

Mukund Alias Kundu Mishra and Another

Vs

State of M. P.

Criminal Appeals Nos. 676-677 of 1996

(S. Saghir Ahmed, M. K. Makherjee JJ)

02.05.1997

JUDGMENT

M. K. MUKHERJEE, J. –

Mukund Kundu Mishra and Deva Dev Kumar, the appellants before us, were put up for trial before the IIIrd Additional Sessions Judge, Bilaspur, to answer charges under Sections 449, 394/397 and 302/34 IPC. The charges were based on the allegations that in the night intervening 17-1-1994 and 18-1-1994 they trespassed into the residential house of Anuj Prasad Dubey, committed murders of his wife and their two children and looted their ornaments, other valuable articles and cash. On conclusion of the trial the learned Judge found them guilty of all the above charges and accordingly convicted them. For the conviction under Sections 302/34 IPC both of them were sentenced to death and, for the other a convictions, to different terms of rigorous imprisonment. Against their convictions and sentences they preferred individual appeals which were heard by the High Court along with the reference made by the learned Judge under Section 366 CrPC. In disposing of them by a common judgment the High Court dismissed their appeals and confirmed the death sentences. Hence these appeals by special leave;

2. The case of the prosecution, briefly stated, is as under :

(a) Anuj Prasad Dubey along with his wife Santa Dubey, daughter Jyoti (aged about 6 years) and son Deepak (aged about 4 years) used to reside at Panchwati Colony in the town of Bilaspur. However, at the material time Anuj Prasad Dubey (PW 9) was in Bombay in connection with his business. Sohan Lal Dixit (PW 1), Kumari Shraddha Dixit (PW 6), Dr. Awadhesh Kumar Singh (PW 7), and Smt. Shailja Singh (PW 8) were, amongst others, neighbors of Anuj Prasad. The appellant Mukund happens to be the son-in-law of one Santosh Dubey, a cousin of Anuj Prasad and he was also a resident of the same town. In view of the above relationship, Mukund used to visit the house of Anuj Prasad even when he was out of station in connection with his business.

(b) About 7 or 8 months prior to the incident with which we are concerned in these appeals Mukund had taken a loan of Rs. 10,000 from Anuj Prasad assuring repayment thereof within a week. On his failure to keep the promise Anuj Prasad approached Santosh Dubey and he repaid the loan after about three months. Three months later Mukund demanded another sum of Rs. 10,000 from Santosh Dubey but as he declined to pay, Mukund started pestering Anuj Prasad. Mukund used to tell Anuj Prasad that either he should accommodate him or persuade Santosh Dubey to

do so.

(c) In the evening of 17-1-1994 Shauja went to the house of Dubeys and after having a cup of tea there when she left, Sarita, as was her wont, locked up her compound gate.

(d) On the following day, that is 18-1-1994, at about 12 noon Shailja called one bangle-seller to purchase some bangles. Expecting that Sarita might also be interested in purchasing bangles, she sent a girl to call her. The girl came back and reported that Santa could not be found in the drawing room or in the courtyard. Shailja then went to the house of Sarita and entering her bedroom found her lying dead on the floor with hands and legs tied with a coir strip and the two children lying dead on the bed. She further found household articles lying scattered all around the room and the steel almirah open. Immediately thereupon Shailja came out of the house screaming and called the neighbours including Dr. Awadhesh Singh who rushed to the spot. Dr. Singh then sent a message to Anuj Prasad at Bombay and thereafter went to Sarkanda Police Station and lodged an information.

(e) On that information (Ext. P-26) Shri R. K. Roy, Station In-charge registered a case and took up investigation. He went to the house of Dubeys along with other police officers, a photographer and a scientist of Forensic Science Laboratory (FSL) Department. After holding inquest upon the three dead bodies found there he sent them for post-mortem examination. He seized a number of articles from the spot including broken pieces of bangles and mangalsutras, one button and one plastic ornament box with "Ajay Kumar Shah" printed thereon as the owner of the shop which sold it.

(f) In the night that followed both the appellants were arrested and interrogated. Pursuant to the statement made by Mukund the Investigating Officer recovered and seized some gold and silver ornaments and a knife from his house. Besides he seized a woollen sweater from his house of which two buttons were found missing. Thereafter the house of the other appellant Deva was searched and some currency notes were recovered. Pursuant to his statement, one polythene bag containing some silver and gold articles, ornaments and a lady's wristwatch were recovered from beneath some earth in the house. He also produced a dagger (bhujali) and some clothes which were all bloodstained. Since both the appellants were found to have some injuries on their persons they were thereafter sent for medical examination.

(g) In course of investigation identification proceedings in respect of the articles recovered from the house of the appellants were conducted by Shri M. L. Sisodia, (PW 16) Executive Magistrate and those articles were identified to be those of Santa.

(h) On receipt of the report of FSL and completion of investigation the police submitted charge-sheet against the appellants.

3. The appellants pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated.

4. That Santa and her two children met with homicidal death as alleged by the prosecution stands

proved by overwhelming evidence on record. Apart from the evidence of the neighbours of Dubey, namely, Sohan Lal Dixit (PW 1), Kumari Shraddha Dixit (PW 6), Dr. Awadhesh Kumar Singh (PW 7) and Smt. Shailja Singh (PW 8), who testified about having seen the three members of the family lying dead with injuries on their persons in the afternoon of 18-1-1994, there is the evidence of Mr. R. K. Rai (PW 11), the Investigating Officer who held inquest and Dr. S. K. Chandel (PW 3), who held the autopsies. The doctor found an incised wound on the neck of Santa with all the vessels cut; multiple bruises on the throat of Jyoti with hyoid bone fractured; and an incised wound in the middle of the front portion of the neck of Deepak. He opined that all the injuries he found on the persons of the three deceased were ante-mortem and homicidal in nature. Indeed, we find this part of the prosecution case was not seriously challenged during the trial.

5. In the absence of any eyewitness to prove the complicity of the appellants in the commission of the offences alleged against them including the above murders, the prosecution rested its case on circumstantial evidence. The circumstances alleged against Mukund are as under;

- (a) Mukund used to remain indebted and short of funds;
- (b) He was the son-in-law of the cousin of Anuj Prasad Dubey and was on visiting terms with the Dubey family. Even in absence of Anuj Prasad he used to meet Sarita;
- (c) Being very conscious of her own safety and security as also of her children Santa used to lock the channel gate fixed in the compound wall of her house, in the early hours of the night daily and would not open it unless and until she was assured that the person intending to enter was known to her. On the date of the incident also she had locked the gate;
- (d) No marks of forcible entry into the house were noticed on the gate which indicated that the miscreant/miscreants were known to Sarita;
- (e) A button was found lying on the spot, the colour, design and physical quality of which was similar to the buttons that were found stitched in the woollen sweater (jacket) seized from the house of Mukund. Besides two buttons which were stitched on the upper side of the sweater were found missing;
- (f) Soon after the incident - on 19-1-1994 to be precise - a number of articles including ornaments belonging to Sarita were recovered at the instance of and from the possession of Mukund;
- (g) The clothes and the dagger seized from the possession of accused Mukund as well as his nail cuttings were found to be stained with blood; and
- (h) At the time of arrest injuries were found on the person of Mukund which could have been caused by the victim while defending his/her person.

6. As against the other appellant Deva, the prosecution relied upon the following circumstances :

- (a) Two persons were seen in the vicinity of the house of Dubey in the evening of 17-1-1994 with cycles and, of them one entered inside the house of Dubey while the other stood nearby;

(b) Injuries were found on the person of Deva which could have been caused by teeth bite and also by human nails and he failed to give any explanation as to how he sustained those injuries;

(c) Soon after the incident, valuable properties belonging to Sarita including her wristwatch were recovered from Deva;

(d) Blood was found on the bhujali seized from him and also on the cuttings of the nails.

7. Another circumstance which proved joint participation of both the appellants in commission of the crimes was the manner in which looted properties were distributed between them.

8. On consideration of the evidence adduced during trial the learned Judge held that the prosecution succeeded in proving each of the above circumstances and, as according to him, the circumstances so proved unerringly pointed to the guilt of the appellants convicted and sentenced them in the manner stated earlier. In appeal the High Court concurred with each of the findings recorded by the trial court.

9. Mr. Jain, appearing for the appellants, firstly contended that the prosecution failed to establish that any incriminating article was recovered from the respective houses of the appellants, far less, that it was stolen at the time of the murders. We are not impressed by this contention of Mr. Jain for on perusal of the record we find that both the courts below have discussed in detail the entire evidence adduced by the prosecution and given cogent and convincing reasons for accepting the same. Having gone through the evidence we are constrained to say that no other reasonable view of it could have been taken. Mr. Jain next submitted that even if it was assumed that the articles stolen from the house of Dubey were recovered from the appellants it could at best be said that they committed the offence under Section 411 IPC but not the offences for which they stood convicted. We do not find any in this submission of Mr. Jain also. If in a given case - as the present one - the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder. In drawing the above conclusion we have drawn sustenance from the judgment of this Court in *Gulab Chand v. State of M. P.* ((1995) 3 SCC 574 : 1995 SCC (Cri) 552) We hasten to add that the other incriminating circumstances detailed earlier reinforce the above conclusions, rightly drawn by the courts below. We therefore find no hesitation in upholding the convictions as recorded by the trial court and affirmed by the High Court.

10. That brings us to the last contention of Mr. Jain that in any case the applicants did not deserve the sentence of death. From the judgments of the courts below we notice that in awarding the death sentence the trial court and in confirming the same the High Court were considerably moved by the facts that the victims were helpless and innocent and that the appellants committed the gruesome murders for some gain. While there cannot be any manner of doubt that the murders were ghastly and in committing them Mukund betrayed his trust we did not think this case to be one of the "rarest of rare cases" as exemplified in *Bachan Singh State of Punjab* ((1980) 2 SCC 684 : 1980 SCC (Cri) 580) and *Machhi Singh v. State of Punjab* ((1983) 3 SCC 470 : 1983 SCC (Cri) 681). We, therefore, commute the sentence of death imposed upon the appellants for their conviction under Sections 302/34 IPC to imprisonment for life but maintain the sentences imposed for the other convictions.

The appeals are thus disposed of.