Sirajuddin Alias Siraj vs State Of Karnataka on 3 September, 1980

Equivalent citations: AIR1981SC113, 1980CRILJ1498, (1980)4SCC375, AIR 1981 SUPREME COURT 113, 1980 CRI APP R (SC) 359, 1980 SCC(CRI) 964, 1980 CRI APP R (SC) 859, (1981) MAD LJ(CRI) 291, (1981) 1 SCJ 447, 1980 (4) SCC 375

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Bench: A.C. Gupta, E.S. Venkataramiah, R.S. Sarkaria

JUDGMENT

R.S. Sarkaria, J.

1. This appeal is directed against a judgment, dated December 17, 1973, of the High Court of Karnataka, whereby it reversed the acquittal of the appellant and convicted him under Section 302, Penal Code. Briefly stated, the facts of the prosecution case were as follows:

> Sirajuddin alias Shri appellant and three others (who will be referred to by their original numbers as accused in the trial Court), namely, Altaf (accused 1) Sardar (accused 3) and Jaweed (accused 4) were tried for the murder of Smt. Khrushuddinnisa, wife of Dawood Sab. Accused 2 and 3 are the sons of different sisters of this Dawood Sab. Dawood Sab, his wife (the deceased) and P. W. 2 were residing in a house in Mohammedan Block, Malleswaram. These three were the only inmates of that house. Accused 3 and 4 were working in a laundry. Appellant herein who is the original accused 2, is a book-maker runner.

2. For about one month prior to March 3, 1972, these four accused planned to murder the deceased and take away her cash and gold ornaments from her house. They were aware that Dawood Sab used to go away every morning from his house to attend to his work as Electrical Contractor and return by 9 p. m. and that P. W. 2 also used to go to Nijalingappa College every morning and return by 5-30 p. m. or so. The story further proceeds that these four accused persons were frequently meeting in a room in Everest Hotel and some other places to hatch their plan.

3. In the morning of March 3, 1972, which is the date of occurrence, Dawood Sab went to the Fuel Depot of Keshava, where P. W. 4, and P. W. 15 were working as fuel cutters and placed orders for supply of fuel to his house. At about 2-30 p. m., Dawood Sab again went to the Fuel Depot and paid the splitting charges and went away to attend to his work as Electrical Contractor. In compliance

with the order placed by Dawood Sab, P. W. 4 and P. W. 15 took the fuel wood to Dawood Sab's house, but found the door closed. P. W. 4 called: 'Amma Amma'. Thereupon, accused 1 opened the door and asked P. W. 4 to store the fuel at a place shown by accused 1. P. W. 15 and P. W. 4 accordingly unloaded the fuel at that place and went back to the Fuel Depot. Accused 1 closed the door.

4. At about 4-15 p. m., P. W. 14 (Abdul Sattar), whose house is situated almost in front of the house of Dawood Sab, across the lane, saw all these four accused persons emerging out of the house of Dawood Sab and going away towards the railway line. P. W. 1, an auto rickshaw driver, who had come to the locality, heard the outcry of a girl "Murder Murder". That girl had just come out of the house of Dawood Sab. P. W. 1 went into the house and found Smt. Khrushuddinnisa lying murdered, P. W. 1 then went to Malleswaram Police Station and lodged the information (Ex. P-l). The Police Sub-Inspector (P. W. 46) after registering the case reached the spot at about 5-15 p. m. Investigation commenced. The Circle Inspector (P. W. 47) also came and recorded the statements of P. W. 4, P. W. 14 and P. W. 15 and suspected these four accused persons. He directed his staff to trace and apprehend the accused. Accused 1 was arrested at 5-30 p. m. on March 7, 1972 and the appellant (accused 2) on March 7, 1972. He was interrogated by the Police Inspector. After making the statement (Ex. P-42), the appellant led the police in the presence of witnesses to the shop of the pawn-broker (P. W. 29), and asked the latter to produce the Articles and jewels that he had pledged with him (P. W. 29). Accordingly, P. W. 29 produced a gold chain with pendent (M.O. 4), gold chain (M.O. 5), gold chand-thara (M.O. 7), a pair of golden earrings (M.O. 8), a pair of golden jumkies (M.O. 9), a pair of gold bangles (M.O. 11), a single gold bangle (M.O. 12) and a pair of golden metal (M.O. 28). These Articles were seized under the Panchanama (Ex. P-32)-The Police Inspector, also, took into possession the pawn-ticket and the pawn receipts and prepared the seizure memo in respect thereof. Accused 2 also led the police to his house and produced there from Ex. P. 26, the receipts issued by P. W. 26 and a sandal (M.O. 50) which appeared to be stained with blood. These Articles were sealed under Panchanama (Ex. P-26).

5. Similarly, accused 1, after giving the information (Ex. P-61) caused the production of a shirt, pants, etc. from Room No. 35 of the Hotel. Accused 3 is said to have caused the discovery of a knife from a bush.

6. After investigation, all the four accused were prosecuted and put on trial. The Additional Sessions Judge acquitted all of them. The State carried an appeal to the High Court which maintained the acquittal of accused 1, accused 3 and accused 4 but reversed the acquittal of accused 2 and convicted him as aforesaid. Hence this appeal.

7. Shri P. Dutta, appearing as amicus curiae for the appellant, has carefully taken us through the material portions of the record. It is submitted by him that this was not a case where the High Court should have reversed the acquittal.

8. On the other hand, Shri Netar, appearing for the State, has tried to support the judgment of the High Court.

9. It may be noticed that there was no eye-witness of the occurrence. The evidence against the accused was entirely circumstantial. According to the prosecution case, the culprits did not remove any jewel or other Article from the body of the victim. Its case was- that Rs. 2,500/-in cash and some jewels belonging to the deceased which had been kept by her in an almirah in another room of that house, had been removed by the miscreants. Most of these ornaments are, said to have been recovered from the pawnbroker (p. W. 29). Excepting a bangle these jewels were identified by P. W. 3, (the daughter), as belonging to the deceased. Thus, the only circumstance which the prosecution had tried to establish in order to connect the appellant with the murder, was the recovery of the aforesaid jewels of the deceased from the Pawn-broker Kavalchand (P. W. 29).

10. The evidence of the pawn-broker was to the effect that accused 2 was his old customer and, therefore, he knew him well. On March 3, 1972 at about 6 p.m., accused 2 (Siraj) accompanied by accused 1 came to his shop. Accused 2 brought some jewels in a handkerchief. "They offered" to sell the same to the witness. The witness told the appellant that he would not purchase the jewels for cash, but only receive them on pledge. Accused 2 then went to the side of the shop where accused 1 was standing and after consulting his companion, returned and pledged the gold ornaments and other Articles with the.witness for Rs. 1,500/-. The witness received the jewels, weighed them and made the entry in his pawnbook (Ex. P-31). Ex. P-31(a), dated March 3, 1972, was the counter foil of the receipt which the witness gave to Siraj, appellant. On March 3, 1972, Siraj also redeemed his watch which he had pledged for Rs. 115/- with the witness on February 23, 1972. The witness deducted that amount of Rs. 115/- from Rs. 1500/- which was the amount advanced by him to the accused Siraj under the document, Ex. P-81(a). The witness paid Rs. 385/-in cash to the appellant, and for the balance of Rs. 1,000/-, he telephoned to his elder brother's son, Mangilal, and directed the latter to pay Siraj, appellant Rs. 1,000/-. The witness told Mangilal that the appellant would be accompanied by Sheik Ebrahim, an employee of the witness. The accused and Sheik Ebrahim then went to the shop of Mangilal and the latter paid Rs. 1,000/- to Siraj, and informed the witness about this payment, on telephone. The appellant, accused 1 and Sheikh Ibrahim then returned to the shop of the witness. Sheikh Ibrahim informed the witness that the money had been paid to Siraj. Both the accused then went away. The witness further identified the gold jewels which, according to him, were pledged with him by the appellant, and also stated how he had produced the same along with the document executed by Siraj before the police at the instance of Siraj who was then in custody. He identified his signature on the Mahazar (Ex. P-31).

11. Mr. Dutta has severely criticised the evidence of this witness on the ground that he is a licensed money- lender by profession and maintains account-books. In spite of this, as admitted by the witness in cross-examination, he did not make any entry with regard to the payment of Rs. 1,000/- in his Books, to the appellant. It is argued that it was, highly hazardous to accept the ipse dixit of such a witness who appeared to be a person of questionable character, under the influence of the police, particularly when his evidence as against Altaf (accused I) had not been accepted by both the Courts below.

12. We find a good deal of force in this contention. We have gone through the evidence of the witness. It is to the effect that both Altaf and Siraj accused came together to him to pawn the jewels and raise loan on the security thereof. The witness is a licensed pawn-broker who was required to

maintain proper accounts in regard to all the loan transactions entered into by him. But in this case, he did not make any entry in his account-books or anywhere else regarding the lending of Rs. 1,000/- on the security of the ornaments to accused 2. Mangilal, also, did not make any entry in his account-books or elsewhere regarding the alleged payment of Rs. 1.000/- to the appellant.

13. In his examination at the trial, accused 2 had denied that he had ever pledged these jewels with P. W. 29. After comparing the signature of accused 2 on his statement recorded at the trial under Section 342, CrPC, with those purporting to be his in duplicate on the pawn ticket-book (Ex. P-31(a) and Ex. P-31(b)) the trial Judge doubted if the signatures alleged to be of the appellant on these documents produced by the pawn-broker (P. W. 29) were of accused 2. He also noted that the prosecution made no attempt to get these signatures on the documents (Ex. P-31(a) and Ex. P-31(b)) examined and compared with the standard or admitted signatures of accused 2 by a handwriting expert. The trial Judge further suspected that the witness was a person who was frequently receiving stolen property. This suspicion was based on the admission wrung out from the witness in cross-examination that he had been previously involved in a number of cases by the police. The trial Judge further noticed that the account-books of the witness were not seized by the police. According to P. W. 29, it was Raj Mul who used to make the entries in his pawn-book. This Raj Mul, who was the scribe of the entries in question was not examined by the prosecution. Sheikh Ibrahim, the employee of the witness, who had allegedly accompanied accused 2 to the shop of Mangilal, was also not examined by the prosecution. The trial Judge further noticed that the particulars of the jewels had not been noted anywhere in the documents (Ex. P-31(a) and Ex. P-31(b)). He further noticed that before the police, P. W. 29 had stated that e learnt about the identity of accused 1 (Altaf) there and then from accused 2. In variance with it, at the trial P. W. 29 stated that he knew accused 1 for several weeks prior to that date because the father of accused 1 was his old customer. For these reasons, the trial Judge found it "impossible to accept the testimony of P. W. 29," when he stated that accused 2 and accused 1 had come and pledged the gold Articles with him on March 3, 1972 after the murder.

14. Thus, in the circumstances of the case, when the oral testimony of P. W. 29 in regard to the payment of Rs. 1,000/-as loan to the appellant on the security of the jewels, was not supported by any entry in his account-books, and his evidence was otherwise, not free from infirmities, the opinion of the trial Judge to the effect that the witness was unreliable, could not be lightly ignored, much less could it be said to be manifestly erroneous or palpably wrong. It is well settled that if the view of the evidence taken by the trial Court is reasonably possible, the High Court should not, as a rule of prudence, disturb the acquittal. We are therefore, of opinion that in the circumstances of this particular case, the High Court was not justified in reversing the acquittal of the appellant.

15. These, then, are the reasons in support of our Order, dated August 21, 1980, by which we had allowed Sirajuddin's appeal and acquitted him of the charge leveled against him.