

State of Maharashtra

Vs

Annappa Bandu Kavatage

Criminal Appeal No. 399 of 1976

(Syed M. Fazal Ali, A. D. Koshal JJ)

06.02.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the Bombay High Court by which the convictions of the respondent under Sections 302 and 364 of the Indian Penal Code were set aside and the respondent was convicted under Section 369 of the Indian Penal Code and sentenced to two years' rigorous imprisonment. The respondent was tried under Sections 302 and 364 before the Sessions Judge who convicted him under Section 364 and sentenced him to two year's rigorous imprisonment and under Section 302 sentenced him to death. The Sessions Judge made a reference to the High Court and the respondent filed an appeal against his conviction. The High Court after hearing counsel for the parties came to the conclusion that the circumstantial evidence relied upon by the prosecution was not sufficient to raise an irresistible inference that the respondent had committed the murder of the child-Dhanpal. The facts of the case have been detailed in the judgment of the High Court and it is not necessary to repeat the same all over again.

2. On July 26, 1974 the deceased-Dhanpal a boy of three years of age was playing in the land adjacent to the house of the respondent. Dhanpal's mother went to milk the cow. After milking the cow, Dhanpal's mother Indubai came back to her house and sent Mahavir to fetch Dhanpal as she wanted to give some milk but was told that Dhanpal had been taken away by the respondent who had said that he would give him some sweets. Thereafter, she went about her work. Some time after when she returned she found that the respondent and Dhanpal both were missing. It appears from the circumstances proved by the prosecution that the respondent had taken away Dhanpal with him and hired a cycle and then had gone to a grocer's shop and bought some sweets for the boy. Thereafter, the boy was found missing. The respondent appears to have taken away the ear-rings from the boy and they were sold in the market to PW Shaha for a sum of Rs. 35. On a search of the person of the accused Rs. 34.50 were recovered from him. The body of the deceased was recovered next day from a well situated in the field of PW Kalo. This was the evidence led against the respondent. The High Court found that although the circumstances proved against the respondent created a good deal of suspicion against the respondent, it was unable to find that the circumstances were of such a conclusive nature so as to exclude every possible hypothesis of innocence insofar as the death of the boy was concerned. It is well settled that before a court can act on circumstantial evidence the circumstances proved must be complete and of a conclusive nature so as to be fully inconsistent with the innocence of the accused and are not explainable on any other hypothesis except the guilt of the accused. It was pointed out by learned counsel for the respondent before us that even accepting all the circumstances, the possibility that after having snatched the ear-rings the respondent may have left the boy near the field, cannot be excluded. In our opinion, the contention

is well founded and must prevail. As there was sufficient interval between the death of the boy and the recovery of the body, the link in the chain of the circumstantial evidence does not appear to be fully complete. In these circumstances, therefore, we agree with the High Court that the respondent was entitled to benefit of doubt under Sections 302 and 364. However, there cannot be any doubt that the respondent had taken away the child for the purpose of snatching ear-rings, which was recovered from him and which has been accepted by the High Court. Under these circumstances, we find no merit in the appeal and which is dismissed.

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