

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE MS. JUSTICE J. UMA DEVI

Crl.A.No. 144 of 2013

JUDGMENT: (Per Hon'ble Ms. Justice J. Uma Devi)

1. Aggrieved by the judgment dated 21.11.2007 passed by the IV-Addl. District and Sessions Judge (Fast Tract Court), Nellore in Sessions Case No. 41 of 2006 acquitting A1 and A2 of the offences under Sections 302, 379 and 201 IPC, the State of Andhra Pradesh has preferred the present appeal.

2. The prosecution case as culled from the evidence of the prosecution witnesses was that the deceased Yaddalapudi Ravi s/o Haranadaiah was taken from his house by A1 and A2 for catching fish on 23.10.2003 at about 11.00 A.M. at Yeruru village, Chillakur Mandal and as the deceased Yaddalapudi Ravi did not return home on that day, when the father of the deceased Yaddalapudi Haranadaiah (P.W.1) went to the house of A2 to enquire him about the whereabouts of his son and he was informed that all the three including A1 and A2 and the deceased Yaddalapudi Ravi went to Mannegunta village, there they consumed arrack, and they came up to *Varava Kaluva* and later he did not know what happened thereafter. Upon getting such information from A2, he along with A1 and A2 and other villagers went in search of the deceased Yaddalapudi Ravi and found his dead body in a water pit near *Varava Kaluva* and brought it to their house at about 11.45 A.M. Based on the report given by the father of the deceased (P.W.1) on 24.10.2003 at 2.00 P.M., the Sub-

Inspector of Police, Chillakur police station initially registered a case in Cr.No. 101 of 2003 under Section 174 Cr.P.C. and issued the First Information Report (FIR). He examined and recorded the statements of Yaddalapudi Haranadaiah (P.W.1), Yaddalapudi Subbamma (P.W.2), Yeddalapudi Nageshwara Rao (P.W.3), Yeddalapudi Venkata Ramana (P.W.4), Pericherla Venkatasubbaiah (P.W.5), Yeddalapudi Lakshmi (P.W.8) and others and also recorded the statement of Lanka Audeiah (A1). He held inquest over the dead body of the deceased in the presence of Kavali Baji (P.W.11) and two others. He observed the scene of offence in the presence of Kanimela Ramchandraiah (P.W.7) and another and prepared a rough sketch of scene of offence, and seized the incriminating material objects from the scene of offence. The statement said to be made by A1 and A2 in the presence of Sreemantham Raghunath (P.W.6), in charge village secretary of Yeruru Gram panchayat village was the basis for the Sub-Inspector of Police to alter the section of law from 174 Cr.P.C. to Sections 302, 379 and 201 IPC. The extra judicial confession made by A1 and A2 in the presence of P.W.6 was the vital piece of evidence for the prosecution to proceed against them for the offences under Sections 302, 379 and 201 IPC. The Inspector of Police, Gudur (P.W.14) took up investigation of the case on 30.10.2003 on receiving the copy of altered FIR from Sub-Inspector of Police. During the course of investigation, the Inspector of Police seized a gold chain, gold ring and wrist watch and a lungi and a pair of chappals from the house of A1 under the cover of a panchaanaama-Ex.P5 prepared in the

presence of Nandavaram Subbarao (P.W.12) and another. The extra judicial confession said to be made by A1 and A2 in the presence of P.W.6 regarding which a report was submitted by him, and the recovery of the material objects, the details of which we referred to above and the last seen theory were the incriminating circumstances relied on by the prosecution to prove that the accused are the perpetrators of the crime. The prosecution laid the charge sheet against the accused for the offences under Sections 302, 379 and 201 IPC before the Judicial Magistrate of First Class, Gudur mentioned the aforementioned facts.

3. The Judicial Magistrate of First Class, Gudur, before whom the Inspector of Police, Gudur laid the charge sheet, on verification of the entire material produced before him, committed the case to the Court of Sessions, as the offences alleged against the accused were exclusively triable by it. The learned Sessions Judge to whom the case was made over framed the charges under Sections 302, 379 and 201 IPC against the accused, read over and explained to them in their vernacular language, and they pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 14 witnesses and marked Exs.P1 to P12 and M.Os 1 to 5 to prove its case against the accused. The incriminating evidence brought on record against the accused by the prosecution was read over and explained to them during the course of their examination under Section 313 Cr.P.C. and they denied the

same. The accused examined D.Ws. 1 and 2 and marked Exs.D1 to D7.

5. On appreciation of the evidence of prosecution witnesses and the defence witnesses examined by the accused, the learned trial Judge found that the prosecution could not succeed in establishing the guilt of the accused for the offences under Sections 302, 379 and 201 IPC and accordingly acquitted of them of the said charges under Section 235 (1) Cr.P.C. Aggrieved thereby, the State of Andhra Pradesh had filed the present appeal.

6. It was contended by the learned Public Prosecutor that though it was amply proved by the prosecution that the deceased was taken from his house by A1 and A2 and he was last seen alive in the company of the accused, and that they were the persons responsible for his death, the learned trial Judge acquitted them of the charges under Sections 302, 379 and 201 IPC. The prosecution examined P.W.12 to prove the recovery of M.Os 1 to 5 at the instance of the accused. Though the evidence adduced by the prosecution was suggesting the involvement of the accused in the crime, the learned trial Judge erroneously held that the prosecution failed to establish the incriminating circumstances. The reasons assigned by the trial Court to acquit the accused were wholly unsustainable in law. Since the learned trial Judge grossly erred in holding that the prosecution could not able to make out its case as against the accused despite the examination of several witnesses who spoke about the incriminating circumstances that the deceased was last seen alive in the company of

the accused, and the extra judicial confession they made admitting the commission of offence, and the recovery of incriminating material objects at their instance, the prosecution preferred this appeal seeking the indulgence of this Court.

7. Opposing the aforementioned contentions of the learned Public Prosecutor, the learned counsel appearing for the respondents/accused stated that in the instant case the prosecution could not establish that the accused were having the motive of killing the deceased. The theory that deceased was last seen alive in the company of the accused was not established by the prosecution. The trial Court, on close scrutiny of the evidence of prosecution witnesses, came to the conclusion that the motive which the prosecution alleged was not proved. It was admitted by the mother of the deceased i.e., P.W.2 that A1 and A2 were having properties in their village. The prosecution had not examined Iragaraju Polaiah (L.W.15), who, according to it, had seen the deceased in the company of the accused just prior to his death. Based on the evidence given by PWs 1 to 5 and 8 who only stated that the deceased left his house along with the accused one day prior to the noticing of his dead body, it could not be inferred that they were the persons responsible for his death. The learned trial Judge opined that the theory of last seen was not established by the prosecution. The prosecution also could not able to establish that the accused made an extra judicial confession in the presence of P.W.6. The reasoning recorded by the trial Court to disbelieve the testimony of P.W.6 which was wholly inconsistent with the testimony of

P.W.14, the Inspector of Police, itself was enough to say that the so-called extra judicial confession was the theory invented by the prosecution. It was his further contention that on the basis of hypothesis no criminal case be decided. It is only when it is found that all the incriminating circumstances are compatible with the guilt of the accused, the Court can convict the accused. In the instant case, no strong evidence is there to believe that the accused are the perpetrators of the crime. The learned trial Judge has rightly acquitted them of the charges under Sections 302, 379 and 201 IPC.

8. In the light of the aforementioned submissions of both sides, this Court is now called upon to answer the question, “whether the judgment of acquittal passed by the IV-Addl. District and Sessions Judge (Fast Tract Court), Nellore in Sessions Case No. 41 of 2006 is sustainable in law?”

9. The allegation made by the prosecution against the accused is that on 23.10.2003 they had taken the deceased Yaddalapudi Ravi from his house at 11.00 A.M. on the pretext of catching fish and caused his death by drowning him forcibly in the waters of *Varava Kaluva* to snatch away his gold chain, gold ring and wrist watch from him. Since this being its contention, the onerous responsibility is on it to prove such contention beyond all reasonable doubt.

10. The present case is based on circumstantial evidence. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*¹ the Apex

¹ (1984) 4 SCC 116 = AIR1984SC1622

Court elaborately considered the standard of proof required for recording a conviction on the basis of circumstantial evidence and the golden principles of standard of proof required in a case sought to be established on the basis of circumstantial evidence, are as follows,

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully 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. On analysis of the evidence on record, what we have understood is that the prosecution is mainly relying on four circumstances which are as follows,

(1) that the accused are having sufficient motive to kill the deceased as their intention is to steal the golden ornaments worn by him;

(2) that the deceased was last seen alive in the company of the accused and the recovery of dead body at their instance;

(3) that the accused made an extra judicial confession before

P.W.6 admitting that they committed the offence;

(4) that the recovery of M.Os. 3 to 5 pursuant to the disclosure

statement made by the accused;

12. As regards the motive that was alleged by the prosecution is concerned, it was not said in the evidence of PWs 1 to 5 and 8 that the deceased wore M.Os. 3 to 5 while leaving his house and no suspicion was expressed by them against any of the accused in the complaint given by P.W.1. It was not stated in Ex.P1 that to steal the gold ornaments of the deceased he might have been killed. It was deposed by P.W.2, the mother of the deceased, that the accused are having landed property in their village. The aforementioned witnesses did not state the particulars of the gold ornaments which the deceased used to wear, and on the day when he left the house he wore M.Os. 1 to 5.

13. As regards to the other circumstance spoken to by PWs 1 to 5 and 8 that the deceased was taken by A1 and A2 from his house one day prior to the noticing of his dead body is concerned, A1 and A2 admittedly are residents of Yeruru village and A1 is related to P.W.1. It is elicited in the evidence of P.W.1 that they never had any disputes with A1. It is also elicited through P.W.1 that A1 and his deceased-son were moving in the village as brothers. P.W.1 also testifies that there was no enmity between them and A1 and A2 and that A1 and A2 are having landed proper in the village of PWs 1 and 2 (as admitted by PWs 1 and 2). If that so, did they commit the murder of the deceased for stealing the gold ornaments from him? The motive

which the prosecution has asserted appears to be very weak, and the same has not been established beyond any doubt.

14. As regards to the other circumstance spoken to by PWs 1 to 5 and 8 that the deceased was taken by A1 and A2 from his house one day prior to finding of his dead body is concerned, A1 and A2 are residents of Armur village to which village P.Ws. 1 to 5 and 8 belong to. Merely because it is stated by PWs 1 to 5 and 8 that the deceased was taken by A1 and A2 from his house along with them one day prior to noticing of his dead body in Varava Kaluva, it is difficult to infer that they are the persons who killed him.

15. Coming to the other circumstance that the dead body of the deceased was found at the instance of the accused is concerned, it is recited in Ex.P1 given by P.W.1 that after enquiring A2 about the whereabouts of the deceased, they along with A1 and A2 and his other villagers searched for the deceased and found his dead body in a pit near *Varavakaluva* and in the statement made by P.W.1 while lodging a complaint it was nowhere stated that the dead body of the deceased was recovered at the instance of the accused. He did not express any sort of suspicion on anybody else regarding the death of the deceased. A1 was present when the inquest over the dead body of the deceased and his statement was also recorded by the Sub-Inspector of Police, Chillakur PS whom the prosecution did not choose to examine for the reasons best known to it. It was only when P.W.1 was examined in the Court for the first time, he changed the version and deposed that when he enquired A1 and A2 about the whereabouts of the deceased

son Yaddalapudi Ravi, they gave evasive reply and therefore they suspected foul play behind the death of the deceased and that the accused when were questioned by them again along with their another son Yeddalapudi Nageswara Rao who came there, they told that they would show his deceased son and that the dead body was recovered at the place where they showed. The above information which he gave for the first time in his evidence was the improvement and such information he did not chose to mention in Ex.P1 or in his statement.

16. The dead body of the deceased as was seen from the contents of Ex.P1 was recovered upon the search made by P.W.1 along with his villagers who accompanied him including A1 and A2. The prosecution though cited Iragaraju Polaiah as L.W.15 to speak about the fact that he saw the deceased in the company of the accused one day prior to the notice of his dead body in *Varavakaluva*, it did not choose to examine him as a witness before the Court for the reasons best known to it. The evidence of P.W.9-Koneru Somaiah would in no way lend any support to the prosecution case as his evidence was only to the effect that he saw A1 in a drunken condition and provided him with a towel, which was returned to him immediately after A1 wore the lungi which he noticed from a distance of 10 feet.

17. A feeble attempt was made by the prosecution to establish that P.W.9-Koneru Narsaiah saw A1 at about 3.00 A.M. and provided him with a bed sheet and duppati etc, but that also would not lend any support to the prosecution case, as nothing like an incriminating circumstance be imagined with such evidence since his evidence at

best would only establish the circumstance that he saw A1 during night hours. The prosecution had not examined Iragaraju Polaiah who according to it, had seen the deceased alive in the company of the accused at Mannekunta village while selling arrack to them. Even assuming for a moment that Iragaraju Poliaah had seen the deceased in the company of the accused on the previous day night, that circumstance itself is not sufficient to draw an inference against the accused. Thus the theory of 'last seen' has not been proved substantially by the prosecution.

18. Two different opinions were given by the panch witnesses to the inquest regarding the death of the deceased. They opined that 'the deceased Yaddalapudi Ravi might have died due to accidental drowning' or that 'his death occurred under suspicious circumstances which could be determined after receipt of post mortem report'. After the dead body was forwarded to the Government Area Hospital, Gudur, Dr. P. Santhikala, Civil Assistant Surgeon (P.W.13) conducted autopsy over the dead body and preserved viscera for chemical examination and issued the preliminary report dated 26.10.2003-Ex.P7. After receipt of RFSL report dated 19.1.2004-Ex.P9, the doctor gave her final opinion on 11.2.2004- Ex.P8 stating that the death of the deceased occurred 'due to asphyxia as a result of drowning'. No signs of external violence on the neck and other parts of the dead body of the deceased were found by P.W.13 and this itself would suggest that there was no forcible drowning.

19. It was only mentioned in the post mortem report that a little quantity of water like fluid was found in the lungs, and a little bit of brownish liquid was found in stomach. The proposition laid down in Modi's Medical Jurisprudence and Toxicology that 'when the death was caused by asphyxia due to drowning, it would result in entering of more water into lungs through mouth to overcome suffocation', was fully agreed by P.W.13. In the given case only a little bit of water like fluid was found in lungs and no water was found either in the stomach or lungs. Thus there were circumstances to believe that there was no forceful drowning. When two views are possible regarding the death and if one such view is favourable to the accused, the benefit of such view shall go to them.

20. So far as the extra judicial confession said to be made by the accused in the presence of P.W.6, the in charge village secretary of Yeruru Grampanchayat village is concerned, the prosecution has examined P.W.6 to prove that an extra judicial confession is made by the accused admitting that they have committed the offence. The said confession is made on 30.10.2003 at 1.00 P.M. as per the prosecution case. The said confession is admittedly made seven days after the alleged date of incident. It is deposed by P.W.6, the in charge village secretary of Yeruru Grampanchayat village that A1 and A2 were brought before him by P.W.7-Ramachandraiah, the village Talari while he was busy in distributing ration cards. The accused who were brought before him confessed that they committed the offence of killing the deceased Yaddalapudi Ravi by drowning in *Varuva*

Kaluva. Based on the admission made by them, he prepared his report incorporating the confession made by A1 and A2, and sent it to Chillakur police station through P.W.7-Ramachandraiah with a direction to produce A1 and A2 before the police. On the same day at about 6.00 P.M. or 7.00 P.M. P.W.6 went to Chillkur police station and informed to the Sub-Inspector of Police about the confession made by the accused about the offence in his presence. The admitted portion in the report given by P.W.6 to the police was marked as Ex.P2. As per the endorsement found on Ex.P2, it was received by the Sub-Inspector of Police, Chillakur police station at 1.00 P.M. But as a matter of fact, the panchanama containing Ex.P2, the marked portion was prepared in between 1.00 P.M. and 4.00 P.M. The village Talari (P.W.7) through whom it was sent to the police station handed over it to the Sub-Inspector of Police at 3.30 P.M. (as was deposed by P.W.7). The evidence given by P.W.7 as to the handing over of Ex.P2, the panchanama by him at 3.30 P.M. by which time the drafting of it was not completed by P.W.6, would create any amount of doubt. It was deposed in clear and categorical terms by P.W.6 that he prepared the said report in between 1.00 P.M. and 4.00 P.M. It is beyond the imagination of anybody else, as to how it was reached to the Sub-Inspector of Police, Chillakur police station at 3.30 P.M.? when the preparation or drafting of which was completed by 4.00 P.M. Chillakur police station was at a distance of 25 kilo meters from Yeruru village and if that was the situation, how P.W.7 could hand over it by 3.30 P.M. when the writing of such report was completed

by 4.00 P.M. by P.W.6? The Sub-Inspector of Police, Chillakur police station to whom the said report was handed over by P.W.7 was not examined. The Inspector of Police (P.W.14) who took up investigation on 30.10.2003 deposed that by 1.00 P.M. he learnt through Sub-Inspector of Police, Chillakur police station that A1 and A2 confessed the offence before P.W.6, and that he received a written report from P.W.6 regarding the confession made by the accused. Soon after receiving of such intimation from the Sub-Inspector of Police, he rushed to Chillakur police station and received copy of altered FIR issued by the Sub-Inspector of Police at 1.30 P.M. based on the report received from P.W.6. It was deposed by P.W.14 consistently that by the time he reached police station, Chillakur, P.W.6 was available there, and he recorded his statement and that on securing the presence of P.W.12 and another, he along with Sub-Inspector of Police and staff members went to the scene of offence situated near Yeruru village and observed the scene of offence that was shown to them by the accused. The panchanama that contained the marked portion Ex.P2 was prepared in between 1.00 P.M. and 4.00 P.M. as deposed by P.W.6. If such was the evidence of P.W.6, how P.W.14, the Inspector of Police could get intimation about its existence by 1.00 P.M. The Sub-Inspector of Police who was supposed to say about the alteration of section of law based on Ex.P2 was not examined by the prosecution. The evidence of P.W.6 was that Ex.P2 report was not handed over by him to the Sub-Inspector of Police personally and it was sent through village Talari (P.w.7). The

evidence given by P.Ws 6 and 7 regarding the confession said to be made by the accused and drafting of panchanama containing the marked portion of Ex.P2 in between 1.00 P.M. and 4.00 P.M. was not corroborated by the evidence of each one of them on all material particulars. The evidence given by P.W.14 was altogether different from the evidence given by PWs 6 and 7. As per his version the panchanama containing Ex.P2 was received by him at 1.30 P.M. The Sub-Inspector of Police who altered the section of law to Sections 302, 379 and 201 IPC did not choose to enter into witness box. The statement of P.W.6 which the Circle Inspector of Police recorded in the police station at Chillakur was not placed before the Court. The inexplicable omission on the part of the prosecution to produce the Sub-Inspector of Police, Chillakur as a witness to prove the alleged confession and other material facts, would create any amount of doubt.

21. As a matter of record, Ex.P2- panchanama was not received in the police station, Chillakur at 1.00 P.M. particularly in the light of the evidence given by P.W.6 who said in clear terms that he prepared Ex.P2 – panchanama in between 1.00 and 4.00 P.M. Admittedly the contents of the said panchanama were not read over and explained to the accused before obtaining their signatures on it. It is also evident from the material on record that P.W.6 who prepared the said report was not the village secretary of Yeruru Grampanchayat village, and he was only the incharge secretary of the said village and that the accused had no prior acquaintance with him. The panchanama and the

report wherein the alleged confession was incorporated came into existence seven days after the alleged date of incident.

22. The prosecution story has taken a new turn on 30.10.2003 and prior to that the accused were not suspected by anybody else including the police and the parents of the deceased. A1 was very much available in the village at the time of conducting of inquest over the dead body of the deceased. Both the accused were arrested on the evening of 30.10.2003 after the section of law was altered by the Sub-Inspector of Police. PWs 1 to 5 and 8 gave different versions that they suspected foul play behind the death of the deceased as evasive replies were given by the accused etc. which, as a matter of fact, was not stated by them at the time of lodging of the complaint. The Sub-Inspector of Police, Chillakur police station who conducted inquest over the dead body of the deceased and recorded the statements of witnesses including the statement of A1, was not examined by the prosecution as a witness. Non-examination of the Sub-Inspector of Police as a witness is giving a scope to comment that the report and the panchanama which gave momentum to the investigation was created with the assistance of P.W.6 as the police could not get any clue about the culprits even after lapse of one week from the date of death of the deceased. Withholding of crucial evidence of Sub-Inspector of Police who investigated the case and recorded the statements of witnesses, who was capable of stating about the existence of Ex.P2 report is fatal to the prosecution case, and this is creating any amount of doubt in our mind as to the credibility of the

prosecution case. No plausible explanation is offered by the prosecution for non-examination of Sub-Inspector of Police who has investigated the case at the initial point of time.

23. The evidence given by P.W.12 regarding the concealment of pair of chappals and a lungi appears to be wholly unreliable, as no prudent person will keep such stolen items in his house if really an offence is committed by him.

24. A1 is related to P.W.1 (as per his own testimony). He testifies that there were no disputes between him and the accused, and the deceased and A1 and A2 were moving as brothers. It is deposed by P.W.2 that both the accused are having landed property in Yeruru village. If such is the version of P.W.2, do they kill the deceased for committed theft of small gold items such as a gold chain and a gold ring and a wrist watch? None of the prosecution witnesses have stated about the particulars of the gold items which the deceased used to wear regularly, and that the deceased while leaving the house wore M.Os. 3 to 5.

25. The another incriminating circumstance namely the recovery of M.Os. 3 to 5 appears to be a mockery as inconsistent versions are given by PWs. 6, 7, 12, and 14 in regard to the timing at which the panchanama containing Ex.P2 is prepared. It is as per P.W.6 the panchanama containing Ex.P2 marking portion was prepared in between 1.00 P.M. and 4.00 P.M. But as per P.W.7, he handed over such panchanama in police station by 3.30 P.M. by undertaking journey of 25 KMs from Yeruru village. The evidence of P.W.14, the

Circle Inspector of Police is that he got the information through the Sub-Inspector of Police, Chillakur about the alleged extra judicial confession said to be made by the accused at 1.00 P.M. and about the alteration of section of law and immediately he rushed to Chillakur police station and reached there by 1.30 P.M. and received a copy of the altered FIR. But the evidence of P.W.6 is quite contrary to the evidence of the Circle Inspector of Police of which a reference is made above by us in detail. P.W.12 whose assistance is taken to prepare the recovery panchanama is called to the police station by 1.30 P.M. and within five minutes thereafter he reached the police station and immediately he along with Circle Inspector of Police and others reached Yeruru village by 3.15 P.M. and they recovered M.Os. 1 to 5. But as a matter of fact, the panchanama relating to the confession has reached the police station after 4.00 P.M. (as per the evidence of P.W.6). The above infirmities which we have pointed above themselves are suffice to hold that the entire evidence let in by the prosecution in so far as the disclosure statement made by the accused and the recovery that has taken place pursuant to the statement made by them appears to be a self invented story created by the police. There may not be any difficult for the police personnel to secure the items like M.Os. 3 to 5 even by asking the relatives of the deceased to bring such items, if they intend to close the investigation pretending that the deceased is killed to steal the gold items from him.

26. The evidence let in by the prosecution for establishing the extra judicial confession is not cogent and is not inspiring the confidence of

the Court particularly in view of the inconsistent versions made by PWs. 6, 7 and 14. The prosecution though has come up with the circumstance such as last seen theory, it failed to establish such circumstance by examining Iragaraju Poliaha (L.W.15) who, according to it, had seen the deceased alive in the company of the accused just prior to his death. Relying on the evidence of PWs 1 to 5 and 8 that the accused took the deceased with them on the previous day of the incident, it is difficult to connect them with the crime. The prosecution though is obligated to prove all the circumstances through which an inference of guilt can be drawn against the accused, has failed to establish the chain of circumstances which clearly point out the guilt of the accused. At this juncture it is relevant to quote the observations made by the Supreme Court in *Satish Nirankari Vs. State of Rajasthan*²,

“.....We have to keep in mind that this Court is dealing with a criminal matter where appellant is charged with committing murder of Pooja. Criminal cases cannot be decided on the basis of hypothesis. Another aspect which is to be kept in mind is that it is for the prosecution to prove the guilt of the accused charged for such an offence and that too, beyond reasonable doubt. In a case where there is no eyewitness and, which rests on circumstantial evidence, the prosecution is obligated to prove all those circumstances which leave no manner of doubts to establish the guilt of the accused person, i.e., chain of circumstances must be complete and must clearly point to the guilt of the accused. Chain of continuous

² (2017) 8 Supreme Court Cases 497

circumstances means that all the circumstances are linked up with one another and the chain does not get broken in between. It is now well established, by catena of judgments of this Court, that circumstantial evidence of the following character needs to be fully established:

- (i) Circumstances should be fully proved.
- (ii) Circumstances should be conclusive in nature.
- (iii) All the facts established should be consistent only with the hypothesis of guilt.

(iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the Accused (see *State of U.P. vs. Dr. Ravindra Prakash Mittal* (1992 (3) SCC 300) and *Chandrakant Chimanlal Desai Vs. State of Gujarat* (1992) 1 SCC 473. It also needs to be emphasised that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.”

27. The conclusion arrived by the trial Court that the prosecution has failed to establish the guilt of the accused cannot be faulted particularly because of its failure to establish the theory of last seen and the extra judicial confession said to have been made by the accused before P.W.6 whose evidence appears to be not trustworthy and credible, especially in view of the inconsistent versions made by

PWs 6, 7 and 14. Having regard to the aspects which we have pointed out above, we have no hesitation to hold that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt.

28. For the reasons stated in the aforementioned paras, the appeal filed by the State fails and the same is hereby dismissed.

C.PRAVEEN KUMAR, J

Dt.13.4.2018
KR

J. UMA DEVI, J

