

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 971 OF 2012

VIDYALAKSHMI @ VIDYA

..APPELLANT

VERSUS

STATE OF KERALA

..RESPONDENT

WITH

CRIMINAL APPEAL NOS. 852-853 OF 2014

ANAND SABARIRAJ @ AND ETC.

..APPELLANTS

VERSUS

STATE OF KERALA

..RESPONDENT

J U D G M E N T

M.R.SHAH, J.

As common question of law and facts arise in this group of appeals and as such arise out of the common impugned

judgment and order passed by the Division Bench of the High Court of Kerala at Ernakulam, all these appeals are decided and disposed of by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court, by which the High Court has dismissed the said appeals preferred by the respective Accused Nos. 1 to 3 and has confirmed the judgment and order of conviction and sentence imposed by the learned trial Court convicting the original Accused for the offences punishable under Section 302 read with Section 34 of the IPC (original Accused Nos. 1 & 2), for the offences punishable under Section 120B of the IPC (original Accused Nos. 1 & 3) and for the offences punishable under Section 302 read with Section 114 of the IPC (original Accused No.3) and convicting the original Accused Nos. 1 & 2 for the offences under Section 379 read with Section 34 of the IPC, the original accused Nos. 1 to 3 have preferred the present appeals.

3. As per the case of the prosecution, Accused No.1 and Accused No.3 had been lovers for more than last three years. The marriage of the Accused No.3 was solemnised on 7.6.2006 with one Anandaraman (the deceased) in Chennai against the will

of Accused No.3. It was the case of the prosecution that after the solemnisation of the marriage with a view to live with Accused No.1 after doing away with Anandaraman before 18.06.2006, Accused No.1 and Accused No.3 hatched up a conspiracy and solicited the assistance of A2 and subsequently A2 became a party to the conspiracy. It was the further case on behalf of the prosecution that Accused No.3 after the marriage planned with Anandaraman to go to different tourist centres in Kerala under the guise of a honeymoon celebration and disclosed the particulars of such journeys and visits to Accused No.1. The couple started from Chennai on 16.06.2006 to Kerala for visiting Guruvayoor and Munnar. Accused No.3 with pre-determination passed information to Accused No.1 through mobile phone, whereby to facilitate Accused No.1 and Accused No.2 to pursue/follow the couple. Accused No.3 led Anandaraman to the Kundala Dam at Munnar (place of the offence) under the pretext of going tour and thereafter having boating she took Anandaraman to a lonely place and brought about the arrival of first and second accused thereby passing information over mobile phone. The case of the prosecution is that the deceased was led

by Accused No.3 to a catchment area which afforded opportunity for implementation of the scheme of conspirators.

3.1 According to the prosecution, AI and A2 who had reached there found the opportunity and caused the death of the deceased by ligature strangulation with MO.7 (Camera Strip) and smothering. It was further the case of the prosecution that Accused No.2 committed robbery of Rs.13,000/- kept inside the pocket of the pants worn by Anandaraman and Accused No.1 committed robbery of wrist watch valued at Rs.2,000/- and the camera valuing to Rs.10,000/-, totalling to Rs.25,000/-. As per the case of the prosecution, as part of the conspiracy, Accused No.3 removed herself the gold chain from her neck and entrusted to Accused No.1 and she herself stained her dress with stain of blood and after being satisfied from message over mobile phone that Accused Nos. 1 and 2 had escaped, misrepresented the facts and to create a story as if some unknown persons have committed the robbery and had killed Anandaraman taking advantage of the lonely place. The first information report was lodged before the police by PW1 – Sam Vincent, the driver of the vehicle in which A3 and the deceased had travelled. The Circle Police Inspector started investigation. According to the

prosecution, thereafter Accused No.1 & 2 had panicked on seeing a police van proceeding to Kundala Dam – the scene of the crime. They came to know that word had gone around that a crime had been committed and the police were looking for two persons who had allegedly committed that crime. They somehow wanted to leave Munnar to some other place. Thereafter they made enquiries with PW2 and others as to how they could hurriedly leave Munnar. Their conduct allegedly aroused suspicion in the mind of PW2 and his friends. They ensured that A1 and A2 did not escape and informed the police about the suspicious activities of A1 and A2. Thereupon A1 and A2 were taken to the police station.

3.2 During the course of the investigation, the Investigating Officer collected incriminating material against the accused. The Investigating Officer also recorded the statements of the concerned witnesses. The Investigating Officer found that the clothes worn by A1 to A3 were stained with human blood. They further found that the nail clippings of A1 and A2 had blood marks on them. They recovered MO.6 – tour programme – itinerary of A3 and the deceased in the handwriting of A3 from the possession of A1. During the course of the investigation, the

IO recovered, at the instance of Accused Nos. 1 & 2, watch, camera and cash of the deceased and the gold chain of A3, which, according to A3, was taken away from her by force by the unknown miscreants. The deceased, at the scene of the crime, had some scalp hairs of the miscreants within his fingers, which came to be seized by the police while preparing the inquest report. On conclusion of the investigation, the Investigation Officer filed the charge sheet/final report against the accused for the offences punishable under Section 302 read with Section 34 IPC, Section 302 read with Section 120B IPC, Section 302 read with Section 114 IPC and Section 379 IPC against the respective Accused Nos. 1 to 3. The case was committed to the Court of Sessions. The accused pleaded not guilty and therefore they came to be tried by the learned Sessions Court for the aforesaid offences.

4. To prove the charge against the accused, the prosecution examined in all 40 witnesses. The prosecution also produced on record through witnesses the documentary evidence – Exhibits P1 to P80. M.Os 1 to 51 series were also marked by the prosecution. Thereafter, the prosecution submitted the closing pursis. The accused did not adduce any evidence at the stage of

defence. However, Exhibit D1 was marked by A2 when PW29 was examined. Thereafter, the statements of the accused under Section 313 of the Cr.P.C. were recorded. In their 313 statements, the accused had taken up the defence of total denial. It appears that A1 and A3 did not dispute their relationship. In fact, they did admit their relationship. But, according to them, the relationship had been put to an end in 2004 and that thereafter, A3 had willingly married with the deceased. They denied any contact between them after 2004. A3 filed a detailed written statement. It was the case on behalf of the accused that they were not in any way responsible for the murder of the deceased Anandaraman and that they had been falsely implicated by the police.

5. The learned trial Court, on appreciation of the evidence, came to the conclusion that the prosecution has successfully established the offence of conspiracy under Section 120B between A1 and A3. The learned trial Court also came to the conclusion that the murder of the deceased Anandaraman was executed by A1 and A2 in the presence of A3 at the scene of the crime - Kundala dam using MO7 – Camera Strip. The trial Court also observed and found that the death of the deceased was

caused by a ligature strangulation and there were also attempt to smother the deceased. The learned trial Court further came to the conclusion that attempts were made deliberately to mislead others by stating that it was the case of some unknown miscreants to commit theft/robbery of valuable articles which the deceased and A3 were having with them. Thereafter, the learned trial Court convicted the original Accused No.1 – Anand for the offence punishable under Section 302 of the IPC and also for the offence under Section 120B and Section 379 of the IPC. The learned trial Court sentenced the original Accused No.1 to imprisonment for life and to pay a fine of Rs. 5,000/- for the offence punishable under Section 302 of the IPC, and in default of payment of fine, to undergo rigorous imprisonment for one year more. He is also sentenced life imprisonment and to pay a fine of Rs.5,000/- under Section 120B of the IPC, and in default of payment of fine, to undergo rigorous imprisonment for one year more. While convicting the original Accused No.1 for the offence punishable under Section 379 of the IPC, learned trial Court further sentenced to undergo rigorous imprisonment for three years.

5.1 The learned trial Court convicted original Accused No.2 for the offence punishable under Section 302 IPC and sentenced him life imprisonment and to pay a fine of Rs.5,000/-, in default of payment of fine, rigorous imprisonment for one year more. The learned trial Court sentenced Accused No.2 to undergo three years rigorous imprisonment for the offence punishable under Section 379 of the IPC.

5.2 The learned trial Court convicted the Accused No.3 for the offences punishable under Sections 302 read with 114 of the IPC and sentenced her to undergo life imprisonment and to pay a fine of Rs.50,000/-, in default of payment of fine, to further undergo three years rigorous imprisonment. Accused No.3 is also sentenced for life imprisonment and to pay a fine of Rs.50,000/- under Section 120B of the IPC, and in default of payment of fine, to further undergo three years rigorous imprisonment.

5.3 The learned trial Court ordered that the substantive sentences of imprisonment awarded to each of the accused shall run concurrently.

6. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the Sessions Court, the original Accused Nos. 1 to 3 preferred appeals before the High

Court of Kerala at Ernakulam. By the common impugned judgment and order, the High Court has dismissed the appeals. Hence, the present appeals.

7. Learned counsel appearing on behalf of the respective appellants have vehemently submitted that in the facts and circumstances of the case, both, the learned trial Court as well as the High Court have committed a grave error in convicting the respective accused for the offences punishable under Section 302 of the IPC with the aid of Section 34, 114 and Section 120B of the IPC.

7.1 It is vehemently submitted by the learned counsel appearing on behalf of the respective appellants that as such the High Court has not properly appreciated the fact that it was a case of circumstantial evidence, and therefore the prosecution is obligated to prove all those circumstances which leave no manner of doubt that all the circumstances are linked up with one another and the chain has not broken in between. It is submitted therefore that unless the chain of circumstances is complete leading to the only conclusion that it is the accused alone had committed the offence, the Court is not justified in convicting the accused.

7.2 It is further submitted on behalf of the respective appellants that both the Courts below have materially erred in holding that Accused No.3 and Accused No.1 entered into a conspiracy to murder the deceased Anandaraman.

7.3 It is further submitted by the learned counsel for the respective appellants that even the prosecution has failed to prove the motive put forward by the prosecution. It is submitted that, according to the prosecution, marriage against the will of the Accused No.3 was the motive. It is however submitted by the learned counsel that Accused No.3 categorically stated in her 313 statement and in the written statement that she was very much happy with the deceased and in fact there were no relationship continued with Accused No.1 after the marriage and/or even after 2004.

7.4 It is further submitted by the learned counsel appearing for the respective appellants that the Courts below have materially erred in holding that Accused No.3 and Accused No.1 entered into a conspiracy to commit the murder of the deceased solely on the basis of the call details/calls from deceased phone to Accused No.1. It is further submitted by the learned counsel that even the prosecution has failed to prove that the love letters between

Accused No.3 and Accused No.1 were in existence even at the time of the incident. It is submitted that the evidence of PWs 22, 23 and 35 even if at the face value do not prove that the love affair between the A3 and A1 was in existence.

7.5 It is further submitted by the learned counsel that even the prosecution has failed to prove by leading cogent evidence that the itinerary – MO.6 which was alleged to be found from A1, which was alleged to be in the handwriting of A3 was in fact in the handwriting of A3.

7.6 It is further submitted by the learned counsel appearing on behalf of Accused Nos. 1 & 2 that the prosecution has failed to prove by leading cogent evidence the presence of Accused Nos. 1 & 2 at Guruvayoor. It is further submitted by the learned counsel appearing for A1 and A2 and even by the learned counsel appearing for A3 that the prosecution has failed to prove by leading cogent evidence that Accused Nos. 1 & 2 met Accused No.3 at Arunodhayam Tourist Home.

7.7 It is further submitted by the learned counsel appearing on behalf of Accused No.1 that the courts below have materially erred in holding that the tour programme/itinerary of Accused No.3 and the deceased was recovered from Accused No.1.

7.8 Making the above submissions, it is prayed to allow the present appeals by setting aside the impugned common judgment and order passed by the High Court confirming the judgment and order of conviction and sentence passed by the learned Sessions Court and consequently acquit the accused for the offences for which they are held to be guilty.

8. The present appeals are vehemently opposed by the learned counsel appearing on behalf of the respondent – State.

8.1 It is vehemently submitted by the learned counsel appearing on behalf of the respondent-State that in the facts and circumstances of the present case and on appreciation of evidence on record, the Courts below have rightly held the accused guilty for having committed the murder of the deceased Anandaraman.

8.2 It is vehemently submitted by the learned counsel that in the present case the prosecution has been successful in proving by leading cogent evidence that the Accused No.1 and Accused No.3 were in love and were having relationship which even continued after the marriage of A3. It is further submitted by the learned counsel appearing on behalf of the respondent-State that prosecution in the present case has been successful in proving

the conspiracy between the accused to commit the murder of the deceased.

8.3 It is submitted by the learned counsel for the respondent-State that in the present case the prosecution has been successful in establishing and proving the presence of A1 and A2 at all the places where A3 and the deceased went and that from even Guruvayoor to Echo Point where the incident has taken place. It is submitted that the aforesaid is established and proved by the prosecution by examining the relevant witnesses, namely PW2 and PW4 and also by leading documentary evidence.

8.4 It is further submitted that even the detailed itinerary/tour programme of A3 and the deceased, which was in the handwriting of A3 was recovered from A1 and it was established and proved that wherever A3 and the deceased went as per the tour programme, A1 and A2 also followed. It is further submitted by the learned counsel appearing on behalf of the State that in the present case the prosecution has been successful in proving that all throughout A1 and A3 were in touch and having conversation on mobile phones.

8.5 It is further submitted by the learned counsel for the respondent-State that even there was a recovery from Accused Nos. 1 & 2 of the cash, gold chain, which was also looted.

8.6 It is further submitted by the learned counsel that in the present case the prosecution has been successful in completing the chain of events leading to the conclusion that (1) accused hatched the conspiracy; (2) the relationship between A1 & A3; (3) that A1 & A2 followed A3 and the deceased and they were present at all the places where A3 and the deceased went/stayed; (4) that all through out A3 and A1 were in contact and were having conversation over mobile phones; and (5) that the recovery of MO6 – tour programme of A3 and the deceased, which was in the handwriting of A3 and which was recovered from A1. It is submitted by the learned counsel appearing on behalf of the State that all the above circumstances lead to irresistible conclusion of guilt against accused persons. It is submitted that the links in the chain of circumstances has been completely established by the prosecution. It is submitted that therefore neither the learned Sessions Court nor the High Court have committed an error in convicting the accused for the offences punishable under Section 302 with the aid of Sections, 34, 114,

120B and 379 of the IPC. Therefore, it is prayed to dismiss the present appeals.

9. We have heard the learned counsel appearing on behalf of the respective parties at length.

9.1 At the outset, it is required to be noted that in the present case, original Accused Nos. 1 & 2 are convicted for the offences punishable under Section 302 of the IPC with the aid of Section 34 of the IPC, original Accused Nos. 1& 3 are convicted for the offences punishable under Section 302 of the IPC with the aid of Section 120B of the IPC and original Accused No.3 is also convicted for the offences punishable under Section 302 of the IPC read with Section 114 of the IPC. Original Accused Nos. 1 & 2 are also convicted for the offences under Section 379 read with Section 34 of the IPC.

9.2 That the learned Sessions Court on appreciation of evidence on record, both oral as well as documentary, held that the prosecution has been successful in establishing and proving that the accused entered into a conspiracy to commit the murder of the deceased. On appreciation of the evidence, the trial Court found and held that original Accused Nos. 1 & 2 right from the beginning followed Accused No.3 and the deceased and wherever

the Accused No.3 and deceased visited/stayed, the original Accused Nos. 1 & 2 followed them. The learned trial Court also found that all through out Accused Nos. 1 & 2 and Accused No.3 were in contact and were having the conversation over mobile phones. Right from the very beginning from Guruvayoor to Echo Point where the incident had taken place the presence of Accused Nos. 1 & 2 has been established and proved. That the learned trial Court convicted the accused for the aforesaid offences and sentenced them to undergo life imprisonment and other sentences noted hereinabove and the same have been confirmed by the High Court by the impugned common judgment and order.

10. It is mainly contended on behalf of the accused that as it is case of circumstantial evidence, the prosecution has to establish and prove and/or complete the chain of circumstances, which would lead to the only conclusion that it is the accused who committed the offence. It is also the case on behalf of the accused that the prosecution failed to establish and prove the motive, as according to Accused No.3 there was no relationship since long and at least at the time of marriage and/or post marriage. We are conscious of the fact that this is a case of circumstantial evidence and therefore the prosecution has to

establish and prove and complete the chain of circumstances which lead to the guilt of the accused.

11. Having heard learned counsel for the respective parties and on appreciation of the evidence on record, we are satisfied that in the present case the prosecution has been successful in proving and/or completing the chain of circumstances which would lead to the only conclusion that Accused Nos. 1 to 3 entered into a conspiracy; that Accused Nos. 1 & 2 committed the murder of the deceased and Accused No.3 was a party to the conspiracy.

12. From the judgment and order passed by the learned trial Court, it appears that the learned trial Court enumerated as many as 33 circumstances against the accused and the High Court considered as many as 28 relevant circumstances against the accused. The 33 circumstances enumerated and considered by the learned trial Court against the accused are stated in paragraph 58 and the 28 circumstances considered by the High Court while holding the accused guilty for the murder of the deceased are narrated in paragraph 18 of the impugned judgment and order. On considering the entire evidence on record, both oral as well as documentary, the prosecution has been successful in proving that Accused Nos. 1 & 2 followed

Accused No.3 and the deceased at Guruvayoor, Munnar and also at Echo Point. There was a recovery of detailed itinerary/tour programme of A3 and the deceased from A1 which was in the handwriting of A3. The prosecution has also been successful in proving that A1 and A2 met A3 at Arunodhayam Tourist Home where A3 and the deceased stayed (from the deposition of PW4). The prosecution has also established and proved that Accused Nos. 1 & 3 stayed at Munnar on 17.06.2006 by leading cogent evidence and examining PW5 – Abdul Rasheed, Manager of Arafa Tourist Home at Munnar, and also by leading the documentary evidence – P5, the tourist home register. The prosecution has also been successful in proving by leading cogent evidence that Accused Nos. 1 & 2 went to Echo Point where A3 and the deceased had gone and the place where the deceased was murdered. The aforesaid has been established and proved by the prosecution by examining PW2. Thus, the presence of Accused Nos. 1 & 2 was found right from the beginning at Guruvayoor, Munnar, Kundala Dam and Echo Point. This is required to be appreciated from the fact that there was a recovery of itinerary/tour programme of A3 and the deceased from A1 which was found to be in the handwriting of A3. It has also been

established and proved by leading cogent evidence by examining the BSNL personnel that there was a conversation on the mobile phones between A3 and A1 from the mobile of the deceased (which was used by A3) and the mobile of A1. Therefore, it has been established and proved that Accused Nos. 1 & 2 were following A3 and the deceased as per the instructions by A3 and/or that all the accused were in contact with each other even at the time when the incident had taken place. All the aforesaid circumstances lead to irresistible conclusion of guilt against the accused persons. The aforesaid circumstances lead to the conclusion that the prosecution case can be taken to have been proved beyond all reasonable doubts. From the aforesaid circumstances proved, it can be said that the links in the chain of circumstances have been completely established. All the aforesaid circumstances leave no manner of doubt that all the circumstances are linked up with one another and the chain is not broken in between. Thus, the prosecution has been successful in completing the chain of circumstances leading to the only conclusion that all the accused entered into a conspiracy to commit the murder of the deceased and that in fact A1 and A2 committed the murder of the deceased.

13. So far as the submission of the Accused No.1 and Accused No.3 that in the present case the prosecution has failed to prove the motive and to prove by leading cogent evidence that the relationship between A1 and A3 continued even after the marriage is concerned, it is required to be noted that as such Accused No.1 in fact denied having any love affair with Accused No.3. However, Accused No.3 herself in her written statement had admitted that they were in love earlier. But, according to Accused No.3, thereafter there was no relationship continued. Therefore, Accused No.1 came out with a false defence. Be that as it may, when the prosecution has been successful in proving the conspiracy between the accused as well as the accused committed the murder of the deceased, motive may not have that much relevance. We are more than satisfied that in the present case the prosecution has been successful in proving the case against the accused. We are in complete agreement with the view taken by the High Court as well as the learned trial Court. We see no reason to interfere with the impugned judgment and order passed by the High Court.

14. In view of the aforesaid reasons, all the appeals fail and deserve to be dismissed and are accordingly dismissed.

.....J.
[UDAY UMESH LALIT]

NEW DELHI;
FEBRUARY 15, 2019.

.....J.
[M.R. SHAH]