Tulsiram Kanu Vs The State

Court: Supreme Court of India

Date of Decision: Jan. 29, 1951

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 417, 423, 510
Evidence Act, 1872 â€" Section 11, 114, 45

Citation: AIR 1954 SC 1

Hon'ble Judges: Harilal Jekisundas Kania, C.J; Sudhi Ranjan Das, J; M. Patanjali Sastri, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Kania, C.J.
This is an appeal from the judgment and order of the High Court at Nagpur, reversing the judgment and order of the

Additional Sessions Judge, Bhandara, and convicting the appellant for the offence of murder and passing a sentence of death on him u/s 302, Penal

Code. The brief facts are these.

One Kawadu had taken two mango trees on rent from the owners. He used to watch the fruits during the daytime and returned to his house in the

evening. On 26-5-1949 he went as usual from his residence to watch the trees and went home for his mid-day meal. After taking his meal he went

to resume his watch but did not return home in the evening. His wife thereupon got anxious and with some others went to the place where Kawadu

used to sit. They found Kawadu lying dead about a few yards away from the hut which he had constructed near the trees. Certain gold ornaments

which he used to wear on his ears were found missing. A report of the death was made and police investigation followed. In spite of various visits

of the police officers to the site and inquiries made in the village, nothing was traced.

On 28-10-1949, i.e., about five months after the death of Kawadu the appellant was arrested. When his house was searched one knife with a

wooden handle, one white and dirty piece of dhoti suspected to have blood stains and one rusted axe, without handle, found buried three feet

below the ground in the kitchen, were taken possession of by the police. On the same day another white dirty dhoti 4 1/2 cubits long suspected to

have stains of blood in the middle, here and there was also taken charge of by the police from the brother of the appellant. On 30th October the

police seized from one Mangroo certain ear ornaments which appeared to have old blood like marks here and there. On 31st October they further

seized from the house of the appellant one crowbar of iron and a receipt dated 25-9-1949 in respect of payment of tax for a she-buffalo.

The appellant was taken before Mr. Bhuskute, Magistrate 1st Class, Sakoli, on 9-11-1949 for recording his confession. The Magistrate warned

the appellant that he was not bound to make any confession and if he made one it might be used against him. He was given time to reflect without

disturbance till the next day and was told that he should not be influenced by any consideration in stating what he wanted to state the next day. He

was ordered to be kept separate in the magisterial lock-up away from other under-trials but not so as to amount to solitary confinement. The

record shows that he was kept in the magisterial lock-up but in charge of the police and was taken to the Magistrate again the next day in the

custody of Baharam, an orderly. On that day, the Magistrate again told him that he need not say anything unless he freely wished to do so. The

appellant told the Magistrate that the police were after him for the last nine or ten days and he was arrested on Sunday the 30th October 1949.

In answer to the Magistrate''s question whether the police gave him any threat, he stated that they did not allow him to sleep for three days and did

not allow him to take meals. They applied leeches to his thighs and thrashed him. In answer to the next question whether anybody had told him that

he would be let off or have a'' lighter punishment awarded to him if he made a confession, he answered in the affirmative and stated that the police

people had told him that they would let him off in case he made a confession. He was next asked, if so, why he wanted to make a statement and

whether he wished to do so at the instance of somebody or voluntarily. His answer was that he wished to make a statement of his free will and

pleasure. The Magistrate thereupon put on record that on 10th of November he was satisfied that the appellant was free from all threats and

inducements and insisted on making a statement and therefore recorded his confession on that day.

In substance the confession is that on 26thMay he had gone to the jungle at 10 or 11o''clock in the morning to dig out roots. He dug them till 2

o''clock and prepared a bundle. When he was coming home, with the bundle on his head, he found the dead body of Kawadu under a tree. On

seeing him dead he removed the gold that was in the ears of the dead man and brought it home. He left the gold with his brother-in-law and later

on gave them to the police. In answer to a further question of the Magistrate whether he wanted to say anything more the appellant stated as

follows:

I have not beaten (Killed) the old man. Because the police thrashed me, I out of fear stated that I had struck with a crowbar built is not true. I

have not committed the murder.

2. After the committal proceedings, the appellant was tried before the Sessions Judge with four assessors. He was charged with the offence of

murder u/s 302 and with dishonestly misappropriating property possessed by the said Kawadu at the time of his death, u/s 404, I. P. C. The

assessors unanimously found the appellant not guilty of any offence. The Sessions Judge in a detailed and considered judgment also found the

appellant not guilty of any offence and acquitted him The State Government appealed to the High Court and the High Court reverse the finding of

the Sessions Judge and convicted the appellant of the offence of murder and sentenced him to death. The matter was fully argued before us in

detail and as in our opinion the conclusion of the High Court was not correct we directed that the appellant be set at liberty and we now give our

reasons for our conclusion.

3. The case of the prosecution before the sessions Judge was that three or four days before 26-5-1949 the appellant had told the deceased that he

should not wear gold ornaments as someone might murder him for the same. It was alleged that the deceased reported this to his wife Anil another

witness. On the day in question the appellant was seen at about 10 a. m. digging roots with an axe and a crowbar about 40 paces away from the

spot where the deceased was sitting. There is no evidence thereafter of the movements of the appellant. The post-mortem examination of the body

of the deceased showed that his stomach was empty and the time of his death was therefore fixed between 4 and 5 p. m. the Post-Mortem

examination further showed that there was a punctured wound on the head which might have been caused by a blow with an axe when the

deceased was in a standing position. The fracture of the ribs was stated to be possible by a blow with a crowbar when the deceased was in a

reclining position. The evidence of Somku (P. W. 8) who had gone in the jungle to collect some firewood shows that the appellant was digging

roots not far away from where the deceased was sitting, at about 10 A. M. The brother-in-law of the appellant, Mangroo, produced certain ear

ornaments which the widow and two other witnesses identified as ornaments the deceased was habitually wearing.

The Sessions Judge, after noticing that there were no eye-witnesses, summarized the entire circumstantial evidence under four heads: (1) the

alleged statement of the deceased about the appellant telling him not to wear the ornaments lest somebody may murder him to rob him of the

ornaments; (2) the presence of the appellant at about 10 a.m. digging roots with an axe & a crowbar 40 paces away from the spot where the

deceased was sitting; (3) discovery of the axe and the ornaments; and (4) recovery of bloodstained pieces of cloth. He also took notice of the

confession made by the appellant. After considering these in detail he came to the conclusion that the evidence was not sufficient for the conviction

of the appellant.

4. Before proceeding to examine the reasons for the High Court''s conclusion, we think It necessary to point out that in an appeal against an order

of acquittal on a charge of murder, u/s 417, Criminal P. C, while the appeal court has full powers to review the whole case, the court must start

with the realisation that an experienced judicial officer (with four assessors'' had concluded that there was clearly reasonable doubt in respect of the

guilt of the accused on the evidence put before the court. It, therefore, requires good and sufficiently cogent reasons to overcome such reasonable

doubt before the appeal court comes to a different conclusion.

In our opinion the Sessions Judge had correctly analysed the evidence and put them under the heads mentioned above. In respect of the first head

it is necessary only to point out that the story on the face of it is difficult to be accepted. If the appellant had the intention of murdering the deceased

in a few days and take away his gold ornaments, he would be .the last person to tell the deceased that he should not wear those ornaments lest

someone may murder him to rob him of the ornaments. It will be creating in advance evidence for his own conviction. In our opinion this story is

quite unreal and should be completely disregarded. The evidence under head 2 leads to no conclusion. The deceased was sitting in open fields near

two mango trees. It is not disputed that during the day many persons; could and in the ordinary course would pass by the spot where the deceased

used to sit. No witness has even suggested that the appellant was near the spot after 10 a. m. By the fact that the appellant was digging roots at 10

a. m. with an axe and a crowbar, it does not therefore at all follow that the appellant was anywhere near the spot between 4 and 5 p. m. The

evidence under head 2 is therefore useless for proving the guilt of the appellant.

The discovery of the axe in the house of the appellant requires to be considered under two heads: (i) Was the axe in the house of the appellant as

suggested by the prosecution? (ii) Was it the axe used for giving the punctured wound mentioned by the doctor in his evidence? As regards the

discovery of the axe, the evidence is most unsatisfactory. Three witnesses deposed to the discovery of the axe. The house of the appellant was

locked up by the police on the 27th October in the afternoon. There is a mystery about who kept the key of the lock thereafter.

(After discussion of some evidence His Lord-snip proceeded): Heading the evidence of these three witnesses together it is thus clear that the house

was not in the charge of the appellant after the evening of 27-10-1949. There is a clear conflict of evidence as to who had the key of the lock in

the interval. If an axe is found on the following day buried three feet deep in the kitchen when a search was made, it is difficult under the

circumstances to hold that the appellant had buried it there.

As regards the suggestion that the blow received by the deceased on his head was by this axe, the evidence is. far from satisfactory. The axe was

sent to the chemical examiner and to the Imperial Serologist. The report of chemical examiner is unconvincing. Blood was found on the axe when

the benzedine test was applied but no blood could be found when the axe was examined through a spectroscope. The serologist reported that

there was no blood on the axe. These two reports were taken on record by the Magistrate without any of the two witnesses being called to give

evidence. In ordinary circumstances there would have been nothing wrong in taking reports of these persons on record as permitted by the

Criminal Procedure Code. When however there is a difference of opinion in the reports, the duty to explain the difference is on the prosecution and

the mere production of the report does not, under the circumstances, prove anything which can weigh against the appellant. The effect of the first

document, which itself shows two different results, is practically nullified by the second document. In this unsatisfactory state of the evidence, the

Sessions Judge, in our opinion, was right in holding that both in the matter of the production of the axe and on the question of blood being found on

the axe the evidence is unreliable and cannot be considered as evidence to prove the guilt of the appellant.

5. The discovery of a blood-stained piece of cloth from the house of the appellant leads to no conclusion against him on the charge of murder"".

While the chemical examiner found blood on it, the Imperial Serologist could not say that it was human blood. The discovery of one or more dhotis

with some stains of blood, which are not ascertained to be human blood, five months after the alleged murder cannot be stated to be evidence of

murder against the appellant. The Sessions Judge was quite right in observing that if some blood stains are found on clothes of persons engaged in

cutting roots and working in the jungle they cannot be put down as evidence of murder. The dhoti seized from the appellant"s brother Motiram was

not even found in the possession of the appellant. Under the circumstances the evidence classified under the fourth head is of no assistance to the

prosecution.

6. In our opinion, the confession of the appellant recorded by the Magistrate in this case does not deserve even to be looked at. The Magistrate

was told by the appellant that he was ill-treated shortly before he was sent to the magistrate on 9th November and he was also offered the

inducement that if he made a confession he would be let off lightly. When the Magistrate thought of giving the accused time to think over the matter

for 24 hours the Magistrate should have taken care to see that he was not left in police custody. On the other hand, as noticed above, he was left

in the magisterial lock-up which was in charge of the police. Therefore one is left only to conjecture what happened to the accused during those 24

hours. The fact that he was taken to the Magistrate by an orderly on 10th November does not prove that the appellant had remained free from

police influences. In our opinion, the confession recorded under such circumstances could not be regarded as a free and voluntary confession at all.

We think that the Sessions Judge was right in ignoring it and the High Court was in grave error in attaching any importance to this confession.

7. Apart from this confession, the judgment of the High Court is based on the identification of the gold ornaments. The Sessions Judge recognised

that if the ornaments had been proved to have been the property of the deceased it would have been possible to infer that the accused was the

person who committed the murder and robbed the murdered man. In our opinion, this reasoning, under the circumstances of the case, is unsound.

The alleged murder took place on 26-5-1949 and assuming that the ornaments were traced to the accused at the end of October 1949, no

legitimate inference could be drawn about the appellant being the murderer of the deceased. The important factor which appears to have been

overlooked is that five months had elapsed between the date of the alleged murder and the tracing of the ornaments. The presumption permitted to

be drawn u/s 114, illu. (a), Evidence Act, has to be read along with the important time factor. If ornaments or things of the deceased are found in

the possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months expire in the interval, the

presumption may not be permitted to be drawn having regard to the circumstances of the case. This criticism applied equally to the reasoning of the

High Court for its conclusion.

8. In the present case, the Sessions Judge has examined in detail the evidence in respect of the ornaments and has given reasons for his conclusion

that the ornaments were not proved to be the ornaments of the deceased. (After discussion of the evidence on this point His Lord ship concluded).

Under the circumstances we are unable to accept the theory that the ornaments seized by the police from the possession of Mangroo were the

ornaments of the deceased Kawadu. In our opinion, the reasons given by the Sessions Judge for rejecting the statements of witnesses that the

ornaments seized from the possession of Mangroo were the ornaments of the deceased Kawadu are sound and we are unable to accept the

reasons given by the High Court for holding that these ornaments were of the deceased Kawadu.

9. The judgment of the High Court is principally based on the identity of these ornaments. The rest of the judgment of the High Court is defective in

not taking into consideration the different detailed reasons given by the Sessions Judge for rejecting the rest of the evidence alleged to prove the

guilt of the appellant. In our opinion the High Court was in error in convicting the appellant of murder and we have, therefore, reversed the decision

of the High Court. The reasoning of the High Court that the accused had not made any attempt to show that the ornaments belonged to him is

clearly fallacious. The failure or omission of the appellant to prove that fact does not in any way help the prosecution in proving the guilt of the

appellant. In our opinion the observations of the Sessions Judge in the concluding para. 31 of his judgment deserve careful notice by the State

authorities.

10. As the ornaments are not proved to be the ornaments of the deceased, no conviction u/s 404, I. P. C., can also be sustained. The ornaments

which are lying in the lower court should be returned to the appellant.