

STATE OF KARNATAKA

A

v.

M.V. MAHESH

MARCH 4, 2003

[S. RAJENDRA BABU AND AR. LAKSHMANAN, JJ.]

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Penal Code, 1860/Evidence Act, 1872:

Circumstantial Evidence:

C

Disappearance and murder of the deceased allegedly by husband and father-in-Law—Recovery of bones—Conviction by Trial Court—Reversed by High Court—On appeal, Held: In murder case of such nature, definite evidence as to the proximity of time of the deceased and accused being last seen together and commission of murder was within the knowledge of accused need to be established—Discovery of bones of the deceased not based on the basis of statement of her husband—Absence of motive and other appropriate material to establish involvement of husband in the commission of murder—Hence conviction of husband rightly set aside by High Court.

D

Respondent-husband lodged a complaint about the missing of his wife. On investigation, human bones had been recovered and were subjected to DNA examination which established identity of bones as that of the deceased-wife. Trial Court found accused-husband and his father guilty of committing murder of the deceased and convicted and sentenced both of them accordingly. Before the High Court, they successfully appealed against the conviction and sentence. Hence the present appeal by the State.

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Dismissing the appeal, the Court

HELD: 1.1. Regarding involvement of the respondent-husband in the commission of murder of his wife, the deceased, the explanation sought to be offered by him is that he took her to the place of her relatives on 28.11.1988 at about 5.45 A.M. while the evidence of the witnesses is that they saw her last on an earlier date. The statement made by the respondent was false and not established. Merely being seen last together is not enough.

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- A** What has to be established in a case of this nature is definite evidence to indicate that the deceased had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. Even in the absence of the *corpus delicti* it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the Court. In the instant case no such material is made available to the Court. [555-D-E-F]

- B**
- 1.2. The statement given by the respondent is a very lengthy one unnecessarily narrating various circumstances leading to his marriage with the deceased against the wishes of his parents and then she was in the family way at the relevant time and so on. So far as respondent is concerned, no motive appears to have been established. Further the statement of the respondent as such leading to the discovery is neither marked nor put to the witnesses for prosecution. Indeed, the statement which itself is in doubt inasmuch as the police had already information through another witness and that circumstance was strongly relied upon by the High Court holding that the whole prosecution case is a chain of circumstances connecting one with another with many missing links in between, hence, rightly rejected it. [555-A; 556-A-B-C]

- D**
- E** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1678 of 1995.

From the Judgment and Order dated 14.7.1995 of the Karnataka High Court in Crl. A. No. 374 of 1993.

- F** Siddharth Dave, for S.R. Hegde, for the Appellant.

U.R. Lalit, S.N. Bhat, for the Respondent.

The Judgment of the Court was delivered by

- G** **RAJENDRA BABU, J.** This case bristles with mystery over mystery as to the disappearance of Beena, wife of the respondent. On a complaint lodged about the missing of the said Beena, investigation was taken up by the police and on recovery of human bones M.O.13 to M.O. 20 which were subjected to DNA examination, in order to establish the identity of the said bones as that of Beena, laid a charge sheet against the respondent and his father in the Court of Sessions at Bangalore which Court, after an elaborate
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trial, found that there are incriminating circumstances involving the respondent and his father in the offence alleged against them, namely, murder of Beena and convicted both of them who successfully appealed against the same. Hence this appeal. During pendency of this appeal father of the respondent died. A

The first circumstance relied upon by the Trial Court is that the said Beena was last seen in the company of the respondent. The second circumstance relied upon by the Trial Court is that the respondent gave false explanation as to her disappearance stating that she was in the family way and she insisted upon visiting her parents on 28.11.1988 and at 5.45 A.M. he took her on his two-wheeler and dropped her at the residence of her relatives and thereafter he did not hear anything about her. The DNA examination resulted in matching of the bones with that of the grouping of her close relatives. B C

Even if we proceed on the basis that the DNA examination resulted in identifying the bones found by the police as that of Beena, still what has to be established is involvement of the respondent in the commission of her murder. For that purpose reliance is placed upon the evidence of PWs. 2, 6, 17, 28 and 29 who claim to have seen Beena in the company of the respondent. The explanation sought to be offered by the respondent is that he took her to the place of her relatives next morning at about 5.45 A.M. while the evidence of the witnesses referred to just now is that they saw her last on 28.11.1988. The statement made by the respondent was false is not established. Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that Beena had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence of the *corpus delicti* it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In this case no such material is made available to the court. D E F

Further the so-called statement given by the respondent leading to discovery of the bones of Beena does not seem to have been appropriately put forth before the court. The statement given by the respondent is a very lengthy one narrating various circumstances as to how he fell in love with the said Beena, thereafter got married much against the wishes of his parents and she was in the family way at the relevant time and so on. So far as the G H

- A** respondent is concerned, no motive appears to have been established. Further the statement of the respondent as such leading to the discovery is neither marked nor put to the witnesses for prosecution. Indeed, whether the statement made by him really led to the discovery itself is in doubt inasmuch as the police had already information through another witness and that circumstance was strongly relied upon by the High Court. The High Court held that the statement made by the respondent, if at all, will not lead to any discovery inasmuch as the information was already in possession of the police and that reasoning cannot be faulted with. The whole prosecution case is a chain of circumstances connecting one with another with many missing links in between. These aspects were noticed by the High Court and, therefore, did
- B**
- C** not accept the case put forth by the prosecution.

In this view of the matter, we do not think any case is made out by the appellant to interfere with the order made by the High Court. The appeal, therefore, stands dismissed.

D S.K.S.

Appeal dismissed