

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
BHOJA POOJARI & ANR.

DATE OF JUDGMENT: 09/09/1997

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF SEPTEMBER, 1997

Present:

Hon'ble Mr. Justice G.T.Nanavati

Hon'ble Mr. Justice S.P.Kurdukar

Ms. Manjula Kulkarni, M.Veerappa, Advs. for the appellant
R.S.Hegde, K.K.Tyagi, K.R.Nagaraja, Advs. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

J U D G M E N T

S.P.KURDUKAR, J.

Chitravathi (since deceased) was the daughter of Kirodian (PW 3) and Amba (PW 5). They are the resident of Bombay. On 28th November, 1976, Chitravathi was married to Bhoja Poojari (A-1)-the first respondent herein. After marriage the couple went to the native place of A-1 at Kalwar and stayed there for one and half months. A-1 then came to Bangalore and after staying there for a week or so, he returned to Kalwar where his father was ailing. One week thereafter, A-1 along with Chitravathi came to Bangalore. Parents of Chitravathi who had come to Bangalore went to Kalwar to see their daughter. Chitravathi told her parents that she was being harassed for dowry and ornaments. At that time, Chitravathi was in her fifth month of pregnancy. Chitravathi, her parents and brother of A-1 then came to Bangalore at the house of A-1 at Chikkanna garden. A-1 did not appreciate the coming of Chikkanna garden. A-1 did not appreciate the coming of Chitravathi at his house at Chikkanna garden as he was then staying with his mistress Parvathi (A-2), the second respondent herein. Parents of Chitravathi were very much disturbed on finding A-1, residing with A-2 at Bangalore. Chitravathi and her parents thereafter went to Bangalore at their relative's house and after staying there for one and a half months, they returned to Bombay along with A-1 on or about 3rd November, 1977. According to the prevailing custom, parents of Chitravathi celebrated Seemantha ceremony as she was in her seventh month of pregnancy. A-1 stayed at Bombay for about one and a half months and thereafter left for Bangalore. Chitravathi on 2nd February, 1978 was blessed with a female child at Bombay and A-1 was informed by a letter but,

however, he did not respond to the same. Since there was no response from A-1, Chitravathi told her parents that she would go to Bangalore and stay with A-1 and A-2 and would face the difficulties which might arise, Chitravathi's parents, however, did not approve of it immediately and made her to wait at Bombay until the naming ceremony of the child was over. The child was named by Nalini. Sometime in the month of August, 1978, Kirodian (PW 3) along with his daughter and grand child came to Bangalore. When they came to the house of A-1 at Bangalore, they saw A-2 along with her three children was residing in the house of A-1. Kirodian (PW 3) then advised A-1 to look after his daughter and the child properly and thereafter he left for Bombay.

2. While leaving for Bombay, it is alleged by the prosecution that Kirodian (PW 3) told Chitravathi that the would be sending money on the address of Guruva (PW 19) who would pay the same to her. This arrangement continued for sometime but in January, 1979, when Guruva (PW 19) received a money order from Kirodian (PW 3). he informed him that when he went to the house of A-1 at Chikkanna garden on two occasions, he found the house locked and on enquiry, the neighbours informed him that one day Chitravathi, Nalini and A-1 had gone to see a film at 1.00 p.m. and thereafter they did not return. Kirodian (PW 3) on January 15, 1979 received a letter (Ex.P5) purporting to have been written by his daughter stating that she was going to a place which was 13 miles away from Bangalore and she would inform her new address. till then money order be not sent. Kirodian (PW 3) who was conversant with the hand writing of Chitravathi did not believe that the said letter was written by he and suspecting some foul play he wrote back to Guruva (PW 19) requesting him to go and find out the whereabouts of Chitravathi. On 15th of May, 1979, Ananda son of Guruva came to Bombay and told Kirodian (PW 3) that whereabouts of Chitravathi, Nalini and A-1 were not known. Kirodian (PW 3) then on 29th May, 1979 came to Bangalore and after making enquiries with the neighbours of A-1 residing at Chikkanna garden, was told that Chitravathi and Nalini were taken by A-1 at 1.00 P.M. and since then they did not return. One of the neighbours also told that A-1 had taken Chitravathi and her daughter to watch a film show. Kirodian (PW 3) then made several attempts to find out the whereabouts of Chitaravathi and her child but without any success and therefore, on 3rd June, 1979, he lodged a missing report/complaint at Central Police Station, Bangalore (Ex.P56). The police also searched the missing persons at various places but they could not find them nor could they get any clue. On 11th July, 1979, Kirodian (PW 3) lodged a complaint (Ex.P3) suspecting the murder of his daughter Chitravathi and Nalini. The crime was accordingly registered for an offence punishable under Section 302/34 of the Indian Penal Code. During the investigation, A-1 was apprehended by Veera Basappa Raju (PW 22) at the Byatarayanapur bus stand and was produced before the C.P.I who arrested him. During interrogation, he voluntary made a statement to point out the place where the dead bodies were buried. Accordingly, mahazar (memorandum) was prepared in the presence of the panch witnesses after obtaining the permission from the Sub Divisional Magistrate to exhume the dead bodies. Investigating Officer along with A-1, panch witnesses, medical officer and photographer went to the Sarvodaya School compound as per the direction of A-1. A-1 then pointed out the place where the dead bodies were buried. The dead bodies were kept in the gunny bag which was then taken out of a pit. They were in a highly

decomposed condition. The Investigating Officer carried out the inquest panchanama on the dead bodies. The articles which were found on the dead bodies and in the pit were seized under the panchanamas. Dr. B.C.Chandra Gowda (PW 23) performed the autopsy on the dead bodies. B Raghavendra Rao, Serologist (PW 12) carried out the test after super imposing the skull. A-2 was arrested on 1st August, 1979. After completing the investigation. A-1 and A-2, the respondents herein were put up for trial for the offences punishable under Section 302, 201/34 IPC.

3. Both the accused/respondents herein pleaded not guilty to the charge and claimed to be tried. According to them, they are innocent and they have been falsely implicated in the present crime.

4. There is no direct evidence to the crime in question and, therefore, the prosecution case entirely rested on circumstantial evidence. The prosecution must prove each circumstance beyond reasonable doubt and such circumstance must complete the chain. Such proved circumstances must exclude any other reasonable hypothesis of innocence of the accused and they must be pointer to the guilt of the accused. The prosecution has examined number of witnesses to prove these various circumstances and the evidence thereof will be dealt with each circumstance wise.

5. It is not disputed that Chitravathi (since deceased) was the daughter of Kirodian (PW 3) and was married to Bhoja Poojari @ Vasu son of Babu Poojari on 28th November, 1976 at Bombay. A-1 is the resident of village Kalwar in Karnataka. After Marriage, A-1 took Chitravathi to village Kalwar and after staying there for one and a half months left Chitravathi at his parent's house and came to Bangalore where he was residing in a Chikkanna garden. It is also not seriously disputed that Chitravathi stayed with A-1 at Bangalore for some time and thereafter came to Bombay along with her father as she was on the family way and on 2nd February, 1978, she was blessed with a daughter. Sometime in August, 1978, Kirodian (PW 3) along with his wife, son, Chitravathi and Nalini (newly born baby) came to Bangalore. Kirodian left Chitravathi and Nalini at the house of A-1 with a request to look after them properly. Kirodian and others thereafter left for Bombay. The evidence of Kirodian (PW 3) and Amba (PW 5) is very categorical that they left Chitravathi and Nalini at the place of A-1 and thereafter left for Bombay. In view of this positive evidence, it is clearly established by the prosecution that Chitravathi and Nalini were left at the house of A-1 at Chikkanna garden in August, 1978. The evidence of Krishna (PW 16), Venkatgirappa (PW 18), Sarojamma (PW 20) and Sulochana (PW 21) who were neighbours indicated that Chitravathi, Nalini and A-1 continued to stay in the said house until 12th January 1979.

6. It is alleged by the prosecution that on 12th January, 1979 at about noon time, A-1 went along with Chitravathi and Nalini from his house at Chikkanna garden to a movie. After 13th of January, 1979, Chitravathi and Nalini were not seen. On 14th July, 1979, two dead bodies were exhumed from the compound of Sarvodaya School, Jainagar, Bangalore, where A-1 was staying in a watchman shed during that period.

7. The first and the most important circumstance that prosecution has to prove is whether the two dead bodies exhumed on 14th July, 1979, were identified beyond reasonable doubt to be that of Chitravathi and Nalini. The two dead bodies were kept in a gunny bag and were found buried in a pit and then filled with earth. This pit was near the shed of A-1 in the Sarvodaya School compound. The

dead bodies were exhumed on 14th July, 1979 on the basis of the statement made by A-1 under Section 27 of the Indian Evidence Act and then pointing out the place where the dead bodies were buried. As regards the identity of the dead bodies, the trial court accepted the evidence of Kirodian (PW 3), Amba (PW 5), Siddaiah (PW 9), Venkatachalaiah (PW 11) and Kempegowda (PW 13) as credible one. This ocular evidence finds corroboration from some of the M.Os. (Muddemal articles) which were found on the dead bodies. Out of these articles, Karimanisara (MO 9), toe rings (MO 10) and pieces of bangles (MO 11) were found on the dead body of an adult person whereas earring (MO 12), talisman (MO 13) and pair of anklets (MO 15) were on the dead body of the child. These articles were identified by Kirodian (PW 3) and Amba (PW 5). They testified that these articles were given to Chitravathi and Nalini by them. The trial court succinctly discussed the evidence of PW 3 and PW 5 in a great length and found the same to be trustworthy. The High Court has disbelieved the evidence relating to the identity of these MOs on the ground that the same are commonly used and found in the market and, therefore, from this evidence, the identity of the dead bodies could not be said to have been conclusively established. We are unable to subscribe to the doubt entertained by the High Court in this behalf. It is true that all these articles (MOs) are commonly used by the women folk but Amba (PW 5) stood well during her cross-examination and asserted that these articles were given to Chitravathi and Nalini by her. We, therefore, find that the High Court was not right in setting aside the findings recorded by the trial court as regards the identity of these MOs.

8. IT is true that the evidence of Dr. B.C. Chandra Gowda (PW 23) who held the autopsy on the dead bodies is inconclusive as both the dead bodies were in a highly decomposed condition and beyond recognition/identification. However, the prosecution examined B. Raghavendra Rao (PW 12). Serologist, Forensic Science Laboratory, Bangalore, who super imposed the skull (Article 1) of an adult person and after examination of the skull and the photographs, he opined that it was of an adult human female aged about 25 to 30 years. He further stated that there is certainty of about 90-95% in the findings given by him. The defence cross-examined the witness at a great length but there is no material which could discredit his evidence.

9. IT is not and cannot be disputed that the two dead bodies were exhumed on 15th July, 1979. The evidence of Dr. B.C. Chandra Gowda (PW 23), Kempegowda (PW 13), the investigating officer was quite sufficient to conclude that the two dead bodies were exhumed on 14th July 1979 from the place pointed out by A-1. The High Court in our considered view was not right in rejecting the prosecution evidence as regards the identity of the two dead bodies being that of Chitravathi and Nalini.

10. Coming to the next circumstance that some time in August, 1978, Chitravathi and Nalini came to Bangalore along with her father, mother and brother who after leaving them at the house of A-1 at Chikkanna garden, left for Bombay. As regards the quarrels between Chitravathi and accused persons and ill treatment meted out to the former, the prosecution relied upon the evidence of Kirodian (PW 3) Amba (PW 5), N.Krishna (PW 16), Venkatgirappa (PW 18), Guruva (PW 19) and Sarojamma (PW 20). The evidence of parents of Chitravathi indicates that A-1 was staying with A-2 (mistress) since prior to the marriage of Chitravathi with A-1 which fact was not known to them at the time of

marriage. This fact was first time came to their knowledge when Chitravathi went to Bangalore after marriage along with A-1 and at that time, she found that A-2 was residing with A-1 along with her children from her first husband. Kirodian (PW 3) and Amba (PW 5) testified that Chitravathi was complaining about the behaviour and conduct of both the accused who were quarreling with her on one or the other pretext. A-1 used to take side of A-2 and he was not providing any money to her. Chitravathi was under mental trauma as A-2 was residing with A-1 in the side house. Realising financial difficulties, Kirodian (PW 3) used to send money orders to Guruva Poojari (PW 19) for her day to day expenses which he used to pass on to her. Guruva Poojari (PW 19) has supported this version of Amba (PW 5). Some money orders coupons were also produced on record. This evidence, therefore, clearly establishes that A-1 and A-2 were ill treating Chitravathi.

There is also sufficient material on record in the form of evidence of Krishna (PW 16), Venkatgirappa (PW 18), Guruva Poojari (PW 19) and Sarojamma (PW 20) who had stated that they were residing in the nearby huts/houses and used to hear and see quarrels between Chitravathi, A-1 and A-2. At times, A-1 used to say that he was fed up of quarrels between Chitravathi and A-2. There is nothing in the cross-examination to disbelieve their evidence. The trial court accepted the evidence of all these witnesses on the issue of ill treatment and quarrels as trustworthy and for no statable reasons, the High Court has discarded the same. We, therefore, do not agree with the reversal finding of the High Court on this issue.

11. The next circumstance, namely, motive to commit the murder of Chitravathi. The same has to be inferred from the conduct of A-1 and A-2. Both the accused wanted to get rid of Chitravathi for the obvious reasons that her stay in the house at Chikkanna garden was a great nuisance to their illegitimate conduct. Therefore, the evidence on record clearly proves the motive on the part of A-1 to get rid of Chitravathi so that he could stay with A-2 peacefully.

12. The evidence of Krishna (PW 16), Venkatgirappa (PW 18) and Sarojamma (PW 20) who are the neighbours of A-1 in Chikkanna garden further proves that A-1 prior to 12th January, 1979 had taken a job of a watchman and was staying in the watchman shed in the compound of Sarvodaya School, Jainagar, Bangalore. A-1 was staying with A-2 in that shed. The accommodation was provided to A-1 by the management for his services as a watchman. Siddaiah (PW 9) who is the Secretary of the School had testified that A-1 was staying in a watchman shed along with A-2 and doing the job of watchman. This is significant because A-1 had left probably the frequent quarrels between Chitravathi and A-2. This circumstance is also proved by the prosecution.

13. Coming to the next most important circumstance as to what happened on 12th of January, 1979. According to the prosecution on that day, A-1 came to Chikkanna garden and took Chitravathi and Nalini at about 1.00 p.m. for a movie. Chitravathi while going told Sulochana Amma (PW 21) who was in the hut that she was going along with A-1 and Nalini to watch a movie. The evidence of Sulochana (PW 21) is quite credible to prove the fact that on 12th January, 1979, A-1 took Chitravathi and Nalini at about 1.00 p.m. for movies. What happened thereafter was exclusively within the knowledge of A-1, A-1 has denied that he took Chitravathi and Nalini on 12th January, 1979 but this denial has no meaning and the same was rightly rejected by the trial court. This clinching circumstance, therefore, shows that

on 12th January, 1979, A-1 along with Chitravathi and Nalini had left their house at Chikkanna Garden. Chitravathi and Nalini were thus last seen alive in the company of A-1 on that day.

14. The evidence of Kempegowda (PW 13), Krishna (PW 16), Venkatgirappa (PW 18), Sarojamma (PW 20) and Sulochana (PW 21) is quite consistent to prove that after 12th of January, 1979, A-1 Chitravathi and Nalini did not return to their house. There is nothing in the cross-examination of these witnesses which could make us disbelieve their evidence. The trial court accepted this evidence as trustworthy but the High Court has erroneously discarded the evidence of these witnesses. We, therefore, hold that on 12th of January, 1979 at about 1.00 p.m, A-1 took Chitravathi and Nalini along with him for watching a movie and thereafter Chitravathi did not return to the house in Chikkanna Garden. The evidence of Guruva Poojari (PW 19) also supports the fact that Chitravathi did not return to the house at Chikkanna Garden after 12th January, 1979 until the investigating agency exhumed the dead bodies on 14th July, 1979, Guruva Poojari (PW 19) has testified that on 15th May, 1979, on receipt of the money order from Kirodian (PW 3) for Chitravathi, he went to the house of Chitravathi but it was found locked and after making inquiries, he was told by the neighbours that she had not returned to the house after they went for movie on 12th January, 1979. Guruva Poojari (PW 19), therefore, returned the money order to Kirodian (PW 3).

15. To corroborate the vital circumstance that Chitravathi and Nalini were last seen together in the company of A-1 on 12th January, 1979, the prosecution has examined Siddaiah (PW 9), the Secretary of the School. he stated that he noticed A-1 was coming with a woman and a child to the watchman shed which was occupied by him within the school compound. When he asked him as to who she was, A-1 told that she was his wife. The evidence of Siddaiah (PW 9) further shows that a few days prior to 12th January, 1979, A-1 was digging a pit by the side of his watchman shed and when it was enquired from him, he told that the same was being prepared for dumping the rubbish. As per the spot panchanama (Ex.P2), the size of pit was fairly good and was 3' to 4' deep. A-1 was arrested on 13th July, 1979 and while in custody, he made a disclosure statement. It is not disputed that such a statement is admissible under Section 27 of the Evidence Act which led to the discovery of the dead bodies from the pit. The Investigating Officer obtained the necessary permission from the District Magistrate to exhume the dead bodies. A requisition was sent to Dr. B.C. Chandra Gowda (PW 23) to hold the post mortem at the spot. The dead bodies were exhumed pursuant to the statement of A-1 in the presence of panch witnesses and Dr. B.C. Chandra Gowda (PW 23). The post mortem was carried out by Dr. B.C. Chandra Gowda (PW 23) on the spot itself. This evidence, therefore, clearly establishes that the two dead bodies were exhumed on 14th July, 1979 but they were in a totally decomposed condition and were not identifiable. The clothes and other articles found on the dead bodies were seized under the separate panchanamas. A specific question was put to accused in this behalf during recording their statements under Section 313 Cr.P.C. They, however, denied their involvement. On the basis of this evidence, we can safely conclude that the two dead bodies were exhumed on 14th July, 1979 pursuant to the statement made by A-1 which was admissible under Section 27 of the Evidence Act.

16. Preceding the exhumation of the dead bodies, Kirodian

(PW 3) has stated that when he received an information from Guruva Poojari (PW 19) that Chitravathi was not found at her house in Chikkanna Garden Kirodian suspected some foul play and came to Bangalore on 25th May, 1979. He made inquiries with the neighbours any relatives but nobody could give any information as regard the whereabouts of Chitravathi and Nalini. On 3rd June, 1979, he lodged a missing report. The investigating officer despite his efforts could not get any clue. Search of both the accused was found futile as they were absconding. Siddaiah (PW 9) also stated that A-1 had left the watchman shed and his whereabouts were not known. however, on 13th July, 1979, A-1 came to be arrested and during interrogation, he pointed out the place from where the dead bodies were exhumed. Kirodian (PW 3) then lodged the First Information Report under Sections 302, 1201/34 of the Indian Penal Code against both the accused. A-2 was arrested on 1st August, 1979. The trial court accepted the evidence of Kirodian (PW 3) and P.V. Kowri (PW 27), investigating officer and came to the conclusion that after January 12, 1979, both the accused were absconding. Dr. B.C.Chandra Gowda (PW 23) has stated in his evidence that deaths might have occurred four to six months earlier. There was no effective cross-examination in this behalf. The High Court has failed to appreciate the evidence in this behalf in proper perspective and has fallen into error while disbelieving the prosecution story.

17. The last circumstance which was pressed into service by the prosecution is the absconction of A-1 and A-2. To prove this circumstance, prosecution relied upon the evidence of Siddaiah (PW 9), the School secretary who had stated that both the accused had left the watchman shed few months prior to 14th July, 1979 without informing anybody. The evidence of P.V.Kowri (PW 27), the investigating officer also confirms the fact that both the accused despite their best efforts could not be traced at their known places. This circumstance, in our opinion, is again very important link to show their guilty mind.

18. The trial court on the careful scrutiny of the oral and documentary evidence on record held that the prosecution has successfully established beyond every reasonable doubt that A-1 was responsible for causing the death of Chitravathi and Nalini and was also responsible for having caused disappearance of evidence of murder of Chitravathi and Nalini. Consistent with his findings, the trial court vide its judgment dated 12th November, 1980 convicted A-1 under Section 302 IPC and sentenced him to undergo life imprisonment and for an offence punishable under Section 201 IPC, sentenced him to suffer RI for seven years. Both sentences were ordered to run concurrently. A-1 filed an appeal against his order of conviction and sentence whereas State of Karnataka filed appeal against the order of acquittal of A-2. The High Court of Karnataka by its common judgment dated 17th January, 1983, allowed the appeal filed by A-1 and acquitted him of all the charges and also confirmed the order of acquittal of A-2. Both the courts below have acquitted A-2 of all the charges. In our considered view, the order of acquittal of A-2 needs no interference.

19. For the foregoing conclusions, we set aside the order of acquittal in respect of Bhoja Poojari (A-1) passed by the High Court vide its common judgment dated 17th January, 1983 in Criminal Appeal No. 349 of 1981 and restore the order of conviction and sentence dated 12th November, 1980 passed by the IInd Addl. Sessions Judge, Metropolitan Area, Bangalore City in Sessions Judge, Metropolitan Area,

Bangalore City in Sessions Case No. 40 of 1979. The appeal filed by the State of Karnataka against the order of acquittal dated 17th January, 1983 passed by the High Court in Criminal Appeal No. 350 of 1981 in respect of A-2 is dismissed. The appeal filed by the State of Karnataka for enhancing the sentence of A-1 is also dismissed. Bhoja Poojari (A-1) if on bail, shall surrender to his bailbonds to serve out the remaining part of his sentence .

JUDIS