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C.K. RAVEENDRAN

v.

STATE OF KERALA

DECEMBER 2, 1999

B

[G.B. PATTANAIK AND M.B. SHAH, JJ.]

Criminal Law—Penal Code—Sections 302, 201 IPC—Appellant's wife missing for some days—Appellant having dissensions with wife and talk of divorce going on—Body of wife found in a ravine—Post mortem report not conclusive whether injuries were ante-mortem—PW15 alleging extra-judicial confession by Appellant while consuming liquor—Motive of Appellant not established—Appellant seen with deceased travelling in jeep and in a hotel—Wrist watch of deceased recovered from Appellant after arrest—High Court affirming the conviction of Appellant by Sessions Court relying on circumstantial evidence—Held, prosecution has not been able to establish any motive on the part of the Appellant—Case has not been proved beyond reasonable doubt—Appellant acquitted of all charges.

C

D

Deceased 'Y' developed intimacy with one G and later she got pregnant and before they could marry G died. The deceased then became intimate with the Appellant and married him. Later there were dissensions between the Appellant and his wife and there were talks of divorce. On 3.3.88 the Appellant along with 'Y' was seen travelling in a jeep. A few days later PW23, younger brother of 'Y' was informed by the Appellant that he had contracted a second marriage and that it should be conveyed to 'Y'. PW23 informed this matter to his mother PW16 and brother PW6. Since they did not know the whereabouts of 'Y' PW16 lodged a missing report with the Police. On 30.3.88 PW1 reported that a dead body was seen in a ravine. The body was identified as that of 'Y' by PWs 6 & 16.

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The doctor who conducted the Post mortem, after getting the report of the Chemical analyst reported that the death was homicidal. On a complaint by PW16, the Appellant and two other persons were arrested and a wrist watch was recovered from the Appellant. On the basis of circumstantial evidence and the evidence of PWs 1, 6 and 16 the Sessions Court found the Appellant guilty of murder and convicted him under Sec. 302 IPC read with S.201 IPC. Accused 'G' was convicted under Section 201 IPC only. The appeals by the

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Appellant and accused 'G' were dismissed and the findings of the Sessions Court were confirmed by the High Court. The High Court relied on certain circumstances to come to the said conclusion. The High Court though did not accept the extra-judicial confession made to PW15 by the Appellant, relied upon the evidence of PW15 for completing all the links in the chain of circumstances.

In appeal to this Court, the Appellant contended that the circumstances relied upon by the High Court not only have not been established by the prosecution beyond reasonable doubt but also that even if all the circumstances can be said to have been established, all of them taken together do not complete the chain and they do not unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

Allowing the Appeal, this Court

HELD : 1. The conclusion of the High Court that 'Y' met a homicidal death is wholly erroneous. There is not an iota of material from which it can be stated that the death of 'Y' can only be homicidal. The Doctor PW19 who conducted the autopsy, while issuing the post-mortem certificate, Exh. P10, categorically stated that the exact cause of death cannot be ascribed and reserved his opinion, pending the result of chemical analysis. On getting the report of the Assistant Chemical Examiner Exh. P11, the said Doctor PW19 gave a final report as per Exh. P12, which indicated that the deceased sustained head injury, which if ante-mortem, could result in death and the injury, if ante-mortem, could be caused by hitting with stones like M.Os. 11 or 12. The said report further revealed that nobody could say that there was violence on the neck of the deceased or not. When the Doctor himself has not been able to give a definite opinion as to the injuries found on the dead body could be ante-mortem or post-mortem and the dead body itself was found on 30th of March, 1988 and Y was alleged to have been seen in the company of the accused last on 3.3.88, it is difficult to sustain the conclusion of the High Court that the death of Y can only be homicidal. [147-C; 146-H; 147-A-B-C]

2. The extra-judicial confession as deposed by PW15 has not been relied upon by the Sessions Judge and High Court also came to the conclusion that it is difficult to rely upon the same, as the exact words or even the words as nearly as possible have not been reproduced by PW15. That apart, even the evidence of PW15 indicates that the Appellant and he went to arrack shop and consumed liquor, whereafter the Appellant disclosed the entire incident

A and therefore, such statement cannot be said to be a voluntary and truthful one and on the other hand it is the outcome of the consumption of liquor, both by the witness as well as the accused, if at all he can be said to have made the statement. Hence, the so-called extra-judicial confession has to be excluded from the purview of consideration for bringing home the charge.

[147-C, D, E]

B

3. While analysing the different witnesses who deposed about seeing the jeep on 3rd March, 1988 at different places at different point of time, the High Court itself has noticed that the witnesses do not agree with each other, so far as the time factor is concerned. That apart, the so-called evidence of C PWs 10 and 11 who had deposed that at 5 p.m. on the same day, some people came in a jeep and took tea from Grant Hotel, is of no consequence and cannot be held to be incriminating in nature, as they never knew accused nor had there been any earlier test identification parade and, therefore, the said evidence cannot be utilised to bring home the charge against accused.

[147-F-G]

D

4. The prosecution case is hazy about the motive and the High Court has brushed aside the same on the ground that the motive is not essential ingredient of an offence. It is no doubt true that through some witnesses, the prosecution wanted to establish that on an earlier occasion, the Appellant made E an attempt to kill Y, but could not succeed as she escaped, but that circumstance also is through the evidence of PW15, who had testified the so-called extra-judicial confession and has not been relied upon and it would be highly unsafe to rely upon the testimony, even for the alleged conduct of the Appellant. PW23 who was living in an adjacent house of Y at Kappad, in his evidence, made a statement that mother of R had once offered him that she F would purchase a van for him, if he agrees to divorce Y but that by itself can hardly be said to be establishing a motive on the part of Appellant.

[148-A, B, C]

5. On the materials on record, prosecution has not been able to establish G any motive on the part of the accused R for committing the crime. In this state of affair, the so-called recovery of the wrist watch of the deceased, on the basis of statement made by accused R can hardly be said to be a clinching circumstance for coming to the conclusion that the prosecution case has been proved beyond reasonable doubt. In view of the conclusion, as aforesaid, there is no hesitation to come to the conclusion that the prosecution case has not H been proved beyond reasonable doubt as against accused R and, therefore, the

conviction of R of the charge under Section 302 as well as Section 201 IPC, cannot be sustained. [148-C, D, E] A

The conviction and sentence of accused R are set aside and he is acquitted of the charges levelled against him.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 809 of 1997. B

From the Judgment and Order dated 22.10.93 of the Kerala High Court in Crl. A. No. 87 of 1990.

A.M. Pattiyani, M.L. Gond, M.P. Raju and M.K.D. Namboodiry for the Appellant. C

K.M.K. Nair for the Respondent.

The Judgment of the Court was delivered by

PATTANAIK, J. Appellant Raveendran along with two other accused persons stood charged under Sections 302 and 201 IPC. The learned Sessions Judge convicted Raveendran under Sections 302 and 201 IPC and accused Gopalan under Section 201 IPC alone. The third accused was acquitted of both the charges. Raveendran and Gopalan, preferred Appeal No. 87 of 1990 to the High Court of Kerala. State also preferred an appeal against the order of acquittal of the third accused. The High Court by the impugned judgment, affirmed the acquittal of Gopalan and the other accused of the charge under Section 302/34 IPC and dismissed the appeal preferred by the Government. The High Court also affirmed the conviction of appellant Raveendran of the charge under Sections 302 and 201 as well as the conviction of Gopalan under Section 201 IPC. The learned Sessions Judge had sentenced appellant Raveendran to imprisonment for life for his conviction under Section 302, and five years R.I. and to pay a fine of Rs. 2000 and in default, to undergo R.I. for six months for his conviction under Section 201, with the further direction that the sentences would run con-currently. So far as, accused Gopalan is concerned for his conviction under Sec. 201 IPC, he was sentenced to rigorous imprisonment for four years and to pay a fine of Rs. 2000 and in default, to undergo S.I. for six months. Gopalan has not preferred any appeal and it is only Raveendran, who has preferred the appeal. D E F G

The prosecution case in nutshell is that deceased Yashoda developed intimacy with one Gopalan (not the accused) and became pregnant. Before she could marry, Gopalan died and Yeshoda gave birth to a child. Yeshoda, H

A thereafter, came in contact with accused Raveendran and they developed intimacy. The parents of Raveendran however did not approve the relationship between them. Raveendran married Yeshoda sometime in August, 1986 and Yeshoda after purchasing a land in a place called Kappad, constructed a small house and lived therein. After spending some good time, there was dissension between Yeshoda and Raveendran and they B decided to dissolve the marriage. Yeshoda used to visit the house of Raveendran. Sometime in March, 1988, Raveendran promised Yeshoda that he would purchase a house for her at Badagara. The prosecution alleged that on 3.3.1988 Yeshoda went to meet her husband at 8 A.M. and her husband informed her that he would come with jeep and fetch her. PW8 C informed PW6, the brother of Yeshoda that he saw Yeshoda and Raveendran in a jeep at Payam Mukku. It is alleged that PW23, the younger brother of Yeshoda went to Iritty for marketing and met Raveendran there and Raveendran asked him about Yeshoda. When PW23 could not say the whereabouts of Yeshoda, Raveendran told him that he can inform his sister that he had contracted a second marriage. PW23, accordingly conveyed D this to his brother PW6 and mother PW16. PW16 became suspicious and made queries about Yeshoda and was surprised to hear from Raveendran that he did not know anything about Yeshoda. On not getting any information about Yeshoda, PW16 accompanied by her son PW6 went to Peravoor Police Station and lodged a missing report. It is thereupon, the E Police Officer took them to the Revenue Divisional Officer at Tellicherry, as certain articles had been recovered from the dead body of a lady, which were lying there. Both PWs 6 and 16, on looking to those articles were convinced that the articles belonged to Yeshoda. On 30.3.1988, PW1 saw a dead body of a lady in a ravine. The place was on the road Tellicherry to Manantavady. PW1 then went to the police station and gave a statement F to the police and a case was registered, describing unnatural death. PW35, the Circle Inspector took up the investigation. He sent the dead body for post-mortem examination and on getting the report of the Chemical Analyst, when the doctor confirmed that the death was a clear case of homicide, case was registered under Section 302. Accused Raveendran was then G arrested on 11.7.88 and certain recoveries were made from him pursuant to a disclosure statement. Accused Gopalan was arrested on the same day and certain recoveries were also made from him. The third accused was also arrested on the same day. On completion of investigation, charge-sheet was filed and on being committed, the accused persons stood their trial. There is no eye witness to the occurrence and the entire case hinges H upon circumstantial evidence. On he basis of evidence of PWs 1, 6 and

16, coupled with the recoveries of M.Os. 1, 2, 4 and 5, the learned Sessions Judge as well as the High Court came to the conclusion that the dead body recovered from the ravine was that of the deceased Yeshoda and this conclusion has not been assailed before us. So far as, the complicity of accused appellant Raveendran is concerned, the circumstances relied upon by the High Court are :

(i) That Raveendran and Yeshoda developed intimacy and ultimately married but the parents of Raveendran never approved of the same;

(ii) After marriage, though they lived for sometime as husband and wife happily at a place called Kappad but later on the situation became unpleasant and Raveendran wanted to divorce Yeshoda and thought of a second marriage;

(iii) Yeshoda was seen in the company of the accused persons in a jeep by PWs 7 and 8 on 3.3.88 at 9.30 A.M.

(iv) The jeep bearing No. K.L.A. 1170 was found during the forenoon of 3.3.88 at Payam Mukku, Iritty and Tellicherry, which is established through evidence of PWs 4, 7, 8 and 9.

(v) From the evidence of PW10 and PW11, it is established that a jeep stopped near the Grant Hotel, run by PW10, at 5 P.M. and while two or three persons came in the jeep, took tea and one woman was sitting in the jeep, almost tired.

(vi) Conduct of accused Raveendran, in not making any inquiry about Yeshoda after 3.3.1988.

(vii) Medical evidence of the doctor, who conducted the autopsy over the dead body as well as the post-mortem certificate issued by him, Exh. P10, is to the effect that the exact cause of death could not be given and opinion was reserved, pending the result of chemical analysis. On getting the report of the Assistant Chemical Examiner Exh. P11, the said doctor opined that it is not possible to say as to whether the injuries found on the dead body are ante-mortem or post-mortem but if the injuries are ante-mortem then the head injury sustained by the deceased could result in death. Notwithstanding the aforesaid positive medical evidence the High Court however came to the conclusion that the injuries were ante-mortem in nature.

A (viii) Recovery of articles belonging to the deceased on the basis of statement made by the accused Raveendran, while in custody admissible under Section 27 of the Evidence Act. The two statements made by the accused are Exhibits P30 and P31.

(ix) Extra-judicial confession of the accused as deposed by PW15. B This extra-judicial confession was not relied upon by the learned Sessions Judge as well as the High Court as the exact words or words as nearly as possible were not reproduced by PW15 and further according to PW15, Raveendran in June, 1988 took him to an arrack shop and after consuming liquor, narrated the incident. C Thus it cannot be said to be a voluntary one, if at all such a statement was made. It is curious to note that even though, the High Court did not accept the so called extra-judicial confession alleged to have been made by accused Raveendran to PW15, yet relied upon the evidence of PW15 for completing all the links in the chain of circumstances.

D On these circumstances, the High Court affirmed the conviction of accused Raveendran of the charge under Sections 302 and 201 IPC.

It is contended on behalf of appellant Raveendran that the circumstances relied upon by the High Court not only have not been established by the E prosecution beyond reasonable doubt, but also even if all the circumstances can be said to have been established, all of them taken together do not complete the chain and they do not unequivocally point to the guilt of the accused and exclude any hypothesis consistence with his innocence. It is not necessary for us to discuss in detail the law relating to the circumstantial evidence, suffice it to say that prosecution must prove each of the F circumstances, having a definite tendency pointing towards the guilt of the accused and though each of the circumstances by itself may not be conclusive but the cumulative effect of proved circumstances must be so complete that it would exclude every other hypothesis and unequivocally point to the guilt of the accused. When we examine the circumstances said to have been G established in the light of the aforesaid principle, we find sufficient force in the contention of the learned counsel for the appellant that the circumstances thus proved, do not point out unerringly to the guilt of the accused. It is in this context, the most important question is the medical evidence. The dead body of Yeshoda was found on 30th of March, 1988 and the post-mortem was conducted on 1.4.1988. The doctor PW19, who conducted the autopsy, while H issuing the post-mortem certificate Exh. P10, categorically stated that the exact

cause of death cannot be ascribed and reserved his opinion, pending the result of chemical analysis. On getting the report of the Assistant Chemical Examiner Exh. P11, the said doctor PW19 gave a final report as per Exh. P12, which indicated that the deceased sustained head injury, which if ante-mortem, could result in death and the injury, if ante-mortem, could be caused by hitting with stones like M.Os.11 or 12. The said report further revealed that nobody could say that there was violence on the neck of the deceased or not. When the doctor itself has not been able to give a definite opinion as to the injuries found on the dead body, whether could be ante-mortem or post-mortem and the dead body itself was found on 30th of March, 1988 and Yeshoda alleged to have been seen in the company of accused last on 3.3.88, it is difficult for us to sustain the conclusion of the High Court that the death of Yeshoda can only be homicidal. There is not an iota of material from which the High Court could have jumped to the aforesaid conclusion and we, therefore, have no hesitation to hold that the conclusion of the High Court that Yeshoda met a homicidal death is wholly erroneous. The extra-judicial confession as deposed by PW15 has not been relied upon by the learned Sessions Judge and High Court also came to the conclusion that it is difficult to rely upon the same, as the exact words or even the words as nearly as possible have not been reproduced by PW15. That apart, as has been stated earlier, even the evidence of PW15 indicates that Raveendran and he went to arrack shop and consumed liquor, where-after Raveendran disclosed the entire incident and therefore, such statement cannot be said to be a voluntary and truthful one and on the other hand it is the outcome of the consumption of liquor, both by the witness as well as the accused, if at all he can be said to have made the statement. In this view of the matter, the so-called extra-judicial confession has to be excluded from the purview of consideration for bringing home the charge. The most important circumstance which can be said to have been established by the evidence of PWs 7 and 8 is that they saw Raveendran with Yeshoda on 3rd of March, 1988 in a jeep and that jeep was found to be moving around on different places on the same day. While analysing the different witnesses who deposed about seeing the jeep on 3rd of March, 1988 at different places at different point of time, the High Court itself has noticed that the witnesses do not agree with each other, so far as the time factor is concerned. That apart, the so-called evidence of PWs10 and 11 who had deposed that at 5 P.M. on the same day, some people came in a jeep and took tea from the Grant Hotel, is of no consequence and cannot be held to be incriminating in nature, as they never knew accused Raveendran nor had there been any earlier test identification parade and, therefore, the said evidence cannot be utilised to bring home the charge against accused Raveendran.

A Necessarily, therefore, the only evidence of PWs 7 and 8 is to the effect that on 3rd of March, 1988 at 9.30 A.M., Yeshoda was seen with Raveendran in the jeep. So far as the motive is concerned, the prosecution case is rather hazy and the High Court itself has brushed aside the same on the ground that the motive is not an essential ingredient of an offence. It is no doubt true that through some witnesses, the prosecution wanted to establish that on an B earlier occasion, Raveendran made an attempt to kill Yeshoda by hitting her with jeep but could not succeed and Yeshoda escaped, but that circumstance also is through the evidence of PW15, who had testified the so-called extra-judicial confession and has not been relied upon and it would be highly unsafe to rely upon the testimony, even for the alleged conduct of accused C Raveendran. PW23 who was living in an adjacent house of Yeshoda at Kappad, in his evidence, made a statement that mother of Raveendran had once offered Raveendran that she would purchase a van for him, if he agrees to divorce Yeshoda but that by itself can hardly be said to be establishing a motive on the part of accused Raveendran. In our opinion, therefore, on the materials on record, the prosecution has not been able to establish any motive D on the part of the accused Raveendran for committing the crime. In this state of affair, the so-called recovery of the wrist watch of the deceased, on the basis of statement made by accused Raveendran can hardly be said to be a clinching circumstance for coming to the conclusion that the prosecution case has been proved beyond reasonable doubt. In view of our conclusion, E as aforesaid, we have no hesitation to come to the conclusion that the prosecution case has not been proved beyond reasonable doubt as against accused Raveendran and, therefore, the conviction of Raveendran of the charge under Section 302 as well 201 IPC, cannot be sustained. We accordingly, set aside the conviction and sentence of accused Raveendran and acquit him of the charges levelled against him. He be set at liberty forthwith, unless F required in any other case.

The appeal is accordingly allowed.

V.M. Appeal allowed.