

Wilson Vs. State of Kerala

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Court : Kerala

Decided On : Nov-18-2009

Judge : K. Balakrishnan Nair and; P.Q. Barkath Ali, JJ.

Acts : Evidence Act - Section 114; ;Indian Penal Code (IPC) - Sections 302, 392, 397 and 449; ;Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Crl. A. No. 1621 of 2005

Appellant : Wilson

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Deepu Thankan, Adv.

Disposition : Appeal dismissed

Judgement :

P.Q. Barkath Ali, J.

1. The challenge in this appeal by the accused in SC No. 361/2004 of Sessions Court, Kozhikode (the appellant herein) is to the judgment dated March 15, 2005 convicting him under Sections 449, 302 and 392 read with Section 397 of IPC and sentencing him to undergo imprisonment for life under Section 302 of IPC, to

undergo rigorous imprisonment for 8 years under Section 449 of IPC and rigorous imprisonment for 7 years under Section 392 read with Section 397 of IPC. The sentences are ordered to run concurrently.

2. The case of the prosecution as testified by Pws.1 to 19 before the lower court in brief is this:

PW.1 is the husband of deceased Mary @ Mamy. They were residing in House No. 8/461 in Erappanthottil of Koorachundu panchayat. PW.1 is an agriculturist and is the president of the local Rubber Board. On January 4, 2003, in the evening he went to Erappanthode where he was constructing a house. At about 7 - 7.30 p.m. he went to the nearby toddy shop and bought a bottle of toddy. The accused is a distant relative of PW.1. He used to visit the house of PW.1. In the toddy shop the accused was present. The accused had previously borrowed Rs. 10000/- from PW.1 which he did not repay. The accused asked for a loan of Rs. 500/-. PW.1 replied that he has no money with him. The accused insisted for the amount. PW.1 told him that he will consider his request. Thereafter he did not see the accused. At about 8.30 p.m. PW.1 left the toddy shop and reached his house at about 8.45 p.m. There was electric light in the verandah and in the house. He did not see his wife. Therefore he went to the kitchen. He found his wife lying naked in a pool of blood. He was shocked. He then went outside and informed his younger brother who is residing nearby. His younger brother and wife reached the scene of occurrence. PW.1 informed the neighbours. According to PW.1 his wife used to wear a gold chain, two bangles and ear studs. The chain was found missing.

3. At about 11.30 p.m. PW.1 went to the Koorachundu Police Station and complained. PW.18, the then Sub Inspector of Police, Koorachundu Police Station, recorded the statement of PW.1, Ext.P1, and registered the case as Crime No. 1/2003 under Section 302 of IPC. Ext.P1(a) is the FIR. PW.19, the then Circle Inspector of Police, Perambra, took over the investigation. He prepared the inquest report Ext.P3 at 11.30 a.m. on 5.1.2003 and seized Mos.1 to 3, 5 and 6. Mos. 1 to 3 are the dresses of the deceased and MO.6 is a piece of wood found at the scene of incident. PW.19 sent the dead body for autopsy to the Medical College, Kozhikode. PW.15 the then Asst. Professor and Deputy Police Surgeon,

Medical College, Kozhikode, conducted postmortem on the dead body of the deceased and issued Ext.P7 postmortem certificate. There were 20 ante-mortem injuries on the dead body of which injury No. 14 was fatal. He has opined that the deceased died due to the cumulative effects of the injuries on the neck. PW.19 arrested the accused at 2.10 p.m. on January 6, 2003. Ext.P11 is the arrest memo. Ext.P12 is the remand report. On the basis of the statement given by the accused, PW.19 recovered Mos.7 and 8, the shirt and lungi of the accused, as per seizure mahazar Ext.P6. He also recovered MO.1 gold chain of the deceased by seizure mahazar Ext.P13(a) on the basis of the information given by the accused. Ext.P18 is the report of the chemical analyst which shows that there were blood stains on the seized articles i.e. M.Os.1 to 8. Ext.P8 is the sketch of the scene of incident prepared by PW.16, the then Village Assistant of Koorachundu village. Ext.P9 is the ownership certificate of the house of PW.1 issued by PW.16. After completion of investigation PW.19 laid the charge before the committal court, Judicial First Class Magistrate Court-I, Perambra.

4. On appearance before the committal court, copies of documents relied on by the prosecution were furnished to the accused. As the offence under Section 302 of IPC is exclusively triable by the court of Sessions, the case was committed to the Sessions Court, Kozhikode from where it was made over to the trial court. On appearance before the trial court, the accused pleaded not guilty to the charge under Sections 449, 302, 392 and 397 of IPC. Pws.1 to 19 were examined and Exts.P1 to P20 were marked and Mos.1 to 9 were produced by the prosecution before the lower court. When questioned under Section 313 Cr.P.C. by the Sessions Judge, he pleaded innocence. Exts.D1, D1(a) and D2 were marked by the accused. The lower court on an appreciation of evidence found that the prosecution has succeeded in proving that it was the accused who committed the murder of the deceased and found him guilty of the offence punishable under Sections 302, 449, 392 and 397 of IPC, convicted him thereunder and sentenced him as aforesaid. The accused has now come up in appeal challenging his conviction and sentence.

5. Arguing the appeal, counsel for the appellant submitted that the circumstances relied on by the prosecution are very weak and do not in any way connect the

accused with the crime and that the lower court is not justified in convicting the accused. The Public Prosecutor, on the other hand, would support the judgment of the lower court.

6. The following points arise for consideration:

1. Whether the conviction of the appellant by the lower court under Sections 449, 302 and 392 read with Section 397 of IPC can be sustained?

2. Whether the punishment imposed is excessive or unduly harsh? Point No. 1

7. The conviction of the appellant is based entirely on circumstantial evidence. It has been consistently laid down by the Apex Court in the following decisions-

1. Ujjagar Singh v. State of Punjab 2009(1) SCC (Cri) 272

2. Kusuma Ankama Rao v. State of A.P. 2008(13) SCC 257

3. State of Haryana v. Jagbir Singh : 2003(11) SCC 261

4. State of Rajasthan v. Raja Ram : 2003(8) SCC 180

5. C. Chenga Reddy v. State of A.P. : 1996(10)SCC 193

6. State of U.P. v. Ashok Kumar Srivastava : 1992(2) SCC 86

7. Padala Veera Reddy v. State of A.P. : 1989 Supp(2)SCC 706

8. Ashok Kumar Chatterjee v. State of M.P. 1989(1)SCC 560

9. Balwinder Singh v. State of Punjab : 1987(1)SCC 1

10. State of U.P. v. Sukhbasi : 1985 Supp SCC 79

11. Sharad Birdhichand Sarda v. State of Maharashtra : 1984(4) SCC 116

12. Earabhadrapappa v. State of Karnataka : 1983(2) SCC 330

13. Hukam Singh v. State of Rajasthan : 1977(2) SCC 99

14. Eradu v. State of Hyderabad : AIR 1956 SC 316

15. Bhagat Ram v. State of Punjab : AIR 1954 SC 621

16. Hanumant Govind Nargundkar v. State of M.P. : AIR 1952 SC 343 that where a case rests squarely on circumstantial evidence, such evidence must satisfy the following tests:

(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 definite tendency unerringly pointing towards 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; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

8. The above position has been reiterated by the Apex Court in Syed Hakkim and Anr. v. State represented by Deputy Superintendent of Police, Karur District, Tamil Nadu : 2009(4) Supreme Court Cases 324. In the light of the principles laid down in the above decisions, we shall discuss the evidence in this case and consider whether the circumstances highlighted by the prosecution satisfy the tests mentioned above. PW.1 is the husband of the accused. He is an agriculturist and is the president of the local rubber board. On the date of the incident he went to Erappanthode where he was constructing a house. At about 7 - 7.30 p.m. he went to the nearby toddy shop and bought a bottle of toddy. The accused is a distant relative of PW.1. The accused had borrowed Rs. 10000/- from PW.1 which he did not repay. The accused demanded a loan of Rs. 500/-. PW.1 stated that he has no money with him. The accused insisted for the amount. PW.1 told him that he will consider his request. Thereafter he did not see the accused. At about 8.30 p.m.

PW.1 went to his house and reached there at about 8.45 p.m. There was electric light in the house. He did not see his wife. Therefore he went to the kitchen and found his wife lying naked in a pool of blood. He was shocked. He then went outside and informed his younger brother who is residing nearby. His younger brother and his wife, PW.2, rushed to the scene of incident. PW.1 informed the neighbours. According to PW.1 his wife used to wear a gold chain, two bangles and ear studs. The chain was found missing. PW.1 identified Mos.1 to 3, dresses of his wife. At about 11.30 p.m. he went to the police station and complained. MO.4 gold chain seized by the police at the instance of the accused was also identified by him.

9. In cross-examination nothing was brought out to discredit his evidence. Further, it was not even suggested in the cross examination that he has any enmity towards the accused. Therefore the lower court is perfectly justified in believing his evidence. The evidence of PW.1 proves that at about 8.30 p.m. on the date of the incident PW.1 met the accused at the nearby toddy shop and the accused was in need of money.

10. PW.2 is the wife of the younger brother of PW.1. She is residing near the house of PW.1. PW.2 would say that on hearing the cry of PW.1 she rushed to the scene of incident at about 8.45 - 9 p.m. and found the deceased lying naked in a pool of blood. She further stated that after some time she had seen the accused, that there were blood stains on his shirt and the accused was found perplexed and restless. She has also identified the dress of the accused, Mos.7 and 8. She has absolutely no enmity towards the accused. Further, the defence counsel was not able to shake her evidence in cross-examination. Therefore the lower court is right in believing her evidence. The counsel for the accused/appellant would argue that PW.2 did not mention about the blood stains on the shirt of the accused to police and that therefore the above version of her cannot be believed. We are unable to agree. There is no rule of law, which says something stated by the witness in court, but not stated before police should be taken as untrue. Normally, courts may look for corroboration for the new facts, so introduced. Chemical analyst has found blood stains on the shirt of the accused which probabalises the version of PW.2 about having seen blood stains on the shirt of the accused. The accused has no

explanation to offer. Therefore the lower court is justified in believing the evidence of P.W.2.

11. PW.3 is a businessman. He knows the accused. He would say that the accused had visited his shop at about 7 - 7.30 p.m. on the date of the incident and bought a betel nut from his shop. PW.4 is also a businessman and he is having a provision store in the market. According to him, on 4.1.2003 at about 7 - 7.30 p.m. the accused purchased 2 kgs. of maida from his shop. PW.4 gave the maida in a plastic cover and also an additional plastic cover to the accused as requested by him. PW.5 is a rubber tapper. He would say that he used to walk through the pathway near the house of PW.1. At about 8.15 p.m. on 4.1.2003 he had seen a packet of maida kept near the house of PW.1. According to him he had seen a person standing in the verandah of the house of PW.1, but could not identify him. PW.6 is the postman of Erappanthode. He would say that on the date of the incident at about 8 p.m. when he had gone through the way in front of the house of PW.1, he had seen a packet of maida kept near the house of PW.1. PW.7 is a cleaner working in a jeep. On 4.1.2003 at about 4 p.m. he reached Erappanthode and returned at 9 p.m. While he was walking along the way in front of the house of PW.1, he had seen the accused there. PW.7 was having a candle with him. Though the accused asked for a candle, PW.7 did not give it to him. Though PW.7 was declared hostile by the Public Prosecutor with the permission of the court, to a certain extent he supported the prosecution case. The evidence of the above witnesses are not seriously challenged in cross-examination. Their evidence shows that on the date of the incident, in the night the accused was found near the house of PW.1.

12. PW.8 is a person residing on the northern side of the house of PW.1. He would say that at about 8.45 p.m. the accused jumped over the gate and asked PW.8 some water to wash his hands, that the accused washed his hands with water and asked for a candle which PW.8 gave and that thereafter the accused left the place. PW.8 has also attested the inquest report Ext.P3. Nothing was brought out during his cross-examination to discredit his evidence. He has no enmity towards the accused to testify against him. According to the prosecution, the accused came to the house of PW.8 after committing the crime, which is probalised by the

evidence of PW8. PW.9 has testified that he had seen the accused in the house of PW.1 at about 10 p.m. and that PW.2 expressed suspicion about him, and that he went along with PW.1 to the police station to complain. The evidence of PW.9, who is a neighbour of PW1, supports the case of PW.2 that immediately after the incident the accused was found in the house of PW.1 and PW.2 has expressed suspicion about him to PW.9. PW.10 is the daughter-in-law of PW.1. She would say that when she went to the house of PW.1, MO.4 was missing from the dead body of the deceased.

13. Pws.11 and 12 are the attesters to the seizure mahazar Ext.P5, regarding the seizure of MO4 gold chain, on the basis of the information given by the accused to PW19 the Investigating Officer. MO4 gold chain was kept under the soil near a coconut tree at Kavil Paramba. It was covered by a newspaper. PW13 is the Goldsmith who weighed MO4 gold chain. PWs.11 to 13 testified that the accused himself took MO4 and handed over the same to PW19. Nothing was brought out to suspect their credibility. They have absolutely no enmity towards the accused. Further, their evidence is supported by PW19 the Circle Inspector who conducted the investigation. Therefore, the trial court is justified in believing their evidence. MO4 is identified by PW1, as the gold chain worn by the deceased at the time of her death, which was found missing. Evidence of PWs.11 to 13 and 19 prove beyond doubt the recovery of MO4 gold chain, worn by the deceased immediately prior to her death. PW14 is an attester to Ext.P6 seizure of MOs.7 and 8, the dress of the accused, worn by him at the time of the incident. He stated that PW19 brought the accused and that the accused took MOs.7 and 8 from the varanda of the house of the accused and handed over the same to PW19 Investigating Officer. Therefore, the lower court is right in believing his evidence regarding the recovery of MOs.7 and 8.

14. PW15 is the doctor who conducted postmortem on the dead body and prepared the report Ext.P7. PW16 is the Village Assistant of Koorachundu Village who prepared Ext.P8 the plan of scene of incident, the correctness of which is not disputed by the accused. PW17 is the Secretary of Perambra Grama Panchayat who issued Ext.P9 ownership certificate, which showed that the house belongs to PW1. PW18 is the Sub Inspector of Police, Koorachundu Police Station who

recorded Ext.P1 FIS and registered the case. Ext.P1 (a) is the F.I.R.

15. PW19 is the Investigating Officer who conducted the investigation in this case. He prepared Ext.P3 inquest report in the presence of the witnesses. He recovered MOs.1 to 3 and 5 series and 6 as per seizure mahazar Ext.P5. He testified regarding the recovery of MOs. 4, 7 and 8 on the basis of the information given by the accused. The relevant portion of the statement of the accused is marked Exts.P13 and P13(a). Nothing was brought out in his cross-examination to discredit his evidence. No serious flaw was pointed out in his investigation. His evidence shows that MOs.7 and 8 were recovered on the basis of the information given by the accused. His evidence is supported by PWs.11 to 14. Therefore, the lower court is justified in believing his evidence regarding the recovery of MOs.4 to 8 on the basis of the information given by the accused.

16. The evidence discussed above shows that the prosecution relies on the following circumstances to establish the guilt of the accused:- MO4 the gold chain of the deceased and MOs.7 and 8 the dress of the accused were recovered by PW19 on the basis of the information given by the accused, which is proved by the evidence of Pws.11 to 14 and 19. The blood stains were found on MOs.4, 7 and 8, which is not explained by the accused. At the time of the incident the deceased was alone in the house. The accused was a frequent visitor to the house of the deceased and he is known to the deceased. He was in need of money immediately prior to the incident as spoken to by PW1. On the date of incident at about 7 - 7.30 P.M. the accused purchased betel nut from the shop of PW3 and purchased 'myda' from the shop of PW4. At about 8.15 P.M. Pws.5 and 6 found a packet of 'Myda' near the house of PW1. PW6 has seen a person standing at the varandah of the house of PW1 at about 8.15 P.M. on that day. PW17 has seen the accused in front of the house of PW1 at about 9 P.M. At about 8.45 P.M. the accused has gone to the house of PW8 with a request for water to wash his hands. Immediately after the incident PW2 had seen the accused with blood stains on the shirt in the house of PW1. He was seen perplexed and PW2 expressed suspicion about the accused to PW9. The accused has failed to explain about the possession of MO4 and blood stains on MOs. 4,7 and 8. Cumulative effect of the above proved circumstances pointed above, in my view, bring home the guilt of

the accused and negate the innocence of the accused.

17. There is also another aspect. The accused in his defence statement denied the entire facts and contended that PW1 might have murdered the deceased. There is absolutely no evidence to show that PW1 has any enmity towards the deceased or PW1 has special motive to implicate the accused. The Apex Court has held in Antony D'Scuza and Ors. v. State of Karnataka : AIR 2003 SC 258 that when the accused has filed a statement suppressing the established facts and set up a false story, which could be counted as providing missing link for completing the chain of circumstance. Therefore, in my view the above proved circumstances satisfy the tests laid down by the Supreme Court in the above cited decisions and establish the guilt of the accused beyond reasonable doubt and the same are consistent with the guilt of the accused and inconsistent with his innocence.

18. Counsel for the appellant argued that motive in this case is not proved which is fatal to the case of the prosecution. There is no substance in the above contention. The evidence of PW1 shows that prior to the incident the accused was in need of money. Therefore, it cannot be said that there is absence of motive in this case. That apart, the Apex Court has in Krishna Pillai Sree Kumar and Anr. v. State of Kerala : AIR 1981 Supreme Court 1237 observed thus:

It is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it.

19. The above principle has been reiterated by the Supreme Court in several subsequent decisions which is also followed by another Division Bench of this Court in State of Kerala and Anr. v. Balu 2008(3) KHC 915. In the present case, there are materials on record which unerringly point to the guilty of the accused. Therefore, no inference adverse to the prosecution can be drawn though there is weakness in supplying evidence regarding motive.

20. It was next submitted by the counsel for the appellant that FIR in this case is not registered at the time and place mentioned therein and it was ante-timed. In support of his contention, he points out some corrections in the FIR about the date

of occurrence. Only in one place in FIR the date is corrected from 3 to 4. But in the FI statement and in other places in FIR date is correctly shown. Even according to the accused, he accompanied PW1 to police station on the date of incident itself. At that time PW1 has not implicated anybody. FIR reached the court on the next day itself. Therefore, the above contention of the appellant cannot be accepted.

21. Counsel for the appellant next argued that there were two burn injuries found on the deceased which were not explained which cast serious doubt regarding the case of the prosecution. In Ext.P7 postmortem report, those burn injuries are shown as injury Nos. 11 and 12. Those are superficial burns. In my view mere absence of explanation regarding the said injury does not affect the case of the prosecution. Injury No. 14 mentioned in Ext.P7 is the fatal injury which caused the death. That apart, the incident occurred in the kitchen. Therefore the deceased sustaining such injuries from kitchen cannot be ruled out.

22. The counsel for the appellant next argued that prosecution has not proved that the blood stains found on Mos 4, 7 and 8 are that of the deceased which cast serious doubt about the truth of the case of the prosecution. I am unable to agree. Mos 4 , 7 and 8 were recovered on the basis of the information given by the accused. Therefore, he has to explain the blood stains found therein. He has no case that blood stains found on Mos 4, 7 and 8 is that of some other person. The Apex court has held in Sanjay alias Kaka v. State (N.C.T. of Delhi) : AIR 2001 SC 979 that failure on the part of the prosecution to prove the origin of blood stains on the cloths recovered could not extend any benefit of doubt to the accused. That apart, there is every reason to suspect that the blood stains found on MO 4, 7 and 8 are that of the deceased. MO4 is the gold chain worn by the deceased at the time of incident and MO 7 and 8 are the dress worn by the accused at the time of accident. They were recovered at the instance of the accused. In the absence of any explanation on the part of the accused, it has to be held that the blood stains found on MO 4, 7 and 8 are that of the deceased.

23. All these apart, the Apex court has held in several decisions that the recent and unexplained possession of stolen property will be taken to be presumptive evidence of charge of murder as provided under Illustration (a) of Sections 114 of

Evidence Act. In the present case MO4 was recovered soon after the murder on the basis of the disclosure statement given by the accused. It not only proves robbery but also the murder.

24. Thus it is seen that the circumstantial evidence in this case clearly establishes the guilt of the accused beyond reasonable doubt and that he has committed murder of deceased as alleged by the prosecution. In addition to that, he has also committed robbery . For the purpose of committing robbery, he has trespassed into the house of PW1. Thus he has committed the offences punishable under Sections 302, 449, 392 read with 397 of IPC. Therefore, we confirm the conviction of the appellant under the above sections.

Point No. 2

25. As regards the sentence, he was sentenced to undergo imprisonment for life under Section 302 of IPC. He was further sentenced to rigorous imprisonment for eight years under Section 449 of IPC and rigorous imprisonment for seven years under Section 392 read with Section 397 of IPC. The sentences were ordered to run concurrently. In view of the materials placed by the prosecution and analysed by the trial court and taking into account the nature of crime committed by the assured, we are not inclined to reduce the sentence. There is no valid ground for reducing the sentence as claimed by the appellant.

In the result, confirming the conviction and sentence of the appellant, the appeal is dismissed.

1. Kusuma Ankama Rao v. State of A.P. 2008(13) SCC 257
2. State of Haryana v. Jagbir Singh : 2003(11) SCC 261
3. State of Rajasthan v. Raja Ram : 2003(8) SCC 180
4. C.Chenga Reddy v. State of A.P. : 1996(10)SCC 193
5. State of U.P. v. Ashok Kumar Srivastava : 1992(2) SCC 86
6. Padala Veera Reddy v. State of A.P. : 1989 Supp(2)SCC 706

7. Ashok Kumar Chatterjee v. State of M.P. 1989(1)SCC 560
8. Balwinder Singh v. State of Punjab : 1987(1)SCC 1
9. State of U.P. v. Sukhbasi : 1985 Supp SCC 79
10. Sharad Birdhichand Sarda v. State of Maharashtra : 1984(4) SCC 116
11. Earabhadrapa v. State of Karnataka : 1983(2) SCC 330
12. Hukam Singh v. State of Rajasthan : 1977(2) SCC 99
13. Eradu v. State of Hyderabad : AIR 1956 SC 316
14. Bhagat Ram v. State of Punjab : AIR 1954 SC 621
15. Hanumant Govind Nargundkar v. State of M.P. : AIR 1952 SC 343

The above position has been reiterated by the Apex Court in Syed Hakkim and Anr. v. State represented by Deputy Superintendent of Police, Karur District, Tamil Nadu 2009(4) Supreme Court Cases 324.

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