SUPREME COURT OF INDIA

Gilbert Pereira

Vs.

State of Karnataka

Crl.A.No.752 of 2004

(P. Venkatarama Reddi and B. P. Singh, JJ.)

24.08.2004

JUDGEMENT

B. P. SINGH, J.:-

1. The appellant Gilbert Pereira was tried by the First Additional Sessions Judge D.K., Mangalore having been charged of the offences under Sections 302 and 397 IPC for having committed the murder of a young girl Marita Margaret Pereira and robbing her of her gold ornaments. The learned Additional Sessions Judge acquitted him of the charges under Sections 302 and 397 IPC but found him guilty of the offence under Section 379 IPC, since it found that the gold ornaments worn by the deceased shortly before her murder, and which were found missing after her murder, were recovered at the instance of the appellant who could offer no plausible explanation as to how he came in possession of the said ornaments. Accordingly, he was found guilty of the offence under Section 379 IPC and sentenced to two years rigorous imprisonment and also to pay a fine of Rs. 2000/- and in default to undergo rigorous imprisonment for a period of three months.

2. The State of Karnataka preferred an appeal to the High Court of Karnataka against the order of

acquittal being Criminal Appeal No. 89 of 1997. The High Court by its judgment and order of October 30, 2002 allowed the appeal, set aside the acquittal of the appellant and sentenced him to life imprisonment for the offence under Section 302 IPC and to pay a fine of Rs.1000/-. He was also sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 397 IPC. The sentences were ordered to run concurrently. In default of payment of fine of Rs. 1500/- the appellant was directed to undergo simple imprisonment for three months.

3. We may notice at the threshold that the accusation against the appellant was sought to be proved by circumstantial evidence as no one had witnessed the occurrence in which Marita was murdered. The case of the prosecution is that Marita (deceased) lived with her parents in Chokkadi at village Yenagudde in Udupi Taluk. Her father Thobias Pereira PW-1 was an agriculturist. On April 6, 1995 Marita accompanied her father to the coconut garden at about 7 a.m. for watering the coconut trees. After they had worked for some time, at about 9.15 a.m. PW-1 sent Marita (deceased) to their house with one plastic kerosene can and another small can with some implements in a nylon bag. She was to keep these items at home and bring tea for her father PW-1 in the coconut garden. Till about 11 a.m. Marita did not return and, therefore, PW-1 became anxious and started searching for her. He came to know from his wife that Marita had not returned home. PW-1 along with others searched for her till about 7.00 p.m. but they found no trace of Marita.

4. On the following morning, they again started the search and when PW-1 came near the house of PW-17 Smt. Juliana D'Silva he noticed that the small gate of the house was unlocked which was usually locked. He reported this matter to PW-13 Joseph Pereira the brother of PW-17 who looked after the house in the absence of PW-17. It is the case of the prosecution that PW-17 was a permanent resident of Mumbai and used to visit the village occasionally, and in her absence the house was looked after by PW-13 her brother, to whom the keys of the house had been entrusted. The appellant is the son of the aforesaid Joseph Pereira PW-13.

5. Shortly, thereafter Camil Pereira PW-9 came and informed him that the dead body of Marita was found lying in the bathroom of the house of PW-17. Immediately, PW-1 went to the said house where many people had gathered. He saw the dead body of his daughter Marita lying in the bathroom with cut injuries on her neck and below her left ear. Blood was found all over in the bathroom. He also noticed that the gold necklace and the ear studs worn by the deceased were missing. The black plastic kerosene can was found lying there. PW-13 Joseph Pereira was also present and it is alleged that he told PW-1 that on the earlier night his son had come with a bandaged hand and on questioning had confessed that he had killed Marita.

6. PW-19 PSI of the Manipal Police Station on coming to know about the incident came to the place of occurrence and recorded the statement of Thobias Pereira PW-1 on the basis of which the formal FIR was drawn up and a case was registered as Crime No.51 of 1995. The Circle Police Inspector of Udupi PW-21 took up investigation of the case and held inquest proceedings in the presence of PW-5 Emilia Pereira and one other witness. The appellant was arrested, and pursuant to voluntary

statement made by him the accused got recovered a pair of gold ear studs (MO-7), a gold chain (MO-8), a knife (MO-14), nylon bag (MO-13), a plastic can with some articles kept in it (MOs-9 to 12). His pant and shirt having blood stains were also recovered being MOs-15 and 16. The ASP Udupi PW-20 had obtained the post-mortem report and has proved the same. The informant PW-1 and Camil Pereira PW-9 identified the gold ornaments as those belonging to the deceased. PW-1 also identified the other articles which he had sent through her to be kept at home.

7. As observed earlier no one had witnessed the occurrence in which Marita had been killed but the prosecution relied upon several circumstances which according to it conclusively proved the guilt of the appellant. The circumstances relied upon by the prosecution were the following:-

1. PW-1 had sent Marita (deceased) to his house from his coconut garden shortly before the incident.

2. The accused was seen near the scene of offence in the village shortly after the incident.

3. The dead body was found in the bathroom cum lavatory of the house of Smt. Juliana D' Silva PW-17 on 7-4-1995.

4. Gold ornaments worn by the deceased were missing when her dead body was found lying in the bath room.

5. The appellant had an opportunity to gain entry into the house and for taking the deceased inside the house.

6. The accused was arrested on 7-4-1995.

7. The gold ornaments worn by the deceased at the time of her death and other incriminating articles were recovered at the instance of the accused.

8. Extra-judicial confession of the accused.

9. The injuries found on the accused.

8. The trial Court on the basis of the medical evidence on record came to the conclusion that the death of Marita was homicidal. It also found the first circumstance established inasmuch as there was good evidence to prove that the informant PW-1 had sent his daughter from his coconut garden to his house at about 9.15 a.m. and that the deceased had occasion to pass by the road in front of the house of PW-17 in the bathroom of which her dead body was found. The second circumstance considered by the trial Court was with regard to the accused being seen near the place of occurrence shortly after the incident. This part of the prosecution case was sought to be proved on the basis of the evidence of PW-2 and PW-3. PW-2 stated that at about 10 a.m. when he was coming to his house, on the path in front of the house of PW-17 he had seen the appellant going towards Katapadypete. The statement of PW-2 was recorded shortly after the dead body of the deceased was found. PW-3 deposed that at about 10.30 a.m. when he was going to the bus stand to catch a bus to Katapadypete he had seen the appellant going into the forest. The trial Court, finding that there was no reason for these witnesses to falsely implicate the applicant, accepted their evidence. Their evidence was also consistent inasmuch as PW-2 had seen him half an hour earlier in front of the house of PW-17 while PW-3 had seen him about half an hour later at a distance of about 1-1/2 furlongs from the said house. The trial Court, therefore, held that the second circumstance had also been established by the prosecution.

9. The third circumstance related to the finding of the dead body of the deceased in the bath room of the house of PW-17 on the morning of 7th April, 1995. This fact has been deposed to by several witnesses namely, PWs 1, 2, 3, 5, 9, 10, 12, 19 and 21. PW-1 is the informant himself who had rushed to the place of occurrence on hearing from his brother-in-law PW-9. PW-5 is a witness to the inquest report. PW-9 is the brother-in-law of the informant who had reported to the informant about the dead body found in the house of PW-17. PW-19 and PW-21 are the police officers who had reached the place of occurrence on getting the report about the incident. Apart from them, there were other witnesses who had gathered at the place of occurrence. PW-10 was a witness to the scene of offence Panchnama, while PW-12 an Assistant Engineer, PWD had been requested by the police to prepare the sketch plan of the place of occurrence which he prepared (Ex.P-13). Considering the voluminous evidence on record to prove this circumstance the trial court held that the prosecution had proved this circumstance as well beyond reasonable doubt.

10. The fourth circumstance related to the missing of gold ornaments which were worn by the deceased at the time of her death. The trial Court found this circumstance proved on the basis of the evidence of PW-1 who stated that when he saw the dead body of his daughter for the first time he noticed that her gold chain and ear studs were missing. The recovered gold ornaments (MOs. 7 and 8) were shown to him which he identified as those of his daughter.

11. The fifth circumstance sought to be established by the prosecution was that the appellant had access to the house in question where the dead body of the deceased was found. According to the

prosecution, the owner of the house PW-17 normally resided at Mumbai and she had, therefore, left the keys of her house with her brother PW-13. The appellant was the son of PW-13 and, therefore, had ample opportunity to enter the house since the keys of the house were kept with his father PW-13. The keys of the house were available to him and he could, therefore, enter the house. The trial Court noticed that both PW-17 and her brother PW-13 turned hostile to the prosecution and did not support the prosecution on vital aspects of the matter. PW-17 Smt. Juliana D' Silva denied that she had left the keys of her house with her brother who was requested to take care of the premises. She stated that though her house was looked after by her brother PW-13, she had kept the key of the house with herself. She had only given to PW-13 the keys of the locks put on the two outer gates of the house, and not the key of the lock which was put on the main door of the house.

12. PW-13 also resiled from his statement made in the course of investigation and stated that the key of the lock which was put on the main door of the house was with PW-17 and not with him. He admitted that he had been looking after the house in the absence of PW-17 in the sense that he had been looking after the coconut trees and the compound but he did not possess the key of the lock put on the main entrance of the house. He denied the suggestion that on the morning of 7th April, 1995 PW-1 had come to him to inform him that the lock put on the small gate of the compound was unlocked and that he had gone to the house along with PW-9 whom he met on the way and found that the lock of the small gate of the house was missing. He also denied the suggestion that he, thereafter, opened the main door of the house and entered the premises and that he was surprised as to how the dead body of the deceased was lying in the bathroom since the key of the house was with him and except for himself and his son, the appellant, no one else could enter the house. He also denied having questioned his son who admitted having committed the murder of deceased Marita and deprived her of her gold ornaments.

13. Similarly, PW-17 denied the statement made by her, in her statement under Section 161 Cr.P.C. that PW-13 had come to her at about 4 p.m. on 9-4-1995 and had wept and told her that his son had committed the murder of Marita.

14. It is, therefore, apparent from the evidence of PW-13 and PW-17 that they contradicted the case of prosecution that the key of the main door of the house had been given by PW-17 to PW-13. So far as the evidence of PW-1 and PW-9 is concerned, the trial Court found that there was no consistency between the two versions given by these witnesses. While PW-1 stated that he had seen the outer gate of the house unlocked and informed PW-9 about it who in turn informed PW-13, according to PW-9, he was with PW-1 when they found that the gate of the house was open and he went and informed PW-13 about it whereafter they both went to the house and opened the main door and found the dead body of the deceased. On the other hand, a suggestion was made to PW-13 in the witness box that PW-1 had himself come to him and informed him about the missing lock and then PW-13 went alone to the house, and on his way met PW-9 who also accompanied him to the house and was present when the door was opened. These inconsistencies found in the evidence of the aforesaid witnesses led the trial Court to hold that the prosecution failed to establish this circumstance. According to the trial Court if PW-13 possessed the key of the house, the investigating officer, would have certainly seized the said key. Upon such reasoning, the trial Court

came to the conclusion that the fifth circumstance had not been proved beyond reasonable doubt.

15. The sixth circumstance related to the arrest of the accused on 7-4-1995. The trial Court found this circumstance established as the evidence clearly proved that he was arrested by PW-21 on 7-4-1995.

16. The seventh circumstance related to the recovery of the incriminating articles. The trial Court considered the evidence of PW-21 the Circle Police Inspector to whom the appellant made a statement resulting in the recovery of incriminating articles such as the gold ornaments etc. of the deceased. In this connection, the trial Court also relied upon the evidence of PW-4 the Panch witness and PW-20 as also on the evidence of PW-11 the proprietor of the shop from where the gold chain was recovered at the instance of the appellant. After considering the evidence of these and other witnesses the trial Court concluded that the prosecution had proved beyond reasonable doubt that the gold ornaments belonging to the deceased were recovered at the instance of the appellant pursuant to his voluntary statement.

17. The extra-judicial confession was relied upon by the prosecution as the eighth circumstance. However, in view of the fact that both PW-13, before whom the confession was allegedly made and PW-17, to whom PW-13 related the matter, became hostile to the prosecution, this circumstance could not be proved.

18. The ninth circumstance related to the injuries found on the person of the accused. The trial Court noticed the injuries found on the person of the accused which according to the prosecution may have been sustained by him in the scuffle while attempting to kill the deceased. The trial Court considered the evidence of PW-6 Dr. Mahabaleshwar Vaidya and PW-8 Dr. Vishnumoorthi Rao (declared hostile). Dr. Mahabaleshwar Vaidya PW-6, the medical officer in Government Hospital, Udupi stated that he had examined the appellant at about 9.15 p.m. on 7-4-1995 when he was brought to him by a police constable. The appellant had disclosed to him that he had suffered the injuries while inflicting injuries with a knife on the deceased. He found the following injuries on the appellant :-

"1) Lacerated wound 1 "x 1/2" x muscle deep obliquely situated over the palmar aspect of the right index finger over the junction of the first and second phalanx.

2) Lacerated wound measuring 2" x 1/2" x muscle deep exposing the tendons over the proximal phalynx over the palmar aspect of the ring finger.

3) Lacerated injury of the size of 1-1/2" x 1/2" x muscle deep over the middle finger at the junction of the proximal and inter phalanges.

4) Partly sutured wound 1-1/2" long and exposing the underlying tendons and muscles at the junction of the first and second proximal phalanx of the little finger.

5) An incised wound measuring 3/4" x 1/2" x skin deep over the left hand over the thenar eminence 1" below the root of the left thumb".

19. According to him, injuries numbers 2, 3 and 4 were grievous in nature and the other injuries were simple. He found injury number 4 to be sutured which indicated that the appellant had been treated earlier. He also deposed that if the accused held the blade of the knife (MO-14) during a scuffle, injury Nos. 1 to 4 could have been caused. However, in the wound certificate given by him ExP-9 he had noted that injuries 1 to 4 could be caused by a blunt object. The trial Court also noticed the evidence of PW-8 Dr. Rao to whom it was suggested that the accused had told him at the time of examination that he had sustained the injuries while chopping tender coconut. This was contradictory to what he is alleged to have stated before PW-6 Dr. Vaidya. The trial Court further held that according to PW-6, the age of the injuries was 12 to 24 hours prior to his examination which took place at about 9.15 p.m. on 7-4-1995. If the injuries had been caused within 12 to 24 hours prior to the examination, the injuries would have been caused between 9.15 p.m. on 6-4-1995 and 9.15 a.m. on 7-4-1995 and not between 9.30 a.m. and 10 a.m. on 6-4-1995. The trial Court, therefore, concluded that the prosecution had failed to prove the circumstance that the injuries suffered by the appellant were suffered during the course of scuffle with the deceased.

20. It was urged on behalf of the prosecution that the clothes of the deceased M.O Nos. 1 to 4 had been seized under Inquest Panchnama Ex.P8 and knife recovered at the instance of the appellant as well as his clothes M.O. Nos. 14 to 16 were seized pursuant to his voluntary statement Ex.P28. The seizures had not been challenged by the defence and since the clothes seized as well as the knife had blood stains on them, they had been sent for examination by experts. Chemical Examiner's report Ex.P25 and Serologist's report Ex.P26 proved beyond doubt that the blood found on all these items were of human origin and were stained with the same blood group i.e. AB Group. Since the clothes of the deceased, the clothes of the appellant and the knife were found stained with the same blood group of human origin it indicated that the accused was in close proximity with the deceased when she was fatally wounded. This itself was a strong incriminating circumstance against the appellant. Reliance was placed on the decision of this Court in Ashok Kumar v. State (Delhi Administration) 1995 Supp (3) SCC 626. The trial Court, however, held that the evidence of DW.1 Dr. B. Jayaprakash Shetty and his report established that the appellant by reason of deformity in both his hands since birth could not hold any object with firm grip with either hand. The Court also observed that the appellant had deformity in all the fingers of both hands and, therefore, it appeared that he could not possibly hold any object firmly with either hand. The appellant had filed an application seeking a AIR 1996 SC 265 : 1995 AIR SCW 4040 : 1996 Cri LJ 421 direction to the

Superintendent, District Prison, Mangalore, to produce him before Dr. Jayaprakash Shetty, DW-1 of the District Wenlock Hospital, Mangalore, for examination of the deformity in his hands and to submit his report. Though this application was opposed by the prosecution, the Court allowed the application and direction was issued to the Superintendent, District Prison, Mangalore to produce the accused before DW.1, who thereafter examined him and submitted his report. Dr. Shetty was examined as DW.1. He described the deformity of the fingers of both his hands and in his opinion the appellant was not capable of holding any object with firm grip with either hand. The deformity was there ever since his birth and, therefore, it was unlikely that he could hold a knife with firm grip and cause injuries with it to any person. Based on his evidence the trial Court reached the conclusion that having regard to the deformity of hands suffered by the appellant he could not have committed the murder since that involved inflicting of injuries with sufficient force. In view of this finding the trial Court held that the presumption under Section 114 of the Evidence Act was of no avail to the prosecution since the accused was not capable of committing the murder with the knife as alleged. In view of this finding it could not be presumed that the accused committed both murder and theft. In substance the trial Court found that the presumption, if any, under Section 114 of the Evidence Act stood rebutted by the fact that the appellant was incapable of committing the murder with a knife in view of the deformity of both his hands.

21. In view of these findings the trial Court acquitted the appellant of the offences punishable under Sections 302 and 397 IPC giving him the benefit of doubt.

22. However, the trial Court found the appellant guilty of the offence under Section 379 IPC holding that the gold ornaments which were missing after the murder of the deceased were recovered at the instance of the appellant who was unable to give any plausible explanation as to how he came in possession of the same. The trial Court, therefore, held him guilty only of the offence under Section 379 IPC and sentenced the appellant to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 2,000/-, in default to undergo rigorous imprisonment for a further period of 3 months. The fine if recovered, was directed to be paid to PW 1, father of the deceased.

23. Aggrieved by the judgment and order of the trial Court the State of Karnataka preferred an appeal before the High Court which was allowed by judgment and order dated 30th October, 2002 and the appellant was found guilty of the offences punishable under Sections 302 and 397 IPC.

24. To avoid prolixity, it is not necessary to advert to the evidence on the basis of which the High Court found the incriminating circumstances against the appellant proved by cogent evidence. So far as 6 of the 9 incriminating circumstances are concerned, the trial Court also found in favour of the prosecution. Only in respect of 3 circumstances the trial court found that the prosecution had failed to establish those circumstances which provided the missing links in the chain of circumstances sought to be proved by the prosecution. The extra judicial confession was discarded by the trial Court and that finding has not been disturbed by the High Court. So far as the concurrent findings

are concerned, with the assistance of counsel for the parties, we have perused the relevant evidence on record and we find no reason to take a different view. That leaves us to the consideration of the two circumstances on which the High Court came to a different conclusion and held that those two circumstances also stood established. The trial Court had also recorded a finding that in view of the physical handicap suffered by the appellant, he was not capable of committing the murder as alleged by the prosecution. The High Court disagreed with this finding. We shall, therefore, consider the relevant evidence having a bearing on the findings on which the High Court has differed from the trial Court. We shall also consider the evidence which relates to the physical handicap suffered by the appellant.

25. The trial Court held that the evidence on record did not establish that the appellant had access to the house in question from where the dead body of the deceased was found. The trial Court was of the view that the evidence on record was not consistent as to who informed PW.13 about the small gate of the premises remaining unlocked and in what manner the lock of the main entrance to the house was opened. PW.13, brother of PW-17, who was the owner of the house as well as PW.17 in the course of investigation had supported the prosecution story that PW.17 had handed over the keys of the house to her brother PW-13 who used to look after her house in her absence. They resiled from their earlier statements while deposing in Court and both of them deposed that only the keys of the outer gates had been handed over to PW.13 and the key of the lock put on the main entrance of the house remained with PW.17 who resided at Bombay. PW-13 and PW-17 were declared hostile and, therefore, the trial Court concluded that this circumstance had not been established by the prosecution.

26. On the other hand the High Court observed that PWs. 13 and 17 had turned hostile since PW.13 was the father of the appellant while PW.17 was the sister of PW.13. There was no evidence to the effect that door of the house or the lock put on the main entrance had been broken open or tampered with. Obviously the lock had been opened before gaining entry inside the house and this could be done only with the help of a key. This circumstance, therefore, eloquently supported the case of the prosecution that the key of the lock put on the main entrance of the house was available, and the lock had been opened with the key and the dead body found inside the house. Therefore, the prosecution case that the key of the lock put on the main entrance of the house remained with PW-13 could not be doubted. Since the appellant was known to the deceased, his acquaintance may have helped him in persuading her to go inside the house where she was ultimately murdered. We find ourselves in agreement with the finding recorded by the High Court. Apart from over-looking the significant circumstance that the door had been opened by someone, the trial Court also over-looked the evidence of Camil Pereira, PW.9 in this regard. So far as PW-9 is concerned, there appears no reason to doubt his testimony as there is not even an allegation against him that he had any animosity towards the accused or his family members. PW-13 and PW-17 have thoroughly discredited themselves by turning hostile and, therefore, it may not be safe to rely upon their evidence. Their assertion at the trial that the key was at Bombay with PW-17 cannot be believed to be true, since the assailant had gained entry by opening the lock, and not by breaking it, and again locking it before leaving the place of occurrence. Even assuming that there was some inconsistency as to who informed PW-13 about the small gate remaining open, the evidence of PW-9 is quite clear and convincing that he came alongwith PW-13 to the house in question and it was PW-13 who opened the lock of the house whereafter they entered the house and saw the dead body of the

deceased lying in the bath room. He thereafter immediately went and informed PW-1, father of the deceased who also came rushing to the place where the dead body was found. We are, therefore, satisfied that the evidence on record does establish the fact that the key of the house was entrusted to PW-13 and the appellant being his son had access to the house in question. The circumstances clearly establish that the person who committed the murder of the deceased had the key of the house with the help of which he entered the house and after committing the offence locked the house and went away. In these circumstances there appears to be no reason to doubt the testimony of PW-9. The trial Court completely failed to notice reliable evidence on record as also the very significant circumstance that the lock of the door had been opened by the assailant and again locked after committing the murder. The trial Court having overlooked reliable and crucial evidence on record, the High Court was justified in setting aside its finding.

27. As noticed earlier, the case of the prosecution is that the appellant had sustained injuries on his right hand which may have been sustained in the scuffle that preceded the murder of the deceased. The trial Court took the view that the prosecution had miserably failed to establish that the accused sustained the said injuries during the course of the incident, while the High Court has held that this circumstance was fully established by the evidence on record.

28. The case of the prosecution is that on the date of occurrence i.e. 6th April, 1995 the appellant had gone to the clinic of Dr. Rao, PW.8 where he got his wounds bandaged. After his arrest on 7th April, 1995 he was sent to Dr. Vaidya, PW.6, Medical Officer of the Government General Hospital, Udupi for medical examination.

29. Dr. Rao, PW.8 denied the fact that the appellant had ever visited him or that he had ever bandaged his injuries. He resiled from his statement recorded under Section 161, Cr.P.C. and denied the fact that when questioned by him, the appellant had informed him that he had sustained those injuries while chopping coconuts.

30. The evidence of PW.6, Dr. Vaidya is to the effect that he examined the appellant at 9.15 p.m. on 7th April, 1995 when he was produced before him by a police constable on the request of the Circle Police Officer. The appellant told him that he had suffered those injuries with the knife while he was inflicting injuries on the victim. He found the following injuries on the person of the appellant.

"i) Lacerated wound measuring 1 x 1/2" and muscle deep obliquely situated over the palmar aspect of the right index finger over the junction of the first and second injuries.

ii) Lacerated wound of the size of 2" x 1/2" muscle deep exposing the tendence over the proximal phalynux over the palmar aspect of the ring finger.

iii) Lacerated injury of the size of 1 1/2 " x 1/2" again muscle deep over the middle finger at the junction of the proximal and inter phalyaline.

iv) Partly sutured wound 1 1/2" long to which the underly's tendence and muscles at the junction of the first and second preveinal of the little finger.

v) An incised wound of the size of 1/2" x 1/2" and skin deep over the left hand over the tereon uniness 1" below the root of the left thumb."

31. In his opinion those injuries could be caused by the knife shown to him, if the appellant had held the blade of that knife in the course of scuffle. Injury Nos. 2 to 4 were grievous in nature while other injuries were simple. Age of these injuries, according to him, was 12-24 hours before the medical examination. The trial Court did not accept the case of the prosecution holding that PW.8 Dr. Rao was declared hostile and there was nothing to show that he was deposing falsely. If he had supported the case of the prosecution in the course of investigation, the Investigating Officer could have got a 'wound certificate' from him and confronted him with that certificate. So far as the opinion of Dr. Vaiyda, PW.6 is concerned, the trial Court held that his opinion was not acceptable because in the wound certificate issued by him he had mentioned that the injuries could be caused by a hard blunt substance. Moreover if the injuries were caused 12-24 hours before the examination of the accused by him, the injuries could have been caused between 9.15 p.m. on 6th April, 1995 and 9.15 a.m. on 7th April, 1995, while the case of the prosecution is that the injuries were caused at about 9.30 or 10.30 a.m. on 6th April, 1995.

32. The High Court on the other hand, after noticing the evidence of these two doctors, held that PW.8 who had been declared hostile was not speaking the truth. It was not denied by the defence that when the appellant was examined by Dr. Vaidya, P.W.6, injury No.4 was found to be a sutured wound, which proved that the appellant had received medical aid before he was produced before Dr. Vaiyda, PW.6. Moreover it was for the appellant to explain the injuries found on his person and no explanation has been offered by the appellant in this regard.

33. Having considered the evidence on record and the reasons recorded by the trial Court as well as the High Court, we find ourselves in agreement with the finding recorded by the High Court. The incriminating circumstance sought to be proved by the prosecution was that soon after the occurrence injuries were found on the person of the appellant, which was indicative of the fact that in the course of scuffle preceding the murder of the deceased, he may have sustained those injuries. This circumstance, if proved, buttresses the case of the prosecution by adding one more circumstance to the chain of incriminating circumstances proved against the accused. It was not possible for the prosecution to give the details of the occurrence in which the injuries were caused

and the manner in which they were caused, simply because there was no witness to the occurrence. The prosecution could only establish as an incriminating circumstance the fact that the appellant was found to have sustained injuries which may have been sustained in the course of the same occurrence, and this circumstance had to be considered along with other circumstances proved at the trial. This circumstance at best provided an additional link in the chain of incriminating circumstances pointing to the guilt of the appellant.

34. What, however, is very significant is the fact that the appellant has offered no explanation whatsoever as to how he came to sustain those injuries. That fact being within his special knowledge, it was incumbent upon him to explain those injuries. Not only that he did not offer any explanation for the injuries, even when questions were put to him in his examination under Section 313, Cr. P.C. relating to those injuries, he only offered a general denial. In these circumstance we are persuaded to hold that the prosecution has proved as an incriminating circumstance the fact that the appellant when arrested on the next day was found to have sustained several injuries on his right hand which may have been sustained by him in the course of the occurrence when resistance was offered by the victim. In any event he offered no explanation as to how he came to suffer those injuries. Of course this circumstance by itself does not conclusively prove his complicity, but this circumstance has to be considered along with other incriminating circumstances proved on the basis of the evidence on record.

35. Another circumstance which is worth noticing at this stage is that during the course of investigation the clothes of the deceased were seized under Inquest Panchnana Ex.8 and marked M.O. Nos. 1 to 4. Similarly the knife in question had been recovered and seized at the instance of the accused. His clothes were also seized. These items were sent for chemical examination. Exs.P25 and P26 the Chemical Examiner's Report and Serologist's Report respectively are to the effect that the blood found on all these articles was human blood of AB Group.

36. It is evident from the evidence of PW7 Dr. Naik that the sample blood of the accused was examined and it was found that the blood group of the appellant was A+. Obviously, therefore, the blood found on the clothes of the deceased, the weapon of offence and the clothes of the appellant must have been the blood of the deceased. It therefore, follows that the accused was in close proximity with the deceased when she was fatally wounded. It was faintly urged before us by the counsel appearing for the appellant that the appellant did not kill the deceased and sought to explain the blood stains on his clothes saying that while snatching the ornaments from the deceased his clothes may have got stained with her blood, even though he did not actually kill the deceased. It is not possible for us to accept the above explanation in the facts and circumstances of this case. In any event no such explanation was offered by the appellant.

37. The trial Court, even though it found many of the circumstances proved against the appellant, rejected the prosecution case on the ground that having regard to the physical handicap suffered by the appellant, he could not have committed the offence which involved holding a knife in his hands

and stabbing the deceased with the use of sufficient force. For this, reliance was placed on the evidence of DW.1, Dr. Shetty. As we have noticed earlier Dr. Shetty, DW.1 was examined on the request of the counsel for the appellant, though the prayer was opposed by the prosecution. It is not possible for us to conjecture as to why the appellant particularly sought permission to examine Dr. Shetty, DW.1 as a defence witness. It is not his case that he was being regularly treated by Dr. Shetty or that at any time before the occurrence he was medically examined by him.

38. Dr. Shetty stated that he had examined the appellant on 14th August, 1996 when he was sent to him by the Superintendent, District Prison, Mangalore pursuant to the direction of the Court. On examination of the accused he noticed the following:-

"1. On the right hand there is swan neck deformity of fingers with the hyper extension of PIP and DIP (Proximal inter phalangeal joint and Distal inter phalangeal joints).

2. He has less power of grip and pinch of grade II.

3. He has the absence of terminal phalinx of all the fingers with deformity of residual power of grip of Grade II and with no pinch.

With the above condition, the accused Gilbert Pereira is not capable of holding any object with firm grip with his either hand."

39. He referred to report Ex.D.4 where he had mentioned his above observations. In his opinion having regard to the deformity in both hands of the appellant since his birth, it was quite unlikely that the appellant could hold a knife like weapon with firm grip and cause any injury with it on any person. This witness was shown the post-mortem report Ex.P.15. He opined that injury Nos. 1 and 2 mentioned in that report could not have been caused by the appellant holding the knife M.O. No.14 and assaulting the deceased with it. The reason given by him was that for inflicting those injuries the knife had to be hit against the victim with sufficient force which the accused could not do by reason of deformity in his hands. He, however, admitted that the accused was capable of causing injury No.3 by assaulting the deceased with the knife M.O. No.14. He denied the suggestion that it was possible for the appellant to cause injury Nos. 1 and 2 by assaulting the deceased with the knife M.O. No.14 holding the same in his right hand. He, however, stated that the accused was capable of writing and signing his name holding a pen. The muscle power of the accused was Grade-II. The accused could take his meals holding a spoon.

40. We may also notice the evidence of Dr. Vaidya, PW.6 who had examined the appellant on the very next day of the occurrence. He deposed that he had found injuries on the right hand of the

appellant on its palmer aspect. He also found that one of the injuries was sutured and, therefore, it appeared that the appellant had been examined earlier by a medical practitioner. He had also seen the deformity in all the four fingers of the left hand of the accused except the thumb. The left great toe was absent. There was wasting of muscles in the left toe. In his opinion as well, the appellant could not hold any object with his left hand by reason of deformity of his fingers.

41. The trial Court on the request of counsel for the appellant during the course of arguments observed the fingers of both the hands of the accused. It noticed that the accused had deformity in all the fingers in both the hands. The accused had then submitted that he had been suffering this deformity since his birth.

42. It appears that the High Court as well observed the deformity suffered by the appellant in both his hands for which he was required to appear before the High Court. The High Court noticed that all the fingers of the left hand including the thumb are not properly formed and the defect appears to be since birth. As far as the right hand is concerned his thumb and the index finger were sufficiently strong though the other fingers did not appear to be very strong. The appellant had told the Court that he had been eating food with a spoon holding the spoon in his right hand. The High Court also noticed that his arms were strong and he was physically and mentally sound and was a young man aged about 20 years on the date of occurrence. Except for the fingers he was otherwise physically fit.

43. The trial Court concluded that there was no reason to disbelieve the evidence of D.W.1. His definite opinion was that with the deformity of his hands suffered by the appellant since birth, he could not hold any object with firm grip with either hand and, therefore, injury Nos. 1 and 2 mentioned in the post-mortem report could not have been caused by him by using a knife. The trial Court, therefore, held that the appellant could not have committed the murder of the deceased.

44. The High Court, on the other hand, has considered the evidence on record and made its own observations regarding the physical handicap suffered by the appellant. It noticed that though P.W.6 had examined the appellant only a day after the occurrence, and though the said doctor was cross-examined at length, no question was put to him in the cross-examination with regard to the deformity suffered by the appellant in his right hand and his ability to hold the knife or any other object in his right hand. It was not even suggested to Dr. Vaiyda, P.W.6 that the appellant could not hold the knife in his right hand and cause injuries to the deceased. The High Court concluded that it was not possible to agree with the finding of the trial Court and to hold that the appellant was incapable of causing the injuries found on the person of the deceased. So far as injury No. 3 is concerned, even DW.1 admitted that such an injury could be caused by the appellant using the knife M.O. No.14. He also stated that the appellant could write and sign holding a pen. The appellant could also take his meals by holding a spoon. His muscle power was of Grade-II. In view of these facts the High Court found that the view taken by the trial Court that because the appellant had no firm grip, it was not possible for him to stab the deceased with the knife M.O. No.14, was palpably

wrong. We find ourselves in agreement with the High Court, even keeping aside the personal observations made by it.

45. It is no doubt true that the appellant is a physically challenged person inasmuch as he suffers from deformity of fingers in both the hands. So far as the arms are concerned, there is no abnormality and, therefore, he is fully capable of using his arms like any other normal person. The fact that he is not capable of holding any object with firm grip with either of his hands does not mean that he cannot hold a knife at least in his right hand. As noticed by the High Court his right thumb and index finger are sufficiently strong. The evidence on record also proves that he can write with his hand holding a pen. He can also take his meals holding a spoon. Even according to DW.1 he was capable of causing injury No.3 as mentioned in the post-mortem report by assaulting the victim with the knife M.O.14. If it is possible for the appellant to do all these things, one fails to understand why he could not have caused injuries 1 and 2 found on the person of the deceased. It is common experience that physically challenged persons since birth, as of necessity, improvise their own methods of doing things very much in the same manner as a normal person does. Having regard to the evidence on record we have no doubt that he must have committed the offence. The circumstances found proved against him conclusively establish that he must have committed the offence. As against that his defence that he was physically challenged and, therefore, not in a position to cause the injuries is unbelievable. The circumstances are so telling that even the trial Court which placed implicit reliance on the evidence of DW-1 felt compelled to hold that the appellant must have snatched the ornaments from the deceased, though he may not have committed the murder. These ornaments were later recovered at the instance of the appellant which is a strong circumstance to prove his complicity.

46. Though, in our opinion, the circumstances proved against the appellant are conclusive in nature, being consistent only with the hypothesis of his guilt, we may observe that once his defence that he was not capable of committing the offence on account of the physical handicap suffered by him is rejected, the presumption under Section 114 of the Evidence Act can also be drawn. In the instant case, the evidence discloses that only a few hours after the occurrence, the appellant sold the gold chain to PW-11, from whose custody the gold chain was recovered only 4 days later at the instance of the appellant, who had no explanation to offer as to how he came in possession of the gold chain belonging to the deceased. The presumption therefore arises that the appellant was the culprit who removed the gold chain from the person of the deceased. This presumption coupled with the other circumstances adverted to above especially the unexplained injuries on the hand of the accused and the blood of same group being found on the clothes of deceased as well as accused, gives rise to further presumption that the removal of gold ornament and the fatal attack on the deceased should have taken place as part of the same transaction.

47. We are, therefore, of the view that the incriminating circumstances proved against the appellant form a complete chain of circumstances which is consistent only with the hypothesis of guilt of the appellant. Each circumstance is incriminating in nature and the totality of circumstances conclusively establish the guilt of the appellant. We, therefore, find no merit in this appeal and the same is accordingly dismissed.

Appeal dismissed.