

SUPREME COURT OF INDIA

V. Vijay Kumar

Versus

State of Kerala

&

G. Thankappan and others

Versus

State of Kerala

(G.B. Pattanaik and M.B. Shah, JJ)

Criminal Appeals Nos. 1148-50 of 1997 &

Criminal Appeals Nos. 1147 of 1997

10.12.1999

JUDGMENT

Pattanaik J.---

These appeals are directed against conviction of the appellants under Section 302/34, 201 and 120-B IPC and sentenced to undergo imprisonment for life for conviction under Sections 302/34 IPC and six months' RI under Section 120-B IPC and RI for one year, each under Section 201/34 IPC. The learned Sessions Judge convicted the appellants of the aforesaid offences for causing the murder of one Issac Edward, inside the campus of Government Sanskrit College. The said conviction and sentence has been upheld in appeal by the High Court of Kerala.

2. The prosecution case in a nutshell is that on 26.5.1992 at 10.30 p.m. deceased Isaac Edward, the watchman of the College came to close the college gate and on that score there was some quarrel between him and Accused 1 and Accused 1 slapped him and took away the keys. Issac Edward went to the residence of the Principal, PW2 and narrated the occurrence and came back to the college campus. His dead body was found on the next day hanging from the bracket of the sunshade of the second window of the corner of the building and according to the prosecution case, all the five accused persons hatched a conspiracy and in pursuance of the said conspiracy, assaulted the deceased and hanged him from the place where the dead body was found on the next morning. On getting the news of hanging of the deceased Isaac, PW 2 the Principal sent an information in writing to Cantonment Police Station, which was treated as FIR, the investigation started and on completion of investigation, charge-sheet was filed. The accused persons on being committed to the Court of Session, stood their trial. There is no eyewitness to the occurrence and the prosecution

case hinges upon the circumstantial evidence. The circumstances relied upon by the prosecution are as follows :

1. though Accused 1 was attached to Cantonment Police Station and other accused persons were from the Armed Reserve Camp. Nandavanam, but all of them had been assigned te duty at Sanskrit College in connection with the centralised valuation :
 2. the evidence of PW2, the Principal of the College, indicates that the deceased came tot his house at 10.55 p.m. and informed him that a police constable prevented him from closing the gate and slapped him on his face and took away his torch and bunch of keys;
 3. PW 5, in the early morning went to the watchman's room and he found drops of blood;
 4. In the guard room on the table as well as on the wash tube, blood was found, which has been established through the evidence of PW 30 and the said blood on being serologically tested, was found to be human blood;
 5. The medical evidence indicates that the death is homicidal in nature;
 6. The fibre of lugi of A-1 found in the hands of the deceased, as is established by PW 30 and the report Exh. P-41;
 7. When PWs 13 and 14 asked Accused 1 about the blood in the guard room, there was no answer from Accused 1'
 8. The lungi, that was used as a ligature was stained with human blood of Group 'A' and the blood group of Accused 2 is also of Group 'A'.
2. Relying upon these circumstances, the learned Sessions Judge convicted the accused persons of offences as already stated and the High Court also has affirmed the conviction on appeal.
 3. Mr. U.R. Lalit, learned Senior Counsel appearing for Accused 1-4 and Mr. E.M.S. Anam, appearing for Accused 5 contended that there is not an iota of evidence to indicate that all these accused persons were seen inside the camps along with the deceased by anybody and the evidence of the Principal indicates that the deceased had been to his residence at 10.55 p.m. and the circumstances till he was found hanging from the roof on the next morning. According to learned counsel for the appellants, the prosecution not having established the fact that the lungi that was used as a ligature belongs to Accused 2, presence of blood group of Accused 2 and the presence of blood of the same group on the lungi do not necessarily mean that Accused 2 is in any way involved with the crime. It is further contended that in view of the evidence of PW 12 that Accused 1 complained to him about the deceased assaulting him and thereafter the said Accused 1 having been taken away in the mobile jeep and hospitalised, the presence of fibre of the lungi of Accused 1 found in the hands of the deceased, cannot be a clinching evidence, so far as the said accused 1 is concerned. So far as Accused 2 to 5 are concerned, there is not an iota of material, except the duty chart, indicating that they were supposed to be on duty in the Sanskrit College compound.

5. Mr. Anup Chowdhary, learned Senior Counsel appearing for the State on the other hand contended that the accused persons and the deceased being the only persons within the campus on the fateful night and those accused persons, not having explained as to how blood could be found in the guard room itself, when read with the circumstances that the fibre of lungi of Accused 1 was found in the hands of the same group as that of Accused 2, the entire chain becomes complete and, therefore, the conviction of the accused appellants is unassailable.

6. It is too well settled that in case of circumstantial evidence, the prosecution must establish different circumstances beyond reasonable doubt and all those circumstances taken together must lead to no other inference except that of the guilt of the accused. To justify an inference of guilt the circumstances from which such inference is sought to be drawn, must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Bearing in mind the aforesaid principle, let us now examine the circumstances which can be said to have been proved in the case in hand. But before examining the circumstances, it would be appropriate to discuss the medical evidence also. The Medical evidence consists of PWs 26 and 27. As has been indicated by the High Court in the impugned judgment even, PW 26 and PW 27 did not rule out the possibility of suicidal hanging altogether, but certain injuries found on the deceased being ante-mortem in nature and since hairs were seen projecting from the knot, both the witnesses who conducted the autopsy, came to the conclusion that possibly the death was homicidal. It would thus appear that the medical evidence was not very categorical about the homicidal nature of death but the conclusion of the learned Sessions Judge and the High Court that the death was homicidal, however has not been assailed before us by the counsel, appearing for the accused persons. The question that arises for consideration, therefore, is whether the circumstances established in the case complete the entire chain from which a conclusion can be drawn that it is the accused persons who committed the crime. As has been stated earlier, there is no witness, who has seen all the accused persons together with the deceased on the fateful night in the Sanskrit College campus but from the entry Exh. P-16, which is the allotment of guard duty, the Court has come to the conclusion that all these accused persons must be deemed to have been present in the Sanskrit College campus on the fateful night. Even if it is assumed that they were on guard duty on the date of occurrence but that they were inside the guard room is also not established by any positive evidence. From the evidence of PW2, it is established that Accused 1 came and complained to him that the deceased assaulted him and had run away, whereafter a mobile van was called and Accused 1 was taken in the said van and was hospitalised. It would, therefore, be reasonable to mobile van, it is he, who stated that the deceased came and assaulted him. There is no material to indicate as to whether the other four accused persons were at all present when Accused 1 was taken to the hospital by the mobile van, it is he, who stated that the deceased or at any point of time thereafter and the dead body of the deceased having been found hanging from the ceiling on the next morning. To connect the accused persons with the deceased, no other circumstance has been established, excepting the circumstance of presence of human blood in the guard room and presence of Group 'A' blood on the lungi that was used as a ligature, which is also the blood group of Accused 2. In the

absence of any evidence that all these accused persons were last seen in the guard room with the deceased, the so-called presence of human blood in the guard room cannot be a clinching circumstance to bring home the charge against the accused persons. That apart, it has not been established that the said blood is of the same group as that of the deceased. It cannot, therefore, be reasonable to hold that the deceased was assaulted in the guard room as contended by Mr. Chowdhary, appearing for the prosecution, in court of his arguments. The presence of Group 'A' blood on the lungi that was used as ligature, which is also the blood group of Accused 2 could have been utilised as a clinching circumstance against the said accused, had it been established that the lungi belongs to Accused 2. But in the absence of any such evidence and further in the absence of any investigation as to what was the blood group of the deceased, the said circumstances, in our opinion, cannot be held to be a clinching circumstances, so far as Accused 2 is concerned. The only other circumstance relied upon by the prosecution is the presence of fibre of the lungi of Accused 1 in the hands of the deceased. But as has been stated earlier that there had been some altercation between Accused 1 and the deceased, even before the deceased went to the house of the Principal, PW2 and, further after he came back, it is alleged that the deceased assaulted the said Accused 1 in the hands of the deceased cannot be held to be a conclusive circumstances against Accused 1 also. In the aforesaid premises, we have no hesitation to come to the conclusion that the circumstances said to have been established by the prosecution evidence do not inconsistent with their innocence. We, therefore, set aside the impugned conviction and sentence and acquit the appellants of the charges leveled against them and they be set at liberty forthwith,, unless required in any other case.

7. These appeals are accordingly allowed.