

Bilaluddin and ors. Vs. the State of Assam

Bilaluddin and ors. Vs. the State of Assam

SooperKanoon Citation : sooperkanoon.com/137886

Court : Guwahati

Decided On : Mar-14-1991

Judge : S. Haque and M. Sarma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

Appeal No. : Criminal Appeal No. 70/1985

Appellant : Bilaluddin and ors.

Respondent : The State of Assam

Advocate for Def. : G. Gopal, Public Prosecutor

Advocate for Pet/Ap. : D.K. Bhattacharjee, B.M. Choudhury and B.D. Das, Advs.

Disposition : Appeal allowed

Judgement :

S. Haque, J.

1. Four (4) accused-appellants Bilaluddin, Ennas AH, Isab Ali and Abdul Matleb had been convicted Under Sections 302/304, IPC and sentenced to suffer imprisonment for life and to pay fine of Rs. 100/- each in default R.I. for another 3 months vide judgment dated 18-7-1985 passed by the Sessions Judge, Nagaon in Sessions Case No, 64(N)/1982 arising out of G.R. Case No. 1767/1980.

2. There was no dispute on the fact of death of Samsul Haque on 26-6-1980 as a result of injuries sustained. Dr. S.K. Bar-thakur (P.W. 1) held post mortem examination on the dead body of Samsul and found the following injuries :--

1. one curve incised wound on the lateral aspect of the right arm 3' x 2' x muscle deep;
2. one incised wound over the left parietal region measuring 3' x 2' x skull deep;
3. one penetrating wound measuring 1' x 1/2' on the left side of the back of the chest x lung deep;
4. one penetrating wound 2' x 1' x lung deep on the right side of the back of the chest.

Both sides of plurae injured with full of blood clots in both cavities and both lungs were cut. The injuries were ante-mortem and doctor opined that death was due to penetrating wounds cutting lungs and the head injury. He further opined that the injured was probably in his senses for about 15 minutes after sustaining injuries. In view of the nature of the injuries over the head and chests cutting both lungs, we fully agree with the opinion of the doctor. But we find it difficult to agree with the medical opinion that the injured could be in senses for about 15 minutes after such injuries. The head injury endangering life coupled with penetration of both the lungs might have caused loss of senses within minutes.

3. P.W. 2 Iman Ali lodged the-First Information Report, stating that he found Samsul Haque lying injured at the place of occurrence and on query injured said that Bilaluddin; Abdul Matleb, Isam Ali and Ennas Ali assaulted him with dagger, dao and spear; and that Samsul died while carrying towards Thana.

4. The prosecution relied on two types of evidence, firstly, dying declaration deposed by P.W. 2, Iman Ali, P.W. 3 Abdul Mazid and P.W. 5 Hassen Ali; and secondly, direct evidence P.W. 4 Abdul Khaleque. Iman Ali deposed that he along with Hassen Ali, Has-mat and Mazid went to the place of occurrence which was more than a mile from their houses and found Samsul lying in injured condition and told them that Bilal, Matleb, Isab and Ennas assaulted him with Sulfi, ramdao

and lathi. Iman Ali was the first informant. He did not disclose in the FIR that Hasmat, Mazid, Hassan and Barek were present at the time of making the dying declaration. He deposed that deceased disclosed the names as Bilal, Matleb, Isab and Ennas, whereas in the FIR he described their names as Bilaluddin, Abdul Matleb, Isab Ali and Ennas Ali with their full descriptions and addressed. Identity of the assailants with descriptions were not given in the dying declaration. But the informant gave more description to identify and connect the four accused with full descriptions in the FIR. This was an improvement by Iman Ali differing from what the deceased declared. Iman Ali further deposed that deceased declared that assailants used Sulfi, ramdao and lathi, whereas in the FIR he stated that he could know from the deceased that dagger, dao and spear were used. Thus Iman Ali gave different versions as to weapons disclosed by deceased. On careful scrutiny it is found that evidence of informant Iman Ali had full of infirmities.

5. P.W. 3 Abdul Mazid and P.W. 5 Hassen Ali corroborating Iman Ali deposed that in their presence injured Samsul declared that Bilal, Matleb, Isab and Ennas assaulted him. They did not state about deceased disclosing names of weapons used by assailants. From their evidence it was not possible to connect these four accused with the crime as their descriptions or identity had not been indicated in the declaration. They further did not state about deceased declaring about weapons used by assailants. On this point they did not corroborate Iman Ali. Their evidence did not inspire confidence.

6. The occurrence took place at Roumari at a distance of about more than a mile from the houses of Iman Ali, Mazid and Hassen Ali. One boy saw the injured lying at Roumari. He came to the house of Iman Ali and reported him; thereafter, Iman Ali along with Mazid, Hassen, Hasmat and Barek went to the place of occurrence on foot and found the injured lying. Sufficient time must have passed when they arrived at place of occurrence. It was difficult to believe that with those fatal injuries the deceased was in senses and speaking state for such a long period to make the declaration. Furthermore, infirmities were found in the evidence of witnesses. Therefore, the evidence as to dying declaration did not inspire confidence and lacked basis for conviction.

7. A conviction can rest on a dying declaration verily implies that the declaration must inspire confidence so as to make it safe to act upon. When medical evidence as to injuries found to be fatal and time passed before the witnesses arrived, then it becomes doubtful if the deceased could be said to be in fit state to speak out or to reply to query or questions. The infirmities in the evidence of the witnesses speaking out fact of dying declaration make the fact shaky and doubtful. The instant case as to the injuries, time of arrival of the witnesses after occurrence, and the infirmities in their evidence made the prosecution case weak and suspicious on the fact of dying declaration and was short of inspiring confidence.

(Relied Darshan Singh v. State of Punjab and Joga Singh v. State of Punjab, AIR 1983 SC 554 : (1983 Cri LJ 985).

8. P.W. 4 Abdul Khaleque deposed that he saw Samsul sitting in the courtyard of Soroj Ali and at that time the four accused armed with ramdao, lathi and daos appeared and dealt blows on Samsul and he out of fear entered the house. He came out after about half an hour and found Samsul already dead. It is found from his evidence that one Abdul Sovan and Hussain Ali (not P.W. 5) were present in the courtyard of Soroj Ali and saw the occurrence. It is found from his evidence that witnesses Iman Ali, Mazid and Hassen did not arrive at the place of occurrence when he came out of his house after about half an hour and found Samsul already dead. So, those three (3) witnesses perhaps arrived at the place of occurrence after death of Samsul. Therefore, the story of dying declaration was perhaps an after thought.

9. Witness Abdul Khaleque was contradicted with his previous statement before the Investigating Officer and the same was proved by the Investigating Officer P.W. 7. Abdul Khaleque did not state before the Investigating Officer that he saw Samsul sitting in the courtyard of Soroj Ali and that Bilal, Matleb, Isab and Ennas armed with daos and lathies appeared at the courtyard of Soroj Ali and assaulted Samsul. When Abdul Khaleque did not disclose these material facts of the occurrence before the Investigating Officer immediately after the occurrence, his evidence become doubtful and he is found to be not trust-worthy.

10. One trust-worthy witness is sufficient to base conviction. It is not necessary to multiply witnesses; quality is the factor to count than quantity. Where eye witness for the prosecution is only one, it becomes the duty of the Court to be more cautious and very critically scrutinise his evidence. Mere probability of witnessing the occurrence being neighbour of the place of incident is not enough, but something more is required to test his veracity in order to mark him as most trust-worthy when such a solitary witness omits to state the material facts of the actual incident in his first disclosure before the Investigating Officer, then his evidence becomes doubtful and to be pushed out of the arena of trustworthiness. In the instant case P. W. 4 Khaleque was of such character and so his evidence was discarded.

11. It was found from the evidence on record that one Abdul Sovan, Hussain Ali, Soroj Ali and his mother were present at the place of occurrence. Mother of Soroj Ali found water on the head of injured. The evidence of these persons were very much essential to unfold the genesis and origin of the occurrence. Their non-examination made the prosecution case doubtful.

12. Prosecution should not adopt device to withhold material witnesses from whom the truth was likely to be unfolded. Its duty is to assist Court to come to a correct decision. Prosecution need not multiply witnesses if a large number of persons see and know about the occurrence, but where the persons first arrived and find the injured immediately after infliction of injuries and in the state of speaking out, then they must be regarded more essential witnesses on point of dying declaration than the witnesses coming lately at the moment of dying or after death. Iman Ali, Mazid and Hassen Ali came long after Sovan, Soroj and mother of Soroj. So they were material and essential witnesses and their withholding by prosecution raised occasion to draw adverse inference and was a serious infirmity in establishing prosecution case.

(Relied *Karnesh Kumar Singh v. State of Uttar Pradesh*, AIR 1968 SC 1402 : (1968 Cri LJ 1655).

13. Both dying declaration and direct evidence failed to establish the charge against the four accused persons beyond reasonable doubts. The trial Court could

not appreciate the evidence and law. The order of conviction is liable to be set aside.

14. Accordingly, this appeal is allowed. The order of conviction and sentences of the four accused-appellants vide impugned judgment are set aside and they are acquitted of the charges and set at liberty forthwith. They are discharged from bail bond.

Send down the records.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com