State Of Tamil Nadu vs Rajendran on 22 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3535, 1999 AIR SCW 3536, (1999) 4 CRIMES 179, 2000 (2) LRI 343, 2000 SCC(CRI) 40, 1999 (6) SCALE 145, 1999 (8) SCC 679, 1999 (8) ADSC 348, 1999 CRIAPPR(SC) 538, 1999 (3) CRIMES 179, (1999) 7 JT 348 (SC), 1999 (9) SRJ 503, (1999) 39 ALLCRIC 754, (1999) 3 EASTCRIC 355, (1999) 4 ALLCRILR 8, (1999) 4 CURCRIR 18, (1999) SC CR R 892, (1999) 4 RECCRIR 257, (1999) 8 SUPREME 505, (1999) 26 ALLCRIR 2193, (1999) 6 SCALE 145, (1999) 3 CHANDCRIC 36

Bench: M. Srinivasan, N. Santosh Hegde

CASE NO.:
Appeal (crl.) 917 of 1996

PETITIONER:
STATE OF TAMIL NADU

RESPONDENT:
RAJENDRAN

DATE OF JUDGMENT: 22/09/1999

BENCH:
G.B. PATTANAIK & M. SRINIVASAN & N. SANTOSH HEGDE

JUDGMENT:

JUDGMENT 1999 Supp(3) SCR 89 The Judgment of the Court was delivered by PATTANAIK, J. This appeal by the State of Tamil Nadu is directed against the Judgment of the Division Bench of Madras High Court, against the acquittal of the respondent in Death Reference Case No. 2 of 1995, arising out of Sessions Case No. 169 of 1994. The learned Sessions Judge convicted the accused-respondent of the charge under Section 302 for having murdered his wife and two children brutally and sentenced him to death. On a reference being made under Section 366 of the Cr.P.C. for confirmation of the death sentence, the High Court did not confirm the sentence of death and on the other hand acquitted the accused of the charges levelled against him and thus the present appeal.

The prosecution case in nutshell is that the accused and deceased Jayalakshmi were married together about eight years prior to the date of occurrence in 1994. Out of their wedlock, two female children had been born named Jeeva, aged six years and Sita, aged two years. The accused was not having any job and was solely dependant on his wife, the deceased. He had the habit of taking liquor and for that purpose he used to often demand money from the deceased and used to assault her. On the very date of occurrence, there was a quarrel between the accused and the deceased at about 7 P.M. and it continued till about 9 P.M. PW 1, a close by neighbour however interfered and pacified, whereupon, she returned to her house which was hardly 150 feet away from the house of the

accused. P.W. 4 was present there in the house of PW 1 and was sleeping. Suddenly, he heard the cries of the eldest daughter of the deceased and when he came out, he found that the hut of the accused was on fire. PW 1 and PW 4 then came near the house of the accused, whereupon PW 4 entered into the hut of the accused by jumping from the roof and rescued the eldest daughter. By that time, wife of the accused and the youngest daughter Sita had already become victims and had met their death. PW 4 then took the eldest daughter to the Government Hospital at Thuraiyur, PW 1 went to her father PW 2 and narrated the incident. This was recorded by PW 2 and was sent to the Padalur Police Station. The further prosecution case is that PW 5 met the accused on 11.4.94 at the bus stop and on questioning the accused about the setting fire of his house, he had stated that the deceased refused to serve meals to him and was also not giving money and as he had doubts about her chastity, so on the previous night he strangulated the deceased and has killed her. He also further said that he poured kerosene on the dead body of the deceased and set fire to the body. The eldest daughter, Jeeva was examined by doctor PW 8 and extensive burn injuries on her person were found. She however died in the hospital on 11.4.94 at 7 P.M. The Sub- Inspector of Police on the basis of statement received from PW 2, registered a case under Sections 436 and 302 I.P.C. and started investigation and on completion of investigation, submitted the charge- sheet and on being committed, the accused stood his trial. The learned Additional Sessions Judge, Tiruchirapalli, relied upon the circumstances established by the prosecution witnesses and came to hold that it is the accused who is the perpetrator of the crime and, therefore, convicted him under Section 302 as well as Section 436 of the Indian Penal Code. Looking to the aggravating circumstances under which the murder was committed and in the absence of any extenuating circumstances, he sentenced the accused to death and made a reference to the High Court under Section 366 of the Cr.P.C. for his conviction under Section 302 and for his convict ion under Section 436, the accused was sentenced to rigorous imprisonment for seven years. It may be stated that the accused himself did not prefer any appeal against the conviction and sentence. The High Court however in the impugned Judgment without examining the circumstances said to have been established by the prosecution evidence and without examining the conclusion of the learned trial Judge in a most slipshod manner, by coming to some conclusions abruptly on the peripheral issue, ultimately came to hold that the doubtful circumstances impels to give benefit of doubt to the accused and thus acquitted the accused.

Mr. Pragasam, the learned counsel, appearing for the State, seriously contended that a bare reading of the impugned Judgment of the High Court would indicate that the High Court has not discharged its duty as a Court of appeal and instead of focussing its attention to the prosecution evidence, establishing different circumstances and instead of finding whether ultimate conclusion of the learned trial Judge on those circumstances can at all be sustained or not, has given benefit of doubt to the accused on mere surmises and, therefore, the said order of acquittal cannot be sustained. Mr. Pragasam further contended that no doubt there is no eye witness to the occurrence and the case, therefore, depends upon the circumstantial evidence which would mean combination of facts creating a net without there being any tear through which the accused can escape. In a case of circumstantial evidence, what is necessary to be examined by a Court is whether the circumstances from which the conclusion is drawn have been proved and such circumstances whether are of such conclusive nature that, it is consistent only with the hypothesis of guilt and inconsistent with the innocence of the accused. The High Court as Court of appeal, while entertaining a death reference no-doubt has full powers to go into the evidence and come to his conclusion one way or the other on

the evidence adduced by the prosecution. But the High Court cannot on mere surmises and conjectures without applying its mind to the specific conclusions of the learned Sessions Judge on the basis of evidence on record can reverse the conviction by examining some peripheral issues and then abruptly come to a conclusion that the accused it entitled to benefit of doubt. According to the learned counsel appearing for the State, the circumstances relied upon by the prosecution and found to have been established by the learned Sessions Judge have not even been enumerated in the impugned Judgment and, therefore the Judgment of acquittal is wholly unsustainable in law. Mrs. K, Sharda Devi, the learned counsel appearing for the respondent on the other hand submitted that it is true that the High Court has not focussed its attention as an appellate Court would do, but all the same the accused having been given benefit of doubt and having been acquitted by the High Court, the same should not be interfered with by this Court under Article 136 of the Constitution of India. The learned counsel also contended that the conclusion of the High Court is possible on the evidence on record and even if another conclusion is possible on the same evidence, yet this Court should not interfere with the order of acquittal until and unless this Court finds that the conclusion of the High Court is not that of a reasonable man.

Having considered the rival submissions at the bar, really two questions arise for our consideration - (i) Has the High Court discharged its duty as a Court of appeal while entertaining the death reference in the impugned Judgment? and (ii) What are the circumstances which can be said to have been established and whether such circumstances thus proved are consistent only with the hypothesis of the guilt of the accused and inconsistent with his innocence. So far as the first question is concerned, a bare perusal of the impugned Judgment persuades us to come to the conclusion that the High Court has miserably failed in discharging its power under Section 386 of the Code of Criminal Procedure by not re-appreciating and re-assessing the facts and law and by not examining the conclusion arrived at by the learned Sessions Judge. When a reference is made to the High Court under Section 366 of the Code of Criminal Procedure by the learned Sessions Judge on passing a sentence of death, the High Court has to satisfy whether a case beyond reasonable doubt has been made out against the accused for infliction of the extreme penalty of death. The proceedings before the High Court in such a case require a re-appraisal and re-assessment of the entire facts and law so as to come to its independent conclusion but while so doing, the High Court cannot also totally over-look the conclusion arrived at by the learned Sessions Judge. In performing its duty, the High Court is of necessity bound to consider the merits of the case itself and has to examine the entire evidence on record. The legislature having provided in the confirmation proceedings, a final safeguard of the life and liberty of the subject in cases of capital sentences, the duty of the High Court becomes more onerous to consider independently the matter carefully and examine all relevant material evidence and come to a conclusion one way or the other. It is, therefore, the duty of the High Court in a death reference to consider the evidence afresh. If the impugned Judgment of the High Court is scrutinized bearing in mind the aforesaid parameters, the conclusion becomes irresistible that the High Court as Court of appeal has failed to exercise its power under Section 386 of the Code of Criminal Procedure and instead of discharging its bounden duty to examine the evidence and other materials on record and without appreciating the same, it has merely on surmises and conjectures come to the conclusion that the accused is entitled to the benefit of doubt. In our considered opinion, the aforesaid conclusion cannot be sustained. Not only there has been an infraction of the duty and obligation of the appellate Court but also such infraction has caused gross

miscarriage of justice.

Coming now to the second question, the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. It has been held by a scries of decisions of this Court that the circumstances proved must lead to no other inference except that of guilt of accused. (See Ram Avtar v. State (Delhi Administration), [1985] Supp. SCC 410 and Prem Thakur v. State of Punjab, [1982] 3 SCC 462. The law relating to circumstantial evidence no longer remains res integra and we do not think it necessary to multiply authorities on this point. The circumstances which can be said be have been established by unimpeachable evidence are that the husband and wife namely the accused and the deceased were frequently quarreling and even on the date of incident they quarreled with each other from 7 P.M. to 9 P.M., as has been deposed to by PWs 1, 3 and 4. The incident namely the death of the deceased and her two children occurred inside the house of the accused and accused had been seen inside the house at 9 P.M. On the date of incident, which has been established through the evidence of PWs 1, 3 and 4 and PW 1 happens to be a neighbour. In course of incident, the accused himself was seen coming out of the house through the roof as deposed to by PWs 1 and 3 and the accused has also admitted in his statement under Section 313 of the Code of Criminal Procedure. The very conduct of the accused in not raising any alarm even on seeing the fire, knowing fully well that his wife and two daughters are inside the house and no attempt had been made by the accused to save anyone of the deceased persons. On the other hand the prosecution evidence indicates that after coming out the accused was standing as a silent spectator. The opinion of the doctor indicating that the wife of the accused died of asphyxia due to strangulation and not on account of burn injuries and several findings indicated in the post-mortem report undoubtedly supports the conclusion about the death on account of asphyxia. If the accused and his wife were seen together in the house at 9 P.M. and accused came out in the morning through the roof, leaving the wife and two children and the death of the wife was found to be not on account of burn injuries but on account of strangulation and on being asked, the accused offers and explanation about the accidental fire which is found to be untrue, then in such a case, there cannot be any hesitation to come to the conclusion that it is the accused who is the perpetrator of the crime. In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This proposition fully applies to the circumstances of the present case. On the circumstances enumerated above which have been established by the prosecution, we have no hesitation to come to the conclusion that the charge of murder has been proved beyond reasonable doubt as against the accused respondent and the High Court erroneously acquitted him of the said charge. We, therefore, set aside the impugned order of acquittal and convict the respondent Rajendran of the offence under Section 302 I.P.C. So far as the sentence is concerned, we are not in a position to hold that the case represents one of the rarest of the rare cases, justifying a penalty of death. We. therefore, sentence respondent Rajendran to the imprisonment for life. Coming to the charge under Section 436 IPC, the aforesaid circumstances together with the evidence of PW 5 to whom the accused is said to have stated about his setting fire to the house, fully establishes the said charge. The High Court in our opinion was in error in interfering with the conviction and sentence passed by the learned Sessions Judge under Section

436 IPC. We, accordingly, set aside the order of acquittal of the High Court, so far as this charge is concerned and confirm the conviction and sentence recorded by the learned Sessions Judge. Needless to mention, sentences would run concurrently.

The appeal is allowed.