

# SUPREME COURT OF INDIA

State of Kerala

Vs.

V. Baby

CrI.A.No.1306 of 1999

(B.P.Singh and S.B.Sinha JJ.)

13.04.2005

## JUDGMENT

### **B.P.Singh, J.**

1. This appeal has been preferred by the State of Kerala against the order of acquittal dated 18th February, 1999 recorded by the High Court of Kerala at Ernakulam in Criminal Appeal No.407 of 1998. The sole accused was the respondent herein who was charged of the offence of murder for having caused the death of Lakshmi Amma in order to commit theft of a pair of ear-studs and a gold chain on the evening of September 3, 1992. The case of the prosecution is that he beat her with a spade and thereafter buried her dead body in his land. The case rests purely on circumstantial evidence. There is no direct evidence to prove that the respondent had either assaulted the deceased or had buried her dead body. In order to prove its case, the prosecution relied upon three main circumstances. The first circumstance is that PW-3 was shown two ear tops by the accused at the bus stop. Secondly, the respondent had mentioned about the ear tops and chain to PW-2 though he had not shown them to him. In his statement to the police he had mentioned only about the chain and not about the ear- studs. Lastly, it was the case of the prosecution that the respondent had buried the dead body of the deceased in his own field and the said body was recovered on the basis of the disclosure statement made by the respondent himself.

2. The High Court found the circumstances either not established or insufficient to prove the case against the respondent. So far as PW-3 is concerned, the High Court found it wholly unnatural for the respondent to go to him at the bus stop and show him two ear tops without any reason. This witness was examined by the police in the course of investigation one year after the occurrence. The High Court did not find this part of the prosecution case to be reliable. The second circumstance namely that the accused had talked about the ear tops and chain to PW-2 was also not found believable particularly when PW-2 was not even shown those ear tops and chain. In fact the ear tops and the chain were never recovered and therefore, not produced at the trial.

3. As to the most important circumstance namely the recovery of the dead body at the

instance of the respondent, the High Court found the evidence relating to the same to be unacceptable. The evidence on record disclosed that a part of the dead body was exposed and had come out from the grave and was visible. The second reason for disbelieving the disclosure statement was that even before the body was exhumed, a large number of persons had already collected there, which itself established that the fact was known to everyone in the village, and the body was really not discovered at the instance of the respondent.

4. We have gone through the material placed before us but we find no reason to disturb the findings recorded by the High Court, particularly in an appeal against acquittal.

5. This appeal is, therefore, dismissed.