GOVINDASAMI

v.

STATE OF TAMIL NADU

APRIL 22, 1998

[M.K. MUKHERJEE AND S.S. MOHAMMED QUADRI, JJ.]

Indian Penal Code, 1860 :

S.302—Accused committing murder of his uncle and four other members of his family—Circumstantial evidence—Discarded by trail court—Accused acquitted—High Court reversed the-acquittal—Convicted the accused—Found the circumstances leading to guilt of accused proved—Circumstances indicating absence of sudden provocation—Pre-meditated crime—Attack on victims while they were asleep—Nature and manner in which crime was committed found to be gruesome, heinous, atrocious and cold-blooded murder—Imposition of death sentence on accused by High Court—Upheld—Record does not indicate any extenuating or mitigating circumstances in favour of accused—Evidence—Circumstantial evidence—Sentence—Imposition of death sentence.

The accused—appellant was prosecuted for committing murder of his uncle (D1), aunt, their two sons and a daughter. The prosecution case was that at about 7 A.M. on 30.5.1984 when P.W.2 reached the house of D-1 in order to fetch milk, she found all the five victims lying dead with bleeding injuries. She informed her husband (P.W. 3) who gave a report to the Village Administrative Officer (P.W. 7) and stated that he suspected the accused and his younger brother to have committed the murders as there was a land dispute between them and D-1. PW 7 submitted the report at the Police Station. The Circle Inspector of Police (PW 26) went to the place of occurrence and sent the dead bodies for post mortem examination. He seized some articles from the spot including a wrist watch. Later, PW 27, an Inspector of Police arrested the accused and seized a blood stained 'lungi' (M.O. 10), and a promissory note (M.O. 20) from his person. On the statement of the accused, PW 27, also recovered from the house of PW 14, a cycle and a gunny bag containing a torch and an '*aruval*', a sharp cutting instrument. The '*aruval*' and lungi were sent for chemical examination.

The prosecution, in order to establish the guilt of the accused, relied

A upon four circumstances, namely : (i) the accused had a motive to commit the crime as he had a boundary dispute with D-1 and two days prior to the incident he had a quarrel with D-1 and his son; in the course of the said quarrel D-1 beat him and coerced him to sign a promissory note: (ii) the write watch recovered from the scene of crime belonged to the accused: (iii) the accused , at the time of his arrest, was wearing the blood stained 'lungi' B and had a promissory note (M.O. 20) with him: and (iv) recovery of '*aruval*' pursuant to the statement of the accused, and the '*aruval*' was found to be stained with human blood of Group B which was the blood group of some of the deceased. The trial court acquitted the accused holding that none of the circumstances stood proved. But the High Court held the said circumstances C were proved and unerringly pointed to the guilt of the accused; and it convicted the accused and sentenced him to death. Aggrieved, the accused filed the present appeal.

It was contended for the appellant that the view taken by the trial court of the evidence was a reasonable one and the High Court should not have D interfered with it. It was also contended that even if the appellant was found guilty, the case did not fall in the category of 'rarest of rare cases', and the mere fact that the appellant committed five murders could not be a ground for imposition of death sentence.

Dismissing the appeal, this Court

E

HELD : 1.1. The circumstances relied on by the prosecution, each of which unerringly points towards the guilt of the appellant, taken cumulatively, are consistant only with the hypothesis of the guilt of the appellant and wholly inconsistent with his innocence, therefore, the conviction recorded by the High Court is correct. [1144-C]

F

2. The High Court did not base its decision to impose the penalty of death solely on the fact that 5 persons were murdered, it also took into consideration the other attending circumstances relating to murders. The High Court held that the incident did not take place on account of any sudden provocation but it was a pre-meditated one; all the five victims were attacked G while they were sleeping and there was no scope or chance for them to face the attack; there was no mental derangement of the accused; and the nature and the manner in which the accused committed the five murders was found to be gruesome, heinous, atrocious and cold-blooded. Besides the brutal manner in which the appellant wiped out the entire family of his uncle (except one of his sons, PW-8, who fortunately at the material time was H

studying in a city obviously to grab his properties, has shocked the judicial conscience. The record does not indicate any extenuating or mitigating circumstances in favour of the appellant. In the circumstances, the sentence of death imposed upon the appellant by the High Court is justified. A

[1145-G-H]

Bachan Singh **v.** *State of Punjab,* **AIR (1980) SC 898 and** *Mahesh* **v.** *State of Madhya Pradesh,* **[1997] 3 SCC 80, relied on.** B

Shamshul Kanwar **v.** *State of U.P.,* **AIR (1995) SC 1748, cited.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 900 of 1997.

From the Judgment and Order dated 2.9.97 of the Madras High Court in Crl. A. No. 30 of 1988. C

Ranjan Mukherjee for the Appellant.

V.G. Pragasam for the Respondent.

The Judgment of the Court was delivered by D

M.K. MUKHERJEE, J. This appeal under Section 379 Cr. P.C. is directed against the judgment and order dated September 2,1997 rendered by the Madras High Court in Criminal Appeal No. 30 of 1988. By the impugned judgment the High Court reserved the acquittal of the appellant of five charges of murder, convicted him thereof and sentenced him to death. The victims were Nagamalai (elder brother of the appellant's father), his wife, two sons and a daughter. E

2. The prosecution case briefly stated is as follows: -(i) On May 30, 1984 at or about 7.00 A.M. Sowndaram (P.W.2), a resident of village Kondayapalayam, in which Nagamalai and appellant also lived, went to the house of the former to fetch milk as it was her daily wont. Reaching there she F found him, his wife, two sons and a daughter lying dead in the front yard of their house with bleeding injuries on their persons. She rushed back to her house and told her husband Kurukkal (P.W.3) about the macabre murders. P.W.3 then went to the house of Nagamalai and, having seen the dead bodies, apprised his co-villager Ramaswamy (P.W.1) of the incident. After a visit to the house of Nagamalai, P.W.1 went to the nearby village Varapalayam and G gave a report to Ramani Marimuthu (P.W.7), their Village Administrative Officer, which was recorded by him. In that report he first described what he had seen in the house of Nagamalai and then stated that he suspected that Govindaswami (the appellant) and his younger brother had committed the murders as there was a land dispute between them and Nagamalai. H

A (ii) P.W. 7 then left for village Kondayampalayam and after seeing the dead bodies went to Puliampatti Police Station and submitted the report (Ex.p.1). On that report a case was registered and investigation taken up by Palanisamy (P.W. 26), the then Circle Inspector of Police. He went to the house of Nagainalal held inquest upon the five dead bodies and sent them to the Government hospital, Sathyamangalam for post-mortem examination. B He seized some articles from the scene of crime, including a wrist watch with its broken chain (M.O.1).

(iii) On June 4, 1984 the investigation of the case was taken over by Shri Beeman (P.W. 27), an Inspector of Police. On that day he arrested the C appellant and seized a blood stained lungi (M.O. 19) and a promissory note (M.O. 20) from his person under a memo (P.Ex. 8). Pursuant to a statement made by the appellant he then went to the house of Marimuthu (P.W. 14), an astrologer by profession, in village Arasur and seized a cycle (M.O. 21) and a gunny bag (M.O. 23) containing a torch light (M.O. 18) and an *aruval*, (M.O. 22), a heavy sharp. cutting instrument. The aruval, lungi and some other D articles seized from the scene of crime were sent to the Forensic Science Laboratory (F.S.L.) for chemical examination. After receipt of report of such examination and on completion of investigation police submitted charge-sheet against the appellant.

E 3. The appellant pleaded not guilty to the charges and contended that he was falsely implicated.

4. That Nagamalai, his wife, two sons and a daughter met with homicidal death in front of their house stands proved by overwhelming evidence on record. Indeed, this part of the prosecution case was not challenged by the F defence. Apart from the uncontroverted evidence of P.Ws. 1,2,3, and 7, all of whom claimed to have seen the dead bodies of the 5 persons lying with bleeding injuries in front of their house, the evidence of P.W.27, who held inquest upon the dead bodies, proves that fact. From the evidence of the three doctors, namely, Dr. Ulaganathan (P.W.16) , Dr. Saroja (P.W. 17) and Dr. G Marimuthu (P.W. 18), who held post-mortem examination upon one or the other of those dead bodies, we get that each of them had a number of deep cut injuries all over their bodies. While Nagamalai had 6 such injuries, his sons, Moorthy and Balasubramanian, had 12 and 4 respectively, his wife Ponnathal had 4 and daughter Anbu Selvi had 2. When shown the aruval (M.O. 22), the doctors opined that all the injuries could be caused by such H a weapon. From the evidence of the above witnesses it is thus abundantly

clear that the 5 deceased met with homicidal death in front of the their house in the night between May 29 and May 30, 1984. A

5. The pivotal question that now falls for our determination is whether the prosecution has been able to conclusively prove that the appellant is the perpetrator of the above murders. In absence of any eye witness to prove the same the prosecution relied upon the following circumstances:- (i) the appellant had a motive to commit the murders as he was having a boundary dispute with Nagamalai over their properties and two days prior to the murders he had a quarrel with Nagamalai and his son Moorthy in course of which he (the appellant) was beaten up. Besides, Nagamalai coerced the appellant to sign a promissory note; B C

(ii) from the scene of crime a wrist watch with a broken chain (M.O. 1) belonging to the appellant was recovered;

(iii) at the time of his arrest on June 4, 1984 the appellant was found wearing a blood stained lungi (M.O. 19) and having a promissory note (M.O. 20) with him; and D

(iv) pursuant to the statement made by the appellant aruval (M.O. 22) was recovered from the house of P.W. 14 on June 4,1984 and it was found to be stained with human blood of group 'B', which was also the blood group of some of the deceased. E

6. On consideration of the evidence adduced by the prosecution to prove the above circumstances the trial Court held that none of them stood proved an, accordingly, it acquitted the appellant. In reversing the findings of the trial Court, the High Court held that all the above circumstances stood firmly established and that those circumstances unerringly pointed to the guilt of the appellant. F

7. Mr. Ranjan Mukherjee, the learned counsel appearing for the appellant, first submitted that the reasons given by the trial Court for rejecting the relevant and material evidence of the prosecution were weightier and had not been completely displaced by the High Court. He next submitted that, in any case, the view of the evidence taken by the trial Court was also a reasonable one. In such a situation, he argued, the High Court should not have reversed the order of acquittal, by ignoring the well-settled principles laid down by this Court in this regard. He lastly submitted that even if it was assumed that the High Court was justified in so doing, it was not justified in imposing the G H

A sentence of death.

8. As against this Mr. Pragasam, learned counsel for the State, submitted that the reasons given by the trial Court for discarding the entire prosecution evidence were patently untenable and had been rightly dispelled by the High Court. According to him the powers of the High Court to review the evidence B and reach its own findings in an appeal against acquittal are as wide as those of the trial Courts.

9. This being a statutory appeal we have gone through the entire evidence on record keeping in view the judgments of the Courts below. Our C such exercise persuades us to hold that each of the findings of the trial Courts is patently wrong.

10. Coming first to the motive, the prosecution examined five witnesses to prove the same; and they are Ramaswamy (P.W.1), Donnuswamy (P.W.4). Govindaswamy (P.W. 5), Ramaswamy (P.W. 6) and Ganesan (P.W. 8), the D surviving son of the deceased Nagamalai, who at the material time was in Coimbatore. P.W.1, who is related to both the deceased and the appellant, testified that there were disputes between them with regard to the boundaries of their land and that he and other Panchayatdars attempted to settle the disputes. P.W.4 stated that about 1-1/2 year before the incident the mother E of the appellant complained to him about the boundary dispute and grazing of cattle and that he and others mediated and settled the dispute before the date of occurrence. Similar is the evidence of P.W.5. The evidence of P.W.8 in this regard is that due to land dispute there were frequent quarrels between his father and the appellant. In disbelieving the evidence adduced by the prosecution to prove the motive the trial Court observed that there were F discrepancies in the evidence of the above witnesses as to when the Panchayat was convened and who were the participants. Having carefully gone through the evidence we do not find any material contradiction to discredit them. On the contrary, we find that their evidence unmistakably proves that there were disputes between them regarding the boundaries of their lands and the most G eloquent proof in support thereof (which has gone completely unnoticed by the trial Court as also by the High Court) is the evidence of Ramaswamy (P.W. 6) of village Ponnampalayan. From his evidence we get that two days prior to the occurrence he had seen Nagamalai and his son Moorthy quarrelling with the appellant in connection with their lands. He further stated that the appellant came to him and complained that Nagamalai got an empty promissory H note signed by him and beat him up. He next stated that he advised them not

to quarrel. This witness was not at all cross-examined with reference to the above aspects of his evidence. When the above uncontroverted evidence of P.W.6 is read along with the evidence of the witnesses mentioned earlier there cannot be any manner of doubt that the prosecution has succeeded in proving that there was dispute between the appellant and Nagamalai over their lands and that only two days before the incident they had a quarrel over that dispute in course of which the former beat the appellant and, thereafter compelled him to sign a promissory note.

11. To prove the second circumstance, the prosecution firstly relied upon the evidence of P.W. 26 and P.W.7. P.W.26 testified that in presence of Mariamuthu (P.W. 7), The Village Administrative Officer, and K. Anumugam he seized a HMT wrist watch with the word 'Cheran' engraved thereon (M.O.1), which was found near the dead body of Moorthy under a memo (Ext. P.6). The above testimony of P.W. 26 stands corroborated by that of P.W. 7 and the seizure memo, contemporaneously prepared. The evidence adduced by the prosecution to prove the above recovery was not challenged by the defence. Next, to prove that the seized wrist watch belonged to the appellant, the prosecution examined Sabesan (P.W 11) , who is a resident of the same village and at the material time was working as a bus-conductor in Jeeva Transport Corporation. He testified that his uncle gave him a HMT wrist watch with the word 'Cheran' written thereon, which he (his uncle) had purchased from a worker of Cheran Transport Corporation. After he (P.W. 11) had used the wrist watch for 2/3 years he sold it to the appellant, whom he knew from before, for Rs. 240/- about two years before the incident. He identified M.O. 1 as the wrist watch which he sold to him. P.W. 11 was cross-examined at length but nothing could be elicited to discredit him. Rather, it was elicited that 10/15 days prior to the incident he had seen the appellant wearing the same.

12. The trial Court disbelieved the evidence of P.W. 11 principally on the ground that he did not furnish any receipt regarding purchase of the wrist watch by his uncle or sale to the appellant nor could he give the number of the wrist watch. According to the trial Court, since any person could have owned that wrist watch and could be present at the scene of crime, recovery of the same did not and could not incriminate the appellant. The above reasons are, to say the least, untenable. It is a matter of common knowledge that a person has any uncanny sense of identifying his own belongings, particularly articles of regular personal use. The trial Court was, therefore, not at all justified in discarding the assertion of P.W. 11, who admittedly bore no

A animus against the appellant, that the wrist watch (M.O. 1) earlier belonged to him . While on this point it is pertinent to mention that the word 'Cheran' engraved in M.O. 1 unmistakably supported P.W. 11's version. Equally unjustified was the trial Court in disbelieving his further assertion that he sold the wrist watch to the appellant for absence of receipt relating to the sale or purchase of the same for it is also common knowledge that in such petty B transactions in villages no body insists thereupon. It must, therefore, be said that the prosecution has been able to firmly establish that the wrist watch found at the place of occurrence belonged to the appellant.

13. That brings us to the third circumstance. P.W. 27, the Inspector of C Police, who took up the investigation of the case on June 4, 1984 from P.W. 26, testified that on that day he arrested the appellant at Pullyampatty bus stop and seized a blood stained lungi (M.O. 19) and a promissory note (M.O. 20) in presence of witnesses one of whom was Murugesan (P.W. 9), a Revenue Inspector. The evidence of P.W. 9 and the seizure memo (Ext. P-8) fully corroborate the evidence of P.W. 27 in this respect and the report of the D Chemical Examiner show that the lungi contained human blood. It is of course true that the Serologist could not give any definite opinion as to its blood group due to disintegration but absence thereof does not in any way affect the prosecution case. In discarding the evidence regarding recovery of the hand note the trial court observed that the hand-writing expert could not give E any definite opinion that the signature appearing thereon was that of the appellant but it failed to consider that when the factum of the above recovery is read along with the admission made by the appellant before P.W. 1 of his having been coerced by Nagamalai to execute a hand note in his favour the recovery of the hand note is a strong incriminating circumstance against him.

F 14. Having found that the first three circumstances stand firmly established we turn our attention to the last circumstance. As earlier noticed, the appellant was apprehended by P.W. 27 on June 4, 1984 in presence of P.W.9 and one Arumugam. According to P.W. 27, after his arrest the appellant made a statement which he recorded in presence of the above witnesses. The G statement (Ext. P-7), to the extent it is admissible under Section 27 of the Evidence Act, was to the effect that if permitted he would identify and hand over the cycle, torch light, gunny bag and *aruval*. After making the statement, the appellant led them to the house of P.W.14 in village Arasur. Reaching there he brought out, from the house of P.W. 14 a cycle (M.O. 21), a gunny bag (M.O.23), a torch light (M.O. 18) and an *aruval* (M.O.22) . In presence H of the witnesses, namely, P.W. 9 and Arumugam P.W. 27 seized those articles

under a memo which was attested by both of them. P.W. 27 further stated that he sent the seized articles, including the aruval for chemicals analysis.

15. While supporting the testimony of P.W. 27, P.W. 9, who is an independent witness, stated that in his presence and that of Arumugam the Inspector (P.W. 27) interrogated the appellant. In course of the interrogation the appellant stated that he would identify and hand over the *aruval* and cycle if taken to Arasur and the statement so made was recorded by P.W. 27 (Ext. P.7) and attested by him and Arumugam. He next stated that after the blood stained lungi and promissory note were seized (about which we have discussed earlier) he along with P.W. 27, the appellant and Arumugam proceeded to Arasur where the appellant identified the house of astrologer Marimuthu (P.W.14). From that house he took out a cycle with a gunny bag tied in the carrier of the cycle. In that gunny bag one *aruval* and one torch light were found. In cross-examination he stated that the *aruval* was found to be blood stained. He denied the defence suggestion that he was deposing falsely at the instance of the police.

16. In his evidence P.W. 14 stated that on May 31, 1984 at or about 7 A.M. the appellant came to his house on a cycle and sought his professional advice for which he gave him Rs. 2/-. The appellant then left his house leaving behind his cycle and the gunny bag stating that he would take them back in the evening. When he asked about the contents of the gunny bag he told him that there were some coirs in it. The appellant, however did not return as promised, but after four days he came to his house accompanied by the police. After entering his house the appellant took out the cycle and the gunny bag and brought out one aruval and a torch light therefrom. This witness was cross-examined at length but nothing could be elicited to discredit him. This witness hails from a different village altogether and there is nothing to suggest even as to why he would depose falsely against the appellant whom he did not know from before. The trial Court disbelieved the evidence of P.W. 14 on the grounds that it was not expected of him to remember each of the 20-40 persons who used to come daily to seek his advice and that, admittedly, he did not keep any account of his professional activities. In our considered view both the grounds are wholly unsustainable; the former is factually incorrect, in that he (P.W. 14) stated that on an average 5-10 persons came daily to seek his advice and so far as the second one is concerned, it was not expected of P.W. 14 who was earning his livelihood in a village as an astrologer charging Rs. 2/- per person, to keep accounts of his income. Having carefully gone through the evidence of P.Ws. 27, 9 and 14 we have

A no hesitation in concluding that the prosecution has been able to conclusively prove that pursuant to the statement of the appellant that he would hand over the aruval, it was recovered from the house of P.W.14. The reports of the Chemical Examiner show that the seized aruval contained human blood of group 'B' and the blood seized from the spot where the dead bodies were lying was also of group 'B'. The fourth circumstance, thus, also stands cogently established.

17. When the above four circumstances, each of which unerringly points towards the guilt of the appellant, are taken cumulatively, there is no escape from the conclusion that they are consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with his innocence. We, therefore, uphold the conviction of the appellant as recorded by the High Court.

18. Lastly, comes the question of sentence. Mr. Mukherjee submitted that the present case did not fall in the category of 'rarest of rare cases' justifying imposing the extreme penalty of death. According to him, the mere fact that the appellant committed five murders cannot be made a ground for imposition of death sentence. In making the above submission he strongly relied upon the judgment of this Court in *Shamshul Kanwar* v. *State of U.P,* AIR (1995) SC 1748, wherein it was observed that a large number of deaths on one side cannot ipso facto be a ground to bring the case into the category of 'rarest of rare cases'. He also relied upon some other judgments of this Court wherein sentences of death were commuted. To avoid prolixity we refrain from referring to those cases as they turned on their own facts. In responding to the above contention of Mr. Mukherjee, Mr. Pragasam relied upon the observations recorded by the High Court while imposing the death sentence.

19. From the impugned judgment we find that the High Court first discussed the principles laid down by this Court, for imposing death sentence in *Bachan Singh* v. *State of Punjab,* AIR (1980) S.C. 898, and other cases and then stated as under :-

> "Now, we are going to consider the law laid down by the Apex Court of our land in the above rulings with reference to the present case on hand. Admittedly, as seen from the facts and circumstances of the case, the following are proved beyond doubt :
>
> (1) There is no provocation or any quarrel between the accused and

the five deceased. All the five deceased were unarmed and sleeping during midnight and also they were helpless. There was no scope or chance for them to face the attack. A

(2) It is proved beyond doubt that it was a pre-meditated one, but not on account of any sudden provocation.

(3) There is no mental derangement for the accused to kill 5 human beings in five strokes one after another and they were killed during the course of their sleep. B

(4) The nature and the manner in which the accused committed the five murders found to be gruesome, calculated, heinous, atrocious and cold-blooded murder. C

Accordingly, in the above circumstances, it is proved beyond doubt that the said heinous and calculated offence committed by the respondent/accused in killing the 5 persons with five strokes one after the another is a rarest of the rare cases of the present age in this State as a whole. D

We are of the clear view that the way in which he cut the neck of five individuals, while they were sleeping during mid-night, is really a pre-meditated, atrocious and calculated murder. As such we are of the clear opinion that if a human being of this nature viz., the respondent /accused is allowed to continue to live in the present E society, there is great threat to the co-human beings. There is no safety or protection for the innocent, helpless, un-armed fellow human beings in the society. In view of the above special reason and the peculiar circumstances of the case on hand, we are of the clear view that it is just, proper, appropriate, fit and deserving case where the F capital punishment of death could be awarded to the respondent/ accused."

20. From the above quoted observations, it is seen that the High Court did not base its decision to impose the penalty of death solely on the fact that 5 persons were murdered but also other attendant circumstances relating G to the murders. Having given our anxious and deep consideration to this aspect of the matter we are in complete agreement with the reasons canvassed by the High Court to impose the capital punishment. We only wish to add that the brutal manner in which the appellant wiped out the entire family of his uncle [except one of his sons, (P.W.8) who, fortunately at the material time was studying in Coimbatore], obviously to grab his properties, has shocked H

A our judicial conscience. Nonetheless we looked into the record to find out whether there was any extenuating or mitigating circumstances in favour of the appellant but found none. If, inspite thereof, we commute the death sentence to life imprisonment we will be yielding to spasmodic sentiment, unregulated benevolence and misplaced sympathy.

B 21. In *Mahesh* v. *State of Madhya Pradesh,* [1987] 3 SCC 80, this Court, while refusing to commute the death sentence, observed:-

> "It will be mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to
C render the justicing system of this country suspect . The common man will lose faith in courts. In such cases, he understands and appreciates the deterrence more than the reformative jargon."

As the above observations squarely apply in facts of the instant case we uphold the sentence of death imposed upon the appellant.
D

22. In the result, the appeal fails and the same is hereby dismissed.

R.P. Appeal dismissed.