SUPREME COURT OF INDIA

Govinda Reddy

Vs.

State of Mysore

Crl.A.No.7,8,105 and 106 of 1958

(S. R. Das, C.J.I., N. H. Bhagwati, S. K. Das, J. L. Kapur and K. Subba Rao, JJ.)

19.08.1958

JUDGEMENT

SUBBA RAO, J.:

1. These four appeals, the first two by Certificate issued by the High Court of Mysore under Art. 132 (1) of the Constitution of India and the other two by Special Leave granted by this Court under Art. 136 of the Constitution of India, arise out of a sensational and gruesome murder of a lawyer of Bangalore and some of the members of his family at Bangalore in Mysore State.

2. The case of the prosecution lies in a small compass and may be stated thus: Belur Srinivasa Iyengar, at the time of his death, was 74 years of age and had amassed substantial properties. His first wife died in 1936 leaving behind her a son, who is said to be insane, and two daughters. After the death of the first wife, he married Vengadamma in February 1937 and had three daughters and three sons by her. Prior to 5th June 1956, Belur Srinivasa Iyengar had fractured his leg and was confined to bed. On the night of 5th June, 1956, the inmates of the house retried to bed as usual. Belur Srinivasa Iyengar was sleeping on a cot in his bed-room. His wife, Vengadamma, her daughter Rangalakshmi, her two sons Lava and Kusha and her mother Singamma were sleeping on three costs in a room adjoining the bed-room of Belur Srinivasa Iyengar. The other two daughters, Ratna and Prasanna, were sleeping in a separate room. Their servant, Ramalingam, was sleeping in the veranda. There was also a watch-dog in the house. Belur Srinivasa Iyengar being a rich man, there were cash, jewels, silver ware and other valuable articles kept in his house in iron-safes, almirahs, trunks and suit cases. On the morning of 6-6-1956, it was discovered the house was broken into and that some of the inmates of the house, viz., Belur Srinivasa Iyengar, his wife, mother-in-law, his two sons Lava and Kusha and their servant, Ramalingam, were lying dead with serious injuries on their bodies. The dog was also found doped and lying in a dying condition. The valuable articles from the iron-safes, almirahs and other boxes were found removed. Rangalakshmi, a daughter of Belur Srinivasa Iyengar, was found leaning against a wall with bleeding injuries on her head and in an unconscious state.

3. The version of the prosecution is that the appellants, who are related or at any rate closely associated with one another, getting scent of the fact that Belur Srinivasa Iyengar kept cash and valuable jewels in his house, conspired to commit murder and robbery, broke into his house on the right of 5th June, 1956 with deadly weapons, doped the dog, killed the servant, murdered Belur Srinivasa Iyengar, his wife, mother-in-law, two sons Lava and Kusha, caused grievous injuries to Rangalakshmi, took away the booty gathered in the house and divided the spoils amongst

themselves.

4. The appellants were charged on the following counts. Section 302 read with S. 34, Indian Penal Code; S. 307 read with S. 34, Indian Penal Code; S. 457 read with S. 34, Indian Penal Code; S. 380 read with S. 34, Indian Penal Code; S. 392 read with S. 34, Indian Penal Code; S. 394, Indian Penal Code; S. 397 read with Section 34, Indian Penal Code and S. 460, Indian Penal Code. The prosecution examined 116 witnesses. No witnesses were examined on behalf of the appellants Nos. 2 and 3. Three witnesses were examined on behalf of the first appellant. There were no eye-witnesses to the incident for the simple reason that all the persons who could have witnessed the occurrence were done away with and the only other member, Rangalakshmi who was sleeping in the same room along with her mother and others, was seriously injured and was in an unconscious state. It is in evidence that she continued to be unconscious for some days after the incident and thereafter also was not in a position to give evidence. The other two daughters, Ratna and Prasanna, who were providentially sleeping in a different room, escaped from being murdered and they came to know of the ghastly incident only on the early morning of the 6th June. In the circumstances the prosecution case was based upon circumstantial evidence.

5. The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of Madhya Pradesh, AIR 1952 SC 343, and it is as follows:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

Having regard to the aforesaid principle, the learned Sessions Judge and, on appeal, the High Court definitely found the circumstantial facts relating to each of the accused and drew the inference from them that the accused conjointly participated in the commission of the murder and the other offences with which they were charged. On that finding, the learned Sessions Judge convicted them on the counts on which they were charged. On the first count they were sentenced to death and on the other counts they were sentenced to various terms of imprisonment. On appeal, the High Court confirmed the conviction as well as the sentences except in regard to the fourth count, as in its opinion, the offence of theft being an ingredient of the offence of robbery, they should not have been convicted twice over the same offence. The aforesaid appeals were filed by the accused against the sentences of death and imprisonment.

6. The learned Counsel for the appellants contended that an important link in the chain of circumstantial evidence found by the Court below was the fingerprints of the appellants taken by the police during the course of the investigation for the purpose of comparing the same with the finger prints found on the articles scattered in the room in the house of Belur Srinivasa Iyengar, where the incident took place, that the said evidence was inadmissible by reason of Art. 20, Cl. 3 of the Constitution of India, that if the finger prints were excluded from the evidence, the continuity of the chain would be broken and that in any event there would be no evidence to hold that the three appellants conjointly participated in the commission of the offences with which they were charged. The argument raises an important and interesting question, namely, whether the taking of thumb

impressions of the accused by the police during the investigation and their use during the trial would be contrary to the constitutional guarantee given under Art. 20(3). In the present case, we are relieved of the duty of expressing our opinion on the said question, as, in our view, even if the facts found on the basis of comparison of the finger prints of the accused taken by the police during investigation with those found on the articles in the house of Belur Srinivasa Iyengar were excluded, the other pieces of evidence were overwhelmingly sufficient to sustain the convictions.

7. We shall now proceed to state the circumstances found by the two Courts against the accused: (i) The appellants are related or at any rate closely associated with one another; (ii) about a fortnight prior to the date of the incident, appellants 2 and 3, along with P. W. 44, Channa, made an unsuccessful attempt to burgle the house of Belur Srinivasa Iyengar for the purpose of committing theft; (iii) on the 5th June 1956, appellants Krishna and Muniswamy purchased crow-bars, M. Os. 1 and 4, in the shop of P. W. 60, Dhanalakshmi and P. W. 61, Ibrahim, respectively and those articles were found in the bed-room of Vengadamma in 'Renga Vilas' on the morning of 6th June, 1956, and they were blood-stained; (iv) the appellants were found moving together on the 5th June 1956; (v) the finger prints of the appellants were found on the silver vesels, M. Os. 86, 87 and 89, which were lying scattered in 'Renga Vilas' on the morning of 6th June 1956 and those finger prints tally with those of the appellants; (vi) jewellery belonging to and in the possession of the members of the family of Belur Srinivasa Iyengar just prior to the commission of the offence were found in the possession of the appellants either on their persons or in their houses ; (vii) bloodstained clothes were recovered from a hedge near the house of appellant No. 2, Krishna, on the information furnished by him and from appellant No. 1, Govinda Reddy's house; (viii) the appellant Krishna made several purchases on the 6th and 8th June 1956 and he converted some of the jewels into gold ingots and disposed them of and the two bills for having purchased a cot and an almirah were found on his person on the date he was arrested, that is, on the 9th June, 1956. The cot and the almirah, which were yet in an unpacked condition, were found in the house of appellant Krishna, where he was living with his concubine, P. W. 38, Jayamma, that is in the house bearing No. 21/6-86 Ramakrishna Mutt Road Ulsoor; (ix) The knife, M. O. 3, was recovered from a well behind the house of the second appellant, Krishna, on the information furnished by him and it contained mammalian blood and was identified by several witnesses as belonging to the second appellant Krishna, and as the one that was in his house in premises No. 21/6-86 Ramakrishna Mutt Road, Ulsoor, and which was being used by the inmates of the house for domestic purposes; (x) two half portions of cinema tickets were found on the scene of occurrence, Appellant No. 1, Govinda Reddy, told Basavaraj, P. W. 75, that he and appellant No. 2, Krishna, were going to a cinema; (xi) appellant No. 2, Krishna, suddenly became rich and made several purchases immediately after the date of the incident.

8. The learned Counsel for the appellants, while not disputing the fact that the aforesaid circumstantial evidence would lead to the irresistible conclusion that the three appellants participated in the commission of murder and other offences, argued that if the evidence furnished by the finger prints was excluded, the other evidence left after such exclusion would not justify a conviction under S. 302 read with S. 34, Indian Penal Code and he relied on the decision in Shreekantiah Ramayya Munipalli v. The State of Bombay, 1955-1 SCR 1177: ((S) AIR 1955 SC 287). We cannot accept this contention. So far as the appellants 2 and 3 were concerned, it is manifest that the facts found were incompatible with their innocence. In combination with the other facts found, the discovery of the crow-bars, proved to have been purchased by appellants Nos. 2 and 3 Krishna and Muniswamy, in the bedroom of Vengadamma on the 6th June 1956 with blood-stains thereon, establishes beyond any reasonable doubt that these appellants were present in the house of the deceased and took part in the incident.

9. The learned Counsel contended that though the crow-bars were purchased by appellants 2 and 3, it might be that the said crow-bars were handed over to the real culprits for committing the murder and the appellants might have been only the recipients of stolen goods. The principle that the inculpatory fact must be inconsistent with the innocence of the accused and incapable of explanation on any other hypothesis than that of guilt does not mean that any extravagant hypothesis would be sufficient to sustain the principle, but that the hypothesis suggested must be reasonable. It may be that the said fact in itself may not be decisive of the complicity of appellants 2 and 3, but the said fact along with the other facts found may reinforce the conclusion of guilt. In the circumstances of this case, the hypotheses suggested is far fetched and the only reasonable conclusion that a prudent man can come to is that the appellants 2 and 3 had committed the offences.

10. The learned Counsel then made a special pleading in the case of appellant No. 1, Govinda Reddy. He urged that whatever justification there might have been for the finding in the case of appellants Nos. 2 and 3, if the evidence of finger prints was excluded, it would not be possible to hold that the first appellant participated in the commission of the offences and, without such participation, he could not be jointly made liable along with the other two appellants. To meet this argument it would be convenient to restate, with more particularity, the facts found against that appellant: (i) Appellant No. 1 was closely associated with appellants Nos. 2 and 3; (ii) P. W. 38 heard the third accused saying that there were money and jewels in the house of Belur Srinivasa Iyengar and that they should kill them and bring away the properties; (iii) on the day following the unsuccessful attempt, appellant No. 1 came to the house of appellant No. 2 and he was told that, as the dogs barked, they could not succeed in their attempt (iv) 15 days after the first incident, P. W. 38 heard appellants 1 and 3 asking appellant No. 2 to go again to Belur Srinivasa Iyengar's house and she intervened and said to the first appellant that, being an elderly man, he should not instigate them to do such illegal things and that he should give proper advice to the youngsters; (v) Appellant No. 1 had the special knowledge of the fact that Belur Srinivasa Iyengar was a wealthy man and had a lot of cash and jewels in his house; (vi) on the 5th June 1956 at 11 a.m., appellant No. 1 was expecting appellant No. 2 to meet him at the Ramanatha Caf_Appellant No. 1, at the request of P. W. 74, went to the "Water Office" and appellant No. 2 came to the Caf_n his absence and asked P. W. 74 to tell appellant No. 1 that he could meet him at 3 p.m.: (vii) at bout 8 p.m., the appellants 1 and 2 went to the fuel shop of P. W. 75, Basavaraj, where appellant No. 2 left his motor-cycle, and appellant No. 1 informed Basavaraj that they where going to the Himalaya Talkies; (viii) two half portions of cinema tickets, Exhibits P-74 and P-74(a), which were proved to be the corresponding half portions of the tickets sold at the Himalaya Talkies, were found on the early morning of the 6th June 1956 in the house of Belur Srinivasa Iyengar, close to the window from which a bar had been wrenched; (ix) the finger impressions of appellant No.. 1, Govinda Reddy, were found on the silver cup, M. O. 89, found in the house of the deceased; (x) on the morning of 10th June1956, the house of the first appellant was searched by P. W. 114 and the panche, M. O. 101, was seized and that it contained stains of human blood; the panche was proved to belong to appellant No. 1; (xi) M. Os. 183 to 185 were recovered from the person of appellant No. 1 at the time of his arrest and it was established that the said jewels belonged to the inmates of Belur Srinivasa Iyengar's house; (xii) no explanation was offered by the first appellant as to how he came into possession of these jewels.

11. Out of the said facts, we are excluding from consideration the evidence furnished by the comparison of the finger prints found on the silver vessels and those taken by the police from the appellants. It was contended that if that fact was excluded, the other facts would not establish that appellant No. 1 participated in the offence of murder and robbery and would be consistent only with his being the receiver of stolen goods. But we cannot agree with this argument. The cumulative effect of the circumstantial evidence found by the Courts, particularly in view of the unacceptable

explanation given by appellant No. 1 for the presence of blood stains on his panche and his failure to give any explanation in regard to the possession of the stolen goods a few days after the incident, leave no doubt in our minds that the hypothesis suggested, namely, that appellants 2 and 3 might have committed the murder and given to appellant No. 1 a portion of the spoils, is more fanciful than real. In this particular case, the facts found are not capable of explanation upon any other hypothesis than that the first appellant participated in the commission of the offences of murder and robbery. We agree with the conclusion arrived at by the High Court and hold that the appellants were rightly convicted and sentenced under each count. The appeals are accordingly dismissed.

Appeals dismissed.

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