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

Kanbi Babu Vs. the State

Kanbi Babu Vs. the State

SooperKanoon Citation : sooperkanoon.com/733697

Court : Gujarat

Decided On : Dec-21-1954

Reported in : 1955CriLJ1522

Judge : Shah, C.J. and; Baxi, J.

Appellant : Kanbi Babu

Respondent : The State

Judgement :

Shah, C.J.

1. The appellant Babu alias Kurji Valji is convicted of murder and robbery Under Sections 302 and 397, Penal Code by the Additional Sessions Judge, Gondal, and sentenced to transportation for life and seven years' rigorous imprisonment respectively, the sentences being ordered to run concurrently. The deceased Manu Ramji was aged about 12 years and lived at Gomta with his brother Bhikhu and an elder widowed sister Jivati. On the day of the offence, 1-4-1954, he attended school and after returning from school at 11 A. M. he took his meals and then went . out. Jivati was not at the house then, but on her returning in the afternoon she enquired about Manu since she wished to take him along to Gondal for seeing a circus, but was told that Manu had gone out and so she went in the company of some women and returned to Gomta the next day at about 11 A. M. Bhikhu and his wife Diwali were under the impression that he might have gone to

Gondal with Jivati, but as he was not with Jivati they become anxious and started a search at certain villages but the search proved unavailing, and at about 11 A, M. on 3-4-1954 news was brought to them that the dead body of a boy was floating in a well at Rellavav, a distance of more than a mile from the village. It was found to be Manu's dead body and was ; taken out and the police was then informed. Jivati lodged information with the police at about 4-15 P. M. the same day, suspecting the accused Babu of having murdered Manu and having robbed him of his gold 'Murkis' (ear-rings) and a gold 'omkar'. After investigation the accused was charged with the abovesaid offences and has been convicted by the learned Judge.

2. The defence of the accused was a total denial of all the relevant circumstances appearing against him. He stated that he was lying ill with temperature at his house since about a week and had not gone out, and he denied having met Jivati and others or made enquiries with them regarding the deceased, or having shown the scene of the offence or the place where the 'murkis' and 'omkar' had been concealed or having produced them. In fact he denied having had anything to do with the offence,

3. The evidence against the accused is purely circumstantial and it is well settled that before an accused can be convicted on purely circumstantial evidence, it must be of such a character as to exclude all possibility of the accused being innocent. It must conclusively prove that it was the accused and none else who committed the offence and the circumstances must be altogether incompatible with his innocence. The accused is from Gomta and is aged about 16 or 17 years. His lather Valji died while he was an infant, and his mother remarried thereafter and he has been brought up by his grandmother Radlia, and lives with her and one of his uncles, Naran Mavji. Radha and Naran were at their wadi at Gomta on the day of the occurrence and their evidence is that the deceased had come there and he and the accused were together at the wadi, Radha left for home in the afternoon at about 5 P. M. when the deceased was still at the wadi in the company of the accused. Both Radha and Naran say that the deceased had not some home that night nor had taken his evening meal. Naran was sleeping at the fodder house and according to him the accused had gone there at about midnight and said that

Manu did not return and haci run away. The accused was aware that a search was being made for Manu by his relatives and he went to Manu's. house in the evening of 2nd April and enquired from Jivati and others whether Manu had come and what had happened to the search, and he told them that he and Manu were together till the previous evening, but Manu had refused to return home with him. That is proved by the evidence of Jivati herself and of Dewali, Hari, Dudhi Khii.ia and Mithi Arjan, who were present at the time the accused made the enquiry. The accused happened to meet Jetha Daya, a cousin of Jivati, and one Chhagan Devsi in the bazar the same evening and he disclosed to them that Manu had gone away towards the main road and said that they might look up wells in that direction. The accused has no doubt denied all these facts, but they are proved by the evidence of witnesses of whom Radha and Naran are the accused's grandmother and uncle, and by others who are in no way interested in falsely involving him. Therefore it is proved conclusively that the deceased and the accused were together, at any rate, till the evening of 1st April and the deceased was last seen alive in his company. The enquiry which the accused made with his uncle and with Jivati and the way he informed Jetha indicate that his conscience was biting him and he could not bear it any longer. He was apprehended and was brought from his wadi to the village the same evening, but he ran away on the pretext of going to ease himself and after wandering about the whole night he went to the wadi of his uncle Vallabh Mavji at Kolithad, about 8 miles from Gomta, at about 10 a. m., the next morning. The police went in search of him and ultimately found him at Kolithad in the afternoon of the 4th April. He was brought to Gomta and was arrested the same night at 10 p. m. This conduct standing by itself may not have much significance but viewed in the light of the other circumstances it clearly points to his guilt.

4. But the more important circumstance is the fact of the accused having been found in possession of a pair of gold murkis and a gold omkar belonging to the deceased Manu. Manu was constantly wearing the murkis on his ears, a fact which is amply borne out by the evidence of Jivati, Bhikhu, Diwali (the wife of Bhikhu) and by Jayantilal Nathalal the class teacher of the deceased. Two pairs of murkis were purchased from Jetpur by Ramji the father of the deceased, one for Manu and the other for Bhikhu, and that is evidenced by Jivati and liy Kainji O iya

Ex. 30, a cousin of Jivati, who had accompanied Ramji at the time of the purchase. There is abundunt evidence therefore to prove that the 'murkis' and the 'omkar' were the ornaments be- longing to the deceased and also that the decease to prejudice the question, whether he commited was wearing them constantly. Diwali is definite that the 'inurkis' and the 'omkar' were on the person of Manu when he left home in the noon of 1st April after taking his food. These ornaments have been produced by the accused by digging them out from a corner on his own flolfi lu me presence of Ills Panenas on the morning of the 5th April, They were kept in a small box which was put in cigarette case and buried at the place. Trie discovery was accompanied by a statement made by the accused that he had buried them there and would produce them and since the discovery was made in consequence of the information received from the accused, the statement is admissible in evidence Under Section 27, Evidence Act, The production of the murkis and the omkar is proved by the Fanch NaUia Jutha Ex. 16, Despite the tact that, the accused has denied having made the statement or even having gone to the field, we are satisfied that the accused had made it and that lie did voluntarily produce these articles. It is true the place was I accessible to others but the fact that the : articles were lying buried and had to be dug out (indicates that the accused must have buried 'them there and that is reinforced by his own statement that he had done so and in consequence of which the articles were recovered.

5. The accused was thus in possession of the ornaments worn by the deceased at the time of the murder and the question is as to the inference to be drawn from this circumstance. The crime appears to have been committed on the night of the 1st April and the ornaments were produced in the morning of the 5th. But having regard to his own conduct in the interval, the possession must be deemed to be recent. The accused has not offered any explanation of the possession but has simply denied the fact, and the question is whether this justifies an inference of robbery or whether in addition an inference that the accused had committed the murder of Manu. In 'Basangouda Yamanappa (No. 1) v. Emperor' AIR 1941 Bom 139 (A), Beaumont C. J. observed:

In my opinion, the rule is that circumstantial evidence must be consistent, and consistent only with the guilt on the accused, and that U the evidence is consistent

with any other rational explanation, then there is an element of doubt of which the accused must be given the benefit. No doubt of the circumstances, which have to be taken into account, is the fact that the accused has offered no explanation, or has offered a particular explanation but it must be borne in mind that in this country the accused cannot go in witness box and. is not bound to give any explanation at all. An accused person, who knows the law, is quite entitled to say: 'The evidence is just as consistent with the guilt of somebody else as with my guilt, and, that being so there is a doubt, and you cannot convict me, and I am not going to open my mouth.' The fact that he does not open his mouth cannot be urged against him. One must remember also that very frequently the accused is an illiterate person, and makes a statement Under Section 342 Criminal P. C, which is obviously untrue. Very frequently he is not prepared to admit anything, whereas, if he was wise, he would admit facts which are definitely proved against him and an explanation about them. But very often he will not admit anything. The fact that an accused is not willing to admit that he took part in a robbery which is proved against him ought not ed murder at the same time.

The learned Chief Justice then thought of some theories in favour of the accused which needed to be considered and eliminated and my view they should also be considered and eliminated in the present, case before drawing an inference of murder against the accused. The first is that it may be that some one merely committed the murder and went away leaving the) ornaments. However Manu was a young boy studying at school and there is nothing in the evidence to suggest that anyone else had enmity with the deceased for the sake of which he would merely kill the deceased and go away without removing the ornaments. The second suggestion) that might possibility be made is that the someone' murder yd Manu and stole the property and then entrusted it to the accused. But there is no scope for this suggestion too and if that had been the case the accused might probably have said so. There is equally no scope for the suggestion that] the murderer and the person who robbed the deceased of the ornaments was himself robbed by someone and the suggestion, even if made, is fantastic. None of the above alternative hypothesis is thus present in this case and none can far made out with any reasonable degree of conviction. The accused's possession of the ornaments and his producing them before the police after having made a

statement that he had buried them at the place and the absence of any explanation on his part are, therefore, circumstances In which the Court is entitled to draw an inference that it was the accused who committed the murder.

6. An inference of that kind was drawn on facts which were somewhat similar in 'Narayana v. Emperor,' AIR 1933 Mad 2S3 (B), though in the above Bombay case Beaumont C. J. was not in agreement witli some of the dicta of the learned Judge. In 'in re Venkataswami : AIR1950 Mad309 , dealing with the presumption Under Section 114, of Evidence Act, it was observed that the explained possession of a jewel of a murdered person will be evidence Under Section 114 not only regarding theft but also regarding the murder itseii' if the possession could not rea- . sonably be got without committing the murder.

In 'in re Kaliaperumal : [1954]26ITR310(Mad) , the learned Judges have held that where murder and robbery of the jewels on the person of the deceased are proved to have been integral parts of the same transaction, the presumption that can be drawn from the possession of property which was on the person of the deceased may, consistently with all the facts proved in the case, be that the person to whom such possession was traced not only committed the theft of those jewels but also committed the murder which formed part of the same transaction as theft. But before any such presumption can be drawn, the primary thing to be proved is that the accused had no satisfactory explanation to offer for his possession of the jewels.

The Calcutta High Court has taken a similar view in 'Emperor v. Chintamoni Shahu : AIR1930 Cal379 , where it was held that the possession of the stolen goods recently after their loss may be indicative not merely of the offence of larceney or of receiving with guilty , knowledge but of any other more aggravated crime which has been connected with theft, and that this particular fact of presumption forms also a material element of evidence in a case of murder. The presumption is particularly appli- cable where there is proof in case of a murder of a woman that the stolen articles were habitually: worn by the deceased and that she was actually seen wearing it on the evening before the murder.

7. Following the above quoted case, the Nagpur High Court has held in 'Rarnprashad Makundram v. The Crown , that the accused's possession of the ornaments belonging to the deceased woman soon after her murder is material evidence against the accused not only on the charge of robbery but also on the charge of murder. It was held relying on AIR 1933 Mad 233 (B),' that Under Section 114, the Court is entitled, if it appears reasonable in all the circumstances of the case, to infer that an accused person committed a murder or took part in its commission, from the facts that he is found in possession of property proved to have been in possession of the murdered person at the time of the murder or is able to point out the place where such property is concealed and admits having concealed it there and fails, to give any reasonable explanation of his possession.

The Supreme Court dealing with a similar question has held in 'Sunderlal v. The State of M.P. : AIR 1954 SC28 , that the accused's recent possession of the ornaments worn by the deceased and his failure to give any satisfactory explanation as to how he came in their possession was a circumstance sufficient to find the accused responsible for the murder of the deceased. It is true that in that case the possession of the ornaments worn by the deceased at the time of the murder was traced to the accused on the same day, but that circumstance does not make any difference here in view of the peculiar facts of the present case.

In another case 'Ram Bharose v. State of U.P. : AIR 1954 SC704 , the accused had disappeared from the house early next morning after the offence and after his arrest he produced the articles worn by the deceased from his house, and it was held on these facts that the accused was not merely a receiver of stolen property but was the murderer. The conduct of the accused previous to the dead body being found, his production of ornaments which were on the person of the deceased and his consequent possession thereof, coupled with his total failure to any explanation are in our opinion sufficient for finding that he was the murderer and not merely a receiver of stolen property.

8. On the arrest of the accused on the night of the 4th April, the trousers which he was wearing were attached by the Police and these had large stains of blood at two or three places and in respect of the blood stains too the accused has not

offered any explanation. The accused had shown the scene of the offence of which the panchnama is Ex. 19, but since no signs of the offence were noticed, this circumstance is of no value against the accused. The place is a sort of a small pit in the wadi of the accused and the prosecution's suggestion is that it was here that the accused hit the deceased with a 'Ramp' on the head and killed him and that he took the dead body from there to the Reliavav well which is about half a mile from the place.

As I said the place of the offence does not show any signs to indicate that Manu was killed on that spot, but since it is the prosecution's case it becomes necessary to consider whether the accused could have carried the dead body to over a distance of half a mile from the place. The deceased was aged about 12 years and it appears from the evidence of his teacher Jayantilal that he was stunted in comparison to his age. Devraj Ramji too says that Manu appeared rather small. It seems therefore that the deceased was light in weight and it is not at all improbable that the accused in the frenzy of the moment could have carried the dead body to that distance.

It was night time, the night was dark and there was no difficulty in doing so without being noticed by any one. Two of the stones of the parapet wall of the Reliavav well bore marks of blood which suggests that the body must have brought, from elsewhere and thrown into the well and that (.he stones got blood stains in the process of throwing. The 'Ramp' with which Manu is said to have been hit has no blood stains apparently because it was removed by Naran and was leased to one Babu Jasmat for using.

9. The circumstantial evidence in this case, viewed cumulatively is in our opinion sufficient to sustain the finding of the lower Court that the accused has committed the murder of Manu and we therefore confirm his conviction Under Section 302 and Section 397, I. P. Code and the sentences and dismiss the appeal.

Baxi, J.

10. I agree.

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