A MUJEEB AND ANR.

v.

STATE OF KERALA

NOVEMBER 29, 1999

B [G.B. PATTANAIK, M. SRINIVASAN AND S.N. PHUKAN, JJ.]

Penal Code, 1860 : Section 34, 120—B, 201, 302 and 392—Decision based on circumstantial evidence alone—The evidence should be strong and such that, within all human probability, no conclusion other than the guilt of the accused is possible, to convict the accused—If there is any shortcoming in the evidential chain linking the various circumstances leading to the crime, accused cannot be held guilty.

C

The case against the appellants was that they hired the taxi of the deceased, killed him and disposed off his body. When they took the car to a garage for repair, it was found that the registration number was tempered with and police on being informed arrested the appellants. The Sessions Court acquitted them but on an appeal by the State, the High Court convicted them. Hence this appeal.

D

E **Allowing the appeal, the Court**

HELD : 1. The High Court erred in law in not considering whether the circumstances proved, formed a complete chain. In this chain of circumstances the missing links were : hiring of taxi driven by the deceased by A1, visiting lake and temple by the accused in the taxi driven by the deceased, giving soft drink mixed with sleeping tablets, intoxicating liquor and death of the deceased due to strangulation. In view of the above missing links in the chain of circumstances, the prosecution had failed to establish the guilt of the accused cogently and firmly. A reasonable person on the facts of this case cannot come to the conclusion that the accused were guilty. Taking into account the cumulative effect of all these circumstances and weighing them as an integrated whole, the Court has no hesitation to come to the finding that the accused were not guilty. [23-A-C]

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Umedbhai Jadavbhai **v.** *State of Gujarat,* **AIR (1978) SC 424 = SCR [1978] (2) 471 and** *Mohan Lal Pangasa* **v.** *The State of U.P.,* **AIR (1974) SC 1144, relied on.**

H

2. The High Court giving considerable importance to the subsequent events of the recovery of the vehicle from the service station, taking into custody of the accused by the sub-inspector of police, recovery of articles belonging to the deceased and parts of the car, found the appellants guilty. The prosecution has failed to prove the above circumstances. When a case rests on circumstantial evidence, such evidence must be cogently and firmly established. These circumstances should form a chain pointing towards the guilt of the accused and the same should be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. If any link in the chain is missing the guilt of the accused cannot be established. Both trial court and the High Court rejected the prosecution version of the story that the accused gave soft drink "Fruity" mixed with sleeping tablets and also intoxicating liquor in view of the evidence of the Doctor and Chemical analysis report. Moreover, no evidence was recorded to prove that intoxicating liquor was given to the deceased. The trial court as well as the High Court disbelieved the version of the prosecution story that A1 approached PW 12 on 29.03.91 and on the next day PW 3 saw A1 talking to the deceased for hiring the taxi. Both the Courts below also do not accept the identification of A1 by PW 12 in the belated test identification parade conducted by PW 35 and the evidence of PW 3 that he saw A1 talking to the deceased at 11.30. a.m. on 30.03.91 as PW 3 did not disclose this fact to the Investigating Officer. Nobody saw the accused in the car or in the temple and therefore this fact would not link the accused to the alleged crime. Both the Courts also did not believe the story of the prosecution that the deceased along with the accused went to the shop of PW 33 for repair of dynamo of the car who could not set it right and thereafter it was taken to an auto-electrician. According to the Courts below both PW 32 and 33 could not have identified the accused. It is true that at the time of conducting autopsy the dead body was decomposed. PW 42 who conducted autopsy clearly stated that during post-mortem he did not find any positive evidence of ligature strangulation. This witness gave the opinion that possibility of death resulting from ligature strangulation as per police history can be ruled out. The High Court erred in law in not giving the clear finding inasmuch as medical evidence is clear. The evidence of doctor that possibility of death resulting from ligature strangulation as per police history could not be ruled out, is not a positive medical evidence to come to the conclusion that death was caused by strangulation. The impugned judgment of the High Court laid too much stress on the subsequent alleged conduct of the accused.

[22-G-H; 23-A; 19-D; 20-B, D, G, H; 21-B]

3. Though according to the Investigating Officer the recovery was made on the basis of statement of the accused from the evidence it is found that actual words in verbatim leading to the recovery were not recorded by the Investigating Officer. From the evidence of PW 47 the sub-inspector who apprehended the accused persons it is found that this witness did not record the information given by the owner of the workshop and the fact that he apprehended the accused, in the general dairy of the police station. According to PW 47 these facts were recorded in his pocket book which was not proved. It is difficult to accept the above version of the story of the prosecution and therefore the High court erred in law in accepting it. [21-G; 22-C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 284 of 1997.

From the Judgment and Order dated 24.1.1997 of the Kerala High Court in Crl. R.P. No. 77 of 1994.

R.A. Mishra, (A.C). Ms. Malini Poduval and Manu Krishnan for the appearing parties.

The Judgment of the Court was delivered by

PHUKAN, J. This appeal is directed against the Judgment and Order dated 24.01.97 passed by the High Court of Kerala in Criminal Appeal No. 485/93. The High Court allowed the appeal filed by the State by setting aside the judgment of the Sessions Judge, Kozhikode Division dated 26th March, 1993 in Sessions Case No. 9/92.

The learned Sessions Judge acquitted accused Mujeeb @ Mujeeb Rahman (A1), Johnson (A2) and Akbar (A3) who were charged under Sections 302, 392, 201 and 120-B IPC read with Section 34 IPC.

The High Court as stated above allowed the appeal filed by the State and convicted all the three accused under the above Sections. The present appeal has been filed only by two accused namely A1 and A3. A2 is not before us.

The prosecution case was that on 30.03.91 at about 11.30 a.m A1 reached Koyilandy Taxi Stand, hired the Tourist Taxi (Ambassador Car) driven by Balan of Thazha Valappil. A1 went in that car to Ashar lodge in Koyilandy where the other accused were staying and all of them proceeded in the car to Wynad and spent some time in Pookode lake. Thereafter, they visited Thirunelli Temple and Mananthavadi. While they were returning to

Thamarasserry, it was alleged by the prosecution that soft drink "Fruity" mixed with sleeping pills was given to the driver Balan and also intoxicating liquor. After immobilizing and removing him from the driver's seat, A1 drove the car to Thamarassery and Eangampuzha. At about 11.30 p.m. they strangulated the driver Balan with a thorthu and proceeded to Puthuppadi . They also took away the purse and watch from deceased Balan and with the intention to cause disappearance of evidence of murder and robbery they threw the dead body of deceased at one kilometer west of 9th point curve at Wynad Ghat Section. The accused took the car to Mysore and Bangalore and altered the registration number and also sold the watch and some other things of the deceased at Mysore and stayed there. They returned to Sultan's Battery and on 04.04.91 in the evening they entrusted the car for service in an automobile workshop informing that they would take the car on the next day morning. The owner of the workshop found that there was alteration of registration number of the car and getting suspicious he informed the sub-inspector of police, Sultan's Battery. In the morning of 05.04.91 the sub-Inspector along with other police personnel came to the workshop in mufti and when the accused came to the workshop they were apprehended and taken to the police station.

We have heard the learned counsel for the parties.

In absence of direct evidence prosecution tried to prove the case through circumstantial evidence.

When a case rests on circumstantial evidence, such evidence must be cogently and firmly established. These circumstances should form a chain pointing towards the guilt of the accused and the same should be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. If any link in the chain is missing the guilt of the accused cannot be established.

In *Mohan Lal Pangasa* v. *The State of U.P.*, AIR (1974) SC 1144, this Court held that it is trite law that when the evidence against an accused person, particularly when he is charged with a grave offence like murder, if it consists of only circumstances and not direct oral evidence, it must be qualitatively such that on every reasonable hypothesis the conclusion must be that the accused is guilty; not fantastic possibilities nor freak inferences but rational deductions which reasonable minds make from the probative force of facts and circumstances.

In *Umedbhai Jadavbhai* v. *State of Gujarat,* AIR (1978) SC 424 = SCR

A [1978] 2 471 this Court held that it is well settled that in a case resting on circumstantial evidence all the circumstances brought out by the prosecution, must inevitably and exclusively point to the guilt of the accused and there should be no circumstance which may reasonably be considered consistent with the innocence of the accused. It was further held that in case of circumstantial evidence, the court will have to bear in mind the cumulative B effect of all the circumstances in a given case and weigh them as an integrated whole. Any missing link may be fatal to the prosecution case.

Before we consider the other circumstances sought to be proved by the prosecution we may at the out set take note of the fact that both trial court and the High Court rejected the prosecution version of the story that the C accused gave soft drink 'Fruity' mixed with sleeping tablets and also intoxicating liquor in view of the evidence of the doctor and chemical analysis report (Exh. P-45). Moreover, no evidence was on record to prove that intoxicating liquor was given to the deceased.

According to the prosecution on 29.03.91 A1 wanted to hire a taxi from D the taxi stand to go to Wayanad and he talked to PW12 who was the driver of a tourist taxi and as A1 wanted to visit places at Wayanad and then return, PW12 did not agree to undertake the trip. Thereafter the car was handed over to deceased by PW12 on 30.03.91. On that date it was alleged by the prosecution that A1 talked to the deceased and hired the taxi and drove away.

E The trial court as well as High Court disbelieved the above version of prosecution story that A1 approached PW12 on 29.03.91 and on the next day PW3 saw A1 talking to the deceased Balan for hiring the taxi. Both the Courts below also did not accept the identification of A1 by PW12 in the belated test identification parade conducted by PW35 and the evidence of PW3 that he F saw A1 talking to deceased at 11.30 a.m. on 30.03.91 as PW3 did not disclose this fact to the Investigating Officer. We are of the opinion that both the courts below rightly discarded the above version of the prosecution story.

According to the prosecution the accused took the car driven by the deceased first to Pookod lake in Wayanad for boating. PW31 was examined G to prove this fact but he turned hostile. From the lake they went to temple and PWs4 and 29 who had gone to the temple saw the deceased and the car near the temple. The High Court took note of the fact that PWs 4 and 29 did not disclose this fact to the investigating officer and did not claim to have seen the accused. However, according to the High Court it was quite probable that the car went to the temple. But nobody saw the accused in the car or H in the temple and therefore in our opinion this fact would not link the accused

to the alleged crime. A

Both the courts below also did not believe the story of the prosecution that the deceased along with the accused went to the shop of PW33 for repair of dynamo of the car who could not set it right and thereafter it was taken to an auto-electrician-PW32. According to the courts below both PWs32 and 33 could not have identified the accused. More over PW32 became hostile B witness. The car was taken to PW40 who was the owner of Excel autos in Mananthawady for purchasing diesel. According to the courts below prosecution also could not prove this fact as PW40 turned hostile.

Regarding the death by strangulation of the deceased while they were going from Mananthawady towards Thamarassery the trial court did not C accept this version of story of the prosecution in view of medical evidence. It is true that at the time of conducting autopsy the dead body was decomposed. PW42 who conducted autopsy clearly stated that during post-mortem he did not find any positive evidence of ligature strangulation. This witness gave the opinion that possibility of death resulting from ligature strangulation as per police history can be ruled out. D

The High Court held as follows:

> "It is here the theory of strangulation with MO-14 found on the dead-body became relevant and acceptable particularly in the context that the medical evidence did not totally rule it out as the case of death." E

We are of the opinion that the High Court erred in law in not giving the clear finding inasmuch as medical evidence is clear. The evidence of doctor that possibility of death resulting from ligature strangulation as per police history could not be ruled out, is not a positive medical evidence to come to the conclusion that death was caused by strangulation. F

We find from the impugned judgment that the High Court laid too much stress on the subsequent alleged conduct of the accused. According to prosecution after dropping the dead body accused went to Mysore and Bangalore in the same car and they stayed there till 03.04.91. At Bangalore they stayed at Manjunatha Lodge which fact was sought to be proved by G prosecution by examining PW15. The prosecution has led evidence to prove disposal of articles belonging to the deceased by the accused.

We find from the evidence of the Investigating Officer PW13 that accused were taken to various places for alleged recovery of the above articles. Though according to Investigating Officer the recovery was made on H

A the basis of statement of the accused but we find from the evidence that actual words in verbatim leading to recovery were not recorded by the Investigating Officer. For example in case of one recovery PW 49 deposed in the following words:

> "Thereafter, based on the statement of the same accused that he
B knows the person who runs a blade company and provision shop at Ambalavayal with whom he had pledged the gold bangles and that he could show the same place as led by the accused we reached the same place and questioned the witness and recorded his evidence."

In our opinion such a statement by the accused can not be treated as
C statement of the accused leading to recovery. More over witnesses to the recoveries were co-drivers of deceased residing far away at the distance of about 100 k.ms. Therefore, such recoveries are not legally acceptable.

According to the prosecution on 4.4.91 in the evening accused entrusted the car for service in the automobile workshop informing that they would take
D car on the next day and while trying to do so they were apprehended by the sub-inspector of police Sultan's Battery on 5.4.91. From the evidence of PW47 the sub-inspector who apprehended the accused persons we find that this witness did not record the information given by the owner of the workshop and the fact that he apprehended the accused in the general diary of the police station. According to PW47 these facts were recorded in his pocket
E note book which was not proved. We are unable to accept the above version of the story of the prosecution, and therefore, hold that the High Court erred in law in accepting it.

On the following material circumstances the prosecution tried to bring home the charges against the accused namely: (i) A1 hired the tourist taxi
F driven by deceased Balan; (ii) all the accused went in the car driven by deceased Balan to Wynad and spent some time in Pookad Lake and thereafter they visited Thirunelli temple and Mananthavadi; and (iii) while returning to Thamarasserry accused gave soft drink 'Fruity' mixed with sleeping pills to deceased Balan and after immobilizing and removing him from driver's seat A1
G drove the car and accused strangulated the driver Balan to death and thereafter proceeded to Puthuppadi.

Both the courts below did not accept the above circumstances except the fact that the High Court did not rule out possibility of death of deceased Balan by strangulation which finding is not tenable in law as stated above.

H The High Court giving considerable importance to the subsequent

events of recovery of the vehicle from the service station, taking into custody of the accused by the sub-Inspector of police, Sultan Battery's, recovery of articles belonging to the deceased and parts of the car, found the appellants guilty. We have already held that the prosecution has failed to prove the above circumstances. We hold that the High Court erred in law in not considering whether the circumstances proved, formed a complete chain. In this chain of circumstances following links are missing namely—hiring of taxi driven by the deceased by A1, visiting lake and temple by the accused in the taxi driven by the deceased, giving soft drink mixed with sleeping tablets, intoxicating liquor and death of the deceased due to strangulation. In view of the above missing links in the chain of circumstances we hold that the prosecution has failed to establish the guilt of the accused cogently and firmly. A reasonable person on the facts of this case cannot come to the conclusion that the accused were guilty. Taking into account the cumulative effect of all these circumstances and weighing them as an integrated whole we have no hesitation to come to the finding that the accused were not guilty.

For the reasons stated above we find merit in the present appeal and accordingly allow the same by setting aside the impugned judgment and order of the High Court. Both the appellants shall be set at liberty forthwith if not required in connection with any other offence.

I.M.A. Appeal allowed.