CASE NO.:
Appeal (crl.) 815-816 of 1996

PETITIONER:
State of Rajasthan

RESPONDENT:
Vs.
Raja Ram

DATE OF JUDGMENT: 13/08/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

The State of Rajasthan is in appeal questioning legality of judgment of the High Court of Rajasthan at Jodhpur Bench, holding that the respondent was innocent and was entitled to acquittal from the charges levelled against him for alleged commission of offence punishable under Section 302, Indian Penal Code, 1860 (for short IPC). The accused was held to be guilty by the learned Additional Session Judge, Hanumangarh who awarded a death sentence on finding the accused guilty.

Accusations which laid foundation of the prosecution case reveal that information was given by Sahi Ram (PW-6) on 20.12.1989 at about 7.15 a.m. at the Sangaria Police Station to the effect that his younger brother was responsible for homicidal death of 5 persons, that is, his father, younger brother, the younger brother's wife and their two children. The killings were on account of gunshots and murders were committed on 19.12.1989. On the basis of information lodged investigations were undertaken and on completion thereof charge sheet was filed stating that offences punishable under Section 302 IPC and Section 27 of Indian Arms Act, 1959 (for short 'Arms Act') were committed, the appellant was described as the assailant. In order to further its version, 7 witnesses were examined. The prosecution version rests on circumstantial evidence. The accused examined himself as DW-1 and placed on record materials to attack the credibility of evidence tendered by PW-3 & 4; more particularly it was stated that they were not favourably disposed towards him, and had falsely implicated him. Accepting the version of Vinod Kumar (PW-3) and Nand Ram (PW-4) before whom allegedly the accused made extra judicial confession, the Trial Court found the accused guilty of offence punishable under Section 302 IPC as noted above and awarded death sentence in addition to the fine of Rs.5000. However, it was found that the accusations relating to Section 27 of the Arms Act were not established. As death sentence has been awarded, a reference was made to the High Court under Section 366 of the Code of Criminal Procedure, 1973 (in short the 'Code') for confirmation. An accused also filed an appeal. In appeal as noted at the threshold, the High Court found the evidence to be inadequate to fasten the guilt on the accused and, therefore, prosecution version to be vulnerable. The evidence of PW-3 and PW-4 which formed foundation of the Trial Court's judgment did not find acceptance by the High Court finding the evidence to be unreliable and incogent.

The learned counsel for the appellant-State in support of the appeal submitted the approach of the High Court is erroneous. There was no infirmity in the evidence of PW-3 and PW-4 to warrant rejection of their evidence. They were related to both the accused and the deceased and there is no reason as to why they would falsely implicate the accused. Conduct of the accused, which was found to be suspect by the Trial Court, has been overlooked by the High Court while directing acquittal. The wearing apparels of the accused contained bloodstains and since the accused did not explain as to how the blood stains appeared on such apparels, that itself is a suspicious circumstance, which the High Court overlooked.

The circumstances highlighted to fasten the guilt on the accused are as follows:-

(1) Extra judicial confession of the offence made by the accused before the witnesses.

(2) Immediately after the incident the accused was seen coming from the side of the dhani of the deceased Maniram.

(3) The conduct of the accused immediately after the incident.

(4) Human blood being found on the clothes of the accused

(5) Recovery of pistol being got made by the accused.

It is noted that circumstances 1, 2 and 3 related to the evidence of PWs-3 & 4. The pistol which was allegedly recovered on being pointed out by the accused was found to be not one from which bullets found on the dead bodies were fired.

Learned counsel for the respondent-accused submitted that the case rests on circumstantial evidence and the chain of circumstances highlighted by the prosecution did not lead to the inevitable conclusion that ruled out others and established that accused alone was responsible for the crime. It was further submitted that considering the fact that the appeal is against an order of acquittal, scope for interference is very limited. The evidence of PW-3 & 4 has been rightly discarded and there is no reason as to why the well-reasoned judgment of the High Court should be interfered with.

There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh (JT 2002 (3) SC 387)]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for

doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra (1973 (3) SCC 193), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225) and Jaswant Singh v. State of Haryana (JT 2000 (4) SC 114).

Before analyzing 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 that 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 and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa 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). 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 the offences home beyond any reasonable doubt.

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....".

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.

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, (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 touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343), wherein 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 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 the 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 compete 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.

The case at hand has to be gauzed in the background of aforesaid principles. The evidence of PW-3 & 4 as noted above form the foundation of the prosecution case. It was noted by the High Court that PW-4 was not in good terms with the accused and, in fact, a case had been lodged by the accused against PW-4 a few months before the incident.

Confessions may be divided into two classes, i.e. judicial and extra-judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? And (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the

confession, even if it is admissible in evidence One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. [See R. v. Warwickshall: (1783) Lesch 263)]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe Evidence, 9th Edn. Page 284). A promise is always attached to the confession, alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words ’appear to him’ in the last part of the section refer to the mentality of the accused.

An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the

perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

If the evidence relating to extra judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by learned counsel for the respondent-accused, is a matter of prudence and not a invariable rule of law. It is improbable, as rightly held by the High Court that the accused would repose confidence on a person who is enemically disposed towards him, and confess his guilt. Similarly, PW-3 is a close relative of PW-4 and as records reveal, a person of doubtful antecedents being a history sheeter. Though that alone cannot be the ground to discard his evidence, the totality of circumstances cast an indelible shadow of doubt on his evidence. It is to be noted that accused examined himself as DW-1. Though it was the prosecution version that there was also extra judicial confession before informant Sahi Ram (PW-6) that was disbelieved by both the Trial Court and the High Court in view of the fact that he stated differently from what was allegedly stated by him during investigation. He disowned that the accused made any confessional statement before him. Though the prosecution during cross-examination of the accused (DW-1) suggested that he had made extra judicial confession before PW-6, significantly not even such a suggestion was given in respect of PW-3 & 4.

Coming to the bloodstains on the cloth which were allegedly seized on being pointed out by the accused, the forensic laboratory report indicated that there were blots of human blood on the shirts and trousers of the accused. There was no effort to find out the blood group. In fact, the High Court noted this position and observed that presence of PW-4 at the time of recovery is doubtful as he has been found to be an unreliable witness. It was observed that even if it is accepted that there was existence of blood, this circumstance is not such from which it can be found that the accused was perpetrator of the crime. In the aforesaid report (Ex.61) it was clearly stated that the blood group of blood found on the clothes could not be determined. Neither the blood group of the deceased nor that of the accused was determined. In that background, the High Court held that the possibility of the blood being that of the accused cannot be ruled out. In view of the findings recorded by the High Court about the non-acceptability by evidence relating to alleged extra judicial confession, the conclusions of the High Court cannot be said to be one which are unsupportable. We decline to interfere in the appeals, and the same are dismissed.