

State of Kerala

Vs

Chellappan Sanal Kumar

Criminal Appeal No. 237 of 1976

(A. D. Koshal, Baharul Islam JJ)

12.04.1981

JUDGMENT

KOSHAL, J. –

1. The respondent was tried by the Sessions Judge, Trivandrum for offences under Sections 302, 392, 457, 369 and 201 of the Indian Penal Code and was acquitted of the charge in its entirety. The State filed an application under Section 378 of the Code of Criminal Procedure, 1973 before the High Court of Kerala with a prayer that leave to appeal against the judgment of acquittal rendered by the trial Court be granted. The application was rejected by an order dated January 10, 1975 which is challenged in this appeal by special leave.
2. The deceased in this case is a 1 1/2 - year-old female child named Rajni who was the daughter of Rajan (PW 5) and his wife Santhanalakshmi (PW 2). The respondent Sanal Kumar is the first cousin of the said Rajan, their respective mothers being real sisters.
3. The prosecution case may be stated thus. Actuated by greed of gain the respondent went, at the dead of night to a house consisting of three rooms including the one in which the unfortunate child was sleeping with her mother. He effected ingress into the middle room after unhasping its door by means of a long batten introduced through a facing window. He then crossed into the room with the child, caught hold of her, smothered her with a piece of cloth, brought her outside the house into the open, relieved her of the gold ornaments that she was wearing and then threw her dead body into a nearby pond after tying stones to it.
4. There is no eyewitness to the occurrence and the case of the prosecution rests solely on circumstantial evidence which consists mainly of the following items :
 - (a) The respondent was on very good terms with Rajan (PW 5) just as a member of the latter's family would be and was on that account fully familiar with the place from where the child was removed and its surroundings.
 - (b) A few days prior to the occurrence Madhusoodanan (PW 7) saw the respondent coming from the said of the pond and asked him the reason for his presence there but without any satisfactory response.
 - (c) On the night of the occurrence, he was seen by Pankajakshy (PW 9) in the vicinity of the house of Rajan (PW 5) when the witness had emerged out of her own house to make water.

(d) On the morning of July 16, 1973, a letter consisting of five sheets of paper scribed by the respondent was discovered lying at the pillar of the gate which served as entrance to the house of Rajan (PW 5) and other houses. The letter contained a demand for ransom in return for the child.

(e) The respondent made confessional statements after his arrest by the police on July 19, 1973 leading to the recovery of various incriminating articles including the corpse of the deceased from the pond and the articles of which the child had been robbed.

5. All the items of evidence have been the subject-matter of analytical discussion at the hands of the trial Court in its judgment which we have been taken through by learned counsel for the appellant-State. After giving considerable attention to the reasons put forward by the learned Sessions Judge in support of his conclusion in the case of each of the above items that the same is not proved by reliable evidence and of his emphatic opinion that the story for the prosecution suffers from grave improbabilities, we find ourselves in agreement with him, especially on two aspects of the case. For one thing, we cannot accept that part of the prosecution case according to which the intruder, whoever he was, succeeded in opening the hasp of the door of the room adjoining that from which the deceased was removed. The hasp of the door is said to have been unfastened from the inside with a batten for which the point of entry was provided by the opposite window which was separated from the door by a distance of about 20 feet, and this operation is alleged to have been accomplished without disturbing two adolescent girls who were the sole occupants of that room. The story is too good to be true. Secondly, we find it hard to believe that the police would not arrest the accused on the morning of July 16, 1973 itself when the only clue against him on the basis of which he was ultimately arrested three days later was available to them on that date itself, as, according to Pankajakshy (PW 9) the fact of the accused having been seen on the night of the occurrence in the vicinity of the house of Rajan (PW 5) had been communicated by her to Santhanalakshmi (PW 2) at 6.00 a.m. on that date.

6. We do not mean to say that we do not agree with the learned Sessions Judge on any of the other findings arrived at by him. On the contrary, all his conclusions appear to us quite reasonable and we see no reason to differ from them. In this view of the matter, we need not reiterate either those findings or the reasons given by him in support thereof.

7. For the reasons stated, the appeal fails and is dismissed.

</html