Babuda

Vs

State of Rajasthan

Criminal Appeal No. 74 of 1983

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

28.08.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. The sole accused in the case is the appellant herein. He was tried for offences punishable under Ss. 302, 307, 380 and 460, IPC by the learned Sessions Judge, Jalore. He was sentenced to death under S. 302, IPC. He was also sentenced under S. 307, IPC to undergo 10 years R.I. and to pay afine of Rs. 2,000/-in default of payment of which to undergo 3 years R.I. under S. 380, IPC to 5 years R.I. and to pay a fine of Rs. 1,000/- in default of payment of which to undergo 2 years R. I. and under S. 460, IPC to 10 years R.I. and to pay a fine of Rs. 2,000/- in default of payment of which to undergo 3 years R.I. The sentences other than death were ordered to run concurrently. The learned Sessions Judge made a reference for confirmation of death sentence and the accused also preferred an appeal against the convictions and s6ntences and they were disposed of by a common judgment by the High Court. The death sentence was reduced to imprisonment for life by the High Court and other convictions and sentences were confirmed. Hence the present appeal.

2. The prosecution case is that on the intervening night of 13th and 14th July, 1980 the deceased Manshaji and his wife Smt. Gangadevi P.W. 2 were sleeping in the chowk of their house. P.W. 18 Pukhraj, son of the deceased Manshaji and his wife Smt. Phau, P.W. 1 were sleeping upstairs. At about 1 a. m. in the night the deceased raised alarm "Chor Chor'. Thereupon, Smt. Gangadevi, P.W. 2 got up and saw her husband and the thief grappling with each other. The thief who was armed with a sword, inflicted injuries on the head and on other parts of the body of the deceased. Then P, W. 2 went near the thief and she was also inflicted blows with sword. The deceased fell down and became unconscious. P.W. 18 and his wife P.W. 1 on hearing the alarm came down. The thief had already run away before they came down. The villagers also gathered later. On verification it was found that the thief had stolen some silver karas. P.W. 18 went to the police station and gave a report. S.H.O., P.W. 30 sent the same for registration to the Police Station and the crime was registered and investigation commenced. Inquest was held and the dead body was sent for postmortem. The doctor, P.W. 20 who conducted the postmortem, opined that the deceased died because of the injuries found on him. S.H.O. seized certain articles at the scene of occurrence. He recovered a bag which contained shocs and pieces of towels. He learnt that a person by name Babuda (the appellant before us bears the same name) used to move about tying red chundari turban with a sword having a black sheath and a piece of towel tied to that sheath. The Investigating Officer enquired about his movements. He learnt that Babuda was involved in a case in the Court of Bhininal and that he did not attend the court as he was an under-trial accused. He made investigation

from jail officials and gathered some information about his clothes. Then he got identified all the clothes recovered from the spot and came to know that Babuda was a historysheeter. The S. H.O. alerted all police stations. He seized a sword said to have been deposited at the police station by one Sattar. He arrested the appellant Babuda on 1-9-80 nearly I- 1 1/2 months after the occurrence and on information given by him that he sold silver karas to one Shesh Ram Sunar (Pawn Broker), P.W. 15, he went to P.W. 15 and recovered silver karas articles 1, 2, 3 and 4. When the accused was arrested he also recovered a sword with a black sheath. Articles 1, 2, 3 and 4 were identified as belonging to the deceased. After completion of the investigation charge-sheet was laid. The prosecution examined 32 witnesses who spoke about various circumstances. The accused pleaded not guilty and stated that he was arrested and implicated falsely. Both the courts below observed that the case rested on the following circumstances:

> "(1) The accused was found wearing red chundari turban with a sword having black sheath near to the place of occurrence.
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> (2) The accused left his turban and black sheath on the spot.
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> (3) The accused committed theft of the four silver karas of Mst. Phau, P.W. 1, which he had to sold to Sheshmal Sugar of Sheoganj.
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> (4) The clothes of the accused were recovered on the next morning from near the place of occurrence which were identified by the jail officials on 24-7-80 to be that of the accused.
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> (5) The accused was seen with a naked sword which was handed over to Sattar, P.W. 10 in a red velvet sheath which was sold by P.W. 21 Pyarelal and the Patta of which was prepared by Ganpat P.W. 22."

3. It was held by both the courts below that these circumstances particularly the circumstance namely the recovery of silver karas identified as belonging to the deceased established the guilt of the accused. The High Court held that the prosecution has failed to prove that the turban and the black sheath were of the accused. The High Court has also held that the general evidence that the accused used to wear a red chundari turban and used to have a sword with a black sheath is of no help to the prosecution. The High Court also pointed out that the Investigation Officer has - recovered two swords and thus a discrepancy has crept in. This second circumstance was eschewed. The High Court relied on the other circumstances and held that they form a complete chain and bring home the guilt to the accused. We may point out here that the main circumstance relied upon by the High Court was the recovery of the silver karas.

4. It is a case of circumstantial evidence and it is well-settled that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving room to any other hypothesis and should be consistent with his guilt and inconsistent with his innocence. When the second circumstance of those mentioned above is eschewed then the remaining circumstances, in our view, are not sufficient to establish the guilt of the appellant. The fourth circumstance namely that the alleged recovery of the clothes of the accused next morning from near the place of occurrence which were identified by jail officials, also appears to be suspicious and untrustworthy. First of all if he was out of jail and moving about it is highly unnatural for him to wear the same clothes and it is highly doubtful whether the jail officials would remember the type of clothes he was wearing when he was in jail some time ago. Then we

are left with the recovery of silver karas which was effected after nearly 1-11/2 months from P.W. 15 to whom the accused is alleged to have sold the silver karas. P.W. 15 deposed that he knew the accused and that on 16th July, 1980 he came to his shop in the morning and sold those articles 1, 2, 3 and 4 and he has entered the same in his account book Ex. P. 16. On 3-9-80 the police came along with the accused on his shop and recovered those articles. First of all these recoveries were made after a long time. P.W. 15 admitted in cross-examination that he has not noted the brand of the silver . . karas and that he has not melted these pairs in the same form. He has also admitted that he has not noted the weight. He also admitted that at that time there was no other old pair in the safe. When confronted as to how he could give the weight he said that by relying on his memory he gave the weight of the articles. We find his evidence artificial. Even otherwise mere recovery of articles after such a long time, cannot be a clinching circumstance to hold that the person who came into possession of these articles could be the murderer. P.W. 15 himself stated that the accused told him that the silver karas belonged to his wife. Therefore there is any amount of suspicion about the recovery of these silver karas. Even otherwise in our view mere recovery does not establish the guilt of the accused, when there is no other clinching evidence particularly about his presence in the house of the deceased when the occurrence took place. On mere suspicion, however strong, the conviction cannot be based. In the result the convictions and sentences awarded to the appellant are set aside. If the appellant is in jail he shall be set at liberty forthwith. The appeal is allowed accordingly.

Appeal allowed.

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