Machander, Son of Pandurang

Vs

State of Hyderabad

Criminal Appeal No. 9 of 1955

(B. Jagannath Das, Vivian Bose, B. P. Sinha JJ)

27.09.1955

JUDGMENT

BOSE J. -

This is another of those cases in which Courts are compelled to acquit because Magistrates and Sessions Judges fail to appreciate the importance of section 342 of the Criminal Procedure Code and fail to carry out the duty that is cast upon them of questioning the accused properly and fairly, bringing home to his mind in clear and simple language the exact case he has to meet and each material point that is sought to be made against him, and of affording him a chance to explain them if he can and so desires. Had the Sessions Judge done that in this case it is possible that we would not have been obliged to acquit.

The facts are simple. The appellant Machander was charged with the murder of one Manmath. Machander's brother Gona was also challaned but as he absconded he could not be tried.

The appellant and the deceased and Gona reside in the same village. There was some ill-feeling between the appellant and the deceased and it can be accepted that Gona shared his brother's sentiments because, so far as the latest cause for enmity goes, Gona is equally concerned; and this also applies to Pandu, the appellant's father, and Bhima, another brother. The causes for enmity are the following.

In or about the year 1947 the appellants appears to have stolen a pair of bullocks and a cart belonging to the deceased. The deceased prosecuted him for the theft and also instituted a civil suit for the price of the cart and bullocks. He succeeded in both cases. The appellant was convicted of the theft and sent to jail. A decree was also passed against him for Rs. 520 and that decree was duly executed.

We now come to the events immediately preceding the murder. The appellant and his family took forcible possession of some land belonging to the deceased's sister Parubai. She sued the whole family for possession of this land, that is to say, she impleaded the appellant's father Pandu, the appellant and his two brothers Bhima and Gona. The last hearing was on 15-12-1950 and the decision was announced on 16-12-1950. It was in Parubai's favour. The deceased conducted this litigation on behalf of his sister. He was present in Court on the 15th and was present at Parenda, where the Court is situate, up to 3 p.m. on the 16th, the day the decision was announced. That was the last that was seen of him. These facts are said to be the cause of the ill-feeling. But, as the facts themselves indicate, a similar cause for enmity (though not to the same degree) could be assigned to the father and the other brothers; equally, they had similar opportunities. The movements of the

appellant have been traced to Parenda and back but not the movements of the rest of the family. So it is not shown that they had no similar opportunity to murder. It can however be accepted that cause for enmity on the appellant's part is established.

It is proved that the deceased went to Parenda on the 15th for the last hearing of the case and that he was also there on the 16th up to 3 p.m. It is also proved that the appellant was in Court on the 15th and that he was in Parenda on the following day. It can be accepted that both the deceased and the appellant were present in Court at the same time on the 15th and that therefore the appellant knew that the deceased had attended the Court that day. But there is no proof that the two met each other or either knew about the movements of the other on the 16th. All we know is that both went to see their respective pleaders at different places and times and learned the result of the case.

Four or five days after the case, the appellant came home but not the deceased. The deceased's son Shantiling (P.W. 10), who knew that the appellant had also gone to Parenda for the case, asked him where his father was. The appellant said that the father had not attended court. This made the son anxious, so he went to Parenda to make enquiries. The pleaders there told him that his father had attended court on the 15th and that he was in Parenda till 3 p.m. on the 16th. Shantiling (P.W. 10) immediately informed the police that his father was missing and gave them a description of him and also a list of the things he was wearing and a description of the horse he was riding. This was on the 26th. Three days later, on the 29th, he lodged a regular complaint and said that he was afraid his father had been murdered and said that he suspected the appellant and his brother Gona.

The appellant was arrested the same day and after his arrest he led the police and Panchas to a place where blood-stained earth and grass were found and a blood-stained stone, also some of the articles which Shantiling (P.W. 10) had described to the police on the 26th, namely pieces of a silver linga, two silver kadas, a silver spike and a white gilt button. All except the kadas were found to be stained with human blood. About 25 paces from here the appellant pointed out another place where the corpse of the deceased was found to be buried. Pearl ear-rings and a kardoda of yarn with three iron keys were still on the body. They were all stained with human blood and are proved to have belonged to the deceased.

On the 1st of January, 1951 the appellant took the police and the Panchas to a place where two saddle straps and two iron stirrups were buried. One of the stirrups was stained with human blood.

On the 3rd the reins of the horse and the horse itself were discovered but this discovery was not at the instance of the appellant.

Except for the confession, which has been excluded, this is all there is against the appellant. The question is whether that is enough to bring guilt home to him. Stated briefly, the circumstances are -

1. That the appellant knew that the deceased had attended the Court at Parenda on the 16th and that he had seen him there but when question about it he told a lie.

In passing it is to be observed that this is not the class of case in which an accused person is last seen with a murdered man within a few hours of the murder. Though the deceased and the appellant were both in Court at the same time, they were not there "together" and in view of the ill-will between them and in view of the fact that the deceased went on a horse it is unlikely that they travelled together either going or coming; and the appellant was not with the deceased when he was last seen at 3 p.m. on the 16th. But it is clear that the appellant wanted to hide something.

2. That thirteen days after the murder he knew that Manmath had been murdered. He also knew where the murder had been committed and where the body and certain articles belonging to the deceased were hidden.

3. That there was ill-will between them, but an ill-will that other members of the appellant's family might be expected to share.

4. That he had full opportunity to commit the crime, but the same kind of opportunity that the other members of his family also had.

The question is whether these four circumstances, regarded in the background of this case, are sufficient to warrant a conclusion of murder by the appellant. In our opinion, they are not because the same circumstances could be said to point with equal suspicion at other members of the appellant's family. It has to be remembered that the brother Gona was also suspected and that he absconded and could not be traced. We do not say that he was the murderer and it would be wrong to suggest that in his absence, but if he was, then the appellant's knowledge of the murder and of the concealment, thirteen days later, might have been derived from Gona, or it might even be that he saw his brother commit the crime and hide the corpse and the articles. Those are hypotheses that are not unreasonable on the facts of this particular case and they have not been reasonably excluded. Consequently, we are unable to hold that mere knowledge thirteen days later, coupled with a motive which three others share, and a lie about the deceased's movements told four or five days after the murder, are enough; and, as that is all that the High Court has based on, the conviction must be set aside.

We have assumed throughout that the identity of the corpse that was discovered on the 29th and the fact of murder have been established. Those facts were not admitted before us but we need not discuss the point. It is enough to say that, in our opinion, both facts are satisfactorily proved.

We referred, earlier in our judgment, to a confession which the High Court has excluded. This was excluded from evidence because the appellant was not questioned about it under section 342, Criminal Procedure Code. We gather that the High Court thought that that occasioned prejudice though the learned Judges do not say so in so many words. The appellant was arrested on the 29th and he made many discoveries on the 29th December, 1950 and on the 1st, 2nd and 3rd January 1951 but did not confess till the 6th. Much might have happened in the eight days between his arrest and the 6th, so the High Court was not unjustified in refusing to take that into consideration without hearing the appellant's side of the story.

We were asked to reopen the question and, if necessary, to remand the case. But we decline to do that. Judges and magistrates must realise the importance of the examination under section 342 of the Criminal Procedure Code and this Court has repeatedly warned them of the consequences that might ensue in certain cases. The appellant was arrested in December 1950 and has been on his trial one way and another ever side, that is to say, for over 4 1/2 years. We are not prepared to keep persons who are on trial for their lives under indefinite suspense because trial judges omit to do their duty. Justice is not one-sided. It has many facts and we have to draw a nice balance between conflicting right and duties. While it is incumbent on us to see that the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed. They must be given a fair and impartial trial and while every reasonable latitude must be given to those concerned with the detection of crime and entrusted with the administration of justice, limits must be placed on the lengths to which they may go. Except in clear cases of guilt, where the error is purely technical, the

forces that are arrayed against the accused should no more be permitted in special appeal to repair the effects of their bungling than an accused should be permitted to repair gaps in his defence which he could and ought to have made good in the lower courts. The scales of justice must be kept on an even balance whether for the accused or against him, whether in favour of the State or not; and one broad rule must apply in all cases.

The error here is not a mere technicality. The appellant appears to have been ready to disclose all on the 29th and make a clean breast of everything and yet the police waited eight days before getting a confession judicially recorded. That may be capable of explanation but the difficulty of asking an accused person to establish facts of this kind in his favour four and a half years later is obvious. Without therefore attempting to lay down any general rule, we are not prepared to order a retrial in this case because of the facts that appear here.

The appeal is allowed. The conviction and sentence are set aside and the appellant is acquitted.

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