A

PRAKASH

v.

STATE OF KARNATAKA

(Criminal Appeal No. 1682 of 2005)

APRIL 15, 2014

B

[RANJANA PRAKASH DESAI AND MADAN B. LOKUR, JJ.]

Penal Code, 1860: s.302 - Murder - Acquittal by trial court

C *- Conviction by High Court on the basis of circumstantial evidence - Appeal against conviction - Prosecution case that appellant went to the house of victim-deceased and robbed her ornaments and murdered her - High Court relied on the circumstances that the appellant was found in deceased*

D *house on the fateful day; that fingerprint expert found his fingerprint on a plastic cover; that appellant's clothes were blood-stained when he was arrested after 6 days and the blood-stains tallied with the blood group of the deceased; that the ornaments of the deceased were recovered at the instance*

E *of the appellant after his arrest; that the weapon of offence, that is, a steel rod was discovered at the instance of the appellant - On appeal, held: The incident took place at 8.30 P.M. while the prosecution witnesses had seen the appellant with the deceased at 1 P.M. - There was no evidence about*

F *the whereabouts of the appellant from 1 P.M. to 8.30 P.M. - Further, no TIP was held - High Court proceeded merely on the basis of probabilities - The entire exercise of the appellant's fingerprint identification was also shrouded in mystery - Mere recovery of some ornaments from some*

G *people also did not lead to any conclusion that the ornaments so recovered belonged to the deceased - Investigating Officer made no effort to ascertain whether the blood stains on the steel rod were those of the deceased nor was any effort made to ascertain whether the steel rod contained any fingerprints*

H

which matched with those of the appellant - This, coupled with the fact that the blood stained crowbar seized at the place of occurrence, was not sent for a chemical examination, raised a grave suspicion that the investigation was not fair and the benefit of this doubt must go to the appellant - None of the circumstances accepted by High Court pointed to the probability of appellant's guilt or involvement in the murder of the deceased - The view taken by trial court giving appellant the benefit of doubt was certainly a plausible view and in the absence of any perversity in the view taken, the High Court ought not to have upset the conclusion.

Investigation: Scientific methods - Use of - Discussed.

Karnataka Police Manual: Guideline No. 1543 and 1544 - Articles containing fingerprints - Procedure to be followed - Discussed.

Test identification parade: Requirement of holding - Held: An identification parade is not mandatory nor can it be claimed by the suspect as matter of right - The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial - If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been seen by the witness or victim for some length of time - However, if the suspect is known to the witness or victim or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media no identification evidence is necessary - Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution.

Evidence: Circumstantial evidence - Held: In a case of circumstantial evidence, there has to be some degree of trustworthiness and certainty about the existence of the

circumstances - Mere probabilities are certainly not enough.

The prosecution case was that on 5th November, 1990, the appellant who was resident of Nagenahalli village was searching for the victim-deceased house. While doing so, he met PW-6 and asked her for directions. PW-6 did not know the way of the house of the deceased and took the appellant to the house of PW-7 and requested her to take the appellant to the house of deceased. PW-7 took the appellant to the deceased's house. The appellant informed the deceased that he had came along with 'S', the son of her brother PW-3 from his village and enquired from the deceased whether 'S' had reached. The deceased informed that 'S' has not come to her house. This happened at about 1.00 P.M. In the evening, when the deceased did not visit the house of PW-1 to watch TV, PW-1 sent her grandson to call the deceased. The deceased came to PW-1 and informed her that she could not watch TV at her house as usual since some relatives from her village had come to her house and she had to cook food for them. The next day evening PW-1 came to know about the murder of the deceased. The Investigating Officer PW-25 soon reached the place of occurrence. The dog squad, a fingerprint expert and a photographer also reached there a little later. On a requisition made by the Investigating Officer, PW-12, the photographer took photographs of the dead body and the crime scene and of a passbook MO-13 lying at the scene of the incident. The fingerprint expert PW-20 examined nine articles in the premises and found some fingerprints on a plastic cover containing the inscription 'Canara Bank'. The appellant was apprehended on 11th November, 1990. Certain cash and ornaments were recovered from him. The blood stained clothes of the appellant and a blood stained steel rod concealed beneath a stone slates were seized by the Investigating Officer. The Investigating Officer sent the appellant's

fingerprints to the fingerprint bureau for comparison. The fingerprint expert, PW-20 certified that the fingerprint sent to him matched with the chance prints found on the plastic cover found at the place of occurrence. The trial court however found the appellant not guilty and acquitted him. The High Court set aside the acquittal. The instant appeal was filed challenging the order of the High Court.

Allowing the appeal, the Court

HELD: 1. The High Court proceeded on the basis that the case was one of circumstantial evidence. The Court mentioned five relevant circumstances that the appellant was found in deceased house on the fateful day; that the fingerprint expert found appellant's fingerprint on a plastic cover bearing the inscription 'Canara Bank' [Exh P-18]; that the appellant's clothes were blood-stained when he was arrested on 11th November, 1990 and the blood-stains tallied with the blood group of the deceased; that the deceased's ornaments were recovered at the instance of the appellant after his arrest; that the weapon of offence, that is, a steel rod was discovered at the instance of the appellant from the place where it was concealed. The High Court also mentioned two other circumstances, namely, that the deceased met with a homicidal death and that the appellant absconded after committing the crime. [Para 16 and 17] [262-B-F]

2. There is no doubt that PW-1 did not at all see the appellant at house of the deceased. Her evidence was only to the effect that the deceased did not come to watch TV with her on the fateful evening because she had some relatives in her house and she had to cook food for them. These relatives were not identified or named except that she stated that the deceased's nephew 'S' would be coming and that she had to feed him. Similarly, PW-4 also did not identify or name any of the deceased's relatives

A in her house. All that he stated was that when he was at his shop he observed that some relatives had come to the deceased's house and she had given food to them. He stated that he closed his shop at 8.30 p.m. or so and went home. The evidence of PW-4 disclosed that the B deceased was alive till about 8.30 p.m. and was in the company of more than one person. [Paras 19 and 20] [262-H; 263-A-C]

3. PW-6 also did not add to the case of the C prosecution. She stated that the appellant had approached her for directions to the deceased's house and that she took the appellant to the house of PW-7. She did not accompany the appellant or PW-7 to deceased's house. The appellant was produced before this witness about 5 or 6 days after the incident when he was brought D to her shop by the police and she identified him as the person whom she had met in the afternoon of 5th November, 1990. The only witness who actually saw the appellant with the deceased was PW-7. She narrated the conversation between the appellant and the deceased E and the fact that the deceased did not know the appellant and had asked him to identify himself. The conversation she heard revealed that 'S' was expected to come to the deceased's house. This witness left midway during the conversation between the appellant and the deceased F and did not actually see the appellant enter her house. A few days after the incident, PW-7 was called to the police station and she saw the appellant sitting over there and identified him. On the basis of the evidence of these four witnesses, it can at best be said that the appellant was at G deceased's house at about 1.00 p.m. on 5th November, 1990 and that according to him 'S' was also to arrive at the deceased's residence. The whereabouts of the appellant from 1.00 p.m. onwards are not known. It could also be said that the deceased gave dinner to her relatives H at about 8.30 p.m. but these relatives cannot be identified.

The appellant may or may not be one of them. It could not, therefore, be definitely concluded that the appellant was being served dinner by the deceased at about 8.30 p.m. on 5th November, 1990 or that he stayed in her house thereafter. But it is clear that even if the appellant was there, he was not alone with the deceased when she served dinner. [Paras 21-24] [263-D-H; 264-A-C]

4. 'S' was not examined by the Investigating Officer and there was absolutely no answer forthcoming from the State in this regard. The involvement of the appellant in the incident came about only because PW-3 informed the Investigating Officer on the night of 5th November, 1990 that he was not on talking terms with the appellant and that he had given a complaint against him when the appellant tried to assault PW-3. This is all the more reason for the Investigating Officer to have questioned 'S' who was expected to be at the deceased's house on 5th November, 1990. Secondly, no Test Identification Parade was held to determine whether the appellant was actually the person who was seen by PW-6 and by PW-7. [Paras 25 and 26] [264-D-F]

5. An identification parade is not mandatory nor can it be claimed by the suspect as matter of right. The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been seen by the witness or victim for some length of time. However, if the suspect is known to the witness or victim or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always

A **fatal to the case of the prosecution. [Paras 30 and 31] [266-A-C, E-F]**

Ravi Kapur v. State of Rajasthan **(2012) 9 SCC 284: 2012 (10) SCR 229** ; *R. Shaji v. State of Kerala* **(2013) 14 SCC 266: 2013 (3) SCR 1172** ; *Rameshwar Singh v. State of J&K* **(1971) 2 SCC 715: 1972 (1) SCR 627** ; *Mulla v. State of U.P.* **(2010) 3 SCC 508: 2010 (2) SCR 633**; *Kishore Chand v. State of H.P.,* **(1991) 1 SCC 286: 1990 (1) Suppl. SCR 105**; *State of U..P. v. Boota Singh* **(1979) 1 SCC 31: 1979 (1) SCR 298** ; *Malkhan Singh v. State of M.P.* **(2003) 5 SCC 746: 2003 (1) Suppl. SCR 443**; *Vsveswaran v. State* **(2003) 6 SCC 73: 2003 (3) SCR 978 - relied on.**

Marcouix v. The Queen **(1976) 1 SCR 763**; *Mezzo v. The Queen* **(1986) 1 SCR 802 - referred to.**

D

6. Both PW-6 and PW-7 saw the appellant for the first time on the afternoon of 5th November, 1990 and they had seen him, if at all, briefly if not fleetingly. It is true that these witnesses had identified the appellant when he was E **produced before them on his apprehension about five or six days after the incident and also while he was in the dock in court, but the circumstances under which the dock identification took place are not quite satisfactory inasmuch as both the witnesses entered the witness box** F **almost 4-1/2 years after they are said to have first seen the appellant only briefly and without any identification parade having been conducted. The trial court was of the view that the evidence on record did not inspire confidence as far as fixing the identity of the suspect as the appellant was concerned. The trial court took into account the long lapse** G **of time between the incident and the identification of the appellant in court, the absence of any distinguishing features of the appellant, the brief time for which the witnesses saw him and the fact that he was a total stranger to the witnesses. The High Court was satisfied that the** H **appellant was suitably identified but completely**

overlooked the fact that even if the trial court had come to an erroneous conclusion, at best, it placed the appellant at the place of occurrence at 1.00 p.m. and not later. Given the facts of the case, it would have been more appropriate for an identification parade to have been conducted, but its absence in this case is not necessarily fatal, there being other reasons also for not accepting the case set up by the prosecution. However, the absence of an identification parade certainly casted a doubt about the appellant's presence at the deceased house on 5th November, 1990. [Paras 32 and 33] [267-C-D, F-H; 268-A-B]

7. Even assuming the appellant was present at the deceased house on 5th November, 1990 at about 1.00 p.m. it would not necessarily follow that he was also present at about 8.30 p.m. that day. Thus, not only was there an absence of some degree of certainty and a doubt about the appellant's presence at the deceased's house on 5th November, 1990 but also an absence of certainty and a doubt whether he was there at 1.00 p.m. and at 8.30 p.m. There was also no reason at all for the appellant to have gone alone to the deceased's house. He did not know where she lived and even she did not know who he was. It is difficult to imagine that the appellant would leave his house in Nagenahalli village to visit the deceased's house for the purpose of stealing some ornaments, as suggested by the prosecution theft of ornaments being the alleged motive. This presumes that the deceased had ornaments which were worth stealing and it also presumes that the appellant knew of the existence of these ornaments. Given the evidence it is very difficult to accept with certainty the case of the prosecution that the appellant alone was with the deceased on the fateful night of 5th November, 1990. The view taken by the trial court giving the appellant the benefit of doubt is certainly a plausible view and in the absence of any perversity in the view taken, the High

A Court ought not to have upset the conclusion arrived at. [Paras 34 to 36] [268-C-G]

8. The High Court proceeded merely on the basis of probabilities. The High Court held that the appellant was probably present in the deceased's house on 5th B November, 1990 and that in all probability he was the relative who was having dinner at the deceased's house. In a case of circumstantial evidence, there has to be some degree of trustworthiness and certainty about the existence of the circumstances - mere probabilities are C certainly not enough. This is an unsatisfactory way of dealing with the issue and the view taken by the High Court in this regard cannot be upheld in view of the above, it is not necessary to labour on the questions raised on the applicability of the last seen theory. There D is a clear doubt whether the appellant was with the deceased; if he was, then it was at about 1.00 p.m. on 5th November, 1990; there is no evidence that the appellant was with the deceased thereafter and on the contrary there was evidence that some of her relatives (which may E or may not include the appellant) were with her at about 8.30 p.m. It would be stretching the last seen theory to the vanishing point if it was to be applied to the facts of this case. [Paras 37 and 38] [268-H; 269-A-D]

9.The witnesses relevant for the purposes of the F fingerprint evidence as a relevant circumstance were the photographer and the fingerprint expert. The photographer stated that he had taken a photograph of the bank pass book belonging to the deceased. He also produced in court the negative of a photograph taken by G him [marked as MO-13(a) of the appellant's fingerprint on the pass book. No positive print or photograph was developed from the negative. In his cross examination, the photographer could not say if the fingerprint in the negative was that appearing on the pass book. In other H words, there was nothing in MO-13(a) to relate it to the

pass book. The testimony of the photographer with regard to the fingerprints of the appellant on the bank pass book was therefore, inconsequential. [Para 39 and 40] [269-E-G; 270-A]

10. The appellant was in fact apprehended and arrested on 11th November, 1990 and proceeding on that basis, there cannot be any question of his being given a cover to hold by the Investigating Officer on 7th November, 1990 for the purpose of obtaining his fingerprint. The ultimate conclusion is that there is absolutely no evidence on record to show how Exh. P-20 which is said to be the admitted fingerprint of the appellant came into existence. In the absence of any admitted fingerprint, there is nothing to show that the handprint or the fingerprints on Exh. P-18 was that of the appellant. [Para 43] [271-B-C]

Hanumant Govind Nargundkar v. State of M.P 1952 SCR 1091; *Narain Singh v. State of Punjab*(1963) 3 SCR 678; *Dadarao v. State of Maharashtra* (1974) 3 SCC 630 - relied on.

11. Assuming the appellant's fingerprint was in fact obtained by the Investigating Officer it was clearly not given voluntarily, but perhaps unwittingly and in what seems to be a deceitful manner. To avoid any suspicion regarding the genuineness of the fingerprint so taken or resort to any subterfuge, the appropriate course of action for the Investigating Officer was to approach the Magistrate for necessary orders in accordance with section 5 of the Identification of Prisoners Act, 1920. The High Court has taken the view that it is not incumbent upon a police officer to take the assistance of a Magistrate to obtain the fingerprints of an accused and that the provisions of the Identification of Prisoners Act are not mandatory in this regard. However, the issue is not one of the provisions being mandatory or not - the issue is

A whether the manner of taking fingerprints is suspicious or not. In this case, it is not known if the appellant's fingerprint was taken on 7th November, 1990 as alleged by him or later as contended by the Investigating Officer, or the circumstances in which it was taken or even the
B manner in which it was taken. It is to obviate any such suspicion that this Court has held it to be eminently desirable that fingerprints are taken before or under the order of a Magistrate. As far as this case is concerned, the entire exercise of the appellant's fingerprint
C identification was shrouded in mystery. [Paras 46 and 47] [271-E-G; 272-D-G]

Mohd. Aman v. State of Rajasthan (1997) 10 SCC 44 - Relied on.

D 12. Though a blood-stained crowbar was seized from the place of occurrence and according to the Investigating Officer, a blood-stained steel rod was recovered at the instance of the appellant neither of these material objects was sent for fingerprint examination. The
E investigation was conducted in a rather unconcerned manner. The plea of the appellant that the photographs of the scene of incident did not show the existence of the plastic cover Exh. P-18 and therefore, according to him, the plastic cover was planted subsequently cannot be
F accepted because it was nobody's case that the photographer took photographs of everything or every item found in the residence of the deceased. [Paras 48 and 49] [272-G-H; 273-A-C]

13. When fingerprint expert took Exh. P-18 with him,
G no mahazar or panchnama was drawn up and nobody was told that the plastic cover bearing the inscription 'Canara Bank' was taken away by him for examination. This was not permissible and that there should have been some record of the plastic cover having been taken by
H the finger print expert especially since the Investigating

Officer was present at the spot. On the other hand, if the plastic cover was taken away by the finger print expert without the knowledge of the Investigating Officer and right under his nose, then it makes the position even worse for the prosecution. Be that as it may, there is no doubt about the bona fides of finger print expert since, in his testimony, he clearly stated that he had examined nine articles and one of them was the plastic cover bearing the inscription 'Canara Bank' and that while carrying an object containing prints, there is chance of damage to the prints if the object is not handled properly. It is perhaps to avoid the possible damage that he took the plastic cover with him. [Para 50] [273-C-F]

14. The finger print expert followed the guidelines laid down in the Karnataka Police Manual and perhaps acted in an overly cautious manner. Guideline No. 1543 provided that the opinion of the fingerprint expert is of paramount importance in the investigation of various crimes. Clause (iv) and (v) of Guideline 1544 in the Manual provide that iv) If latent prints are found on portable articles they should be seized under a detailed panchanama duly packed and labelled and sent to the Finger Print Bureau with a police officer with instructions regarding the care of the package during the journey. v) In sending the articles containing latent prints to the Bureau, proper attention must be given to their package. It should be ensured that no portion of the article where prints may be found should get into contact with anything else and the articles should be securely packed in a suitable container." Clause (iv) was clearly not followed when the fingerprint expert took the plastic cover along with him and this was an extremely serious lapse. However, he was given the benefit of doubt assuming that it was perhaps with clause (v) in mind that he took the plastic cover along with him. [Paras 51 and 52] [273-G-H; 274-A-F]

A 15. While the manner in which Exh. P-18 was taken away by the fingerprint expert is disapproved the case of the prosecution did not get strengthened even if a valid procedure was followed, since there was nothing on record to show that the 'admitted' fingerprints on Exh. P-
B 20 were those of the appellant which could be compared with the fingerprints on Exh. P-18 and the enlarged photograph being Exh. P-19 Assuming that Exh. P-20 was a valid piece of evidence validly obtained, there was no explanation why it was kept by the Investigating
C Officer from 14th November, 1990 till 9th January, 1991 when it was received by the fingerprint expert. The Karnataka Police Manual highlights the importance of keeping safe an article containing fingerprints. In view of its importance, the fingerprint expert did not trust anyone
D with the plastic cover bearing the inscription 'Canara Bank' [Exh. P-18] and carefully took it along with him to avoid its getting damaged by getting into contact with anything else. On the other hand, the Investigating Officer kept Exh. P-20 with him for almost two months and in
E circumstances that seemed unclear. The possibility of Exh. P-20 getting damaged due to careless handling cannot be ruled out. There was no fingerprint evidence worth it linking the appellant to the murder of the deceased. [Paras 53 to 55] [274-F-H; 275-A-C]

F 16. The witnesses relevant for the recovery of blood stained clothes of the appellant were PW-18, PW-21 and PW-24. PW-18 and PW-24 gave a very similar statement to the effect that the appellant was apprehended on 11th November, 1990. They did not state that at the time of his
G apprehension, he was wearing blood stained clothes. However, when PW-21 was called to the police station on 11th November, 1990 he was told that it was for the purpose of witnessing a search of the appellant. He stated that the appellant was wearing a shirt and a
H panche and he noticed blood stains on both the

apparels. On the personal search of the appellant some cash was recovered and a receipt from Vijayalakshmi Financiers was also recovered. The recovery of the blood stained clothes of the appellant did not advance the case of the prosecution. The reason is that all that the prosecution sought to prove thereby was that the blood group of the deceased was AB and the blood stains on the appellant seized clothes also belong to blood group AB. This would not lead to any conclusion that the blood stains on appellant's clothes were deceased's blood. There are millions of people who have the blood group AB and it is quite possible that even the appellant had the blood group AB. A blood sample was taken from the appellant and this was sent for examination. The report received from the Forensic Science Laboratory [Exh.P-27] was to the effect that the blood sample was decomposed and therefore its origin and grouping could not be determined. It is, therefore, quite possible that the blood stains on appellant's clothes were his own blood stains and that his blood group was also AB. [Para 57, 58 and 61] [275-D-F; 276-C-F]

17. The appellant contended that the report of the serologist was not put to him when he was examined under Section 313 of the Code of Criminal Procedure. The High Court dealt with this issue in an unsatisfactory manner. [Para 62] [276-F-G]

18. According to the prosecution; the appellant had led the Investigating Officer to various places from where some ornaments belonging to Gangamma were recovered. The recovery witnesses were examined by the prosecution as well as those persons from whom the ornaments were recovered. However, what is of significance is that none of the recovered ornaments could be connected to the deceased. This is a serious lapse in investigation and the mere recovery of some

A ornaments from some people would not lead to any conclusion that the ornaments so recovered belonged to the deceased. At the stage of re-examination of PW-3, the prosecution sought permission to examine him with regard to identification of the ornaments said to belong
B to the deceased. However, this was declined by the trial judge who perused the statement of the witness recorded under Section 162 of the Code of Criminal Procedure which did not have anything with regard to identification of the ornaments. The High Court adversely commented
C on this and held that the trial judge adopted a very strange procedure while declining to grant the request of the prosecution to have the ornaments identified through PW-3. According to the High Court, PW-3 had stated in an earlier part of his testimony in court that the deceased
D had ornaments such as a gold chain, silver waist belt, silver rings, ear studs etc. and that he had seen those ornaments and could identify them if he saw them. Therefore, permission should have been granted to the prosecution to further examine PW-3 and it was for the
E defence to have brought out any contradiction between the statement made by the witness in court and the statement made by him under Section 162 of the Code of Criminal Procedure. Having said that, the High Court concluded that the ornaments belonged to the deceased. Even if the procedure followed by the trial court is
F assumed to be incorrect, in the absence of any identification of the ornaments as belonging to the deceased, the High Court could not have definitely concluded that they did belong to the deceased. In any event, even assuming that the ornaments belonged to the
G deceased, at best, the appellant would be guilty of having received stolen property but could certainly not be guilty of having murdered the deceased. [Paras 66, 68 and 69] [278-D-H; 279-A-E]

H 19. The steel rod used to kill the deceased was

recovered at the instance of the appellant. This was hidden under a stone slab and it contained blood stains. The Investigating Officer made no effort to ascertain whether the blood stains on the steel rod were those of the deceased nor was any effort made to ascertain whether the steel rod contained any fingerprints which matched with those of the appellant. This, coupled with the fact that the blood stained crowbar seized at the place of occurrence, was not sent for a chemical examination, raised a grave suspicion that the investigation was not fair and the benefit of this doubt must go to the appellant. The investigation in the case was very cursory and the Investigating Officer had made up his mind that the appellant had murdered the deceased and the investigation was directed at proving this conclusion rather than the other way around with the investigation leading to a conclusion that the appellant had murdered the deceased. None of the circumstances relied upon by the prosecution and accepted by the High Court point to the probability of appellant's guilt or involvement in the murder of the deceased. Though the murder was committed way back in 1990, scientific methods for investigation were available even at that time but unfortunately not made use of. The prosecution must lay stress on scientific collection and analysis of evidence, particularly since there are enough methods of arriving at clear conclusions based on evidence gathered. [Paras 70, 71, 73 and 74] [279-E-G; 280-A-B, E-G]

Case Law Reference:

(1976) 1 SCR 763	Referred to	Para 27
(1986) 1 SCR 802	Referred to	Para 30
2012 (10) SCR 229	Relied on	Para 30
2013 (3) SCR 1172	Relied on	Para 30
1972 (1) SCR 627	Relied on	Para 30
2010 (2) SCR 633	Relied on	Para 30

A	**1990 (1) Suppl. SCR 105**	**Relied on**	**Para 30**
	1979 (1) SCR 298	**Relied on**	**Para 30**
	2003 (1) Suppl. SCR 443	**Relied on**	**Para 30**
	2003 (3) SCR 978	**Relied on**	**Para 31**
B	**1952 SCR 1091**	**Relied on**	**Para 44**
	(1963) 3 SCR 678	**Relied on**	**Para 45**
	(1974) 3 SCC 630	**Relied on**	**Para 45**
	(1997) 10 SCC 44	**Relied on**	**Para 46**

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1682 of 2005.

From the Judgment and Order dated 06.07.2005 of the High Court of Karnataka, Bangalore in Criminal Appeal No. 699 of 1999.

D

K. Parmeshwar, Shekhar G. Devasa, Dinesh Kumar Garg for the Appellant.

Gurudatta Ankolekar, V.N. Raghupathy for the Respondent.

E The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The substantial issues raised in this appeal, in which the conviction is based on circumstantial evidence, primarily relate to the presence of the convict at the place and time of the murder of Gangamma, the analysis of the
F fingerprint evidence recovered from the place of incident and the recovery of blood stained clothes of the convict and the ornaments of the deceased at his instance. On all issues, we find in favour of the convict and conclude that that none of the circumstances that have been found against him by the High
G Court and which have led to his conviction have been satisfactorily proved. The conviction must, therefore, be set aside.

The facts

H 2. On 5th November, 1990 the appellant Prakash,

ordinarily a resident of Nagenahalli village in Doddaballapur taluk of Bangalore district was searching for Gangamma's house in Bangalore. While doing so, he met PW-6 (also named Gangamma) and asked her for directions. Since PW-6 did not know the way to Gangamma's house, she took Prakash to PW-7 Ammajamma's house, and requested her to take Prakash to Gangamma's house.

3. Ammajamma then took Prakash to Gangamma's house. On reaching there, Prakash informed Gangamma that Swamy (son of her brother PW-3 Hucha Basappa) and he had come from the village and he enquired from Gangamma whether Swamy had reached. Gangamma informed him that Swamy had not come to her house and asked him (Prakash) to disclose his identity. Thereupon, Prakash introduced himself and Ammajamma left them and returned home. This happened at about 1.00 p.m. on 5th November, 1990.

4. In the evening, Gangamma would normally visit PW-1 Revamma's house, across the road, for watching TV. When Gangamma did not come in the evening on 5th November, 1990 Revamma sent her grandson Lohith aged about 5 years to Gangamma's house to call her. Gangamma then came with Lohith to Revamma's house and informed her that she could not watch TV at her house as usual since some relatives from her village had come to her house and she had to cook food for them. Soon thereafter, Gangamma left and returned to her house. According to the First Information Report (FIR) this was at about 8.00 p.m. on 5th November, 1990.

5. On the next day, at about 5.30 p.m. Revamma had gone to a medical shop where she learnt that Gangamma had been murdered in her house. Thereupon, she went to Gangamma's house and found a crowd had gathered over there. She entered Gangamma's house and saw the dead body with her clothes and other articles lying scattered about. She then sent word through PW-4 Muniyappa and others to Gangamma's brother PW-3 Hucha Basappa about the incident.

6. Revamma was advised by some people in the crowd

A to lodge a complaint with the police. Therefore, she went to the police station and lodged a complaint about the incident at about 7.30 p.m. and an FIR was registered.

7. The Investigating Officer PW-25 D'Souza soon reached the place of occurrence, that is, Gangamma's house. The dog
B squad, a fingerprint expert and a photographer also reached there a little later. On a requisition made by the Investigating Officer, PW-12 Ramachandra the photographer took photographs of the dead body and the crime scene. He also took a photograph of a passbook MO-13 lying at the scene of
C the incident. The fingerprint expert PW-20 Nanaiah examined nine articles in the premises and found some fingerprints on a plastic cover containing the inscription 'Canara Bank'. Nanaiah took the plastic cover [Exh. P-18] with him for a detailed examination.

D 8. The Investigating Officer seems to have taken the fingerprint of Gangamma and that was later given to Nanaiah who compared the fingerprint with the chance print on Exh. P-18 and concluded that they were not identical. He issued a certificate in this regard on 9th November, 1990.

E 9. While the Investigating Officer was at the place of occurrence, Hucha Basappa (Gangamma's younger brother) arrived and he revealed that he suspected Prakash's involvement in the crime since he was informed that Prakash had visited Gangamma's house.

F 10. According to the prosecution, on 11th November, 1990 at about 4.45 p.m. Prakash was apprehended and produced before the Investigating Officer.[1] He was then arrested and searched and on his personal search some cash was recovered as also a receipt dated 7th November, 1990 issued
G by Vijayalakshmi Financiers. Prakash's clothes, that is, his shirt, dhoti and shawl were found to be blood stained and they too were seized by the Investigating Officer. Prakash made a voluntary disclosure to the Investigating Officer wherein he stated that some ornaments of the deceased were taken by him

H 1. Prakash says that he was arrested on 7th November, 1990.

and pledged with Vijayalakshmi Financiers; some ornaments were sold elsewhere and some ornaments were hidden near his father-in-law's house. Prakash took the Investigating Officer to the places mentioned by him and the ornaments were seized.

11. Prakash also took the Investigating Officer to a place from where he took out a steel rod concealed beneath a stone slab. The steel rod was found to be blood stained and was seized by the Investigating Officer in the presence of panch witnesses. It was allegedly used to murder Gangamma.

12. As a part of the investigations, a sample of Prakash's blood was drawn and given to the Investigating Officer who sealed it in a bottle. This was then sent to the Forensic Science Laboratory for examination.

13. On 14th November, 1990 the Investigating Officer took Prakash's fingerprints and sent them to the fingerprint bureau for comparison. On 9th January, 1991 the fingerprint expert, Nanaiah received the fingerprints and he gave a certificate on 11th January, 1991 to the effect that the fingerprint sent to him matched with the chance prints found on the plastic cover [Exh. P-18] found at the place of occurrence. Later, an enlarged photoprint of the chance fingerprint Exh. P-18 was made as Exh. P-19 and an enlarged photoprint of the fingerprint of Prakash obtained by the Investigating Officer on 14th November, 1990 was made being Exh. P-20. On 18th March, 1991 Nanaiah marked several identical characteristics on both enlarged photographs and gave an opinion [Exh. P-21(a)] that two fingerprints "shall never be identical unless they are derived from the same finger of the same person."

14. On these broad facts Prakash was charge-sheeted for having murdered Gangamma and for having stolen her cash and ornaments valued at about Rs. 25,000/-.

15. The Trial Court, by its judgment and order dated 21st January, 1999 acquitted Prakash. The acquittal was set aside in appeal by the High Court of Karnataka by its judgment and

A order dated 6th July, 2005.[2] It is under these circumstances that this appeal is before us.

Relevant circumstances

16. Both the Trial Court and the High Court proceeded on
B the basis that the case is one of circumstantial evidence. Both the Courts mentioned the following five relevant circumstances:-

1. Prakash was found in Gangamma's house on the relevant day, that is, 5th November, 1990.

C 2. The fingerprint expert, Nanaiah found Prakash's fingerprint on a plastic cover beaing the inscription 'Canara Bank' [Exh P-18]. This was taken by Nanaiah for comparison and on a comparison having been made, the fingerprints thereon matched the fingerprints of Prakash.

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3. Prakash's clothes were blood-stained when he was arrested on 11th November, 1990 and the blood-stains tallied with the blood group of Gangamma.

4. Gangamma's ornaments were recovered by
E D'Souza at the instance of Prakash after his arrest.

5. The weapon of offence, that is, a steel rod was discovered at the instance of Prakash from the place where it was concealed.

F 17. The High Court also mentioned two other circumstances, namely, that Gangamma met with a homicidal death and that Prakash absconded after committing the crime.

Presence of Prakash in Gangamma's house

G 18. Both the Courts referred to the evidence of Revamma, Muniyappa, PW-6 Gangamma and Ammajamma in this regard.

19. There is no doubt that Revamma did not at all see Prakash at Gangamma's house. Her evidence is only to the

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H 2. Criminal Appeal No. 699 of 1999 .

effect that Gangamma did not come to watch TV with her on the evening of 5th November, 1990 because she had some relatives in her house and she had to cook food for them. These relatives were not identified or named except that she stated that Gangamma's nephew Swamy would be coming and that she had to feed him.

20. Similarly, Muniyappa also did not identify or name any of Gangamma's relatives in her house. All that he says is that when he was at his shop he observed that some relatives had come to Gangamma's house and she had given food to them. He stated that he closed his shop at 8.30 p.m. or so and went home. The evidence of Muniyappa only discloses that Gangamma was alive till about 8.30 p.m. on 5th November, 1990 and was in the company of more than one person.

21. PW-6 Gangamma also does not add to the case of the prosecution. She says that Prakash had approached her for directions to Gangamma's house and that she took Prakash to Ammajamma's house. She did not accompany Prakash or Ammajamma to Gangamma's house. Prakash was produced before this witness about 5 or 6 days after the incident when he was brought to her shop by the police and she identified him as the person whom she had met in the afternoon of 5th November, 1990.

22. The only witness who actually saw Prakash with Gangamma was Ammajamma. She narrated the conversation between Prakash and Gangamma and the fact that Gangamma did not know Prakash and had asked him to identify himself. The conversation she heard reveals that Swamy was expected to come to Gangamma's house. This witness left midway during the conversation between Prakash and Gangamma and did not actually see Prakash enter her house.

23. A few days after the incident, Ammajamma was called to the police station and she saw Prakash sitting over there and identified him.

24. On the basis of the evidence of these four witnesses,

A it can at best be said that Prakash was at Gangamma's house at about 1.00 p.m. on 5th November, 1990 and that according to him Swamy was also to arrive at Gangamma's residence. The whereabouts of Prakash from 1.00 p.m. onwards are not known. It can also be said that Gangamma gave dinner to her relatives at about 8.30 p.m. but these relatives cannot be B identified. Prakash may or may not be one of them. It cannot, therefore, be definitely concluded that Prakash was being served dinner by Gangamma at about 8.30 p.m. on 5th November, 1990 or that he stayed in her house thereafter. But it is clear that even if Prakash was there, he was not alone with C Gangamma when she served dinner.

25. Two questions immediately arise in this context: Firstly, why is it that Swamy was not examined by the Investigating Officer since he was expected to be at Gangamma's residence on 5th November, 1990? There is absolutely no answer D forthcoming from the State in this regard. The involvement of Prakash in the incident came about only because Hucha Basappa informed the Investigating Officer on the night of 5th November, 1990 that he was not on talking terms with Prakash and that he had given a complaint against him when Prakash E tried to assault Hucha Basappa. This is all the more reason for the Investigating Officer to have questioned Swamy who was expected to be at Gangamma's house on 5th November, 1990.

26. Secondly, why is it that no Test Identification Parade was held to determine whether Prakash was actually the person F who was seen by PW-6 Gangamma and by Ammajamma?

27. Two types of pre-trial identification evidence are possible and they have been succinctly expressed in *Marcouix v. The Queen*[3] by the Supreme Court of Canada in the following words: G

> "An important pre-trial step in many criminal prosecutions is the identification of the accused by the alleged victim. Apart from identification with the aid of a photograph or

H 3. [1976] 1 SCR 763.

photographs, the identification procedure adopted by the police officers will normally be one of two types: (i) the showup-of a single suspect; (ii) the line-up-presentation of the suspect as part of a group."

28. With reference to the first type of identification evidence, the Court quotes Professor Glanville Williams from an eminently readable and instructive article in which he says:

"... if the suspect objects [to an identification parade] the police will merely have him "identified" by showing him to the witness and asking the witness whether he is the man. Since this is obviously far more dangerous to the accused than taking part in a parade, the choice of a parade is almost always accepted."[4]

29. With reference to the second type of identification evidence, Professor Glanville Williams says:

"Since identification in the dock is patently unsatisfactory, the police have developed the practice of holding identification parades before the trial as a means of fortifying a positive identification..... The main purpose of such a parade from the point of view of the police is to provide them with fairly strong evidence of identity on which to proceed with their investigations and to base an eventual prosecution. The advantage of identification parades from the point of view of the trial is that, by giving the witness a number of persons from among whom to choose, the prosecution seems to dispose once and for all the question whether the defendant in the dock is in fact the man seen and referred to by the witness."[5]

A similar view was expressed by the Canadian Supreme Court in *Mezzo v. The Queen*.[6]

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4. 1963 Criminal Law Review pp. 479, 480.
5. Ibid. pp. 479, 480.
6. [1986] 1 SCR 802.

A 30. An identification parade is not mandatory[7] nor can it be claimed by the suspect as matter of right.[8] The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial.[9] If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable[10] unless the suspect has been seen by the witness or victim for some length of time.[11] In *Malkhan Singh v. State of M.P.*[12] it was held:

> "The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact."

31. However, if the suspect is known to the witness or victim[13] or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media[14] no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution. In *Visveswaran v. State*[15] it was

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7. Ravi Kapur v. State of Rajasthan, (2012) 9 SCC 284.
8. R. Shaji v. State of Kerala, (2013) 14 SCC 266.
9. Rameshwar Singh v. State of J&K, (1971) 2 SCC 715.
10. Mulla v. State of U.P., (2010) 3 SCC 508 , Kishore Chand v. State of H.P., (1991) 1 SCC 286.
11. State of U.P. v. Boota Singh, (1979) 1 SCC 31.
12. (2003) 5 SCC 746.
13. Jadunath Singh v. State of U.P., (1970) 3 SCC 518.
14. R. Shaji.
15. (2003) 6 SCC 73.

held:

> "The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence."

32. What happened in the present case? Both PW-6 Gangamma and by Ammajamma saw Prakash for the first time on the afternoon of 5th November, 1990 and they had seen him, if at all, briefly if not fleetingly. It is true that these witnesses had identified Prakash when he was produced before them on his apprehension about five or six days after the incident and also while he was in the dock in court, but the circumstances under which the dock identification took place are not quite satisfactory inasmuch as both the witnesses entered the witness box almost 41/2 years after they are said to have first seen Prakash only briefly and without any identification parade having been conducted.

33. Given the law laid down by this Court, it would have been more appropriate for the Investigating Officer to have conducted an identification parade so that it becomes an effective "circumstance corroborative of the identification of the accused in court".[16] However, that was not done. The Trial Court was of the view that the evidence on record did not inspire confidence as far as fixing the identity of the suspect as Prakash is concerned. The Trial Court took into account the long lapse of time between the incident and the identification of Prakash in court, the absence of any distinguishing features of Prakash, the brief time for which the witnesses saw him and the fact that he was a total stranger to the witnesses. The High Court was satisfied that Prakash was suitably identified but completely overlooked the fact that even if the Trial Court had come to an erroneous conclusion, at best, it placed Prakash

16. R. Sahji.

A at the place of occurrence at 1.00 p.m. and not later. We are of the opinion that given the facts of the case, it would have been more appropriate for an identification parade to have been conducted, but its absence in this case is not necessarily fatal, there being other reasons also for not accepting the case set up by the prosecution. However, the absence of an B identification parade certainly casts a doubt about Prakash's presence at Gangamma's house on 5th November, 1990.

34. Even assuming Prakash was present at Gangamma's house on 5th November, 1990 at about 1.00 p.m. it does not C necessarily follow that he was also present at about 8.30 p.m. that day. Thus, we find that not only is there an absence of some degree of certainty and a doubt about Prakash's presence at Gangamma's house on 5th November, 1990 but also an absence of certainty and a doubt whether he was there at 1.00 p.m. and at 8.30 p.m.

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35. There does not seem to be any reason at all for Prakash to have gone alone to Gangamma's house. He did not know where she lived and even she did not know who he was. It is difficult to imagine that Prakash would leave his house in E Nagenahalli village to visit Gangamma's house for the purpose of stealing some ornaments, as suggested by the prosecution - theft of ornaments being the alleged motive. This presumes that Gangamma had ornaments which were worth stealing and it also presumes that Prakash knew of the existence of these ornaments.

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36. Given the evidence before us, we find it very difficult to accept with certainty the case of the prosecution that Prakash alone was with Gangamma on the fateful night of 5th November, 1990. The view taken by the Trial Court giving Prakash the G benefit of doubt is certainly a plausible view and in the absence of any perversity in the view taken, we are of the opinion the High Court ought not to have upset the conclusion arrived at.

37. We may also mention that from the decision of the High Court it is clear that it has proceeded merely on the basis of

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probabilities. The High Court held that Prakash was probably present in Gangamma's house on 5th November, 1990 and that in all probability he was the relative who was having dinner at Gangamma's house. In a case of circumstantial evidence, there has to be some degree of trustworthiness and certainty about the existence of the circumstances - mere probabilities are certainly not enough.[17] In our opinion, this is an unsatisfactory way of dealing with the issue and we cannot uphold the view taken by the High Court in this regard.

38. In view of the above, it is not necessary for us to labour on the questions raised on the applicability of the last seen theory. There is a clear doubt whether Prakash was with Gangamma; if he was, then it was at about 1.00 p.m. on 5th November, 1990; there is no evidence that Prakash was with Gangamma thereafter and on the contrary there is evidence that some of her relatives (which may or may not include Prakash) were with her at about 8.30 p.m. We would be stretching the last seen theory to the vanishing point if we were to apply it to the facts of this case.

Fingerprint Evidence

39. The witnesses relevant for the purposes of the fingerprint evidence as a relevant circumstance are Ramachandra (the photographer) and Nanaiah (the fingerprint expert).

40. Ramachandra stated that he had taken a photograph of the bank pass book belonging to Gangamma. He also produced in court the negative of a photograph taken by him [marked as MO-13(a)] of Prakash's fingerprint on the pass book. No positive print or photograph was developed from the negative. In his cross examination, Ramachandra could not say if the fingerprint in the negative was that appearing on the pass book.[18] In other words, there was nothing in MO-13(a) to relate it to the pass book. The testimony of Ramachandra with regard

17. Hargun Sunder Das Godeja v. State of Maharashtra, (1970) 1 SCC 724.

18. "In the negative photo produced by me today MO.13(a) there are no marks to show that it was taken from that passbook.".

A to the fingerprints of Prakash on the bank pass book is, therefore, inconsequential.

41. Nanaiah stated that he had obtained from the scene of occurrence a hand print on a plastic cover bearing the inscription 'Canara Bank'. The plastic cover was marked as B Exh.P-18 and an enlarged photograph of this was marked as Exh. P-19. According to Nanaiah, he compared the fingerprints on Exh. P-19 with the fingerprint of Prakash on Exh. P-20 and found that it tallied. How did Exh.P-20 come into existence? We have been left wondering as there is no answer to this question, C nor is there anything to show that Exh. P-20 contained a fingerprint of Prakash. Even the testimony of the Investigating Officer D'Souza is silent on this aspect.

42. The High Court accepted that Exh. P-20 contained Prakash's fingerprint in view of an admission made by him in D his statement recorded under Section 313 of the Code of Criminal Procedure. The High Court relied, rather selectively, on a part of the statement given by Prakash in his examination under Section 313 of the Code of Criminal Procedure. The question put to Prakash and the answer given read as under:

E "Q: PW-20 C.K. Nanaiah, Finger Print expert and Dy. S.P. states that on 6.11.1990 he was called to the scene of occurrence amd he visited there, examined the articles found at the place between 8-30 and 9-45 p.m. and got a chance print on a plastic cover found there, which is at Ex. F P-18 and on comparison it was identical with your right middle finger print and issued a certificate as per Ex. P-13. What do you say?

Ans: On 7th date Inspector D'Souza given me a cover to hold the same."

G 43. The High Court took into account only the latter part of the answer given by Prakash, namely, that he held a cover. From this, the High Court concluded that "The fact that the fingerprint of the accused was found on Ex. P-18 (sic Ex. P-20) is accepted by the accused himself." In doing so, the High Court H ignored the first part of Prakash's statement that this happened

on 7th November, 1990. If any credibility is to be given to Exh.P-20 then it must be held that Prakash was arrested on 7th November, 1990 but that is not the case of the prosecution. We have, therefore, to proceed on the basis that Prakash was in fact apprehended and arrested on 11th November, 1990 and proceeding on that basis, there cannot be any question of his being given a cover to hold by the Investigating Officer on 7th November, 1990 for the purpose of obtaining his fingerprint. The ultimate conclusion is that there is absolutely no evidence on record to show how Exh. P-20 which is said to be the admitted fingerprint of Prakash came into existence. In the absence of any admitted fingerprint, there is nothing to show that the handprint or the fingerprints on Exh. P-18 was that of Prakash.

44. In *Hanumant Govind Nargundkar v. State of M.P*[19] it was held:

> "It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all."

45. A similar view was expressed, rather expansively, in *Narain Singh v. State of Punjab*[20] and *Dadarao v. State of Maharashtra.*[21]

46. Assuming Prakash's fingerprint was in fact obtained by D'Souza, it was clearly not given voluntarily, but perhaps unwittingly and in what seems to be a deceitful manner. To avoid any suspicion regarding the genuineness of the fingerprint so taken or resort to any subterfuge, the appropriate course of action for the Investigating Officer was to approach the Magistrate for necessary orders in accordance with section 5 of the Identification of Prisoners Act, 1920. In *Mohd. Aman v. State of Rajasthan*[22] this Court referred to the possibility of the police fabricating evidence and to avoid an allegation of such

19. 1952 SCR 1091.
20. (1963) 3 SCR 678.
21. (1974) 3 SCC 630.
22. (1997) 10 SCC 44.

A a nature, it would be eminently desirable that fingerprints were taken under the orders of a Magistrate. We may add that this would equally apply to the creating evidence against a suspect. This is what this Court had to say:

> "Even though the specimen fingerprints of Mohd. Aman
B had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take fingerprints of the
C accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate."

47. The Karnataka High Court has taken the view[23] that it
D is not incumbent upon a police officer to take the assistance of a Magistrate to obtain the fingerprints of an accused and that the provisions of the Identification of Prisoners Act are not mandatory in this regard. However, the issue is not one of the provisions being mandatory or not - the issue is whether the manner of taking fingerprints is suspicious or not. In this case,
E we do not know if Prakash's fingerprint was taken on 7th November, 1990 as alleged by him or later as contended by the Investigating Officer, or the circumstances in which it was taken or even the manner in which it was taken. It is to obviate any such suspicion that this Court has held it to be eminently
F desirable that fingerprints are taken before or under the order of a Magistrate. As far as this case is concerned, the entire exercise of Prakash's fingerprint identification is shrouded in mystery and we cannot give any credence to it.

48. We are also surprised that though a blood-stained
G crowbar was seized from the place of occurrence and according to the Investigating Officer, a blood-stained steel rod was recovered at the instance of Prakash, neither of these material objects was sent for fingerprint examination. The

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H 23. State by Rural Police v. B.C. Manjunatha, ILR 2013 Karnataka 3156.

investigation was conducted in a rather unconcerned manner, to say the least.

49. Learned counsel for Prakash made two subsidiary submissions, namely, that the photographs taken by Ramachandra of the scene of incident do not show the existence of the plastic cover Exh. P-18 and therefore, according to him, the plastic cover was planted subsequently. We are not prepared to accept this submission because it is nobody's case that Ramachandra took photographs of everything or every item found in the residence of Gangamma.

50. It was also submitted that when Nanaiah took Exh. P-18 with him, no mahazar or panchnama was drawn up and nobody was told that the plastic cover bearing the inscription 'Canara Bank' was taken away by him for examination. This is true and we are of the view that this was not permissible and that there should have been some record of the plastic cover having been taken by Nanaiah, especially since the Investigating Officer was present at the spot. On the other hand, if the plastic cover was taken away by Nanaiah without the knowledge of the Investigating Officer and right under his nose, then it makes the position even worse for the prosecution. Be that as it may, we do not doubt the bona fides of Nanaiah since, in his testimony, he clearly stated that he had examined nine articles and one of them was the plastic cover bearing the inscription 'Canara Bank' and that while carrying an object containing prints, there is chance of damage to the prints if the object is not handled properly. It is perhaps to avoid the possible damage that he took the plastic cover with him.

51. Our attention was drawn to the Karnataka Police Manual and it appears that Nanaiah followed the guidelines laid down therein and perhaps acted in an overly cautious manner. Guideline No. 1543 provides as follows:

"1543. The opinion of the finger print expert is of paramount importance in the investigation of various crimes. The following instructions should be followed regarding chance finger and foot prints and their developments, preservation

of the scene, method of packing and other matters:

52. Guideline 1544 in the Manual contains various provisions and clause (iv) and clause (v) are relevant for our purposes. They read as follows:

"1544. i) to iii) xxx

iv) If latent prints are found on portable articles they should be seized under a detailed panchanama duly packed and labelled and sent to the Finger Print Bureau with a police officer with instructions regarding the care of the package during the journey.

v) In sending the articles containing latent prints to the Bureau, proper attention must be given to their package. The following essential points should be borne in mind:

- It should be ensured that no portion of the article where prints may be found should get into contact with anything else and
- The articles should be securely packed in a suitable container."

Clause (iv) was clearly not followed when Nanaiah took the plastic cover along with him and this is an extremely serious lapse. However, we give him the benefit of doubt and assume that it is perhaps with clause (v) in mind that Nanaiah took the plastic cover along with him.

53. While we completely disapprove of the manner in which Exh. P-18 was taken away by Nanaiah (and the Investigating Officer did nothing about it), the case of the prosecution does not get strengthened even if a valid procedure was followed, since there is nothing on record to show that the 'admitted' fingerprints on Exh. P-20 were those of Prakash which could be compared with the fingerprints on Exh. P-18 and the enlarged photograph being Exh. P-19.

54. Assuming that Exh. P-20 was a valid piece of evidence validly obtained, there is no explanation why it was kept by the Investigating Officer from 14th November, 1990 till 9th January,

1991 when it was received by Nanaiah. The Karnataka Police Manual highlights the importance of keeping safe an article containing fingerprints. In view of its importance, Nanaiah did not trust anyone with the plastic cover bearing the inscription 'Canara Bank' [Exh. P-18] and carefully took it along with him to avoid its getting damaged by getting into contact with anything else. On the other hand, we have the Investigating Officer keeping Exh. P-20 with him for almost two months and in circumstances that seem unclear. We cannot rule out the possibility of Exh. P-20 getting damaged due to careless handling.

55. We are of the opinion that there is no fingerprint evidence worth it linking Prakash to the murder of Gangamma.

Blood Stained Clothes

56. The witnesses relevant for the recovery of blood stained clothes of Prakash are PW-18 Savandaiah, PW-21 Shivanna and PW-24 Subanna.

57. Savandaiah and Subanna have given a very similar statement to the effect that Prakash was apprehended on 11th November, 1990. They did not state that at the time of his apprehension, he was wearing blood stained clothes.

58. However, when Shivanna was called to the police station on 11th November, 1990 he was told that it was for the purpose of witnessing a search of Prakash. He stated that Prakash was wearing a shirt and a panche and he noticed blood stains on both the apparels. On the personal search of Prakash some cash was recovered and a receipt from Vijayalakshmi Financiers was also recovered.

59. Learned counsel for Prakash sought to take advantage of two discrepant statements made by Shivanna in his cross-examination. One statement is to the effect that before Prakash was searched, the police told Shivanna that he was carrying cash and a receipt. The question raised by learned counsel was how was the police aware of the existence of cash and a receipt on the person of Prakash without having conducted his personal

search. It was submitted by learned counsel that this reveals that Prakash had already been searched by the police and Shivanna was summoned only to complete the paper work. We make no comment on this.

60. The second discrepant statement was that Shivanna stated that the police had kept Prakash's clothes on the table. It was submitted, in other words, that the blood stained clothes were already seized by the police and kept on the table. We are not sure whether the actual statement made by Shivanna has been lost in translation.

61. In any event, the recovery of the blood stained clothes of Prakash do not advance the case of the prosecution. The reason is that all that the prosecution sought to prove thereby is that the blood group of Gangamma was AB and the blood stains on Prakash's seized clothes also belong to blood group AB. In our opinion, this does not lead to any conclusion that the blood stains on Prakash's clothes were those of Gangamma's blood. There are millions of people who have the blood group AB and it is quite possible that even Prakash had the blood group AB. In this context, it is important to mention that a blood sample was taken from Prakash and this was sent for examination. The report received from the Forensic Science Laboratory [Exh.P-27] was to the effect that the blood sample was decomposed and therefore its origin and grouping could not be determined. It is, therefore, quite possible that the blood stains on Prakash's clothes were his own blood stains and that his blood group was also AB.

62. Learned counsel for Prakash contended that the report of the serologist was not put to him when he was examined under Section 313 of the Code of Criminal Procedure. The High Court dealt with this issue in a rather unsatisfactory manner. This is what the High Court had to say:

"Even assuming that the report of the Serologist had not been put to the accused in his statement recorded under Section 313 Cr.P.C. the same cannot be said to be fatal to the prosecution, more so, when the same had not

prejudiced the accused in any way. In fact, we put the said Serologist's report Ex.P29 to the learned counsel appearing for the respondent and sought for their explanation in this regard and it is submitted that they have nothing to say in that matter. That means, the respondent has no explanation to offer in this regard."

63. It is one thing to say that no prejudice was caused to Prakash by not affording him an opportunity to explain the serological report. It is quite another thing to put the report to his learned counsel in appeal and give him (the learned counsel) an opportunity to explain the report of the serologist. The course adopted by the High Court is clearly impermissible. The law on the subject was laid down several decades ago by the Constitution Bench in *Tara Singh v. State*[24] and is to the effect that an accused must be given a chance to offer an explanation if the evidence is to be used against him and the conviction is intended to be based upon it. It follows that if the accused is not given an opportunity to explain the circumstances against him in the testimony of the witnesses, then those circumstances cannot be used against him, whether they prejudice him or not. This is what the Constitution Bench said:

"It is important therefore that an accused should be properly examined under section 342[25] and, as their Lordships of the Privy Council indicated in *Dwarkanath v. Emperor*,[26] if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in Sessions Courts. But whether the matter arises in the

24. 1951 SCR 729.

25. Now Section 313 of the Code of Criminal Procedure.

26. AIR 1933 PC 124.

A Sessions Court or in that of the Committing Magistrate, it is important that the provisions of section 342 should be fairly and faithfully observed."

64. This was more clearly spelt out in *Ajay Singh v. State of Maharashtra*[27] when this Court held:

B "A conviction based on the accused's failure to explain what he was never asked to explain is bad in law."

65. We are not satisfied with the conclusion of the High Court that since the clothes of Prakash were blood stained and C the stains bore the same blood group as that of Gangamma, the circumstance could be used Prakash. A serological comparison of the blood of Gangamma and Prakash and the blood stains on his clothes was necessary and that was absent from the evidence of the prosecution.

D **Ornaments of the deceased**

66. According to the prosecution, Prakash had led the Investigating Officer to various places from where some ornaments belonging to Gangamma were recovered. The recovery witnesses were examined by the prosecution as well E as those persons from whom the ornaments were recovered. However, what is of significance is that none of the recovered ornaments could be connected to Gangamma. This is a serious lapse in investigation and the mere recovery of some ornaments from some people does not lead to any conclusion F that the ornaments so recovered belonged to Gangamma.

67. At the stage of re-examination of Hucha Basappa, the prosecution sought permission to examine him with regard to identification of the ornaments said to belong to Gangamma. However, this was declined by the Trial Judge who perused the G statement of the witness recorded under Section 162 of the Code of Criminal Procedure which did not have anything with regard to identification of the ornaments.

68. The High Court adversely commented on this and held that the Trial Judge adopted a very strange procedure while

H 27. (2007) 12 SCC 341.

declining to grant the request of the prosecution to have the ornaments identified through Hucha Basappa. According to the High Court, Hucha Basappa had stated in an earlier part of his testimony in court that Gangamma had ornaments such as a gold chain, silver waist belt, silver rings, ear studs etc. and that he had seen those ornaments and could identify them if he saw them. Therefore, permission should have been granted to the prosecution to further examine Hucha Basappa and it was for the defence to have brought out any contradiction between the statement made by the witness in court and the statement made by him under Section 162 of the Code of Criminal Procedure. Having said that, the High Court concluded that the ornaments belonged to Gangamma.

69. Even if we were to assume that the procedure followed by the Trial Court was incorrect, in the absence of any identification of the ornaments as belonging to Gangamma, the High Court could not have definitely concluded that they did belong to Gangamma. In any event, even assuming that the ornaments belonged to Gangamma, at best, Prakash would be guilty of having received stolen property but could certainly not be guilty of having murdered Gangamma.

Other issues

70. It was brought to our notice that the steel rod used to kill Gangamma was recovered at the instance of Prakash. This was hidden under a stone slab and it contained blood stains. The Investigating Officer made no effort to ascertain whether the blood stains on the steel rod were those of Gangamma nor was any effort made to ascertain whether the steel rod contained any fingerprints which matched with those of Prakash. This, coupled with the fact that the blood stained crowbar seized at the place of occurrence, was not sent for a chemical examination, raises a grave suspicion that the investigation was not fair and the benefit of this doubt must go to Prakash.[28]

28. Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394 and State of U.P. v. Arun Kumar Gupta, (2003) 2 SCC 202.

71. All that we need say is that the investigation in the case was very cursory and it appears to us that the Investigating Officer had made up his mind that Prakash had murdered Gangamma and the investigation was directed at proving this conclusion rather the other way around with the investigation leading to a conclusion that Prakash had murdered Gangamma.

72. It is true that the relevant circumstances should not be looked at in a disaggregated manner but collectively. Still, this does not absolve the prosecution from proving each relevant fact.

> "In a case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence and the circumstances so proved, must form a complete chain without giving room to any other hypotheses and should be consistent with only the guilt of the accused."[29]

Conclusion

73. None of the circumstances relied upon by the prosecution and accepted by the High Court point to the probability of Prakash's guilt or involvement in the murder of Gangamma. Consequently, we allow this appeal and set aside the judgment and order of the High Court and acquit Prakash of the murder of Gangamma.

74. Though the murder was committed way back in 1990, scientific methods for investigation were available even at that time but not made use of. We must express our unhappiness on this state of affairs. At least from now onwards, the prosecution must lay stress on scientific collection and analysis of evidence, particularly since there are enough methods of arriving at clear conclusions based on evidence gathered.

Devika Gujral Appeal allowed.

29. Lakhjit Singh v. State of Punjab, 1994 Supp (1) SCC 173.