

CASE ANALYSIS OF KIRITI PAL AND ORS. V STATE OF WEST BENGAL AND ORS

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FACTS OF THE CASE

In case Kiriti Pal v. State of West Bengal, Anjali Goswami(deceased) was married to the Karuna sindhu Goswami who used to run a hotel at Mohd. Bazaar. The couple had a daughter and a son. The husband of deceased died in the year 2000 and her daughter committed suicide in year 2006 and in the year 2008 her son died in an accident. After the death of her husband, the deceased used to look after the hotel but afterwards gave it to PW14-Bhagyadhar Dhibar on lease and started a beauty parlor and a cloth shop at Mohd. Bazar Which she afterwards shifted in a place rented by PW10-Manash Chakraborty at Suri. She hired fourth appellant-accused to run her beauty Parlor business and shifted to the Suri in her newly purchased house at Nutanpally, Suri. During the tenure of her in her residence she developed a friendship with the appellant-accused 1 and he used to frequently visit at the deceased's place.

On the fateful day, the deceased left the house with the appellant- accused 1 saying that she has to go to a programme organized in a school at Rajnagar on 11.11.2008. On 12.11.2008 a dead body was found in the jungle called babuibona 25 kms away from Anjali(deceased's) house. On 12-11-2008 FIR was registered the basis of complaint lodged by PW1-Swapan around 9.45 a.m. at Sadaipur P.S. Case No. 74/2008 Under Section 302 Indian Penal Code. Her neck was tied with one end of saree she was wearing and the other end of the saree was tied with tree (Sonajahuri) suggesting that the death was homicide. PW37-Santosh Kumar Ghosh, Sub Inspector of Police, who registered the F.I.R. had taken up the initial investigation. PW37 inspected the spot of the incident and arranged for photographs and made seizure and recovered material articles from the spot where the dead body was lying. PW8-Arunasish Goswami, nephew of the deceased identified the dead body as of Anita goswaami.

The dead body was then sent for the post mortem and in the post mortem report it was stated that the injuries were sufficient in the ordinary course of the nature to cause death and there were some injuries at the labia minora which could be caused by the forced sexual intercourse.

The case of criminal conspiracy was also filed against the Siddique Mia (A-2), Mustaque Mia (A-3) and Durga Sutradhar (A-4) to commit the murder of deceased-Anjali Goswami.

CONTENTIONS RAISED BY THE PROSECUTION AND DEFENCE AND THE EVIDENCE TAKEN BY THE COURT

The case was clearly based on the circumstantial evidence and various theories emerged which was taken into account by the court that is *last seen theory* and prosecution in this case relied upon the circumstantial evidence, but for the circumstantial evidence it is well settled rule that every fact or circumstance should be connected and there should be a complete chain of facts which should be well connected and should be clearly pointing towards the guilt of the accused and burden to prove this chain is on prosecution. For convicting the A-1 the prosecution relied upon the *last seen together* theory and on the subsequent conduct of the accused and for the conviction of A-2, 3, 4 under section 120B, the prosecution relied upon the evidences such as telephonic conversation, call records.

For conviction A-1 the circumstances on which the prosecution relied upon was that the accused was last seen together with the deceased when they both left for the function and secondly on the circumstance that the accused did not have justifiable explanation as to he being last seen with the deceased and where he left her and thirdly, his subsequent conduct which was found later that he was threatening witnesses as to keep silent on the matter of murder of deceased in front of police and threatening the A-3 as not to take his name or to put blame of murder on him and not to reveal anything about the conspiracy.

The other incriminating circumstance or another fact in the chain is that the deceased lied to the PW-6 that she is leaving for the Rajnagar to attend the function of Prosenjit and Chiranjib but on the statement of iPW11-Asit Dey who is the principle of Rajnagar High School it was found that no function was scheduled in the school ground to be held on 11.11.2008 either of Prosenjit or Chiranjib or of any other film artist and hence again the picture of *last seen together* theory picture comes into the scene. For this theory, the prosecution relied upon

the testimony of PW-6 who is tenant on the ground floor where the deceased used to reside and PW 6 saw her leaving the house in saree on the motor bike of the A-1.

For the conviction of A-2, 3, 4 the prosecution relied upon the sole evidence of records of the telephonic conversation and the records for the same was presented in the court. The prosecution also relied upon the confession made by the three accused in presence of the police **on the basis of which** material have been seized by the police which included one improvised country made single shooter pipe gun measuring about 10" (approx) having barrel, trigger, firing pin and iron butt was recovered. PW38 recovered one blood stained part of wooden butt which seems to be a part of wooden butt of a shotgun, measuring about 8 cm (approx) with a screw hole in the middle; one blood stained part of a wooden butt which seems to be a part of a wooden butt of a shotgun measuring 8 cm (approx) fixed with a iron screw in the middle measuring about 2.5 cm (approx.) from Babuibona jungle under Karamkal Mouza and from the report of the post mortem it was clear that injury was caused by the blunt sharp object and it could be caused by the butt of shotgun. For conviction of other three accused prosecution not only relied upon the telephonic conversation but also relied upon recoveries made after the confessional statement of the Appellants 2 and 3 (Siddique Mia and Mustaque Mia). Pursuant to the statement of Siddique Mia one TVS Fiero red colour motor cycle bearing No. WB-54B/8245 with its key and Nokia mobile handset (phone No. 9932345230) was seized under Ext. 17/3. Pursuant to the statement of Mustaque Mia Nokia mobile handset having connection No. 9932705533, one gold finger ring in the shape of a flower with inscription of letter 'Anjali', and silver made chain with one Amethyst and red coral fitted with it were seized but court did not accept this an evidence as the signatures on the seizure list was of PW 17.

Defence to prove the innocence of A-1 completely relied upon the absence of the motive on the part of the accused. The defence contended that there was no motive on behalf of the accused to murder deceased in spite of the friendship and intimacy between two knowing that accused was a married man does not prove the motive of the murder.

The court while deciding the matter took into consideration or based their decision on circumstantial evidence while convicting the appellant accused 1. The court based its decision on the various circumstances and relied upon the *last seen together* theory. The court also took into the consideration two incriminating circumstance that is of subsequent conduct of A-1

when he threatens the prosecutor's witnesses and also to the accused 1 and other incriminating circumstance was of material substance found after the confession made in the police custody.

The court while taking into consideration the *last seen theory* talked about the time gap

And proximate time of the accused and deceased being together and then parting of the company. In this case the court took into consideration that accused was not able to give satisfactory explanation regarding the how he parted with the company of the deceased.

The court after taking into consideration, convicted the appellant accused 1 of the murder of the deceased backing by the *last seen theory* and while deciding about the criminal conspiracy of A-2, 3, 4 the court acquitted them saying that the prosecution was not able to give sufficient evidence regarding conspiracy and court cannot solely rely upon the telephonic conversation.

Court rejected the contention of defence in case of A-1 that the prosecution was not able to prove motive of the A-1 for the murder of the deceased but the court rejected this contention and said that the motive is not necessary as in regard to circumstantial evidence and prosecution has been able to prove the guilt of the A-1 beyond reasonable doubt and has been able to connect all parts of the chain of circumstances which clearly points towards the guilt of the accused.

CASE ANALYSIS

The case *Kiriti pal v. State of West Bengal* deals with the circumstantial evidence and the court while convicting the appellant-accused 1 clearly based its decision on the *last seen theory* and on the material recovery of the things on the statement of the accused 2, 3, 4 and on the subsequent conduct of the appellant-accused 1.

The provisions which the case deals with are the Indian Evidence Act, 1872 - Section 8, Indian Evidence Act, 1872 - Section 106

The author will in this analysis will talk about the *last seen together* and the electronic evidence which in this case is telephonic conversation on behalf of which the charges of criminal conspiracy under section 120 B was framed against the A-2, 3, 4 and on the procurement of material evidence on basis of the confession given under police custody which is dealt under

section 27¹ which clearly states that the “how much information received from the accused may be proved”

This case is completely based on the circumstantial evidence and for the circumstantial evidence prosecution must prove every hypothesis and should connect every circumstance and a chain of facts pointing towards the guilt of the accused which prosecution has been able to done in this case as stated by the court.

Circumstantial evidence has been dealt by court at various periods of time and courts in many cases has held some principles for the circumstantial evidence based case as in *Geejaganda Somaiah v. State of Karnataka* ² it was held as follows: -

Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

Coming to the *last seen theory*, this theory talks about the person who is dead and with whom he was noticed last. The last seen theory has been discussed in many cases and it is dealt under the section 106³ which talks about the burden of proving facts especially within knowledge which in the last seen together theory comes on the appellant or the accused in which he has to prove or give satisfactory explanation as to parting of the company of the deceased which in this case was on the Kiriti pal and he failed to give sufficient explanation as to how he parted with the company of the deceased which clearly pointed towards the guilt of the accused.

This theory has been discussed in many case and some rules or principles have been pointed out by the court or ruled out. The court dealt with last seen theory in the case of *State of*

¹ Indian Evidence act, 1872, EASTERN BOOK COMPANY 27th edition

² (2007) 9 SCC 315

³ *Ibid*

*Rajasthan v. Kashi Ram*⁴ in which court clearly mentioned that if the deceased was found last in the company of the accused then accused as to furnish the information as to how he parted with the company of deceased and this burden of special knowledge is on accused and the explanation by accused should satisfy the court and if the accused fails then the court can convict accused if it clearly points towards the guilt of the accused.

"It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act⁵ and in another case which is *Naina Mohd., Re*⁶. in which court said that if in last seen theory the accused fails to provide court with a satisfactory information or explanation as to how he parted ways with the deceased then it must be taken as a strong incriminating circumstantial evidence which fulfills the part of the chain of the facts pointing towards the guilt of the accused.

The important factor of *last seen theory* is the time gap of accused and deceased last seen together and deceased found murdered which in this case is clearly proved by the facts that there was very little time gap between parting of the company and the deceased was murdered that there was no possibility of any third party committing the act and then the accused failed in the onus to furnish a satisfactory information.

Author completely agrees with the courts ratio in convicting accused as taking *last seen together* theory as very strong incriminating circumstance and in this theory the role of time which is considered by the court is appreciated by the author. According to the author the reasoning of the court fulfills all the aspects of the justice as to the accused that he shall prove with a satisfactory explanation to court in case of section 106 and if he fails, it should be taken against him as it points towards the guilt of the accused Not only in this case but court took this reasoning in famous Aarushi Talwar's murder case in which court convicted the father of

⁴ (2006) 12 SCC 254

⁵ *Ibid*

⁶ AIR 1960 Mad 218.

Aarushi Talwar on basis of last seen together theory as the Aarushi was last seen at night at her home and in morning g she was found murdered. The court while convicting the Dr. Rajesh Talwar held that looking at the circumstances there was no possibility of any third party act or involvement in murder of the deceased and the father of deceased could not fulfill the onus given by section 106 of special knowledge and hence court convicted him.

The other incriminating fact which was taken in to account by the court is material recovery on the basis of the statement given the A-2, 3, 4. The section 25 clearly states that no confession should be acceptable which is given into the police custody but section 27 acts as a proviso which happened in this case as Section 27 clearly talks about the admissibility of confession if material thing or fact is recovered based on that confession as in this case on the confession of the A-2, 3, 4 material facts such as one improvised country made single shooter pipe gun measuring about 10" (approx) having barrel, trigger, firing pin and iron butt was recovered. These all recoveries made the confession admissible. The court has played very important role in determining the true sense of section 27 by discussing it in various cases such as *Anter singh v. State of Rajasthan*⁷ in which court clearly mentioned some principles for the basis of acceptability of confession under section 27 which are-

There must be a discovery of the fact.

The fact must have been discovered in consequence of information;

The information must have been given by the accused while he is in the police custody;

So much of the information, which distinctly relates to the fact thereby discovered, maybe proved;

Although the recoveries were made on the confession of A-2, 3, 4 but court did not accepted this an evidence as the signatures on seizure list was of PW17

Another incriminating circumstance against A-2, 3, 4 was telephonic conversation under criminal conspiracy which was rejected by the court as no proper evidence was adduced before the court except the call records which just showed the no. of calls made among accused 1, 2,3 4 but court clearly rejected both the contentions of the prosecution against the three accused stating that that prosecution does not have enough evidence against 3 accused and it is just a

⁷ (2004)10 SCC 657

suspicion and prosecution has failed in connecting all the parts of the chain of facts against three accused.

The author in this issue does not agree with the court as according to the author there was sufficient evidence against the three accused which was not appreciated by the court as court did not take into consideration the telephonic records.

The contention of defence which was the absence of motive of A-1 which court rightly rejected. Section 8⁸ talks about the motive preparation and previous conduct but if the prosecution is not able to prove the motive, then it is not so fatal as against prosecution and courts just be more careful while scrutinizing the evidences. This provision has been discussed in many cases such as *Amitava Banerjee v. State of West Bengal*⁹ in which the court clearly said that if the case is clearly based on the circumstantial evidence, motive is important but if the motive is not proved then the case of prosecution cannot be thrown out but then the courts are required to be more careful and circumspect in scrutinizing the evidence.

Another case in which court held the same contention was *Vivek Kalra v. State of Rajasthan*¹⁰ in which it was observed that

where prosecution relies on circumstantial evidence only, motive is a relevant fact and can be taken into consideration Under Section 8 of the Indian Evidence Act, 1872 but where the chain of other circumstances establishes beyond reasonable doubt that it is the accused and the accused alone who has committed the offence, and this is one such case, the Court cannot hold that in the absence of motive of the accused being established by the prosecution, the accused cannot be held guilty of the offence.

The other contention where section 8 again came into picture was regarding the subsequent conduct in which it was said that A-1 had threatened the A-4 and PW6 regarding speaking against him in front of the police. The court accepted this contention as it was clear that A-1 threatened to hide his crime and author agrees with the court.

⁸ Indian Evidence act, 1872, EASTERN BOOK COMPANY 27th edition

⁹ (2011) 12 SCC 554

¹⁰ (2014) 12 SCC 439

The court in a leading case of *Vikramjit v. State of Punjab*¹¹ stated that *conduct of the accused must have nexus with the crime committed.*

CONCLUSION

In the author will like to sum up everything dealt in this case and regarding the current judicial trend. The current judicial trend is that the courts take the last seen together theory as very important and incriminating tool in the cases based on circumstantial evidence and if the accused fails to give explanation it can be taken against him which is correct view as to protect innocents from being served with injustice it takes the time gap very important and very carefully scrutinizes the evidences given in support of the last seen theory.

Then comes the circumstantial evidence as a whole then in present scenario also the courts follow the principles that were set up by the supreme court earlier as to that prosecution should prove beyond reasonable doubt and should be able to connect all parts of the chains as facts to form that chain of facts which clearly points towards the guilt of the accused.

Then court dealt with the confessional statement in police custody. The current trend in this matter is still same as courts think that police can use torture to adduce the confession and hence confessional statement is held inadmissible if given in police custody except if any material facts is recovered as to according to the court if any fact is recovered then the accused must be speaking truth and hence that statement is held admissible.

The court talked about which is still according to courts is important but it's mere absent does make case weak for the prosecution.

At the end author will like to conclude by drawing attention to the point that the principles which were set up earlier by courts in regards to the circumstantial evidence, the same are followed till today and there no changed in trend is for seen in near future.

¹¹ (2006)12 SCC306