Earabhadrappa Alias Krishnappa vs State Of Karnataka on 11 March, 1983

Equivalent citations: 1983 AIR 446, 1983 SCR (2) 552, AIR 1983 SUPREME COURT 446, 1983 (2) SCC 330, 1983 (1) SCC 330, 1983 SCC(CRI) 447, 1983 CRI APP R (SC) 232, (1983) SCCRIR 251, (1983) 1 CRILC 550, (1983) 1 CRIMES 784, (1983) 2 KANT LJ 1

Author: A.P. Sen

Bench: A.P. Sen, E.S. Venkataramiah

PETITIONER:
EARABHADRAPPA ALIAS KRISHNAPPA

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT11/03/1983

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1983 AIR 446 1983 SCR (2) 552
1983 SCC (2) 330 1983 SCALE (1)254
CITATOR INFO :
R 1985 SC1224 (4)
R 1988 SC1275 (20)
R 1989 SC 79 (10)
R 1989 SC1890 (31)
R 1991 SC 917 (8)
F 1992 SC2045 (20)

ACT:

A. Evidence-Circumstantial evidence-Nature of proof required for conclusion of guilt and conviction.

B. Indian Evidence Act-Section 27, conditions prerequisite, therefor- 'Fact' and "Fact discovered" explained.

C. Presumption under section 114 of the Indian Evidence Act-Nature of presumption under illustration (a) explained.

D. Sentencing and duty of the Court in appropriate case of conviction- Interference with sentence in criminal appeal by the Supreme Court-Binding nature of Article 141 of the Constitution.

HEADNOTE:

The appellant, Earabhadrappa hailing from village Mattakur, under the false name of Krishnappa and with a false address obtained employment of service as a domestic servant under PW 3 Makrappa, the husband of the deceased Bachamma, who was found murdered by strangulation on the night between March 21-22, 1979 after having been robbed of her jewellery, clothes, etc. Based on circumstantial evidence, the appellant, who was found missing right from the early hours of the 22nd March, 1979 and who was apprehended a year later on March 29, 1980, was charged with and convicted for the offences under Sections 302, 392 IPC respectively. He was sentenced to undergo rigorous imprisonment for a term of 10 years under section 392 IPC and to death under Section 302. In appeal, the High Court confirmed both the conviction and sentences imposed upon him. Hence the appeal by special leave. Dismissing the appeal and modifying the sentence, the Court.

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HELD: 1.1 To sustain a charge under s. 302 of the Indian Penal Code,the mere fact that the accused made a statement leading to the discovery of the stolen articles under s. 27 of the Evidence Act, by itself is not sufficient. There must be something more to connect the accused with the commission of the offence. The circumstances relied upon by the prosecution in the instant case led to no other inference than that of guilt of the accused as murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under illustration (a) to s.-114 of the Evidence Act is that not only the accused committed the murder of the deceased but also committed robbery of her gold ornaments which formed part of the same transaction. The prosecution had led sufficient evidence to connect the accused with the commission of the crime. [561 G-H]

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1.2 For the applicability of s. 27 of the Evidence Act, two conditions are pre-requisite, viz: (1) Information must be such as has caused discovery of the fact, and (2) The information must "relate distinctly" to the fact discovered." Under s. 27, only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word "fact" means some concrete or material fact to which the information directly relates. [549A, 550B-C]

Pulukuri Kottayya v. Emperor, LR [1947] IA 65; Jaffer

Hussein Dastgir V. State of Maharashtra, [1970] 2 S.C.R.332, referred to.

2.1 The nature of presumption under illustration (a) to s. 114 of the Evidence Act from recent and unexplained possession must depend upon the nature of the evidence adduced. As to the meaning of "recent possession", it was observed: No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. The fact that a period of one year had elapsed between the commission of the crime and the recovery of the ornaments on a statement made by the accused leading to their discovery under s. 27 of the Evidence Act immediately upon his being apprehended by the police, cannot be said to be too long particularly when the accused had been absconding during that period and the stolen articles were such as were not likely to pass readily from hand to hand. There was no lapse of time between the date of his arrest and the recovery of the stolen property. The accused had no satisfactory explanation to offer for his possession thereof. On the contrary, he denied that the stolen property was recovered by him. The false denial by itself is an incriminating circumstance. [56 H, 562 A-E]

3. In Bachan singh V. State of Punjab, [1980] 2 SCC 684, the Supreme Court, moved by compassionate sentiments of human feelings has ruled that sentence of death should not be passed except in the "rarest of rare" cases. The result now is that capital punishment is seldom employed even though it may be a crime against the society and the brutality of the crime shocks judicial conscience. The test laid down in Bachan Singh's case is unfortunately not fulfilled in the instant case. That being so, the Court is constrained to commute the sentence of death passed on the appellant into one for imprisonment for life. [562 F-H, 563 A]

Observation of Dissent

[A sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders. Failure to impose death sentence in such grave cases where it is a crime against society-particularly in cases of murders committed with extreme brutality will bring to naught the sentence of death provided under Section 302 of the Penal Code.] [563 A-B]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 669 of 1982.

Appeal by Special leave from the judgment and order dated the 29th October, 1981 of the Karnataka High Court in B.D. Sharma (A.C) for the Appellant.

M. Veerappa and Ashok Kumar Sharma for the Respondent. The Judgment of the Court was delivered by SEN, J. Appellant Earabhadrappa @ Krishnappa is under sentence of death and this appeal by special leave is directed against the judgment of the High Court of Karnataka dated October 29, 1981. The Sessions Judge, Kolar by his judgment dated March 21, 1981 convicted the appellant under s. 302 of the Indian Penal Code for having committed the murder of one Smt. Bachamma, wife of P.W. 3 Makrappa and sentenced him to death. On reference, the High Court has upheld the conviction of the appellant under s. 302 of the Indian Penal Code and confirmed the death sentence passed on him. The appellant has also been convicted by the learned Sessions Judge under s. 302 of the Indian Penal Code for having robbed the deceased of her gold ornaments and clothes and sentenced him to undergo rigorous imprisonment for a term of 10 years.

Upon the evidence presented at the trial it transpired that on the night between March 21 and 22, 1979 the deceased Smt. Bachamma was throttled to death at her house in village Mallur and relieved of her gold ornaments. On the night in question, the deceased Smt. Bachamma as usual served dinner to the family members. After taking his meals, P.W.3 went upstairs to his bed-room, her mother-in-law P.W.2 Smt. Bayamma went to the 'Kana' to keep a vigil while the deceased slept in the hall adjoining the kitchen and her son P.W.4 G.M. Parkash slept in the courtyard of the house. The appellant who had recently been employed as a servant by P.W. 3 slept in a room on the ground floor where the silk cocoons used to be reared and kept. On the 22nd morning at about 6 a.m when P.W.4 went to wake up his mother he found that she was lying dead and he therefore went upstairs and called his father P.W.3. They saw that the deceased had been strangulated to death and relieved of her ornament. Her gold mangalsutra and gold-rope chain were missing so also the gold nose-ring and gold ear-rings. On the right side of the bed was lying the screw of the missing gold nose-ring. There was also lying a towel (M.O. 1) which had been given by P.W. 3 to the appellant for his use, and apparently the deceased has been strangulated with the towel. The iron safe and almirah kept in the hall were found open and bunch of keys which the deceased carried with her was found missing. All the jewellery and cash of Rs. 1700/- kept in the iron safe and six silk sarees kept in the almirah were also found missing. There was a search made for the appellant but he was not to be found either in the house or in the village and he had therefore absconded with the jewellery and valuables.

Intelligence report received by P.W. 26 Abdul Mazeed, Circle Inspector of Police who had taken over the investigation from P.W. 25 Sreenivasa Rao, Station officer Shidalaghatta on 28 March 1980 revealed that the appellant was seen moving in Hosakote and Anekal Taluks and accordingly P.W. 26 along with his staff searched for the appellant in both the taluks but he could not be found, and therefore he encamped at Anekal on that day. On March 29, 1980 he got definite information that the appellant was seen in village Hosahally in Hosakote Taluk and was able to apprehend him at that village at about 2 p,m. On being taken into custody, the appellant made a statement Ex. P-35

leading to the discovery of the ornaments and clothes belonging to the deceased from several places. He first led P.W. 26 to the house of his sister P.W. 8 Smt. Yallamma in village Gudisagarapelly leading to the recovery of four silk sarees (M. Os. 11 to 14) which were seized under seizure memo Ex. P-4. From that place, he took him to village Mattakur, from where he hails, to the house of one Dasappa leading to the recovery of the screw of the missing gold nose-ring (M.O. 5) which was seized under seizure memo Ex. P-7. Thereafter, he took P.W. 26 to the house of P.W. 12 Guruvareddy leading to the recovery of a silk saree (M.O.15) which was seized under seizure memo Ex. P-5 and then to the house of P.W. 13 Narayanareddy leading to the recovery of the gold chain (M.O. 6) and a pair of gold bangles (M.OS. 7 & 8) which were seized under seizure memo Ex. P-6. The very day he took P.W. 26 to the house of P.W. 15 Chinnamma in Village Sollepura leading to the recovery of a silk saree (M.O.10) which was seized under seizure memo Ex. P-8. On the next day i.e. on the 30th the appellant took P.W. 26 to the house of P.W. 21 Ramachari in village Hosur who led them to the shop of P.W. 22 Palaniyachar leading to the recovery of a pair of gold earrings (M.Os. 3 & 4) and a gold ingot (M.O.

9) which were seized under seizure memo Ex. P-15. The seized articles have all been identified by P.W. 3 Makrappa and his mother P.W. 2 Smt. Bayamma and son P.W. 4. G.M. Prakash as belonging to the deceased.

The appellant abjured his guilt and denied the commission of the alleged offence stating that he had been falsely implicated. He also denied that he ever made the statement Ex. P-35 or that the stolen articles were recovered as a direct consequence to such statement.

In cases in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and the fact and circumstances should not only be consistent with the guilt of the accused but they must be in their effect as to be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence. The chain of circumstances brought out by the prosecution are these:

> 1. The appellant who hails from village Mattakur was a stranger to village Mallur ostensibly in search of employment. He falsely stated his name to be Krishnappa and gave a wrong address stating that he belonged to a nearby village. The securing of employment by giving out false name and wrong address shows that he had some oblique motive in his mind. He obtained employment with p.w. 3 and gained his confidence and was allowed to sleep in a room on the ground floor where the silk cocoons were kept. He thus became familiar with the places where the inmates of the house used to sleep and where the jewellery, cash and other valuable belongings used to be kept i.e. in the iron safe and almirah kept in the hall adjoining the kitchen.
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> 2. It appears that the appellant had pre-planned the commission of robbery. Earlier in the evening he went to P.W. 6 Narayanappa and borrowed Rs. 2 and thereafter went to the toddy shop of P.W. 7 Smt. Anasuyamma and took liquor. On the night in question he reached the 'kana' at about 9 p.m. and was reprimanded by P.W. 2 for

being late. Upon reaching the house he went upstairs in an inebriated state and told P.W. 3 that he no longer wanted to serve and he should settle his accounts.

P.W. 3 told him to come in the morning and take his wages. It therefore appears that the appellant had made up his mind to leave the village.

3. On the next morning i.e. on the 22nd at about 6 a.m. it was discovered that the deceased Smt. Bachamma had been strangulated to death. The gold ornaments on her person and in the iron safe had been stolen. There was a search made for the appellant but he was not to be found anywhere. Near the dead body of the deceased was lying the blood-stained towel (M.O. 1) given by P.W. 3 to the appellant for his use with which the deceased had apparently been strangulated. The appellant had therefore absconded from the scene of occurrence after committing the murder and robbery.

4. After the appellant had suddenly disappeared from the house of P.W. 3 with the gold ornaments and other valuables, there was a frantic search made by P.W. 25, Sreenivasa Rao and P.W. 26 Abdul Mazeed at various places and he was absconding till March 29, 1980 until he was apprehended by P.W. 26 at village Hosahally in Hosakote taluk at about 2 p.m. On being arrested after a year of the incident on March 29, 1980, the appellant made the statement Ex. P-35 leading to the recovery of some of the stolen gold ornaments of the deceased and her six silk sarees from different places and they have all been identified by P.Ws. 2, 3 and 4 as belonging to the deceased.

5. The appellant falsely denied the recoveries and could offer no explanation for his possession of the stolen articles.

6. It appears from the prosecution evidence that after the commission of the murder and robbery, the appellant had with him the incriminating articles and taken them to his native place Mattakur where he disposed them of to several persons. The testimony of P.W. 26 reveals that in consequence of the information given by the appellant he recovered the missing screw of the gold nose ring (M.O.5) from one Dasappa in village Mattakur, that of P.W,12 Guruvareddy that appellant had sold to him the silk saree (M.O.15) for Rs. 150/-, and that of P.W.13 Narayanareddy discloses that the appellant had sold to him a gold rope chain (M.O.6) and a pair of gold bangles (M.Os. 7&8) for Rs. 2000/-, The testimony of P.W.8, Smt, Yallamma, sister of the appellant, hailing from village Gudisagarapally show that the appellant had given her four silk sarees (M.Os.11 to 14), and that of P.W.15 Smt. Chinnamma of village Sollepura, who was known to the appellant from before, shows that the appellant gave her the silk saree for Re. 1/- when she refused to take his gratis. The testimony of P.W. 21 Ramachari of village Hosur shows that appellant brought with him a pair of gold ear- rings and a gold ingot and wanted to sell them saying that he was hard-pressed. This witness took him to P.W. 22 Palaniyachar and the appellant sold the gold ingot (M.O.9) for Rs. 330/-and a pair of gold ear-rings (M.Os. 3&4) for Rs. 500/-.

From this evidence it is apparent that the appellant while he was absconding moved from place to place trying to dispose of the stolen property to various persons.

The learned Sessions Judge as well as the High Court have come to the conclusion that the circumstances alleged have been fully proved and they are consistent only with the hypothesis of the guilt of the accused. We are inclined to agree both with their conclusion and the reasoning. The chain of circumstances set out above establishes the guilt of the appellant beyond all reasonable doubt There is no controversy that the statement made by the appellant Ex. P-35 is admissible under s. 27 of the Evidence Act. Under s. 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word 'fact' means some concrete or material fact to which the information directly relates. As explained by Sir John Beaumont in Pulukuri Kottaya v. Emperor (1):

> "It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced: the fact discovered embraces the place from which the object is produced, and the knowledge of the accused as to this, and the information given must relate distinctly to this fact".

For the applicability of s. 27 therefore two conditions are prerequisite, namely (1) the information must be such as has caused discovery of the fact; and (2) the information must 'relate distinctly' to the fact discovered. In the present case, there was a suggestion during the trial that P.W. 26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that statement Ex. P-35 was prepared after the recoveries had been made and therefore there was no 'fact discovered' within the meaning of s. 27 of the Evidence Act. We need not dilate on the question because there was no suggestion made to P.W. 26 during his cross- examination that he had known the places where the incriminating articles were kept. That being so, the statement made by the appellant Ex. P-35 is clearly admissible in evidence.

In Jaffer Hussein Dastgir v. State of Maharasetra, (2) the portion of the statement with reference to which this question arose read as follows:

> "I will point out one Gaddi alias Ramsingh of Delhi at Bombay Central Railway Station at III Class Waiting Hall to whom I have given a Packet containing diamonds of different sizes more than 200 in number."

The only question for decision in that case before the Court was whether the aforesaid statement made by the accused was admissible in evidence by virtue of s. 27 of the Evidence Act, the diamonds having been found with the person named. In the facts of that case the Court came to the conclusion that the police had already known that the diamonds were with the person named by the accused with the result that there was no fact discovered by the police as a result of the statement made by the accused. However, it was held clearly that, but for such knowledge of the police, the aforesaid statement of the accused would have been admissible in evidence.

In the present case, some of the material portions in the statement Ex. P-35 which distinctly relate to the fact discovered read:

> "If I am taken to Gudisagarapally, I shall get the four silk sarees."

At village Gudisagarapally the appellant took P.W. 26 to the house of his sister P.W. 8 Smt. Yallamma who produced four silk sarees (M.Os. 11 to 14) which were seized under seizure memo Ex. P-4. P.W. 8 Smt. Yallamma states that she is the sister of the appellant and that he had given to her the four silk sarees. It was suggested that the police had not only planted P.W. 8 as a sister of the appellant but also the four silk sarees in question, but there is no basis for this assertion. Then the statement Ex. P-35 recites:

> "If I am taken to native place Mattakur, I shall get one gold nose ring without screw .. one silk saree..... one gold rope chain and one pair of gold ear rings."

At village Mattakur from where he hails, the appellant took P.W. 26 to the house of one Dasappa leading to the recovery of the screw of the missing gold nose ring (M.O. 5) which was seized under seizure memo Ex. P-7. Thereafter, he took P.W. 26 to the house of P.W. 12 Guruvareddy leading to the recovery of a silk saree (M.O. 15) which was seized under seizure memo Ex. P-5. He then took P.W. 26 to the house of P.W. 13 Narayanareddy leading to the recovery of a gold rope chain (M.O. 6) and a pair of gold bangles (MOs. 7&8) which were seized under seizure memo Ex. P-6. The prosecution could not examine Dasappa because he was dead during the trial. P.W. 12 stated that the appellant had sold him a silk saree for Rs. 150 while P.W. 13 stated that he had sold him a gold rope chain and a pair of gold bangles for Rs. 2000/-. The statement Ex. P-35 contains similar recitals leading to the recovery of the other incriminating articles, viz (1) A silk saree (M.O.10) given by the appellant to P.W. 15 Smt. Chinnamma of village Sollepura whom he knew from before, for a token price of Re. 1/ -; (2) A pair of gold ear rings (M.Os. 3&4) and a gold ingot (M.O.9) from P.W. 22 Palaniyachar which he had purchased from the appellant for Rs. 830.

Apart from the question of sentence, two other contentions are raised, namely: (1) There is no proper identification that the seized ornaments belonged to the deceased Smt. Bachamma; and (2) the presumption arising under illustration (a) to s. 114 of the Evidence Act, looking to the long lapse of time between the commission of murder and robbery and the discovery of the stolen articles, should be that the appellant was merely a receiver of the stolen articles and therefore guilty of an offence punishable under s. 411 of the Indian Penal Code and not that he was guilty of culpable homicide amounting to murder punishable under s. 302 as well. We are afraid, none of these contentions can prevail.

Our attention was drawn to the testimony of P.W. 13 Narayanareddy who, during his cross-examination, stated that ornaments similar to the gold rope chain and the pair of gold bangles were available everywhere and that other ornaments were also in his house. From this it is sought to be argued that the seized ornaments cannot be treated to be stolen property as they are ordinary ornaments in common use. Nothing really turns on this because P.W. 2 Smt. Bayamma, mother-in-law of the deceased, her husband P.W. 13 Makarappa and son P.W. 4 G.M. Prakash have categorically stated that the seized ornaments belonged to the deceased Smt. Bachamma. There is no reason why the testimony of these witnesses should not be relied upon particularly when P.W. 2 Smt. Baymma was not cross-examined at all as regards her identification of the seized ornaments and clothes as belonging to the deceased. Even if the seized ornaments could be treated to be ornaments in common use, this witness could never make a mistake in identifying the seized six silk

sarees (M.Os. 10 to 15). It is a matter of common knowledge that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family. That apart, the description of the silk sarees in question shows that they were expensive sarees with distinctive designs. There is no merit in the contention that the testimony of these witnesses as regards the identity of the seized articles to be stolen property cannot be relied upon for want of prior test identification. There is no such legal requirement.

This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under illustration (a) to s. 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction. The prosecution has led sufficient evidence to connect the appellant with the commission of the crime. The sudden disappearance of the appellant from the house of P.W.3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangulated to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by P.W. 26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex. P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments. The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false denial by itself is an incriminating circumstance. The nature of presumption under illustration (a) to s. 114 must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particulary when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property.

Finally, there remains the question of sentence, it was cruel hand of destiny that the deceased Smt. Bachamma met a violent end by being strangulated to death by the appellant who betrayed the trust of his master p.w. 3 and committed her pre-planned cold-blooded murder for greed in achieving his object of committing robbery of the gold ornaments on her person and in ransacking the iron safe and the almirah kept in her bedroom on the fateful night. The appellant was guilty of a heinous crime and deserves the extreme penalty. But we are bound by the rule laid down in Bachan Singh v. State of Punjab (1) where the Court moved by compassionate sentiments of human feelings has ruled that sentence of death should not be passed except in the 'rarest of the rare' cases. The result now is that capital punishment is seldom employed even though it may be a crime against the society and the brutality of the crime shocks the judicial conscience. A sentence or pattern of sentence with fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders. Failure to impose a death sentence in such grave cases where

it is a crime against the society particularly in cases of murders committed with extreme brutality-will bring to naught the sentence of death provided by s. 302 of the Indian Penal Code. The test laid down in Bachan Singh's case (supra) is unfortunately not fulfilled in the instant case. Left with no other alternative, we are constrained to commute the sentence of death passed on the appellant into one for imprisonment for life.

Subject to this modification in the sentence, the appeal fails and is dismissed.

S. R. Appeal dismissed.