

(1996) 06 KAR CK 0044
In the Karnataka High Court
Case No : Cr.A. 203/94

M. Maleyadri @ Ramesh

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 219, 220, 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 201, 302, 307, 324, 364

Citation : (1997) 1 ALT(Cri) 54 : (1996) ILR (Kar) 2748 : (1996) 3 KarLJ 629

Hon'ble Judges : M.P. Chinnappa, J;J. Eswara Prasad, J

Bench : Division Bench

Advocate : Ashmath Pasha, for the Appellant; S.R. Bannur Math, SPP, for the Respondent

Final Decision : Dismissed

Judgement

Eswara Prasad, J.—This appeal is by the accused in S.C.No. 136/1993 in the Court of the XXI Additional Sessions Judge, Bangalore, convicting him for offences under Sections 302 and 307 IPC and imposing sentence to undergo life imprisonment and rigorous imprisonment for 3 years respectively. The appellant was charged for committing the murder of Rama Rao on 18.12.1992 by intentionally causing his death by hitting him with boulder stones on his head and by stabbing him on his neck punishable u/s 302 IPC and for causing disappearances of the dead body of the deceased punishable u/s 201 IPC. He was also charged with attempting to commit murder of PW.37 on 19.1.1993 u/s 307 IPC for abducting PW.37 punishable u/s 364 and for robbery of PW.37 of her gold ornaments punishable u/s 394 IPC.

2. The case of the prosecution is that the appellant and PW.37 were working in Sinclair TV. Factory and became intimate with each other. The appellant, while promising to secure a better jobs for her and her son deceased Rama Rao, took them to Bangalore without informing PW.24 - the husband of PW.37. The house -

hold articles of PW.37 were also taken along with them to Bangalore, where a house was taken on lease at Agara village from CW.58 and his wife PW.25 with the help of PW.23 and they started living together as husband and wife. Finding that the appellant was unable to secure jobs for herself and her son, PW.37 was often quarrelling with the appellant. In the third week of December, 1992, the appellant left the house along with the deceased saying that he wanted to meet someone at Jalahalli, the appellant alone returned at 10 P.M. and informed PW.37 that the deceased had gone to attend duty in an establishment, where the deceased himself secured a small job. Finding that deceased did not return even after two days, PW.37 started weeping and an astrologer PW.16 was consulted to find out the whereabouts of the deceased. The appellant falsely told PW.37 that he was assured by PW.16 that the deceased would return after 2 or 3 days. As the deceased did not turn up, PW.37 asked the appellant to take her to another astrologer. So the appellant left to Gunjur along with PW.37. On the way, while going through an eucalyptus grove at Doddakannahalli, the appellant hit PW.37 on her face with a big boulder resulting in injuries and the appellant robbed PW.37 by removing her ornaments. PW.36 found PW.37 unconscious and on his furnishing information, PW.27 - Head Constable of Varthur Police Station (Out Post) went to the spot and removed PW.37 to Kadugodi Primary Health Centre, where she was treated by PW.11 - Medical Officer. She was referred to Victoria Hospital for further treatment. On the report of PW.27 as per Exhibit P.33, PW.39 - the PSI Whitefield Police Station registered a case in Crime No. 8/93 u/s 324 IPC and submitted FIR to the Court as per Exhibit P.35. PW.39 visited the scene of offence on the next day and he held panchanama as per Exhibit P.32 and seized gold tali - M.O.64 in the presence of PW.35. PW.37 was treated at the Victoria Hospital by PW.34 who issued wound certificate Exhibit P.31. After recording statements of PW.37 as per Exhibit P.34, PW.39 submitted the second FIR as per Exhibit P.36 by adding the offence u/s 307 IPC.

3. On 27.12.1992, PW.1 went to Gangammanagudi Police Station in the night and gave a report at 11 P.M. in Exhibit P.1 stating that he found a dead body of a male person in an old septic tank in the land of one Kempanna with injuries on the face and neck. PW.31, PSI of Gangammanagudi Police Station registered Crime No. 156/92 under Sections 302 and 201 IPC and submitted FIR - Exhibit P.26. Investigation was continued by PW.40 - CIP, Jalahalli Sub-Division and on the next day he held a mahazar on the spot as per Exhibit P.2 and seized M.O.1 - big boulder, M.O.2 - small stone, M.O.3 - a pair of have chappals, M.O.4 - blood stained earth and M.O.5 - unstained earth. An inquest was held as per Exhibit P.3 on the dead body. The deceased was found wearing clothes M.Os.6 to 10. Inquest was held by PW.19 on a requisition under Exhibit P.18. Six injuries were found and post mortem report Exhibit P.9 was given opining that the death was due to shock and haemorrhage as a result of stab injuries to the neck. From the tailor mark found on the clothing of the deceased, it was found that the stitching was done by Durga Tailoring Shop at Hyderabad and with the help of the tailor - PW.7 and PW.8, it was found that the body of the deceased is that of Rama Rao,

son of PW.37. The appellant was arrested by PW.31 on 22.1.1993. On interrogation, the appellant volunteered information as per Exhibit - P.37, Consequently M.Os 14 to 17 were seized under Exhibit P.4 in the presence of PW.2. On the basis of information as per Exhibit P.37, PW.40 seized a knife - M.O.18 as per Exhibit P.6 and also M.Os.9 to 23 which are bindi, 3 green bangle pieces and 10 broken pieces of teeth. M.Os.27 to 29 were seized from his house including M.Os.30 to 35 under Exhibit - P.9. M.Os.56 to 59 were recovered from the shop of PW.18 as per Exhibit P.12, M.O.16 - silver leg chain was recovered from the house of PW.29 and M.O.61 - T.V. from the house of PW.21 under Exhibit P.24. The appellant was produced before the Court and after investigation PW.40 laid charge sheet. The learned Chief Metropolitan Magistrate Bangalore committed the appellant to trial to the Sessions Court.

4. In support of the case 40 witnesses were examined and Exhibits P.1 to P.42 were marked and M.Os.1 to 64 were produced. When examined u/s 313 Cr.P.C., the appellant denied the charges and claimed to be tried.

5. So far as the charges under Sections 302 and 201 Cr.P.C. are concerned, the prosecution relies on the evidence of PW.37 and the circumstantial evidence tendered by PW.25 who stated that he was informed by PW.37 about the deceased going along with the appellant on the date of the offence. The prosecution also relies on the evidence of PW.37 and the recoveries for establishing the guilt of the appellant under Sections 307; 364 and 394 IPC. The learned Sessions Judge held that the trial is not vitiated on account of the, misjoinder of charges, that Rama Rao died a homicidal death and the appellant caused the death of the deceased. It was further held that the appellant attempted to murder PW.37 and convicted the appellant under Sections 302 and 307 IPC.

6. The learned Counsel for the appellant strenuously contended that the trial is vitiated on account of the misjoinder of charges which has caused serious prejudice to the accused. He further contends that the dead body recovered is not that of Rama Rao, as the opinion relating to the age of the deceased as found in the inquest report was 30 years, whereas the medical opinion was that the age of the body which was subjected to post - mortem was between 12 and 18 years and hence the body recovered by the police is not that of Rama Rao. He contends that there is no direct evidence to connect the appellant with the death of Rama Rao and that the circumstantial evidence is too meagre to base conviction. He did not seriously advance his argument against the conviction of the appellant u/s 307 IPC relating to PW.37.

7. The learned State Public Prosecutor contends that the joinder of the charges was proper inasmuch as the offences with which the appellant was charged were committed within a period of 12 months and that their being of the same nature, could be tried together and that no prejudice is caused to the appellant. He further submits that the evidence of PW.37 taken together with the circumstantial evidence and the recoveries, clearly established the guilt of the

appellant.

8. It is in evidence that the appellant became intimate with PW.37 and that he took her along with her son Rama Rao promising to secure better jobs for them at Bangalore. It is also in evidence that PW.37 left her marital home, taking away her belongings along with her son and lived in Bangalore with the appellant as his wife. It is also in evidence that the appellant was unable to secure jobs for PW.37 and Rama Rao as promised and PW.37 was often quarreling with the appellant for that reason. These facts are brought out by unimpeachable evidence adduced by the prosecution. As rightly contended by the learned State Public Prosecutor, the appellant wanted to do away with PW.37 and Rama Rao as he was constantly being pestered for his failure to obtain jobs for them. The body of the deceased was found on 27.12.1992 and the appellant is charged with attempt to murder of PW.37 on 19.1.93. These two charges relate to offences said to have been committed within a period of one year from each other. The cause for both the offences, as seen from the evidence is that the appellant was being continuously pestered by PW.37 for not securing jobs for her and her son.

9. u/s 220 Cr.P.C., if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. u/s 219 Cr.P.C., when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three. From the facts noticed earlier, it is dear that the series of acts attributed to the appellant formed the same transaction. He could, therefore be tried at one trial for every such offence.

10. The contention of the learned Counsel for the appellant is that the charges under Sections 302 and 201. IPC are not of the same kind and that the charges under Sections 307 and 394 IPC are also not of the same kind and that they cannot be tried together u/s 219 Cr.P.C. Apart from the fact that the charges can be tried at one trial inasmuch as the series of acts are so connected together as to form the same transaction and can be tried together at one trial u/s 220 Cr.P.C., it cannot be said that the offences with which the appellant is charged are not of the same kind.

11. Committing murder and causing disappearance of the evidence are of the same kind. Similarly, attempting to commit murder and to commit an offence u/s 394 IPC are also of the same kind. Apart from that, we have no doubt in our mind in holding that there was no misjoinder of charges and the appellant could be tried at one trial as we hold that the series of acts are so connected together as to form the same transaction. We are unable to see as to how prejudice is caused to the appellant for being charged for offences as permissible under law. No specific prejudice to the appellant has been established. We therefore reject the contention of the learned Counsel for the appellant on this aspect.

12. In *Banwari Vs. State of Uttar Pradesh*, it was held that Section 234 Cr.P.C. of 1898 which was the old Section corresponding to Section 219 of the Act of 1973, allows the trial of a person accused of three or less number of offences of the same kind committed within the space of 12 months, and provides that offences of the same kind are those which are punishable with the same amount of punishment under the same Section of the Indian Penal Code or of any special or local law. In that case, the offences were under Sections 302 and 307 IPC and the Supreme Court held that the offences being of the same kind, the accused could be tried for both the offences in one trial. As observed earlier, the offences under Sections 302 and 201 IPC are of the same kind and the offences under Sections 307 and 394 IPC are of the same kind and the series of acts of the appellant are so connected as to form the same transaction and can be tried together at one trial u/s 220 Cr.P.C.

13. In *Kadiri Kunhahammad Vs. The State of Madras*, it was held that the point of time in the proceedings at which the question whether or not more persons than one can be tried together and whether the condition that the offences alleged had been committed in the course of the same transaction has been fulfilled or not and is at the time when the accusation is made and not when the trial is concluded and the result known. It therefore follows that the appellant having remained silent at the time of framing of charges and having allowed the trial to go on and the result announced, cannot now be permitted to raise the said objection at this stage, that too, when no prejudice is caused to him.

14. "The contention relating to the identity of the deceased is mainly based on the age of the deceased being mentioned as 30 years in the mahazar Exhibit P.18 whereas, the age of the body which was subjected to post mortem examination was mentioned as between 12 and 18 years. It is to be noted that the dead body which was recovered was partly lying in an old septic tank on 27.12.1992, long after the death of the deceased. The opinion with regard to the age was that of the panch witnesses and cannot outweigh medical opinion with regard to the age of the deceased. The body which was recovered from the septic tank was subjected to post mortem and the Doctor opined that the age of the deceased was between 12 and 18 years. The clothes M.Os.6 and 7 found on the dead body were identified by PWs.5 and 6 as well as PW.24-the father of the deceased. The description of her son was given by PW.37 which fit into the description of the dead body. Much comment was made by the learned Counsel for the appellant with regard to the identification of the photograph - M.O.26 of the dead body shown to the witnesses including PWs.24 and 37. Their evidence reveals that they identified Rama Rao though the face of the deceased was not identifiable. Taking into consideration the evidence of PWs.5, 6, 8, 24 and 37, there can be no doubt that the body which was recovered from the septic tank is that of Rama Rao - the son of PWs.24 and 37.

15. The complicity of the appellant in causing the death of the deceased and disappearance of the body is based on circumstantial evidence. The learned

Counsel for the appellant vehemently contended that the circumstantial evidence is neither sufficient nor reliable and cannot form the basis for holding that the appellant is responsible for the death of Rama Rao. The circumstantial evidence relates to the deceased going along with the appellant, which was seen by PW.37 and informed to PW.25 and the fact that the deceased never returned again. Another circumstance is that the appellant feigned ignorance about the disappearance of the deceased and stated that the deceased went to work. The appellant tried to put off the issue of the non-return of the deceased even after two days by trying to mislead PW.37 into the belief that the deceased would return after a few days as predicted by the Astrologer - PW.16. It is also to be noted that the knife - M.O.18 was recovered on 21.1.1993 at the instance of the appellant in the presence of PW.2 - the panch witness by the Investigating Officer -PW.40.

16. It was contended by the learned Counsel for the appellant that the evidence of PW.40 in relation to the admission of the accused leading to the recovery of the knife is not admissible in evidence. Section 27 of the Evidence Act is as follows:-

"27. How much of information received from accused may be proved - Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".

It is clear from Section 27 that so much of such information which is received from a person accused of any offence, in the custody of a police officer, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The essential ingredient of Section 27 is that the information given by the accused must lead to the discovery of a fact which is the direct outcome of such information and only such portion of the information given as is distinctly connected with the said discovery is admissible against the accused. The discovery of the knife relates to the commission of the offence and hence that portion of the information given by the appellant which is distinctly connected with the discovery is admissible against him. The learned Counsel for the appellant relying on *Vijayakumar Vs. State*, and *M.V. Mahesh Vs. The State of Karnataka*, contends that the information which led to the discovery of the knife has to be proved like any other fact and mere recording in the deposition of the Investigating Officer, that particular statement recorded and exhibited, does not take place of substantive evidence. It is to be noted that in the present case, the Investigating Officer has clearly stated that the appellant stated before him as per Exhibit P.37. It was therefore not necessary for him to repeat again in his evidence, whatever was contained in Exhibit P.37.

17. It was pointed out by the learned Counsel for the appellant that even if the recovery of a knife at the instance of the appellant was true, it was found to be rusted and could not have been found to be stained with human blood. It has to

be noted that the knife was thrown in a damp area and was naturally exposed to moisture and got rusted. The report of the Forensic Science Laboratory and Serology Report are to the effect that the knife as well as the other articles namely pant, shirt and banian M.Os.27 to 29 were blood stained. M.Os.27 to 29 were issued by PW.40 under Exhibit P.7 in the rented house of the accused at Agra village under panchanama Exhibit P.9. As per Exhibit P.41 two boulder stones M.Os.1 and 2, blood stained earth - M.Os.4 and all the articles found on the dead body of the deceased M.Os.6 to 13 except belt M.O.9 and M.O.13 - tulsi beads were all stained with blood. As per the Serology Report Exhibit P.39, M.Os. 4, 6 and 7 were stained with "D" Group Human Blood. As per Exhibit P.39, M.O.27 - pant was stained with "D" Group blood which is the same as found on M.Os. 4, 6 and 7. The knife -M.O.18 was recovered at the instance of the accused and we have no reason to disbelieve the evidence of PWs.2 and 40 on that aspect. The evidence of the Doctor - PW.19 lends support to the case of the prosecution that M.O.18 is the knife with which the deceased was stabbed.

18. The learned Counsel for the appellant relying on KANSA BEHERA v. STATE OF ORISSA 1987 SCC 601, argued that in the absence of the mention of blood group in the Serologist's Report on the knife, it cannot be connected with the deceased. As noted earlier, the knife was exposed to weather and was recovered at the instance of the appellant a few days after the death of the deceased. In view of the fact that we accepted the evidence of PWs.2 and 40 relating to the recovery of the knife at the instance of the appellant, the absence of blood stains on the knife does not assume significance.

19. We are also satisfied that the appellant had sufficient motive in committing the crime with which he was charged. He eloped with PW.37 on the promise that he would secure her and her son jobs at Bangalore. He started selling the articles belonging to PW.37 which was resented by PW.37. Having failed to secure jobs for PW.37 and the deceased, the appellant, finding that PW.37 was pestering and accusing him for his failure to obtain jobs, thought of eliminating the deceased and eventually killed him. The evidence of PW.9 revealed that the appellant left Hyderabad with deceased and PW.37 and came to Bangalore. PW.23 spoke to the fact that a house was secured by the appellant, in which he was living with PW.37 and the deceased. PWs.18 and 25 deposed that the appellant started pledging the articles belonging to PW.37. When the evidence of the prosecution relating to these aspects was put to him u/s 313 Cr.P.C., the appellant totally denied even his acquaintance with PW.37 and the deceased.

20. In UDAIPAL SINGH v. THE STATE OF UTTAR PRADESH AIR 1972 SC 54, it was held that in cases where only circumstantial evidence is available at the outset one has to normally start looking for the motive and the opportunity to commit the crime. If the evidence shows that the accused having a strong motive had the opportunity of committing the crime and the established circumstances on record considered along with the explanation, if any, of the accused, excluded a reasonable possibility of any one else being the real culprit,

then the chain of evidence can be considered to be so complete, as to show that within all human probability, the crime must have been committed by the accused. He may, in that event, safely be held guilty on such circumstantial evidence. It was further held that if the explanation of the accused is found to be absurd, it should be held to be inconsistent with the innocence of the accused and incapable of any other hypothesis than that of the guilt of the accused.

21. The appellant had a very strong motive to get rid of the deceased and PW.37 with whom his relations became strained on account of his inability to secure jobs for them and PW.37 started pestering him. He was last seen going in the company of the deceased and returned alone without the deceased and later tried to give evasive answers to PW.37 and tried to mislead her by taking her to Astrologers. His conduct after the occurrence in absconding would also point towards his guilt. His total denial of acquaintance with PW.37 and the deceased and his relationship with them, would also point to his guilt. The prosecution has made out all the links in the chain pointing towards the guilt of the appellant by adducing acceptable evidence.

22. The contention of the learned Counsel for the appellant based on *AKHILESH HAJAM v. STATE OF BIHAR* 1995 SCC 883, that the circumstantial evidence is not sufficient to conclusively establish the guilt of the appellant and that emotional considerations cannot take the place of proof is not applicable to the facts of this case, inasmuch as the evidence let in by the prosecution is sufficient to establish the guilt of the accused. The decision in *KANSA BEHERA v. STATE OF ORISSA*, relied on by the learned counsel for the appellant in contending that the circumstantial evidence does not conclusively establish the commission of murder by the appellant is also not helpful to him for the same reason.

23. It was the further contention of the learned Counsel based on *State of Maharashtra Vs. Annappa Bandu Kavathe*, that there is a break in the link of chain of circumstances as there was sufficient interval between the death of the deceased and recovery of his dead body and therefore the appellant is entitled to the benefit of doubt cannot be accepted for the reason that there is no break in the link of chain of circumstances. The appellant, after doing away with the deceased, tried to conceal the dead body and therefore there was a delay in recovering the body. The prosecution has established by cogent evidence that the dead body is that of the deceased. The recovery of the blood stained clothes and the knife at the instance of the appellant point out to the fact that he was guilty of the murder. The contention of the learned Counsel based on *Shidagouda Ningappa Ghandavar Vs. State of Karnataka*, that the falsity of defence cannot take place of proof which the prosecution has to establish in order to succeed does not impress us as the other circumstances mentioned by us point unfailingly to the guilt of the accused and a false plea can be considered as an additional circumstance as held by the Supreme Court in the above decision. We have reached the conclusion that the appellant is guilty of murder of deceased Rama Rao after a proper and careful evaluation in order to determine whether they are

compatible with any other reasonable hypothesis.

24. Though the learned Counsel for the appellant has not seriously addressed arguments relating to the finding of guilt and sentence of the appellant with regard to attempt to murder PW.37, we have gone through the evidence of PW.37 in that regard. We find her evidence convincing and we have no reason to doubt the evidence. PW.37 has stated that the appellant with a view to do away with her when they were passing through the eucalyptus grove, hit her with a boulder stone on her face and forehead, as a result of which she sustained three injuries, one of which is grievous in nature. It was her good fortune that PW.36 happened to pass that way while returning from walk. As the place was an isolated one, PW.37 would not have been found out and timely medical aid could not have been given to her. It is revealed by the medical evidence that PW.37 was in a semi-conscious state for a long time. The intention of the appellant in hitting PW.37 with a boulder stone is clear that he wanted to do away with her. The learned Sessions Judge was therefore justified in holding that the appellant was guilty of the charge u/s 307 IPC.

25. The prosecution has established its case against the appellant and proved the charges under Sections 302 and 307 IPC to the hilt and the learned Sessions Judge was correct in finding the appellant guilty of both the charges and in awarding the sentence. We see no reason to interfere with the same. The appeal therefore fails and is dismissed.