Joseph S/O Kooveli Poulo vs State Of Kerala on 27 April, 2000

Bench: S.N.Variava, K.T.Thomas

PETITIONER:
JOSEPH S/O KOOVELI POULO

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 27/04/2000

BENCH:
S.N.Variava, K.T.Thomas, Doraiswami

JUDGMENT:

J U D G M E N T Raju, J. The appellant, who was ableto escape from the long arm of law due to his acquittal by the trial court was soon made to realise that the sword in the hands of justice never fails to vindicate itself in preserving ultimately law and order in the society when he was indicted for offences under Sections 376, 392 and 302, IPC, and imposed with punishments of imprisonment for life under Section 302, IPC, and rigorous imprisonment for seven years each on the other counts, to run concurrently. The case of the prosecution is that on 16.09.94 at about 5.30 p.m., the appellant, representing himself to be the husband of one of the sisters of Gracy the deceased went to St. Marys Convent, Vandoor, where she was employed as Kitchen maiden and on a false pretext that her mother was ill seriously and had been admitted to Medical Trust Hospital, Ernakulam, took her away with the permission of PW-5, the Sister incharge of the Convent at the relevant time. The further case is that the appellant after taking the victim out of the Convent, had her walk along with him by the side of the Railway Line in Koratty and thereafter at a desolate place not only raped and robbed her of her ornaments, but laid her on the Rail track to be run over by the passing train. On 17.09.94, PW-2, the key man attached to Karukutty Railway Station, found the dead body of a female on the up track railway line and informed PW-1, the Station Master, who, in turn, brought it to the notice of Koratty Police Station as per Ex.P1, on which PW-28, the Head Constable, registered an FIR in Crime No.166/1994 under the caption unnatural death. An inquest was held over the dead body and along with the findings in the inquest report, a brown blouse, a white brassier, a brown polyester sari with blue and green design and two under skirts, one blue in colour and the other green were also seized, besides taking photographs of the dead body. The autopsy was done by PW-10, the Lecturer and Police Surgeon attached to the Forensic Department of Medical College, Trichur, on 20.09.94 and he submitted his report under Ex.P4. While matter stood thus, it appears that PW-7, the mother superior and incharge of the Convent, was informed on 18.09.94 over telephone by a person claiming to be one Joseph that Gracy would return to the Convent in a few

days since her mother had recovered. Finding that she did not so return on 05.10.94, PW-8, another Sister and inmate of the Convent, went to the house of the victim and learnt that the mother of Gracy was neither ill nor was admitted in any Hospital and that she did not at all return home thereafter. PW-9, the brother of deceased, went and made enquiries in the Convent and when he was asked to come the next day, on 06.10.94 PW-9, PW-26 (Member of the Panchayat), the accused and two other relatives of the deceased went and got other details and even at that stage the accused was said to have been identified by PW-5 as the person who took Gracy from the Convent. PW-9 thereafter lodged a complaint, Ext. P18, with the Circle Inspector of Police, Pudukkad, and an FIR in Crime No.281/94 was registered under the caption man missing. During the course of investigation, PWs-5 to 7 and 9 were asked to meet PW-29, the Sub-Inspector, Koratty Police Station, when they seem to have also identified the photographs to be that of Gracy and that the clothes shown also belonged to her. Statements were also recorded from them. On 09.10.94, PW-30, the Circle Inspector of Police, Chalakkudy, took up the investigation, visited the scene of occurrence, prepared a Mahazar, Ex.P22, and arrested the accused on the same day. As per the statement of the accused, PW-30 seized M04-diary and Ex.P7, a slip from the accused under Ex.P6 Mahazar. MOs 1 to 3 were also seized thereafter under Ex.P5, as per statement Ex.P5(a). The vaginal swab and smear, collected during the course of autopsy as also the clothes taken from the dead body and the dhoti recovered at the instance of the accused were all sent for chemical examination and reports in Ex.P20 and 21 were obtained. PW-30 questioned the witnesses, recorded their statements and completed the investigation, though his successor in office PW-31 verified the records and ultimately laid the charge sheet before Court. The learned Magistrate, who took cognisance of the case, on finding the offences to be such, exclusively triable by a Court of Sessions, committed the case to Sessions Court, Trissur, and thereby the case stood transferred to trial before the First Additional Sessions Judge. After preliminary hearing and framing of charges under Sections 376, 392 and 302, IPC, the accused having pleaded not guilty and claimed to be tried, the prosecution let in evidence by examining PWs-1 to 31, besides marking Ex.P1 to P22 and MOs 1 to 4 were got identified and also marked. Though there was no oral evidence let in for the defence, Exs.D1 to D13 - marked portions of statement of some of the PWs, were marked for the defence. The accused when questioned under Section 313 of the Criminal Procedure Code, denied bluntly all the incriminating circumstances brought out against him and reiterated about he being innocent. The learned Sessions Judge, on the evidence on record, came to the conclusion that the body found on the railway track was that of deceased Gracy, who was working at St. Marys Convent at Vandoor,; that she met her death as a result of being run over by a train; that there is clinching evidence to show that it was the accused who had taken Gracy at 5.30 p.m. on 16.09.94 on the pretext that her mother was seriously ill and that the said circumstance stand fully established. But at the same it was held that there is no evidence to show that the accused committed rape on Gracy, or that it is the accused who sold the ornaments of Gracy (MOs 1 to 3) and could not, therefore, be responsible in any manner for the death of Gracy. The prosecution was able to, in the view of the Sessions Judge, establish only a strong suspicion and since it cannot take the place of proof, the accused was entitled to the benefit of doubt and, therefore, acquitted him of all the charges. The State pursued the matter on appeal before the High Court and a Division Bench of the Kerala High Court, on re-appreciation of the evidence on record, differed from the findings recorded by the Sessions Court on the guilt or innocence of the accused and found him guilty of the charges levelled against him. The High Court after specifically noticing the several incriminating facts which inevitably and necessarily led to an

hypothesis of the accused being guilty of the charges levelled against him convicted him of the offences, charged with. The manner of consideration of the evidence and the other materials on record, as also the method of analysis as well as the ultimate reasoning and conclusions arrived at by the Sessions Court were held to be perverse and resulted in gross miscarriage of justice. Hence, the High Court dislodged some of the findings of the trial court and finally the accused was held guilty of the charges levelled against him and accordingly punished for the same. The learned counsel for the appellant contended that the evidence on record established sufficiently the case to be one of suicide and not homicide and that at any rate the chain of circumstances is not so complete as to lead to the hypothesis of guilt of the accused. It was also contended that the deceased had not been taken away from the Convent by the accused as alleged and even if that be so, the nature of injuries found on the body, the probable time of death and the other materials on record, if at all may only create a suspicion as observed by the trial judge and that too based upon surmises against the appellant, but those at any rate are not sufficient to prove the guilt beyond reasonable doubt. The learned counsel for the respondent-State submitted that the trial court had not only over simplified the cumulative effect of every vital circumstances leading towards the guilt of the accused but the analysis and consideration of evidence proceeded on too technical lines in a superficial manner and, therefore, the High Court was right and justified in reversing the findings of the trial court. Argued the learned counsel for the respondent further that the failure on the part of the appellant to give any acceptable explanation as to what happened to the deceased who was not only last seen alive together with the appellant but also not seen thereafter alive anywhere itself is sufficient to indict the appellant in this case. The High Courts being a verdict of reversal of the acquittal, the learned counsel on either side also took us through the evidence and other materials on record, at length, to substantiate their respective stand. So far as the case on hand is concerned, there is direct evidence of the Sisters of the Convent where the deceased was working, PWs-5 and 6 to prove beyond reasonable doubt that it was the appellant who had taken the appellant from the Convent at about 5.30 p.m., on 16.09.94 on the pretext that her mother was seriously ill and hospitalised. Even the trial court which returned a verdict of acquittal was very much convinced of this fact against the appellant and satisfied with the evidence of PWs-5 to 8. They had nothing against the accused and no reason to speak falsely to implicate the appellant, and despite searching and severe cross-examination made nothing could be brought out to discredit their evidence. PW- 9, the brother of the accused, and PW-26, the member of the Panchayat, also confirmed that PWs-5 and 6 had identified the appellant as the person who had taken away Gracy on 16.09.94 when they went to enquire about the deceased, accompanied by the accused also. The learned Judges of the High Court also were got convinced with the conclusions of the trial court in this connection and accepted the same to be correct on the basis of the evidence of PWs-5 and 6, and PWs-9 and 26. We see no infirmity whatsoever either in the manner of appreciation of their evidence or the reasons assigned in support of the same and, therefore, this finding of fact appears to be well justified on the materials on record. The same does not also call for interference in this appeal. As for the homicidal fact is concerned, there is only circumstantial evidence. It is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinised to see that the incriminating circumstances are such as to lead only to an hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. There can also be no hard and fast rule as to the appreciation of evidence in a case and being always an exercise pertaining to arriving at a finding of fact the same has to be in the manner necessitated or warranted by the peculiar facts and circumstances of each case. The whole effort and endeavour in

this case should be to find out whether the crime was committed by the appellant and the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the appellant. The formidable incriminating circumstances against the appellant, as far as we could see, are that the deceased was taken away from the Convent by the appellant under a false pretext and she was last seen alive only in his company and that it is on the information furnished by the appellant in the course of investigation that the jewels of the deceased, which were sold to PW-11 by the appellant, were seized under Ex.P5 duly attested by PW-12 and that PWs-5 and 6 were categorical in their evidence that those jewels were worn by the deceased at the time when she left the Convent with the appellant. PW-10, who conducted the post mortem, noted about 20 injuries in detail in his Report, Ex.P4. Though the learned counsel for the appellant attempted to substantiate that some of the injuries taken together with height of the deceased and the width of the railway track could not have possibly resulted by laying the victim on the track and, therefore, it should be reasonably presumed that the deceased committed suicide by jumping before the moving train, we are unable to persuade ourselves to agree with the said line of thinking since it would require too many hyper-technical assumptions to be made to believe such suggestions. Having regard to the categorical and positive medical opinion that persons who commit suicide usually do not lay in such posture and the further evidence of PW-10 that though he could not state that the victim was strangulated before she was laid on the railway track, he was at any rate definite in his opinion that the nature and type of injuries sustained by the victim is suggestive of only a case of homicide. Though the nature of all such injuries could not rationally be explained, they could very well be inflicted when the body got twisted and pushed away from its original position due to the reaction of life-force in the body the moment it first got into contact with the moving train and also on account of being thrown away due to the impact of the fast moving train. There is nothing on record to suggest or even surmise a plausible reason of her own on that evening for the victim to commit suicide. Consequently, the theory of suicide suggested to save the appellant seem to be more a matter invention based on imagination than even a remote possibility warranted or could reasonably be justified on the proved facts. PWs-5 to 8 are the inmates of the Convent holding different positions therein and all of them identified MOs 1 to 3 as the ornaments belonging to the deceased Gracy and which she was wearing when she left the Convent with the accused. PW-9, the brother of the victim, also identified the jewels. They have also spoken in unison to the other details relevant, which when cumulatively taken up for consideration reasonably as well as with great certainty establish the various incriminating factors against the appellant involving with the crime, which, if at all, could be properly and reasonably be explained only by him. But they remain totally undeciphered and unexplained by the attitude of total denial of everything by the appellant. PW-11 was working as Manager in the Jewellery Shop in question at Angamaly where the appellant was said to have taken MOs 1 to 3, and sold them for Rs.5,103/-. Before actual sale, the jewellery was weighed and the slip, Ex.P7, seized from the diary of the appellant, was said to have been prepared and given to him at that time. The worker in the Shop, PW-14, who prepared the slip after weighing the MOs 1 to 3, has also identified the jewels and the slip. PW-12 is the gold platter having his Shop adjacent to the Jewellery Shop in question. Their evidence, though certain discrepancies not so material as to effect their truthfulness are attempted to be pointed out, positively prove that only the accused sold those jewels representing to be that of his wife and money was urgently required to meet some hospital expenses. There is no reason for them to either falsely implicate or depose against the appellant and we see no relevant or valid reason to disbelieve them. The adverse

comments made by the trial judge against their evidence merely on account of certain minor discrepancies are neither justified nor those discrepancies could themselves be said to be enough to detract from the truthfulness or genuineness of their deposition. PW-17, a former employee of the accused in his quarry, was shown to have been paid Rs.2,500/- by the accused and though the prosecution would attempt to connect the same with the sale proceeds of the jewellery of the deceased, PW-17 could not specifically remember the actual date of the said payment. The appellant could not explain how he came into possession of the ornaments belonging to and worn by the deceased when she left the Convent on the evening of the fateful day with him. As noticed earlier, the deceased was last seen alive only with the appellant and thereafter she neither returned to the Convent nor her home, alive and not found anywhere else also by any one, outside the company of the appellant. Taking advantage of the discrepancies pointed out by the Sessions Judge, the learned counsel for the appellant also tried to contend that the evidence of PWs-11 to 14 is not trustworthy. It is not that every discrepancy or contradiction that matters much in the matter of assessing the reliability and credibility of a witness or the truthfulness of his version. Unless the discrepancies and contradictions are so material and substantial and that too are in respect of vitally relevant aspects of the facts deposed, the witnesses cannot be straightaway condemned and their evidence discarded in its entirety. On going through the entire evidence of PWs-11 to 14, we are unable to come to the conclusion that they are not speaking the truth or that they cannot inspire confidence in the mind of any reasonable person or authority to adjudge disputed questions of fact, so as to eschew entirely their evidence from consideration, whatsoever. The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313, Cr.P.C., the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else they being personally and exclusively within his knowledge. Of late, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see State of Maharashtra Vs. Suresh - 2000(1) SCC 471). That missing link to connect the appellant-accused, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy. For all the reasons stated supra, we have no hesitation to agree with the findings of the Division Bench of the High Court holding the appellant guilty of offences under Section 302 for committing the murder of Gracy and for robbing her of her jewellery worn by her - MOs 1 to 3, under Section 392. The deceased meekly went with the accused from the Convent on account of the misrepresentation made that her mother was seriously ill and hospitalised apparently reposing faith and confidence in him in view of his close relationship - being the husband of her own sister, but the appellant seems to have not only betrayed the confidence reposed in him but also took advantage of the loneliness of the hapless women. The quantum of punishment imposed is commensurate with the gravity of the charges held proved and calls for no interference in our hands,

despite the fact that we are not agreeing with the High Court in respect of the findings relating to the charge under Section 376. The charge under Section 376, IPC, is mainly fastened upon the appellant on the `last seen together theory. The factum of rape of the deceased is sought to be proved from Ex.P20, a report on examination of vaginal smear collected and said to confirm the presence of semen and spermatozoa, indicating that she should have had sexual intercourse before her death. Ex.P21, chemical report, also showed that semen was detected in one of the under skirts found on the body of the deceased. Ex.P8, certificate issued by PW-15, the doctor, also showed that the accused appellant was potent. But in the Report, Ex.P21, it was specifically stated that the dhoti of the appellant, subjected to chemical examination, contained no stains of blood or semen. If there had been any forcible sexual intercourse, the victim must have made some strong resistance being a grownup lady and in the process, some injuries would have been found on the vagina/private parts of the body or some other parts indicative of any such use of force and it would be too much to assume that there would have been no injuries whatsoever on the body, on this account. Though injuries on the body is not always a must or sine qua non to prove a charge of rape, having regard to the case of the prosecution that the victim had been subjected to brutal rape and forced sexual intercourse, this aspect of the matter cannot be completely lost sight of. The deceased was stated to be of about 26 years age, when she died and she is the sister of the wife of the appellant. It is not as though they were shown earlier to be on inimical terms. Anything possible might have happened and the facts found proved do not irresistibly lead to the only conclusion of the guilt of the appellant in respect of an offence under Section 376, IPC. Consequently, we are prepared to give the benefit of doubt to the appellant and acquit him of the offence under Section 376, IPC, and the conviction recorded and sentence imposed by the High Court upon the appellant on this account is set aside. For the reasons stated above, except for the modification made in respect of the charge under Section 376, IPC, we see no reason to interfere with the judgment of the High Court, in other respects pertaining to the charges under Sections 302 and 392, IPC, and the appeal relating to the same is dismissed.