

Karnataka High Court N. Rajendra Prasad Bhat vs The State Of Karnataka on 7 August, 1995 Equivalent citations: 1996 (2) ALT Cri 242, 1996 CriLJ 257, ILR 1995 KAR 2739, 1995 (6) KarLJ 748 Bench: M Vishwanath, M Mirdhe JUDGMENT 1. The appellant-accused has preferred this appeal against the judgment dated 22-10-1993 passed by the Sessions Judge, Dakshina Kannada, Mangalore, in S.C. No. 70/1990 convicting the appellant-accused for the offences punishable under Sections 302 and 392, I.P.C. and sentencing him to rigorous imprisonment for life for the offence under Section 302, I.P.C. and rigorous imprisonment for five years for the offence under Section 392, I.P.C. 2. We have heard Sri R. B. Deshpande, learned Counsel for the appellant-accused, and Sri. A. B. Patil, learned Additional State Public Prosecutor for the State, fully and perused the records of the case. 3. The case of the prosecution in brief is as follows : Deceased Smt. Prabhavathi was the mother of P.W. 1 - Bhaskara Bhat and P.W. 11 - Lalitha Bhat, and she was the wife of complainant Gopala Bhat. The accused is the husband of P.W. 11 - Lalitha Bhat and son-in-law of deceased Prabhavathi. Gopala Bhat was a retired post-master and after retiring from his service, he was residing in a rented house at Durgaprasad Compound at Udupi with deceased Prabhavathi, P.W. 11 - Lalitha Bhat and the accused. Another daughter of the deceased by name Geetha was residing at Anokola. P.W. 1 - Bhaskara Bhat was the only son of deceased Prabhavathi and Gopala Bhat. P.W. 4 - Dr. Gopinath Bhat is the brother-in-law of the accused and he was having his clinic at Bajpe. The accused had married P.W. 11, daughter of the deceased about 10 or 12 years prior to the incident. The accused is an engineering graduate having studied B.E. in electricals and he was working as an engineer at Madras. P.W. 11 resided in her father-in-law's house for some time. But, 2 or 3 years after the marriage, the accused came to Udupi and he was employed as Principal in Sunkadakte Polytechnic. He worked there for about 3 months as Principal. The accused was addicted to the habit of gambling. On account of this bad habit, he lost his job of Principal as he misappropriated the money of the school for his gambling purpose. Thereafter, he got a job at Manipal and he lost that job also on account of his gambling habit. After losing the job at Manipal, he got jobs at two other places and he lost those two jobs also on account of his habit of gambling. At the time when the deceased was done to death, the accused was unemployed. Deceased Prabhavathi was giving money for the accused for his personal expenses as he had no income of his own due to his unemployment P.W. 1 - Bhaskara Bhat was coming to the house of his parents once in a month to see his parents from his place of employment i.e., Mathikana Estate. On the day of the incident, P.W. 11 - Lalitha Bhat had gone to stay with P.W. 4 - Dr. Gopinath Bhat at Bajpe, who is the brother-in-law of the accused. On the date of the incident, i.e., 16-4-1990, at about 8.30 p.m., Gopala Bhat made a phone call to P.W. 1 and informed him that his mother had died and asked him to come immediately. P.W. 1 came in a car and reached Udupi in the night and he saw the dead body of his mother with injuries lying beneath a cot in the bed-room and her karimanisara and havalada sara so also the gold bangles which the deceased was always wearing were missing from the dead body. P.W. 1's father Gopala Bhat expressed suspicion about the accused

being the author of this offence. Then Gopala Bhat went and filed the complaint. The police registered a case and after investigation filed a charge-sheet against the accused. 4. There are no eye-witnesses to connect the accused with the offence alleged against him. The case of the prosecution entirely rests on circumstantial evidence. The learned Counsel for the appellant-accused quoted a number of rulings as to what should be the standard of circumstantial evidence for conviction of the accused. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra*, , the Supreme Court has held as follows : “The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established; (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 A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. It is also held in that ruling that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and other which benefits an accused, the possibility which benefits an accused should be accepted. In the case of *Nagappa Dondiba Kalal v. State of Karnataka*, , the Supreme Court has held that in a case where the offences alleged against the accused are under Sections 411, 302 and 394, I.P.C., the onus lies on the prosecution to prove its case and merely on the fact that the deceased was last seen wearing those ornaments which were recovered at the instance of the accused, the accused cannot be convicted for the offence punishable under Section 302, I.P.C. He also relied on a decision in the case of *Babuda v. State of Rajasthan* wherein it has been held that on mere suspicion, however strong, the conviction cannot be based. In that case, there was no clinching evidence particularly about the presence of the accused in the house of the deceased. In the case of *Khashaba Muruti Shelke v. State of Maharashtra*, , it has been held that circumstantial evidence must be so complete as to exclude every hypothesis other than that of guilt of the accused. In the case of *Kansa Behera v. State of Orissa* , the Supreme Court held that the circumstantial evidence must lead to the only inference that is of the guilt of the accused and then only conviction can be based on such evidence. In the case of *Rahman v. The State of U.P.*, (AIR 1972 SC 110) : 1972 Cri LJ 23 the Supreme Court has held that circumstances forming evidence must be conclusively established and even when so established, they must form such a complete chain that it is not only consistent with the guilt but is inconsistent with any reasonable hypothesis of innocence of the accused. In the case of *Gambhir v. State of Maharashtra*, , the Supreme Court has reiterated the tests of assessing the circumstantial evi-

dence. In the case of *Vidya Sagar v. State of U.P.*, the Supreme Court again reiterated that circumstantial evidence must forge such a chain so as to support the sole hypothesis that the accused committed the murder. In the case of *Prem Thakur v. State of Punjab*, the Supreme Court again has reiterated the principles of assessment of evidence in a case which is based on circumstantial evidence. 5. In a nut-shell, the law laid down by the Supreme Court can be summarised as follows : In a case which is based on circumstantial evidence, the circumstances alleged against the accused must be conclusively established and the chain of circumstances must be so closely knit so as to exclude all the reasonable hypothesis of the innocence of the accused. The evidence must point only to the guilt of the accused and if the evidence leads to two interpretations, the interpretation in favour of the accused must be given effect to. The trial Court has kept all these principles in mind while assessing the evidence on record. The grievance of the appellant-accused is that the trial Court has erred in convicting him as the evidence on record is not sufficient to prove his guilt beyond reasonable doubt. 6. The circumstances which are relied upon by the prosecution to connect the appellant with the offences alleged against him are as follows : 1) that the deceased died a homicidal and violent death. 2) that the accused was residing with the deceased and her husband Gopala Bhat at the time of the incident in her house and the deceased was last seen alive in the company of the accused together in the house where she was done to death. 3) the accused was unemployed at the time of the incident and he was addicted to gambling and was always in need of money. 4) the deceased was always wearing karimanisara and havaladasara and gold bangles and they were found missing on the dead body of the deceased. 5) that the shirt of the accused was found blood-stained and the blood-stains on that shirt, M.O. 8, were of the same blood group as that of the deceased. 6) that the accused absconded after the incident. 7) that two gold ingots and six havalas were recovered pursuant to the voluntary statement made by the accused. 7. It is the case of the prosecution that deceased Prabhavathi, who is the mother-in-law of the accused, died a violent and homicidal death. P.Ws. 11, 1, 4 and 2 have deposed that they saw the dead body of deceased Prabhavathi lying in a pool of blood with injuries on her person below a cot in the house of complainant Gopala Bhat. P.W. 18 has deposed about the post-mortem examination conducted by him over the dead body of the deceased. He noticed as many as 11 external injuries. He also noticed 4 internal injuries. He has opined that the death of the deceased was due to the injuries to vital organs. He has also opined that such injuries could be caused by hitting with a weapon like the kutani, M.O. 9. In view of the evidence of P.Ws. 11 and 18, it can be safely held that the deceased died a homicidal death. The evidence of P.Ws. 1 and 11, children of the deceased, and the evidence of P.Ws. 2 and 3 clearly shows that the deceased died a homicidal death in the house where her body was found in a pool of blood. 8. The next circumstance that is alleged against the accused is that the accused was residing with the deceased and Gopala Bhat and P.W. 11 in that house at the relevant time. It is not in dispute that deceased Prabhavathi was the mother-in-law of the accused and P.W. 11 is his wife. It is not in dispute that P.W. 1 is the son of the deceased

and Gopala Bhat and P.W. 4 - Dr. Gopinath Bhat is the brother-in-law of the accused. It is relevant to note that at this point that complainant Gopala Bhat died before the commencement of the trial in this case on 16-8-1991. The case of the prosecution is that the accused was residing at Udupi along with his wife P.W. 11. She has deposed that since two years prior to her giving evidence she was residing at Madras and before that she was residing in her mother's house at Udupi. She has stated that she was married to the accused 13 years back and about 7 years after their marriage, they came down to Udupi and she was living in the house of her mother at Udupi and the accused, her husband, was employed in Manipal. P.W. 4 has also stated that at the relevant time, the accused was living at Udupi. P.W. 1 has stated that the accused and his wife were living with his parents at the time of the incident. The evidence of P.Ws. 1, 4, 12 and 10 proves beyond reasonable doubt that at the relevant period, the accused was living with the deceased and Gopala Bhat in their house along with his wife P.W. 11, who had gone to the house of P.W. 4 at Bajpe due to the holidays of her children at the time of the incident. Therefore, the prosecution has been able to prove beyond reasonable doubt that the accused was living not at Madras but at Udupi in the house of Gopala Bhat and his wife-deceased Prabhavathi. It is also proved by the prosecution that some time prior to the incident the wife of the accused who was residing with him in that house had gone to the house of P.W. 4 - Dr. Gopinath Bhat at Bajpe due to the holidays to her children and, therefore, the inmates of the house where the murder of Prabhavathi took place were the accused, the deceased and Gopala Bhat, as P.W. 1 was staying in Mathikana Estate in Basrikatte of Koppa Taluk. P.W. 11 in her evidence has stated that on the date of the incident she was not in the house of her mother at Udupi, but she had gone to the house of her brother P.W. 4 at Bajpe. She has also stated in her evidence as follows : From this, it is proved beyond reasonable doubt that the accused and the deceased and Gopala Bhat were the only inmates of their house at the time of the incident. 9. The next circumstance that is alleged against the accused is that the accused was accustomed to gambling and he could not work satisfactorily in any place and he was unemployed at the time of the incident and was in need of money. The case of the prosecution is that the accused committed the murder of his own mother-in-law as he was in need of the money for his gambling needs. P.W. 10 is the Managing Director of the company called Manipal Precision Tube Company at Manipal and he has deposed that the accused was working as a Sales Representative in their company during the year 1980, that the accused was removed from service in the month of Feb. 1990 as he had misappropriated the money belonging to the company. His evidence came to be attacked by the counsel for the appellant-accused on the ground that there are no documents to corroborate his evidence. P.W. 10 has not produced any documents to show that either the accused was employed in that company or that he was removed from that company for having misappropriated the money of that company. P.W. 10 is an independent witness. He is not related to the accused and he had no animus against the accused and there is no reason as to why an independent person like P.W. 10 should depose against the accused. His evidence cannot

be disbelieved merely because the documents in this regard are not produced. The evidence of P.W. 4 is to the effect that the accused was working in a pipe company at Manipal and he could not tell the reason as to why he left that company. P.W. 11 is the wife of the accused. She has also stated that at the time her mother died, the accused had left the job at Manipal. She has stated that she does not know whether the accused was employed after he left the job at Manipal. The evidence of P.W. 10 shows that the accused was working in their company and he was removed for misappropriating the money of that company. The evidence of P.Ws. 4 and 11 also shows that the accused had left the job. From these pieces of evidence, it is clear that the accused was unemployed on the date of the incident. 10. P.W. 7 has deposed about the accused visiting the club to play cards. His evidence is also criticised by the Counsel for the appellant-accused on the ground that there are no documents to corroborate his evidence. P.W. 7 is a worker in Manoranjan Club. We do not find any animus on the part of this witness to depose falsely against the accused. He had come to know the accused only on account of the visits of the accused to that club to play cards i.e., gambling. P.W. 7 has stated that he had seen the accused having come to that club for playing cards for 4 or 5 times. The evidence of P.W. 7 is that the accused had come to that club with some member of that club. When the accused had gone as a guest with someone, probably there may not be any documents to show that he attended that club. But, on that count, the evidence of P.W. 7 cannot be disbelieved which has stood the test of the prosecution very well. Hence, the prosecution has proved that the accused was unemployed and he was addicted to gambling. The prosecution has been able to prove that the accused was in need of money badly on that day by the evidence of P.W. 2. P.W. 2 has deposed that on 16-4-1990 at about 12-45 p.m. the accused had come to his medical shop demanding Rs. 10/- and that he did not give that amount as he knew the habits of the accused. The Counsel for the appellant submitted that this evidence cannot be believed as it is the evidence of an interested witness. From the cross-examination of this witness no such material is elicited so as to disbelieve this witness. His evidence proves that about 45 minutes prior to the incident in question, the accused had come to his shop demanding a petty amount of Rs. 10/-. That goes to show that how badly the accused was in need of money. The prosecution has been able to prove that the accused was not only unemployed on that day, but he was also badly in need of money which he could not get from P.W. 2. The Counsel for the appellant-accused submitted that there is no evidence to show that the accused returned to that house thereafter. Certain things have to be inferred from the circumstances in the case. It may not be possible for the prosecution to prove such links by the evidence of direct eye-witnesses. These links will have to be found in the chain of circumstances proved against the accused. 11. The circumstance of violent death of the deceased who was hale and healthy when her husband left the house is a circumstance which points at the accused as the only person who did this job only to get some money for his gambling. It has come in the evidence of P.Ws. 1 and 11 and even the ornaments like karimanisara, havaladasara and gold bangales which were always worn by the deceased were

missing at that time. The evidence of P.W. 2 coupled with the circumstance of violent death of the deceased in her house and then missing of some of her gold ornaments are enough to lead to the inference that it is the accused who had done this heinous offence of murdering his mother-in-law. 12. The next circumstance that is alleged by the prosecution is that the deceased was last seen alive in the company of the accused. P.W. 1 has deposed in his evidence that when he came home on receiving the phone call from his father, his father told him that on that day at about 8 or 9 a.m., the accused was in his house. His evidence to that effect is as follows : Gopala Bhat, the complainant who filed the complaint could not be examined as he died before the commencement of the trial in this case. But, his complaint is marked Exhibit P1 which corroborates the evidence of P.W. 1 that his father told him that when he left the house at 8 or 9 a.m., the accused was in his house. This evidence cannot be brushed aside as hearsay evidence as Gopala Bhat is dead and what his son, P.W. 1, heard from Gopala Bhat will not be an hearsay evidence, but it will be an evidence as to what the witness heard from his father as to who were the inmates of that house at that time. The accused was in that house when Gopala Bhat left the house and when Gopala Bhat returned home at 5.00 p.m. he found his wife lying dead in the house beneath a cot. This circumstance is also proved beyond reasonable doubt. 13. The next circumstance alleged against the accused is that he was absconding after the offence. The evidence of P.W. 11 is to the effect that when she went to her mother's house, her husband was not there and she saw her husband only in the Court. P.W. 23 has deposed that on 22-8-1990 he went to Bajpe Bus-Station on credible information about the presence of the accused and he arrested the accused and brought him to the Police Station. P.W. 5 has deposed that the accused took rooms for some time under different names. The Counsel for the appellant-accused submitted that his evidence is not believable as there is no evidence to show that the handwriting in Exhibit P11 is that of the accused. Even if this evidence is excluded from consideration, there is evidence to show that the accused was absconding after the incident. P.W. 11 who is none other than the wife of the accused, has stated that after the incident she did not see her husband. The deceased was none other than the mother-in-law of the accused. If the accused was innocent, he would have certainly attended the funeral and obsequies of his mother-in-law. But, the accused was not to be found till he was arrested by P.W. 23 on 22-8-1990. Therefore, the prosecution has been able to prove that the accused absconded after the incident. We are also aware that mere abscondance is not an incriminating circumstance against an accused. Even innocent persons may abscond due to the fear of the police or on account of avoiding the humiliation of being involved falsely in a crime. But, here the circumstances are different. The deceased was the mother-in-law of the accused. If he was really innocent, he would have been present in his house and attended the funeral and obsequies of his mother-in-law. P.W. 23 has deposed that he arrested the accused on 22-8-1990 at Bajpe Bus Stand. Coupled with this, evidence of P.W. 5 is that the accused stayed in his lodge. All these pieces of evidence prove beyond reasonable doubt that the accused absconded after the incident. 14. Another clinching circumstance against the accused is that his

shirt M.O. 8 was having stains of the same blood group as that of the deceased. M.O. 8 was produced before the police by Gopala Bhat. M.O. 8 is identified by P.W. 11 as the shirt belonging to her husband. She has also deposed that the said shirt was found in her mother's house and it was given by her father to the police. It is her evidence that it was kept in a suit case. The said shirt has been seized by the police under Exhibit P5. It is not difficult for a wife to identify the clothes of her husband even if there are no special identification marks on those clothes. By sheer seeing a particular person wearing an article, that person or a close relative of that person will be able to identify that article. The evidence of P.W. 11, the wife of the accused, deserves to be accepted in this case as no wife would tell lies against her own husband. Exhibit P9, serologist's report, is to the effect that M.O. 8 was stained with 'B' group blood and the clothes of the deceased were also stained with 'B' group blood. Therefore, this piece of evidence is also proved that the accused's shirt M.O. 8 which was found in the suit case in his house and which was handed over to the police by Gopala Bhat was stained with 'B' group blood, which was the blood group of the deceased. This had happened because the accused had committed the offence wearing that shirt and before leaving the house, he had kept that shirt in the suit case. Otherwise, if he had gone wearing that shirt, he would have incurred the danger of being apprehended as the blood-stains on the shirt would have attracted the attention of the people. 15. All these circumstances proved by the prosecution against the accused beyond reasonable doubt are consistent only with the guilt of the accused and they exclude all the reasonable hypothesis of the innocence of the accused. Hence, the trial Court was justified in holding that the prosecution has proved beyond reasonable doubt that the accused had committed the murder of his mother-in-law Prabhavathi. 16. The trial Court has also convicted the appellant-accused for the offence punishable under Section 392, I.P.C. This is also one of the circumstance alleged by the prosecution in support of its case regarding the murder of Prabhavathi. P.W. 23 has deposed that after the arrest of the accused, the accused made voluntary statement as per Exhibit P15. But, Exhibit P15 cannot take the place of substantive evidence. This court in the case of Vijayakumar v. State (ILR 1994 Kant 491) has held as follows : "Section 27 says that so much of the information that distinctly leads to the discovery of a fact alone is admissible in evidence and it is exception to Sections 25 and 26 of the Evidence Act. Therefore, so much of the information as leads to discovery of a fact must be proved like any other fact and recording in the deposition or the prosecution leading evidence of an investigating officer that he recorded a particular statement as per certain record made by him and exhibited cannot take place of substantive evidence." In this case Exhibit P15 is merely marked without proving the fact of the statement of the accused as required by law. Therefore, Exhibit P15 cannot be a substantive piece of evidence and the alleged recovery in pursuance of Exhibit P15 also cannot be an evidence against the accused. Even the evidence in this regard, about the production of ingots and sale of bangles etc., is not free from doubt. Therefore, we hold that the case of the prosecution regarding the voluntary statement and production of gold ingots, etc. has not been proved as required by law. Hence, the trial Court

was not justified in convicting the accused for the offence punishable under Section 392, I.P.C. But, at the same time, we want to make it clear that even if this circumstance is excluded from consideration, the other circumstances that have been considered by us above are more than enough to prove the guilt of the accused for the offence punishable under Section 302, I.P.C. 17. Hence, we proceed to pass the following order : The appeal is allowed in part. The conviction of the appellant-accused for the offence punishable under Section 302 and sentencing him to R.I. for life is confirmed. But, the judgment of the trial Court convicting the appellant-accused for the offence punishable under Section 392, I.P.C. and sentencing him to rigorous imprisonment for five years is set aside and the appellant-accused is acquitted of the offence punishable under Section 392, I.P.C. 18. Order accordingly.