

State of Kerala

Vs

Thomas Alias Bobby

Criminal Appeal No. 372 of 1976

(V. D. Tulzapurkar, Baharul Islam JJ)

16.12.1982

JUDGMENT

TULZAPURKAR, J. -

1. This appeal has been preferred by the State against the acquittal of the respondent-accused recorded by the High Court in respect of a double murder and theft said to have been committed by him on the night between January 27 and 28, 1974.
2. The prosecution case was that on January 28, 1974 at about 4.30 a.m. the respondent-accused accompanied by his brother-in-law Daniel (acquitted by the trial court) went in a taxi to the tea shop of one Joy and stabbed Joy as well as his wife Ammini by means of a knife and after committing theft of gold chain and other ornaments worn by Ammini on her person made good his escape in the same taxi and after going to the house of one Smt. Sarasamma (PW 15) sold the gold ornaments to her.
3. Admittedly, the prosecution case rested on circumstantial evidence, there being no direct evidence of any eyewitness to the crime. In addition to the circumstantial evidence an extra-judicial confession (Ex. P-12) said to have been made by the respondent-accused to the taxi driver was also relied upon. The trial court convicted the respondent-accused and sentenced him to death but acquitted his co-accused, the said Daniel. In the appeal and the confirmation case, the High Court acquitted the respondent. The State has challenged this acquittal.
4. It was not disputed before us that the trial court rested its conviction purely on two pieces of evidence (i) the extra-judicial confession said to have been made by the respondent-accused to PW 14, the taxi driver and (ii) circumstantial pieces of evidence, in particular two of them, which strongly suggested his complicity in the crime. The two circumstances were that the taxi driver (PW 14) had taken the respondent-accused along with his brother-in-law at the tea shop of the deceased in the early hours on January 28, 1974 and after the alleged dastardly crime was committed, the taxi driver carried him back to PW 15's (Smt. Sarasamma) house where he discarded incriminating articles, namely, blood-stained clothes and articles of stolen property and the other pertained to the discovery of the stolen articles at the instance of respondent-accused from PW 15. It is obvious that these two incriminating circumstances emerged on record only from the evidence of these two witnesses PW 14 (the taxi driver) and PW 15 (Smt. Sarasamma) but if the evidence of these two witnesses is not acceptable then obviously the incriminating circumstances themselves would not be proved, and the conviction merely on the basis of extra-judicial confession will be difficult to sustain. The High Court has acquitted the respondent-accused on the ground that evidence of neither of these two witnesses was credible or acceptable. What was urged on behalf of the State before us

was that the High Court was wrong in not accepting the evidence of these two witnesses which establish the incriminating circumstances against the respondent-accused. We will examine this contention presently.

5. Turning to the evidence of PW 14, the taxi driver, it cannot be disputed that on his own showing he would be an accomplice and, therefore, his evidence cannot be accepted unless it receives independent corroboration. True, when the taxi driver took the respondent-accused in his taxi to the locality where the tea shop of deceased Joy was situated it would be an innocent trip but when the respondent-accused returned back to his taxi with all his body and clothes stained with blood there was every reason for him to suspect that there was something amiss and particularly when the respondent-accused on the return journey tried to change his clothes and later on disposed of those articles by going to the house of PW 15, he surely became an accomplice in the offences committed by the respondent-accused. Actually, the prosecution has relied upon the extra-judicial confession said to have been made by the respondent-accused to this witness when he entered the taxi after committing the crime. In helping the respondent-accused to escape after the commission of the crime PW 14 could be said to have become particeps criminis after the event and as such his evidence would require some independent corroboration before it can be accepted and the important corroborative evidence that was sought to be relied upon by the prosecution was the trip-sheets (which we are informed are in the nature of log-books) produced on record showing the movement of the taxi from place to place, distance travelled and the consumption of petrol, etc. But unfortunately, the trip-sheets themselves are not free from doubt because they are in loose sheets and not in any bound book which ordinarily an owner of the taxi is supposed to maintain. The High Court was unable to rely upon these trip-sheets as corroborative evidence. The witness's subsequent conduct in keeping mum about the incident and about his carrying the accused-respondent to the tea shop of the deceased and carrying him back to the house of PW 15 and not disclosing anything to anyone for quite a few days till he was contacted by the police also assumes significance. In the circumstances we cannot say that the High Court was wrong in not accepting the evidence of PW 14 for want of independent corroboration.

6. As regards the evidence of discovery of ornaments, which were worn by the deceased on her person and which were said to have been recovered from Smt. Sarasamma (PW 15) at the instance of the respondent-accused, the High Court felt that the ornaments were commonplace articles like some small gold chain with locket, etc. which would be commonly available in the market and that the identification of such articles by the father of the deceased woman and other relatives in the absence of any peculiarity or characteristic of these ornaments could not be relied upon. It is not possible to accept this part of the reasoning of the High Court; in the first place the availability of such articles in the market would have relevance if those articles had been claimed by respondent-accused or by Smt. Sarasamma as their own and secondly the father's evidence about the identity of these ornaments as having been presented by him to her deceased daughter at the time of her marriage may be difficult to reject. But from the material on record relating to this discovery we find that the same has not been properly proved by the prosecution as discovery of the ornaments at the instance of the accused purely rests upon the evidence of police officer. We may mention that the alleged statement of the respondent-accused which is said to have been made by him leading to such discovery as well as the alleged actual recovery are said to have been witnessed by two independent Panch witnesses. But, unfortunately neither of the Panch witnesses was examined by the prosecution at the trial. In the absence of such independent evidence which could have been made available and which could have been placed before the Court in support of the alleged discovery of the ornaments it will be difficult to accept such discovery merely relying upon the evidence of the police officer. PW 15 has been found to be otherwise unreliable. If this evidence of

discovery of ornaments is eliminated or becomes doubtful and cannot be accepted for want of independent evidence of Panches the complicity of the respondent-accused in the crime becomes extremely difficult to accept.

7. The evidence of extra-judicial confession obviously depends upon the acceptability of the evidence of PW 4 which, as we have indicated earlier, is difficult to accept for want of independent corroboration. It is obvious that if his evidence that he carried the respondent-accused in his taxi to the shop of the deceased Joy is unacceptable then obviously there will be no occasion for extra-judicial confession made by the respondent-accused to the taxi driver.

8. In the result we feel that this is not a case where we should interfere with the order of acquittal of the respondent-accused recorded by the High Court. The appeal is dismissed.

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