Ram Bharosey vs State Of Uttar Pradesh on 25 February, 1954

Equivalent citations: AIR1954SC704, AIR 1954 SUPREME COURT 704

JUDGMENT

Venkatarama Ayyar, J.

1. This is an appeal by special leave against the judgment of the High Court of Allahabad. confirming the conviction of the appellant under Section 302, I. P. C. and the sentence of death passed on him by the Sessions Judge, Unnao. The charge against the appellant was that on the night of the 26th May 1952 he murdered his father, Manna and his stepmother, Kailasha, There was no direct evidence connecting him with the offence. The only question is whether the circumstantial evidence in the case is sufficient to sustain the conviction.

2. The appellant had become divided from his father some four years prior to the occurrence, and was living apart in another house separated from that of his father by a gonda. On the morning of the 27th May 1952 both Manna and Kailasha were found dead lying amidst blood with multiple injuries on their bodies. The matter was reported to the chaukidar, P. W. 1, who made the first information report, Exhibit P-1.

Therein he stated: "Bitter feelings existed between Manna and his son Ram Bharosey since long. I think that Ram Bharosey certainly has his hands in this murder."

The station officer, P. W. 18, went to the scene at about 7-30 a.m., and prepared the inquest reports. The appellant who was missing from his house was arrested by the constable P. W. 13, while going to a village called Gonda and brought back to the place. He was then wearing a dhoti which was blood-stained. That was seized, and is Exhibit VII in the case. On being interrogated by P. W. 18, the appellant took him to his house, went into the 'bhusa kothri', brought out from it three silver ornaments, a taria a pachhela and kare, and a gandasa, and delivered them to him. They were all blood-stained.

These articles were sent to the Serologist for examination, and he reported that while the blood on the pachhela had disintegrated and could not be identified, that on the taria, kare and gandasa was human blood. (Vide Exhibits P-28, items 100, 101, 102 and 107). After further investigation, the police charge-sheeted the appellant under Section 302, I. P. C., and the Courts below have held that the evidence, though circumstantial, was sufficient to convict him.

3. The correctness of this conclusion was assailed by the appellant firstly on the ground that inadmissible evidence had been admitted, and that that had vitiated the finding; and secondly on the ground that there had been misdirections in the appreciation of certain pieces of evidence, and if they were excluded, there was not sufficient legal evidence to convict the appellant. The first

contention has reference to certain statement which the appellant is alleged to have made to his wife. She, was examined on behalf of the prosecution as P. W. 2, as she deposed as follows:

> "I awoke in the morning and saw that my husband was coming down the roof. Thereafter he went inside the Bhusa Kothri. He came out of the Bhusa Kothri and had a bath on the 'nabdan' after becoming naked. After this he wore on the same dhoti, which he was wearing before taking his bath. He sat at home after his bath and said to me that he would give me Chail Choori, Lachha, Kara and Zangir.....I had asked him where he had gone at about 'moonhandherey', and he replied that he had gone to the middle house in order to get cheez."

The middle house referred to in this deposition is the house in which Manna was living. The argument of the appellant is that his statements to P. W. 2 that he would give her jewels, and that he had gone to the middle house to get them were inadmissible under Section 122 of the Evidence Act, being communications made to his wife. This is plainly so, and the Courts below ought not to have taken this evidence into consideration.

4. It was next argued that the learned Judges had misdirected themselves in holding that the fact that the dhoti which the appellant was wearing at the time of his arrest was. Blood-stained was proof that he had participated in the crime. It was contended that before an accused could be convicted on purely circumstantial evidence, it must be of such a character as to exclude all possibility of the accused being innocent, and that that could not be said of the bloodstains on the dhoti, because the appellant stated when examined under Section 342 of the Criminal Procedure Code that, stricken with grief, he fell on the dead body of his father, and that the dhoti became blood-stained then.

That explanation finds support in the evidence of P. W. 2, and cannot be brushed aside as improbable, and this circumstance: cannot therefore be taken as unequivocal evidence that the appellant had committed murder. This evidence should also have been excluded from consideration.

5. It was then contended that the Courts, below were in error in holding that the production of the ornaments, the taria, pachhela and kare by the appellant was evidence that, he had committed murder, that that would at the most raise only a presumption that the appellant had committed theft of those ornaments, or that he had received them after they were stolen with the knowledge that they were stolen, and that it did not necessarily lead t6 the inference that he had committed murder. Reliance was placed on the decision of this Court in Criminal Appeal No. 99 of 1952 (SC) (A), wherein in setting aside a conviction under Section 302 for murder based solely on the production by the accused of a gold 'kanthi and a silver plate (tashak) belonging to the deceased, and substituting therefore a conviction under Section 380, I. P. C. for theft in a dwelling house, this Court observed after reviewing the authorities : "In our judgment, no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances' may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer." It will be noticed that the question whether the unexplained possession of the articles by

the accused would be evidence of participation in murder was held to be one of fact turning on all the circumstances of the case, and in that case, the two articles were produced by the accused, one on 13-1-1948 and the other on 18-1-1948, whereas the deceased had been murdered the night between 31-12-1947 and 1-1-1948, and there was no other circumstance to connect the accused with participation in the murder. We have therefore to examine the facts and circumstances established in this case, and determine whether they are such as to fix the appellant with the guilt of murder.

6. Firstly, there is the evidence of P. W. 2 that the accused was seen in the early hours of the 27th May 1952 while it was still dark, coming down the roof of his house, that he went to the bhusha kothri and came out again and had a bath and put on the dhoti again. This is not inadmissible under Section 122, as it has reference to acts and conduct of the appellant and not to any communication made by him to his wife. Secondly, there is the fact that among the articles delivered by him to P. W. 18 at the time of the investigation on the morning of the 27th was a blood-stained gandasa.

In answer to a question under Section 342 the accused denied that he handed over the gandasa to P. W. 18. But this fact is proved beyond all doubt by the recovery report, Exhibit P-VI and the evidence of P. Ws. 12, 14 and 18. Thirdly, when the ornaments were produced by the appellant on the morning of the 27th they were in a blood-stained condition. This is a feature which distinguishes the present case from Criminal Appeal No. 99 of 1952 (SC) (A). That the accused might have committed theft or received stolen property with the knowledge that it was stolen and had not committed murder was a possible view to take on the facts of that case, because the recovery was several days after the death of the deceased.

But here the appellant had disappeared from his house even before 7-30 a.m., and when he was brought back under arrest, he produced the articles from the bhusha kothri. He should therefore have got possession of the articles before he left the house; and seeing that the inquests were made shortly after dawn and not late in the day as in Criminal Appeal No. 99 of 1952 (SC) (A), it is difficult to accept the view contended for by the appellant that he might have been merely a receiver of stolen property.

It may also be mentioned that in his examination under Section 342 the appellant denied that he delivered these articles to P. W. 18. That that statement is false is proved by Exhibit P-VI and the evidence of P. Ws. 12, 14 and 18. The presence of the blood-stain on the jewels taken along with the circumstance that the appellant was found getting down the roof of the house in the early hours and with the recovery of the blood-stained gandasa from him is, in our opinion, sufficient to connect him with the offence of murder.

It should be added that there is also ample evidence that the relations between the appellant and his father were not cordial, that there were frequent quarrels between them resulting in a partition, and that differences continued even thereafter. (Vide the evidence of P. Ws. 1, 12 and 14). That evidence was accepted by the courts below as furnishing a motive for the crime. The above circumstances taken cumulatively appear to us to be sufficient to sustain the finding of the courts below that the appellant had committed the offence of murder.

7. We accordingly confirm his conviction under Section 302, I. P. C. and the sentence of death passed on him, and dismiss the appeal.