

PETITIONER:
SHANKAR GAJANAN KALAN

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT: 20/09/1996

BENCH:
G.B. PATTANAIAK (J)
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G.B. PATTANAIAK (J)
MUKHERJEE M.K. (J)
MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)
RAMASWAMY, K.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

The appellant before us was tried by the Sessions Judge, Thane for offences punishable under Sections 302 and 201 IPC. The allegation against him was that on June 24, 1984 he committed the murder of Tulsibai, wife of Vishnu Shankar, and threw her dead body near a creek. The trial Judge acquitted the appellant and aggrieved thereby the respondent-State of Maharashtra filed an appeal in the High Court. The High Court reversed the order of acquittal and convicted and sentenced the appellant for both the offences. Hence this statutory appeal at his instance.

2. Bereft of details the prosecution case is as under:

(a) Vishnu Shankar (P.W.7) and his family comprising his wife Tulsibai (the deceased) and two brothers Maruti Shankar (P.W.1) and Somwar Shankar (P.W.4), were residents of village Goa in the district of Thane whereas the appellant, who happens to be their cousin (mother's sister's son), lived in the nearby village Kon, with his mistress Kamala (P.W.3). The appellant used to earn his livelihood from sorcery and prophesy and the family of Vishnu had full faith in his eerie expertise.

(b) A few days before her death Tulsibai had complained of some stomach ailments and had approached the appellant to cure her. The appellant promised to cure her through sorcery within a day provided he was paid Rs. 800/-. Even though the amount was readily paid the appellant could not keep his promise. He however asked Tulsibai to come to his but a few days later.

(c) Accordingly on June 24, 1984 Tulsibai left her house telling her husband that she was going to the appellant for treatment. At that time she was wearing a pair of gold earrings and a mangalsutra with four gold beads and two pendants. When, till evening, Tulsibai did not come back

home, Vishnu went in search of her to the house of the appellant only to be told that she had not come to his place. On the following day i.e. June 25, 1984 Vishnu along with his two brothers searched for Tulsibai at various other places but could not trace her out. Thereafter when they again went to the appellant to enquire about her, he demanded a sum of Rs. 751/ for prophesying the whereabouts of Tulsibai but the demand was not met. However on June 27, 1984, the appellant himself went to the house of Vishnu and, on being paid the demanded amount, told that the dead body of Tulsibai would be found near the creek on the following day i.e. June 28, 1984. The above prophesy of the appellant came true for on June 28, 1984 the highly mutilated dead body of Tulsibai was, indeed, found near the creek by Vishnu and his brothers.

(d) Maruti then went to the Police Station and lodged a report alleging that the appellant had committed the murder of his sister in law. On that report a case was registered and the appellant was arrested. Pursuant to the statement made by the appellant the two ear rings and the mangalsutra of Tulsibai were recovered from Hajarabi (P.W.5) and Sakharchand (P.W.2) respectively. The appellant also made a statement before the Investigating Officer (10) and other witnesses that he would show the place where he had initially buried the dead body of Tulsibai. He then took them to his hut. On digging the earth there some human hair, pieces of human skin and flesh and a hammer were found. Besides a rank odour was emanating therefrom. The 10 seized all the articles found there and along with the clothes of the deceased and of the appellant, which were earlier seized, sent them to Forensic Science Laboratory (FSL) for examination and analysis. On receipt of the reports of FSL and after completion of investigation the 10 submitted chargesheet against the appellant and in due course the case was committed to the Court of Session

3. The appellant pleaded not guilty to the charges levelled against him and his defence was that he had been falsely implicated.

4. To prove its case the prosecution relied upon the ocular version of Kamala and the following circumstances:-

- (i) Tulsibai left her house on June 24, 1984 with a mangalsutra and earrings on her person;
- (ii) Before leaving the house she had told her husband that she would be visiting the appellant for getting herself treated;
- (iii) In that evening she did not come back home as expected;
- (iv) On June 27, 1984 the appellant went to the house of Vishnu and made a prophesy that her body would be found near the creek on the next day;
- (v) The above prophesy of the appellant came true when her dead body was found near the creek on June 28, 1984;
- (vi) The ornaments which she was wearing when she left the house on June 24, 1984 were missing from the dead body;
- (vii) Soon after her disappearance the appellant had sold those ornaments to P.Ws. 2 and 5;
- (viii) On June 29, 1984 when, pursuant to the statement made by the appellant earth was dug in his hut, it was found to emanate a foul smell and to contain articles, including hair, which could be only of the dead body of a human being, and a hammer; and
- (ix) Human blood was found on the bush shirt of the appellant and on the human hair.

(5) The trial Judge disbelieved the ocular evidence of Kamala and the evidence led by the prosecution in proof of

circumstance No. (vii), while accepting the evidence in support of the other circumstances. According to the trial Judge, the proved circumstances only raised a grave suspicion against the appellant but did not unerringly point to his guilt and, hence, he acquitted him. In appeal, the High Court concurred with the finding of the trial Judge that Kamala was not a truthful witness but found that all the circumstances alleged against the appellant stood firmly established and they formed a complete chain to conclusively prove the guilt of the appellant.

6. We have carefully considered the judgments of the learned Courts below in the light of the evidence adduced during trial. On such consideration we do not see any reason whatsoever to disturb the concurrent findings of the learned Courts below that Kamala is not a truthful witness and that circumstance Nos. (i) to (vi) and (viii) and (ix) stand established, more so when the findings are based on proper consideration and appraisal of evidence. Resultantly, the next question that falls for our determination is whether the finding of the trial Court that the prosecution failed to prove circumstance No. (vii) is patently wrong as held by the High Court. In our opinion the answer to the above question will decide the fate of the appellant for we find that in the facts of the instant case the circumstance No. (vii) incriminates the appellant the most and therefore only on proof thereof that the prosecution can legitimately claim-after having proved the other circumstances detailed earlier-that the chain is complete. In other words, if the prosecution has failed to prove the above circumstance, a link in the above chain will be missing. We, therefore, proceed to appraise and evaluate the evidence on record to ascertain whether the above circumstance has been proved or not.

7. Since the prosecution has been able to establish circumstances No. (i) and (vi) it is evidently clear that the ornaments that the deceased was wearing were removed after she had left her house on June 24, 1984 for going to the house of the appellant. To prove that none except appellant could have removed those ornaments, the prosecution relied upon the evidence of Sakharchand (PW 2) and Hajarabi (PW 5). In his evidence Sakharchand stated that on June 25, 1984 at or about 10 A.M. when he was in his shop the appellant came along with a woman and told him that his wife was sick and he needed some money for her treatment. He then offered six golden beads (Ext. 22) of a mangalsutra for sale of him (P.W.5) stated that the appellant had earlier taken a loan of Rs. 300/- from her and on her persistent demands he gave her one pair of gold earrings (Ext.21) in liquidation of her debt. The above ornaments (Exs. 21 and 22) were identified by Vishnu as belonging to his wife and he testified that she was wearing them at the time of her departure from his house on June 24, 1984. Having carefully gone through the evidence of the above witnesses we find no reason to disbelieve them, more so, when nothing was brought out in cross examination to indicate why they would depose falsely against the appellant. Though P.W. 5 could not give the date when the earrings were handed over to her, P.W. 2 categorically stated that the beads were sold to him on June 25, 1984. The only irresistible conclusion that can be drawn from the above evidence is that the appellant came into possession of those ornaments of the deceased only after she left her house on June 24, 1984 and not earlier and disposed of them on the following day. This discussion of ours is sufficient to hold that the prosecution has succeeded in proving

circumstance No. (vii) but to appreciate the reasoning of the trial Judge, who held otherwise, it will be necessary to detail and discuss the evidence adduced by the prosecution relating to the recovery of the ornaments from P.Ws 2 and 5 pursuant to the statement of the appellant.

8. Shivaji Vishnu (P.W. 9) deposed that on June 30, 1984 when he was going along the road by the side of the Police Station he was called by the Police and going there he found the accused (appellant) detained there. In his presence a police officer interrogated the appellant and he (the appellant) told that he had kept the ornaments of the deceased at Kalyan and he would produce them. The police thereafter prepared a panchnama of the statement (Ext.19) so made and he signed the same. Thereafter he along with the police officer, the appellant and another witness left in a jeep. Near Lal Chowki the jeep stopped as asked for by the appellant. Then he took them to a shawl and called Hajarabi (P.W. 5). On being asked by him (the appellant) she produced the earrings (Ext.21). Thereafter the appellant took them to the shop of Sakharchand (P.W.2). and told him (P.W.2) to produce the beads. After the beads (Ext. 22) were produced the police officer seized them in their presence. The 10 (P.W.19) fully corroborated the above testimony of P.W.9.

9. The trial Judge disbelieved the panchnama (Ext.19) prepared in respect of the statement made by the appellant and the evidence of P.Ws 9 and 19 on the ground that the appellant had only disclosed that he had kept the ornaments at Kalyan but did not disclose that he had sold the same to P.Ws 2 and 5. According to the learned Judge, there was also a lot of difference between "keeping the ornaments at a place" and "selling the ornaments to some persons" and that such discrepancy raised a serious doubt as to whether the appellant had furnished the information to the police at all pursuant to which the ornaments were recovered. To say the least the above reasoning of the trial Judge is absurd, for once it is established that the ornaments were handed over by the appellant to P.Ws. 2 and 5 the question whether those ornaments were recovered from them pursuant to the statement of the appellant was wholly immaterial. In that context, equally irrelevant were the question whether those ornaments were recovered from them pursuant to the statement of the appellant was wholly immaterial. In that context, equally irrelevant were the questions whether the appellant made the statement (Ext.19) and, if so, whether it was true or not.

10. In the result we uphold the impugned judgment of the High Court and dismiss the appeal. The appellant, who is on bail, will now surrender to his bail bonds to serve out the sentence.