

Prakash Mahadeo Godse

Vs

State of Maharashtra

Criminal Appeal No. 225 of 1968

25.03.1969

JUDGMENT

HEGDE, J. –

The appellant was tried and convicted by the Sessions Judge of Kolaba for offences under Section 302 as well as under Section 376, I.P.C. For the former offence, he was sentenced to death and for the latter to suffer rigorous imprisonment for four years. The two sentences were ordered to run concurrently. In appeal the High Court of Maharashtra confirmed the judgment of the Trial Court. Thereafter the appellant has submitted this appeal from jail after obtaining special leave from this Court.

2. In brief, the prosecution case is that on October 13, 1967, the appellant raped and thereafter killed a young girl by name Lata aged about nine years at Alibagh in Kolaba District. The deceased was permanently living with her parents at Poona. Her mother herself and her younger brother had come to Alibagh where her grandmother lived, a few days before the occurrence. On the date of the occurrence it is said that the appellant came to the house of the grandmother of the deceased at about 4 p.m. and enquired for the maternal uncle of the deceased. On being told that he was not at home he (the appellant) left the place. Very soon thereafter, the deceased also left her house. Thereafter she did not return to the house. When the maternal uncle of the deceased P. W. 2, Mahadeo came to the house at 5 p.m. his mother and his sister (mother of the deceased) told him that the deceased who had gone out had not come back. Therefore he went in search for her. Though he searched for her in various places he could not find her. Thereafter he went and reported in the police station that his niece was missing. Sometime thereafter the dead body of the deceased was found in a hut near the sea-shore. It was found that she had been raped and strangled. Subsequently P. W. 2 again went and made a report to the police station accusing the appellant of having murdered his niece. After recording the complaint, the police with the assistance of the local people made a search for the appellant. He was not found in his house. Later at about 9-30 p.m. he was seen returning to his house. At that time the people of the locality attempted to catch hold of him but seeing the same he jumped down from the bridge over which he was passing and ran towards the sea and laid himself flat at a dark spot. Ultimately he was found and caught hold of by his pursuers. Afterwards the police came there and arrested him.

3. The case against the appellant rests entirely on circumstantial evidence. Therefore we have first to see whether the circumstances put forward have been satisfactorily established. Next we have to see whether all or any of those circumstances are incriminating in character and whether the proved circumstances are such as to establish a reasonably conclusion case against the appellant. Those circumstances must not only be compatible with his guilt but they should also be incompatible with his innocence. In other words they must not be capable of suggesting any reasonable hypothesis other than the guilt of the appellant. There must be a chain of circumstances so far complete as not

to leave any reasonable ground for a conclusion consistent with the innocence of the accused; see *Hanumant v. State of Madhya Pradesh*.

4. We shall now examine the circumstances held to have been established against the appellant on the basis of the tests noticed above. The High Court agreeing with the Trial Court has come to the conclusion that the following seven circumstances have been established against the appellant :

(1) The appellant visited the residence of the grandmother of the deceased at about 4 p.m. on October 13, 1967 and there made enquiries about P. W. 2 and his cousin Zumber. Finding that they were not at home he went away;

(2) Almost immediately after the appellant left that place, the deceased also left her house telling her grandmother that she would return within a short time but she never returned. Later her dead body was found in one of the cottages near Krida Bhavan at about 8 p.m. on the same day;

(3) At about 5 p.m. on that day, the appellant and the deceased were seen going together towards the cottages near Krida Bhavan;

(4) At about 5-30 p.m. on the same day, the appellant was seen in a confused state of mind by the said of cottages near Krida Bhavan;

(5) The dead body of the deceased was found at 8 p.m. on the same day in one of the cottages near Krida Bhavan wrapped in a net. The examination of the dead body showed that the deceased must have been ravished and strangled;

(6) At about 9-30 p.m. on the same day when the appellant was returning to his house, some of the persons who were on the road tried to catch hold of him; then he ran away frantically, jumped from the bridge over which he was passing and hid himself in mud near the sea-shore; and

(7) Blood was detected on the accused's pyjama.

5. Both the High Court as well as the Trial Court have concurrently found that the circumstances enumerated above are satisfactorily established. We have gone through the evidence on record and we see no reason to differ from the conclusions reached by these courts. Ordinarily this Court does not interfere with the findings of fact reached by the High Court.

6. We have now to see whether all or any of the circumstances enumerated above are incriminating in character and what is the cumulative effect of the proved circumstances.

7. The fact that the accused went to the house of the grandmother of the deceased at about 4 p.m. on the day in question and enquired about P. W. 2 and his cousin affords no reasonable basis for the suspicion that he was there for enticing the deceased. It is not the case of prosecution that the appellant was acquainted with the deceased prior to that date. No witness has spoken to the fact that the appellant and the deceased were even seen together at any time prior to the date of the occurrence. The deceased was a permanent resident of Poona. She had come to Alibagh only a few days prior to the date of occurrence. She was a young girl aged about 9 years. From the material on record we cannot reasonably come to the conclusion that the appellant had gone to the house of the grandmother of the deceased on the evening in question with a view to entice the deceased. From

the fact that the appellant made enquiries about P. W. 2 and his cousin when he went to the house of the grandmother of the deceased, no adverse inference can be drawn against the appellant. The shop of the appellant is just opposite that of P. W. 2. Therefore they should have known each other intimately. Under these circumstances we do not think that the High Court and the Trial Court were right in concluding that the circumstance that the appellant had been to the house of the grandmother of the deceased on the evening in question does in any manner incriminate against the appellant.

8. We are also unable to draw any inference adverse to the appellant from the circumstance that very soon after he left the house of the grandmother of the deceased, the deceased also left that house. It is seen from the report made by P. W. 2 at the police station at about 7 p.m. on the date of the occurrence that usually the deceased used to go out of her house at about 4 p.m. for playing. Therefore the circumstance that the deceased left her house very soon after the appellant left her house is of no significance. It may be a more co-incident.

9. From the evidence on record, it is clear that somebody had raped the deceased and killed her. This circumstance by itself does not connect the accused with the crime.

10. It is true that the accused and the deceased were seen going together towards Krida Bhavan at about 5 p.m. The accused has offered no explanation about the same. The dead body of the deceased was seen at about 8 p.m. These facts highly incriminating in character. They raise a strong suspicion against the appellant.

11. It is said that at 5-30 p.m. the accused was found standing in front of one of the huts near the Krida Bhavan. But there is no evidence to show that he was standing in front of the hut in which the dead body of the deceased was found. P. W. 4 Magahan says that he happened to pass that way at about 5-30 p.m. on that day. The appellant is said to have asked for a match box from him but when he offered a match box, the appellant is alleged to have changed his mind and told P. W. 4 that he did not want the match box and asked P. W. 4 to go away from that place. From these facts the courts below have come to the conclusion that the appellant was found to have been in a confused state of mind at about 5-30 p.m. on the date of the occurrence. It is very difficult to gauge the state of mind of an individual. It is not unlikely that P. W. 4 formed his opinion about the state of mind of the appellant at the time in question only after he came to know the fact that he (the appellant) was suspected to have murdered a young girl.

12. The fact that the appellant ran away and hid himself when people tried to catch hold of him does not lead to a firm conclusion that he behaved in that manner because he had a guilty mind. Even most innocent persons when suspected of grave crimes are likely to evade their arrest. The instinct of self-preservation is uppermost in the mind of an ordinary man. The courts have refused to attach much significance to abscondent evidence.

13. The only other circumstance found against the appellant is that blood was detected in his pyjama. This circumstance would have been of considerable importance if it had been satisfactorily established. The suspected blood patch was unsuitable for chemical examination. Therefore there is no evidence to show that blood was detected in the pyjama of the appellant.

14. From the above discussion it is seen that out of the several circumstances found to have been established by the Trial Court as well as by the High Court, most of them must be held to be innocuous. The principal incriminating circumstance established against the appellant is the proof of

the fact that he was seen proceeding with the deceased towards the Krida Bhavan at about 5 p.m. on the date of the occurrence. That circumstance remains unexplained by the appellant. To this we may add that the appellant was found standing in front of one of the cottages near the Krida Bhavan at about 5-30 p.m. These facts taken along with the other facts of the case undoubtedly raise a grave suspicion against the accused. But in our opinion they are insufficient to hold the appellant guilty of the offences with which the place of proof and therefore the appellant is entitled to the benefit of doubt.

15. We accordingly allow this appeal and acquit the appellant. He shall be set at liberty.

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