2024 INSC 838

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 291 OF 2023

Karakkattu Muhammed Basheer ... Appellant

VERSUS

The State of Kerala ... Respondent

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. This Appeal is preferred against the judgment and order dated 18.10.1996 passed by the High Court of Kerala at Ernakulam (hereinafter referred to as "the impugned judgment"), upholding the order of conviction and sentence passed by the Sessions Court, of the Appellant/Accused No. 01 under Sections 302 and 201 of IPC for the murder of one Gouri during the night of 16th-17th August 1989, at the house of Accused No. 02. The sentence included

life imprisonment under Section 302 and seven years of rigorous imprisonment under Section 201 of IPC. The Accused No. 02 was found guilty under Section 201 of IPC receiving a sentence of four year rigorous imprisonment. Against the order of conviction and sentence, two separate appeals were preferred by the Appellant-Accused No. 01 and Accused No. 02. These appeals came to be dismissed by the impugned judgment, upholding the conviction and sentence of both the accused/appellants therein. However, the present Appeal is preferred by Accused No. 01 only.

2. The story as made out by the prosecution is that the body of a woman was discovered in a paddy field by PW1-V.T. Manikandan, while he was going for work in the morning of 17.08.1989. He informed the police, and based on his statement, PW38-C.P.

Vijayamani, a Sub Inspector, registered a case of unnatural death at the Parappanangadi Police Station. This witness visited the scene, took photographs, and collected fingerprints. The postmortem examination was conducted by PW33-Dr. M. Kunjukrishnan, on 18.08.1989, at 10:30 AM. He reported finding six antemortem injuries on the left side of the head fractured into multiple fragments, as well as abraded contusions on the right wrist and left knee. Injuries on the head were determined to be sufficient to cause death under ordinary circumstances and could have been inflicted with a weapon such as a coconut scraper (MO-20). According to the medical expert, the time of occurrence of death was approximately 30 to 35 hours before the postmortem examination. PW2-V.T Lakshmi and PW3-V.T Ambika, mother and sister of deceased with some local people identified the dead

body of Gouri. The case was investigated by PW39-K.V Satheesan, who submitted the final report against the Appellant and Accused No. 02.

3. To prove the guilt of the accused, prosecution proceeded to establish motive for the murder by asserting that there was illicit relationship between the Appellant and Accused No. 02. This relationship had developed for the reason that the husband of Accused No. 02 was living abroad, leaving her to reside alone with her two children, which lead to the two accused coming close. The deceased, Gouri, was related to Accused No. 02 and since this accused was living alone, the deceased would frequently visit her house and even stayed there overnight.

4. When the relationship between the Appellant and Accused No. 02 was discovered and local opposition

increased, the Appellant at the suggestion of Accused No. 02, entered into a registered marriage with Gouri on 17.05.1989, in an attempt to cover up his relationship with Accused No. 02. It is also brought on record, that the said marriage was dissolved by way of another deed dated 31.07.1989. It was alleged that there were letters which were exchanged between the two accused indicating their intimacy and love for one another, *albeit* under assumed names. However, there was no evidence which was brought on record especially the factum that these letters were indeed written by these two accused in the form of some handwriting expert etc.

5. The narrative put forward by the prosecution is that on the date of incident both the accused and deceased Gouri were at the house of Accused No. 02. An altercation occurred between the Appellant and

the deceased with reference to Appellant's relationship with Accused No. 02. It is alleged that during this confrontation, Appellant grabbed a coconut scrapper from the kitchen and hit Gouri on the head multiple times, leading to her death. The prosecution has further projected that the Appellant dragged the body out of the room and thereafter carried it outside the house to the paddy field, which is about 1KM away, where it was left. He then came back to the house of Accused No. 2 and left for his destination the following morning.

6. The Learned Senior Counsel for the Appellant contends that the case is solely based upon circumstantial evidence, with no eyewitness to the occurrence of the incident. He asserts that the courts below have misread the evidence and misguided themselves in coming to the conclusion

that the prosecution established a convincing chain of circumstances based on material evidence and witnesses, leading to the Appellant's conviction and sentence. He argues that there exist glaring gaps in the evidence produced by the prosecution, creating a doubt regarding the incident much less the Appellant's involvement in the alleged offense.

7. He further submitted that for the prosecution to establish a case based on circumstantial evidence, must complete the chain of events that leads to an inescapable conclusion of accused's guilt, with no room for alternative explanation(s). He points out several shortcomings in the evidence presented by the prosecution with regard to the sequential occurrence of the incident and circumstances surrounding the death of Gouri. He has highlighted the said aspects with reference to the evidence

including deposition and cross examination of the witnesses. Consequently, he asserts that the prosecution has failed to establish the guilt of the Appellant beyond reasonable doubt. Prayer has thus been made for allowing the present Appeal and acquittal of the Appellant.

8. On the other hand, the Learned Counsel for the State has made an effort to explain out the circumstances supporting the prosecution's case based on evidence led by the prosecution. He thus supported the findings of the courts below as also the conviction and sentence awarded to the Appellant. He prays for dismissal of the present Appeal.

9. Having heard the Learned Counsel for the parties and with their assistance having gone through the evidence carefully as presented by the prosecution, it

is apparent and has not been disputed that there is no eyewitness of the incident in question, and therefore, the case of the prosecution is solely based upon circumstantial evidence. This casts an enhanced burden on the prosecution to demonstrate an unbroken chain of events that establishes the accused's guilt for the alleged offense. The prosecution is required to prove that there is continuity in the sequence of events leading to an ultimate conclusion of offense being committed by the accused and no one else.

10. Before proceeding further, it would be appropriate to mention the principles as have been enunciated and settled by this Court, which would determine the parameters within which the case of the prosecution, if based on circumstantial evidence, is to be tested

with regard to the establishment of the offence stated to be committed by the Appellant.

This Court in the case of **Ramreddy Rajesh Khanna Reddy and Another v. State of A.P.**[1] while referring to the various earlier judgments which have been passed by this Court from time to time, summarized key principles which act as a guide for the courts to come to a conclusion with regard to the guilt of an accused in cases which are solely dependent on the circumstantial evidence. The same have been referred to as the *"panchsheel principles"* and are discussed in paragraph 26 to 28 of the said judgment, which read as follows:

> 26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so

[1] **(2006) 10 SCC 172**

proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar [(2003) 9 SCC 67 : 2004 SCC (Cri) 1167] and Reddy Sampath Kumar v. State of A.P. [(2005) 7 SCC 603 : 2005 SCC (Cri) 1710])

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.

28. In State of U.P. v. Satish [(2005) 3 SCC 114 : 2005 SCC (Cri) 642] this Court observed: (SCC p. 123, para 22)

"22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the

> deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."
> (See also Bodhraj v. State of J&K [(2002) 8 SCC 45: 2003 SCC (Cri) 201].)

11. Thereafter, the above principles have been reiterated in the subsequent judgments of this Court and hold the field till date.

Thus, these basic established principles can be summarized in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence

of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion that is the guilt of the accused. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the accused, the accused person must be given the benefit of doubt which obviously would lead to his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain of

events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.

12. It needs a mention here that although both the accused were put to trial to face charges under Section 302, 201 read with Section 34 of IPC, but they were acquitted of the charge of Section 34 of IPC, as it has been not established rather finding was returned that there was no common intention prior to the commission of the offence. Accused No. 02 was held guilty under Section 201 of IPC (causing disappearance of evidence) only, and was thus, sentenced to four years of imprisonment.

13. At this point, it is apposite to discuss the relevant testimonies and evidence presented by the

prosecution aimed at establishing the guilt of the Appellant and Accused No. 02.

14. The prosecution presented the testimony of PW2-V.T Lakshmi and PW3-V.T Ambika (mother and sister of deceased respectively) who in their testimonies stated that the deceased Gouri told them that she was going to the house of Accused No. 02 and they saw the deceased going till the turn towards the house of Accused No. 02 at around 7:30 PM on the date of incident i.e., 16.08.1989. They also acknowledged the fact that Accused No. 02 is related to them and they regularly visited each other's house and had cordial relations.

15. The factum that the deceased had gone to the house of Accused No. 02 at around 7:30 PM on the date of incident is not disputed as the two children of

Accused No. 02 who are PW10-T.K. Ramya and PW11- T.K. Radhesh have also stated in their statement that deceased was present in their house in the evening of 16.08.1989. However, they have added that she had left the house at around 9:00 PM and did not return thereafter.

16. As regards the Appellant, the evidence which has been brought on record by the prosecution to establish his presence in the house of Accused No. 02 is the statement of PW14-K.V. Raman, who had stated that he had seen the Appellant entering the house of Accused No. 02 at around 11:30 PM on the date of incident.

PW20-K. Majeed, a taxi driver has been produced by the prosecution, who had stated that he saw the Appellant at 5:30 AM on 17.08.1989 at Parappanangadi bus stand, heading towards the

railway station. He further stated that the Appellant was wearing a coffee brown shirt, white spotted lungi and a bath towel was tied around the head.

17. These are the two witnesses who have been produced to establish presence of the Appellant in the house of Accused No. 02 on the date of incident. PW-14 is stated to have seen the Appellant going to the house of Accused No. 02 at 11:30 PM in the night of incident and PW-20 has seen the Appellant leaving the town, the following morning. They are the two witnesses who can be said to be the star witnesses as far as the presence of the Appellant in the house of Accused No. 02 is concerned at the night of incident.

18. Another witness who can be said to be crucial for the prosecution case is PW18-Sirajudheen from whose

possession and presence, recovery of a bag allegedly belonging to the Appellant was made on 27.08.1989. Blood-stained clothes, a blanket and a head towel belonging to the Appellant are said to have been recovered from this bag. The prosecution claims that these articles belong to the Appellant and the recovery was made on his behest in the presence of PW-18 on 27.08.1989. This witness has actually blown off the lid and falsified the case of prosecution by stating that a police constable visited his shop on 23.08.1989 and took away the bag in question from him. Subsequently, on 27.08.1989 police came in a police jeep and handed him the same bag which was taken from him earlier and opened it, showing articles as stated above, and got his signatures on the prepared Mahazar. It was at this moment he saw the Appellant sitting in the police jeep. This discrepancy casts a serious doubt on the

prosecution story regarding recovery of bag and articles contained therein at the behest of the Appellant in the presence of PW18 and that too on 27.08.1989.

19. As regards the discovery of blood stains, cloth stained with blood and coconut scrapper (MO 20) from the house of Accused No. 02 in the presence of of the three witnesses i.e., PW-26 to 28 is concerned, none of them have categorically stated that the police has seized anything in their presence, rather to the contrary they have stated that they were not taken to the spot and were only shown the cotton swabs stained with blood and other clothes which were said to have been recovered from the house of Accused No. 02. PW27-M. Muhammed in his statement stated that police showed him the coconut scrapper and cotton swab and he was told that same

were taken from the rooms of Accused No. 02's house. A similar statement was made by PW28, V. Dasan, who stated that he did not know where the police obtained these material objects from.

20. When the evidence, as has been presented by the prosecution is tested on the standard of proof and parameters discussed above, we are unable to accept the conclusions as reached by the courts below while convicting and sentencing the Appellant.

21. As regards Accused No. 01-the Appellant, the first and foremost evidence which is required to be established is with regard to his presence in the house of Accused No. 02 at the time when deceased Gouri was also there. It is then and only then that it would have been possible for the Appellant to have committed murder of Gouri. Apropos, Gouri's presence in the house of Accused No. 02, there is

ample evidence to that effect, including the statements of PW10 and PW11, both children of Accused No. 02, who were very much present in the house. Their evidence, which has gone unchallenged clearly establishes the factum that deceased Gouri had left the house at around 9:00 PM on 16.08.1989. Nothing has come on record which would indicate to the contrary, that is with regard to she having returned or continued to stay back at the house of Accused No. 02.

22. The evidence which has been brought on record by the prosecution in the form of statement of PW14, who has claimed to have seen the Appellant entering the house of Accused No. 02 at 11:30 PM on 16.08.1989, belies the aspect of the Appellant having committed the murder of deceased, as prior thereto, the deceased had already left the house in question.

Another aspect which needs to be pointed out is that this witness has not come face to face with the Appellant rather he stated that he had only seen the back of the Appellant. This witness acknowledges that he assumed that the person he had seen on the date of incident entering the house of Accused No. 02 was the Appellant as the Appellant typically has been doing so at odd hours. This creates doubt in the story of prosecution, as the presence of deceased and the Appellant in the house of Accused No. 02, at the same time on the day of the incident which was essential for commission of the murder of deceased by the Appellant in the said house, is not conclusively proved by the evidence led by the prosecution.

23. As regards the recoveries which have been affected especially with regard to the weapon of

offence from the house of Accused No. 02, suffice to say that those being made not in the presence of independent witnesses, as has been so deposed by PW26 to PW28 and discussed above, the same cannot be relied upon.

24. Similar is the position with regard to the recovery of the bag from PW18, which contained the Appellant's blood-stained clothes, as well as a blanket with blood stains and other articles. PW18, the witness of recovery, has expressed a doubt with regard to the contents of the bag. He has testified that the bag was handed over to him by the Appellant, 2-3 days prior to 23.08.1989, and on this very date a police constable came and had taken the bag, and he was not shown the contents of the said bag. Thus, as per this witness the bag in question was handed over by him to the police on 23.08.1989 whereas, as per the

recovery memo, this bag was recovered and seized on 27.08.1989, when the police party came along with the Appellant in a police jeep and opened it showing the articles contained therein and the witness was made to sign the Mahazar. The said recovery which is alleged to have been made at the instance of Appellant, thus cannot be accepted as the same is not borne out from the evidence of the witness. Rather the possibility of the articles having been planted in the bag cannot be ruled out.

25. Additionally, relying on the testimony of PW20, the prosecution suggested that after killing Gouri, the Appellant left the town in between 5:00-5:30 AM on 17.08.1989. As per the case of the prosecution, the Appellant having disposed of the body in the paddy field, returned to the house of Accused No. 02 and thereafter left again for his destination. A perusal of

the testimony of PW20, does not indicate as to from where the Appellant was actually coming from when this witness saw him. Additionally, this witness has stated that he had seen the Appellant from a distance, that too very early in the morning. Assuming this testimony to be true, it is not established that the Appellant was coming from the house of Accused No. 02.

26. Another aspect that further casts a doubt with regard to the identity of Appellant is that the clothes which are alleged to have been worn by the Appellant while going to the house of Accused No. 02 as per PW14, and clothes he was wearing while returning as per PW20, were not produced in the court to be identified by these witnesses. It is not the case of the prosecution that these clothes were put to these two witnesses for identification thereof,

which are alleged to have been worn by the Appellant at the time of commission of the offence.

27. As per the case of prosecution, the time of death of the deceased Gouri has got to be after 11:30 PM, as it has been held by the courts that it is the Appellant alone who had committed her murder. The body obviously would have been disposed of prior to 5 AM on 17.08.1989. It has come on record that the distance between the house of Accused No. 2 and the paddy field where the body was found is about 1 KM; in between there is a sawmill which runs 24 hours. If the case of the prosecution is to be accepted, according to which the Appellant had carried the dead body of the deceased Gouri on his shoulder from the house of Accused No. 02 to the paddy fields, someone would have most likely seen him on the way, especially when there was a

running mill in between from where the Appellant is said to have crossed. This further raises a doubt with regard to the credibility of the case as has been projected by the prosecution.

28. In the light of the above, when tested upon the anvil of the principles and parameters laid down by this Court, as referenced earlier, the prosecution has miserably failed to indicate the involvement of the Appellant in the commission of the offence, what to say of establish, for which he was charged. The chain of circumstances which are being sought to be projected by the prosecution to be complete has glaring holes and significant gaps, which leads this Court to come to the conclusion that the prosecution has failed in its endeavour of bringing home the guilt against the Appellant. The case having not been proved what to say of beyond reasonable doubt

against the Appellant, the impugned judgments cannot sustain and are set aside.

29. The Appellant is acquitted of all the charges. In case the Appellant has been released on bail, the bail bonds and the sureties, if any, are hereby discharged. The Appellant be set free forthwith.

30. The Appeal is allowed in the above terms.

.....J.
(ABHAY S. OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

New Delhi;
November 05, 2024.