SUPREME COURT OF INDIA

Sanwat Khan

Vs.

State of Rajasthan

Crl.A.No. 99 of 1952

(Mehr Chand Mahajan, S. R. Das and N. H. Bhagwati, JJ.)

09.12.1952

JUDGEMENT

MAHAJAN, J. :

The appellants, Sanwat Khan and Kaloo Khan, were convicted by the Sessions Judge of Nagpur for an offence under S. 302, I.P.C. for the murder of one Mahant Ganeshdas and his servant Ganpatia and were sentenced to death. They appealed to the High Court of Judicature for Rajasthan at Jodhpur and their case also came up for confirmation of the sentence under S. 374, Cr. P. C., before that Court.

The High Court confirmed the conviction but commuted the sentence of death into one of imprisonment for life. To this extent the appeal of both the accused persons was allowed. This is an appeal by special leave against the above decision of the High Court.

2. Shortly stated, the facts of the case are that Mahant Ganeshdas who was a wealthy person used to live in the temple of Shri Gopalji situated on a hillock near Panchota about a mile and a half from the village. Ganpatia Daroga used to live with him at the temple. On the morning of 1-1-1948 it was discovered that both of them were lying dead in the temple. Death took place on account of the injuries caused to them by means of an axe.

The house had also been ransacked and boxes and almirahs opened. The matter was reported to the police by Thakur Daulat Singh, a notable of that village. At the time the report was made it was not known how the Mahant and Ganpatia had met their end and who was responsible for the robbery and murder.

3. As a result of the investigation by the police the appellant Kaloo Khan was arrested on 13-1-1948 and on the same day he produced a gold kanthi (Ex. P-13/A) from his bara where it was lying buried in the ground. Sanwat Khan, appellant, was arrested on 18-1-1948 and on the 19th he produced a silver plate (tashak) bearing a certain inscription from his house where it lay buried in the ground.

They were committed to the court of session with the result above mentioned. The accused denied the charge and attributed their prosecution to enmity with Thakur Daulatsing, the jagirdar of the village.

4. There is no direct evidence whatsoever proving the participation of the two appellants in the

murder of the Mahant and Ganpatia. The learned Sessions Judge in convicting the appellants placed reliance on the evidence of one Madari, P. W. 7, and the recovery of the kanthi and tashak at their instance. He also took into consideration the fact that the accused were seen near the place of occurrence on the day previous to the murder and that soon after they left the village. Reliance was also placed on certain evidence connecting the accused with the axe, Ex. P-5/A.

The High Court, however, held that the evidence of Madari, P. W. 7, was not trustworthy and that it was not proved that the axe belonged to Kaloo Khan. It further held that it was not correct to say that the accused had left the village after the occurrence because they had gone away to settle in a different place about a couple of months before this incident. The other circumstances relied upon by the Sessions Judge were held to be of no consequence.

Having rejected practically the whole of the circumstantial evidence on which the learned Sessions Judge had placed reliance, the High Court upheld the conviction of the appellants by relying on the solitary circumstances of the recovery of the two articles above mentioned at the instance of the accused. It was said that in the absence of any explanation about the possession of the articles belonging to the Mahant by the accused, the inevitable inference was that they were persons who had some hand in the destardly act.

5. Mr. Umrigar for the appellants contended that the evidence of the recovery of the articles belonging to the deceased at the instance of the accused at the most could lead to a presumption that they were the thieves or had received the articles knowing them to be stolen property, but it was inconclusive on the question of their having committed the murders. In our judgment, this contention has force.

The unexplained possession of stolen property is the only circumstance appearing in the evidence against the accused charged with murder and theft, and they could not be convicted of murder unless their possession of the property could not no be explained on any other hypothesis except that of murder.

In the absence of any evidence whatsoever of the circumstances in which the murders or the robbery took place, it could easily be envisaged that the accused at some time or other seeing the Mahant and Ganpatia murdered, removed the articles produced by them from the temple or received them from the person or persons who had committed the murder.

The prosecution led evidence to prove that Mangu Khan, the father of these two persons, was planning to murder the Mahant since a long time. Madari P. W. 7, who is an ex-convict, deposed that he was also being approached to join in the conspiracy to murder the Mahant. It is not improbable that any of these two or somebody else might have murdered the Mahant and some of the stolen property came into the possession of these two brothers.

Be that as it may, in the absence of any direct or circumstantial evidence whatsoever, from the solitary circumstance of the unexplained recovery of the two articles from the houses of the two appellants the only inference that can be raised in view of illustration A to S. 114 of the Evidence Act is that they are either receivers of stolen property or were the persons who committed the theft, but it does not necessarily indicate that the theft and the murders took place at one and the same time.

The accused produced these articles about a fortnight after the theft and the maximum that can be

said against them is that they received these goods knowing them to be stolen or that they themselves stole them; but ion the absence of any other evidence, it is not possible to hold that they are guilty of murder as well.

6. The learned counsel for the State in support of the view taken by the High Court placed reliance on a decision of the Madras High Court in - 'Queen-Empress v. Sami', 13 Mad 426 (A). The head-note of the report says that

"Recent and unexplained possession of stolen property which would be presumptive evidence against the prisoners on the charge or robbery would similarly be evidence against them on the charge of murder."

This head note, however, does not accurately represent the decision given by the learned Judges. In the particular circumstances of that case it was observed that in cases in which murder and robbery and shown to form parts of one transaction, recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder.

Here, there is no evidence, direct or circumstantial, that the robbery and murder formed parts of one transaction. It is not even known at what time of the night these events took place. It was only late next morning that it was discovered that the Mahant and Ganpatia had been murdered and looted. In our judgment, Beaumont, C. J., and Sen J. in - Bhikha Gober v Emperor, AIR 1943 Bom 458 (B) rightly held that the mere fact that an accused produced shortly after the murder ornaments which were on the murdered person is not enough to justify the inference that the accused must have committed the murder.

There must be some further material to connect to accused with the murder in order to hold him guilty of that offence. Our attention was drawn to a number of decisions which have been summed up in a Bench decision of the Allahabad High Court in 'State v. Shankar Prasad' AIR 1952 All 776(C), in some of which a presumption was drawn of guilt from the circumstance of possession of stolen articles soon after a murder. We have examined these cases and it appears to us that each one of these decisions was given on the evidence and circumstances established in that particular case and no general proposition of law can be deduced from them.

In our judgment no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof.

7. For the reasons given above we cannot maintain the conviction of the appellants under S. 302, I.P.C. and we, therefore, acquit them of that offence. It is, however, clear that both the appellants either took part in the theft or received the stolen property with the knowledge that it had been stolen. The appellants were charged with having committed theft in a building armed with certain weapons. They can thus be convicted for having committed theft in a dwelling house.

We, therefore, hold them guilty of the offence under S. 380, I.P.C. Learned counsel appearing for them urged that in view of the fact that they have been undergoing the sentence of transportation for life for the last three years, the appropriate sentence in their case should be the one they have

already undergone. In our opinion, the contention that the punishment already suffered by the accused will meet the ends of justice in this case has force, and we accordingly sentence them under S. 380 I.P.C. to three years' rigorous imprisonment and as they have already undergone it, we direct their release. The appeal is allowed to the extent above indicated

Appeal partly allowed.

</html