Govindaswami

Vs

State of T. N.

Criminal Appeal No. 900 of 1997

(S. M. Quadri, M. K. Mukherjee JJ)

22.04.1998

JUDGMENT

M. K. MUKHERJEE, J. –

1. This appeal under Section 379 CrPC is directed against the judgment and order dated 2-9-1997 rendered by the Madras High Court in Criminal Appeal No. 30 of 1988. By the impugned judgment the High Court reversed the acquittal of the appellant of five charges of murder, convicted him thereof and sentenced him to death. The victims were Nagamalai (elder brother of the appellant's father), his wife, two sons and a daughter.

2. The prosecution case briefly stated is as follows :

> (i) On 30-5-1984 at or about 7.00 a.m. Sowndaram (PW 2), a resident of Village Kondayapalayam, in which Nagamalai and the appellant also lived, went to the house of the former to fetch milk as it was her daily wont. Reaching there she found him, his wife, two sons and a daughter lying dead in the frontyard of their house with bleeding injuries on their persons. She rushed back to her house and told her husband Kurukkal (PW 3) about the macabre murders. PW 3 then went to the house of Nagamalai and, having seen the dead bodies, apprised his co-villager Ramaswamy (PW 1) of the incident. After a visit to the house of Nagamalai, PW 1 went to the nearby Village Varapalayam and gave a report to Ramani Marimuthu (PW 7), their Village Administrative Officer, which was recorded by him. In that report he first described what he had seen in the house of Nagamalai and then stated that he suspected that Govindaswami (the appellant) and his younger brother had committed the murders as there was a land dispute between them and Nagamalai.
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> (ii) PW 7 then left for Village Kondayapalayam and after seeing the dead bodies went to Puliampatti Police Station and submitted the report (Ex. P-1). On that report a case was registered and investigation taken up by Palamsamy (PW 26), the then Circle Inspector of Police. He went to the house of Nagamalai, held inquest upon the five dead bodies and sent them to the Government Hospital, Sathyamangalam for post-mortem examination. He seized some articles from the scene of crime, including a wristwatch with its broken chain (MO 1).
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> (iii) On 4-6-1984 the investigation of the case was taken over by Shri Beeman (PW 27), an Inspector of Police. On that day he arrested the appellant and seized a bloodstained lungi (MO 19) and a promissory note (MO 20) from his person under a

memo (P. Ex. 8). Pursuant to a statement made by the appellant he then went to the house of Marimuthu (PW 14), an astrologer by profession in Village Arasur and seized a cycle (MO 21) and a gunny bag (MO 23) containing a torchlight (MO 18) and an aruval (MO 22), a heavy sharp-cutting instrument. The aruval, lungi and some other articles seized from the scene of crime were sent to the Forensic Science Laboratory (FSL) for chemical examination. After receipt of report of such examination and on completion of investigation police submitted charge-sheet against the appellant.

3. The appellant pleaded not guilty to the charges and contended that he was falsely implicated.

4. That Nagamalai, his wife, two sons and a daughter met with homicidal death in front of their house stands proved by overwhelming evidence on record. Indeed, this part of the prosecution case was not challenged by the defence. Apart from the uncontroverted evidence of PWs 1, 2, 3 and 7, all of whom claimed to have seen the dead bodies of the 5 persons lying with bleeding injuries in front of their house, the evidence of PW 27, who held inquest upon the dead bodies proves that fact. From the evidence of the three doctors, namely, Dr. Ulaganathan (PW 16), Dr. Saroja (PW 17) and Dr. Marimuthu (PW 18), who held post-mortem examination upon one or the other of those dead bodies, we get that each of them had a number of deep-cut injuries all over their bodies. While Nagamalai had 6 such injuries, his sons, Moorthy and Balasubramanian, had 12 and 4 respectively, his wife Ponnathal had 4 and daughter Anbu Selvi had 2. When shown the aruval (MO 22), the doctors opined that all the injuries could be caused by such a weapon. From the evidence of the above witnesses it is thus abundantly clear that the 5 deceased met with homicidal death in front of their house in the night between 29-5-1984 and 30-5-1984.

5. The pivotal question that now falls for our determination is whether the prosecution has been able to conclusively prove that the appellant is the perpetrator of the above murders. In the absence of any eyewitness to prove the same the prosecution relied upon the following circumstances :

(i) the appellant had a motive to commit the murders as he was having a boundary dispute with Nagamalai over their properties and two days prior to the murders he had a quarrel with Nagamalai and his son Moorthy in course of which he (the appellant) was beaten up. Besides, Nagamalai coerced the appellant to sign a promissory note;

(ii) from the scene of crime a wristwatch with a broken chain (MO 1) belonging to the appellant was recovered;

(iii) at the time of his arrest on 4-6-1984 the appellant was found wearing a bloodstained lungi (MO 19) and having a promissory note (MO 20) with him; and

(iv) pursuant to the statement made by the appellant aruval (MO 22) was recovered from the house of PW 14 on 4-6-1984 and it was found to be stained with human blood of 'B' group, which was also the blood group of some of the deceased.

6. On consideration of the evidence adduced by the prosecution to prove the above circumstances the trial court held that none of them stood proved and, accordingly, it acquitted the appellant. In reversing the findings of the trial court, the High Court held that all the above circumstances stood firmly established and that those circumstances unerringly pointed to the guilt of the appellant.

7. Mr. Ranjan Mukherjee, the learned counsel appearing for the appellant, first submitted that the reasons given by the trial court for rejecting the relevant and material evidence of the prosecution were weightier and had not been completely displaced by the High Court. He next submitted that, in any case, the view of the evidence taken by the trial court was also a reasonable one. In such a situation, he argued, the High Court should not have reversed the order of acquittal, by ignoring the well-settled principles laid down by this Court in this regard. He lastly submitted that even if it was assumed that the High Court was justified in so doing, it was not justified in imposing the sentence of death.

8. As against this Mr. Pragasam, learned counsel for the State, submitted that the reasons given by the trial court for discarding the entire prosecution evidence were patently untenable and had been rightly dispelled by the High Court. According to him the powers of the High Court to review the evidence and reach its own findings in an appeal against acquittal are as wide as those of the trial courts.

9. This being a statutory appeal we have gone through the entire evidence on record keeping in view the judgments of the courts below. Our such exercise persuades us to hold that each of the findings of the trial court is patently wrong.

10. Coming first to the motive, the prosecution examined five witnesses to prove the same : and they are Ramaswamy (PW 1), Donnuswamy (PW 4), Govindaswami (PW 5), Ramaswamy (PW 6) and Ganesan (PW 8), the surviving son of the deceased Nagamalai, who at the material time was in Coimbatore. PW 1, who is related to both the deceased and the appellant, testified that there were disputes between them with regard to the boundaries of their land and that he and other Panchayatdars attempted to settle the disputes. PW 4 stated that about 1 1/2 years before the incident the mother of the appellant complained to him about the boundary dispute and grazing of cattle and that he and others mediated and settled the dispute before the date of occurrence. Similar is the evidence of PW 5. The evidence of PW 8 in this regard is that due to land dispute there were frequent quarrels between his father and the appellant. In disbelieving the evidence adduced by the prosecution to prove the motive the trial court observed that there were discrepancies in the evidence of the above witness as to when the Panchayat was converted and who were the participants. Having carefully gone through the evidence we do not find any material contradiction to discredit them. On the contrary, we find that their evidence unmistakably proves that there were disputes between them regarding the boundaries of their lands and the most eloquent proof in support thereof (which has gone completely unnoticed by the trial court as also by the High Court) is the evidence of Ramaswamy (PW 6) of Village Ponnampalayan. From his evidence we get that two days prior to the occurrence he had seen Nagamalai and his son Moorthy quarrelling with the appellant in connection with their lands. He further stated that the appellant came to him and complained that Nagamalai got an empty promissory note signed by him and beat him up. He next stated that he advised them not to quarrel. This witness was not at all cross-examined with reference to the above aspects of his evidence. When the above uncontroverted evidence of PW 6 is read along with the evidence of the witnesses mentioned earlier there cannot be any manner of doubt that the prosecution has succeeded in proving that there was dispute between the appellant and Nagamalai over their lands and that only two days before the incident they had a quarrel over that dispute in course of which the former beat the appellant and, thereafter compelled him to sign a promissory note.

11. To prove the second circumstance, the prosecution firstly relied upon the evidence of PW 26 and PW 7. PW 26 testified that in the presence of Marimuthu (PW 7), the Village Administrative

Officer, and K. Arumugam he seized a HMT wristwatch with the word "Cheran" engraved thereon (MO 1), which was found near the dead body of Moorthy under a memo (Ext. P-6). The above testimony of PW 26 stands corroborated by that of PW 7 and the seizure memo, contemporaneously prepared. The evidence adduced by the prosecution to prove the above recovery was not challenged by the defence. Next, to prove that the seized wristwatch belonged to the appellant, the prosecution examined Sabesan (PW 11), who is a resident of the same village and at the material time was working as a bus-conductor in Jeeva Transport Corporation. He testified that his uncle gave him a HMT wristwatch with the word "Cheran" written thereon, which he (his uncle) had purchased from a worker of Cheran Transport Corporation. After he (PW 11) had used the wristwatch for 2/3 years he sold it to the appellant, whom he knew from before, for Rs. 240 about two years before the incident. He identified MO 1 as the wristwatch which he sold to him. PW 11 was cross-examined at length but nothing could be elicited to discredit him. Rather, it was elicited that 10/15 days prior to the incident he had seen the appellant wearing the same.

12. The trial court disbelieved the evidence of PW 11 principally on the ground that he did not furnish any receipt regarding purchase of the wristwatch by his uncle or sale to the appellant nor could he give the number of the wristwatch. According to the trial court, since any person could have owned that wristwatch and could be present at the scene of crime, recovery of the same did not and could not incriminate the appellant. The above reasons are, to say the least, untenable. It is a matter of common knowledge that a person has an uncanny sense of identifying his own belongings, particularly articles of regular personal use. The trial court was, therefore, not at all justified in discarding the assertion of PW 11, who admittedly bore no animus against the appellant, that the wristwatch (MO 1) earlier belonged to him. While on this point it is pertinent to mention that the word "Cheran" engraved in MO 1 unmistakably supported PW 11's version. Equally unjustified was the trial court in disbelieving his further assertion that he sold the wristwatch to the appellant for absence of receipt relating to the sale or purchase of the same for it is also common knowledge that in such petty transactions in villages nobody insists thereupon. It must, therefore, be said that the prosecution has been able to firmly establish that the wristwatch found at the place of occurrence belonged to the appellant.

13. That brings us to the third circumstance. PW 27, the Inspector of Police, who took up the investigation of the case on 4-6-1984 from PW 26, testified that on that day he arrested the appellant at Puliampatti Bus-Stop and seized a bloodstained lungi (MO 19) and a promissory note (MO 20) in the presence of witnesses one of whom was Murugesan (PW 9), a Revenue Inspector. The evidence of PW 9 and the seizure memo (Ext. P-8) fully corroborate the evidence of PW 27 in this respect and the report of the Chemical Examiner show that the lungi contained human blood. It is of course true that the serologist could not give any definite opinion as to its blood group due to disintegration but absence thereof does not in any way affect the prosecution case. In discarding the evidence regarding recovery of the hand note the trial court observed that the handwriting expert could not give any definite opinion that the signature appearing thereon was that of the appellant but it failed to consider that when the factum of the above recovery is read along with the admission made by the appellant before PW 1 of his having been coerced by Nagamalai to execute a hand note in his favour the recovery of the hand note is a strong incriminating circumstance against him.

14. Having found that the first three circumstances stand firmly established we turn our attention to the last circumstance. As earlier noticed, the appellant was apprehended by PW 27 on 4-6-1984 in the presence of PW 9 and one Arumugam. According to PW 27, after his arrest the appellant made a statement which he recorded in the presence of the above witnesses. The statement (Ext. P-7), to the extent it is admissible under Section 27 of the Evidence Act, was to the effect that if permitted he

would identify and hand over the cycle, torchlight, gunny bag and aruval. After making the statement, the appellant led them to the house of PW 14 in Village Arasur. Reaching there he brought out, from the house of PW 14 a cycle (MO 21), a gunny bag (MO 23), a torchlight (MO 18) and an aruval (MO 22). In the presence of the witnesses, namely, PW 9 and Arumugam PW 27 seized those articles under a memo which was attested by both of them. PW 27 further stated that he sent the seized articles, including the aruval for chemical analysis.

15. While supporting the testimony of PW 27, PW 9, who is an independent witness, stated that in his presence and that of Arumugam the Inspector (PW 27) interrogated the appellant. In course of the interrogation the appellant stated that he would identify and hand over the aruval and cycle if taken to Arasur and the statement so made was recorded by PW 27 (Ext. P-7) and attested by him and Arumugam. He next stated that after the bloodstained lungi and promissory note were seized (about which we have discussed earlier) he along with PW 27, the appellant and Arumugam proceeded to Arasur where the appellant identified the house of astrologer Marimuthu (PW 14). From that house he took out a cycle with a gunny bag tied to the carrier of the cycle. In that gunny bag one aruval and one torchlight were found. In cross-examination he stated that the aruval was found to be bloodstained. He denied the defence suggestion that he was deposing falsely at the instance of the police.

16. In his evidence PW 14 stated that on 31-5-1984 at or about 7 a.m. the appellant came to his house on a cycle and sought his professional advice for which he gave him Rs. 2. The appellant then left his house leaving behind his cycle and the gunny bag stating that he would take them back in the evening. When he asked about the contents of the gunny bag he told him that there were some coirs in it. The appellant, however, did not return as promised, but after four days he came to his house accompanied by the police. After entering his house the appellant took out the cycle and the gunny bag and brought out one aruval and a torchlight therefrom. This witness was cross-examined at length but nothing could be elicited to discredit him. This witness hails from a different village altogether and there is nothing to suggest even as to why he would depose falsely against the appellant whom he did not know from before. The trial court disbelieved the evidence of PW 14 on the grounds that it was not expected of him to remember each of the 20-40 persons who used to come daily to seek his advice and that, admittedly, he did not keep any account of his professional activities. In our considered view both the grounds are wholly unsustainable : the former is factually incorrect, in that he (PW 14) stated that on an average 5-10 persons came daily to seek his advice and so far as the second one is concerned, it was not expected of PW 14 who was earning his livelihood in a village as an astrologer charging Rs. 2 per person, to keep an account of his income. Having carefully gone through the evidence of PWs 27, 9 and 14 we have no hesitation in concluding that the prosecution has been able to conclusively prove that pursuant to the statement of the appellant that he would hand over the aruval, it was recovered from the house of PW 14. The reports of the Chemical Examiner show that the seized aruval contained human blood of 'B' group and the blood seized from the spot where the dead bodies were lying was also of 'B' group. The fourth circumstance, thus, also stands cogently established.

17. When the above four circumstances, each of which unerringly points towards the guilt of the appellant, are taken cumulatively, there is no escape from the conclusion that they are consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with his innocence. We, therefore, uphold the conviction of the appellant as recorded by the High Court.

18. Lastly, comes the question of sentence. Mr. Mukherjee submitted that the present case did not fall in the category of "rarest of rare cases" justifying imposing the extreme penalty of death.

According to him, the mere fact that the appellant committed five murders cannot be made a ground for imposition of death sentence. In making the above submission he strongly relied upon the judgment of this Court in Shamshul Kanwar v. State of U. P. ((1995) 4 SCC 430 : 1995 SCC (Cri) 753 : AIR 1995 SC 1748) wherein it was observed that a large number of deaths on one side cannot ipso facto be a ground to bring the case into the category of "rarest of rare cases". He also relied upon some other judgments of this Court wherein sentences of death were commuted. To avoid prolixity we refrain from referring to those cases as they turned on their own facts. In responding to the above contention of Mr. Mukherjee, Mr. Pragasam relied upon the observations recorded by the High Court while imposing the death sentence.

19. From the impugned judgment we find that the High Court first discussed the principles laid down by this Court, for imposing death sentence in Bachan Singh v. State of Punjab ((1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898) and other cases, and then stated as under :

> "Now, we are going to consider the law laid down by the Apex Court of our land in the above rulings with reference to the present case on hand. Admittedly, as seen from the facts and circumstances of the case, the following are proved beyond doubt :
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> (1) There is no provocation or any quarrel between the accused and the five deceased. All the five deceased were unarmed and sleeping during midnight and also they were helpless. There was no scope or chance for them to face the attack.
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> (2) It is proved beyond doubt that it was a premeditated one, but not on account of any sudden provocation.
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> (3) There is no mental derangement for the accused to kill 5 human beings in five strokes one after another and they were killed during the course of their sleep.
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> (4) The nature and the manner in which the accused committed the five murders was found to be gruesome, calculated, heinous, atrocious and cold-blooded murder.
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> Accordingly, in the above circumstances, it is proved beyond doubt that the said heinous and calculated offence committed by the respondent/accused in killing the 5 persons with five strokes one after the other is a rarest of the rare case of the present age in this State as a whole.
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> We are of the clear view that the way in which he cut the neck of five individuals, while they were sleeping during midnight, is really a premeditated, atrocious and calculated murder. As such we are of the clear opinion that if a human being of this nature, viz., the respondent/accused is allowed to continue to live in the present society, there is great threat to the co-human beings. There is no safety or protection for the innocent, helpless, unarmed fellow human beings in the society. In view of the above special reason and the peculiar circumstances of the case on hand, we are of the clear view that it is just, proper, appropriate, fit and deserving case where the capital punishment of death could be awarded to the respondent/accused."

20. From the abovequoted observations, it is seen that the High Court did not base its decision to impose the penalty of death solely on the fact that 5 persons were murdered but also other attending circumstances relating to the murders. Having given our anxious and deep consideration to this

aspect of the matter we are in complete agreement with the reasons canvassed by the High Court to impose the capital punishment. We only wish to add that the brutal manner in which the appellant wiped out the entire family of his uncle [except one of his sons, (PW 8) who, fortunately at the material time was studying in Coimbatore], obviously to grab his properties, has shocked our judicial conscience. Nonetheless we looked into the record to find out whether there was any extenuating or mitigating circumstances in favour of the appellant but found none. If, in spite thereof, we commute the death sentence to life imprisonment we will be yielding to spasmodic sentiment, unregulated benevolence and misplaced sympathy.

21. In Mahesh v. State of M. P. ((1987) 3 SCC 80 : 1987 SCC (Cri) 379) this Court, while refusing to commute the death sentence, observed : (SCC p. 82, para 6)

> "... it will be mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

As the above observations squarely apply in the facts of the instant case we uphold the sentence of death imposed upon the appellant.

22. In the result, the appeal fails and the same is hereby dismissed.