Supreme Court of India
Eradu And Ors. vs State Of Hyderabad on 1 November, 1955
Equivalent citations: AIR 1956 SC 316, 1956 CriLJ 559
Author: Bhagwati
Bench: Bhagwati, Sinha
JUDGMENT Bhagwati, J.

1. These are Appeals with special leave against the judgment of the High Court of Hyderabad confirming the convictions and the sentences of transportation for life imposed upon the appellants, accused 1 to 4, by the Court of the Additional Sessions Judge, Medak, in respect of an offence under Section 243, I. P. C. corresponding to Section 302, Indian Penal Code.

2. The accused 1 to 4, along, with one Baldev Muthiah, were charged that they, on or about the 15th day of Isfandar 1359 F. (15th January 1950) at 10 o'clock in the night, abducted one Muneem Lachiah, Telanga, resident of Dognelli, who was at his house, and carried him outside the village where they did him to death, due to enmity, by hitting him with stick and spear and that they took away a silver kardoda and arm kada from his body and that they thereby committed offences punishable under Sections 243 and 330, I. P. C.

3. The learned Sessions Judge convicted the accused 1 to 4 of the offence under Section 243, I. P. C. and sentenced them to transportation for life. The accused 2 was further convicted under Section 337, I. P. C. and sentenced to a term of two years rigorous imprisonment. The sentences of transportation for life were submitted to the High Court for confirmation in accordance with the relevant provision of law in Hyderabad.

The High Court of Hyderabad, in appeal, agreed with the conclusion reached by the learned Sessions Judge and confirmed the conviction of the accused 1 to 4 under Section 243, I. P. C. and the sentences of transportation for life awarded to them by the Court below.

One of the learned Judges of the High Court simply confirmed the sentence tinder Section 243, I. P. C. but another learned Judge held that the accused were guilty of the offences under Sections 243 and 330, Hyderabad Criminal Procedure Code (possibly meaning thereby the A. P. C.) and sentenced each of the accused to undergo life imprisonment on the above charges ill-realising that, in the whole of the judgment with which he agreed, there was not a word to justify the conviction under Section 330, A. P. C.

In substance, the judgment of the High Court came to this that the accused were convicted of the offence under Section 243, A. P. C. and sentenced to undergo life imprisonment in respect of the same.

4. There was no direct evidence of the accused having committed the offence. The whole case rested on circumstantial evidence and that evidence consisted of the testimony of three witnesses, the wife of the deceased P. W. 5, the young son of the deceased P. W. 6 and a neighbour P. W. 7, who deposed that, on the evening of the day in question, all the four accused had gone to the house of the

deceased and accosted him, asking him to accompany them to the well of one Deshmukh.

There was evidence of ill-will between the deceased and the accused in that the accused were alleged to have abducted the deceased a month before the alleged murder and set him at liberty on payment of a ransom of Rs. 350/- and also that the accused had, only three days before, deprived the deceased of a goat belonging to him from, the possession of Kumari Sayiga P. W. 2 and slaughtered it and ate it away and there was consequently a quarrel arising out of the search of the house of accused 1 and 2 made at the instance of the deceased.

Lastly, there were recoveries of the silver kardoda at the instance of accused 2, a white turban and a stick from the house of accused 1 and another stick from the house of accused 3. The silver kardoda was alleged to have been removed from the person of the deceased and buried in a secluded spot which was pointed out by accused 2 and the white turban was alleged to have been stained with human blood.

These were the pieces of circumstantial evidence which, according to the learned Sessions Judge, pointed inevitably to the conclusion that accused 1 to 4 were responsible for his death. The learned Judges of the High Court also were of the opinion that there were no eye-witnesses but a strong motive for the murder and the fact of all the accused having abducted the deceased on the night before the dead-body of the deceased was found were proved and these circumstances led to the conclusion that the accused were the perpetrators of the crime.

5. There is no doubt that the deceased was done to death in a brutal manner and after he was so done to death his dead-body was brought to the doddi or the backyard of his house and was hung there by means of a piece of rope tied round his neck. The theory of suicide was rightly discarded by the Courts below and it was evident on the inquest report as also on the doctor's evidence that the injuries inflicted on the person of the deceased were homicidal injuries. The only question, therefore, which remained to be considered by the Courts below was whether accused 1 to 4 were responsible for those injuries and the consequent death of the deceased.

6. There is also no doubt that accused 1 to 4 had in fact approached the deceased on the evening of that day and accosted him asking him to accompany them to the well of Deshmukh. This fact was proved by the evidence of the witnesses P. W. 5, P. W. 6 and P. W. 7 all of whom were believed by both the Courts below.

7. It could not, however, by itself be enough to connect accused 1 to 4 with the crime. There was no evidence at all of any further movements of accused 1 to 4 or one or more of them nor was there anything to connect them with the crime except the recoveries made at their instance as evidenced by the various panchnamas which were proved before the learned Sessions Judge.

These panchnamas were criticised by the learned counsel for the appellants as containing evidence which was clearly inadmissible inasmuch as they contained, statements alleged to have been made by accused 1, 2 and 3 in regard to their participation in the crime.

Discarding these pieces of inadmissible evidence, therefore, there were indications of accused 1, 2 and 3 having pointed out the several articles which were recovered at their instance, as stated in the respective panchnamas and they proved that the silver kardoda was recovered at the instance of accused 2, a white turban and the stick were recovered at the instance of accused 1 and another stick was recovered at the instance of accused 3.

The white turban, even though it was alleged to have been stained with human blood, was, however not sent for analysis to the chemical analyser and the allegation in regard to its having been stained with human blood stood unconfirmed by any such analysis. The sticks also which were recovered at the instance of accused 1 and 3 were not alleged to bear any stains of human blood and there was nothing to distinguish these sticks from any other sticks which might ordinarily be found at the place of such people.

The silver kardoda was an article in common use by the people in that locality and there was nothing to identify it with the silver kardoda alleged to have been worn by the deceased except the bare word of his wife P. W. 5. These recoveries, therefore, could not connect accused 1 to 4 with the crime. The recovery of the silver kardoda could, at best, prove that accused 2 was in the know of the same after it had been removed from the person of the deceased by whosoever was responsible for doing the deceased to death.

No charge of murder could certainly be entertained against him by reason of such recovery. The stick and the white turban recovered at the instance of accused 1 could also not connect accused 1 with the crime, the stick being an ordinary stick which was not proved to be the weapon of offence and the white turban not having been sent for chemical analysis of the blood stains alleged to have been found upon the same. The stick recovered at the instance of accused 3 was similarly innocuous and none of these recoveries could be enough to fasten upon accused 1 to 3 responsibility for the crime.

8. The motive which was alleged against accused 1 to 4 also was equally unhelpful to the prosecution. The previous incident of accused 1 to 4 having abducted the deceased and having set him at liberty on receiving a ransom of Rs. 350 could not show that accused 1 to 4 had any grudge against the deceased. If at all they had received the ransom of Rs. 350, they could not be said to bear any ill-will against the deceased by reason of having received that payment.

The later incident of the goat having been slaughtered and eaten away by accused 1 to 4 might have led to some sort of bitterness between the deceased and them but the animosity would be on the side of the deceased and not of the persons who had eaten the goat. The version, however, given by the wife of the deceased, P. W. 5, in regard to this incident having been responsible for the enticing away of the deceased was not such as to carry conviction with the Court.

In the inquest report which was made on 16-1-1950, the wife of the deceased had stated that accused 1 to 4 had called her husband to settle the account of the excise contract. In the evidence which she gave before the Sessions Court, she stated that on her enquiry from accused 1 to 4 why they were taking him away they replied that they had eaten the goat and they wanted to repay him for it.

Both these statements could not be reconciled with each other and whatever be the correct version it rested merely on the bare word of the witness herself and was not corroborated by either of the two witnesses P. W. 6 or P. W. 7. Under the circumstances, the motive could not be said to have been satisfactorily established by the prosecution and that circumstance was certainly of no avail.

9. If, therefore, neither the motive nor the recoveries could be of any help to the prosecution, the only thing which remained was the circumstance of accused 1 to 4 having accosted the deceased on the evening of that day and taken him away to the well of Deshmukh without anything more to connect them with the crime.

The only offence which could be laid at their door on that fact being established could be one of abduction which would involve the infliction upon them of a punishment which would certainly not be fife imprisonment. As we are informed all the accused have been undergoing sentences of rigorous imprisonment for the last 5 years and more and that would be more than enough to atone for the offence of abduction, if at all they committed the same.

10. The conviction for the offence under Section 243, A. P. C., however, could not be sustained on the evidence as it stands on the record. It is a fundamental principle of criminal jurisprudence that circumstantial evidence should point inevitably to the conclusion that it was the accused and the accused only who were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused.

Both the Courts below considered that the fact of accused 1 to 4 enticing away the deceased on that evening and the further fact of the deceased having been found hanging in the doddi or the backyard of his house were by themselves enough to lead inevitably to the conclusion that it was the accused and the accused only who were responsible for the crime.

We cannot agree with this conclusion reached by the Courts below. In our opinion, these circumstances, by themselves, are not enough without anything more to connect the accused with the crime and the accused are entitled to be acquitted of the offences with which they have been charged.

11. In view of the fact that they have already undergone rigorous imprisonment for 5 years and more, we do not think it necessary to order any further investigation into any other offence accused 1 to 4 might be alleged to have committed in connection with the occurrence.

In the case of accused 2 also, we do not think it necessary to express any opinion as regards his conviction under Section 337, A. P. C. because he has already undergone rigorous imprisonment for two years which was imposed upon him by the learned Sessions Judge in respect of the same.

12. We accordingly allow the appeals, quash the convictions and the sentences imposed upon the appellants under Section 243, A. P. C. and order that the appellants be discharged and set at liberty forthwith.