

Suresh Vs. State of Karnataka

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Court : Karnataka

Decided On : May-28-2002

Reported in : 2002CriLJ3273

Judge : M.F. Saldanha and ;N.K. Patil, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302

Appeal No. : Cri. A. No. 14 of 2000

Appellant : Suresh

Respondent : State of Karnataka

Advocate for Def. : G. Bhavani Singh, Addl. SPP

Advocate for Pet/Ap. : H.M. Thimmarayappa and ;H.V. Rarnesh, Advs.

Judgement :

1. The appellant-husband before us has preferred this appeal which is directed against the judgment and order dated 27-11-1999 of the learned X Addl. Sessions Judge at Bangalore. Originally, the appellant Suresh and his mother Sakamma were charged with having committed the offences punishable under Sections 302 and 201, IPC. The prosecution alleged that at about 4 a.m. on 21-1-1995 accused No. 1 Suresh took his wife Veenadevi out of the house on the pretext that she should do pooja at the Shanidevara temple. Thereafter he brought her to his

agricultural land and while she was doing the pooja he suddenly assaulted her and he is alleged to have also strangled her. Thereafter, the prosecution alleges that accused No. 1 Suresh and his mother Sakamma dug a trench on the side of the agricultural land, put the body into it and covered it up with mud. Several days after i.e. on 2-2-1995 her father Srikanta who is P.W.I lodged a complaint with the police stating that his daughter is missing. Shortly after this, he received a letter in the post ostensibly in the handwriting of Veenadevi telling him that she was going to Dharwar and he should not look for her. According to PW. 1 Srikanta on the one hand the relationships between accused No. 1 and his wife were not good, he was also ill-treating her and the mysterious disappearance caused suspicion. When he made enquiries with the villagers he was informed that there is a freshly dug area in the field belonging to the accused No. 1 and he states that when he went there along with some other persons and excavated the mud he discovered that there was a body buried there. He informed the police about it and on the next day the police officers exhumed the body. It was found that the body was that of Veenadevi and even though it was in a highly decomposed state both the father and the mother identified it as the body of their daughter not only from the clothes but more importantly from the various items of personal jewellery such as the earrings, chain, rings on the hand, tow-rings etc. The police authorities sent the body for post mortem but ran into a serious difficulty because it was in an advanced stage of decomposition and consequently the doctors found it impossible to make any note of injuries and more importantly they found it impossible to certify the cause of death. The police registered an offence and it was found that accused Nos. 1 and 2 had closed their house and gone away and the D.S.P. PW. 16 states that pursuant to a search the police traced accused Nos. 1 and 2 and produced them in the police station on 24-2-1995 on which date they were placed under arrest. Accused No. 1 is alleged to have made a voluntary statement in the presence of the panchas and he led the police to the field and pointed out the place where the body had been buried and he also produced a pickaxe from the bushes being the implement with which the earthwork in relation to the process of burial had been undertaken. He is also alleged to have taken the police to Channapatna from where he produced a thali that belonged to the deceased. The police completed their investigation and charge-sheeted the two accused and put

them up for trial.

2. The defence in this case is one of total denial. The learned trial Judge has accepted the identification evidence of the parents who have conclusively identified the body that was recovered from the field belonging to accused No. 1 as being that of their daughter Veenadevi. It is true that the mahazar does mention that since the body had been buried in the ground for over one month that the stage of decomposition was advanced and that most of the flesh was virtually falling off from the bones. It is also true that as far as the face is concerned, it was in a totally disfigured condition and it was therefore not readily possible to identify the person on this basis. The identification proceeded on the basis of the jewellery and the clothes and the learned trial Judge after a careful consideration of the evidence of the father and mother has accepted the prosecution case that the body was that of the wife of the accused No. 1.

3. This is essentially a case of circumstantial evidence and the learned trial Judge has outlined the various circumstances one by one starting from the fact that the evidence on record established that the relationships between accused No. 1 and his wife had deteriorated and furthermore that he was desirous of marrying some other woman. The trial Court has also placed very heavy reliance on the fact that the body was found buried in the field belonging to accused No. 1 and that he has not put forward any explanation as to why and how the dead body of his wife could have been buried there if he had nothing to do with her death. The trial Court has also taken cognizance of the fact that accused No. 1 and Veenadevi were husband and wife, that according to him she disappeared suddenly and despite this fact he made no efforts to look for her but more importantly, though she was a young woman and had vanished he did not lodge any complaint with the police or any other authorities and this non-action on his part, had been construed by the trial Court as a guilty circumstance. The learned trial Judge has then proceeded to place heavy reliance on a letter which is Ex. P-1 which was received by PW.7 Krishnaiah who in turn passed it on to PW. 1 Srikanta who is Veenadevi's father. This is a handwritten letter and the prosecution alleged that accused No. 1 himself had written this letter with the sole object of diverting the attention of the parents from the fact that Veenadevi had disappeared. The letter purported to be from her,

addressed to her par -ents telling them that she was going away to Dharwar for sometime and that they should not look for her. This letter has been seized by the police who thereafter obtained the specimen handwriting of accused No. 1 and on a comparison by the handwriting expert the prosecution has established that Ex. P-1 was prepared by the accused No. 1. The trial Court has held that this is a very strong and incriminating circumstance because it was obviously done in order to divert the attention of the parents who would not have been aware or concerned about the disappearance for a very long time in the obvious hope that there would be virtually no traces of the body that had been buried if sufficient time had elapsed. In addition to this, the trial Court has taken note of another circumstance namely that on 14-2-1995 when PW. 1 Srikanta and the police finally recovered the body from the field of accused No. 1 where it had been buried the accused No. 1 and his mother accused No. 2 closed their house and disappeared from the village. They were only traced out on 23-2-1995. The abscondence has been held to be an incriminating circumstance. Next, the learned trial Judge has placed heavy reliance on the fact that on 23-2-1995 accused No. 1 made a voluntary statement in the presence of panchas that he will point out the place where the body was buried and where the implements had been hidden and that he led the police and the panchas to his own field and pointed out the place where the earth had been removed for purposes of burying the body. Thereafter, the accused went to a nearby bush and took out a digging implement which is Ex. P-35 and which was seized by the police. Subsequent to this he took the police and the panchas to a place in Channapatna from where he produced two thalis which have been identified as belonging to the deceased Veenadevi. It is on the basis of their evidence that the trial Court held that the prosecution has proved both the charges as against accused No. 1 and consequently convicted and sentenced him. As far as accused No. 2 was concerned, the Court held that the evidence does not make out any offence as against her and she was accordingly acquitted. It is against this conviction and sentence that the present appeal has been preferred. Bail applications were made on behalf of the accused-appellant particularly on the ground that in the absence of any evidence to establish homicidal death that the conviction under Section 302, IPC, would be unsustainable but this Court rejected the applications. However, the office was directed to secure the records, prepare

the paper book and list the appeal for expedited hearing vide order dated 23-2-2000.

4. We have heard the appellant's learned Advocate Sri Thimmarayappa as also the learned Addl. S.P.P. who represents the State at considerable length. The two learned Counsel have also taken us through the evidence and the entire record which has been reviewed by us virtually threadbare. The principal challenge presented on behalf of the appellant has its main foundation in the contention that the first pre-requisite for a conviction under Section 302, IPC is that the prosecution is required to prove that the victim met with a homicidal death. Mr. Thimmarayappa submitted after taking us through the relevant material namely the oral evidence, the inventories and the post mortem notes that there is no dispute about the fact that the body was recovered in a highly decomposed form and that consequently it was impossible to identify any injuries on the body but more importantly that it was also impossible to be able to conclusively opine about the cause of death. The learned Counsel has gone a stage further in so far as he has seriously attacked the identification evidence and he put forward a twofold submission, the first one being that if the corpse was in such a condition that even the doctors could not form any opinion that admittedly, even the parents would not be able to correctly identify the body in question and that therefore, their evidence in this regard will have to be discarded. As regards the secondary identification on the basis of the clothes and the ornaments are concerned, Mr. Thimmarayappa submitted that this is highly unreliable in so far as garments such as a sari and blouse are common items which any woman would be wearing and there was nothing very special on the basis of which it could be said that the clothes could form a reliable basis, the main reason being that the parents themselves admitted that Veenadevi was not residing with them and that therefore they would not be able to say as to what she was wearing at the time of her death. This argument is not altogether acceptable for the simple reason that often times there is a familiarity particularly within the family with regard to some of the garments which a person wears. Veenadevi was not an affluent woman who possessed a very large wardrobe and if on seeing her clothes the parents identified them as being the ones which their daughter wore, there is a strong possibility that they were right.

5. The stronger challenge presented by Mr. Thimmarayappa however was that the principal basis of identification according to the parents was on the basis of the several items of jewellery on the body starting from the ear rings and the necklace right down to the rings, anklets, toe rings etc. The parents have very clearly stated that these are the ornaments which were worn by their daughter Veenadevi and that there is absolutely no mistake with regard to their identity. Mr. Thimmarayappa's submission is that these are common items of jewellery which perhaps any woman in that area of that age would be wearing and that in the absence of special distinguishing features that the identification is still vulnerable. We are not prepared to accept this argument because there are several supportive circumstances, the most important being the place where the body was recovered namely the field belonging to the husband but more importantly, that as far as the personal items on the body of Veenadevi are concerned that her parents who had seen her and known her very closely could not have made any mistake whatsoever. Apart from this, even in the cross-examination there is precious little challenge to the identification evidence and consequently, the trial Court was fully justified in accepting it. Mr. Thimmarayappa pointed out to us that the incident according to the prosecution took place at 4 a.m. on 2-11-1995 and the police themselves admit that even in the beginning of February which was approximately two months after that date that the accused were very much in the village and were available to the police. His submission is therefore, that the accused were not absconding and if at all they were not in the village for a few days at the time when the body was found that it would be more a co-incidence than a guilty circumstance. We refuse to accept this submission because the evidence of the police officer very clearly discloses that even though PW 1 lodged a missing complaint and accused No. 1 was questioned at the beginning of February that, he misled the police by telling them that she had gone to Dharwar and that he did not know where she was. This circumstance becomes incriminating because of the fact that this is the very statement contained in the letter Ex. P1 which has been traced to accused No. 1 and in our considered view, the fact that both the accused disappeared from the village immediately after the body was traced on 14-2-1995 as an incriminating circumstance.

6. Mr. Thimmarayappa did advance a general submission that the non availability of the accused is not necessarily incriminating because the Supreme Court has in several instances pointed out that if the accused felt that they would be implicated in an offence that they could also run away out of fear. In the present instance, there are several other incriminating circumstances on record which the trial Court has recounted and the disappearance cannot therefore be held to be innocuous.

7. The appellant's learned Counsel also made capital out of the fact that PW 1 in his evidence has stated that the accused were traced two days after the body was found whereas the records indicate and the deposition of the police officers indicate that the police produced the two accused on 23-2-1995 when they were arrested. The learned Counsel submitted that there is a serious discrepancy because even the voluntary statement is attributed to 23-2-1995 whereas PW 1 states that they were traced as early as on 16-2-1995. As far as the arrest of the accused are concerned, it is the evidence of the police authorities and their records that matter and if PW 1 has stated that they were traced approximately two days after the body was recovered, it is an obvious mistake.

8. As earlier indicated, by us, the strongest challenge to the first head of conviction has come from the legal contention that in the absence of the prosecution establishing the cause of death that a conviction on a murder charge is faulty. There is no dispute about the fact that this is one of the few cases wherein there is no medical evidence which establishes that the deceased met with a homicidal death. Mr. Thimmarayappa submitted that this is the basic requirement for a conviction and he drew our attention to two of the judgments of the Supreme Court reported in : 2000 CriLJ497 (C.K. Raveendran v. State of Kerala) and : 1999 CriLJ3699 (Mohd. Zahid v. State of T.N.) wherein, in a more or less similar circumstance the Supreme Court held that such a conviction is unsustainable. Though the facts of these cases were slightly different the learned Counsel submitted that the principle still holds good.

9. The learned Govt. Advocate sought to get over this infirmity by pointing out that there are worse instances wherein the corpus delicti is either destroyed or cannot be found and despite this, that the Courts have still convicted the assailants for the

offence of murder. His submission is that the medical evidence is not the only manner of establishing a homicidal death though it is probably the most direct and reliable form of establishing this ingredient and he submitted that if it can be established that the deceased who was a young healthy person aged twenty years that there is absolutely nothing on record to indicate death by natural causes or otherwise that the only irresistible inference in the light of the circumstances of the case would justify the conclusion that it is a case of murder. We do agree that the arguments put forward by the learned Counsel are not completely unsustainable because it is permissible in those of the cases where the body is not available or where it is in such a condition that the medical experts find it impossible to note the injuries or the cause of death such as in the present case where the body has decomposed, for the prosecution to lead other forms of evidence on which homicidal death can be established. Unfortunately in the present case, that aspect has gone by default and the prosecution has virtually zero evidence for purposes of establishing homicidal death, though the case is one of not only high but grave suspicion but also one where almost everything points to the guilt of the accused No. 1, before recording a conviction on a serious charge, the Court cannot rule out other possibilities. Though death due to natural causes may be a remote possibility, in the absence of evidence to the contrary it may be difficult to totally rule out but more importantly, if the relationship between the parties were really bad and as often happens the wife had decided to put an end to her life and the embarrassed husband decided then to bury the body, the complexion of the case would change. These escape routes that are required to be anticipated are required to be sealed off by the prosecution. It is the basic duty of the prosecution to ensure that these avenues are not left unguarded because in the absence of secondary evidence which could easily have been led even in the present case to establish the cause of death, we find it a little hazardous to record any conclusion that the death was homicidal. In the absence of this pre-requisite, a conviction under Section 302, IPC would be erroneous and consequently, irrespective of the material on record we are left with no option except to set aside the conviction under Section 302, IPC.

10. Mr. Thimmarayappa submitted that the charge under Section 201, IPC, namely the destruction of evidence relating to the commission of an offence is intrinsically

interlinked with the first head of charge and he submitted that if the first charge fails that automatically, the conviction under the second head would also have to go. At first impression, this does appear to be a most reasonable and logical submission and we do concede that in the majority of cases this position would hold good. There could however be a category of cases in which the charge under Section 201, IPC, could result in an independent conviction even if for technical reasons the charge as regards the main offence has not resulted in a conviction. Undoubtedly, this would be in a microscopically small number of cases but the present appeal comes within that category. The body was found buried in the field belonging to accused No. 1. He has not explained how it got there. It is established that he misled the police and the parents about the whereabouts of Veenadevi but more importantly after his arrest he led the police to that spot and pointed it out and he also produced the implements that were used for the burial and consequently, we have no hesitation in confirming the finding of the trial Court that as far as the offence under Section 201, IPC, is concerned that the same has been established. As regards the submission that this conviction in isolation would not be legally correct is concerned, what we need to point out is that Section 201, IPC, is an independent and distinct offence though it may relate to the commission of another offence. From the evidence on record, there is sufficient material to indicate that Veenadevi met with an unnatural death but for the hypertechnical legal reasons set out by us we have refrained from confirming the conviction under Section 302, IPC, but having regard to the independent evidence under this head of charge, we hold that the accused knew and had knowledge of the commission of the offence that he buried the body in order to destroy the evidence and that he has rightly been convicted for the offence punishable under Section 201, IPC.

11. On the question of sentence, Mr. Thimmarayappa submitted that the same may be reduced to the period already undergone. The complexion of this case is very serious and we need to record that the accused No. 1 has got away from the main charge by default and under these circumstances even as far as the sentence awarded by the trial Court for the offence punishable under Section 201, IPC, is concerned we are firmly of the view that it is unduly lenient. Had there been an enhancement notice, we would have had no hesitation in holding that the accused qualified for a heavier sentence but in the absence of any such notice we

refrain from interfering with the sentence awarded by the trial Court.

12. In the result, the appeal partially succeeds. The conviction and sentence awarded to accused No. 1 by the trial Court for the offence punishable under Section 302, IPC is set aside. We confirm the conviction and sentence awarded to accused No. 1 for the offence punishable under Section 201, IPC. We are informed that the accused is in custody. He shall be entitled to set off for the period undergone by him. The trial Court had awarded a sentence and fine Under Section 302, IPC. If that amount has been paid by the accused, the same shall be refunded to him. With these directions, the appeal to stand disposed of.

13. We make it clear that the accused-appellant is liable to pay the fine awarded under Section 201, IPC or in default, to undergo the sentence awarded by the trial Court. We however clarify that the error committed by the trial Court in awarding a sentence of simple imprisonment for the offence under Section 201, IPC is modified to one of rigorous imprisonment.

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