Vijayakumar Vs. State

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Court : Karnataka

Decided On : Dec-01-1993

Reported in : ILR1994KAR491

Judge : D.P. Hiremath and ;M.M. Mirdhe, JJ.

Acts : Evidence Act, 1872 - Sections 25, 26 and 27

Appeal No. : Crl. Appeal No. 130 of 1993

Appellant : Vijayakumar

Respondent : State

Advocate for Def. : C.H. Jadhav, HCGP

Advocate for Pet/Ap. : B.R. Nanjundaiah, ;H.M. Thimmarayappa and ;Ramesh, Advs.

Disposition : Appeal allowed

Judgement :

Hiremath, J

1. The accused was convicted by the Trial Court under Section 302 (sic)nd sentenced to imprisonment for life and also to pay a fine of Rs. 1000/- with default sentence. He has challenged this judgment of conviction in this Appeal.

2. The facts are brief and simple. It was PW.13 who set the law in motion by filing a complaint at the Mahadevapura Police Station at 11.15 p.m. on 27.9.91 that on the night of 27.9.91 when he was sleeping in his house, his acquaintances Ramachandra and Muniraju approached him at 10.45 P.M. and told that the deceased Basavaradhya employed in the Telephone Factory was lying in a pool of blood near a certain Hotel Shameer in Mahadevapura and having gone there he saw the injured Basavaradhya struggling for life. Even before he could be shifted for treatment, he breathed his last. He complained that some unknown persons had stabbed him and escaped. This was received by PW. 21 the A.S.I. in charge of the police station at 11 P.M. on which he registered a case under Section302 IPC. C.P.I., PW.22 took over investigation, held inquest over thedead body, examined some of the witnesses, arrested the accused on10.10.91, seized the knife said to have been used for the commissionof the offence and on completion of due investigation, filed chargesheet against the accused. PW.4 turned out to be an eye witness tothe incident but he did not support the prosecution. The Trial Courtrelying on various circumstances found the accused guilty, convictedand sentenced him as aforesaid.

3. On behalf of the appellant, it is contended that the Trial Court has grossly erred in finding the accused guilty where practically there is no evidence at all on any of the points relied upon by the prosecution. Eye witness did not support the prosecution case. There is no evidence worthy of reliance that the accused and the deceased were last seen together and even on the point of recovery there is no uniform evidence.

4. The very coming into being of the F.I.R. at a particular point of time is controversial while it is in the evidence of the C.P.I., PW.22 and also PW. 13 that it was handed over to the C.P.I. at the spot itself, PW.21 maintains that it was given to him in the police station at 11 P.M. The fact however remains that F.I.R. in the instant case is not of great relevance or importance as no one was suspected in the F.I.R. The prosecution appears to have relied heavily on the evidence of the accused and the deceased having been seen together round about the time of incident. PW.7 working in Doorvani Cables Private Limited deposed that about 10.30 at night he saw both the accused and the deceased talking together

standing near Mahadevapura Gate. When one Manju came there he went with him to his sector. 10 minutes later he came back to the same spot. He saw the deceased lying screaming with pain. Ramachandra and Surender Singh 'were present. Thereafter he and Ramachandra went to the house of PW.13 to take a van from him to enable him to carry the injured to the hospital. However he did not bring the van but the police came to the spot. However when they came to the spot police had already arrived there. It then becomes necessary to know who had given information to the police earlier and how they came to the spot. PW.3 runs a hotel in Mahadevapura Gate called Military Hotel. He knew the deceased Basavaradhya as he was visiting his hotel occasionally and at about 9.15 P.M. he had seen three persons including the deceased taking food in his hotel. It was after 9.45 P.M. that they went away and at 10.45 P.M. he heard some voice and the people had gathered near his hotel itself and he found Basavaradhya dead with injuries. He admitted that he did not tell before police about the deceased going to his hotel at 9.15 P.M. He admitted in the cross-examination that it was dark when he went to the spot and there were already 5 or 6 persons at the spot where the deceased was lying. Police came to the spot and then went to his hotel and people were trying to know whose body it was in the headlight of a scooter. By the time he went there a constable was already there. He then stated that a certain constable phoned from his hotel to the police station about the murder. It was then the C.I. and other police officials came to the spot. He told the police that he did not know what had happened but still the police asked him again and again and threatened him that he must be knowing the fact. It was then that he revealed about 3 persons staying in his hotel to take food. PW.4 Kannappa was to give eye witness account according to the prosecution. But none of the aforesaid witnesses speaks about his presence in the vicinity when they went there and even this PW.4 did not support the prosecution and was cross-examined with permission of Court. Thus ultimately prosecution had to rely only on motive evidence and the evidence of recovery.

5. The wife of the deceased, PW.6 Sulochana deposed that her husband was doing business in Chit Fund in Benniganahally and accused had also joined it as a member. The accused was a friend of her husband. He had taken two memberships. He was not able to pay the money due to her husband and used to

visit their house. Her husband was also doing money lending business in addition to Chit Fund. The accused owed some money taken from her husband as a hand-loan. Her husband asked the accused to pay all the money due to him but the accused was demanding Rs. 20,000/- from her husband. About 10 or 15 days prior to her going to her mother's house, the accused again approached them and insisted for payment of Rs. 20,000/- but her husband did not give. Her husband asked him to repay the earlier loan amount, settle his account and then asked for further advances. At that the accused threatened him that he would kill him if amount is not paid. She went to her mother's house about 10 or 12 days later and about 20 days later this incident occurred. Her statement came to be recorded 4 months after her delivery. She admitted that there were 20 members in the Chit started by her husband and her husband was running two Chits of Rs. 9000/- each. No one was complaining that the rate of interest was high but she could not tell exact number of persons who took loan from her husband. She admitted that she did not state before C.P.I. about the accused threatening her husband to kill him if he did not pay Rs. 20,000/-. Thus this theory of the accused threatening with danger to her life appears only to be an improvement during evidence. Even if it is assumed that some amount was due from the accused to the deceased, that alone cannot be a strong motive to commit the murder of the deceased. As we have already pointed out the evidence with regard to the accused and the deceased being last seen together cannot be accepted for the reason that even at 10 P.M. the deceased was working in the factory according to P.W.1. There was pitch darkness at the time alleged by the prosecution and the Trial Court surmised that in the star lit night the accused and the deceased might have been identified. That again cannot be a strong circumstance because being last seen together cannot be a strong ground to hold that chain of circumstances is complete unless there are other circumstances strong enough to find the accused guilty. Regarding recovery of the weapon it was pointed out in the evidence of panch that on 27.9.91 itself according to him blood stained shirt was seized from the person of the accused whereas according to the Investigating Officer it was seized on 10.10.91. Such discrepancy could not have occurred if really the assistance of the panch was taken to seize the weapon in question. Even according to the Investigating Officer the pant was recovered from somebody else's house i.e. P.W.11 and it is

rather unthinkable that for more than 12 days the accused could have kept the blood stained pant intact only to be produced before the Investigating Officer. Therefore the evidence of seizure does not inspire confidence and much less stains of blood said to be present on the pant and the knife. In our view, the circumstances were wholly inadequate for the Trial Court to come to the conclusion that the accused has committed the murder of the deceased.

6. Our attention was drawn by the Counsel for the appellant to the manner of recording evidence by the Sessions Court, particularly with regard to most material circumstance of the accused giving information under Section 27 of the Evidence Act leading to the discovery of fact. Our attention was particularly drawn to that part of the testimony recorded by the Trial Court which shows that practically no evidence was given in this behalf by the Investigating Officer. The learned Judge has recorded the evidence as follows:-

'The accused was present in the police station as produced by P.C. 3286 & 2004. I recorded the voluntary statement of the accused, as per Ex.P.17.1 arrested the accused and then seized the blood stained shirt and subjected it to P.P. No. 71/91 and under Mahazar Ex. P-3.'

It was rightly urged on behalf of the appellant that taken by itself, Ex.P. 17 cannot go in substantive evidence as Ex.P.17 would provide corroboration to the substantive evidence that should be given in Court by the witness speaking about this information. The Trial Court ought to have insisted on the prosecution to lead substantive evidence in this behalf before making use of Ex.P.17. Thus practically the Investigating Officer PW.22 did not state anything regarding the information said to have been given to him by the accused. Section 27 says that so much of the information that distinctly leads to the discovery of a fact alone is admissible in evidence and it is exception to Sections 25 & 26 of the Evidence Act. Therefore so much of the information as leads to discovery of a fact must be proved like any other fact and recording in the deposition or the prosecution leading evidence of an Investigating Officer that he recorded a particular statement as per certain record made by him and exhibited cannot take place of substantive evidence. Similarly we have come across certain contradictions being recorded only by

referring to exhibits without reproducing exactly what is the contradiction or omission stated by a particular witness or Investigating Officer. Likewise, unless facts incorporated in the mahazar are spoken to by a particular witness in order to marking of a mahazar it does not amount to substantive evidence. It is unfortunate that many of the Sessions Judges have not understood this distinction and it has become a practice to take down depositions in the manner stated above thus unnecessarily creating complications in the matter of acceptance or rejection of the evidence so given. It may also sometimes happen that even if a witness states what exactly was recorded in his own words, the Sessions Judges may find it a short cut to take down only as stated as per certain exhibits without taking down what exactly was the information given by the accused which could fall under Section 27 of the Evidence Act. Such a practice is wholly depreciable as even evidence given by witnesses according to law might sometimes not be reduced to writing while taking depositions only as a matter of convenience. We impress upon Courts below that such a practice of not taking down in the evidence of material witnesses what they actually deposed to in such situations would come in the way of proper appreciation of evidence and even good cases may be seriously affected by such casual and perfunctory recording. Such practice should be discontinued. With these observations, we find that practically there was no evidence for the Trial Court to find accused guilty. Appeal has to be allowed and it is allowed. Judgment of conviction and sentence imposed by the Trial Court are set aside and the accused is acquitted of the charge under Section 302 IPC. He shall be set at liberty forthwith. A copy of this Judgment shall be forwarded to the learned Trial Judge wherever he is.