
(1980) 07 SC CK 0025

In the Supreme Court Of India

Case No : Criminal Appeal No. 54 of 1975

Nagappa Dondiba Kalal

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 29-07-1980

Acts Referred:

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 302, 394, 411

Citation : AIR 1980 SC 1753 : (1980) CriLJ 1270 : (1981) SCC(Cri) 278 : (1981) 13 UJ 344

Hon'ble Judges : S. Murtaza Fazal Ali, J; A. D. Koshal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Murtaza Fazal Ali, J.—The appellant has been convicted by the High Court u/s 302 to life imprisonment and u/s 394 to five years Rigorous Imprisonment. The appellant was acquitted by the Sessions Judge of the charges framed against him but in an appeal filed by the State before the High Court, the acquittal was set aside and the appellant was convicted as mentioned above.

2. The conviction of the appellant rests entirely on circumstantial evidence consisting of the recovery of some gold ornaments at the instance of the appellant.

3. We have gone through the judgment of the High Court and we find ourselves in complete agreement with the reasons given by the High Court for holding that the identity of the ornaments recovered at the instance of the appellant which belonged to the deceased Pashyabi had been fully established. It was also proved that she had been wearing these ornaments when she left the house on the night of 10-4-1973. The recoveries were made on 13-4-1973, that is to say within three days of the occurrence. P.Ws. 7, 8, 16 and 17 who are close relations of the deceased and who had full opportunity to see her wearing these ornaments have identified the ornaments. Their evidence is further corroborated by two gold

smiths P.Ws. 9 & 10 who had prepared these ornaments. In these circumstances therefore, the High Court was fully justified in acting on the evidence of these witnesses and in rejecting the argument of the accused that as no test identification parade was held, the identity could not be established. Taking however the evidence as it stands, there is nothing to connect the appellant with the murder of the deceased or even with any assault the accused may have committed on the deceased or having robbed her of her ornaments. At the utmost as the ornaments have been proved to be stolen property received by the appellant knowing that they were stolen property. The accused can thus be convicted on the basis of presumption u/s 114 of the Evidence Act and u/s 411 of Indian Penal Code as a receiver of stolen property knowing the same to be stolen.

4. Counsel appearing for the State submitted that as the accused had given no explanation. therefore the inference should be drawn that he must have murdered the deceased. We are however unable to draw any such inference. It is for the prosecution to prove its case affirmatively and it cannot gain any strength from the conduct of the accused in remaining silent. In these circumstances, we do not find any evidence to support the conviction of the appellant u/s 302 or u/s 394 but having regard to the evidence ltd by the prosecution, a case u/s 411 of IPC has been clearly made out. We therefore allow this appeal to this extent that the appellant is acquitted of the charges under Sections 302 & 394 but is convicted of the minor offence of Section 411 IPC and sentenced to three years Rigorous Imprisonment and a fine of Rs. 5,000/- (Rupees five thousand only) in default one year's Rigorous Imprisonment.