

Ramesh

v.

State By Madhugiri Police

(Supreme Court Of India)

HON'BLE MR. JUSTICE HARJIT SINGH BEDI HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

Ramesh v. State By Madhugiri Police

Criminal Appeal No. 1384 Of 2003 | 12-08-2010

1. Appellant, Ramesh was put on trial for commission of the offence under Section 302 and 201 of the Indian Penal Code. The Principal Sessions Judge, Tumkur by a judgment dated 25th June, 1996 passed in Sessions Case No.123 of 1994 acquitted him of both the charges.

2. Aggrieved by the same the State preferred Criminal Appeal No.1062 of 1996 and the Karnataka High Court by its judgment dated 3rd July, 2002 set aside the acquittal of the appellant and found him guilty for the charges levelled against him and sentenced him to suffer imprisonment for life as also to pay a fine of Rs.1,000/-, in default to undergo imprisonment for two months.

3. Appellant has preferred this appeal under Section 379 of the Code of Criminal Procedure.

4. According to the prosecution on 18th July, 1994 PW.1, Thotaramu gave report to the Police Station alleging that on 17th July, 1994 at 5p.m. his four year old son, Bhanuprakash, was playing near the house but did not return to the home in the night. In the report it was further stated that he and his wife-Gowaramma, PW.2 went to search him and met PW.3, Sakamma and PW.4, Annapoornamma who informed them that they had seen their son Bhanuprakash along with the appellant near Kothibande at about 6 p.m. on 17th July, 1994. On the basis of the aforesaid information Police registered Crime No.130 of 1994 under Section 363 of the Indian Penal Code.

5. Further case of the prosecution is that on 19th July, 2010 informant came to know that the appellant was hiding in his house and he along with PW.5, H.S. Nagaraju and PW.7, H.D. Ganganna and others enquired about the missing child Bhanuprakash from him. It is alleged that in the beginning appellant denied any knowledge about the missing child but later on he confessed to have murdered the child and buried him and covered it by plants. According to the prosecution the appellant disclosed that he suspected the child's father i.e. informant Thotaramu to have murdered his uncle's son and he further suspected that the informant had spoiled his sister. The informant as also the other persons present there apprehended the appellant and produced him before the Police and gave another report and accordingly Section 302 and 201 of the Indian Penal Code were added in Crime No.130 of 1994. After arrest by the Police, appellant gave a statement before the Police and pointed out the place where he had buried the child and on that information PW.6, Padmanabharaju Tahsildar and PW.9, Dr. Ramadas were summoned to the spot and the dead body was exhumed in their presence and the Panch witnesses. After usual investigation Police submitted charge-sheet against the appellant and he

was ultimately committed to the Court of Session to face the trial where he was charged for the commission of the offence under Section 302 and 201 of the Indian Penal Code. Appellant denied to have committed any offence and claimed to be tried. In order to bring home the charge the prosecution had examined altogether 14 witnesses which included PW.1, Thotaramu and PW.2, Gowaramma, the father and the mother of the deceased as also PW.3, Sakamma and PW.4, Annapoornamma who had seen the appellant holding the hand of the deceased in the evening of 17th July, 1994. The prosecution had also examined PW.5, H.S Nagaraju and PW.7, H.D. Ganganna before whom the appellant had made the extra judicial confession. Besides PW.9, Dr. Ramadas who had conducted the postmortem examination and Tehsildar PW.6, Pamanabharaju, in whose presence the dead body was exhumed were also examined.

6. The trial court rejected the case of the prosecution that the appellant was last seen in the company of the deceased as also extra judicial confession and acquitted the appellant of both the charges. However, in appeal the High Court relied on the evidence of PW.3, Sakamma and PW.4, Annapoornamma and held that the deceased was last seen in the company of the appellant and further found that the appellant had made extra judicial confession before PW.5, H.D. Nagaraju and PW.7, H.D. Ganganna and accordingly set aside the order of acquittal and convicted the appellant as above.

7. Mr. Rajesh Mahale, learned counsel appearing on behalf of the appellant submits that the view taken by the trial court being one of the possible views, the High Court in an appeal from the judgment of the acquittal ought not to have interfered with the same and converted the judgment of acquittal to that of conviction.

8. Mr. Sanjay R. Hegde, learned counsel appearing on behalf of the respondent submits that the evidence on record clearly established that the appellant murdered the child and in order to conceal the crime buried him and that being the only possible view the High Court rightly interfered with the judgment of acquittal.

9. It is trite that the High Court in appeal from the judgment of acquittal does not interfere with the same in case the view taken by the trial court is one of the possible views. It is equally well settled that the High Court in an appeal from the judgment of acquittal possesses the power to appraise the evidence and come to its own conclusion and can reverse the finding of acquittal to that of conviction if in its opinion the evidence on record proves the guilt of the accused. Bearing in mind the principle aforesaid, we proceed to examine the correctness of the impugned judgment. PW.3, Sakamma and PW.4, Annapoornamma are neighbours not only of the deceased but of the appellant also as it has come in their evidence that their houses are intervened by one or two houses of the informant and the appellant. They have clearly stated in their evidence that they had seen the appellant holding the hand of the deceased in the evening of 17th July, 1994. The trial court has rejected this part of the prosecution story on the ground that these witnesses could not have identified the appellant in the evening as it is not the case of the prosecution that there was any light. As stated earlier appellant and these two witnesses are neighbours and, therefore, knew the appellant well and their claim of identification cannot be rejected only on the ground that they have identified him in the evening, when there was less light. It has to be borne in mind that the capacity of the witnesses living in rural areas cannot be compared with that of urban people who are acclimatized to fluorescent-light. Visible capacity of the witnesses coming from the village is conditioned and their evidence cannot be discarded on the ground that there was meager light in the evening. There is nothing on record to

show that these two witnesses are in any way interested and inimical to the appellant. Their evidences clearly show that the deceased was last seen with the appellant and the High Court did not err in relying on their evidence.

10. PW.5, H.S. Nagaraju and PW.6, Padmanabharaju have stated that on enquiry the appellant confessed that he had murdered the deceased as he suspected his father to have killed his uncle's son and spoiled his sister. Nothing has been brought on record in the cross-examination to show that these two witnesses are in any way interested and inimical to the appellant. From their evidence it is evident that the appellant made the extra judicial confession, which is voluntary and further the appellant had motive to commit the crime. It is relevant here to state that after the appellant was brought to the Police Station he made a statement leading to the recovery of the dead body. The prosecution has thus proved beyond reasonable doubt that the deceased was last seen in the company of the appellant, he had made extra judicial confession and the dead body was recovered at the instance of the appellant. The chain of circumstances indicated above clearly point out the guilt of the appellant and in our opinion the High Court rightly held him guilty of the offence charged.

11. In the result, we do not find any merit in the appeal and it is dismissed accordingly. The appellant is on bail, his bail bonds are cancelled and he is directed to surrender forthwith.