

Nagappa Dondiba Kalal

Vs

State of Karnataka

Criminal Appeal No. 54 of 1975

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

29.07.1980

JUDGMENT

FAZAL ALI, J. –

1. The appellant has been convicted by the High Court under Section 302 to life imprisonment and under Section 394 to five years' rigorous imprisonment. The appellant was acquitted by the Sessions Judge of the charges framed against him but in an appeal filed by the State before the High Court, the acquittal was set aside and the appellant was convicted as mentioned above.
2. The conviction of the appellant rests entirely on circumstantial evidence consisting of the recovery of some gold ornaments at the instance of the appellant.
3. We have gone through the judgment of the High Court and we find ourselves in complete agreement with the reasons given by the High Court for holding that the identity of the ornaments recovered at the instance of the appellant which belonged to the deceased Pashyabi had been fully established. It was also proved that she had been wearing these ornaments when she left the house on the night of April 10, 1973. The recoveries were made on April 13, 1973 that is to say within three days of the occurrence. PWs 7, 8, 16 and 17 who are close relations of the deceased and who had full opportunity to see her wearing these ornaments have identified the ornaments. Their evidence is further corroborated by two goldsmiths PWs 9 and 10 who had prepared these ornaments. In these circumstances therefore, the High Court was fully justified in acting on the evidence of these witnesses and in rejecting the argument of the accused that as no test identification parade was held, the identity could not be established. Taking however the evidence as it stands, there is nothing to connect the appellant with the murder of the deceased or even with any assault the accused may have committed on the deceased or having robbed her of her ornaments. At the utmost as the ornaments have been proved to be stolen property received by the appellant knowing that they were stolen property. The accused can thus be convicted on the basis of presumption under Section 114 of the Evidence Act and under Section 411 of Indian Penal Code as a receiver of stolen property knowing the same to be stolen.
4. Counsel appearing for the State submitted that as the accused had given no explanation, therefore the inference should be drawn that he must have murdered the deceased. We are however unable to draw any such inference. It is for the prosecution to prove its case affirmatively and it cannot gain any strength from the conduct of the accused in remaining silent. In these circumstances, we do not find any evidence to support the conviction of the appellant under Section 302 or under Section 394 but having regard to the evidence led by the prosecution, a case under Section 411 of IPC has been clearly made out. We therefore allow this appeal to this extent that the appellant is acquitted of the

charges under Sections 302 and 394 but is convicted of the minor offence of Section 411, IPC and sentenced to three years' rigorous imprisonment and a fine of Rs. 5000 (rupees five thousand only) - in default one year's rigorous imprisonment.

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