing them as minor. In the opinion of the learned Sessions Judge the variation in the previous statement of PW11 stands explained by his desire not to incriminate himself. He also observed that the defence had not brought anything from the cross examination of PW11 to discredit his testimony. The High Court adopted the same line of reasoning for placing reliance on the evidence of last scene.

20. In our view, the testimony of PW11 is wholly untrustworthy. He appears to be a doctored witness, who came forward to support the prosecution cause with a view to win favour from the police in the cases registered against him in connection with the raid of illicit liquor shop. This is the reason why he made vacillating statement regarding the identity of two accused and the deceased and the purpose of their coming to the so-called tailoring shop where he was residing and also working. It is difficult, if not possible, to believe that even though the accused persons used to come to the tailoring shop for getting their clothes stitched, where PW11 is said to be working, he did not know their names. His attempt to conceal his acquaintance with Babu Poojari who was his associate in the business of illicit liquor is inexplicable. The suggestive conjecture made by the learned Additional Sessions Judge that PW11 retracted from the statement made before the police because he did not want to incriminate himself in offences relating to business of illicit liquor

cannot be accepted because the fact of the matter is that the witness was arrested by the police in connection with the said business and there was every reason for him to come forward to support the police case. The testimony of PW11 is also discredited by the fact that he made self contradictory statements regarding the presence of the accused and the deceased at the shop. In one breath he stated that they were passing in front of the shop and thereafter sought to identify them by stating that they had come for stitching the clothes.

21. The next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No. 45 of ''Ganesh Bhuvan'' from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by any one. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of ''Ganesh Bhuvan'' is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiner''s Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder.

22. The over jealous efforts made by the prosecution to link the handkerchief allegedly found near the body of the deceased of the appellant lends support to the argument of the learned Counsel for the appellant that the police had fabricated the case to implicate the appellant. In his statement, PW7 Mohd. Farid Abdul Gani, who is said to have sold the handkerchief to the appellant, admitted that he was not selling branded handkerchiefs and that there were no particular marks on the goods sold by him. He, however, recognized the handkerchief by saying that the accused made a lot of bargaining and he was amused by the latter''s statement that

he will soon become an actor.

23. Both the learned Additional Judge and High Court accepted the testimony of PW7 along with the statement of PW9 ignoring the admission made by the former that he did not put any special mark on the handkerchief sold by him; that he purchased the handkerchiefs in wholesale from the market and removed the label of manufacturer before selling the same and that there are 4 or 5 other persons carrying on the same business in the locality. Likewise both the courts ignored the fact that PW9 could not confirm the exact identity of the handkerchief (marked as Article 3), he could only say that the handkerchief of the appellant was just like Article 3.

24. In our opinion it is extremely difficult to believe that a person engaged in the business of hawking would remember what was sold to a customer almost two months after the transaction and that to without identity of the goods sold having been established.

On the basis of above discussion we held that the prosecution failed to establish the chain of circumstances which could link the appellant with the crime. The learned Trial Court and the High Court committed a serious error by relying on the circumstantial evidence of last scene, the recovery of pant and shirt from Room No. 45 of ''Ganesh Bhuvan'' building, half blade from under the wooden board and the sale of the handkerchief by PW7 to the appellant.

25. In the result the appeal is allowed. The judgment under appeal and the one of the Trial Court are set aside and the appellant is acquitted. He shall be released forthwith if not required in connection with any other offence.