

Thimma and Thimma Raju

Vs

State of Mysore

Criminal Appeal No. 245 of 1969

(CJI M. Hidayatullah, A. N. Ray, I. D. Dua JJ)

02.04.1970

JUDGMENT

DUA, J. -

1. The appellant was convicted by the Sessions Judge, Shimoga, under Section 302, I.P.C. for the murder of one Govindappa, a village postman was awarded capital sentence. He was also held guilty of an offence under Section 201, I.P.C. and sentenced to rigorous imprisonment for 7 years. The High Court of Mysore confirmed the conviction and sentence under Section 302, I. P.C. It also upheld his conviction under Section 201, I.P.C. but set aside the sentence on this count observing that when a person is convicted both under Section 302 and Section 301, I.P.C. it is undesirable to pass separate sentences for both offences. In this appeal with special leave the appellant challenges his conviction and sentence under Section 302, I.P.C.

2. The appellant was tried, along with Laxamma (accused No. 2) wife of the deceased Govindappa and her mother Gangamma (accused No. 3) wife of late Mylappa. The two women were charged with abetment of murder and were acquitted by the Trial Court. We are not concerned with them in this appeal. There is no eye witness in the case and the courts below have accepted the prosecution story on circumstantial evidence. The question before us is whether the circumstantial evidence accepted by the courts below establishes the murder of the deceased by the appellant beyond reasonable doubt. The prosecution story may now be stated.

3. The deceased, Govindappa, resident of Nommanal village in Shimoga Taluk worked as Extra-Departmental Delivery Agent in the postal department. He was attached to the post office at Kommanal and was in common parlance called a postman. G. Sangaish (P.W. 1) resident of village Abbalagore worked as an Assistant School Teacher in Kommanal. The distance between the two village is 1 1/2 miles. P.W. 1 also worked as Branch Postmaster in Kommanal, and was called Extra Departmental Postmaster. According to him the duties of the deceased were to bring the postal bags from the N.N.S. Bus on the main road in the morning at about 8.30 a.m. and after the bags were opened by P.W. 1 to deliver the postal articles to their respective addressees. At about 4.30 p.m. he would return to the post office to take the postal bags to the Mail Service Bus. Six village were attached to his post office. The deceased used to deliver postal articles in two groups of three villages each on alternate days. On July 11, 1967 at about 10 a.m. the deceased received the postal articles from P.W. 1 for delivering them to the addresses in villages Kittadal, Kunchenhalli and Bikkonahalli. The articles to be delivered included two registered letters addressed to Krishna Naika and Ealanaika of Kittadal. At about 3.30 p.m. the deceased returned and told P.W. 1 that the addresses, having gone to their fields, were not in the village, and that he would again try to deliver the registered articles to them. The deceased took the postal bags from the post office for delivery to

the Mail bus. He did not return to duty thereafter. As the deceased had been in the service of the post office for nearly 3 1/2 years, P.W. 1 did not suspect his bona fides. On July 22, 1967, P.W. 1 went to the house of the deceased but did not find him there. Thinking that the deceased might have been unavoidably held up somewhere P.W. 1 in addition to his own duties performed those of the deceased as well on that day. On July 23, P.W. 1 went to village Kittadal to inquire about the delivery of the registered articles to the addressees. There he learnt from Krishna Naika (P.W. 15) that on July 21, 1967 the deceased had delivered to him the registered article a about 6 p.m. P.W. 15 on being questioned by the court gave the time of delivery to be about 4 p.m. But this difference as to time, in the opinion of the Trial Court, was due to the fact that the witness had no precise idea of time. After having waited for another day on July 24, 1967, P.W. 1 reported to the Postal Inspector, or Shimoga Circle about the disappearance of the deceased Exhibit P-1 is this report. P.W. 1 informed the postal Inspector of the steps taken by him in his search for the deceased. Those steps included the inquiries made by him from the addressees of the registered letters which had been delivered by the deceased. P.W. 1 had looked at those registered letters and left instructions for their production when required. It was further reported that the receipts pertaining to the delivery of RL No. 456/UDipi, and RL No. 825/UDipi and the visit book had not been returned by the deceased to the post office. A request was made by P.W. 1 for the appointment of someone in place of the deceased so that the registered articles received on the 24th and 25th July, 1967 be delivered to their respective addressees. The Postal Inspector was asked to visit Kommanal for making the necessary arrangements. This report reached the Inspector (S. W. Pawar, P.W. 2) on July 26, 1967 and he visited Kommanal on July 27, 1967. There he collected four Panchayatdars and examined Laxamna, the wife of the deceased. The same day he submitted his report, Ex. P-3, to the Sub-Inspector of Police, Kasaba Police Station, Shimoga, attaching with it a copy of the report of P.W. 1, and also a copy of the statement of Laxamna. In this report all the relevant facts were stated. The important thing to be noted about this report is that according to it the deceased had two keys of letter boxes fixed at Kunchenhalli and Soxanakoppa. The duplicate keys of these locks were, however, available with P.W. 1. This report was sent because, according to P.W. 2, neither the wife of the deceased nor anyone else from the village had reported to the police about the disappearance of the deceased. While investigation into the fact of disappearance of the deceased pursuant to this report was going on, it appears that Bheema Naika, (P.W. 3), resident of Kommanal while grazing his cattle near Ayanoor forest sensed some foul smell from a spot near 'Korakelu'. On going closer, he saw, what appeared to him to be, a human skeleton with Khakhi half pants, Khakhi shirt and belt and a pair of Chappals. He got frightened and reported to the village patel about what he had seen. As it was late in the evening the patel did not go to the spot that day. The following morning, August 4, 1967, P.W. 3 took the patel (Shahkargowda, P.W. 12) and some others to the spot and showed them what he had seen. The patel then reported the matter to the Sub-Inspector of Police, Shimoga Taluk (Ex. P-11). Investigation then appears to have started for establishing the identity of the dead body, the cause of his death and, if his death was considered to be homicidal, who was the offender. As a result of the investigation the three accused persons, as observed earlier, were sent up for trial.

4. The three questions requiring consideration by us relate to the identity of the dead body represented to be of the deceased, the cause of the death and whether the appellant has committed the murder. In so far as the question of identity is concerned, there can hardly be any doubt that the skeleton was that of the deceased. The Khakhi shirt, Ex. M.O. 1 and the half pant Ex. M.O. 2 have been identified by P.W. 1 as the uniform given to the deceased. The visit book (Ex. M.O. 5) is also proved by P.W. 1 to have been delivered to the deceased. The two postal acknowledgments entrusted to the deceased with the registered articles (Ex. M.O. 6) and the two duplicate keys (Ex. M. O. 3) of the locks of the post boxes at Kunchenhalli and Somanakoppa have also been identified and proved

by P.W. 1. All these articles were recovered from near the dead body. This evidence leaves little doubt that the skeleton was of the deceased. Some doubt was sought to be created on the question whether the bones found at the spot were those of a human body. But on this point the testimony of Dr. Shambulingaswami, Assistant Surgeon, McCann Hospital, Shimoga (P.W. 26) is clear and it establishes beyond doubt that the bones found were those of a human being. For the present we are leaving out of consideration the evidence of Ganga (P.W. 4) and the oral confession made by the appellant to this witness. We will deal with that witness a little later.

5. Turning to the question whether the deceased died a natural death or his death was homicidal, Dr. Ramu, Associate Professor of Forensic Medicine, Bangalore Medical College, was required to examine this question and the skeleton concerned was forwarded to him. His report (Ex. P-20) records the following opinion :

"I am opinion that -

- (a) all the bones sent are of human origin and appear to belong to the same individual;
- (b) the bones belong to a male;
- (c) the age of the person is between 25-35 years;
- (d) the height of the person is about 5 feet 6 inches+one inch;
- (e) the cause of death is due to external violence;
- (f) the time since death is about 4-8 weeks from the date of examination."

This report is dated August 30, 1967. When Dr. Ramu appeared as a witness he was cross-examined by the counsel for the appellant. A suggestion was thrown that the dead body might have been bitten by wild animals. This suggestion was denied by the witness who replied that the gnawing by the wild animals would result in irregular surface which was not the case in respect of the bones sent to him. The witness also refuted the suggestion that the base of the skull in question could have been fractured by a violent fall. The fracture of bones caused by wild animals trampling on them was also stated by the witness to be different in nature from the fractures which were found in the present case. The doctor was clearly of opinion that the injuries caused to the bones sent to him for examination were antemortem and not post-mortem. On being questioned by the court the doctor replied that at least two blows must have been given to the deceased, one on the nape of the neck and the other on the left cheek. He further stated that the spinal cord must have been cut and completely severed because the two pieces M.O. 18 and M.O. 18(a) were completely severed and this result could not have come about without the spinal cord being cut. The injury on the base of the skull, he continued, must have been the result of a very hard blows and this was by itself sufficient in the ordinary course of nature to cause death. The man whose bones were sent to him, must, according to the doctor, have been brutally attacked with a sharp-cutting instrument. This evidence, in our opinion, convincingly establishes that the deceased was the victim of grievous assault as a result of which he died and the courts below were quite right in so concluding.

6. We now come to the question whether it was the appellant who committed the murder. It is in evidence that the deceased was last seen in the company of the appellant at about 4.30 p.m. when the deceased had gone to deliver the mail bags to the bus. At about 3.30 p.m., according to P.W. 1,

the deceased had gone to the post office and taken the postal bags to be delivered to the Mail Bus, N.N.S. Bus Service. He had also told the witness that he would again try to contact Krishna Naika and Halla Naika of Kittadal for delivering the registered articles. Chennabasappa (P.W. 16) has deposed that he saw Govindappa and the appellant delivering the mail bags to the bus after they had taken coffee in the hotel near the bus stop that evening. P.W. 9, the brother of the appellant who was also at the bus stop that evening saw the deceased and the appellant travelling in the same bus. Cangamma (P.W. 8.), the wife of the brother of the deceased who lives in a portion of the same house in which the deceased lived, has stated that she saw the deceased on Friday evening at about 4.30 p.m. with the appellant going from their house towards the post office building. The appellant was at that time carrying an axe on his shoulder. The demeanour of this witness was described by the Trial Court as a natural. Sulochana, an eleven year old daughter of the deceased, appeared as P.W. 10 and stated that on Friday, the day her father disappeared, at about 4.30 p.m. he left the house to deliver the mail bags. At about 5 p.m. the appellant took an axe from her mother and proceeded towards the post office. At about 8 p.m. the appellant returned home. According to this witness four or five days earlier, the appellant had suggested to the deceased to accompany him to the forest area for bringing teak logs so as to be able to make some money. People of village Haramghatta required teak logs and the deceased, according to the suggestion, could earn at least Rs. 15/-. The deceased first expressed his inability to spare time from his official duties but the suggestion having been repeated the deceased ultimately agreed. This witness, though being only 11 years old was not administered oath, created a favourable impression on the Trial Court as is obvious from the following note :

"The witness gave her evidence without faltering or visible signs of hesitancy. She speaks clearly, precisely and straight to the question."

The Trial Court also interrupted the witness in the middle of her testimony, in order to satisfy itself, by breaking the continuity of the story, that she was not reproducing a tutored version. On going through her statement we are satisfied that she is a truth full witness and her evidence deserves to be accepted and was rightly accepted by the courts below. There is in our opinion, cogent and trustworthy evidence to support the conclusion of the courts below that the deceased was last seen with the appellant a short time before his disappearance. Having upheld his conclusion, we may appropriately examine the appellant's explanation. He has merely denied, by express his ignorance, that the deceased had been last seen alive with him. In fact he has simply described as false all the material allegations including that of his acquaintance with Laxamma and that he used to stay in Kommanal. This bare denial without any explanation is not wholly unimportant.

7. This takes us to the motive for the appellant to get rid of the deceased. There can be little doubt on the evidence on the record that the appellant had developed close intimacy with the wife of the deceased. The evidence of Gangamma (P.W. 8), wife of the brother of the deceased, who, it may be recalled, lives in one portion of the ancestral house owned by the two brothers, is quite clear on the point. Laxamma, the wife of the deceased used to run her shop in the other half of the same house. P.W. 8 was, therefore, in a position to know about the appellant's frequent visits to that shop. According to her the appellant sometimes used to take his food in Laxamma's house and also to sleep there. This was due to their intimacy. Though many customers used to come to that shop no one ever stayed on in the house except the appellant. P.W. 8 has also deposed that the deceased and his wife used to quarrel with each other and the deceased used to protest against her fooding the appellant and neglecting him in the matter of food. To this Laxamma used to retort that the deceased did not provide her with enough money for that purpose whereas the appellant did. The suggestion that her husband and the deceased had quarrelled over partition of a field was repudiated

by her. The trial court was favourably impressed by the demeanour of this witness as well. P.W. 9, the brother of the deceased, has also stated about the quarrels between the deceased and his wife. He has deposed :

"My brother and his wife A-2 were often quarreling bitterly. That was after Ugadi of last year. He used to complain to his wife that she was not cooking food at the proper time. A-2 in turn used to reply that he was not supplying her with provision and therefore he could not expect her to cook food in time. He sometimes used to trash A-2. She would weep and sleep away. When my brother used to go away without food, I used to invite him to take his food. Some times he used to take his food in my house. After the last Ugadi, Thimma (A-1)'s visit and stay in my brother's house increased. A-1 and A-2 used to go together for work. They used to go to Nyamathi Shandy to fetch goods. A-1 used to carry the goods back to Pomminal from Nyamathi.

Two days prior to the disappearance of my brother there was a bitter quarrel between A-2 and himself. During that quarrel, Govindappa questioned A-2 how A-1 remained under his roof and that she fed him and that by time he returned, there was nothing left for him. A-2 replied that he earns and supplied the provisions and therefore she was feeding him whereas he (Govindappa) did not supply the provisions and consequently she did not look after him. The quarrel resulted in severe beating of A-2 by my brother. A-2 never served him food."

From this evidence the motive on the part of the appellant to do away with the deceased is obvious.

8. We now turn to the extra-judicial confession of the appellant and his conduct on the day following the disappearance of the deceased. Ganga (P.W. 4) is a nephew of the appellant, being the son of his elder brother. The appellant, according to this witness, had taken up a contract of uprooting plants and trees so as to render the land cultivable. This witness used to visit Laxamma's shop when he was working at Kommanal and he also knew the deceased. On Saturday following the day when the deceased had disappeared, in the early hours of the morning a little before sunrise, the appellant went to the house of the witness in Bodekanna colony near Normannal and woke him up. As the witness began to tether his bullocks the appellant went to his father's house nearby. After a short while the appellant returned and told the witness that the previous evening he had gone to the field of one Mahadevappa and had lost his purse containing Rs. 200/-. The appellant desired the witness to accompany him to find the lost purse. On their way through the forest by the side of the hill they met one Sivappanavar Basappa (P.W. 13) on whose enquiry as to what had brought them there so early, the appellant replied that he had some work in the fallow land of Mahadevappa. On reaching the 'Rorakalu' which was about 2 1/2 ft. deep, the witness was the dead body of Govindappa. The dead body was lying flat on its back and the witness observed injuries on the neck, face and chest of the deceased. He also saw near the dead body Khaki shirt (M.O. 1), Khaki Half pants (M.O. 2), a pair of Chappals (M.O. 7), a plastic belt (M.O. 8) and a Banian (M.O. 9). The appellant then pulled the red waist thread (M.O. 10) worn by the deceased and as he took into his hands, a pair of small keys (M.O. 3-A) were noticed by the witness. The appellant remarked that those were not the keys he wanted. So saying he threw away the thread, the keys and a talisman (M.O. 11) which was also found there. Directing the witness to keep a watch from a higher elevation the appellant cut some branches of the trees and after collecting some twigs covered the dead body with them. After picking up some papers the appellant and the witness started on return journey. After covering some distance the appellant threw away the papers in a bush. The appellant

told the witness that he had killed the deceased with the sickle (matchu) given by the wife of the deceased and that the same had been thrown away by him in a bush. As they reached the main road the appellant warned the witness not to disclose to anyone what he had seen and learnt, otherwise he was threatened with the same fate as the deceased had met.

9. The Trial Court was not favourably impressed by the testimony of Ganga (P.W. 4) though it felt convinced that on the day following the disappearance of the deceased he had knowledge both of the commission of the offence and of the place where the dead body was lying. That court did not rely on his testimony in regard to the extra-judicial confession because it was considered incredible. The High Court on appeal disagreed with the Trial Court in its appreciation of the evidence of P.W. 4. According to the High Court the evidence of P.W. 4 was corroborated by the evidence of P.W. 13 and P.W. 25. The extra-judicial confession was, therefore, held to be admissible and trustworthy. Before us it was contended that the extra-judicial confession said to have been made to P.W. 4 is inadmissible and in any event without corroboration in material particulars from independent source it is unsafe to act upon it. It was emphasised that P.W. 4 was at one stage of the investigation suspected of complicity in this murder and, therefore, he should be treated no better than an accomplice. In our opinion, this criticism is not justified. An unambiguous confession, if admissible in evidence, and free from suspicion suggesting its falsity, is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession the court has to be satisfied that, it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by Section 24, Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. For this purpose, the court must scrutinise all the relevant factors, such as, the person to whom the confession is made, the time and place of making it, the circumstances in which it is made and finally the actual words used. In the case in hand it is quite clear that P. W. 4 is not a person in authority. There can thus be no question of any inducement, threat or promise rendering the confession irrelevant. Nor has any confession been suggested why the appellant should have made an untrue confession to P.W. 4 within 24 hours of the disappearance of the deceased. On the other hand, the appellant appears to have been impelled by some inner urge to take the assistance of P.W. 4, his real nephew, to go to the place of occurrence to see as to what had happened to the dead body of his victim. Such behaviour cannot be considered unnatural. The confession appears to us to be free any taint which would throw suspicion on its voluntary character and it has a ring of truth in it. The fact that during the investigation P. W. 4 was suspected of being involved in the murder would also not cast any doubt on the voluntary character of the confession or on its true nature because it is the knowledge of P.W. 4 derived from this very confession which perhaps invited suspicion on him. We do not consider this to be a cogent ground for holding that P.W. 4 had any motive to concoct the story of confession. This confession is, therefore, admissible in evidence and being true, deserves to be acted upon. The words used are quite clear and admit of no doubt of the appellant's guilt. And then though the evidence of P.W. 4 does not need any corroboration we find that corroboration in material particulars forthcoming on the record. The existence of the dead body and all the other articles at the place where they were later found and the evidence of Basappa (P.W. 13) which proves the visit of the appellant and P.W. 4 to the spot on Saturday following the disappearance of the deceased furnish strong corroboration. The High Court was thus quite right in relying on the extra-judicial confession made to P.W. 4. The confession said to have been made to P.W. 31 and to Abdul Rahman (P.W. 22) stand on different footing. Both the courts below have not considered it safe to rely on these confession and we do not find any sufficient reason for disagreeing with them.

10 Reliance on behalf of the prosecution was also placed on the information given by the appellant

which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the facts discovered and, therefore, the statement conveying the information was admissible in evidence under Section 27 of the Indian Evidence Act. This information, it was argued, also lends support to the appellant's guilt. It appears to us that when P.W. 4 was suspected of complicity in this offence he would in all probability have disclosed to the police the existence of the dead body and the other articles at the place where they were actually found. Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Sections 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of case diary. It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellant's guilt. We are accordingly disinclined to take into consideration this statement.

11. The Trial Court and the High Court have also influenced by the fact that the appellant had absconded after September 1, 1967 when the police got suspicion of his complicity in this offence. It is true that the appellant did make himself scarce with effect from September 1, 1967 till he was arrested on September 5, 1967 and this conduct is relevant under section 8 of the Indian Evidence Act and might well be indicative to some extent of guilty mind. But this is not the only conclusion to which it must lead the court. Even innocent persons may, when suspected of grave crimes, be tempted to evade arrest : such is the instinct of self-preservation in an average human being. We are, therefore, not inclined to attach much significance to this conduct on the peculiar facts and circumstances of this case.

12. In this case the appellant being a pauper was provided with counsel at state expense in the Trial Court. The entire prosecution case depends on circumstantial evidence and the dead body was actually recovered in a decomposed state when it was not capable of identification. In view of these peculiar features we under took to examine the evidence ourselves, a course which this Court as a matter of settled practice, does not ordinarily adopt. We are satisfied that the evidence on the record establishes the appellant's guilt beyond reasonable doubt and the courts below were quite right in convicting him. On the question of sentence also we do not find any cogent ground for interference. This appeal fails and is dismissed.

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