

Kumar @ Narayana Vs. State by Subramanya Nagar P.S.

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Court : Karnataka

Decided On : Jun-20-2005

Reported in : ILR2005KAR3368; 2006(4)KarLJ268

Judge : S.R. Bannurmath and ;K. Bhakthavatsala, JJ.

Acts : Evidence Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 363; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1447 of 2002

Appellant : Kumar @ Narayana

Respondent : State by Subramanya Nagar P.S.

Advocate for Def. : N. Rudramuni, Additional Government Adv.

Advocate for Pet/Ap. : Muralidhar, Adv. (Amicus Curiae)

Disposition : Appeal dismissed

Judgement :

S.R. Bannurmath, J.

1. Being aggrieved by the judgment of conviction and sentence dated 28-5-2002 passed by the Learned Session Judge, Bangalore in S.C.No. 279/2001, finding the accused guilty of the offence under Sections 302, 363 and 201 IPC, the present

appeal is filed.

2. The brief facts according to the prosecution giving rise to the present appeal are as follows:

PW. 1 H. Jayaram and his wife Bhagyamma-PW.2 were residents of Bangalore. PW. 1 is an autorickshaw driver by profession. According to the prosecution, the accused Kumar was also an autorickshaw driver and as such, PW. 1 knew him very well. The couple-PWs.1 and 2 had three children, out of whom, the victim Shwetha was aged three years at the relevant point of time. According to the prosecution, on 30-6-93 as there was festival in the house of PW.1's mother, while he was taking Shwetha to his mother's house at Gayathrinagar, on the way, the accused met PW. 1 and requested him to give drop till Gayathrinagar as he was proceeding to Gayathrinagar. As they were acquainted, it is alleged that PW. 1 agreed to take him up to the house of his mother. It is alleged that at the time, the deceased Shwetha was wearing a pair of gold ear stud and a pair of silver leg chain.

3. According to the prosecution, when PW.1 stopped his autorickshaw in front of his mother's house in Gayathrinagar and went inside for some time, the accused took away the child from the autorickshaw and disappeared. As the accused was well-acquainted, after waiting for sometime, PW.1 goes to the jurisdictional police, lodges a missing complaint and only during their search comes to know from a neighbour PW.9- Jayamma that the accused was seen taking the girl from autorickshaw and going away. As such, having waited for sometime, as the needle of suspicion fell on the accused. PW.1 again goes to the jurisdictional police on the next day around 11.00 a.m. and points out his suspicion towards the accused in the disappearance of his daughter. PW.8 N.T. Ashwath Narayana, PSI on duty, on the basis of the said statement, registers a case in Criminal No. 199/93 for the offence under Section 363 IPC against the accused and investigation is taken up. Unfortunately, neither the accused nor the victim Shwetha are traced almost for a period of eight years and only on 17-1-2001 when the accused is seen and apprehended by the police, he is interrogated. On interrogation, the accused is alleged to have been made voluntary statement, admissible portion of which is

marked as per Ex.P. 9. The same discloses that he had in fact kidnapped the child for taking away the gold and silver ornaments and after he removed the ornaments from the child by taking her to a remote place, when the child started crying, he hit her and unfortunately, it resulted in her death. Thereafter, according to the prosecution, the accused stashed the body in a drainage and then pledged the articles with a pawn-broker on 1-7-93. As this admissible portion was pointing towards the discovery of facts as well as the conduct of the accused, the police investigated in that line. The police and the mahazar witnesses are led by the accused to the pawn-broker shop of PW.6-Jaychand. As almost eight years had elapsed, by that time the pawn-broker as per the license condition had already disposed of the ornaments pledged. However, he produced the necessary registers showing that on 1-7-93, a person by name Kumar S/o. Rama Rao, resident of Mysore Road had pledged a pair of ear stud and a pair of silver leg chain for Rs. 250. The police took out a xerox copy of the register maintained by PW. 6. In spite of search, the body is not traced and ultimately, on completion of investigation, charge-sheet is filed against the accused for the offence under Section 363, 302 and 201 IPC.

4. As the accused denied the charges and claimed to be tried, he is tried in S.C. No. 279/2001. In order to establish the guilt of the accused, the prosecution has relied upon the evidence of 11 witnesses and on exhibits P1 to P13. Total denial appears to be the defence version as is apparent from answers given under Sections 313 Cr.P.C. No witnesses have been examined on behalf of the accused. However, the accused had got marked Ex.D.1 a portion from the statement of PW.9. As already noted, the Trial Court, on appreciation of the entire evidence found the accused guilty on all the counts and sentenced him accordingly. Hence, the present appeal.

5. As the accused had filed the appeal as an indigent person through jail, this Court had requested Sri Muralidhar, Learned Counsel to assist the Court as Amicus Curiae and argue the matter on behalf of the appellant.

We have heard Sri Muralidhar, learned Amicus Curiae and Sri N. Rudramuni, learned Government Advocate appearing for the State and perused the entire

evidence.

6. This is a most peculiar case wherein neither the corpus of the victim Shwetha is recovered nor the pledged ornaments. However, as noted by the Apex Court as long back as in the year 1981 in the case of Rama Nand and Ors. v. The State of Himachal Pradesh, : 1981 CriLJ298 that where the dead body of a victim in murder case is not found, other cogent and satisfactory proof can be adduced by the prosecution. Such proof may be by the direct ocular account of any eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. The corpus delicti or the fact of homicidal death, therefore can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned. In the case of Sevaka Perumal Etc., v. State of Tamil Nadu, : 1991 CriLJ1845 it is laid down that 'in a Trial for murder it is not absolute necessity or an essential ingredient to establish corpus delicti. Corpus delicti in some cases may not be possible to be traced or recovered. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other fact, was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced.' Keeping in view these principles as well as the other guideline principles so far as appreciation of evidence of circumstantial in nature right from the case of Bhagat Ram v. State of Punjab, : AIR 1954 SC621 , Bakshish Singh v. State of Punjab, : 1971 CriLJ1452 and Ram Das v. State of Maharashtra, : 1977 CriLJ955 , and the most important judgment in the case of Gambir v. State of Maharashtra, : 1982 CriLJ1243 wherein three tests for the appreciation of evidence by the Court are laid down. These tests are as follows:

'(1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is

no escape from the conclusion that within all human probability the crime was committed by the accused and none else'.

7. We have reconsidered and reappreciated the entire evidence. Out of the 11 witnesses examined by the prosecution, PWs. 1 and 2 are the parents of the victim Shwetha. PW. 3 is paternal uncle of Shwetha and PW. 4 is PW. 3's wife, PW.9-Jayamma is a neighbour who is an important circumstantial witness alongwith PW.6-Jaychand a pawnbroker. PW.5 is a mahazar witness and PW. 7, 8, 10 and 11 are the members of the investigation team.

8. On perusal of the entire prosecution case and the evidence led in its support, the following circumstances have been projected by the prosecution to link or connect the accused in the disappearance of Shwetha, hardly three years innocent child of PWs. 1 and 2. The circumstances are:

(1) The accused and PWs. 1 and 2 were well-acquainted. The accused was also an autorickshaw driver as PW. 1;

(2) On 30-6-1993 at about 7.00 p.m. while PW.1 and his daughter Shwetha were proceeding towards Gayathrinagar, on the way, the accused sought drop from PW.1 and as such accompanied PW.1, the victim Shwetha in the autorickshaw up to Gayathrinagar i.e. till the house of PW.1's mother;

(3) At Gayathrinagar, when PW. 1 stopped the autorickshaw in front of the house of PW. 1 leaving Shwetha in autorickshaw in the company of the accused, within short time saw the disappearance of the accused and Shwetha;

(4) Shwetha on that day was wearing a pair of gold ear stud and a pair of silver leg chain as it was a festival day for PW. 1 and in fact for that purpose, he was taking the child to the house of his mother;

(5) After the arrest of the accused on 17-1-2001, he was interrogated and volunteered to show the place, where after taking the gold and silver ornaments from Shwetha, sloped and killed her and later stashed her body in a open flowing mori. He also pointed out the place where he had pledged the gold ornaments; and

(6) Last but not the least, the total silence of the accused or his conduct.

So far as the first circumstance, namely, the accused and PWs. 1 and 2 and the child were acquainted with each other, we have the evidence of not only the parents, but also the uncle and aunt of the victim, viz. PWs. 3 and 4. After careful scrutiny of their evidence and more importantly, the searching cross-examination of these witnesses, we do not find any iota of evidence to suspect these persons having any grudge or remote ill-will towards the accused so as to falsely implicate him with the crime in question. All these witnesses have cogently, consistently and repeatedly spoken about the acquaintance of the accused with PWs. 1 and 2 and also with the child as he was often accompanying PW. 1 to the house.

9. The case of the prosecution does not stop here. So far as the date of the incident is concerned, namely 30-6-93, after the accused accompanied PW. 1 and the victim child in the autorickshaw upto Gayathrinagar, neighbour PW.9- Jayamma had seen them. So also, she had noticed when P.W. 1 went inside his mother's house, the accused carrying the child away from the place where the autorickshaw was parked. It is thereafter, the victim is not seen till date. Here again, it is to be noted that P.W. 9 is totally unbiased, uninterested witness, in the sense, absolutely she had no grudge or ill-will to falsely implicate the presence of the accused or his act of taking away the child from the autorickshaw parked in front of the house of PW. 1 's mother. All these witnesses have specifically identified the accused before the Court as the person present on that day. In the absence of any contra-indicative material, we have to hold that the prosecution has succeeded in showing that it was the accused who accompanied PW. 1 along with Shwetha, three years old child of PW. 1 up to the house of PW.1's mother at Gayathrinagar and was seen taking away the child, which thereafter not seen alive or dead.

10. This takes us to the next circumstance, namely, the arrest of the accused and his giving voluntary statement leading to the discovery of certain facts. The investigating officer has stated that the accused was arrested on 17-1-2001 and after his interrogation he volunteered to show the place where he had taken away the ornaments of Shwetha and when she started crying, gave her slap and

because of which the child died and then stashed her body in a flowing mori. This voluntary statement, admissible portion of which is marked as per Exhibit P.9. Thereafter, the investigation officer led by the accused and independent mahazar witness PW. 5 have been taken to the place, including drainage (mori) where the dead body of Shwetha was stashed. But her body was not found, possibly due to flowing water and lapse of almost eight years from the date of the incident.

11. However, the most incriminating disclosure of the accused admissible under Section 27 of the Evidence Act is his leading the police to the pawnbroker shop of PW.6-Jaychand to show that immediately after robbing and after the death of Shwetha, the accused pledged the ear studs and the silver leg chains with PW.6. The evidence of PW.6 is very material. It is to be noticed that as by the time accused made voluntary statement leading to the discovery of the shop of PW.6 where the gold and silver ornaments of Shwetha had been pledged almost eight years had lapsed, according to PW.6, as was his normal practice, after three years of pledging, when the ornaments are not redeemed, they would be auctioned by issuing of public notice. In this regard, PW.6 had produced the register maintained to show the entry dated 1-7-93, on which date one Kumar S/o Rama Rao, Mysore Road (the name of the accused tallies with the name in the register) had pledged a pair of gold ear stud and a pair of silver leg chain and later the same came to be auctioned after issuing public notice. Thus, though the articles worn by the child Shwetha are not recovered due to time lapse, the fact that they were in fact pledged by the accused on 1 -7-93 i.e., on the day next to the alleged disappearance of Shwetha has an important bearing on the case on hand. The fact of ornaments being pledged, pointing to the shop of PW.6 where they were, and the evidence of PW.6 along with Pledge Register Ex.P12 can be attributed only to the knowledge of the accused and later, discovery of these facts. This evidence in our view is acceptable under Section 27 of the Indian Evidence Act. Once these circumstances are found by this Court, even on reappraisal as acceptable and true, the Court would next look forward to the accused as to whether he has any explanation to offer to explain the incriminating circumstances pointed out. It is to be noted that except denial of the prosecution case, the accused has not come out with any explanation either by way of cross-examination to the independent unbiased witnesses and also while he had the last

opportunity to explain while being questioned under Section 313 Criminal Procedure. This silence or denial of the entire prosecution case as merely false as laid down by the Apex Court in the case of Joseph v. State of Kerala, : 2000 CriLJ2467 , furnishes the addition link to make the entire chain of circumstances complete.

12. Thus, on appreciation of the entire evidence, we find that in the absence of corpus delicti, the prosecution has succeeded in showing that it was the accused and the accused alone, who took away the child Shwetha, daughter of PWs. 1 and 2 on 30-6-93 from the autorickshaw parked in front of the house of PW.1's mother and thereafter, the child is not seen alive, coupled with the fact of accused pledging the ornaments worn by the deceased with PW.6. Once this conclusion is arrived at, as held by the Apex Court in the case of Earabhadrapa v. State of Karnataka, : 1983 CriLJ846 , and in the case of State of Uttar Pradesh v. Ashok Kumar Srivastava, : [1992]1SCR37 , the Court is also entitled to draw the presumption that it was the accused who murdered Shwetha. The entire chain of circumstances, namely, the acquaintance of the accused with the deceased and PW.1, his taking away the child and thereafter, the child not seen alive, coupled with the fact that the accused did pledge the ornaments worn by the deceased with PW6, a pawn broker, having been established, leads to the only conclusion that not only the accused robbed the deceased Shwetha, but also murdered her. Even in the absence of corpus delicti, as the entire chain of circumstances in all human probability point out towards the role of the accused in the entire fact scenario, we find that the conclusion of guilt arrived at by the Trial Court against the accused, namely, for the offence under Sections 363, 302 and 201 IPC are just and proper and needs no interference.

13. In the result and for the reasons stated above, we find the appeal is totally devoid of merits. Hence, the same is dismissed.

Before conclusion, placing on record our appreciation to the services rendered by the Learned Amicus Curiae, we direct the office to pay an honorarium of Rs. 2000 to him.

