
(2000) 04 KAR CK 0026
In the Karnataka High Court
Case No : Criminal Appeal No. 858 of 1996

Anjinappa and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2000) ILR (Kar) 3501 : (2000) 5 KarLJ 158 : (2000) 4 KCCR 322 SN

Hon'ble Judges : S.R. Bannurmath, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : Sri C.H. Hanumantaraya and Sri S.K. Venkata Reddy, for the Appellant; Sri B.C. Muddappa, Additional State Public Prosecutor, for the Respondent

Judgement

M.F. Saldanha, J.—The appellants before us face two charges: Firstly, that on the night of 22-1-1990 in the house of P.W. 11 (Obalamma) they are alleged to have committed the murder of Ramanna by squeezing his testicles and secondly in furtherance of their common intention that they took the dead body to a tree nearby and made a pretence as though Ramanna had committed suicide, by tying a rope around his neck and fastening it to the tree and hanging the body and thereby they committed offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code. Barring the evidence of Obalamma in whose residence the murder is alleged to have taken place and her statement recorded u/s 164 of the Criminal Procedure Code by the learned Magistrate who is P.W. 15, there is no other connective evidence in this case helpful to the prosecution. However, placing strong reliance on the aspect of motive which is deposed to by the father of Ramanna, who is P.W. 1 and by P.Ws. 2 and 4 wherein it is alleged that Ramanna had been carrying on an illicit affair with a married women by name Sannahanumakka, who is the daughter-in-law of the brother of accused 1 and also with another woman, Obalamma, who is also a relative of accused 1 and therefore, accused 1 is supposed to have assaulted

Ramanna some time earlier and there was a case pending relating to that incident. The prosecution therefore contended that accused 1 had a very strong motive to do away with Ramanna. Reliance was placed also on the evidence of P.Ws. 4 and 12 to show that the accused are alleged to have made extrajudicial confessions and P.W. 12 has even stated that on the night of the day of the incident he saw the accused carrying something from Obalamma's house; that he remained on the road to know what was happening and that in the course of the subsequent conversation accused 1 and 3 disclosed to him that they had killed Ramanna. The learned Trial Judge has accepted the prosecution evidence and held that the circumstances conclusively established both the offences and the four accused were accordingly convicted and awarded sentences under both heads of charges. The present appeal is against that conviction and sentence.

2. At the hearing the appeal, Sri Venkata Reddy, learned Counsel who represents the appellants, contended that first of all, advertent to the law with regard to circumstantial evidence, in a case of the present type, the conviction is unsustainable unless the chain or web of circumstances is completely established; that each circumstance has to be individually proved and that all the circumstances taken together point to only one conclusion that the accused are guilty of the offences. In keeping with this principle, he submitted that even the first necessary ingredient, viz., the aspect that the deceased Ramanna met with a homicidal death, has not been established. He drew our attention to the Post-mortem Report, Exhibit P. 5, which indicates that the right testicle of the deceased was slightly crushed. There was no other injury on the deceased and the Doctor has opined that the death was due to shock as a result of crushing of the testicle. Mr. Reddy points out that the Postmortem Report has not been proved by examining the Doctor and it was his case that, even if the concerned Doctor is alleged to have died, any other medical practitioner from the Hospital ought to have been examined by the prosecution. Failure to do so on the part of the prosecution has deprived the accused of the right of defence by calling into question the contents of the Post-mortem Report. There is one more defect in the way of prosecution, viz., that the Post-mortem Report was virtually smuggled into the record, because it was tendered by P.W. 10, the P.S.I., in the course of his formal evidence. Even if the report was tendered, the learned Trial Judge ought to have been careful, because the Post-mortem Report in a murder trial is a document of extreme importance and the law postulates that even assuming that an error is committed by the person representing the State, the learned Trial Judge ought not to have permitted it in evidence by-passing the well-defined procedure for tendering and proving such a document. It is true that the defence had omitted to raise an objection; but, in our considered view, having regard to the seriousness of the situation and the far-reaching prejudice caused to the defence, the irregularity with regard to the manner in which Exhibit P. 5 was taken on record will have to go against the prosecution. There is also good ground for barring such a procedure, because it is demonstrated that the Post-mortem Report indicates that there was no other injury on the body. The

deceased was a young man aged about 25 years and on record there are statements of his family members that he is alleged to have been suffering from a chronic stomach ailment and, if the Doctor who conducted the Post-mortem appeared as a witness, the defence would have had an opportunity of ascertaining from him as to whether he carried out a proper investigation to find out as to whether the deceased had any other serious physical complications. As regards the injury to the testicle, there is only a passing reference that it was slightly crushed. The experts as far as medical jurisprudence is concerned have indicated that, undoubtedly, an injury to testicle is very painful and does cause shock. It is only in an extreme cases that it would result in death and, if the injury is minimal as in this case, it would have been necessary for the Doctor to substantiate in the witness-box as to whether the injury of that magnitude, in his opinion, would have caused death. Secondly, the evidence indicates that the body of the deceased was found hanging by a rope tied around his neck and certain questions would have been addressed to the Doctor with regard to the other possibility of death including suicide. All these are because of the breach of procedure and even if the defence had not objected, in our considered view, the prosecution cannot be allowed to get away with this state of affairs because it would create a very dangerous precedent. As regards this circumstance therefore, even though the learned Additional State Public Prosecutor vehemently submitted that the Post-mortem Report within the provisions of the Evidence Act has been validly tendered by P.W. 10, we need to hold that the non-examination of the Doctor in this case is virtually fatal to the prosecution.

3. The strongest evidence of the prosecution to decide the issue is the evidence of P.W. 11, Obalamma, in whose house the accused are alleged to have taken the deceased into a room and killed him. Precaution was taken to record Oblamma's statement u/s 164 of the Cr. P.C., but she has resiled from the statement and has gone to the extent of saying that the statement was recorded by the learned Magistrate by pressurising her and threat and coercion have been used on her and that she does not stand by the statement. She has been totally hostile to the prosecution and the evidence of P.W. 11 therefore does not carry the prosecution case forward at all.

4. The direct connection that the prosecution alleges between the accused and the two offences consists of the evidence of P.W. 12 whose version is that on the night of the day of incident he had gone out to ease himself and that he saw four persons carrying something from the house of Obalamma. "Something" that he refers to is different from his stating that they were carrying the body of a human or an animal in which case it could have increased his curiosity. According to him, they were carrying something like a bag and that despite this he went and sat on the road to find out further. The four persons whom he saw were identified as accused 1 to 4 and accused 3 asked him whether he saw what they carried and he was about to reply in the negative. Despite this, accused 1 and 3 are alleged to have volunteered to him that they were carrying the dead body of Ramanna and they are supposed to have disclosed to him that they have killed

him by squeezing his testicles in the house of Obalamma and that after they had disclosed the entire story to him, they warned him that he should not disclose it to any third party as otherwise they would do the same to him. P.W. 12 was therefore supposed to be the voluntary recipient of the extrajudicial confession and he does not disclose it to anybody, even though in the next morning the whole village was keyed up because of the body being found hanging from the tree and what was even more curious was that the rope was loose and the body was in a kneeling position with the limbs resting on the ground.

5. This is a small village. The appellants came there shortly thereafter and despite this, P.W. 12 remained silent until the police go to him and record his statement. We find that the entire evidence of P.W. 12 is not in the realm of truth, but comes totally within the ambit of fantasy. It is so far-fetched that no Court could have placed any reliance on this type of evidence. One reason alone is sufficient to falsify his evidence. The prosecution case is that the four accused decided to hang the body from the tree in order to create an impression that Ramanna has committed suicide. If that is so, it is very obvious that the accused would have decided to cover up the whole incident and it is an absurdity for the prosecution to contend that after hanging the body, when they met the first person on the road, though he is not a total stranger, they would confess everything concerning the murder to him. It is therefore more than clear that since P.W. 12 resides close to the tree where the body was found the police have used him to fabricate the so-called extrajudicial confession in order to connect the accused with the crime. We find that his evidence is totally unworthy of credibility and of acceptance.

6. The evidence of P.W. 4 is also bad in this case. His evidence is that about three weeks after the incident accused 3 is alleged to have confessed to him on the same lines as was done to P.W. 12 on the night of the incident. The statement of P.W. 4 was recorded about one and a half months after the incident and in order to cover up everything he states that he had gone away to another place and came back only after the arrest of the accused.

7. A careful scrutiny of the evidence of P.W. 4 once again makes it clear that in a desperate attempt to connect the accused with the crime, this witness has been used by the prosecution and in the process they have miserably failed to create any confidence in the mind of the Court. In our considered view, the evidence of P.W. 4 and the evidence of P.W. 12 have been wrongly relied upon by the Trial Court.

8. As far as the rest of the material on record is concerned, we do not find anything that implicates the accused either directly or indirectly in the crime. On the question of motive, all that we point out is that there is a possibility that accused 1 was hostile towards the deceased as was evident from the earlier incident, but as far as the remaining accused are concerned, the prosecution has not given any reason before the Court for their hostility against Ramanna. Next, what we need to record further is the fact that as far as accused 1 is concerned,

his relationship with the two women is not very close and having regard to the fact that he had assaulted the deceased on an earlier occasion itself is of little likelihood that he would have resorted to this kind of clandestine activity getting all the accused involved in the case as though they too were hostile to the deceased and decided to get him finished and, in our view, it would have been done more openly as is characteristic in the rural areas.

9. The total record of this case fails to make out any case on either of the two charges or both of them against the accused. As indicated by us in the beginning of the judgment, the law with regard to circumstantial evidence is strict and the law requires absolute proof of the entire set of circumstances all of which are required to be sufficiently strong. Generally, all the circumstances that the law requires in a case of circumstantial evidence must consist of a chain or web of unimpeachable strength. One or two strong circumstances are totally insufficient for a conviction particularly on charges of murder. Having regard to the law on the point and the record of this case that has been reconsidered, the findings of the learned Trial Judge are incorrect and are liable to be set aside as neither of the charges has been established by the prosecution.

10. Accordingly, the Court allows the appeal and the conviction and sentence awarded to the four accused by the Trial Court are quashed and set aside. Since the accused are in custody, this Court directs that the accused be set at liberty forthwith unless they are required in connection with any other offence. This order be communicated to the Trial Court and the jail authorities forthwith by fax.

11. The criminal justice system has been not only polluted but totally corrupted in this State through one practice that has become endemic and has almost reached malignant dimensions. This Court has been evaluating the number of criminal cases in which one or more witnesses have been tampered with and has found that in over 90% of the cases one or more witnesses have turned hostile. Nothing can be more destructive to the success of a prosecution than the obnoxious practice of bribing or pressurising witnesses and getting them to turn hostile. This Court had earlier directed the Trial Courts to ascertain in all cases where the witnesses turn hostile as to why this has happened and since the majority of witnesses are gullible they have openly disclosed that it was the accused or persons on behalf of the accused who had either used inducements or pressure and threats to get them to turn hostile. There can be little doubt about the fact that the source of this corruption or this corrupt practice can be traced to the accused because it is the accused who is the direct beneficiary of the failure of the prosecution insofar as the accused secures an acquittal in cases where this is not warranted. This practice of tampering with the witnesses has now become so widespread that the prosecutors cheerfully and openly get up and tell the Trial Courts that the witnesses are hostile and that there is no purpose in examining them. The source of this information is the police who are often times a party to what is going on for obvious reasons. While in the rest of the world the prosecuting agency takes all necessary steps to ensure that pressures and

inducements do not affect the evidence, it is unfortunate that here no such preventive steps are taken even though it is possible. The police authorities in collusion with the accused were assisting the defence by keeping back witnesses and falsely informing the Court that they were not available and this Court was required to take stringent steps to combat this dishonest practice with considerably improved results over the last two years. The tampering with witnesses however continues unabated.

12. An antidote to this disease is therefore necessary. The present case is a classic instance where the murder took place in the house of Obalamma who was an eye-witness and who has made a statement which was recorded by a judicial officer namely a Magistrate u/s 164 of the Cr. P.C. and despite all these precautions, at the trial she has turned hostile and has not supported the prosecution even though she had squarely implicated the accused as the persons who had killed the deceased in her house. This is therefore a fit case in which a show-cause notice be issued by the Trial Court to this witness calling upon her to show cause as to why she should not be prosecuted for having committed the offence of perjury and in the course of the enquiry pursuant to the show-cause notice, the Trial Court shall ascertain as to who were the persons responsible for Obalamma having turned hostile even after having made a statement before a Judicial Officer on an earlier occasion. In many of the reports put forward to High Court in the earlier cases, the Trial Judges have pointed out that when they questioned the hostile witnesses as to who was responsible for tampering with the evidence, they have disclosed that it was the accused persons connected with them and in a good percentage of cases, they have even stated that they were taken to the defence lawyer who had told them what to say. The present case has identical overtones because Obalamma is a simple village woman and no lay person could have told her to make a statement that the learned Magistrate before whom her earlier statement was recorded had "threatened and pressurised" her into making a false statement.

13. It would be necessary at least in a few cases to make a thorough example of all those responsible, irrespective of their designation or profession or witnesses turning hostile. Whenever this happens, the Trial Court shall then and there make a serious attempt to ascertain the names of the culprits even in appropriate cases if it becomes necessary by according pardon to the witness who is really the victim on condition that a full and true disclosure of the facts is made. It will be necessary that the Courts send out the message very clearly that nobody who tampers with witnesses will be spared and that every single guilty person including the witness who acted on their instructions will be prosecuted for perjury and in appropriate cases under the Contempt of Courts Act for interfering with the course of a judicial proceeding. The Trial Courts shall take careful note of the directions of this Court and shall ensure that appropriate corrective steps are taken.

14. The Registrar (General) shall circulate copies of this judgment to the Director

General of Police and to the Director of Prosecutions so that the necessary instructions be issued to the prosecutors and the police authorities and shall also circulate copies to the District Judges so that the observations of this Court are brought to the notice of all the Trial Judges in the State of Karnataka.