

In Re: Surchand Ramji Chavan

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Court : Karnataka

Decided On : Oct-21-1971

Reported in : 1972CriLJ1108

Judge : C. Honniah and ;M.S. Nesargi, JJ.

Appellant : In Re: Surchand Ramji Chavan

Judgement :

1 The appellant Surchand Ramji Chavan (A-I) was tried along with three others for the murder of one Motimala, in the court of the Sessions Judge at Chitradurga in Sessions Case No. 16/69 on his file. By his judgment dated 30th November 1970, the learned Sessions Judge acquitted the other three accused namely A-2, A-3 and A-4, but however, convicted A-I under Section 302, I. P.C. and sentenced him to imprisonment for life. This appeal is against the said conviction and sentence.

2. Motimala was a resident of Bombay, residing at Mohideen road, Arab Kalab, Shop No. 1. Bombay-8. He was a dealer in empty tins. He was supplying tins to B. T. Oil Jvills at Davangere. Surchand Ramji Chavan (A-I) was also a resident of Bombay and he was known to Motimala. He was also dealing in empty tins and supplying them to B. T. Oil Mills at Davangere. Some time in the year 1968 A-I left Bombay and came and took up a temporary residence at Davangere. He took a land near Geethanjali Talkies on lease from P. W. 2 Somnath. He put up a shed there and was residing there and doing his usual business. Motimala supplied empty tins to B, T. Oil Mills in the month of May 1969 and he had to receive Rs.

5675/50 being the value of the tins after some deductions. As he did not receive any money from the B. T, Oil Mills for the supplies he had made, he left Bombay on June 13, 1969 to Davangere. At the time he left Bombay, his wife P. W. 28 Smt Mulibai was in advanced stage of pregnancy and it was expected that Motimala would return to Bombay from Davangere early,. There is no evidence to show when Motimala was murdered. But, however, there is indisputable evidence in this case to show that he approached P. W. 11 Nabhiraj, the Managing Director and P. W. 12 Naniundasastri, Accountant, of the B. T. Oil Mills. Davangere. on 17-6-1969 and requested them to pay the amount which was due to him for the supply of empty tins. P. W. 12 handed over the cheque Ex, P-9 issued by P. W. 11 for Rs. 3175-50 and he paid a sum of Rs. 2,500/- in cash to Motimala. At the time Motimala received the cheque and the said sum of money, A-I was present with him. Thereafter there is no evidence to show the whereabouts of Motimala.

3. As Motimala did not return to Bombay as expected early by P. W. 28, she came to Davangere and contacted the B. T. Oil Mill for information about her husband on 3-7-1969. By that time on 26-6-1969 the B. T. Oil Mills had received the cheque Exhibit P-9 with the covering letter Exhibit P-10 in the envelope Exhibit P-11 by registered post from Bombay purporting to have been sent by Motimala requesting the company to send the money in cash to the address given in the letter as he could not encash the cheque Exhibit P-9 because of the strike in the Bank. In Exhibit P-10 the address furnished by Motimala was 'Ujjam Devi, wife of Motimala. Usmania Hotel, 47. Stable Street, Bombay 8'. Although the B T, Oil Mills received the letter Exhibit P-10 along with the cheque Exhibit P-9 requesting that the money should be sent to Ujjam Devi, who was A-4 in the trial court, it appears they did not take any action immediately. When P. W. 28 approached the B. T. Oil Mills on 3-7-1969 she was informed about the cheque and was asked to contact A-I. She went to the shed of A-I and found that the shed had been locked. Therefore, she contacted through P. W. D. Hiralal Mohilal Thakkar. a lorry transporter in Bombay and ascertained from him that her husband was not to be found at the address given in Exhibit P-10. Therefore she gave a missing report Exhibit P-31 on 4-7-1969. She returned to Bombay. On 6-7-1969 she learnt that the cheque Exhibit P-9 was with Accused-1. She gave birth to a child on 8-7-1969. Some time before or after she delivered, she complained to the elders of her community about A-I

possessing the cheque which had been given to her husband, it appears, there was a panchayati and in that pan-chayati, the father and brother of ' Accused-1 were present. Nothing tangible seems to have happened. As her husband did not return till then, P. W. 28 left Bombay on 13-7-1969 and reached Davangere on 15-7-1969. Obviously she left Bombay hardly within five days after she gave birth to ascertain the whereabouts of her husband. On the following day, i. e., on 16-7-1969. she complained to the Police at Davangere as contained in Exhibit P-33 suspecting some foul play. P. W. 29 Gaffar Khan. H. C, at Davangere Police Station was deputed by the Sub-Inspector of Police to go to Bombay with P. W. 28, to look into the complaint. On 17-7-1969 the Head Constable arrested A-I and the other accused at Bombay, produced them before the Magistrate there and obtained remand till 24th of that month. P. W. 29. brought the accused to Davangere on 23-7-1969 and produced them before the C. P. I. P. W. 32 Hanumantha Rao Deshpande.

4. The case of the prosecution was that A-I gave information as contained in Exhibit P-44 and in pursuance of that information A-2 took the C. P. I. to a Pit containing water situated near Geethanjali Talkies and from the said pit 22 human bones M.O. 9. a soiled torn shirt, M.O. 11 and soiled torn pieces of dhoti, M.O. 12 and some other articles were recovered. P. W. 28 identified M. Os. 11 and 12 as the clothes belonging to her husband Motimala. They were seized under Ex. P-26. A-I took the C. P. I. to his house and produced a bag M.O. 23, which contained M. Os. 1 and 16 to 22. Of them, it is necessary to refer to M. Os. 1 and 18 (shirts), M. Os. 16 and 17 (dhoties), M. Os. 19 to 21 (towels) and M. O, 22 (bed sheet). These clothes were identified by P.28 as belonging to her husband.. Then A-I took the C. P. I. and the panchas to a place near the B. T. Oil Mills where he produced a bundle, which contained soiled clothes and cloth pieces and some of them contained blood stains. Then A-I took the C. P. I. to Bombay on 28-7-1969 to his father's house, where A-I produced a sum of Rs. 1,400/- of ten rupee denomination from a trunk. On that day, he pointed out P. W, 24 Rajaram, a job typist, who identified Exs. P-9, P-10 and P-11. The C. P. I. was able to get information that it was A-I who got the letter Ex. P-10 typed from P. W. 24 and at that time he showed the cheque Ex. P-9 to P. W. 24 and sent Exs. P-9 and P-10 in the envelope Ex. P-10, the address on which was written by P. W. 24. The C. P. I.

also got information that the L. T. Mark below Ex. P-10, which is marked as Exhibit P-10-A was the L. T. mark put by A-I representing himself that he was Motimala Chavan. On 29-7-1969 A-I took the C. P. I. to the office of P. W. 5 Hiralal Monilal Thakkar, a transport operator, from whom he got information that A-I on 23-6-1969 attempted to cash the cheque Ex. P-9 issued by the B. T. Oil Mills, Davangere. through him, but for one or the other reason, he did not oblige A-I. The C. P. I. sent Ex. P-10 and the exemplar thumb impressions Ex. P- 18 to the Finger Print Expert P. W, 13 Kulkarni. He opined as per his report Ex. F-20 that the thumb impression found in Ex. P-10 was that of A-I. On these facts the prosecution alleged that A-I committed the murder of Motimala on or about 17-6-1969 and robbed him of the cheque Ex. P-9 and a cash of Rs. 2,500/- and having done so, he attempted to cash the cheque in the manner stated above and thereby committed an offence punishable under Sections 302. 394 and 201 of the Indian Penal Code.

5. In this case, there is not an atom of direct evidence against A-I; the case depends entirely upon circumstantial or presumptive evidence. But it behoved one, however, to be very careful before one accepts such evidence and condemns a man. Presumptive evidence is evidence founded on facts from which other facts necessarily follow.

6. The main evidence against the accused namely A-I that which gives point to the evidence against him, is in his own conduct from the beginning to the end, his own conduct in endeavouring to give an impression to others that he was Motimala and that he was therefore entitled to the monies under the cheque Ex, P-9. He has lied. Throughout the history of the case he has lied and been untruthful. With what object With only the object to screen himself. His conduct has made the case against him doubly strong.

7. It was urged by Mr. Rajaba-lan⁴ the learned Counsel appearing on behalf of the appellant, that the prosecution have not placed and evidence worth the name to show that Motimala has been murdered and at any rate that he is dead. Of course there is no such direct evidence on behalf of the prosecution to probabalise its case that Motimala is done to death. However the prosecution have relied upon certain circumstances to probabalise their case that Motimala must have been done to

death en or about 17-6-1969.

8. There is indisputable evidence in this case to show that Motimala had supplied empty tins to B. T. Oil Mills at Davangere as far as back as April and May 1969 valued at more than Rs. 5,000/- and that the Mill had not paid him any money. The evidence of P. W. 28 makes it very clear that Motimala left Bombay on 13-6-1969 to Davangere for the purpose of collecting money from the B. T. Mill. The evidence of P. Ws. 11 and 12, which cannot be disputed, proves satisfactorily that on 11-6-1969 Motimala came, to Davangere. approached them in their office where a cash of Rs. 2,500/- and for the balance amount a cheque for Rs. 3,175/- (Ex. P-9) were given to Motimala. The evidence of P. W, 12 shows that at the time he handed over the cheque and the cash to Motimala A-I had accompanied him. Mr. Rajabalan contended that P. W. 12 has stated before the Police during the course of investigation that Motimala alone had come to his office, while P. W. 11 has stated that A-I had accompanied Motimala. Therefore, it is contended by him that the statement of P, W. 12 is an improvement in support of the prosecution, and it is unsafe to act upon such evidence. He pointed out that the learned Sessions Judge has not acted upon the evidence of P. W. 12 and that being so, the version of the prosecution that A-I had accompanied Motimala when he took money from P. W, 12 is a make-believe story. We. are unable to agree with his contention and the view expressed by the learned Sessions Judge. It is not shown that P. W. 12 is telling falsehood. A few days later when the wife of Motimala namely, P. W. 28, came to Davangere and contacted the B. T. Oil Mills authorities, she was asked to contact A-I for information about the whereabouts of her husband. Although P. W, 12 has not stated before the police the presence of A-I at the time Motimala took the money and the cheque from him, it is clear from the other circumstances that A-I must have been in the company of Motimala at that time. What happened to Motimala after he received the cash of Rs. 2,500/- and the cheque Ex. P-9 from P. W. 12, one has to gather from the circumstances proved in this case.

9. When Motimala left Bombay-it is an admitted fact, his wife P. W. 28 was in advanced stage of pregnancy and at any moment there was the possibility of her delivering a child. Till 3-7-1969 Motimala did not return to Bombay. Therefore, naturally, P. W. 28 became anxious as to the whereabouts of her husband and on

that day she came to Davangere when she was in very much advanced stage of pregnancy. When she was told at the B. T. Oil Mill Office to contact A-I, she went to the hut of A-I and found the door locked. She never suspected at that moment any foul play. She gave merely a missing complaint to the Police at Davangere and returned back to Bombay. Shortly thereafter, namely on 8-7-1969 she delivered a child. Finding that even by that time her husband had not returned and he was not available at the Us-mania Hotel, as gathered from her enquiries with reference to Ex. P-10, she became very anxious and within five days after delivery, she came to Davangere with the sole anxiety to find out what had happened to her husband. After she came to Davangere. she suspected some foul play and therefore she lodged the complaint, Ex. P-33 on 16-7-1969. P. W. 29 was deputed to investigate into the allegations made in Exhibit P-33 and for that purpose he went along with P. W. 28 to Bombay and there he arrested A-I. A-4 and some others on 17-9-1969. The evidence of P., W, 29 shows that he produced A-I before the Magistrate at Bombay and thereafter brought him to Davangere on 23-7-1969 and produced him before the C. P. I. P. W- 32. The evidence of P. W. 32 shows that he interrogated A-I and recorded his statement as per Exhibit P-44 on the basis of which he recovered 22 human bones and three clothes belonging to the accused from a pit full of water near Geethanjali talkies. Later he recovered from the house of A-I M. Os. 1. 16, to 22 kept in the bag M.O. 23. The clothes and other articles seized from the house of A-I were identified by P. W. 28 as those of her husband. That is her sworn testimony in court.

10. It was contended by Mr. Rajabalan that mere recovery of 22 human bones from a pit in a town like Davangere will not lead to an inference that those bones are the bones of Motimala. The fact that M. Os. 11 and 12 were found in the pit, which was full of water and which was exposed cannot be disputed in view of the evidence of P. W. 32, the C. P. I., the panch witness P. W. 21 N. B. Basanur, and P. W. 28 the wife of the deceased. It was contended by Mr. Rajabalan that human body consists of more than 200 bones and on this basis he contended that the recovery of only 22 bones would not lead to an inference that the bones recovered were those of Motimala. Taking into consideration the state of affairs and the condition of the pit in which the clothes and the bones were found, the possibility of some bones having been dragged away by dogs or vultures cannot be ruled

out. The 22 bones recovered were undoubtedly human bones and that is the evidence of P. W. 31, Dr. Ramu, Associate Professor of Forensic Medicines. Then what should have happened to the remaining bones The only irresistible conclusion is that the other bones must have been dragged away by dogs vultures etc. There is indisputable evidence which establishes that the 22 bones that were found in the pit must be some of the bones of the dead body of Motimala. The two clothes namely M. Os. 11 and 12 have been identified as belonging to Motimala. A-I has not given any rational explanation how and under what circumstances he had the knowledge that the clothes belonging to Motimala and the bones were in the pit. With regard to the seizure of M. Os, 11 and 12 and the bones M.O. 9 there cannot be any dispute because the property form under which these articles were seized shows that they were produced before the Magistrate on the following day, and orders were obtained for retention.

11. *Coypus delicti* means that first that a crime has been committed, that is to say that man is dead and that his death has been caused by a crime. But it is understood that the dead body itself is not the *corpus delicti*. If the crime has been committed and if the dead body is not found or traced, the person who committed the crime cannot be permitted to contend that because the dead body is not available, he is not liable to be punished. What is necessary in cases of this nature is that it must be positively established that the man was murdered, and whether or not the dead body is available, if the other evidence supports the commission of the crime, the accused could be convicted. One does not begin to enquire whether the accused is guilty of a crime until one has established that a crime has been committed. Regard must be had not only to what is intended to be done but how it is attempted. If the crime is established., whether or not the dead body is found the accused could be convicted. The circumstances mentioned above conclusively establish that Motimala was alive on 17-6-1969. who, in the ordinary course, would have returned to Bombay but in fact did not return as expected, but on the other hand, what is established in this case is that two of his clothes identified by P. W. 28 were found in the pit along with 22 human bones. This fact conclusively establishes that Motimala must have been the victim of a foul play on or about 17-6-1969.

12. In support of the above fact, there are number of other circumstances to probabalise the case of the prosecution. The same day on which information was given A-I, the remaining clothes of Motimala were recovered from the hut of A-I at Davangere. If Motimala, as contended by Mr. Rajabalan, was alive, he would not in the ordinary course have left his clothes in the house of A-I and gone away. All the clothes that were brought by Motimala from Bombay to Davangere were either found along with the human bones or in the hut of A-I. The facts stated above, therefore, clearly point out to the only conclusion that Motimala was done to death on or about 17-6-1969.

13. The question which is of considerable importance in this case is whether it is A-I that has committed the murder of Motimala. Again here, the prosecution have relied upon some circumstances in support of their case. On 17-6-1969 A-I was at Davangere and he was in the company of the deceased. Thereafter. A-I left Davangere and reached Bombay and he was there by 23-6-1969 as stated by P. W. 8. P. W. 8 has deposed on oath that he knew A-I as a dealer in empty tins. According to him, on 23-6-1969 A-I approached him and requested him to encash a cheque by the B. T. Oil Mills. Davangere. for a sum of Rs. 3,000/- and odd on the ground that he had no account in any Bank. Although P. W. 8 does not say that Ex. P-9 was shown to him, the men fact that A-I approached him and asked him to encash a cheque issued by the B. T. Oil Mill of Davangere shows that he wanted to encash the said cheque which had been issued to the deceased Motimala, obviously referring, to Ex. P-9. Ex. P-9 was a cheque made payable to order. A cursory glance at Ex, P-9 shows that the cheque which had been issued in favour of Motimala had not been endorsed by him in favour of A-I or any one else. In the normal course, A-I could not have encashed the cheque and therefore the evidence of P. W. 8 is rendered reliable. Added to this, it is at the instance of A-I. P. W. 8 was traced.

14. Having failed to encash the cheque with the help of P. W. 8 the very next day A-I has thought of an ingenious method of getting the money under the cheque Ex. P-9. He approached P. W. 24, a job typist, showed him Ex. P-9 and requested him to type the letter Ex. P-10. P. W. 24 has sworn that at the request of A-I he typed the letter, Ex. P-10 on seeing Ex, P-9 and has in unequivocal terms stated that A-I

affixed his L. T, mark Ex. P-10-A representing himself that he was Motimala. The purport of Ex. P-10 is that the B. T. Oil Mill was requested to send cash as against the cheque Ex. P-9 issued by them as there was a strike in the State Bank of Mysore, Bombay Branch, to the address of Ujjam Devi. In that letter A-I put forward himself as Motimala and also gave an impression that Ujjam Devi was his wife and the money might be sent to her address, That address is different from the address given by Motimala to. B. T, Oil Mills while receiving the cheque and the cash. If the evidence of P. W. 24 is accepted, there is no reason why we should not accept the same, the only inevitable inference that could be drawn is that the cheque Ex. P-9 which was given to the deceased Motimala was found in the possession of A-I and he attempted to cash the cheque by various methods, particularly putting forward that he himself was deceased Motimala. The evidence of P. W. 24 cannot be disputed for more than one reason. The L. T. Mark Ex, P-10-A has been compared with the exemplar thumb impression of A-I by the Finger Print Expert, P. W. 13. and his opinion is that the two are identical.

15. P. W. 24's evidence further shows that he himself typed the address on the cover Ex. P-11, which was addressed to the B. T. Oil Mill, Davangere and he put Exs. P-9 and P-10 into that envelope. There is undisputed circumstance in this case to show that this letter was registered and sent to the B. T. Oil Mill in the post office at Bombay and the receipt Ex. P-6 issued by the post office was found in the house of Ujjam Devi (A4). Ex, P-4 is a bill issued by the B. T. Oil Mill to the deceased Motimala in respect of the tins that he supplied and the amount paid thereunder. Even that bill was found in the house of Ujjam Devi. The address of Uijam Devi had been given by A-I as spoken, to by P. W. 24 and as found in Ex. P-10. Ex. P-6 is the receipt for having received the letter Ex. P-11 containing Exs. P-9 and P-10. A perusal of the letter and the receipt goes to show that the postal authorities have given the same number on both, while registering the letter. It is clear from the facts stated above that A-I was in possession of Exs. P-4 and P-9. No explanation has been offered by him how he came by these two documents within such a short time after they were given to Motimala. His case is one of denial. The only irresistible inference from these proved facts is that A-I must have committed the murder of Motimala and must have removed Exs. P-4 and P-9 from his person and thereafter knowing that Motimala owned L. T. Mark to Ex. P-10

posing himself as Motimala. while in fact it was not so.

16. There is another circumstance which also supports the case of the prosecution. Ex. P-9 was stained with mammalian blood. That fact also has not been explained by A-I. Every incriminating circumstance, which has been proved and established against A-I has not been explained by him; on the other hand, his defence is one of total denial. A-I has no adequate explanation of being in possession of the cheque and the receipt which belonged to the deceased and he has also no explanation to offer why he wrote the letter P-10 to the B. T. Oil Mills posing himself as Motimala. Further he has no explanation why he has put forward Uijam Devi as the wife of the deceased Motimala giving an address different from the real address of the deceased. The effect of the evidence is so conclusive, so much against the accused, there cannot be any doubt in any one's mind that it is A-I who committed the murder of Motimala and robbed him of the cash, the cheque Ex. P-9 and the receipt Ex. P-4. Although Ex. P-4 is of no value or assistance to A-I, he has evidently removed it from the person of the deceased, in order to leave no trace of the identity of the deceased. That is the only inference that could be arrived at for the possession of Ex. P-4 by A-I.

17. We see no reason to interfere with the conclusion of the trial court. This appeal fails and is accordingly dismissed.

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