SUPREME COURT OF INDIA

Praveen Kumar

Vs.

State of Karnataka

(N. Santosh Hegde and B.P. Singh JJ.)

15.10.2003

JUDGMENT

SANTOSH HEGDE, J.

1. Learned Principal Sessions Judge, Dakshina Kannada, Mangalore by her judgment dated 4.2.2002 in Sessions Case No. 64 of 1994 found the appellant herein guilty of offences punishable under Sections 302 and 392 read with Section 397 IPC and awarded the extreme penalty of death for an offence under Section 302 IPC. She also awarded RI for 7 years and to pay a fine of Rs. 1,000/- for offences punishable under Section 392 read with section 397 IPC. For confirmation of the sentence of death, she referred the matter to the High Court of Karnataka in Criminal (RC) 2 of 2002 while the appellant also preferred an appeal against the judgment and conviction before the same High Court, The High Court by a common judgment dated 28.10.2002 while dismissing the criminal appeal of the appellant accepted the reference and confirmed the death sentence awarded to the appellant by the trial court. It is against the said judgment of the High Court the appellant is in appeal before us.

2. The facts necessary for the disposal of this appeal are that the appellant is the son of the brother of one of the deceased Smt. Appi Sherigarthy. About 3 years prior to the date of the incident the appellant used to stay with said Appi in her house at Vamanjur, Mangalore Taluk, doing tailoring work. After his marriage he shifted his residence to his native place namely Uppinangadi. Said deceased Smt. Appi had 3 sons and 3 daughters. Her one daughter Shakuntala and her daughter i.e. the grand-daughter of Appi by name Deepika were staying with said Appi while Shakuntala's husband Jayantha PW-7 was employed at Muscat. Appi's another son Govinda was also staying with her in her house in Vamanjur on Mangalore-Karkala road.

3. It is prosecution case that on 24.2.1994 PW-2 Kumari Revathi a 12 year old girl who used to supply milk to the house of Appi had gone to that house as usual at 7.30 a.m. But on that day even though she called out for said Appi there was no reply but she could see Appi having fallen on the floor with blood by the side of her body. So she returned to her house and reported this to her grand-mother who in turn went to the house of PW-1 Suresh Kumar and informed him about the said fact. PW-1 then went to the house of Appi along with PW-2 and they too got no response when they called out for Appi so they came back to the house and told the mother of PW-1 about their efforts to contact said Appi. Prosecution further alleges at about 10.30 a.m. PW-1 went to bring some vegetables along with PW-2 to the shop of PW-4 Flacy Lobo at that time they informed her of what was noticed by them in the house of Appi. PW-4 then accompanied PWs.1 and 2 and came near the house of Appi and entered the house which was found open from the Southern direction and they

saw Appi lying dead with bleeding injuries. When they went to another room they saw son of Appi, Govinda also with bleeding injuries and in another adjacent room they found the dead bodies of Shakuntala and Deepika with injuries on their heads. PW-4 Flacy Lobo sent PWs.1 and 2 to their house and she herself came and informed her husband about what she saw in the house of Appi and requested him to inform the Police. PW-32 Vishwanath Pandit Sub-Inspector of Police. Mangalore Rural Police Station then was at a place called Pachanady at about 11 a.m. in connection with the investigation of another crime when he received a wireless message about the finding of 4 dead bodies in the house at Vamanjur within the jurisdiction of Rural Police Station, Mangalore. PW-32 then immediately went to the place of incident and secured PW-1 and recorded his statement as per Ex. P-1 based on which a case was registered against unknown persons in Crime No. 46/1994 for offences punishable under sections 449, 302 and 308 IPC and an FIR was sent to the court. He also sent messages to the District Police Office to send the dog-squad and finger-print expert. In the meantime he held inquest over the dead body of Appi in the presence of PW-9 Chandrahasa Rai and others as per Ex. P-2. He further held the inquest over the dead body of Shakuntala in the presence of some Panchas and drew up the inquest Panchnama Ex. P-4. He directed PW-29 Gopala Krishna Shetty S.I. to hold simultaneous inquest on the dead bodies of Govinda and Deepika which was done as per inquest Panchnamas Ex. P-3 and 5 respectively. PW-32 then sent the dead bodies for post mortem examination and recorded the statements of PWs-2, 4, 5 and CWs. 8 and 10 i.e. Ramani and Seetharama Poojary respectively. In the meantime PW-30. K.R. Venkatesh finger-print expert came from Mangalore and in the course of his examination noticed some finger-prints on the almirah which he lifted.

4. From 25.2.1994 the investigation was taken over and continued by PW-33 J. Papaiah, Circle Inspector, who during the course of investigation examined and recorded statements of PW-3 Prema Shetty, PW-6 Seetharam Gurpur, PW-8 Sarojini and other witnesses. During the course of said investigation this I.O. came to know that the appellant was a visitor to the house of deceased. On 28.2.1994 PW-33 recorded the statement of PW-7 Jayantha and on coming to know of the possibility of appellant's involvement in the murder he sent his staff to apprehend the accused which was done on 2.3.1994 and he was produced before PW-33 by PW-31 Manohar Soans S.I. at about 10.30 p.m.

5. Prosecution further alleges that on his interrogation the appellant made a voluntary disclosure statement which is marked as Ex. P-35 wherein he stated that if taken to the place concerned he would show where he had hidden the ornaments, cash and the weapons used in the crime. Since it was already late on that day the 1.6. on the next morning i.e. on 3.3.1994 secured the presence of PW-10 Dr. Satish Mallya and 2 others and took them to Uppinangadi as indicated by the appellant. On the way he took another Panch PW-12 B.Rama Bhat Prosecution alleges that on reaching Uppinangadi the appellant led them to a bamboo bush located in a hillock in the areca garden belonging to his father. The appellant then went near a bush and took, out a bundle tied in a kerchief and opened the same. After opening the bundle it was seen that it contained jewellery which were seized by the I.O. in the presence of Panchas, thereafter the appellant led them to a place where MO-47 the sickle used in the attack on the victims was recovered at the instance of the accused. During the course of investigation, certain receipts and chits were recovered from the shop of PW-25 under Panchnama Ex. P-16 and a cheque under Panchnama Ex. P-9.

6. After completing the investigation a chargesheet under Sections 302 and 392 read with 397 IPC was filed against the appellant before the trial court. The case of the appellant as could be seen from his statement recorded under Section 313 Cr.P.C. is one of total denial.

7. In the absence of any direct evidence the prosecution relied upon certain circumstances to establish the guilt of the appellant. The trial court considering the material placed by the prosecution came to the conclusion that the prosecution had established beyond all reasonable doubt the following circumstances:

1. The relationship of accused with the family of the deceased.

2. Motive.

3. Homicidal death of the deceased.

4. Possession of valuable ornaments and cash by deceased Shakunthala and others.

5. Recovery of stolen gold ornaments, cash belonging to the victims and bloodstained shirt of accused and weapon used for offence from at the instance of the accused.

6. Presence of accused within the vicinity of house of deceased on the relevant day and conduct of accused before and after commission of offence.

7. Presence of finger prints of accused at the spot.

8. Non-explanation of the incriminating evidence that appeared against him by the accused.

8. It is based on these circumstances having come to the conclusion that each and every link in the chain of circumstances have been proved by the prosecution beyond all reasonable doubt the trial court found the appellant guilty, hence convicted him as stated above.

9. The High Court relying on the very same circumstances agreed with learned Sessions Judge and confirmed the conviction and sentence imposed on the appellant by the trial court.

10. Mr. R S Lambat, learned counsel appearing for the appellant as amicus curiae contended that most of the circumstances relied by the prosecution even if it is to be believed would not in any manner establish the prosecution case that it is the appellant who is responsible for the murder of the deceased. He submitted any of the following circumstances like the relationship of the appellant with deceased, the presence of the accused within the vicinity of the house of deceased on the relevant day, the homicidal death of the deceased would not either individually or cumulatively be sufficient evidence to implicate the appellant in the crime. In regard to these circumstances while disputing the evidence produced by the prosecution in support of the same, learned counsel submitted these circumstances at the most would only create a suspicion which by itself however strong it may be, cannot be substituted for hard evidence, based on which a conviction could be founded. He submitted that the alleged presence of fingerprints of accused in the house where the incident in question had taken place has not been established at all by the prosecution hence, cannot be treated as a link in the chain of circumstances. He also pointed out that the alleged motive of the appellant being in need of money was also an irrelevant circumstance apart from being wholly baseless. He however contended the only circumstance that can be said to be of some material use to the prosecution, is the alleged recovery of ornaments belonging to the deceased which according to prosecution was made at the instance of the appellant. This circumstance according to learned

counsel has not been proved beyond all reasonable doubt. Learned counsel argued that if the evidence of PW-33 is to be carefully examined along with evidence of Panch witness PW-10 Dr. Satish Mallya and PW-12 Ram Bhat it would be clear that the recovery cannot be said to be at the instance of the accused and prosecution cannot take advantage of Section 27 of the Evidence Act. He also submitted that the so-called recoveries made from other witnesses who are either financiers or money lenders being highly doubtful the courts below ought not to have placed reliance on this evidence to come to the conclusion, that these recoveries in fact implicated the appellant in the crime.

11. Mr. Sanjay R. Hegde, learned counsel appearing for the State of Karnataka contended that the prosecution has led evidence to prove each and every circumstance starting from the motive to the recoveries of various ornaments, cash and other incriminating documents. The fact that the jewellery belonging to the deceased was found hidden by the accused immediately after the incident, in the absence of any explanation from the appellant would directly indicate that the appellant alone is responsible for death of the victims. He also submitted other circumstantial evidence like the presence of the of the accused near about the place of incident immediately before and after the incident as spoken to by independent witnesses, recovery of the fingerprints of the appellant as spoken to by fingerprint expert from the place of incident would further corroborate the other evidence led by the prosecution as to the involvement of the appellant in the crime in question.

12. It is in the above background, also bearing in mind the fact that the appellant is facing the extreme penalty of death we will consider the material produced by the prosecution to establish the case against the appellant.

13. It is an admitted fact that the appellant is very closely related to the victims being son of the brother of Appi one of the deceased. It is also an admitted fact that a few years prior to the incident the appellant was residing with. Appi in her house when he was doing tailoring business. It is also an admitted fact that all the 4 deceased met with homicidal deaths in the intervening night between 23^rd and 24^th February, 1994. Question therefore for our consideration is whether the appellant is responsible for deaths of these 4 persons or is it a blind murder in which the appellant has been falsely implicated by the prosecuting agency due to suspicion as contended by the learned counsel for the appellant ?

14. The prosecution has alleged that the motive for committing the murder was to rob the family of Appi of their valuables to enrich himself and also to provide for his immediate financial needs. It is also the case of the prosecution that the appellant was addicted to alcohol, as also to gambling in lotteries consequent to which he was in dire financial straits. Prosecution in support of the fact that the appellant was always in need of money relied on the evidence of PW-25 with whom appellant had pledged his wife's jewellery and PW-19 from whom the appellant had borrowed Rs. 300 on the evening of 23.2.1994. According to the prosecution this apart, from the fact that an empty bottle of alcohol was seized at the instance of the appellant indicating that the appellant was addicted to alcohol, prosecution has also led some evidence to show the appellant was betting on lotteries because of which he had to incur debts which establishes that he was in dire need of money. According to the prosecution this would indicate that the appellant had the necessary motive to rob the victims who were financially affluent which fact the accused knew. Thus in that process of robbing the victims he committed their murder to hide his identity. To this extent from the evidence led by the prosecution as accepted by the 2 courts below we are of the opinion that the prosecution has established the fact that the appellant though was a tailor by profession was in debt. Of course

by this fact alone the prosecution will not be able to take forward its case any further against the appellant unless it is able to establish by other material circumstances that it is the appellant who caused the death of victims.

15. In the above process the most important circumstance relied on by the prosecution is that of recovery of part of the gold ornaments at the instance of the appellant himself from a place near his house in Uppinangadi, and recovery of a stolen gold chain belonging to the victims which was pledged on 28.2.1994 (4 days after the incident) by the accused with a financing firm at Uppinangadi which was seized under Mahazar P-8. These recoveries of ornaments either at the place where they were hidden or from the firm to which it was pledged has been established by the prosecution through their Mahazar document P-6 and 8 and by the evidence of Panch witnesses PWs.10 and 12 who are independent persons having no enmity whatsoever against the appellant out of whom it is worthwhile to note that PW-10 is a doctor. This fact of the ornaments belonging to the victims being in the constructive possession of the appellant immediately after the murder leads to an inference in the absence of any explanation that the appellant must have robbed these jewelleries from the victims and in that process committed the murders of the victims. [See: Gulab Chand v. State of M.P. and Sri Bhagwan v. State of Rajasthan].

16. At this stage it may be worthwhile to notice the fact that the appellant had earlier pledged certain gold ornaments belonging to his wife with a finance firm at Mangalore in the year 1993. This fact was established by the evidence of the proprietor of the said firm PW-25 who deposed that during the months of August and December, 1993 the appellant availed of loans from his finance firm by pledging gold ornaments which was redeemed on 25.2.1994 (a day after the incident) by discharging the loan. According to the prosecution this loan obtained by the appellant by pledging his wife's jewellery was discharged after pledging some of the stolen articles from the victims on 25.2.1994 with PW-13. The appellant in the course of his statement under Section 313 Cr.P.C. has not given any explanation how and in what circumstances he got the money to release the jewellery pledged by him as far back as in the year 1993 immediately after the incident in question. The factum of the appellant pledging his wife's jewellery in the year 1993 and its redemption immediately after the murder is established not only by the evidence of PW-25 but also from the documents of the firm where the jewellery in question was pledged and then redeemed. Prosecution has further established that a part of the stolen jewellery belonging to the victims in this case was also pledged with PW-13 a financier. This factum has been established by the prosecution by examination of the said financier PW-13 and the jewellery so pledged was recovered under Panchnama Ex. P-8 on 3.3.1994. Even in regard to the evidence of PW-13 no motive whatsoever has been attributed to allege that the said witness was deposing falsely. The factum of pledging of these jewelleries belonging to the victims immediately after their murder and redemption of jewellery of his wife by the appellant pledged as far back as in the year 1993 immediately after the murder establish two facts. Firstly that the appellant was in need of money for which he had to pledge his wife's jewellery. Secondly appellant came into possession of sufficient money to redeem those jewellery of his wife immediately after the murder for which the appellant has no explanation. Therefore, in our opinion the prosecution has been able to establish two very strong circumstances through the evidence of PWs.10, 13, 21 and 25 that the appellant was in possession of the jewelleries belonging to the victims which were found missing immediately after the murder was detected and the appellant had hidden part of the said jewellery in his father's property and pledged to PW-13 a part of the jewellery belonging to the victims.

17. Defence however in the courts below as well as in this Court has seriously challenged the

identity of the jewellery recovered at the instance of the appellant as also those which were pledged by the appellant. To establish the identity of the jewellery that was recovered at the instance of the appellant and from the financing firm of PW-13 the prosecution has examined PWs.3, 6, 7, 8 and 11. PW-3 is a neighbour of the deceased who in her evidence has stated that she was very friendly with deceased Shakuntala and they used to go to temple and market together as also attended common functions and were also on visiting terms. She stated on 26.1.1994 about 3 months prior to the incident in question she had attended a birthday party of deceased child Deepika arranged in the house of the deceased. During that occasion she had seen 3 gold bangles which were worn by Shakuntala as also a wrist-watch with gold chain and 2 bangles and a jumki that was worn by Deepika. She was also in the know of the fact: that the husband of Shakuntala was working in Muscat. She in her evidence has identified various gold ornaments recovered at the instance of the appellant as belonging to either Shakuntala or Deepika.

18. The evidence of PW-3 Prema Shetty is fully corroborated by the evidence of PW-7 Jayantha. husband of Shakuntala in regard to the identity of the jewellery. He also in his evidence has stated that he had bought some jewellery in 1993 from Muscat in the form of a disco chain and he had purchased a pair of jumkis for his daughter as also a ladies' watch for his wife. He has deposed that at the time of his departure back to Muscat on 14.2.1994 he had left a sum of Rs. 3,000 with his wife Shakuntala. He also identified the jewellery recovered at the instance of the appellant as those belonging to his wife and child. From the above evidence it is clear that the jewellery which was recovered at the instance of the appellant was the jewellery which actually belonged to the victims.

19. The further case of the prosecution is that PW-6 one of the sons of deceased Appi who was working in Zambia had sent a cheque for Rs. 5,000 in the name of his sister deceased Shakuntala to enable her get a telephone connection for their house and from the evidence of PW-11 Vinayak Kamath who was the Branch Manager of the Syndicate Bank, Gurupur, during the relevant time, the prosecution has established that this cheque was encashed by Govinda, brother of said PW-6 and one of the deceased on 23.2.1994 in the evening prior to his death. Said cheque which was encashed was seized later by the Police under Panchnama P-6. This evidence in our opinion establishes the fact that on the date of incident apart from the money that was given to Shakuntala by her husband, there was also a sum of Rs. 5000 which was withdrawn from the bank which generally corresponds to the amount recovered from the appellant who has no explanation for the possession of the said cash.

20. Learned counsel for the appellant however contended that the alleged statement Ex. P-35 was made to PW-33 not in the presence of any independent witness hence the same should be rejected. He also contended that the said statement was made on 2.3.1994 but the recovery was made only on 3.3.1994 therefore the said recovery cannot be correlated to die statement, if any, made by the accused on 2.3.1994. He also challenged the actual fact of recovery stating that the Panch witnesses for the said recovery cannot be believed.

21. Section 27 does not lay down that the statement made to a Police Officer should always be in the presence of independent witnesses. Normally in cases where the evidence led by the prosecution as to a fact depends solely on the Police witnesses, the courts seek corroboration as a matter of caution and not as a matter of rule. Thus it is only a rule of prudence which makes the court to seek corroboration from independent source, in such cases while assessing the evidence of Police. But in cases where the court is satisfied that the evidence of the Police can be independently relied upon then in such cases there is no prohibition in law that the same cannot be accepted without

independent corroboration. In the instant case nothing is brought on record to show why evidence of PW-33 I.O. should be disbelieved in regard to the statement made by the accused as per Ex. P-35. Therefore, the argument that statement of the appellant as per Ex.P-35 should be rejected because the same is not made in the presence of independent witness has to be rejected.

22. As noticed above, the next argument in regard to the recovery is that the same is in the nature of a confession and the said statement having been made on 2.3.1994 and the recovery having been made only on 3.3.1994 said recovery cannot be attributed to the alleged statement made by the appellant hence Section 27 of the Evidence Act cannot be relied upon by the prosecution in regard to the admissibility of Ex.P-35. While considering this argument we should bear in mind the fact that the appellant was arrested and produced before PW-33 at about 10.30 p.m. on 2.3.1994. It is during the course of his interrogation at around 11 p.m. the appellant made the above statement as per Ex. P-35. Uppinangadi is a place which is not very close to Vamanjur where the incident in question took place, therefore, it was practically not possible for the I.O. to get Panch witnesses and travel the distance to make the recoveries as stated by the appellant. Moreover, in his statement Ex.P-35 the appellant had not disclosed where he kid kept the articles concealed and, therefore, the police had no prior information in this regard. The recoveries were made the following manning at the instance of the appellant in the presence of independent panch witnesses from places about which only the appellant had special knowledge. That apart, in Section 27, there is no such restriction that the recovery should be made immediately after the statement is made. So long as the recovery/discovery is pursuant to the statement made by the accused the said statement would be admissible in view of Section 27 of the Act. Therefore, there is no force in the argument that the recovery of stolen goods was not at the instance of the appellant.

23. The next contention in regard to the recovery made on behalf of the appellant is that factually the recovery made is not proved. This is based on an argument that the evidence of Panch witnesses in this regard cannot be believed. We find no basis for the argument. The Panch witnesses as could be seen from the record are all respectable persons. One of them is PW-10 a doctor practicing in Vamanjur where the murders in question took place. PW-12 is an agriculturist of Uppinangadi the place of appellants father's residence. Similarly other witnesses for the recovery Panchnama are respectable persons against whom no suggestions have been made to question the genuineness of their statements, hence, this argument also has to fail.

24. In this background if we examine the evidence of PW-16 Bavu who is a vegetable vendor near the house of the deceased, who has stated in his evidence that he had seen the deceased on the night of the incident near his shop which is situated in the locality where victims' house is situated. Learned counsel for the appellant however contended that there is an improvement in his evidence inasmuch as in his evidence before the court he had stated that the appellant was then in the company of Govinda one of the deceased but in his prior statement to the Police he had only stated that he had seen the appellant near his shop. We think in regard to the fact that appellant was seen near the shop of the witness there is no improvement and to that extent his evidence is consistent and believable. In this context, it should be noted that the appellant is working and residing in Mangalore, a place far away from Vamanjur and the appellant has not given any explanation for his presence in Vamanjur in the evening of 23.2.1994.

25. The prosecution has also further established from the evidence of hand-writing expert PW-30 that he had picked up fingerprints of the thumb which tallied with the corresponding fingerprints of the appellant which also indicates the fact that the appellant was in the house of the deceased at

about the time of the incident in question because those fingerprints were picked up immediately after the investigation of the case started.

26. From the above evidence like the two courts below we are also satisfied that the prosecution has established beyond all reasonable doubt that though the evidence upon relied by it is circumstantial evidence, it has established every link in the chain of circumstances which is consistent only with the guilt of the accused hence we are in agreement with the findings of the courts below recorded against the appellant.

27. While considering the question of sentence, the trial court had noted that the appellant to satisfy his greed had hatched a diabolical plan and committed cold-blooded premeditated murders including that of a young child who were his relatives and well-wishers. It was also observed that the appellant had shown no remorse for his action and even escaped from judicial custody and was absconding for a long period of 4 years which indicates that he has no respect for law. On facts it came to the conclusion that the case in hand was one of the rarest of rare cases calling for extreme penalty of death sentence and having found no extenuating circumstances which would justify a lesser sentence, imposed the sentence of death under Section 302 IPC. The High Court after discussing the case-law on the subject and after giving its anxious consideration to the sentencing policy laid down by the statute and the philosophy restated in Bachan Singh etc. v. State of Punjab etc. agreed with the trial court that the facts of the case called for the extreme penalty of death, hence while dismissing the appeal of the appellant accepted the reference made by learned Sessions Judge.

28. Before us the learned counsel appearing for the appellant strongly contended that the appellant was aged about 31 years at the time of the incident in question and because of certain financial conditions he was led to commit this crime and there being no other previous complaint of criminal activity against the appellant, he should be given a chance in life to rehabilitate himself hence a lesser sentence of life imprisonment may be more appropriate on facts of this case. Per contra, learned counsel appearing for the State of Karnataka reiterated what was observed by the two courts below and contended that the courts below were justified on facts of this case in imposing the maximum penalty of death.

29. As noticed by the courts below, so far as the factors to be taken note of while awarding the extreme penalty of death are concerned, it is settled by various judgments of this Court, reference to which has already been made by the two courts below in their judgments. We have independently considered the facts of the case and find no reason whatsoever to differ from the view taken by the two courts below even in regard to the quantum and nature of sentence. The appellant was a middle-aged person at the time of the crime and should be attributed with sufficient knowledge of the consequences of his act. The act in question cannot be construed as an act of revenge or arising out of a situation wherein the appellant was constrained to commit murders. Hardly 3 years before the incident in question, Appi the aunt of the appellant had accommodated him in her house despite her large family and gave him an opportunity in life to make an honest living as a tailor. He left the house of Appi not out of any misunderstanding or disappointment but because of his marriage and shifted his residence to his parent village of Uppinangadi wherefrom also he moved out to Mangalore to eke out his living as a tailor. The appellant has only himself to blame for his financial losses which was as could be seen from the records, due to his addiction to alcohol as also his gambling habits and it is because of this he had to incur loans and as alleged by the prosecution it is for satisfying his addiction, he planned to rob the family of the victims even at the cost of their

lives. In the process he did not even bother to spare the life of a young child. As noted by the trial court the conduct of his in absconding from judicial custody for nearly 4 years, also indicates the tact that the possibility of any rehabilitation is nil. The act of murder of 4 innocent sleeping victims without any provocation whatsoever from the victims' side indicates cold-blooded, premeditated approach of the appellant to attain his goals, however illegal the same may be. In such circumstances we are in agreement with the courts below that the only sentence that would befit the facts of this case is that of extreme penalty of death which was rightly imposed by the trial court after due consideration and affirmed by the High Court also after independent consideration of the entire facts of the case.

30. For the reasons stated above, this appeal fails and the same is dismissed.

31. We place on record our appreciation for the services rendered by the learned amicus curiae and direct that a sum of Rs. 750/- be paid to him for his valuable assistance.