

Syed Aleem Alias Syed Baba

Vs

State of Karnataka

Criminal Appeal No. 299 of 1975

(R. S. Sarkaria, A. C. Gupta, P. S. Kailasam, JJ )

24.07.1980

JUDGMENT

KAILASAM, J. –

1. This appeal by Syed Aleem alias Syed Baba is under Section 379, CrPC and Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the conviction and sentence imposed by a Division Bench of the High Court of Karnataka. The appellant was tried by the first Additional Sessions Judge, Bangalore for an offence under Sections 201 and 302, IPC and was acquitted. On appeal by the State of Karnataka, the High Court found the accused guilty under Sections 201 and 302 IPC and sentenced him to imprisonment for life under Section 302, IPC. No separate sentence him to imprisonment for life under Section 302, IPC. No separate sentence was passed under Section 201. The case against the accused is purely circumstantial and the question for our consideration is whether the High Court was right in holding that the circumstantial evidence adduced is sufficient to bring home the accused the charge framed against him.

2. The circumstances relied on by the prosecution are enumerated at page 138 of the paper book. The accused was employed as a driver under PW 24, the son of the deceased. It is alleged by the prosecution that the accused developed illicit intimacy with the second wife of the deceased. This was discovered and the deceased chastised the accused and drove him out of the house. The accused ran away with PW 6 but latter PW 6 was brought back to the house. The accused also came back. It is alleged that about two weeks before the occurrence, the accused came back and took the car belonging to PW 24 for repairs and painting to PWs 25 and 26 and brought it back on December 1, 1971. The accused took PW 10 the partner of the deceased PW 11, the friend of the deceased at about 10.30 p.m. and dropped PW 10 at Richmond Road and PW 11 at Malleshwaram. Later, the accused and the deceased were seen together in the car by taxi-drivers PWs 12 and 31. Early next morning, the dead body of Abdul Karim was found near Bangalore-Sarjapur Road. By the side of the dead body, M. O. 15, an iron rod which was used as tool in the car, belonging to PW 24 was found near the scene of occurrence. After the accused was arrested, he furnished the information leading to the recovery of M.O. 11, the knife stained with human blood, a watch in the shop of PW 15 which was identified with human blood, a watch in the shop of PW 15 which was identified as that of the deceased. A diamond ring M.O. 10 was also recovered on information furnished by the accused from the house of the accused.

3. We have been taken through the evidence of the witnesses who speak to the various circumstances. The learned counsel submitted that the case for the prosecution that the accused had illicit relations with PW 6 cannot be accepted, as it that were true the accused could not have been

re-entertain in service. The evidence is that the accused was not in the regular employment of PW 24 but was employed on ad hoc basis whenever his service were needed. It is clear from the evidence of PWs 25 and 26, the mechanic and the painter, that the accused took the car belonging to PW 24 to the workshop and after the work was over, took it back on December 1, 1971, the night of the occurrence. The High Court has rightly pointed out that there is no cross examination of PWs 25 and 26 challenging the fact of the accused taking the car to the garage and taking delivery of it after the job was done on December 1, 1971. Further, PWs 10 and 11 are disinterested witnesses and they speak of the accused driving the car and dropping them in their respective houses. The evidence of PWs 12 and 31 who are taxi-drivers, which has been accepted by the High Court establishes that the accused and the deceased were together at about 11 o' clock on the night of the occurrence. Early next morning, the dead body was found. On this part of the case of the prosecution, we have gone through the evidence of PWs. 25, 26, 10, 11, 12 and 31 and we have no hesitation in agreeing with the carefully considered judgment of the High Court We accept the testimony of these witnesses.

4. Next day after the occurrence, the accused came back and handed over the key in the house of PW 24. This part of the evidence was not seriously challenged. After the accused was arrested, a week after the occurrence, he gave information which led to the discovery of a diamond ring in his house and a watch in the pawn shop owned by PW 15, PW 16 who received the watch and gave the pawn ticket identified that it was the accused who gave the watch. It is significant that the signatures in the pawn ticket, Ex. 10-a, was also identified by PW 16 as that of the accused. Apart from the recovery of the diamond ring and the watch, the accused searched and produced a knife which was found to be stained with human blood. We have been taken through the evidence of the police officer and the Pawn shop witnesses PWs 15 and 16. We agree with the view taken by the High Court that the evidence of these witnesses is acceptable and the prosecution has established that soon after the death of the deceased, he was in possession of a diamond ring and the watch belonging to the deceased and possession of a diamond ring and the watch belonging to the deceased and produced a knife near the scene of the offence which was stained with human blood. In addition to these pieces of evidence, it is also proved that the iron rod which was in use in the car was found near the scene of offence that the offence was committed by making use of the car.

5. We have been taken through the judgment of the trial Court by the learned counsel with a plea that the reasons given by the trial Court should be accepted. We are satisfied that the judgment of the trial Court is vitiated by wrong appreciation of evidence of several mistakes. We are satisfied that the High Court was right in accepting the prosecution case and reversing the order of the trial court. We dismiss the appeal.

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