

CASE NO.:
Appeal (crl.) 60 of 1995

PETITIONER:
State of Karnataka

RESPONDENT:
A.B.Nagaraj & Anr.

DATE OF JUDGMENT: 10/12/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

Thirteen-year old Neelamma's corpse was found on 05-10-1985 at a bush on the side of a footpath leading towards Mavinahalla, near Bennerghatta National Park. The learned Sessions Judge, Bangalore Rural District found Neelamma's father (A1) and stepmother (A2) guilty of killing her. They were convicted under Section 302 read with Section 34, Indian Penal Code and sentenced to life imprisonment. On appeal, the High Court of Karnataka acquitted them. The State has preferred this appeal by special leave.

The case of the prosecution is that on 05-10-1985 both the accused and the deceased went to Bennerghatta National Park. PW5, Kunniga saw all of them walking towards Mavinahalla. After some time he heard a cry "ayyayyo". He looked around but saw nothing. A little later he saw A1 and A2 coming from that side. He approached them and asked them how come they were three when they went and only two returning. The accused replied that the girl was moving about eating groundnuts and doing other things. He was not convinced with the reply. He took them to the Range Forest Office and narrated the incident to PW3, Forester Linge Gowda. PW3 sent some of the Watchers including PW4, PW5 and both the accused to the spot for further inquiry. They found the deceased girl lying with tied hands behind the neck with a kerchief and neck with a towel. A green jacket was found thrust into her mouth. Thereafter, PW1 B Nagaraj, Range Officer was informed. PW1 verified the fact and forwarded a Report (Exb P-1) to Bennerghatta Police Out Post. Later, PW 10, Police Head Constable arrested the accused from the Forest Office. PW 10 took a personal search of A1 and found 9 tickets (MO 1). PW2, Dr. Shivaprakash, who conducted the post-mortem, found that death was caused due to asphyxia on account of strangulation. A1 and A2 were charged under Section 302 read with Section 34 IPC. The accused pleaded not guilty.

Based on the manner in which the body was recovered and the medical evidence of PW 2, the Trial Court found that the deceased met with homicidal death as a result of asphyxia due to strangulation. PW5 deposed that he saw the deceased last with A1 and A2. He also saw them returning from the place where he heard the cry 'Ayyayyo'. Moreover, the Trial Court found that he is not an interested witness and relied upon his deposition. The Trial Court also placed reliance upon the deposition of PW 3 wherein he stated that the accused made extra-judicial confession that they murdered Neelamma because of her bad character. PW 6, bus conductor identified the MO1 tickets that he issued to the accused to travel up to National Park. Juxtaposing all this, the Trial Court found the chain of circumstances complete. A1 and A2 were convicted, based on circumstantial evidence lead before the Trial Court.

On appeal the High Court re-appraised the evidence. Placing reliance on

the Modi's Medical Jurisprudence, the High Court observed that the medical evidence tendered by PW2 fails to prove the homicidal death of deceased as a result of asphyxia due to strangulation. Appraising the evidence of PW.5, the High Court found that huge fence and bushes surround the place where he was working and consequently, that the High Court held that the deposition of PW.5 to the effect that he saw the deceased with A1 and A2 going towards Mavinahalla to be unbelievable. Admittedly the place of occurrence is about 200 to 250 feet from his place of work. He also stated that upon seeing him A1 or A2 had not tried to run away or even attempted to do so. This circumstance was also held in favour of the accused. The High Court impeaches the credibility of alleged extra-judicial confession of accused before PW3. PW5 has not stated about the extra-judicial confession nor has it found a place in the Ex. P 1 prepared by PW1 upon knowing of the incident from PW3. Thus the extra-judicial confession was founded to be a concocted piece of evidence. Lastly, the High Court found that it is difficult to believe the evidence of PW6, bus conductor. The High Court reasoned that, it is difficult to identify the bus ticket without the aid of trip sheet or any other reliable sources. In these circumstances, the High Court set aside the conviction by the Trial Court.

The fact of homicidal death of Neelamma was not disputed at any stage and hence detailed consideration of the medico-legal aspects of the manner of her death need not be examined. The only aspect which needs consideration is the reliability of circumstantial evidence as put forward by the prosecution that leads to the conviction of A1 and A2.

The primary fact for consideration is the reliability of PW5. Admittedly it is difficult to see the place from where he heard cry 'ayyayyo'. Fence and bushes surround his place of work. Hence it is difficult to believe that he saw the deceased along with A1 and A2 moving towards Mavinahalla. Upon hearing the cry, he is said to have stood up on a rock and looked around. Thereafter he continued with his work. When he saw A1 and A2, they did not attempt to escape from the scene. Had they committed the murder they would have normally tried to flee from the place. On the other hand they answered his query. Again it is difficult to believe the prosecution version that the accused accompanied PW3, a manual labourer, who does not hold any position of authority, to the Forest Office. In that view of the matter, the finding of the High Court as regards non-reliability of PW5's evidence needs no interference.

Secondly the fact of the alleged ill treatment by the accused and the so-called 'bad character' of Neelamma, which could have been treated as the cause and motive of the murder is also not sufficiently proved. This seems to be a cooked-up story.

Another aspect is the alleged extra-judicial confession made to PW3 but his deposition is liable to be rejected on two counts. The fact of such a confession that was said to have been made in the Forest Office during the detention of the accused was not mentioned in the Report [Ex. P1] given by PW1. Since PW1 came to know about the incident from PW3 it is improbable that this crucial fact of extra-judicial confession has not found a place in the Report. Again neither PW4 nor PW5 made any mention about such a confession. Therefore, the finding of the High Court on this aspect of the matter also does not need any reconsideration.

The stand of the accused that they had no motive to do away with Neelamma and they were actually in search of her cannot be brushed aside and is consistent with the material on record rather than the version of the prosecution.

In that view of the matter, acquittal of the respondents by the High Court does not call for any interference. The appeal stands dismissed accordingly.