SUPREME COURT OF INDIA

Pershadi

Vs.

State of U.P.

Crl.A.No.45 of 1955

(N. H. Bhagwati, S. J. Imam, S. K. Das and P. Govinda Menon, JJ.)

25.09.1956

JUDGEMENT

IMAM J.–

1. The appellant was sentenced to transportation for life by the Temporary Sessions Judge of Aligarh for the murder of Chimmanlal aged about six years. He appealed against his conviction to the Allahabad High Court and his appeal was heard by Desai J. and Mehrotra, J. There was a difference of opinion between them, Desai J. being of the opinion that the appellant was guilty of the offence of murder while Mehrotra J. was of the opinion that he was not guilty. The case was then placed before a third Judge of the High Court and it was heard by Agarwala J. who agreed with Desai J. Accordingly, the appellant's conviction for murder was upheld and his appeal was dismissed. The High Court certified the case as a fit one for appeal to this Court.

2. It is said that Chimmanlal was murdered on or about 2-12-1950. On that date Chimmanlal had left his father's shop at about 5 p.m. to go home which was a short distance away. He, however, never reached home. His father Shanker Lal came home at about 6 p.m. and did not find him. He searched for the boy. He sought information from the appellant but got a reply the significance of which will be considered later. Next day, at about 9 a.m., he lodged a report at the Police Station, Hathras about the disappearance of his son. He mentioned no one as a suspect responsible for the disappearance of his son. On 9-12-1950 one Gian Chand resident of village Jogia, which is adjacent to the village of the appel1ant, had gone to his well to fix a Persian wheel and he found that some foul smell was coming out of the well. Having looked into the well he found a corpse floating in it. Lohrey Chowkidar was informed by him and an information was sent to the Police Station. A Police Officer came and took out the dead body. On that body there was only one black pyjama. Shanker Lal's father Puran

Mal was called there and he identified the body as that of Chimmanlal. The body was highly decomposed. No injuries were found on it and the doctor could not give any opinion on the cause, of death due to decomposition. On 11-12-1950, the appellant was arrested. When he was being taken to the Police Station he informed the police that he would produce the clothes of the dead Chimmanlal. The appellant took the police to the top of a brick-kiln, removed the earth from the hole and took out the clothes. These clothes have been identified, as belonging to the deceased Chimmanlal.

3. Several circumstances were relied on by Agarwala J. in coming to the conclusion that the

appellant was guilty of murder. In the second place, the appellant had held out a threat against the deceased's father Shanker Lal to the effect that he would take revenge against him. In the third place, the appellant had access to the deceased and was in a position to induce him to go along with him and thus the appellant had the opportunity to kill him. In the fourth place, the clothes of the deceased were handed over by the appellant to the police and in the fifth place, the appellant falsely denied several relevant facts which had been conclusively established. Agarwala J, however, thought that none of them singly was sufficient to establish that the appellant was guilty of the murder of the deceased but the cumulative effect of all of them led to the irresistible conclusion that it was the appellant who had removed the clothes of the deceased, was privy to his murder and hid the clothes at the top of the brick- kiln.

4. Before we consider the submission made by Mr. Mathur, on behalf of the appellant, that the circumstances were not sufficient to establish that the appellant had murdered the deceased, it is necessary to point out that on behalf of the State a preliminary objection was made that the appeal was not maintainable as the High Court had granted a defective certificate. Reference was made to certain decisions of this Court, where it was held, in the circumstances of those cases that the certificates granted were defective. In the, present case, it appears to be likely that when the opinion of the third Judge had been pronounced the Court proceed to dismiss the appeal and at this stage an oral application was made for a certificate to appeal to this Court. The High Court might have thought that in granting the certificate as a part of its order in the appeal before it, the points arising in the appeal, apparent on the face of the judgements of the learned Judges, might be regarded as the grounds upon which the certificate granted. In any event, even if the certificate was defective, it is open to this Court to grant special leave. We think that this is a case in which, having regard to the circumstances of the case, special leave would have been granted if the appellant had the occasion to file such an application and we grant special leave assuming that the certificate granted in this case is defective.

5. We now proceed to consider whether the circumstantial evidence in the case is sufficient to, commit the appellant for the offence of murder. A few facts require to be stated concerning the motive for the appellant to murder the deceased and the threat of revenge on Shanker Lal alleged to have been uttered by him. The appellant is resident of village Ramanpur, which is not far from the town of Hathras. Shanker Lal, father of the deceased, had a Halwai shop at Hathras. The appellant was in his service. There was a theft in the shop of Shanker Lal and concerning it information was lodged at the Police Station on 1-11-1950 implicating the appellant and one Charna. Both these persons were arrested. Charna was sent to jail and the appellant was put up in the lock up and released on furnishing security. The next day, he pointed out the place where the stolen safe of Shanker Lal had been kept and Shanker Lal got back his stolen property. While the appellant was in the lock-up, he had told Ramnath P.W.6, and Jawala Prasad, P.W.10, that he would take revenge on Shanker Lal when he got out of Jail. After he was released from the lock-up he repeated his threat in the presence of Zahar Mal, P.W.4. In the theft case the appellant and Charna were ultimately convicted in 1951 under Section 381, Indian Penal Code. There is no reason to doubt the evidence concerning the threat held out by the appellant and that evidence was rightly accepted by the courts below. On behalf of the appellant, it was urged that the threat was held out to Shanker Lal. Whatever motive it may provide for the appellant to commit an offence against Shanker Lal it did not provide a motive for the appellant to murder Shanker Lal's son Chimmanlal. We are unable to accept this contention. The threat held, out by the appellant was to take revenge on Shanker Lal. The manner in which the revenge would be taken was not disclosed by the appellant and it is difficult to conceive what more effective revenge he could have taken against Shanker Lal than to kill his young son. We are, therefore, satisfied that there was motive for the appellant to commit the

murder and that he had uttered the threat as spoken to by the prosecution witnesses.

6. So far as the access to the deceased is concerned, there is no evidence that the appellant was seen mixing with the deceased on the day he disappeared or shortly before it. Nor is there any evidence that the deceased was last seen alive in the company of the appellant. Since the deceased was a child and the appellant had been his father's servant at one time, it is not improbable if the appellant had induced him to go along with him when a convenient opportunity arose for the same. We would, however, not lay too much stress upon this circumstance.

7. The fourth circumstance, that the clothes of the deceased were handed over by the appellant to the police is a very important circumstance in the, case. The Sub-Inspector deposed to the effect that the appellant had stated that he would give the clothes of Chimmanlal which he had placed in a pit above a brick- kiln, and that thereafter the appellant, in the presence of witnesses, dug the pit in the brick-kiln and took out the clothes. Exhibits 1-5, which were a woollen khaki kurta, a Jawahar cut of cheek design, a sleeveless sweater, a full sleeved white sweater and a white vest have been identified by reliable evidence as the clothes of the deceased. Agarwala J. however thought that as other witness had not spoken about this statement of the appellant, it had not been proved that the appellant had stated to the Police Officer that he had placed the clothes in a pit above the brick-kiln. On the question of admissibility of the appellant's statement to the police, Agarwala J. thought it to be admissible and we think rightly, having regard to the decision of the Privy Council inPulukuri Kottaya v. Emperor,I.L.R. 1948 Mad. 1: (A.I.R. 1947 P.C. 67) (A) Sir. John Beaumont in delivering the judgement of the Privy Council set out the entire statement made by the accused No. 6 to the police and held that the whole of that statement except the passage "I hid it (a spear) and my stick in the rick of Venkatanarasu in the village. I will show if you come": was inadmissible. In other words, the statement "I hid (a spear) and my stick in the rick of Venkatanarasu in the village. I will show if you come" was admissible. In the course of the judgement, Sir John Beaumont observed,

"In their Lordships view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or to the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in the custody that "I will produce a knife concealed in the roof of' my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is used in the commission of the offence, the fact discovered is very relevant".

We can see no good reason for disbelieving the Police Officer regarding the statement made by the appellant. An examination of the Sub-Inspector's p73 evidence does not disclose any circumstance which would justify us in holding that he was not speaking the truth. As has already been stated, the body of the deceased when taken out of the well had only one black pyjama on it. It is unlikely that in the month of December a little child, like the deceased, would be wearing only a pyjama, particularly when he had warm clothes. Whoever was responsible for his death had evidently taken off all his clothes except the pyjama either to prevent identification thereafter or to make a profit out of it or both. On behalf of the appellant, it was urged that the recovery of the deceased's clothes at the instance of the appellant may be proof of his concealing evidence of murder, but it was not a sufficiently incriminating circumstance to show that he was the murderer or privy to the murder. It was suggested that Charna may have been responsible for the murder as he had also been prosecuted by Shanker Lal for theft. It was further suggested that appellant's father may have had a hand in the

murder and the appellant merely had the knowledge as to where the clothes of the deceased had been kept. It may be stated that this suggestion about the father had never been made anywhere before and there is nothing on the record by which it could even remotely be suggested that the appellant's father comes into the picture at all. So far as Charna is concerned, Agarwala J. has given good reasons for discarding the suggestion. In view of the appellant's statement that he had hidden the clothes, it is impossible to accept the suggestion put forward. The brick-kiln where the clothes were found was in village Jogia, adjacent to the village of the appellant and the latter village is only eight furlongs from Hathras where the deceased lived. The fact that the appellant hid the clothes of the deceased clearly indicated his guilty knowledge and is consistent only with his having murdered the deceased.

8. So far as the fifth circumstance is concerned, the appellant's total denial that he was ever in the service of Shanker Lal, that Shanker Lal had implicated him in the theft case that he knew the deceased and that he pointed out the clothes of the deceased at the top of the brick-kiln is a conduct inconsistent with his innocence. These denials were made in order to disclaim all connections with Shanker Lal, with the deceased and with the latter's clothes. A court would therefore be justified in drawing an adverse inference from this against the appellant in the circumstances of the case.

9. It is to be noticed that in the course of cross-examination of Shanker Lal, he had been questioned as to whether he had gone to the house of the appellant in the night of the day the deceased was missing and before he lodge his report at the Police Station and the witness replied in the affirmative. He was then questioned as to whether he had asked the appellant whether he had removed deceased to which the witness replied in the affirmative and stated that the appellant had stated to him, "I have thrown him in the "Bhaar" (furnace)". The courts below were disinclined to consider this as an incriminating circumstance against the appellant because the statement was made in anger. That the appellant made the statement appears to be beyond doubt and even if the statement was made in anger, it is a statement of considerable significance in the present case. The statement is tantamount to the appellant intimating to Shanker Lal that he had done away with the deceased and carried out his threat. It is true that the deceased's body was not found in a furnace, but in a well, but that is of little consequence. What is important is that soon after the deceased was found to be missing the appellant made a statement indicating that he had a hand in his disappearance by throwing him in a furnace.

10. We have considered the circumstantial evidence in the case, and are of the opinion, that is consistent only with the guilt of the accused and that it is inconsistent with any other rational explanation. The only reasonable conclusion, from the circumstances proved in this case, is that the appellant committed the murder. He was, therefore, rightly convicted and the appeal is accordingly dismissed.

Appeal dismissed

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