

PETITIONER:  
UDAY KUMAR

Vs.

RESPONDENT:  
STATE OF KARNATAKA

DATE OF JUDGMENT: 21/09/1998

BENCH:  
G.T. NANAVATI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T  
S.P. Kurdukar. J.

Parthasarathi (P.W.1) alongwith his wife Gangabai (P.W.2) and two children, namely, Suresh and Manjunath (P.W.3) came to the house of mother of P.W.2 at B.M.L. Nagar K G F on 19.4.1998 to attend the Seemantha ceremony of the wife of the brother-in-law of Prathasarathi to be held on 20-4-1988. The parents of Gangabai (P.W.2) reside at B.E.M.L. Nagar K.G.F. The appellant-accused is the real brother of Gangabai (P.W.2). Parthasarathi (P.W.2) was sleeping in one of the rooms in that house. Gangabai (P.W.2) between 4 and 5.00 P.M. came to the room where Parthasarathi (P.W.1) was sleeping and told him that their son Suresh had been killed. On hearing this news, Parthasarathi (P.W.1) and Gangabai (P.W.2) rushed to the said room where dead body of Suresh with head severed was lying on the floor and the appellant was standing there with a Kathi in his hand. Parthasarathi (P.W.1) then immediately rushed to the police station and lodged a complaint against the appellant. The police reached the place of occurrence immediately and carried out the necessary investigation. The appellant was put up for trial for committing the murder of Suresh aged about 4 years, an offence punishable under Section 302 I.P.C. The accused denied the charge and claimed to be tried. He pleaded innocence and stated that he did not know who committed the murder of Suresh. His further plea was that the dead body was found in the bath room and not in the room. He also denied that he was standing near the dead body in the room with kathi. The substance of his defence was that he is innocent and he be acquitted.

At the outset, it be stated that there is no eye witness to the occurrence in question. The prosecution case entirely rested on circumstantial evidence. The circumstances sought to be proved upon by the prosecution were :

1. Suresh died a homicidal death
2. Suresh was hale and hearty when he was taken by the appellant in his room just a few minutes before the incident.

3. The dead body of Suresh with his head severed from the body was found in the room of the appellant and he was standing there with the blood stained kathi in his hand.

4. Abscondence of the appellant after the occurrence.

5. Recovery of the weapon at the instance of the appellant.

The learned Principal Sessions Judge at Kolar, after appraisals of oral and documentary evidence on record, by her judgment and order dated 23.1.1993 acquitted the appellant holding that the prosecution has failed to establish beyond reasonable doubt the complicity of the appellant in the present crime.

The State of Karnataka being aggrieved by the order of acquittal preferred a criminal appeal to the Karnataka High Court at Bangalore. The Division Bench of the High Court on re-appraisal of the evidence on record did not agree with the order of acquittal passed by the trial court and held that the prosecution has conclusively established all the circumstances which would complete the chain thereof and these proved circumstances would unmistakably point out to the guilt of the appellant. The High Court thus allowed the appeal and set aside the order of acquittal and convicted the appellant for the offence punishable under Section 302 I.P.C. and sentenced him to suffer life imprisonment. It is against this judgement and order of conviction the appellant has filed this appeal to this Court.

Mr. R.K.Jain, learned Senior Counsel, appearing in support of this appeal, contended that the High Court was wholly unjustified in reversing the order of acquittal. The view taken by the trial court was equally probable and reasonable one. Learned counsel took us through the judgment of the courts below. The reasons given by the trial court for acquittal in our considered view were totally unsustainable in law. The order of the trial court proceeded on mere surmise and conjectures without assessing the prosecution evidence in proper perspective. The reliance placed by the trial court on the defence evidence to support its reasons for acquittal was totally erroneous as the said evidence is nothing but a tailor made to suit to the defence of the appellant. The High Court, in our opinion, on re-appraisal of evidence on record, was fully justified in reversing the order of acquittal. It is not a case where two views were probable, The reasons given by the trial court for acquitting the accused were not legally sustainable and therefore it could not be said that the view taken by the trial court was probable one.

As stated earlier, the appellant was not a stranger to the innocent child Suresh. Mr. T.N. Parthasarathi (P.W.1) has deposed that a coconut was found tied at the threshold of the house and that the appellant being a believer in superstitious beliefs had sacrificed his son Suresh, an innocent child of four years. In the event, if we hold that the prosecution has established all the circumstances to bring home the guilt of the accused, the least that we can say that the appellant had no regard for a human life and was obsessed with superstitious beliefs.

We now advert to the circumstances which were sought to be relied upon by the prosecution to prove the guilt of the appellant.

The first circumstance is whether Suresh died a homicidal death. It is not and could not be disputed that the death of Suresh was homicidal. Just to complete the

record, we may refer to the evidence of Dr.S.Raj (P.W.5) who held the post mortem on the dead body of Suresh and opined. "The body appeared to have been severed from the most part at the level of the middle of the thyroid cartilage, anteriorly and the levels of the body and pedicles and interspinous space of the fourth cervical vertebra." In fact, the head was severed from the neck and two pieces of the body of Suresh were sent for post mortem examination. In view of this medical evidence, we have no hesitation to conclude that Suresh met with a homicidal death.

Coming to the second circumstance, namely, Suresh was hale and hearty before the occurrence took place on 19.4.1988 between 4.00 and 5.00 P.M., there is no room whatsoever to hold otherwise as regards the hale and hearty state of health of Suresh, The only issue raised before us as regards this circumstance is as to whether the appellant called Suresh and Chandilnathan in his room under the pretext to give them a coconut. It is, therefore, necessary to find out as to whether the prosecution evidence in this behalf is satisfactory and conclusive.

Gangabai (P.W.2) has stated that on 19.4.1988 at about 5.00 P.M. her son Suresh and her sister's son Chandilnathan were taken by her younger brother (appellant) to one of the rooms in the house under the pretext that he would peel coconuts. Within short time thereafter the appellant sent Chandilnathan out of the room and detained Suresh in the room and closed the door. Thereafter, she went to the said room and found that the door of the room was opened and when she went inside, she saw the appellant holding a kathi in his hand and the dead body of Suresh was lying on the floor with his head severed. The appellant was then preparing to put the severed head into the kitbag. The appellant then handed over the kathi to her saying that "you may now do whatever you want." She then kept the kathi on the table and went to her husband Parthasarathi (P.W.1) and told him what she saw in the room. The witness was searchingly cross examined on behalf of the appellant but nothing could be elicited to favour the defence. The witness, however, admitted that the appellant had love and affection for the dead body of Suresh was in the bath room which is situated at some distance and one has to cross three rooms in between. The witness denied the suggestion and asserted that when she went into the room of the appellant, she saw the dead body on the floor of the room and the appellant was standing with a kathi in his hand. It is also difficult to believe the story suggested on behalf of the appellant that the dead body and a kathi were in the bath room and during the investigation P.S.I., Armugam and Subramanyam had conspired and shifted it in his room. This suggestion has been denied. We also do not attach any importance to such suggestion. There is nothing in the evidence to suggest that Gangabai (P.W.2) had any enmity with the appellant and the dead body was caused to be shifted from the bath room to the room of the appellant with a view to implicate him falsely in the present crime. The evidence of Gangabai (P.W.2) is unimpeachable on any score and, therefore, we see no reason to disbelieve her evidence. The High Court has rightly accepted the evidence of Gangabai (P.W.2) as credible one and we are unable to persuade ourselves to hold otherwise.

The evidence of Parthasarathi (P.W.1) on this circumstance also assumes importance because he was called by Gangabai (P.W.2) immediately after she saw the dead body of Suresh in the room. According to Parthasarathi (P.W.1), on reaching the room, he saw his son Suresh lying dead in

the room with the head separated from the trunk and the appellant was holding a kathi in his hand. His evidence in all material particulars corroborates the evidence of Gangabai (P.W.2). After going through the evidence of these two witnesses, we have no manner of doubt that the prosecution has successfully established the fact that Suresh was hale and hearty before the occurrence; he had Chandilnathan were called by the appellant in his room under the pretext of giving a coconut; within a short time Chandilnathan was sent out of room; Gangabai (P.W.2) when entered the room saw the dead body of her son Suresh; the appellant was present in the room with a kathi in his hand and handing over the same to her saying "do whatever you like." The second circumstance, in our considered view, is conclusively established by the prosecution. This discussion of the evidence would also conclusively establish the third circumstance sought to be relied upon by the prosecution, namely, that the appellant was seen in the room with a kathi in his hand and the dead body of Suresh was lying on the floor with the head severed.

The next circumstance relied upon by the prosecution is abscondence of the appellant after the occurrence. The Investigating Officer, Shri B. Anand (P.W.16) in his evidence has stated that the appellant was not traceable during the night of 19th and 20th April, 1988 and he was arrested at about 11.00 A.M. on 20.4.1998. To demolish this circumstance, learned counsel for the appellant drew our attention to the evidence of Parthasarathi (P.W.1) who had stated that when he went to lodge the complaint to the police station, the appellant was standing there. It was contended on behalf of the appellant that if Parthasarathi (P.W.1) saw the appellant with a kathi in his hand in the room and was suspecting him to be the murderer of Suresh, surely he would ask the Police Officer to arrest him. Even one Police Officer did not arrest him. Relying upon this evidence, it was urged that the circumstance that the appellant was absconding is far from truth and this would indicate that the prosecuting has been trying to suppress another crate a false evidence in this behalf. We are not impressed by this argument because one has only to consider and bear in mind the mental condition of a father who saw the dead body of his son with the head severed. There appears to be some mistake in making such statement. In our view, this evidence would not any way affect the substratum of the prosecuting case. Shri G.L. Anand (P.W.16), Investigating Officer, has stated that despite their efforts to trace the appellant, they were unable to find him until he was arrested on 20-4-1998 at about 11.00 A.M. The abscondence in the present case is only of a short duration year it is of some relevance because ordinarily if the appellant was innocent, he would have been found in his house and consoling his sister who lost her son. This circumstance, in our opinion, is also proved by the prosecution.

The last circumstance relied upon by the prosecution relates to the statement of the appellant which led to the recovery of a weapon. To prove this circumstance, the prosecution sought to rely upon the Panchnama and the evidence of a Panch witness M. Kempanna (P.W.8), but he did not support the prosecution and was declared hostile. The prosecution, therefore, had to fall back upon the evidence of Investigating Officer G.Anand (P.W.16) who has proved the recovery of weapon M.O.1 at the instance of the appellant. In the circumstances, we accept the evidence of Investigating Officer G.Anand (P.W.16).

Thus the prosecution, in our considered view, has successfully and conclusively proved all the circumstances which complete the chain of circumstances. All these proved circumstances unmistakably point out to the guilt of the appellant.

It was then contended on behalf of the appellant. that Suresh being the son of his sister (appellant's) and the relations between them being cordial and affectionate, there was no reason for the appellant to commit the present crime. We are not impressed by this submission because of our aforesaid conclusions about the guilt of the appellant. It might be, as stated earlier, the appellant appears to be very much obsessed with the superstitious beliefs and it is because of that he did this crime. However, this observation is not germane to the finding of guilt against the appellant. There is no suggestion to any of these witnesses that any outsider had entered the premises and then committed the crime. In the absence of such material on record, we do not accept this contention. It is true that in a case of circumstantial evidence, motive is one of the circumstance which assumes importance but it cannot be said that in the absence thereof other proves circumstances although complete the chain would be of no consequence. It was then contended on behalf of the appellant that he (appellant) was coaching badminton (shuttle) to number of young boys and girls. He was also distributing toffees, sweets etc. to the boys and girls. He was know for his affectionate and loveable conduct. It this was the image of the appellant, it was urged that it would be unbelievable that he would commit the crime in question. Assuming that the appellant possessed these good qualities but the appellant possessed these good qualities but that would not make the prosecution evidence unbelievable which is otherwise found unimpeachable.

It was then contended on behalf of the appellant that his brothers and parents have been staying in the same house and, therefore, possibility of any other person from the family being the assailant could not be ruled out. The appellant was not having good relations with his brothers and other inmates of the house. On some occasions, he had demanded partition and separate possession of his share in the property. The appellant was not liked by the other members of the family and, therefore, he has been falsely implicated in this crime at the instance of these family members. We see no force in any of these contentions because there is no acceptable material on record.

Lastly, it was contended that the evidence of the defence witnesses is quite credible and the same be accepted. This evidence fully establishes the innocence of the appellant. We have gone through the evidence of the defence witnesses and, to say the least, the said evidence is totally concocted and no reliance can be placed upon such evidence.

For the foregoing conclusions, we are of the considered view that this criminal appeal filed by the appellant is devoid of any merit and, therefore, to stand dismissed.