

A

GADE LAKSHMI MANGRAJU @ RAMESH

v.

STATE OF ANDHRA PRADESH

JULY 10, 2001

B

[K.T. THOMAS AND R.P. SETHI, JJ.]

Criminal Trial :

C

Sniffer Dog—Tracking down of criminals by—Evidentiary value of—Held : Trained dogs can pick up scent from the scene of crime and reach the hideouts of culprits—However, the possibility of error on its part or its master cannot be ruled out—Hence, criminal courts need not bother much about evidence based on sniffer dogs—But investigating agency may employ such sniffer dogs to track down criminals.

D

Fingerprint—Presence of—At the scene of crime—Evidentiary value of—Held: Is a positive evidence of presence of the culprit at the scene of crime—However, its absence is not a guarantee of absence of the person concerned.

E

Circumstantial evidence—Evaluation of—Held : One circumstance by itself may not unerringly point to the guilt of the accused—It is the cumulative result of all circumstances that matters. Jewellery or ornaments belonging to the deceased female—Identification of—By a male kin—Evidentiary value of—Held : Female kin of deceased female would be in a better position to identify her jewellery or ornaments—However, if such ornaments are identified by a male kin in the presence of female kin such identification is admissible

F

in evidence.

The appellant-accused was convicted by the trial court under Section 302 read with Section 34 of the Penal Code, 1860 and was sentenced to undergo imprisonment for life. The High Court confirmed the conviction and sentence. Hence this appeal.

G

According to the prosecution, PW-2 went on a pilgrimage leaving his mother under the care of the appellant. But on his return his mother was found murdered and the ornaments that she was usually wearing were missing. A sniffer dog, which was deployed by the police to track down the hideout of the culprits, went up to the house of the appellant but he was not there then.

H

Subsequently, the appellant was arrested and some of the missing ornaments of the deceased were recovered from him. The sons of the deceased identified her ornaments in the presence of her daughter. The prosecution sought to prove the case with the help of circumstantial evidence. A

On behalf of the appellant it was contended that the evidence pertaining to the sniffer dog was so fragile that no adverse inference could be drawn against the appellant on the strength of the said evidence; that no fingerprint of the appellant was collected from the scene of crime which was enough to exclude his presence there; and that identification of the ornaments of the deceased was a very fragile evidence since they were identified by her sons. B

Dismissing the appeal, the Court C

HELD: 1.1. The uncanny smelling power of canine species has been profitably tapped by investigating agencies to track the culprits. Trained dogs can pick up scent from the scene of any object and trace out the routes through which the culprits would have gone to reach their hideouts. Developing countries have utilized such sniffer dogs in a large measure. In India also the utilization of such tracker dogs is on the increase. Though such dogs may be useful to the investigating officers, their movements cannot be of any help to the court in evaluating the evidence in criminal cases. [836-D-E] D

1.2. A four-fold criticism is advanced against the reception of such evidence. First is, it is not possible to test the correctness of the canine movements through the normal method available in criminal cases, i.e. in cross-examination. Second is that the life and liberty of human beings should not be made to depend on animal sensibilities. Third is that the possibility of a dog misjudging the smell or mistaking the track cannot be ruled out, or many a time such mistakes have happened. Fourth is that even today the science has not finally pronounced about the accuracy of canine tracking. [836-F-G] E

2.1. The possibility of error on the part of the dog or its master is the first weakness of the evidence based on tracker dogs. There is also the possibility of misunderstanding between the dog and its master. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. The last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties, which enable the police dogs to track and identify criminals. Police dogs engage in these actions by virtue of instincts and also by the training imparted to them. [837-B-D] F G H

A *Abdul Razak Murtaza Dafadar v. State of Maharashtra*, AIR (1970) SC 283 and *Surinder Pal Jain v. Delhi Administration*, [1993] Supp. 3. SCC 681, referred to.

B 2.2. The criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although one cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals. [838-B]

2.3. Investigating agencies can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them.

[838-C]

C 3. Presence of a fingerprint at the scene of occurrence is a positive evidence. But the absence of a fingerprint is not enough to foreclose the presence of the persons concerned at the scene. If during perpetration of the crime the fingerprint of the culprit could possibly be remitted at the scene it is equally a possibility that such a remnant would not be remitted at all. Hence, D absence of finger impression is not a guarantee of absence of the person concerned at the scene. [838-F-G]

E 4. In a case based on circumstantial evidence one circumstance by itself may not unerringly point to the guilt of the accused. It is the cumulative result of all circumstances, which could matter. Hence, one circumstance cannot be culled out from the rest for the purpose of giving a different meaning to it.

[839-B]

F 5. A female kin of the deceased female is in a better position than a male kin to identify the jewellery or ornaments worn by a woman. But when Test Identification Parade was conducted to identify the ornaments the daughter of the deceased was also called in. The sons of the deceased would not have contradicted their sister while identifying the ornaments during the Test Identification Parade. Hence, non-examination of the daughter of the deceased need not be taken as a serious flaw, which could vitally affect the prosecution evidence regarding the identification of the ornaments. [839-D]

G 6. There is no infirmity in the appreciation of evidence by the trial court and the High Court. The circumstances of the case, even barring the evidence pertaining to sniffer dogs, are quite enough to form the completed chain pointing unerringly to the active involvement of the appellant in the murder of the deceased. [839-F]

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 58 of

2000.

A

From the Judgment and Order dated 12th April, 1999 of the Andhra Pradesh High Court in CrI.A. No. 1248 of 1997.

Mohit Mathur, K.L. Rathee and Subramonium Prasad for the Appellant.

B

Ms. T. Anamika and G. Prabhakar for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. A trust betrayed in a hideous manner, is the nub of the prosecution story. When the son of an old housewife proceeded on a pilgrimage he entrusted his best friend with the care of his old mother. But that turned out to be like engaging a wolf to guard the chicken. When the son returned home from the pilgrimage he was welcomed by the dreadful news that his mother was butchered, her jewelleryes plundered and the one to whom her care was entrusted had decamped. Prosecution indicted that friend to be one of the marauders of the ensanguined episode.

C

D

Both the indicted persons were convicted by the Sessions Court under Section 302 read with Section 34 of the IPC and were sentenced to imprisonment for life. They were also convicted under Section 404 IPC for which a sentence of RI for two years was awarded to each of them. They filed separate appeals before the High Court and a Division Bench of the High Court of Andhra Pradesh confirmed the conviction and sentence and dismissed the appeals. One of them (Ramesh) has filed this appeal by special leave. He is described by the prosecution as one of the friends of the son of the deceased.

E

F

Kamalavathi, the victim of the episode, was around 65 when she was murdered. She was the widow of one Ramagopala Subramanyam who died about 15 years before the incident in this case. She and her children were in a fairly affluent condition. Her two sons PW-2 Ramesh and PW-1 Gopalakrishna were staying with their mother on the first floor of the house at Palakol (West Godawari District). Her only daughter was given in marriage to a businessman at Rajamundry. PW-1 Gopalakrishna had gone to his sister's house at Rajamundry during the relevant period.

G

On 11.4.1993, PW-2 Ramesh boarded a train for Sabarimalai on a pilgrimage. It was the appellant Mangaraju who escorted PW-2 up to the

H

A railway station, being a close friend. PW-2 then told Mangaraju to stay in his house for giving company to his mother who otherwise would have been all alone. The murder of Kamalavathi took place on the night of 14th April, 1993, at some time after 8 P.M. On the next morning the milkman (PW-4) Bramajirao went to the house of Kamalavathi for supplying milk as usual. When there was no response to his call from inside the house PW-4 entered into the house and found to his consternation the dead body of Kamalavathi lying on the floor in a puddle of blood. PW-4 screamed and ran out. He informed Kamalavathi's step son (PW-3 Narasimharao) who was living with his family on the ground floor of the same building. On hearing the news PW-3 and his wife rushed to the first floor and saw the dead body. He further noticed that the dead body of Kamalavathi did not have the ornaments which she was usually wearing. All persons concerned were informed about it.

It was Dr. C. Raghavelu (PW-13) who conducted autopsy on the dead body and found that the neck was severely cut, separating the platysma, sternomastoid, jugular vein and carotid artery on the right side, the thyroid cartilage up to the subcutaneous tissues. The investigating officer deployed a sniffer dog to track down the hideout of the culprits. The track dog went up to the house of the appellant, but he was not there then. A number of days later, police got information that appellant and his co-accused (Golla Bujji) were in a train destined to Palakol. On 22.5.1993 they were arrested by the police and recovered a number of ornaments from them.

The case against the accused was sought to be proved by the prosecution with the help of circumstantial evidence. A large number of circumstances were projected by the prosecution. The trial court and the High Court enumerated those circumstances collected from the evidence. Both the courts found that those circumstances were well established by the prosecution and they were sufficient to form a complete chain pointing unerringly to the guilt of both of them. Accordingly the trial court as well as the High Court found them guilty under Sections 302 and 404 read with Section 34 of the IPC and convicted them and sentenced them as aforesaid.

Shri Mohit Mathur, learned counsel who argued for the appellant Mangaraju, made a serious endeavour to dig out holes on the edifice of the prosecution case and for that purpose he made an appeal for reappraisal of the evidence. We allowed him to do so in spite of informing ourselves that this is an appeal under Article 136 of the Constitution. Ms. T. Anamika, learned counsel for the State of Andhra Pradesh stoutly defended the conviction and

sentence passed on the appellant. It is useful to recast the circumstances which the prosecution presented through the evidence. They are the following: A

- (1) Death of Kamalavathi was doubtlessly a case of murder for gain. It happened sometime between 8 P.M. on the night of 14.4.1993 and 7 A.M. on the next morning.
- (2) PW-2, son of the deceased, entrusted the appellant with the duty to be with his mother in the house during the absence of all the children of the deceased. But when he returned appellant was nowhere to the scene. B
- (3) PW-5 Rammohan Rao saw the appellant in the house at 8 p.m. on 14.4.1993 watching the TV programme and the deceased was present inside. PW-5 sought permission for making call. C
- (4) At about 9 P.M. PW-6 Rambabu saw A-1 Mangaraju and A-2 Golla Bujji in a restaurant at Palokal. Thereafter he saw both the accused riding on a motorcycle leaving the restaurant. D
- (5) On 15.4.1993, the police dog under the command of PW-8, after smelling the handkerchief and some other articles of the deceased scampered up to the house of the appellant. But he was not present there.
- (6) On the next day (16.4.1993) appellant would have left the place. He and the co-accused requisition the services of PW-9 who had earlier acquaintance with the appellant, to sell some gold ornaments at Tirupati. E
- (7) Gold ornaments were sold by two persons to PW-10 (a gold dealer at Tirupati) on 17.10.1993. Those two persons were introduced to the dealer by PW-9 Sankara Prakash. F
- (8) The finger impression of A-2 Golla Bujji was found sticking on the almirah of the deceased's house.
- (9) Appellant and the co-accused were together arrested on the same day. A number of gold ornaments were found in their possession. All those ornaments were identified to be the belonging of the deceased. G

The appellant denied all the circumstances including the fact that PW-2 entrusted to him the care of his mother when he went on a pilgrimage to H

A Sabarimalai. The circumstances enumerated above, if established, are sufficient to prove the guilt of the appellant without leaving any manner of doubt regarding his involvement in the murder of the deceased. Hence the learned counsel for the appellant undertook the endeavour to show that the evidence relating to those circumstances is not reliable.

B One of the main contentions advanced by the learned counsel is that the evidence pertaining to the sniffer dog is so fragile that no adverse inference could be drawn against the appellant on the strength of the said evidence. PW-8 is the police constable who deployed the police dog "Raja" for the purpose of tracking down the culprits of this murder. PW-8 said that
C the police dog was brought to the place of occurrence on 15.4.1993 and that dog after smelling the blood, bloodstained handkerchief, a knife and a belt which were strewn on the floor near the dead body, began its pursuit in search of the hideout of the culprits or where the body was stashed away. The track which the terrier followed thereafter has been narrated by PW-8 in his evidence. The termini of the track was the house of the appellant.

D The uncanny smelling power of canine species has been profitably tapped by investigating agencies to track the culprits. Trained dogs can pick up scent from the scene of any object and trace out the routes through which the culprits would have gone to reach their hideouts. Developing countries
E have utilized such sniffer dogs in a large measure. In India also the utilization of such tracker dogs is on the increase. Thought such dogs may be useful to the investigating officers, can their movements be of any help to the court in evaluating the evidence in criminal cases?

F A four-fold criticism is advanced against the reception of such evidence. First is, it is not possible to test the correctness of the canine movements through the normal method available in criminal cases, i.e. in cross-examination. Second is that the life and liberty of human being should not be made to depend on animal sensibilities. Third is that the possibility of a dog misjudging the smell or mistaking the track cannot be ruled out, or many a times such
G mistakes have happened. Fourth is that even today the science has not finally pronounced about the accuracy of canine tracking.

H There are basically three kinds of police dogs-the tracker dogs, the patrol dogs and the sniffer dogs. Recent trends show that hounds belonging to certain special breeds sheltered in specialised kennels and imparted with special training are capable of leading investigating agency to very useful

clue in crime detection and thereby help detectives to make a breakthrough in investigation. English courts have already stated treating such evidence as admissible. In Canada and in Scotland such evidence has become, of late, admissible though in United States the position is not uniform in different States. A

The weakness of the evidence based on tracker dogs has been dealt with in an article "Police and Security Dogs". The possibility of error on the part of the dog or its master is the first among them. The possibility of misunderstanding between the dog and its master is close to its heels. The possibility of a misrepresentating or a wrong inference from the behaviour of the dog could not be ruled out. The last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Police dogs engage in these actions by virtue of instincts and also by the training imparted to them. B C

We will now refer to two decisions of this Court in which the evidence relating to sniffer dogs movement have been tested. D

In *Abdul Razak Murtaza Dafadar v. State of Maharashtra*, AIR (1970) SC 283 a three Judge Bench of this Court declined to express any concluded opinion or to lay down any general rule with regard to tracker dog's evidence or its admissibility against the accused, as it was not necessary to do so on the fact situation. However, their Lordships made the following observations on the usefulness or otherwise of such evidence : E

"It was argued that the tracker dog's evidence could be likened to the type of evidence accepted from scientific experts describing chemical reactions, blood tests and the actions of bacilli. The comparison does not, however appear to be sound because the behaviour of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice. But dogs are intelligent animals with many thought process similar to the thought processes of human beings and wherever you have you have thought processes there is always the risk of error, deception and even self-deception. For these reasons we are of the opinion that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight." F G

In *Surinder Pal Jain v. Delhi Administration*, [1993] Supple. 3 SCC 681, H

A a two Judge Bench expressed the opinion that “the pointing out by the dogs could as well lead to a misguided suspicion that the appellant had committed the crime, so save their Lordships side lined that item of evidence from consideration.”

B We are of the view that criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although we cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals.

C Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them.

D Exclusion of that circumstance would not affect strength or sturdiness of the chain found through the other circumstances which have been established by the prosecution. Dealing with the fingerprints collected from the almirah at the place of occurrence, learned counsel for the appellant contended, first, that prosecution did not prove that the fingerprint used by PW-7 to compare the finger impression from the almirah was that of A-2 Golla Bujji. In our view the appellant cannot dispute that fact as A-2 Golla Buji himself did not challenge it when a formal evidence was tendered by the prosecution on that score.

E Learned counsel alternatively contended that even if the involvement of A-2 is treated as proved that is not sufficient to inveigle the appellant into the dragnet. He said that the very fact that no fingerprint of the appellant was collected from the scene is enough to exclude his presence from the scene at the time of occurrence.

F Presence of a fingerprint at the scene of occurrence is a positive evidence. But the absence of a fingerprint is not enough to foreclose the presence of the persons concerned at the scene. If during perpetration of the crime the fingerprint of the culprit could possibly be remitted at the scene it is equally
G a possibility that such a remnant would not be remitted at all. Hence absence of finger impression is not guarantee of absence of the person concerned at the scene.

H Learned counsel contended next that the inability of the prosecution to indicate the time of murder can go to the benefit of the appellant because the appellant alone was once found in the house whereas he was found only at

the restaurant in the company of A-2. According to the counsel if A-2's finger impressions on the almirah is of any use the possibility of A-2 committing the murder all alone cannot be ruled out. A

We cannot approve of the said contention as a safe method for appreciating a case based on circumstantial evidence. One circumstance by itself may not unerringly point to the guilt of the accused. It is the cumulative result of all circumstances which could matter. Hence, we are not inclined to cull out one circumstance from the rest for the purpose of giving a different meaning to it. B

Learned counsel lastly contended that identification of ornaments as those of the deceased is a very fragile evidence. The witnesses who identified the ornaments as those belonging to the deceased were PW-1 and PW-2 who are the sons of the deceased. We agree with the contention of the learned counsel that a female kin of the deceased female would have been in a better position than a male kin to identify the jewellery or ornaments worn by a woman. But we make a note of the fact that when a Test Identification Parade was conducted to identify the ornaments the daughter of the deceased was also called in. There is no case for the prosecution or the defence that she would have failed to identify such ornaments as those of her mother. It is difficult for us to believe that PW-1 and PW-2 the sons would have contradicted their sister while identifying the ornaments during the Test Identification Parade. Hence non-examination of the daughter of the deceased need not be taken as a serious flaw which could vitally affect the prosecution evidence regarding the identification of the ornaments. C D E

We do not find any infirmity as to the appreciation of evidence as done by the trial court and the High Court. We hold the view that the circumstances enumerated above even barring the evidence pertaining to the sniffer dogs, are quite enough to form the completed chain pointing unerringly to the active involvement of the appellant in the murder of the deceased. Accordingly, we dismiss this appeal. F

V.S.S.

Appeal dismissed. H