

Emperor Vs. Kuberappa Dharmappa Chiwati

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Court : Mumbai

Decided On : Nov-28-1912

Reported in : (1913)15BOMLR288; 19Ind.Cas.321

Judge : Batchelor and ;Rao, JJ.

Appeal No. : Criminal Appeal No. 430 of 1910

Appellant : Emperor

Respondent : Kuberappa Dharmappa Chiwati

Disposition : Appeal allowed

Judgement :

Batchelor, J.

1. In this case two men Kuberappa bin Dharmappa, accused No. 2 and Krishna bin Yellappa, accused No. 2, were charged before the Court of Session at Dhanvar with murder by causing the death of one Parsappa. They were acquitted by the learned Sessions Judge with whom the two assessors agreed, and from that order of acquittal this appeal is now brought by the Government of Bombay.

2. It may be convenient to set out in limine certain admitted facts in this case, and those admitted facts are these : The deceased Parsappa, a man of advanced years, was related to the first accused who expected to inherit property from him.

The two accused are close friends. Next door to the first accused lived his mistress, a woman named Tara. Next door to Tara lived the deceased man Parsappa. Both the accused were in embarrassed circumstances. On the night of the nth March Parsappa was by some person or persons strangled to death under circumstances which constituted his killing the offence of murder punishable under Section 302 of the Indian Penal Code. His dead body was found in his own house partly covered by a blanket on the following morning, the 12th of March. Search of the premises was made and ornaments worth Rs. 1,500 were found to have been stolen from his safe. The safe had to be forced open, as the keys of it could not be found. This crime baffled detection for some time, and not till after the lapse of about a month did the investigation upon which the prosecution now rely prove fruitful. 'Hi above, as we have said, are the admitted facts.

3. And the facts upon which the prosecution in this case rely are as follows:- According to the prosecution it was these two accused who plotted to kill the deceased in order to rob him of his ornaments and so to relieve their own indebtedness. To that end they lured him into the house of Tara on the pretext of supplying him with medicine for his eyes which had been giving the deceased some trouble. When he had been the enticed into the house, Tara, obeying the orders of the two accused, squeezed some chilly juice into his eyes, and thus temporarily blinded him. While thus disabled, he was set upon by both the accused who strangled him, the second accused also striking him on the jaws and chest with a large stone. The two accused then removed the deceased's keys, rifled his safe of the ornaments, threw the keys into the pit of Tara's privy, and then, carrying off the corpse out of Tara's house, took it through the court-yard over the party wall into the deceased's house, and there abandoned it leaving Tara's blanket lying partly over it and partly near it. The next morning the villagers' suspicions were aroused and the Police were communicated with. The house was entered and the dead body of Parsappa f was found and sent off for post-mortem examination. No clue to the perpetrators of the offence was obtained until the 10th April when the Sub-Inspector, following up certain information which had been conveyed to him regarding the blanket found on the corpse, went to Belgaum, the original ' residence of Tara, and there collected certain proof that the blanket was Tara's property. Armed with this proof, he returned to Dharwar and confronted

Tara with the knowledge which he had acquired. On the 13th April the first accused was arrested. On the 15th April the second accused and Tara were arrested, and the bulk of the ornaments stolen were found in the house of the first accused's grand-father Ningappa, on information supplied by the second accused. On the 16th April Tara made her confession to a Magistrate, which confession is to all intents and purposes to the same effect as her deposition in the Court of Session. On the 17th of April, in consequence of information furnished by Tara, the pit of her privy was searched by Bhangis, and in it were found a lock and some keys which are fully identified as those of Parsappa's. On the 18th April the first accused produced from where it lay hidden in a file of letters a pearl nose-ring also fully identified as the property of the deceased,

4. Such are the facts which the prosecution claim to have established in this case, and upon these facts it is urged that the guilt of the accused is placed beyond all doubt. From what we have already said it will be recognized that the evidence in the case falls substantially under two heads : first, the evidence of the accused No. 1's mistress, the accomplice Tara ; and secondly, the evidence of the numerous witnesses who prove that on the accused's arrest they, whether directly or indirectly, produced ornaments which are identified as the property of Parsappa.

5. Mr. Wadia, who has said on behalf of the accused persons all that could be said, began by reminding us that the accused in this Court of appeal stand in a stronger position than they occupied in the Court of trial, inasmuch as the learned trying Judge had the advantage of seeing and hearing the witnesses. It is true that that advantage is denied to us, but in this particular case the advantage is rather apparent than real, for we think that the appeal may safely be disposed of on the basis of that evidence which the learned Judge himself believed or, / at any rate, did not disbelieve.

6. It is important, therefore, to see so far as possible what was the learned Judge's view as to the main classes of the evidence to which we have referred. It is clear that the case turns very largely upon the credibility of Tara ; and the learned Judge writes that he considers that the evidence given by the approver Tara is ' probably true in the main'. He accepts, and so far as we can gather the assessors also

accept, in its entirety the evidence which goes to show that the ornaments in suit were produced by the accused persons, and were ornaments belonging to the deceased man. The learned Judge indeed goes so far as to say towards the end of his judgment that in fact he thinks that 'the accused probably are guilty of this murder'. But he says that the evidence is not convincing. It must, we think, be conceded that the result, whether right or wrong, is not wholly satisfactory, seeing that the question of the guilt or innocence of these accused is solely a question of a degree of probability. As we understand the judgment, and it is so candid that there is little risk of our misunderstanding it, the learned Judge believed that Tara was a witness of the murder. He believed also that her evidence was substantially true, and refrained from convicting the accused, only because he doubted whether the evidence of their production of the deceased's ornaments supplied as much corroboration, that is as much in quantity, as the law requires to validate the testimony of an accomplice. Now the law as such does not require any corroboration, and the rule of practice which does lay down this requirement, must in our opinion be applied with due regard to the varying circumstances of each particular case. There is no question of law before us now, but the question is solely one of fact whether certain evidence ought to be believed or not. If that evidence is believed, it is clear to us that there is ample corroboration of the accomplice Tara, not only quoad the incidents and circumstances of the crime, but also quoad the identity or the personality of the offenders. We may add that we know of no rule, whether of law or of practice, which seeks to furnish an inflexible canon as to the precise degree of corroboration which in all cases should be demanded for an accomplice's evidence, and we should deprecate any attempt to formulate any such rule. As to the case of *Queen-Empress v. Ram Saran* (1885) I.L.R. 8 All. 306 upon which the learned Judge relies as authority for some such principle, we are of opinion that that case, properly construed, is merely a decision on its own particular facts. If, however, it is to be read, as laying down a definite principle of law, we should with respect be unable to follow it.

7. Now the main question before us is whether the witness Tara should or should not be believed. It must be said that her story is in itself a natural and probable story, and gives a natural and probable account of the facts which have to be explained. Her statement bears every inherent sign of being true. For instance, we

observe that she admits that the proposal to murder Parsappa was in secrecy disclosed to her beforehand. If she were anxious to misrepresent the truth it would have been perfectly open to her to conceal this circumstance and to pretend, as is usual with such approvers in this country, that the actual commission of the crime came upon her as a surprise. As the learned Judge himself observes, Tara withstood cross-examination successfully. There is therefore nothing in the story itself or in the manner of its telling, which can weaken the authority of Tara as a witness. It remains to consider how far her disability as an accomplice is removed by the corroboration afforded aliunde. It seems to us that it is not possible in this case to draw a sharp line of distinction between the corroboration which goes to the mere incidents of the murder and that which goes to the identity of the murderers ; and we think that on both these separate points the corroboration which is forthcoming, and which the learned Judge himself believed, is ample and convincing.

8. In the first place it is proved, and has not been questioned before us, that the blanket found by the deceased's corpse was Tara's blanket. That circumstance alone tells to some extent against the first accused, for it establishes that the murderer, whosoever he was, had opportunity to use Tara's blanket. It is certain that if the murderer were accused No. , he would have had such opportunity, whereas, so far as we are aware, no other person would have had that opportunity. Furthermore, there is evidence to show that after this particular blanket had been used for the purposes of covering the corpse and had thus been withdrawn from the possession of Tara, she was recouped by the first accused who presented her with another blanket in substitution. It is not quite easy to satisfy oneself from the judgment what view the learned Judge took of this evidence. He expressed no disbelief of it, " though he does not commit himself to any definite statement ' accepting it. We have examined it for ourselves, and, in the light of arguments addressed to us on both sides, we are satisfied that the evidence is true. We have it, therefore, not only that the murderer, whoever he was, used Tara's blanket to cover the deceased, but that after Tara's deprivation of the blanket in this manner she was furnished with another blanket by the first accused.

9. Secondly, we find strong corroboration of Tara's story in the fact, which] the learned Judge accepts, and which is incqntestably proved, that the keys of the deceased man's safe were actually found in the pit of Tara's privy, where Tara said that if search were made they would be found.

10. Next we have the fact that Tara was able to give, and did give, an accurate account of the ornaments which had been stolen from the deceased. Indeed the learned counsel for the accused endeavoured to take advantage of this point and to urge that her account was too accurate to be genuine or spontaneous. We must, however, remember that in general a Hindu woman has a tenacious memory for ornaments, and there is nothing on the evidence to displace the natural assumption that after the murder had been committed and prior to the accused's arrest, the subject of the loot which had been acquired by the murder would be a common topic of conversation between the woman and her paramour. We see, therefore, no ground for surprise or for suspicion in the circumstance that Tara was able to give the Police a fairly accurate account of the ornaments which had been stolen. Her ability to do so, however, proves once more that she was a witness of the murder.

11. Next we think that all the probabilities in the case go to support her story that the murder was committed not in Parsappa's house but in her own house. It is quite true that her first story was that the murder took place in Parsappa's house, and that was the only material variation between her original story to the Police and her subsequent statements to judicial officers. This variation she frankly explains in these words:-' It was because I was afraid of the Sub-Inspector that I told the Police that the murder was committed in Parsappa's house. I was confused and afraid then. I was afraid that I too would be arrested.' But it must be observed that as early as the 12th of April, or one day before the first accused was arrested, and three days before the second accused was arrested, Tara had come forward with her j story describing these two accused men as the murderers. We are not prepared to throw discredit on her whole evidence merely because at first she was anxious, so far as possible, to conceal her own part in this crime, and to that end substituted one house for another.

12. Next, and perhaps most important, we have the evidence which the learned Judge has believed and which we too believe, that on the 15th April on the information of the second accused the bulk of the deceased's ornaments were found in the house of the first accused's grand-father, the blind old man Ningappa, and that Ningappa told the Panchas that he had received them from the first accused. There is no doubt whatever as to this fact, and the importance of it may be realized by the desperate straits to which the defence was driven in order to avoid it. Ningappa indeed went so far as positively to deny in the teeth of all the evidence that he ever produced those ornaments.

13. Lastly, and to much the same effect, is the evidence which shows that the pearl nose-ring belonging to the deceased was P** produced by the first accused. It was hidden in an envelope which lay among many other letters on a file in the first accused's house. Surprise may perhaps be felt at first sight, and has been expressed by the learned Judge, that the two accused who had taken such pains to conceal the actual commission of the crime should have been so ready with confessional disclosures as soon as they were arrested. Here, however, we think that the Police, whose conduct throughout has been such as to merit nothing but commendation, furnish us with a perfectly satisfactory and intelligible explanation. That explanation is that when on the night of the nth April the Sub-Inspector returned from Belgaum with the certain proof that this incriminating blanket was the property of Tara, Tara herself and the two accused inferred, and very naturally inferred, that their guilt was fully discovered and that there was no further purpose in secrecy.

14. It appears to us that all these items of corroboration of Tara's evidence leave us no choice but to act on our belief that that evidence is true. There is no reason why Tara should suppress the names of the real murderers, whom admittedly she must know, and substitute for them the names of her lover and his best friend. It is not suggested that she and accused No. 1 had ever quarrelled. On the contrary the evidence is V that she lived contentedly with him as his regularly kept mistress. The production of the ornaments by the two accused seems to us to be in itself conclusive. It must be remembered that all that Tara can possibly know as to the disposal of those ornaments would be the names of the murderers who took them

from the deceased's safe. If those murderers had in turn transferred the ornaments to third parties, of those parties Tara would presumably know nothing. The learned Judge was oppressed by the possibility that the accused might have received those ornaments from some third person, -intermediary between the murderers and themselves. That, however, as we think, was to extend the scope of the Sessions Court's inquiry into unnecessarily speculative regions, for it was today's case that the accused had received those ornaments from third parties. On the contrary their considered defence was, and always had been, a simple denial of the proved fact that the ornaments were in their possession.

15. Then again the learned Judge hesitated to convict the accused because he said that it was not clearly proved that for Parsappa had retained possession of those ornaments up till the day of his death. Non constat, said the learned Judge, that although they were Parsappa's property, he might not have sold them or transferred them some time before the murder. This again appears to us to be an unnecessarily speculative branch of inquiry, for if we except the evidence that Parsappa had been thinking of selling those ornaments, there is nothing whatever on the record to suggest that they ever left Parsappa's possession. On the contrary the evidence is that upto a fortnight before Parsappa's death witnesses had seen him in possession of this jewellery. Moreover, when the safe was forced open by the Police in the presence of a Panch, some members of the Panch, including a close friend of the deceased, immediately exclaimed that Parsappa was then in possession of far more ornaments than were discoverable in the safe. Furthermore, it is clear upon the evidence that some of those ornaments, and for our present purposes it matters not whether they were some or all, belonged to the deceased's four year old daughter, and it is nobody's case that he ever intended to sell or get rid of those ornaments. Lastly, this theory again makes for the accused a case which neither they nor their pleader . had ever made. It was not the accused's case that Parsappa had sold those ornaments and that by some subsequent transactions they had found their way into the possession of Ningappa and the first accused. On the contrary the case of the accused was that the ornaments were ' never in the possession of Ningappa or the first accused ; in other words they are unable to give any explanation of the ascertained fact that this jewellery was discovered in their custody and control.

16. It appears to us, therefore, upon a general review of all the evidence tendered in this case that Tara's story, probable and credible in itself, is amply corroborated by other evidence which has been believed by the Sessions Judge, and which it is impossible to challenge. We know not in what way better corroboration of an accomplice's evidence could be supplied than has been supplied here. It is clear that the law does not require that every detail of the approver's story should be fortified by a similar story told by an independent witness, since the effect of any such principle would be to rule out the accomplice's evidence as altogether inadmissible. It is in our opinion only necessary that accomplice's evidence should, in the circumstances of each particular case, receive that corroboration which it seems to require. In this case we do f doubt that it has received that corroboration. We believe it and we must therefore act upon it.

17. The result, therefore, is that we set aside the order of acquittal, and convict the two accused of murder under Section 302 of the Indian Penal Code. The crime was in itself a brutal one and was brutally carried out. It was particularly detestable on the part of the first accused with whom the dead man was always on friendly terms, and to whom he was related, yet it would appear from the evidence that it was the first accused who plotted and designed this crime. We sentence the first accused Kuberappa bin Dharmappa Chiwate to death, and we sentence the second accused Krishna bin Yellappa Pishe to transportation for life.