

Union Territory of Goa

Vs

Boaventura D'Souza and another

Criminal Appeal No. 770 of 1985

(K. Jayachandra Reddy, G. N. Ray JJ)

18.08.1992

JUDGMENT

1. This appeal pursuant to the leave granted by this Court is directed against the judgment of High Court of Bombay acquitting the two respondents.
2. The two respondents were tried for offences punishable under Ss. 460, 302, 307 and 397 read with Section 34 of the Indian Penal Code. It is alleged that on the intervening night of 3rd and 4th September, 1980 the accused committed the murder of Filemena Pareira and Mary Lobo and committed robbery by stealing the articles belonging to the deceased persons. It is also further alleged that during the one of them caused injury to Clera Pareira P.W. 24. The case rested mainly on the circumstantial evidence. The main circumstance is the recovery of the articles alleged to have been made at the instance of the accused. The trial Court appears to have mainly relied on the alleged recovery and presumption that the accused must have committed the murder and committed the robbery since they did not give any explanation for the stolen property.
3. The High Court in its detailed judgment considered the entire evidence in respect of all the circumstances and held that the prosecution has not established the guilt of the accused beyond all reasonable doubt.

The prosecution case is as follows :

Inacio Pareira is the resident of Cenra (sic) a village situated on the outskirts of Panaji in Goa. Filemena Pariera, the deceased was his wife. They had three daughters and a son. Clera Pareira P.W. 24 aged eight years was staying along with her mother. At the relevant time, rest of the children were out of the said village. The other deceased Mary Lobo was residing in a neighbouring house and she used to sleep in the house of Filemena Pariera during night. The accused No. 2 Johny was related to Filemena Pariera. He used to visit the house now and then. Accused Nos. 1 and 2 got their residential houses in the nearby hamlet and they were closed friends. Everyday accused No. 1 Kistu after his dinner used to go to the house of Johny and used to sleep there. According to the prosecution, both the accused decided to commit the murder with a view to rob the deceased. Taking advantage of the fact that the deceased Filemena Pariera was very much fond of fish. On the night of 3rd September, 1980 for the dinner, A-2 offered fish to the deceased and stayed there for the night. The two deceased ladies and P.W. 24 slept in another room. The further case is that during the night A-2 facilitated A-1 to enter the house and thereafter both the accused committed the murder of these two ladies. After committing the murder

accused escaped after ransacking the valuable articles like golden ornaments, cameras etc. The next morning i.e. on 4th September, 1980 the milkman came to the house of the deceased and since he did not get any response he peeped into the house. By then a fisher-woman P.W. 15 also reached the house and they saw that the two ladies were lying in a pool of blood. They raised an alarm. P.W. 1 who happened to be there gave the report to the police. P.W. 24 was seriously injured and was also treated for her injuries. The police arrested the accused on 3-10-80 i.e. one month after the occurrence. It is alleged that pursuant to the statements the police recovered various articles said to be belonging to the deceased. The doctor who conducted the post-mortem on the two dead bodies found injuries and opined that they died because of the injuries. On P.W. 24 the doctor who examined found some bleeding injuries.

4. The case rests on the circumstantial evidence. Circumstances relied upon by the trial Court are:

- (i) Both accused were close friends and accused No. 1 used to go to the house of A-2;
- (ii) On 3-9-80 both accused were found in the vicinity of the house of the deceased;
- (iii) Both accused went to a brook and caught a fish and thereafter went to the house of the deceased to offer fish;
- (iv) After dinner at the house of the deceased A-2 overnight stayed;
- (v) During the said night the two deceased were hale and hearty;
- (vi) The accused No. 1 was seen moving in the vicinity;
- (vii) A-2 facilitated the entry of A-1 and
- (viii) Recovery of various incriminating articles including the golden ornaments and other valuables was effected at the instance of the accused.

5. It is not in dispute that the two ladies were done to death on that fateful night. P.W. 24 who was the third person in the house also received injuries but she did not implicate anyone of the accused. That robbery was committed in the house was not in dispute. During the trial the accused denied the offence and claimed that they have been falsely implicated.

6. Now coming at this background we shall examine whether the prosecution has established each circumstance by an independent evidence and whether circumstances so established form a complete chain so as to bring home the guilt of the- accused without giving room to any other hypothesis and whether the circumstances, if accepted, are consistent only with their guilt and inconsistent with their innocence. The prosecution has examined several witnesses and they were grouped into six groups:

- (i) to speak about the close friendship;
 - (ii) to speak about the circumstances that the accused at the relevant time were moving in the vicinity;
 - (iii) to speak about A-2 after taking dinner and overnight staying;
 - (iv) to speak about the discovery of various incriminating articles as well as the valuable articles;
 - (v) to speak about the death of the deceased namely the medical evidence and
 - (vi) lastly the investigating officer.
- The Division Bench of the High Court has considered in detail the evidence of the witnesses speaking about each one of the circumstances. So far as friendship is concerned, the High Court has rightly held that the same does not advance the prosecution case. The next circumstance that the accused was moving in the vicinity also is not in doubt. The High Court has given detailed reasons and has observed that the overnight stay of A-2 is doubtful. Then we have to examine the evidence of P.W. 24 whose presence in the house cannot be doubted. She is a girl of eight years and she also received injuries. We have examined her evidence carefully and she did not implicate any one of the accused.

7. The trial Court in doubt put some questions regarding overnight stay of A-2 and the High Court has rightly commented. that such questions ought not to have been put to the witnesses. We are left with the main circumstance namely, the recovery of the articles at the instance of the accused, The prosecution has examined P.W. 8 who is an independent witness and who speaks about the recovery, but it must be borne in mind that this recovery admittedly was effected one month after the occurrence. From this alone it is difficult to hold that the two accused who were found in possession of the stolen property could be held to be responsible for the murder.

8. It is only in this context the Courts have to be careful. Suspicion, however, strong cannot take place of the proof. As already pointed out the learned Sessions Judge drew a presumption that since the accused did not give any explanation for the possession of the stolen articles then it must be so presumed that they committed the murder also. This finding to the extent it goes against the accused does not stand scrutiny in the eye of law. Unless there is something else to show that the accused alone were in the company of the deceased and in the absence of any explanation then perhaps a presumption can be drawn but even that depends upon the facts and the circumstances of each case. The illustration of S. 114 (a) of the Evidence Act is to the effect "that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession". No doubt in some given cases the presumption is further extended to the extent by holding such person committed the offence of murder also. In this case, we are satisfied that there are no such circumstances to connect the accused with the murder. The only presumption that can be drawn by the application of Sec. 114(a) of the Evidence Act would be to the extent by holding them guilty under Section 411, I. P.C. and that is to say that they have not explained the possession of stolen property. In the result, we confirm the acquittal of the two respondents in respect of all the charges but for the reasons stated above we convict them under Section 411, I.P.C. Each of the respondents is sentenced to undergo Rigorous Imprisonment for one year. The appeal is disposed of accordingly. Order accordingly.

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