

In Re: Chikka Byre Gowda

In Re: Chikka Byre Gowda

SooperKanoon Citation : sooperkanoon.com/372706

Court : Karnataka

Decided On : Jun-22-1955

Reported in : AIR1955Kant119; AIR1955Mys119; 1955CriLJ1274

Judge : Sreenivasa Rau and ;Hombo Gowda, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367 and 374;
[Evidence Act, 1872](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 53 of 1954 and Criminal Ref. Case No. 6 of 1954

Appellant : In Re: Chikka Byre Gowda

Advocate for Def. : Asst. Adv. General

Advocate for Pet/Ap. : E. Kanakasabhapathy, Adv.

Judgement :

Sreenivasa Rau, J.

1. This is an-appeal against the judgment, dated 12-8-1954, of the Principal Sessions Judge, Bangalore Division, in Kolar Sessions Case .No. 7 of 1954, convicting the accused-appellant, Chikka Byre Gowda alias Nadipina Byregowda, of an offence punishable under Section 302, 1. P. C. and sentencing him to death. The proceedings have also been submitted to the High Court for confirmation

under S. 374, Cr. P. C.

2. The prosecution case is as follows :

3. The accused was the second of three brothers who were living as members of a joint Hindu family. The eldest brother Doddabyregowda had a son B, Byregowda and a number of daughters. The son studied up to the S. S. L. C. examination and returned home. He thereafter interested himself in the management of the family affairs. He took exception to the accused selling away the goats belonging to the family behind the back of his brothers. Ultimately this dissatisfaction resulted in a partition of the family properties amongst the three brothers much against the will of the accused. The latter was all the more incensed when the goats, belonging to the family were auctioned amongst the members of the family and the deceased outbid him and the accused was consequently deprived of them. The family owned two houses, one a big house and another a small one. The small one was allotted to the youngest brother while the big one was divided into two portions, the eastern portion falling to the share of the accused and the western portion to that of the eldest brother. There was only one door for the whole house leading to the street on the western side. Access to this front door could be had from the eastern portion which had fallen to the share of the accused through a door' situated in the middle of the wall dividing the two portions. According to the arrangement arrived at during the partition the accused had to open a door into the lane situated on the southern side of the house and close the inner door mentioned above. The partition is said to have taken place about nine or ten days before the incident. There was some delay in the accused opening a door in the southern wall of his portion of the house. The deceased pressed him to expedite it and proceeded to collect bricks to close the inner door. This added to the resentment of the accused: In , consequence of all this resentment the accused, some time during the night of 19-2-1954, murdered B. Byregowda with a bachi marked M. O. 15 in the case.

4. There are no eye-witnesses to the occurrence and the decision in the case rests entirely upon the circumstantial evidence available in the case.

5. That the deceased Byregowda was alive and in normal health on the night of 19-2-1954 and that he met with an unnatural death at the hands of some other

person than himself in the course' of the night has been established beyond doubt.

6. The learned Sessions Judge's decision that the accused was guilty of murdering B. Byregowda is based on the following factors:

(1) Amongst all the inmates of the house on the fateful night, the accused was the only one who had the strongest motive for doing away with the deceased, and he had the opportunity.

(2) The accused was seen washing his bloodstained banian in the pond nearby some time during the following dawn.

(3) The accused was found wearing a pair of blood-stained knickers when he was traced on the next evening.

(4) The accused gave information to the Investigating Officer and the panchayatdars in consequence of which M. O. 15 (bachi) was traced and the said weapon could have inflicted the injuries which caused the death of B. Byregowda.'

(5) The said article M. O. 15 fell to the share of the accused at the family partition.

(6) The conduct of the accused in coming out of the house early in the dawn and not answering Papanna, P. W. 5, when the latter spoke to him and the accused's conduct in going away from the house immediately after the murder was discovered and keeping away all through the day until he was traced by the Police, and

(7) The accused had a strong motive for murdering' his nephew as the latter had been responsible for bringing about the partition, had brought shame to the accused and had deprived him of the goats which had been in the accused's charge all along.

7. It has been repeatedly laid down that when a conviction is to depend upon circumstantial evidence, the incriminating facts must be such as to be incompatible with the innocence of the accused and incapable of explanation on any reasonable hypothesis other than that of the accused's guilt. This has been laid down by this High Court in '8 Mys LJ 379 (A)', and -- Papiiah v. Govt. of Mysore, 49 Mys HCR

444 (JJ), and" by the Supreme Court in -- 'Hanumant Govind v. State of M. P.', : 1953 CriLJ129 (C), in which it is stated:

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which, the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency. and they should be such as to exclude every hypo- ' thesis but the one proposed tp be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence pf the accused and it must be such as to show that within all human probability the act must have been done by the accused'.

8. The principle of this decision has been repeated and applied by the -Supreme Court in --'Ketlar Nath v. State of West Bengal', AIR 1954 SC 860 (D), and in -- 'Kutuhali Yadav v. State of Bihar', : AIR 1954 SC720 (E), the latter being a case in which the Supreme Court found that the tests laid down in ' : 1953 CriLJ129 (C)', had been satisfied by the circumstantial evidence adduced in the case and confirmed the conviction.

9. Adverting to the present case, the circum- stances mentioned above on the basis of which the -learned Sessions Judge has arrived at the conclusion that the accused was guilty may be considered.

.(His Lordship then considered the circumstantial evidence and concluded as follows:)

10. It is thus seen that far from the circumstantial evidence in the case leaving no room for any other hypothesis than the guilt of the accused it is totally inconclusive and fails to satisfy the test laid down in ' : 1953 CriLJ129 (C). Not only are all the vital facts alleged by the prosecution not established by the evidence on record, but even if the said facts should be regarded as proved, they do not constitute a complete and unbroken chain leading to the inevitable inference of the accused's guilt.

11. In the light of all the considerations mentioned above, it appears to us that the conviction cannot be sustained and the sentence of death passed by the Court below cannot be confirmed. The decision of the learned Sessions Judge is accordingly set aside and the Appellant is hereby acquitted and he shall be set at liberty forthwith.

12. Pronounced in open Court.

13. Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com