J.K. Devaiya Vs. State of Coorg

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Court : Karnataka

Decided On : Feb-28-1956

Reported in : 1956CriLJ904

Judge : Padmanabhiah, J.

Appellant : J.K. Devaiya

Respondent : State of Coorg

Judgement :
ORDER

Padmanabhiah, J.

1. This is a revision petition preferred by the petitioner-accused against the judgment of the learned Sessions Judge, Mercara, in Criminal Appeal No. 12/1953. confirming that of the learned Munsiff and) First Class Magistrate, Mercara, in C. C. No. 295/1954, convicting him of an offence under Section 243, I.P.C. and sentencing him to undergo rigorous- Imprisonment for one year and also to pay a fine of Rs. 500/- and in default to suffer rigorous imprisonment for a further period of three months.

2. The facts that have given rise to this petition are briefly as follows:

3. The accused was charge-sheeted for an offence under Section 243,1.P.C. in the Court of the learned Munsiff and First Class Magistrate, Mercara, and the case for the prosecution was that on 23-11-53 the accused was found in fraudulent possession of four counterfeit India Government Rupee coins of 1947 pattern having known at the time he became possessed of them that they were counterfeit and that he thereby committed an offence punishable under Section 243, I.P.C.

The accused pleaded not guilty to a charge framed under the above section but the learned Magistrate ultimately convicted and sentenced the petitioner as stated above. As against that judgment, the petitioner preferred an appeal to the learned Sessions Judge, Mercara, who confirmed the conviction of the petitioner and the sentence passed on him by the trial Court. As against that decision, this revision petition is filed'.

4. The main point that arises for consideration is whether the guilt has been brought home to the petitioner. Though both the Courts below have concurrently found that the accused is guilty, yet I am constrained to observe that the conviction cannot be sustained inasmuch as it is based on evidence which is very meagre and inconclusive.

The offence relates to coins which form the currency of the land, and Section 243, I.P.C. provides a substantive sentence of seven years as punishment for this offence. Thus it is seen that the charge brought against the petitioner is a serious one and in such cases Courts should expect a higher degree of proof in support of the case for the prosecution,

5. To sustain a conviction under Section 243, I.P.C. the prosecution should establish.

firstly that the accused was in possession of coins;

secondly that the said coins were counterfeit coins;

thirdly that the accused was in possession with intent to defraud, and

fourthly that the accused, at the time he be-came possessed of them, knew that they were counterfeit.

From a perusal of the evidence, I am of opinion that the first two ingredients have been established but not the other more important ingredients viz., ingredients Nos. 3 and 4.

6. The four coins in question are marked as M. O. 1 in this case. That they are counterfeit coins is proved by the evidence of P. W. 8, the Coins and Currency Expert. Exhibit P-6 is his. report. He has assigned four reasons for coming, to the conclusion that M. 0.1 are counterfeit coins, they being:

(1) that M. O. 1 coins are cast coins and that all cast coins are counterfeit coins;

(2) that M. o. 1 coins are not attracted by magnet whereas the genuine coins of the year 1947 are attracted.

(3) that the milling and securing groves on the edges of these coins are crude and irregular and

(4) that these coins are lighter in weight than the genuine coins.

In view of the evidence of P. W. 8 and also the evidence of P. Ws. 1 and 7 who had actually seen the coins and also in view of the circumstances that the above fact is not disputed on the side of the defence, I think the Courts below were right in coming to the conclusion that M. O. 1 coins are counterfeit coins.

7. It is P. W. 1 who actually seized M. O. 1 from the possession of the accused under the manager Ext. P-1.. This is sworn to by P. W. 1 and the mahazar witnesses. Further the fact of seizure is not disputed by the accused. As a matter of tact, he has admitted his having been in possession of these coins: but his contention has been that he came into possession of these coins in the course of his paddy trade.

So the first two ingredients necessary to constitute an offence under Section 243, I.P.C. may be taken as having been proved.

8. But the more important ingredients necessary to sustain a conviction for an offence under Section 243, I.P.C. have not, in my opinion, been established, they being that possession of these coins by the accused was fraudulent and that he knew, at the time he became possessed of those coins, that they were counterfeit coins.

The Courts below have mainly relied] on the uncorroborated oral testimony of P. W. 7 in coming to the conclusion that the possession by the accused was fraudulent and that he knew at the time when he became possessed of these coins that they were counterfeit coins. No doubt, the evidence of P. W. 7 is clear that the accused disclosed to him his scheme to manufacture counterfeit currency notes and coins and that the accused also showed the witness the four coins M. O. 1 some time prior to their seizure by P. W. 1.

It is also true that if the evidence of P. W. 7 is accepted without any reservation, the case for the prosecution will have been proved. But, in my opinion the Courts below were wrong in accepting the solitary testimony of P. W. 7 in arriving at this conclusion on such an important point as that.

9. Generally this Court will not interfere with or differ from the opinion of the trial Courts regarding the credibility of witnesses. But, in this case, to accept the above principle without any reservation seems to lead to miscarriage of justice. Therefore I am compelled to go into the question whether the Courts below were right in accepting the evidence of P. W. 7 in toto and in convicting the accused.

The prosecution is, in my opinion, guilty of serious omissions in the conduct of the case, and the police in the investigation thereof.

10. Under Section 243, I.P.C. only possession of coins which the person in possession knew to be counterfeit at the time he became possessed of them is criminal and not any other kind of possession. This was a very material ingredient which the prosecution should have made out with all the available evidence that they had. This has not been done. It is not the case for the prosecution that the only witness who was conversant with the scheme of the petitioner for manufacturing counterfeit coins and currency notes was P. W. 7.

The evidence discloses - and it is also not disputed - that these facts to which P. W. 7 has deposed were within the knowledge of another person by name Nuthanna, who is said to be equally respectable as P. W. 7 and that it is through Muthanna that P. W. 7 got into contact with the accused. According to the prosecution, it is that Muthanna that' first came to know through the accused about his scheme.

In my opinion, this witness Muthanna was a material witness for the prosecution, and the observation of the learned) Sessions Judge that the examination of this witness was immaterial cannot be countenanced. This witness has not been examined and no explanation is forthcoming for his non-examination. Prom the omission to examine this witness an adverse inference against the prosecution has to be drawn.

11. It was contended that P. W. 7 is a respectable witness and that reliance should be placed on his evidence. No doubt, the evidence discloses that P. W, 7 is a respectable witness.

The Indian Evidence Act does not provide that any particular number of witnesses should be examined in proof of any fact and therefore a conviction can be based even on the solitary testimony of a single witness provided that witness is believed) by the Court.

This principle will generally hold, good when the fact to which he deposes is not within the knowledge of any one else or when the incident or the occurrence is not witnessed by anybody else.

But when there are others equally respectable and disinterested who have witnessed the occurrence, which is in issue, and when those witnesses or at least some of them are not examined in corroboration of the evidence of the other witness and no explanation is offered for their non-examination, generally it is unsafe to rely on the uncorroborated testimony of a single witness in a case of this type where the liberty of the subject) is at stake.

The non-examination of the other material witnesses, though available, will very much weaken the evidence of the single witness, however respectable he may be.

12. It has to be remembered that it is P. W. 7 who set the law in motion by reporting the matter to the District Superintendent of Police. As a matter of fact, he is the first informant regarding the commission of the offence to the police. Reading his uncorroborated evidence in that contest, the same loses much of its force.

What value we have to attach to the evidence of P. W. 7 is to be judged from the manner in which it is recorded. The learned Sessions Judge has made damaging remarks against the trial Court regarding the manner in which the evidence of P. W. 7 has been recorded. The learned Sessions Judge has observed that the learned Magistrate did not bring to bear an active mind or bear in mind the rules of evidence as regards the exclusion of hearsay.

He has further observed that there was absolute absence of alertness on the part of the learned Magistrate when he was engaged in recording the evidence. He has further given a note of warning to the learned Magistrate that he (Magistrate) should not allow to trip himself into such lapses which are clearly not proper and likely to affect judicial determination.

The learned Sessions Judge seems to Be unnecessarily severe in his remarks against the learned Magistrate. But, anyway, it is clear from the observations of the learned Sessions Judge that the evidence of P. W. 7 has not properly been recorded. This is also one of the reasons why I am not prepared to accept his evidence as conclusive.

13. The evidence of P. W. 7 discloses beyond any shadow of doubt that it is he who gave the first information regarding the commission of the offence by the accused to the District Superintendent of Police. Admittedly that information has not been reduced to writing by the latter.

Further, the District Superintendent of Police is not examined in the case. It was contended on the sidle of the respondent that what P. W. 7 told the D. S. P. was

not information relating to the commission of an offence, but it was only an information likely to lead to the discovery of a crime and that it was not necessary for the D. 8. P. to have recorded that information.

It is really unfortunate that this view should have found favour with the learned Sessions Judge, according to whom what P. W. 7 told the D. S. P. was not in relation to the commission of any offence.

14. What P. W. 7 told the District Superintendent of Police is that the accused was carrying on a scheme for the manufacture of counterfeit coins and currency notes with fraudulent intention and that the accused was in possession of M. O. 1 counterfeit coins. It cannot be denied that P. W. 7 reported this matter to the Police with the intention of setting the police in motion.

The District Superintendent of Police, relying on this information, started investigation by deputing P. W. 1 to apprehend the accused and seize M. O. 1. If what P. W. 7 told the D. S. P. is not the first Information regarding the commission of the offence, it is not clear what else it could be. To constitute a 'first information report' two conditions are to be fulfilled: firstly what is conveyed must be an information, and secondly, that information should relate to the commission of a cognizable offence on the face of it.

These two conditions have been satisfied in this case, and I fail to understand how the learned Sessions Judge could hold that this is not the first information regarding the commission of the offence. He holds that by the seizure of M. O. 1 by P. W. 1 he came into possession of information regarding the commission of the offence. As P. W. l's report Ext. P-5 itself puts, he proceeded to apprehend the accused and seize the articles on receipt of credible information regarding the commission of the offence.

Apprehending the accused and seizure of the articles concerned in the case cannot be considered as first information regarding the commission of the offence. On the other hand, P. W. l's arresting the accused and seizing the incriminating articles were almost the last stage in the investigation of the case. Under these circumstances, I am of opinion that the information conveyed by P. W. 7 to the D.

S. P. was information regarding the commission of an offence and not an information which led to the discovery of a crime, as found by the learned Sessions Judge.

15. As stated already, this information conveyed by P. W. 7 to the District Superintendent of Police has admittedly not been recorded. Another ground urged on the side of the prosecution for the District Superintendent of Police not recording this information, is that he is not bound under Section 154, Criminal P.C., to record such information and that the recording of information contemplated under that section is confirmed to the officer incharge of the police station. In this connection, I would like to refer to Section 561, Criminal P.C. which provides as follows:

Police-Officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed1, as may be exercised by such officer within the limits of his station.

It was also contended that there is no authority for the proposition that the word 'may' in the above section means 'must' and thereby suggesting that the recording of the information as contemplated under Section 154, Criminal P.C. is purely discretionary when the same is given to police officers superior in rank to an officer-in-charge of a police station'.

16. In my opinion, it is not correct to say that police officers superior in rank to an officer-in-charge of a police station may or may not record information which is given to them regarding the commission of a cognisable offence, because to accept such a proposition may lead to absurdities and ultimately to failure of justice.

The first information regarding the commission of a cognizable offence conveyed to a police officer superior in rank to an officer-in-charge of a police station, if not immediately recorded, may not some times become available subsequently for various reasons. Therefore two courses should suggest themselves to police officers superior in rank to an officer-in-charge of a police station when information regarding the commission of a cognizable offence is reported to them,

When such information is conveyed, the police officer in question must, in cases where he is not inclined to record the information, make arrangements to cause the production of the informant before the officer-in-charge of the police station so that the said officer may record the information as required under Section 154, Criminal P.C. The other course is to record the information himself in cases where he intends to take action on the first information.

In this case, on the information furnished by P. W. 7, the D. S. P, himself took action and set the law in motion and started investigation by deputing P. W. 1 to arrest the accused and seize the properties. When he chose that course it was his duty to have recorded the information furnished by P. W. 7 or caused a record of what P. W. 7 said made. Even P. W. 1, before whom the information given to the District Superintendent of Police was repeated, has not recorded the said information. This appears to be a serious omission in the investigation of the case.

17. The importance of the first information from the stand-point of the accused cannot lightly be ignored. The very object of insisting on a first information regarding the commission of the offence is to obtain early information regarding the alleged criminal activity and to record the circumstances before there is time for the parties concerned to embellish or develop the case as circumstances present themselves to them. That information is very important so far as the accused is concerned because he is entitled to know as to what was the nature or the manner in which the occurrence was first related or started.

The first information report is a very valuable document and the accused is entitled to know what was said in that report to connect him with the offence so that he may be in a position to protect his interests by cross-examining the prosecution witnesses with respect to any additions or alterations in the story of the prosecution which may subsequently be made in evidence.

After all, what P. W. 7 reported to the D. S. P., in the first instance may not be the same as what the witness has stated before Court. The possibility of the witness having forgotten on the date on which he was examined in Court, what he told the District Superintendent of Police some months previously cannot be excluded.

What is more, human memory is defective, and I am of opinion that this omission on the part of the D. S. P. has highly prejudiced the accused. The non-recording by the D. S. P. of the information given to him by P. W. 7 and his non-examination are serious omissions from which an adverse inference has to be drawn as against the prosecution. The view of the learned Sessions Judge that the examination of the District Superintendent of Police was not material is not at all correct.

18. Again, another serious omission I find in the conduct of the case is that the investigating officer has not been examined. This circumstance has lightly been brushed aside by the learned Sessions Judge by saying that the investigating officer could not have given any more information regarding this case. That is not a correct view. It is conceded that it is the Inspector of Police of Virajpat that investigated the case. We do not know what things he did and what he did not.

An accused is entitled to know from an investigation officer what witnesses have been examined in the course of investigation, whether the witnesses examined in Court were examined by him or not, what story the witnesses told before him and whether the same is consistent with the evidence given before Court. The non-examination of the investigating officer in this case is also a serious omission on the part of the prosecution.

19. Prom a reading of the judgment of the learned Magistrate, it is seen that another case, in which the petitioner and some others are accused, was in his mind. It looks as though the learned Magistrate imported to the present case his impressions formed in the other case against this petitioner. Though there is only one accused in this case, he has referred in the course of his judgment to this petitioner as A-1.

The learned Sessions Judge has gone to the extent of suggesting that what the learned Magistrate has recorded as the evidence of P. W. 7 may not be the correct version of the witness. Under these circumstances, I am of opinion that the treatment of the case by the Courts below is anything but satisfactory.

20. The accused has, no doubt, admitted his having been in possession of M.O. 1, but his explanation is that he is a trader in paddy and that he came into possession of these coins in the course of his trade. In the absence of satisfactory evidence to show that he knew, when he became possessed of these counterfeit coins, that they were counterfeit, this explanation of the petitioner which looks plausible has to be accepted. At any rate, there is too much of doubt regarding the complicity of the petitioner in the offence alleged.

In conclusion, I am constrained to observe that the investigation of the case is highly perfunctory and this is not the kind of investigation that is expected from the officers concerned in a case of this type where the offence alleged is against the currency of the land, upon the preservation of which depends the prosperity of the country.

21. In the result, the conviction of the petitioner and the sentence passed on him are set aside and the petitioner stands acquitted. This. petition is allowed and the bail bonds are cancelled.