

State of Karnataka

Vs

Deja K. Shetty

Criminal Appeal No. 588 of 1983

(Kuldip Singh, B. P. Jeevan Reddy JJ)

15.05.1992

JUDGMENT

KULDIP SINGH, J. –

1. Deja K. Shetty was tried for the offences punishable under Sections 302 and 392 Indian Penal Code. The trial court convicted him on both the counts and sentenced him to undergo imprisonment for life and rigorous imprisonment for five years respectively. The appeal filed by him was allowed by the High Court, the conviction and sentence of Shetty was set aside and he was acquitted of both the charges. This is State appeal against acquittal.

2. The prosecution case in a nutshell is as under.

3. Vasanthi-deceased was the daughter of Sesha Shetty PW 8. She along with her son was living with her father in a portion of the family house in village Gurupura. Mohini PW 10 who was Vasanthi's mother's elder sister's daughter, along with her husband and son, was living in another portion of the same house. The remaining portion of the house was occupied by Rathna PW 12 who was Vasanthi's mother's younger sister's daughter. Vasanthi was living in the said portion of the house along with her husband Babu Shetty. The respondent-accused is the younger brother of Rathna PW 12. Vasanthi-deceased was thus a cousin sister to the respondent-accused as she was his mother's sister's daughter. The accused was residing with his wife and children at Mangalore. According to Sesha Shetty PW 8 the accused had come to their house near about December 15, 1980 and at that time his daughter Vasanthi told him that the accused had asked her to accompany him to Mangalore so that she could go for pilgrimage along with his wife. He further stated that on December 24, 1980 Vasanthi told him that she was going to Mangalore and would return the same day or the next day. Raveendra PW 9, Mohini PW 10, Shyamala PW 11, Rathna PW 12 and Ramani PW 17 corroborated the version of Sesha Shetty PW 8. Mohini PW 10 further stated that the deceased borrowed her purse (vanity bag) and at the time of leaving for Mangalore she was wearing rose-coloured sari, a white blouse, four rolled gold bangles, two gold bangles, a ring in her finger, a necklace and two ear-rings. Shyamala PW 11 stated that the deceased had borrowed her ring at the time of leaving for Mangalore. Rathna PW 12 deposed that the deceased borrowed two gold bangles and a chain from her with the promise that she would return the same after return from Mangalore. These witnesses further deposed that Vasanthi-deceased did not return back from Mangalore.

4. The prosecution story further is that the accused and the deceased travelled in a bus from Mangalore to Mysore where they reached on the morning of December 25, 1980. Rama PW 6, a coolie, took them to a motel called Modern Lodge. The accused hired room No. 5 from Nataraj PW 2, the manager. The accused paid Rs 60 as advance and made the necessary entries in the register

Ex. P-2. He signed the register and gave his address. Receipt Ex. P-3 was issued to the accused by the manager. Gopal, CW 3 was the room-boy at that time. He served tea to the accused and deceased. By 9.00 a.m. Ramachandra PW 7 came and took charge from Gopal. PW 7 stated that he brought chicken-fry and two chapathies from another hotel for the accused and the deceased. Rukmangada PW 3 another manager took charge of the Modern Lodge from PW 2 at about 9.00 a.m. Vedaprakash PW 4 was the supervisor of the lodge. According to these witnesses the accused had left the room at about 12.00 noon and had not returned. The motel employees suspected some foul-play and as such they informed Dharma Prakash PW 1, the proprietor of the motel who further informed the police as a result of which Mahadeveviah PW 26, Head Constable in charge of the concerned police station came at about 10.30 p.m. Dead body of a woman was found lying on the cot. She was later on identified to be Vasanthi-deceased. A case was registered, investigated and the respondent-accused was charged with the murder of Vasanthi-deceased.

5. As a result of voluntary statement made by the accused various articles of gold worn by the deceased, were recovered. The accused led the police to the shop of Ganapathacher PW 18, a goldsmith who admitted that the accused had sold gold chain and bangles to him but he produced only the gold ingot stating that he had melted the bangles and the chain.

6. The evidence produced at the trial against the respondent-accused can be divided as under :

(a) The statements of PW 8 to PW 12 and PW 17 which prove beyond reasonable doubt that Vasanthi-deceased left her residential house for Mangalore on December 24, 1980 along with the respondent-accused. Some of these witnesses also identified the jewellery taken from them by the deceased and recovered from the accused.

(b) The evidence of Rama PW 6, the coolie, who took them to the Modern Lodge.

(c) The evidence of hotel employees specially the manager PW 2 and the room boys CW 3 and PW 7. The presence of the accused in room No. 5 of the hotel along with the deceased is proved by these witnesses. These witnesses further stated that the accused left the hotel alone and did not return.

(d) The disclosure statement by the accused and recovery of various articles as a result of said disclosure.

(e) The statement of Ganapathacher PW 18, the goldsmith. PW 18 deposed that the respondent-accused sold the gold ornaments to him.

7. The High Court rejected the testimony of PW 8 to PW 12 and PW 17 without any justification and in a perverse manner. We have been taken through the statements of these witnesses. They are related to respondent-accused. There is no reason whatsoever for these witnesses to falsely implicate the respondent-accused. The High Court rejected their testimony on the ground that there was discrepancy in the statements of PW 8 and PW 17. According to the High Court the deceased told her father PW 8 that she was going on pilgrimage along with the accused whereas she told PW 17 that she was accompanying the accused for the purposes of seeing a girl for the son of a friend of the accused. The High Court was not justified in doing so. All the six witnesses have categorically stated that the deceased told them that she was going with the respondent-accused to Mangalore. Even if there is minor discrepancy in the statements of PW 8 and PW 17 in regard to the reasons for which she was going with the accused, that is no ground to disbelieve the statements of all the six

witnesses. In any case by telling her old father that she was going on pilgrimage she might have thought that she would have no difficulty in getting his permission. We are, therefore, of the view that the High Court was not justified in rejecting the circumstance brought out from the evidence of these witnesses to the effect that deceased told them that she was going with the accused.

8. PW 6 is the coolie who brought the luggage from the bus-stop to the Modern Lodge. He was also acting as a broker. He used to get commission for every customer he was bringing to the motel. It is no doubt correct that no test identification-parade was held but in our view it was not necessary in this case. PW 6 accompanied the accused and the deceased to the motel and thereafter remained in the motel till the time the accused had paid Rs 60 to the manager and out of the said amount PW 6 had received his commission. We are of the view that PW 6 had seen the accused for enough time to remember his face to be able to identify him later in the court. The High Court was not justified in rejecting the testimony of PW 6 on the ground that no test identification parade was done. PW 2 was the hotel manager. He made entries in the register and got the signatures of the accused. He received the advanced amount and issued receipt to the accused. The High Court disbelieved his evidence on the ground that he stated at the trial that he could identify the accused because he was having three cut fingers in his right hand and was having cat's eye. According to the High Court PW 2 gave improved version for identifying the accused. The High Court rejected the evidence of CW 3 and PW 7 the room-boys on the ground that no test identification parade was done to enable them to identify the accused in the jail. CW 3 served tea to the accused and the deceased. PW 7 brought one chicken-curry and two chapathies at the asking of the accused. He also saw the accused at about 11.30/12.00 noon when he was coming out of the room. The accused had told him to get food into the room around 2.30 p.m. These witnesses served the accused while he was occupying room No. 5 in the Modern Lodge. It is reasonably probable that they would remember his identity, specially when his companion who was also served by them was found murdered in the same room. The High Court in our view grossly erred in rejecting their testimony.

9. The statement of PW 18 proves the case beyond reasonable doubt against the accused. His examination-in-chief is as under :

"I know the accused for the last past 15 years, about 2 or 4 years back, for a period of 2 years, the accused was working as salesman in shop which is below my shop. I am a goldsmith. On January 2, 1981, about 9 a.m., the accused came to my shop and asked me to purchase a pair of gold bangles, and a gold chain, which is adjustable. He told me that he needs money to start a shop, therefore, I should purchase them. I weighed the ornaments they weighed 37 grams, and 400 m. grams. I purchased the ornaments for Rs 5,465 at the rate of Rs 1,110 for sovereign for 100 gms. I did not obtain any receipt. This answer is elicited by the court. On the next day, I melted the above ornaments. On January 5, 1981, at about 5 p.m. the Mysore police, and Mangalore police brought the accused to my shop. The accused asked me to give back the chain, the bangles sold to him. I told the accused that I have melted them. I also showed the ingot to him. Thereafter the police wrote a mahazar, seized the gold, I had signed the mahazar."

In the cross-examination he stated that he did not have any record of the payment made to the accused. He further stated that he did not maintain the accounts for the purpose of income tax as he had not employed any other worker. The High Court rejected the evidence of PW 18 on the ground that he did not produce any receipt nor any entry evidencing the payment of Rs 5,465 to the accused. We do not agree with the High Court. A person who acquires jewellery under the given

circumstances would never ask for receipt. There is no reason whatsoever for the goldsmith to falsely implicate the respondent-accused specially by surrendering from his own person the gold ingot which was worth Rs 5,465.

10. The High Court has rejected the evidence of the recovery witness PW 23 on the ground that according to PW 29 and PW 23 the recovery was made on January 5, 1981 and on the other hand, PW 9 has stated that the things recovered were shown to him on January 2, 1981. The High Court, therefore, came to the conclusion that the evidence of PW 9 rendered the recovery at the instance of the accused as suspect. We do not agree. It is not disputed that the accused was arrested by the police on January 4, 1981. Therefore, there was no question of there being any recovery prior to that date. We have been taken through the statement of PW 9. The High Court has misread the said statement. The witness has categorically stated that MOs 10 and 11 were shown to her on January 5, 1981 and not on January 2, 1981.

11. We, therefore, allow the appeal, set aside the High Court judgment and restore the judgment of the trial court. The respondent shall serve the sentence of life imprisonment and other sentence as awarded by the trial court. He shall surrender to his bail bounds and undergo the sentence.

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