(1984) 07 KL CK 0042

High Court Of Kerala

Case No: Criminal A. No. 110 of 1982

Gopalan alias Sathyanesan	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision: July 12, 1984

Acts Referred:

- Evidence Act, 1872 - Section 114
- Penal Code, 1860 (IPC) - Section 302, 392

Citation: (1984) KLJ 550

Hon'ble Judges: Varghese Kalliath, J; M. Fathima Beevi, J

Bench: Division Bench

Advocate: A.S.P. Kurup S.B, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Fathima Beevi, J.

The appeal arises from the conviction of the appellant u/Section 302 and 392 I.P.C. and sentence to imprisonment for life. The appellant was tried on the charge that he strangulated to death his wife and relieved of her gold ornaments between 7.30 A.M. and 8 A.M. on 27-9-1981 and thereby committed the offence of murder and robbery. The conviction is based on the circumstantial evidence tendered by the prosecution. In challenging the conviction the main contention advanced on behalf of the appellant is that the circumstantial evidence relied on is highly artificial, unreliable and inconclusive and therefore the conviction is unsustainable. Conviction based on circumstantial evidence can be sustained if it is such as to be conclusive of the guilt of the accused and incapable of explanation on any hypothesis consistent with the innocence of the accused. Before a person could be found guilty with reference to mere circumstantial evidence, each of the circumstances relied on must be clearly established and the proved circumstances taken together must be such as reasonably to exclude the probability of innocence.

2. The appellant Gopalan alias Sathyanesan, a tapper, married Retna Selvam, now deceased, in January, 1980. They lived together in the village in the appellant''s house situated on a plot of 6 cents with rubber plantation on the south and plantain groves on the north. They had no issues. On the date of the occurrence after daybreak, Retna Selvam was seen alive by P.Ws. 2, 12 and 9. She was wearing around her neck a gold chain (thalimala) and also a pair of gold ear rings. P.W. 9 Johnson the younger brother of the appellant on his return from the teashop in the morning discovered the dead body of Retna Selvam lying in the western charthu of the house where they lived. The gold chain and gold ear rings were missing. A thorthu spun into a rope was found tied around the neck with a single reef-knot on the front of the neck bearing ligature mark. There had been bruises on the inner aspect of upper and lower lips and incised wounds splitting the ear lobes upto the ear-hole on both sides. The post-mortem examination revealed that death was due to strangulation. The appellant disappeared from the house without informing the police and the crime was registered on the basis of Ext. P1 statements given by P.W. 1 the mother of the deceased on 27-9-1981 at 10 A.M. The appellant who was suspected was arrested by P.W. 20 on the same day at 8 P.M. M.O. 13 penknife, M.Os. 10 and 11 blood stained mundu and banian were seized from his person. On the information given by the appellant, M.O. 1 gold ear rings and M.O. 2 gold chain were recovered from the place of concealment by P.W. 22 the Circle Inspector under Ext. P3 mahazar on 28-9-1981 at 8 A.M. Human blood was detected on chemical analysis on the weapon seized, clothes of the appellant and the gold ear rings. M.Os. 1 and 2 were identified as the ornaments worn by the deceased by the mother P.W. 1 and sister P.W. 6.

3. The prosecution by examining P.Ws. 1 to 22 and proving Exts. P1 to P12 sought to prove the conduct of the appellant and the recovery of the material objects as furnishing circumstantial evidence establishing the guilt of the appellant. The motive alleged is that the appellant was in need of money to repay the debt incurred in connection with his sister''s marriage and the deceased was not willing to give her ornaments for being pledged. The plea of the appellant is that he had been falsely implicated and the recovery is foisted.

4. There is unimpeachable evidence in the case that Retna Selvam was strangulated to death at her residence where she lived with her husband, the appellant, on 27-9-1981 between 7 and 9 A.M. The gold chain and ear rings worn by the deceased had been removed after cutting the ear lobes. The appellant who was in the house in the morning suddenly disappeared. Neither did he report the incident before police nor make himself available at the time of the inquest. He was suspected when the first information report was recorded and naturally he avoided the police at the time of the inquest. He was arrested by P.W. 22 the same night. On the information by the appellant M.Os. 1 and 2 gold chain and gold rings were recovered by P.W. 22 under Ext. P3 mahazar attested by P.Ws. 14 and 15. The appellant led P.W. 22 to the boundary between two properties and produced from the crevices of the boundary

stones the packet containing the gold chain and gold rings kept concealed by placing two stones. The ear rings were found stained with human blood as certified under Ext. P12. The attestors to the mahazar are respectable persons of the locality, P.W. 15 being the Panchayat President. M.Os. 1 and 2 had been sufficiently identified as the ornaments worn by the deceased. M.O. 2 gold chain was the thalimala the appellant himself had purchased under Ext. P5 dated 27-12-1979 from P.W. 16. The M.O. 1 gold ear rings had been made by P.W. 17 at the instance of P.W. 1, on converting the gold studs given to the deceased at the time of her marriage. All these witnesses have identified the items. P.W. 7 the mother-in-law of the deceased, P.W. 9 the brother-in-law, besides P.Ws. 1 and 6, have affirmed that the deceased had been wearing these items. P.W. 12 noticed the ornaments when he saw the deceased early in the morning while she had been returning after the bath. The appellant has also no case that M.Os. 1 and 2 did not belong to the deceased or that she was not wearing the same. The recovery of M.Os. 1 and 2 ornaments of the deceased at the instance of the appellant soon after the occurrence, clearly shows that the appellant had come by possession of the property of the deceased. The appellant has no satisfactory explanation how that property had been transferred from the deceased to the appellant. The appellant has only stated that the recovery is false. The testimony of P.Ws. 14, 15, 22 and the contemporaneous record Ext. P3 mahazar belied that case of the appellant. The confessional statement of the appellant had been duly proved and the relevant facts have been stated by P.W. 22 as well as the attestors. We do not find any infirmity or anything artificial in the evidence relating to the recovery. The possession of the property of the deceased with the appellant soon after the occurrence is thus a strong circumstance against the appellant. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction. Therefore it can be reasonably presumed that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction, in the absence of satisfactory explanation for the appellant as to how the property was transferred from the deceased to the appellant.

5. We may refer two decisions of the Supreme Court in this context. In Sunderlal Vs. The State of Madhya Pradesh, of the judgment the court held thus:

These ornaments were, therefore, established to be the ornaments worn by the deceased and the accused was not in a position to give any satisfactory explanation as to how he came to be in possession of the same on the very same day on which the alleged murder was committed. The circumstantial evidence, therefore, was sufficient to hold the accused responsible for the murder of the deceased.

Again in Earabhadrappa v. State of Karnataka (1983 S.C.C. Cases (Cri.) 447) it is observed thus:

This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under

illustration (a) to Section 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction.

The inference of guilt that could be drawn from the circumstance that the appellant was in possession of the property of the deceased is reinforced by the conduct of the appellant. Judged by the natural course of human conduct the movements of the appellant on the date of the occurrence are wholly inconsistent with his innocence and consistent only with his involvement in the crime. The appellant was in the house in the early morning and was seen sitting along with the deceased in the charthu at about 7 A.M. by P.W. 2 an aged agricultural labourer while he passed along the courtyard on his way to the field. P.W. 2 also overheard their talk and the deceased uttering that she has to be done away if he wanted her ornaments. Shortly after that P.W. 2 heard some noise and soon saw the appellant leaving the house proceeding eastwards. P.Ws. 3 and 4 two other labourers also saw the appellant washing his hands in the chalu near the house, a shortwhile before they knew that the appellant''s wife is dead. P.W. 5 the tea shop owner in the vicinity had seen the appellant twice in his tea shop that morning, first at about 7 A.M. when he had taken his breakfast and carried with him some tiffin, and later at about 8.45 A.M. P.Ws. 2 to 5 are all rustic witnesses whose estimate of time and distance can only be rough and approximate. They do however give an account of what came to their knowledge in natural and convincing manner.

6. There is nothing artificial or improbable in what these witnesses have deposed before court. Even P.W. 9 the 16 years old brother of the appellant has affirmed that the appellant left the house while the deceased was there around 7 A.M. and when P.W. 9 who had also gone out returned by 9 A.M. and discovered the dead body there was none in the house. Normally the appellant if innocent would have rushed to the house and lodged the complaint before the police. Instead he made himself scarce and could be arrested only from a place 3 kilometres away from the scene of occurrence. The explanation of the appellant that he had been near the dead body when the neighbours collected there and he had accompanied the Panchayat President to the police station has to be rejected as false because neither P.W. 9 nor P.W. 15 support that story. Thus the appellant who was seen in the company of the deceased, a little while before her tragic end had slipped away from the house, and had been avoiding detection. This conduct of the appellant is wholly inconsistent with his innocence and unmistakably points to his guilt, in the circumstances of the case.

7. It has been contended that the prosecution has not established the motive for the crime. The statement of P.W. 2 that when he saw the appellant and the deceased they were moving intimately and the absence of evidence that there had been any quarrel between the husband and the wife and also the lack of evidence that the appellant had the necessity to repay his debt on the date of the occurrence are the

materials relied on in support of this contention. P.W. 11 had sworn that the appellant had borrowed from him Rs. 300/- undertaking to pay within a month, 3 weeks before the incident. He does not however swear that he had been pressing for repayment. It has come out in the evidence of P.W. 1 that the gold chain she gave the deceased at the time of her marriage was disposed of by the appellant within two months after getting the same on the pretext he wanted it for pledging. The appellant had evidently the need for money, though it is not proved that he had the necessity to pledge or dispose of the wife''s ornaments on the date of the occurrence. The utterances made by the deceased as spoken to by P.W. 2 suggest that the appellant had been persuading the deceased to transfer her ornaments. What transpired thereafter is only a matter for inference from the proved circumstances in the absence of direct evidence. It is not always easy to prove the motive for the crime. Often the motive is locked up in the heart of the offender. The discovery of the true motive is not imperative and the circumstances proving the guilt of the accused are not weakened at all by the fact that the motive has not been established. When there is positive, clear, cogent and reliable evidence, the weakness of the motive suggested by the prosecution will be of no consequence. As has been pointed out by the Supreme Court in Nanak v. State of U.P. (1983 S.C. Cases (Cri) 316) in a case of murder of the wife by the husband there are many considerations which have to be looked into and it is very difficult to know the exact motive in the circumstances of a given case. It often happens that only the culprit himself knows what moved him to certain course of action. If the evidence shows that the accused is having strong enough motive and had the opportunity of committing the crime and the established circumstances on the record considered along with the explanation, if any, of the accused exclude the reasonable possibility of anyone else being the real culprit, the chain of evidence can be considered to be so complete as to show that within all human probability the crime has been committed by the accused. But there is no infallible rule that unless a strong motive is proved the guilt of the accused is not proved whatever be the circumstantial evidence in the case. The circumstances proved in this case are such as to exclude the reasonable probability of anyone else being the real culprit. The evidence led by the prosecution clearly establishes that the appellant was in the company of the deceased just before the incident, that the appellant was in possession of the gold ornaments of the deceased soon after the incident, for which there is no satisfactory explanation and that the appellant had slipped away from the house while his wife was lying dead inside. The chain of circumstances is complete and the evidence unerringly points to the guilt of the appellant and shows that within all human probability the crime must have been committed by the accused. The charge against the appellant is thus satisfactorily established beyond any reasonable doubt and he is guilty of murder and robbery. The conviction has been rightly recorded by the trial court. Separate sentence u/S. 392 I.P.C. should have been imposed. We are unable to accept the contention that the conviction is unwarranted.

In the result the appeal is dismissed confirming the conviction and sentence of the appellant.