State of Karnataka Vs. Udayakumar

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SooperKanoon Citation : sooperkanoon.com/376656

Court : Karnataka

Decided On : Aug-07-1995

Reported in : 1996CriLJ19; ILR1995KAR2438; 1995(4)KarLJ313

Judge : M.B. Vishwanath and ;M.M. Mirdhe, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) , 1973 - Sections 313

Appeal No. : Criminal Appeal No. 478 of 1993

Appellant : State of Karnataka

Respondent : Udayakumar

Advocate for Def. : K. Muniswamy Gowda, Adv.

Advocate for Pet/Ap. : M. Rajagopal, Govt. Pleader

Judgement :

Mirdhe, J.

1. This Criminal Appeal is preferred by the state against the judgment dated 23-1-1993 passed by the Principal Sessions Judge, Kolar, in S.C. No. 45/1988 acquitting the respondent-accused of the offence punishable under Section 302 I.P.C.

2. We have heard the learned Government Pleader Shri M. Rajagopal and the learned counsel for the respondent-accused Shri K. Muniswamy Gowda fully and perused the records of the case.

3. The case of the prosecution is as follows :

Deceased Suresh was the son of P.W. 1 - Parthasarathi and his wife P.W. 2 - Gangabai. Deceased Suresh was their second son and P.W. 3 - Manjunath was their first son. P.Ws. 1 and 2 were residing at Madras ever since the date of their marriage. P.Ws. 1 and 2 had come along with their sons, Manjunath and deceased Suresh on 17-4-1988 to the house of the mother of P.W. 2 situated in B.E.M.L. Nagar, K.G.F., in connection with the Seemantha ceremony of the wife of the brother-in-law of P.W. 1, which was to be held on 20-4-1988. On 19-4-1988 when P.W. 1, the complainant, was sleeping in one of the rooms of that house, his wife P.W. 2 came and informed him between 4.00 and 5.00 p.m. that their son Suresh had been killed. On receiving that information, he went to the said room and saw the body of deceased Suresh lying with his head separated from his body and the accused standing in that room holding a kathi in his hand. P.W. 1 went to the Police Station and filed the complaint as per exhibit P-1. The police registered the case, investigated into the case and after completion of the investigation filed charge-sheet against the accused.

4. The trial Court, after assessing the evidence on record, came to the conclusion that the prosecution failed to prove any of the circumstances alleged against the accused beyond reasonable doubt and hence has acquitted the accused.

5. There are no direct eye-witnesses to connect the accused with the offence alleged against him. The prosecution is relying on circumstantial evidence to prove the offence alleged against the accused. When the case of the prosecution is based on circumstantial evidence, the law requires that each circumstance alleged against the accused must be proved beyond reasonable doubt and the chain of circumstances must be so closely knit so as to exclude all the reasonable hypothesis of the innocence of the accused. The Supreme Court has time and again reiterated this principle. It means that the circumstantial evidence must point only to the guilt of the accused. It is the contention of the appellant State that the

circumstances alleged against the accused prove his guilt beyond reasonable doubt and the trial Court was not justified in acquitting the accused.

6. It is not disputed in this case that P.W. 2 - Gangabai is the sister of the accused. P.W. 1 is her husband and deceased Suresh was the son of P.Ws. 1 and 2. It is also not disputed that the dead body of Suresh was found in the house of father of P.W. 2 on 19-4-1988 between 4.00 and 5.00 p.m. Though it is the contention of the defence that P.Ws. 1 and 2 had not come for Seemantha ceremony of Dr. Manjula, wife of the brother of P.W. 2, but still the presence of P.Ws. 1 and 2 along with their children in that house at that time cannot be disputed in this case in view of the clinching evidence produced by the prosecution.

7. The incriminating circumstances alleged against the accused are as follows :

1) the deceased died a homicidal death.

2) the deceased was hale and healthy and he was taken to the room of the accused by the accused himself just a little while before the incident.

3) the dead body of the deceased with his head severed from his body was found in the room of the accused and the accused was found standing in that room with the blood-stained kathi, M.O. 1, in his hand.

4) ascendance of the accused after the offence.

5) production of the weapon by the accused after his arrest in pursuance of his voluntary statement.

These are the circumstances that are alleged by the prosecution against the accused.

8. Regarding the homicidal death of the deceased, it is significant to note here that the evidence of P.Ws. 1 and 2 goes to show that on 17-4-1988 they had come to the house of the mother of P.W. 2 in connection with the Seemantha ceremony of the wife of the brother of P.W. 2. From the evidence of P.Ws. 1 and 2, it is abundantly clear that the deceased came to the house of the mother of P.W. 2 when he was hale and healthy and alive. Further, the evidence of the prosecution

shows that the deceased was done to death in that house. So far as this aspect of the case is concerned, it cannot also be disputed, because P.W. 2 saw the dead body of her son in the room and she went and informed her husband and he also came and saw the dead body. P.W. 3 has also deposed to that effect. All these pieces of evidence are referred to by us at this juncture to show that the deceased was alive till the evening of 19-4-1988. Inquest report, exhibit P-8, is proved through the evidence of P.W. 16, the investigating officer, who was the in-charge of C.P.I. of that area then, and he has deposed that he held the inquest proceedings over the dead body of the child in the presence of the panchas as per exhibit P-8. P.W. 7 a mahazardar, has deposed about exhibit P-8. But, he has stated in his cross-examination that the dead body was shifted from bath-room to the room where it was seen by him. He has been treated hostile. From his answers, it is apparent that he is a witness who wants to help the accused. Therefore, he has been treated hostile by the prosecution. But, exhibit P-8 discloses that there were injuries on the person of the deceased. P.W. 5 Dr. S. Raj, is the doctor who conducted post-mortem examination over the dead body of the deceased. He has deposed that the head and portion of the neck was severed from the body. He has deposed as follows :

'The body appeared to have been severed for the most part at the level of the middle of the thyroid cartilege, anteriorly and the levels of the body and pedicles and inversions space of the fourth cervical vertebra.'

The doctor has stated that the larynx had been severed at the level of the thyroid cartilege. He has also opined that the spinal chord was severed at the level of the fourth cervical vertebra. He has opined that the death was due to injuries to the vital organs as a result of external violence. He has also opined that the injuries found on the dead body could have been caused by a heavy sharp edged weapon such as a chopper. He has given his report as per exhibit P-3. Even regarding the weapon, he has given his opinion as per exhibit P-4. The evidence referred to by us proves beyond reasonable doubt that the deceased who had gone to the house of the mother of P.W. 2 on 17-4-1988 was found to have been died a homicidal death due to violence. Hence, the prosecution has been able to prove this point beyond reasonable doubt.

9. The next circumstance that is alleged by the prosecution is that the deceased was hale and healthy before he was taken by the accused to his room. The deceased was last seen alive in the company of the accused, before his dead body was found in the room of the accused soon after the accused took him there. For this, there is evidence of P.W. 2, the mother of the deceased and the sister of the accused. P.W. 2 has deposed that on 19-4-1988, at about 5.00 p.m. in the evening, her son deceased Suresh and her sister's son Chandilnathan were taken by the accused to one of the rooms in that house stating that he would peel the coconuts. She has stated that the accused sent the younger child Chandilnathan outside the room and detained her son deceased Suresh inside the room and closed the door. This is a most important circumstance against the accused. P.W. 2 has stated in her cross-examination that at that time, herself, her mother and her brother's wife Dr. Manjula were sitting at the threshold of the house chatting. No such material is elicited in her cross-examination so as to lead to the inference that this witness had any animus against the accused, her own brother, to depose falsely in this regard. In fact, she has admitted that the accused had special affection for the children and he was distributing chocolates and toffees and other choicest eatables to the children. She has also admitted that the accused had special affection for her son Suresh. If this witness were to speak falsehood due to some mala fides against the accused, she would not have stated these facts. She has spoken the truth. But, at the same time, she has also deposed that it is her brother, the accused, who took her son to the room and subsequently she went there and saw the severed body of her son and the accused standing with a blood-stained kathi in his hand in that room. We do not think that this witness is a liar. A suggestion that she was speaking under the influence of her other brothers is denied by her. Merely because her brothers were present in Court, that is not a ground for us to lead to the inference that this witness had deposed under their influence. She has admitted that she and her husband were brought from Madras to depose in the case against the accused. If her brothers had brought her from Madras for attending the Court and depose in the case in the Court, it cannot be a ground for the Court to believe that she had been tutored to depose falsely against the accused. The counsel for the respondent-accused argued that P.W. 2 had deposed falsely as her father had decided to give some property to her. This

argument deserves rejection on the ground that no mother would go to the extent of gaining something material by losing her own son, and involving her own brother falsely. No mother would also shield a real culprit who had murdered her son and substitute an innocent person who is none other than her own brother in his place just to make some gain. The counsel for the respondent-accused also argued that P.Ws. 1 to 3 have been brain-washed by the brothers and father of the accused so as to depose in a particular manner. This argument is also not worthy to be accepted because P.Ws. 1 and 2 have lost their son and they have deposed as to what they had seen. There was no question of any brain-washing them. The complaint was given on the very day. There is no evidence to lead to the inference that P.Ws. 1 to 3 have been brain-washed as argued by the counsel for the respondent-accused. The accused in his statement under S. 313 Cr.P.C. has stated as follows :-

'My father and my brother were very happy when I was involved in this serious case. My father and my brother influenced my sister and my brothers in law to give false evidence in the case.'

As pointed out above, it is very difficult to brain-wash the parents of a murdered boy to shield the real culprit and substitute an innocent man in his place. The evidence of P.W. 2 conclusively and clinchingly proves that the deceased was hale and healthy when the accused took him to his room on that day. It is also proved clinchingly that the deceased was last seen alive in the company of the accused before he took him to his room.

10. The next circumstance that is proved against the accused is that the dead body of the deceased was found in the severed condition with his head and portion of his neck severed from the trunk portion of his body and the accused was standing with the blood-stained kathi in his hand. The evidence of P.Ws. 1 to 3 is the evidence on this point. P.W. 2 has stated that some time after the accused took her son to the room, she went near the room where the accused had detained her son and found the door of the room open and she went inside and saw the accused standing holding a kathi in his hand and the body of her son Suresh was lying on the ground with he head separated from the trunk. She has

also stated that the accused was preparing to put the severed head of her son into a kit bag and the accused handed over the kathi to her on his own accord and came out of the room saying that she could do whatever she liked, and she kept the kathi inside the room and came out of the room without doing anything. Though this witness has been cross-examined, no such material is elicited to point out that she had any motive or animus against the accused to depose falsely against him. Her evidence is further corroborated by P.W. 1, who is her husband, and who had no motive or any animus to depose falsely against his brother-in-law. He has deposed that he was sleeping in one of the rooms of that house, that his wife P.W. 2 came between 4 and 5 p.m. and informed him that their son had been killed and on receiving that information, he went to the room where his son was said to have been killed and saw that the trunk portion of the body of his son was separated from the head portion and the accused was standing there holding a kathi in his hand. The complaint, exhibit P-1, corroborates the evidence of this witness. Though this witness has been cross-examined at length, no such material is elicited in his cross-examination so as to doubt this portion of his evidence.

11. P.W. 3 Manjunatha is another son of P.Ws. 1 and 2. He has deposed that the accused took his younger brother Suresh and another child by name Chandilantha to his room when they were playing with him. He has stated that the accused took Chandilantha first and that child went inside the room and came out and thereafter the accused called his younger brother, that deceased Suresh and the accused went inside the room and the accused closed the door, that after a short while, the door of the room was opened by accused Udayakumar and he came outside the room holding a kathi in his hands, and that his mother P.W. 2 came and snatched away the kathi from the hands of the accused and kept the same on a table in the house. The counsel for the respondent-accused argued that P.W. 3 is a child witness and it will not be safe to rely on the evidence of P.W. 3. He relied on a decision in the case of Chhagan Dame v. State of Gujarat, : 1994 CriLJ56 , wherein it has been held that when a child witness is under the influence of a tutor, it will not be safe to rely upon his evidence. This witness has stated that it is a fact that he, his mother and his father had talked together to give this type of evidence in Court. From this answer, it cannot be inferred that this witness was asked to depose falsely in this regard. But, anyway, in view of the fact that this witness has

himself stated that he his mother and his father had talked together to give this type of evidence in Court, we feel that it will not be safe to rely on the evidence of P.W. 3. Therefore, we exclude the evidence of P.W. 3 from consideration in this case. But, the evidence of P.Ws. 1 and 2 proves beyond reasonable doubt that the deceased was alive and he was taken by the accused to his room and after some time his severed body was found in his room and the accused was standing with the blood-stained weapon in his hand.

12. The counsel for the respondent-accused also relied on a decision in the case of Lakshmi Singh v. State of Bihar, : 1976 CriLJ1736 , wherein it has been held that when there is conspiracy of witnesses to implicate innocent person, the court should not rely on such evidence. But, this ruling will not come to the aid of the respondent. It is difficult to hold that there was any conspiracy on the part of P.Ws. 1 and 2 to involve this accused falsely in this case. The decision relied upon by the counsel for the respondent is in a case where it was not possible for the Court to disengage the truth from falsehood, to shift the grain from the chaff. But, that is not the position in this case. The evidence of P.Ws. 1 and 2 referred to by us above prove this circumstance also beyond reasonable doubt.

13. The next circumstance that is alleged against the accused is that the accused was absconding. P.W. 12 has deposed that on 19-4-1988 at about 7.15 p.m. himself and P.C. No. 350 were deputed to search and apprehend the accused, that they searched for him, but they could not find him. He has further stated that when they were patrolling in the locality of Vasanthanagar, they saw the accused sitting by the side of some house in that area at about 6.00 a.m. and that they apprehended him and produced him before the P.S.I. P.W. 13 has deposed that on 20-4-1988, P.W. 12 - Venkatesh and P.C. No. 350, who were deputed to trace the accused, produced the accused in this case at about 6.30 a.m. before him at the police station. The accused in his statement under Section 313 Cr.P.C. has stated that he went to the police station to give written complaint to the police and he was retained there itself. P.W. 1 has stated in his evidence that when he first went to the police station on the date of the incident, he saw the accused in the police station. From the evidence of P.W. 1, it is proved that when he went to the police station, the accused was also present in the police station. But, the

investigation had not started till then. It appears that when the complaint was given and investigation started, the accused absconded from that place. There is no reason for P.Ws. 12 and 13 to depose falsely in this case. Hence, we hold that the prosecution has proved beyond reasonable doubt that the accused had absconded from that place. Another ground for us to hold that the accused had absconded from that place is the conduct of the accused himself. The accused is not illeterate villager. He is an educated person working in B.E.M.L. He is also a sportsman of some merit. A person of such standing will not keep quiet if the police were to detain him falsely in the case. He was also not alone, in the sense that his brother Kalyanakumar, his sister-in-law Dr. Manjula had appeared and deposed as D.Ws. 2 and 3 in this case. They are also educated persons. If the accused were to be unnecessarily detained by the police in the police station, neither the brother of the accused nor his relatives like Dr. Manjula could have kept quiet without taking steps in this regard to check the illegal action of the police in detaining the accused. But, the conduct of the accused and D.Ws. 2 and 3 in not taking any action against the police goes to show that the say of the accused that he was detained in the police station when he had gone to give the complaint is a false defence. The counsel for the respondent-accused has submitted that the prosecution must stand on its own strength and should not depend on the weakness of the defence. It is a fact that the law is so. The prosecution must prove its case beyond reasonable doubt irrespective of the fact that whether the accused had taken false defence or whether he has not been able to prove his defence. In this case, the defence that is taken by the accused that he was detained in the police station when he had gone to file the complaint is false. But, this is not a ground for us to infer that the prosecution case is proved beyond reasonable doubt. We are giving our finding that the prosecution has successfully proved its case not on the weakness of the defence, but on the strength of the prosecution evidence which we have discussed above.

14. Another contention of the defence is that the accused was not liked by his father and brothers as he was spending money on others and hence they have involved him falsely in this case. From the evidence, it appears that there used to be quarrels between the accused and his brothers in that house. But, neither P.Ws. 1 and 2 nor their children were concerned with that quarrel. When a ghastly

murder of the type in this case had taken place, it is improbable that the father and the brothers of the accused would involve the accused falsely in this case just to wreak their vengeance and shield the real culprit.

15. It has also been argued by the counsel for the respondent that the evidence of D.W. 1 discloses that seemantha ceremony of Dr. Manjula was fixed on 29-4-1988 and not on 20-4-1988 as deposed by P.W. 1. Whether the seemantha ceremony was fixed on 20-4-1988 or 29-4-1988, it does not make much difference for this case, because the presence of the deceased along with his parents on that day at that time cannot be disputed. In view of the evidence discussed by us above. Even the accused in his statement under Section 313 Cr.P.C. has admitted that the dead body of the deceased was found in that house, but according to him not in his room, but in the bath room.

16. The evidence of D.Ws. 2 and 3 that the body of the child was shifted from the bath room to the middle or second room and the door was locked and the police kept watch there also deserves to be totally rejected because D.Ws. 2 and 3 were related to the accused and they are not illiterate witnesses. D.W. 2 is a medical practitioner and D.W. 3 is a lecturer. If the police were to conduct things in such a manner, they would not have kept quiet and they would have brought this to the notice of the authorities concerned. They could not have kept quiet for such a long time till they gave their evidence as defence witnesses in this case. If the police had attempted to shift the body from the bath room to the central room in that house as deposed by D.Ws. 2 and 3, certainly D.Ws. 2 and 3 would have opposed it. They would have filed complaint against the persons who attempted to do this. But, they have not taken any steps in this regard and the only time that they have opened their mouths to speak about this alleged shifting of the body from the bath room to another room in that house is on 4-1-1991 when they gave evidence in Court, i.e., nearly after 3 years of the offence. Therefore, their evidence does not inspire confidence for acceptance and it deserves to be rejected outright.

17. The next circumstance that is alleged against the accused is that after the accused was arrested, he made his voluntary statement per exhibit P-18 and he led the police and panchas to the bath room and produced the blood-stained kathi

from the place. This Court in the case of Vijaykumar v. State, ILR 1994 Kant 491, has held the statement of the accused must be proved like any other fact and merely marking the exhibit is no proof according to law and it is not substantive evidence. In this case also, the prosecution has not proved the statement of the accused as any other fact, but it has merely marked exhibit P-18 as the statement of the accused. Hence, it cannot be a substantive evidence. Therefore, that statement cannot be relied upon and the subsequent recovery of the kathi from the bath-room also cannot be held to be proved against the accused.

18. It is not disputed in this case that the murder of the deceased took place in that house. The defence is disputing that the dead body of the deceased was found in the room of the accused. According to the statement of the accused, when he went to the bath room to take bath, he saw the dead body. It is the suggestion of the defence that the dead body was shifted by the police to the room where it was found. But, this is not the correct fact as the evidence of P.Ws. 1 and 2 clearly goes to show that the dead body of their son was seen with his head severed in the room of the accused. The inquest mahazar is at exhibit P-8. It is mentioned therein as follows :

The evidence of P.W. 13, the investigating officer who conducted the inquest proceedings is also to that effect. We do not see any reason to disbelieve P.W. 13, P.W. 8 has turned hostile obviously to oblige the defence in this case.

19. The counsel for the respondent-accused also commented on the way in which P.W. 1 gave his complaint and the delay in giving the complaint. The delay cannot be said to be fatal in this case, because it has not lead to any concoction or fabrication. P.W. 1 has stated that he went to the police station where his complaint was recorded and he gave his complaint in Tamil which was translated into Kannada by P.W. 15 - P.C. 397, Shreehari, and it was read over to him and the contents were correct and that he signed it. We do not find any such infirmity in the evidence regarding the filing of the complaint by P.W. 1 also so as to make us reject the prosecution case in toto.

20. Even regarding the motive for the accused to commit this murder, P.W. 1 in his evidence has stated that there used to be always galata in the house of his

mother-in-law and he was told that ever since the construction of the house where his mother-in-law was residing, there used to be quarrels between the accused and his brothers. He has also stated that a coconut was found tied at the threshold of the house and his son deceased Suresh was killed as offering a sacrifice to some deity. In exhibit P-1, P.W. 1 has not stated anything about this motive for the accused to commit the offence. But, he has stated that the accused had committed this offence with some ill-will against him. The complaint is not an encyclopaedia of the prosecution case. Therefore, merely because P.W. 1 has not mentioned about the motive that he has stated in his evidence, that cannot be a ground for the Court to reject his evidence on the point of motive that the murder of his son was committed by the accused to propitiate some deity. Looking to the facts and circumstances of the case, the motive does not appear to be improbable.

21. The prosecution has been able to prove beyond reasonable doubt that the deceased was hale and healthy and was alive when the accused took him to his room on that day. The dead body of the deceased with his head severed from his trunk was found in the room of the accused by P.Ws. 1 and 2 and the deceased was found standing holding a blood-stained kathi in his hand and after the complaint was given, the accused was found missing. In our opinion, these circumstances are more than enough to form a close knit chain of circumstantial evidence against the accused so as to exclude all the reasonable hypothesis of his innocence. The trial Court has erred in not assessing the evidence properly. Its inferences are not based on the proper appreciation of the evidence. Its approach to the evidence is not legal and proper. Therefore, this Court is required to interfere with the judgment of the trial Court in this appeal and set it aside as we find that the trial Court was wrong in acquitting the respondent-accused as the evidence in this case proves beyond reasonable doubt that the accused committed the murder of the deceased.

22. Hence, we proceed to pass the following order :

The appeal is allowed. The judgment of the trial Court acquitting the respondent-accused of the offence punishable under Section 302 I.P.C. is set aside and the respondent-accused is convicted for the offence punishable under Section 302

I.P.C. and he is sentenced to undergo R.I. for life. He is ordered to be taken into custody forthwith for undergoing the sentence awarded to him.

23. Appeal allowed.