

PETITIONER:
DAMODAR

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 01/10/1999

BENCH:
G.B.Pattanaik, N.Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

The appellant was convicted and sentenced by the XXII City Civil & Sessions Judge, Bangalore Rural District, Bangalore in SC No.337/91 vide his judgment dated 18.2.1992 for life imprisonment for an offence punishable under Section 302 of the IPC and for a period of 10 years' RI for an offence punishable under Section 377 IPC and for 5 years' RI under Section 364 of the IPC and another period of 5 years for an offence under Section 201 IPC; all the sentences were made to run concurrently. On appeal, the High Court of Karnataka as per its judgment dated 13.1.1993 in Criminal Appeal No.334/92 while confirming the sentences awarded by the Sessions Court for offences under Sections 302, 364 and 201 IPC, set aside the conviction and sentences awarded by the trial court for an offence punishable under Section 377 IPC.

The prosecution case, in brief, is that the appellant was a resident of House No.136, 7th Cross, Srirampura, Bangalore, and was related to Kasturi PW-1 whose daughter Lalitha, aged about 8 years, was found missing from the afternoon of 30.4.1991. PW-1 made frantic search for her daughter and came to know from the neighbours that her daughter was last seen in the company of the appellant at about 2 p.m. Having failed in her efforts in tracing out her daughter, PW-1 lodged a missing person's complaint at the Srirampura Police Station wherein she mentioned her suspicion that the appellant could have had a hand in the disappearance of her daughter. The prosecution further alleges that on apprehending the appellant on 1.5.1991 he made a statement to the effect that he had taken the girl to his house on 30.4.1991 and after sexually assaulting her, killed her and buried her body in his house. Based on the said statement, the prosecution alleges that the accused led the investigating team with the Panchayatdars to his house which was found to be locked and the accused having had no key, the investigating officer got the door of the house opened through PW-5 Basha and on entering the house and on being provided with a spade, the appellant dug out a portion of the room from where the body of Lalitha was exhumed. The prosecution through the evidence of PW-11, the doctor who

conducted the post mortem examination has established the fact that Lalitha died a homicidal death. There being no direct evidence to implicate the appellant of the crime, the prosecution has relied upon circumstantial evidence, like the appellant being last seen with the deceased, the dead body being exhumed from the house of the appellant, the house being locked though accessible through a hole in the roof which was occupied only by the appellant and the appellant having strained relationship with PW-1, the mother of the deceased.

The trial court accepting the evidence produced by the prosecution held the appellant guilty of the offences mentioned hereinabove and sentenced him accordingly. In appeal, the High Court while concurring with the finding of the learned Sessions Judge in regard to most of the charges, came to the conclusion that the appellant is not liable to be convicted and sentenced under Section 377 IPC since proper charges were not framed in regard to this offence and also on the ground that the prosecution has failed to prove the case against the accused in regard to this charge.

We have examined the evidence adduced by the prosecution in this case. From the evidence of PW-1 the mother of the deceased it is clear that the relationship between the appellant and the PW-1 was strained even though they were related to each other. PW-1 has stated that the accused was making constant demand for money from her which she was refusing. The accused was also a bad character. He once assaulted a woman in the neighbourhood after which PW-1 did not allow him to come to her house. Therefore, the accused was bearing ill-will against her. She further stated that on 30.4.1991 after the deceased returned home from the shop to which she was sent by her mother, she went out to play again and had not come back till about 2 p.m. being worried PW-1 made inquiries in the neighbourhood when she was told by PW-6 Anbu who also happened to be related both to the accused as well as the deceased that he had seen the appellant in the company of the deceased at about 2 p.m. She has stated that on coming to know of the same when she went to the house of the appellant, she found the house locked and though she made frantic efforts to trace her daughter, she was not successful. Hence, she lodged a missing person's complaint with the Srirampura Police Station on the said date in the evening. On the next day on being informed of the arrest of the appellant and later on being asked to be present in the house of the accused, she witnessed exhumation of the body of her daughter by the appellant. It is to be noted that in the complaint filed by PW-1 in the Srirampura Police Station she has mentioned the fact that on inquiry from the neighbours she had heard that the deceased was found in the company of the appellant on the said date and knowing the character of the deceased she did entertain a suspicion that the appellant had a hand in disappearance of his daughter. In the cross-examination of this witness in regard to the material aspect of her evidence nothing has been elicited which would cast a shadow of doubt on her evidence.

PW-6 who is related both to the appellant and PW-1 has in his evidence stated that on 30.4.1981 at about 2 p.m. he saw the appellant take Lalitha into the passage of his house. At that time, according to him, the deceased was holding a paper packet and later in the evening, according

to him, PW-1 came in search of her daughter and on inquiry, he told PW-1 that he had seen the deceased in the company of the appellant that afternoon. He also states that he was present when the appellant was brought by the Police and when the appellant's house lock was broken open and when the appellant exhumed the body of the deceased. PW-7 who is working as a cashier in a small hotel in the vicinity of the place where PW-1 and the appellant resided, has in his evidence stated that on 30.4.1991 at about 2 p.m. the appellant had come to his hotel with a girl of about 7-8 years and they purchased 2 chapatis for Rs.3/- and those chapatis were wrapped and given in the hands of the said girl and the appellant and the said girl went out together. He also states that on 1.5.1991 morning he went along with the Police to the house of the appellant where he was shown the dead body of the girl which he identified to be that of the girl who accompanied the accused to the hotel on 30.4.1991 and to whom the packet containing the chapatis was given. The evidence of PWs. 6 and 7 mutually corroborates each other in regard to the presence of the deceased with a packet in her hand at or about 2 p.m. on the fateful day in the company of the appellant. PW-8 is a neighbour of the appellant having her house in front of the house of the appellant. She in her evidence has stated that on 30.4.1991 she had seen the appellant going with PW-1's daughter Lalitha to the appellant's house. She also stated that she had seen PW-1 search for her daughter on the same evening and that she had told PW-1 that she had seen her daughter in the company of the appellant. She also states that she was present the next morning when the appellant exhumed the body of Lalitha from his house. The prosecution through the evidence of PWs-1, 6 & 8 has also established the fact that on the day after Lalitha was found missing the Police had brought the appellant to his house and the appellant himself had dug the place from where the body of deceased Lalitha was exhumed. So far as PWs.7 to 9 are concerned, they are independent witnesses and no motive whatsoever has been suggested to establish that these witnesses were falsely deposing for any particular reason against the appellant. So far as PWs.1 and 6 are concerned, though they are related to each other including the appellant in the cross-examination nothing material has been established to cast a shadow of doubt on their evidence. From the evidence of PWs.1, 6, 7 and 8, the prosecution has satisfactorily established that the appellant was last seen with the deceased on 30.4.1991. The appellant either in his 313 Cr.P.C. statement or by any other evidence has not established when and where he and the deceased parted company after being last seen. The appellant has admitted the fact that the house from where the body of Lalitha was exhumed, belonged to him and he was residing in the said house, though not at the relevant time. Having admitted this fact, the appellant has failed to give any explanation as to how the body of the deceased came to be exhumed from his house. In the background of the material available on record and having considered the same, we find the prosecution has satisfactorily established the chain of circumstantial evidence against the appellant in regard to his involvement in the crime.

We are, therefore, of the opinion that the two courts below were justified in coming to the conclusion that it was the appellant who had kidnapped the deceased Lalitha and having committed the murder, concealed her body by burying the same in his house. Consequently, we confirm the

judgment of the trial court as modified by the High Court and dismiss this appeal.

JUDIS