

Gurdial Singh And Ors vs Union Of India And Anr on 29 June, 2016

Author: Ashok Bhushan

Bench: Ashok Bhushan, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.261 OF 2008
PRAFUL SUDHAKAR PARAB ... APPELLANT
VERSUS
STATE OF MAHARASHTRA ... RESPONDENT

J U D G M E N T

ASHOK BHUSHAN, J.

The appellant has filed this appeal against the judgment of the High Court of Judicature at Bombay dated 14.2.2006 in Criminal Appeal No.703 of 2001 by which the High Court by dismissing the appeal of the appellant has affirmed the conviction and sentence order passed by the Additional Sessions Judge for Greater Bombay dated 31.07.2001 in Sessions Case No. 459 of 1997 recorded against the accused awarding him life sentence and fine of Rs. 5000/- .

2. Prosecution case in brief is that both, the victim Prabhudas Narayan Raut and accused Praful Sudhakar Parab were working in the police Department of the State of Maharashtra. The victim was working as Senior Clerk in Police Training School Marol whereas the accused was working as Pay Sheet Clerk attached to LA-IV, Police Training Centre, Marol. On 7.12.1996, the victim after finishing his office work at 6:30 p.m. reached at his residence by 7:30 p.m. The accused came at the residence of victim at about 8:00 p.m. and informed the victim that he has been called in the office by his superior Mr. Patil and victim should accompany him to the office. The victim after making a phone call to PTS Marol stated that he has not been called in the office and he shall not accompany the accused. When the accused came to the residence of victim, the wife of the victim Kalpana Raut and his son Anis were also present. Victim also told his wife that he will inquire on Monday as to who had given such a false message. At about 9 p.m., the victim and Kalpana went to nearby telephone booth and while Kalpana was having conversations with his brother, accused after enquiring about the whereabouts of the couple from child Anis again came to them at the telephone booth. Accused persuaded Prabhudas to accompany him to the office. After telephonic call was over, Kalpana along with victim and accused returned to the house of victim. The victim took up the bag brought from office with all its contents and left the house along with accused after 9:00 p.m. After above departure from house on 7.12.1996 after 9 p.m. Prabhudas never returned. On next day morning Kalpana, the wife inquired from telephone operator PTS, Marol about her husband. She was informed that nobody had gone to the office of Police Training School, Marol on the preceding

night. Kalpana along with a relative visited the Police Training School, Marol and made enquiries. Police Constables Sanap and Khamkar, who were colleagues of the deceased suggested Kalpana that she would find out the person with whom her husband had gone last night. Kalpana approached Sawant who was maternal uncle of the victim. Sawant took the Kalpana to his sister i.e. mother of accused, accused was not present there. Kalpana was handed over photograph of accused by his mother from which photograph Kalpana identified the accused as the person with whom her husband went last night. Subsequently on the same day, Sawant family informed that accused is available at their residence. Kalpana went to Sawant family and inquired the accused regarding whereabouts of her husband. Accused gave evasive reply. Accused flatly refused that he had gone to house of Raut on previous night. The accused was taken to the Police Station Meghwadi by Kalpana Raut and her relatives. Kalpana met Police Sub Inspector Shinde who recorded the statement of Kalpana Raut and a complaint of missing person Prabhudas Raut was registered. The accused was asked to stay back at the Police Station. Shinde inquired from the accused about the whereabouts of victim, accused was reluctant to answer. On further inquiry by Shinde and Inspector Sonar, accused informed that he took Prabhudas Raut with two other friends Dalvi and Waingankar at Panvel in one hotel. Police team took the accused to Panvel who pointed out a Suman Motel. On inquiry from the hotel staff it was revealed that Prabhudas and other two did not visit the hotel or stayed there. The prosecution case further is that on further interrogation of accused in the morning of 9.12.1996, the accused confessed the murder of Prabhudas Raut and expressed his willingness to show the place he had committed murder and show the dead body. The police party was led by the accused to the place of occurrence where the dead body was seen in the search light pushed inside a big water pipe. Police party decided to carry on Panchanama in sun light after putting two constables to guard the place. The first information report was registered and thereafter again at 8:00 a.m. Police party along with the accused went on the scene in the presence of two Panch, a Panchanama was prepared Exh.-24, certain articles including one big stone left near the body of the deceased, three button of shirts of blue colour and a rexine bag were recovered. The body bore the mark of injury. Face of the deceased was totally battered and injuries were on his head.

3. Accused further expressed his willingness to show the clothes which he was wearing at the time of occurrence. Accused led the police party to the house of his parents from where the clothes worn by the accused were recovered. Panchnama Exh.-35 was prepared in the presence of a witness. Subsequently, accused further led the police party to PTS, Marol where the bunch of keys he alleged to have taken out from the pocket of the deceased were kept. The police party along with Panch went to the PTS, Marol where in the Guardroom under the Stand for keeping the rifles, a bag containing the bunch of keys was found and memo Exh.-30 and Panchanama Exh.- 30A were prepared.

4. Accused was put on trial. Prosecution examined 21 witnesses and has filed various documentary evidence. The statement of accused under Section 313 Cr.P.C. was recorded. Defence did not examine any witness in support of defence case. Learned Sessions Judge convicted the accused relying on the circumstantial evidence after holding that there is no eye witness of the scene nor confessional statements of the accused can be treated to be a confession. Sessions Judge, however, believed the evidence of PW-8 Kalpana Raut and PW-11 Anish Raut son of victim that it was accused who was last seen with the victim and with whom victim went out on 7.12.1996 after 9 p.m. The chain of events clearly pointed out that it was accused who committed murder. With regard to

offence under Section 364, it was held by the Sessions Judge that the said charge does not survive. On appeal against the judgment of the Sessions Judge, the High Court affirmed the conviction and dismissed the appeal. The High Court however, relied on the statement of PW-8 in holding that it was accused who was last seen with the victim. However, High Court decided not to base its finding on the child witness i.e. PW-11. The evidence of Kalpana was elaborately noted and sequence of events and chain of events found support from other evidence on record including the evidence of PW-15 Shanta Ram Sawant and the independent witnesses as well as the statement of Inspector Sonar and Sub Inspector Shinde. The High Court after considering all the evidence on record dismissed the appeal affirming the conviction of the accused.

5. This appeal has been filed by the appellant (hereinafter referred to as 'accused') through amicus curiae. Learned amicus curiae appearing for the accused has raised following submissions in support of the appeal:

(i) There are no eye witnesses of the events. Circumstantial links are not proved beyond doubt.

(ii) PW-8 Kalpana Raut deposed that her husband took dinner and after dinner left out with the accused on 7.12.1996. The food was required to be found in the stomach which is negated by the medical report.

(iii) Prosecution story was that accused went to the deceased twice to call deceased that Patil Sahib was calling him. However, Patil Sahib was not examined by the prosecution.

(iv) Police investigation did not blame the accused that he was having any grudge, rivalry or bad relationship with the deceased. No motive could be proved for the murder hence, the conviction is bad.

(v) Recovery of keys was to support that the accused was planning for theft at police treasury where cash was kept but in whole prosecution evidence, it is not brought on record as how much cash was there.

6. Learned counsel appearing for the State has supported the judgment. It is contended that the findings and conclusion arrived at by the courts below were based on cogent evidence and circumstantial evidence brought by the prosecution was sufficient to convict the accused. There is no merit in the appeal.

7. We have considered the submissions of the learned counsel for the parties and have gone through the record.

8. The present is a case where no eye witness is produced. The statements made before police by the accused in the morning of 9.12.1996 wherein the accused is stated to have confessed murder cannot be said to be a valid confession as has rightly been held by the learned Sessions Judge. The

prosecution has based its case on circumstantial evidence. Whether conviction based on circumstantial evidence can be upheld and whether there was sufficient evidence to support the conviction are the questions to be answered in this appeal. This Court on several occasions has considered the law regarding basing of conviction by the Court on a circumstantial evidence. It is useful to refer to the judgement of the apex Court in Gambhir Vs. State of Maharashtra, 1982 (2) SCC 351, wherein the apex Court laid down that circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Referring to the above judgment of Gambhir Vs. State of Maharashtra (supra), principles were again reiterated by the Supreme Court in K.V. Chacko Vs. State of Kerala, 2001 (9) SCC 277, wherein following was laid down in paragraph 5:

“5. The law regarding basing a conviction by the courts on circumstantial evidence is well settled.

When a case rests upon the circumstantial evidence, such evidence must satisfy three 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. 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. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

9. Again in Trimukh Maroti Kirkan vs State Of Maharashtra, 2006 (10) SCC 681, following was laid down in paragraph 12:

“12. In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

10. In State of U.P. Vs. Satish, 2005 (3) SCC 114, this Court reiterated that there is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touch stone of law relating to circumstantial evidence. Following was laid down in paragraphs 14,15 and 16:

“14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back in 1952.

15. In Hanumant Govind Nargundkar v. State of M.P., AIR (1952) SC 343 it was observed thus;

"It is well to remember that in case 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.

16. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, AIR (1994) SC 1622. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence must be fully established. They are:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the-

innocence of the accused and must show that in all human probability the act must have been done by the accused.”

11. The circumstantial evidence in the present case has to be examined in the light of the law as laid down above.

12. The present is a case where the evidence of last seen together on 7.12.1996 has been relied by the Courts below. The deceased attended his office and left at 6:30 p.m. along with another constable PW-2 Dilip Atmaram Waingankar, who was also on duty on 7.12.1996, who stated that he along with victim has left the office at 6:30 p.m. and he left the victim at 7:30 p.m. at Jogeshwari. PW-8 Kalpana Raut the wife of deceased has stated in her statements that the accused came at 8:00 p.m. on 7.12.1996 and asked the victim to accompany him to office since he was being called by Patil Sahib. The victim made a phone call to PTS, Marol and was informed by telephone operator who has also appeared in the evidence that there was no message for him. PW-8 Kalpana Raut has clearly stated that she along with her husband went to telephone booth near her house to call her brother and when she was talking to her brother, accused again came and had talk with victim. Thereafter both victim and accused came at the house. The victim took up his bag which he brought from the office and left for office along with accused at about 9:15 p.m. on the same day. The child witness PW- 11 Anish was also relied by the learned Sessions Judge, who had made the same statement about leaving the home by victim along with the accused. The High Court decided not to rely on child witness looking to his age at the time of incident.

13. What is the relevance of last seen theory has come for consideration time and again before this Court. In State of U.P. Vs. Satish (supra), there was positive evidence that the deceased and accused were seen together by the witnesses. Following was laid down by this Court in paragraph 22:

“The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.”

14. In Deepak Chandrakant Patil v. State of Maharashtra, 2006 (10) SCC 151, the statements of the wife and son of the deceased to the effect that deceased was last seen in the company of appellant was sought to challenge on the ground that there was no direct evidence led by the prosecution to prove assault on the deceased. Rejecting the said submission, it was held by this Court that circumstance of last seen together if considered with other evidence on record has found the guilt proved. Following was laid down in paragraph 14:

“Learned Counsel for the appellant also submitted before us that the evidence of PWs 15 & 13 to the effect that the appellant was last seen in the company of the appellant became irrelevant in view of the fact that the prosecution had led direct evidence to prove the assault on the deceased. In our view, the submission does not help the appellant. In this case, the circumstance that the deceased was last seen by PWs 15 & 13 in the company of the appellant, is a circumstance which considered with other

evidence on record has been found to prove the guilt of the accused. It is not as if the prosecution has tried to set up a case other than what was sought to be proved by the eye witnesses examined in the case who turned hostile. Since the eye witnesses turned hostile, the circumstance that the appellant had accompanied the deceased and was last seen by him was only treated as one of the circumstances in the chain of circumstances to prove his guilt.”

15. Both the Courts below have considered the statements of PW-8 Kalpana Raut, the wife of victim, referred to the cross examination made by the learned counsel for the accused and has rightly found that it was accused who was last seen together with the victim on 7.12.1996 and it was the accused, who came to the house of the victim and took the victim along with him on the pretext that victim is being called at the office by his superior. Last seen theory is a circumstance, which can be relied but it is well settled that only on the basis of last seen together conviction cannot be recorded. Further, if there is long time gap between last seen together and the date of incident, the evidence of last seen together loses much of its importance. But present is a case where there is no long time gap. The victim went along with the accused on 7.12.1996 after 9 p.m. and next day morning the wife carried rigorous search, met the accused and took him to the police station. From the morning of 8.12.1996 the search was conducted by the wife making statements that it was accused who came to the house of the victim and took away the victim on the pretext that he was being called by his superior in the office. On 8.12.1996, evening PW-8 Kalpana Raut along with the help of her relatives could take the accused to the police station and accused remained at the police station and investigation was carried out by the police authorities. In the early morning of 9.12.1996, the accused is stated to have confessed his guilt and thereafter dead body and other articles were recovered from the spot. Thus, there is no time gap between accused being last seen together and discovery of dead body. The prosecution case is that murder took place on 9.12.1996 itself. Thus, the present is a case of absolutely no time gap hence, evidence of last seen together becomes very relevant and important and has rightly been relied by the Courts below. There are other evidence on record which complete the chain of events. From the scene of occurrence, recovery of three shirt's button; recovery of bag containing the treasury books and other articles which had been taken by the victim at the time of departing for the office at 9 p.m. Recovery of three buttons which were proved to be button of the shirts of the accused which he was wearing at the time of occurrence. Recovery of stone which was used by the accused for smashing the head of the victims and the post mortem report has found the wound as incised like wound which proves the manner of causing death as was stated by the accused. The recovery of clothes worn by the accused from the parents house indicated that his shirt did not have three buttons which were found at the scene of occurrence completes the chain of events. Further keys of the office of PTS, Marol which the victim took along with him while departing along with the accused on 7.12.1996 were recovered at the instance of the accused from the guardroom of PTS Marol. The keys which were with the accused were found in the custody of accused clearly completes the chain of events. There is evidence on record to indicate that accused on 8.12.1996 went to PTS, Marol and wanted the Pay Office of PTS Marol to be opened on the pretext that he has left his keys on previous day. The office was not allowed to be opened and the witnesses who had seen him on 8.12.1996 morning have deposed before the Court. The High Court has elaborately considered the Exh. P-24, the Panchanama which was prepared on the spot. The High Court has rightly observed that Panchanama is a composite document, which contains certain

details pertaining to narration by the accused, and it also contains details which can be termed as panchanama of scene of occurrence, and it also contains the details of the dead body, which can be termed as inquest. Exh. P-24 has been witnessed by the independent witnesses Arvind Veerkar PW-9 was independent witness of scene of occurrence and recovery of dead body and other articles, who was thoroughly cross examined by the defence. The conduct of the accused which has come before the Court by evidence, recovery of clothes which was worn by him at the time of occurrence and recovery of keys which were with the deceased when he left the house completes the chain of events and unerringly points out that it was the accused who committed the crime.

16. One of the submissions which has been raised by the learned amicus curiae is that the prosecution failed to prove any motive. It is contended that the evidence which was led including the recovery of bunch of keys from guardroom was with a view to point out that he wanted to commit theft of the cash laying in the office but no evidence was led by the prosecution to prove that how much cash were there in the pay office. Motive for committing a crime is something which is hidden in the mind of accused and it has been held by this Court that it is an impossible task for the prosecution to prove what precisely have impelled the murderer to kill a particular person. This Court in Ravinder Kumar and another vs State Of Punjab, 2001 (7) SCC 690, has laid down following in paragraph 18:

“18.....It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer to the observations of this Court in State of Himachal Pradesh vs. Jeet Singh {1999 (4) SCC 370}:

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

17. Further in Paramjeet Singh Vs. State of Uttarakhand, 2010 (10) SCC 439, this Court held that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. Following was stated in paragraph 54:

“So far as the issue of motive is concerned, the case is squarely covered by the judgment of this court in Suresh Chandra Bahri (supra). Therefore, it does not require any further elaborate discussion. More so, if motive is proved that would

supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. (Vide: State of Gujarat v. Anirudhsing [supra])”

18. The High Court while considering the motive has made following observations at page 46:

“Although prosecution is not very certain about the motive, upon taking into consideration the evidence of PW-4 and PW-6, a faint probability is created, regarding intentions of the accused to lay hands on the cash which could have been in possession of the victim, as against the initial story that the accused was enraged against the victim, because the victim used to tease him on the point of his marriage with a bar girl Helen Fernandes. Motive is a mental state, which is always locked in the inner compartment of the brain of the accused and inability of the prosecution to establish the motive need not necessarily cause entire failure of prosecution.” We fully endorse the above view taken by the High Court and do not find any substance in the above ground.

19. The amicus curiae submits that the Patil Sahib was not examined as witness. The prosecution case was that accused told the victim that he has been called by Patil Sahib in the office. When the evidence has come on the record including the evidence of PW-1 Pradeep Mohit, who was the Telephone Operator in the PTS, Marol in the night of 7.12.1996 that there was no message for victim, non production of Patil by prosecution is of no consequence.

20. The next submission of amicus curiae is that the PW-8 Kalpana Raut has stated in her statement that on 7.12.1996 victim left the house after 9:00 p.m. after taking dinner but no food was found in the stomach and the medical report bellies that case. The High Court has dealt with the above submissions and made following observations at page 33:

“Evidence of Kalpana, duly supported by PW-15 Shantaram is strong enough to draw conclusion that Kalpana was certainly aware of her husband having departed with nephew of PW-15 Shantaram, irrespective of the fact whether she had seen that nephew or not and also irrespective of the fact, whether the victim departed without dinner. The portion from post mortem notes, indicating the victim to be empty stomach, therefore, is not weighty enough to demolish Kalpana's deposition, which claims knowledge of departure of victim with the accused. We are, therefore, inclined to hold tht Kalpana's evidence that the deceased had departed with the accused, is acceptable and the prosecution has established this circumstance with reliable evidence.”

21 . We endorse the above findings of the High Court. The present is not a case of solitary evidence of last seen together but sufficient evidence was led to complete the chain of events and link the accused to the crime. The High Court after elaborately considering all the evidence on record has rightly dismissed the appeal filed by the accused. We do not find any merit in this appeal. The appeal is dismissed.

.....J. (ABHAY MANOHAR SAPRE)J. (ASHOK
BHUSHAN) NEW DELHI, JUNE 29, 2016.