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Court : Andhra Pradesh

Decided On : Sep-09-1952

Reported in : 1953CriLJ935

Judge : Srinivasachari and ;Jaganmohan Reddy, JJ.

Appellant : Narayan and ors.

Respondent : State

Judgement :

Jaganmohan Reddy, J.

1. Three persons, Narayan, Sopan and Lakshman, who are the appellants before us were charged for the murder of one Jivan Rao on 11.11.1950, in a field known as Farkandi in the village of Mungaloore. The story of the prosecution is that Jivan Rao was going to Ambadh village on a horse-back, accompanied by P.W. 1, Bhawane. After crossing the border of the village from which they were proceeding, Jivan Rao was accosted by Narayan who came and caught hold of the reins of the horse on which Jivan Rao was riding & stopped him from proceeding further. Jivan Rao apprehending danger apparently looked behind & observed Sopan & Lakshman running towards him from behind, and finding that these people were chasing him, he got down from the horse and ran towards the field known as Farkandhi belonging to Venkat Rao. It is further alleged that on this field Sopan and Narayan caught hold of Jivan Rao and brought him down and

Lakshman inflicted injuries on him with an axe in consequence of which Jivan Rao died. Information of the occurrence was given by Bhawane to the Police Patel, Saheb Rao. P.W. 13 made a report (Ex.

2) the same day, on the basis of which the First Information Report dated 12.11.1950, was issued and sent to the Court by post reaching it on 14.11.1950. The accused Sopan and Narayan were arrested on 13.11.1950, and the accused Lakshman was arrested on 25.11.1950. Later, as a result of the investigation, Venkat Rao who was also found to have had something to do with the offence was included in the challan as an absconding accused. The inquest (Panchnama) on the dead body was made on 13.11.1950 (Ex. 1). On the same day the axe, alleged to have bean used for inflicting injuries on the deceased was discovered as a consequence of the information alleged to have been given by the accused and a Panchnama (Ex.

3) was made relating to this discovery on the same day. Panchnamas (Exs. 5, 6 and

9) relating to the seizure of shirt and two dhoties belonging to the accused were also made. After the investigation was completed a challan was filed on 25.12.1950.

The accused pleaded not guilty. At the trial the prosecution examined 14 witnesses and marked the evidence of the Doctor recorded in the enquiring Court and the accused examined 5 witnesses. After the defence evidence was over, the Court acting under Section 540, Criminal P.C., examined four witnesses. It may here be stated that the Committing Magistrate ordered the striking out of the name of the absconding accused, Venkat Rao, from the challan against which a revision was filed by the prosecution before the Sessions Judge who has made a reference recommending to this Court that the revision should be allowed and the order of the Committing Magistrate set aside. The revision is also before us for consideration which will be dealt with separately.

2. The learned Sessions Judge, on the evidence on record held all the three accused guilty of the murder of Jivan Rao under Section 302, Penal Code, but

preferred not to give them the maximum sentence allowed by law as according to the Sessions Judge they appeared to him to be hired assassins. It is against this conviction and sentence that the accused have appealed.

3. We have heard the arguments of the learned Advocate for the accused and the Public Prosecutor in extenso. The main contentions of the learned Advocate for the accused may be summarised as under.

1. That the First Information Report mentions an axe being used although P.W. 1, Bhawane states specifically that he has not observed an axe in the hands of any accused;

2. That the discovery relating to the axe is not admissible under Section 27, Evidence Act;

3. That the evidence of conspiracy or motive is totally unreliable;

4. That there are material discrepancies in the statements of the eye-witnesses with regard to the actual occurrence;

5. That even if it be conceded for the sake of argument that it is proved that Lakshman inflicted injuries on Jivan Rao the other accused, Sopan and Narayan, could not be held guilty under Section 243 for the reason that no common intention as required under Section 7 corresponding to Section 34, I.P.C., has been established and that any conviction is invalid by reason of a specific charge not having been framed under Section 7; and

6. That in the alternative no case of abetment under Section 66 equivalent to Section 109, I.P.C., has been made out.

4. With respect to the first contention, viz., that the statements under Section 154, Criminal P.C., in the F.I.R. and those in the evidence of Bhawane, P.W. 1, are contradictory, it is well to remember that the object of the F.I.R. is to have a contemporaneous account against the alleged offenders at the earliest opportunity when the occurrence took place and the inconsistency between the statements in the F.I.R. and the evidence of the informant at the trial would discredit the

evidence of the informant to that extent but does not make the statement in the F.I.R. the evidence upon the matter in the case. It is no doubt true that P.W. 1 Bhawane states that he did not observe any weapon in the hands of the accused as he was at some distance. But there is nothing in the F.I.R. which justifies the comment of the learned Advocate for the Appellant that this witness has stated anything to the Police Patel about an axe. All that the report says is that P.W. 1 Bhawane informed the Police Patel that as Jivan Rao and he were going to Ambadh, Narayan, Sopan and Laxman accosted him and took Jivan Rao's life and that after the receipt of the report, he - the Police Patel - went and saw that Jivan Rao was lying dead in the Farkandi with injuries caused by an axe on his body and neck. There is, therefore, no warrant for the assumption that Bhawane had made contradictory statements. Further, in the cross-examination of P.W. 1, no question was put to him with reference to this alleged contradictory statement in the F.I.R.

5. Now coming to the second point, viz., that the discovery relating to the axe is not admissible under Section 27, Evidence Act, the learned Advocate for the appellant has addressed elaborate arguments before us and has submitted that the statement as recorded in the Panchnama - Ex. III - has not been taken down in the first person and that it is a joint statement of the accused which does not show which of them individually gave the information leading to the discovery. Before we deal with his contentions, it is necessary to notice the language in which the Panchnama has been recorded. The following is an English translation of the Panchnama, Ex. III.

The accused aforesaid (namely Sopan and Narayan) have stated before us, the Panchas, that on 11.11.1950 I, Lakshman and Narayan have murdered Jivan Rao in the Firkandi number with Lakshman's axe, and myself and Lakshman have buried the axe in the Firkandi number of Venkat Rao in which there is Jawari cultivation and I will go and show it. So saying he took us and the Police to the said field where there is Jawari cultivation and an axe with blood stains was dug out from that place and he said that we killed Jivan Rao with this axe. Narayan accused was also present and said that that is the axe with which we three killed Jivan Rao. My brother Karappa and Lakshman sat and buried the axe in the Jawar field and I was standing at a distance.

Without expressing our view as to whether it is essential that the information furnished by the accused should be recorded in the first person so as to make it admissible in evidence, it is clear from the aforesaid statement in the Panchnama that the informations furnished by Sopan and Narayan have been recorded in the first person, although they could have been taken down in a more lucid and specific language. The words, 'I, Lakshman and Narayan', 'myself and Lakshman', 'Narayan the accused was also present and said 'we three'' used in the panchnama can only point out to the fact that the first statement is that of Sopan and the second statement is of Narayan and that the same is made in the first person. The-evidence of the Panch witness Jheeja, P.W. 8, who proved Ex. 3 relating to the discovery of the axe is as follows;

Another panchnama was held in respect of the discovery of axe. It was kept concealed in a pit in Venkat Rao's adjacent field known as Parkandi in Jawari crop, Sopan showed that place and dug it out saying that with that axe injuries were inflicted to Jivan Rao. The axe had blood stains which were dry by that time. I identify my signature on Ex. 3 and say that the contents are true.

There was nothing in the cross-examination to suggest that the statement was not made by Sopan as stated in the Panchnama nor was there any attempt to discredit the authenticity of the Panchnama. In the cross-examination, certain questions appear to have been put relating to the blood-stains on the axe to which the witness answered

the blood-stains on the axe and its handle were dark as blood was dried, and that the stains can be seen now also on the handle of the axe.

The other witness to the Panchnama Bansi P.W. 9 also proved Ex. 3. In cross-examination he stated that the axe which was recovered was kept concealed beneath the level of the ground, Syed Gulam. Rasool, P.W. 14, Investigating Officer states that he recovered the axe pointed out by Sopan and made a Panchnama. In cross-examination the only fact that was elicited was the distance of the place of recovery of the axe from the dead body, which the witness said was about 15 paces away from the scene of the offence. The evidence pertaining to the recovery of the axe, in our view, cannot be thrown out as being not credible.

The trial Court has also believed the same.

6. The only question is how much of the statement made by the accused is admissible under Section 27, Evidence Act. In the case of - Lachman Singh v. The State : 1952 CriLJ863 (A) their Lordships of the Supreme Court, in a case where as a result of the statement made by several accused certain parts of the dead body were recovered but the initial pointing out was by one of the accused, held that:

even if the rule to be applied in the case was that it is only the information which is first given that is admissible under Section 27 and once a fact has been discovered in consequence of information received from a person accused of an offence, it cannot be said to be rediscovered in consequence of information received from another accused person, the case was covered by the rule

and the discoveries made at the instance of the person who initially pointed it out were admissible under Section 27. In this case it is clear that it was the accused Sopan who made the first statement and it was he who led the Police and the Panchas to the place where the axe was buried & had the same recovered. Consequently the discovery of the axe made at the instance of Sopan would be admissible in evidence under Section 27. There have been recorded in the Panchnama as well as in the evidence of Jheeja P.W. 8 certain statements alleged to have been made by the accused which are clearly inadmissible in evidence under Section 27.

Whatever difference of opinion there may have been in the High Courts in this country with respect to the admissibility of the entire statement of the accused once a fact has been discovered as a consequence thereof, the Privy Council has set at rest that controversy in the leading case of - Pulukuri Kottayya v. Emperor AIR 1947 P C 67 (B) which over-ruled the Full Bench case of - Athappa Goundan v. Emperor AIR 1937 Mad 618 (FB)(C). In, the latter case the Madras High Court while admitting that the weight of Indian authority is against them, nevertheless took the view that any information which served to connect the object discovered with the offence charged was admissible under Section 27. It admitted the confession of murder made by a person in Police custody in view of the fact that

the objects produced not being in themselves of an incriminating nature, their production would be irrelevant unless they were shown to be connected with the murder and there was no evidence so to connect them apart from the confession. Their Lordships of the Privy Council rejected this reasoning and observed that the difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into Section 27 something which is not there, and admitting in evidence a confession barred by Section 26. They approved the decisions in - Suthan v. Emperor AIR 1929 Lah 344 (FB)(D) and - Ganu Chendra v. Emperor AIR 1932 Bom 286 (E). Where a statement of the accused leading to the discovery of any fact under Section 27 consists both of inadmissible and admissible evidence the statements which are clearly inadmissible should be separated and omitted from those which can be admitted and the Courts should apply their minds only to the admissible evidence under Section 27, Evidence Act.

7. In the recent case of - Rama Shidappa Thorali v. State, a Full Bench of the Bombay High Court in : AIR1952 Bom299 held disapproving - Rangrao v. State : AIR1952 Bom72 and the confirmation Case No. 13 of 1950 (H) Bombay, that when a statement of an accused while in custody is tendered in evidence under the provisions of Section 27, Evidence Act, on the ground that an article which is concealed and the accused's knowledge of its whereabouts are discovered in consequence of the statements, words included in the statement with regard to the authorship or concealment, for example, 'I have concealed' 'I have hidden' or 'I have kept' are admissible in evidence. The judgment of the Full Bench delivered by Chagla C.J., with which we are in respectful agreement, has after an exhaustive consideration of the case-law on the point come to the aforesaid conclusion and is in accord with the decision in AIR 1947 P C 67 (B) where their Lordships of the Privy Council pointed out that the fact discovered referred to in Section 27 embraces the place from which the object is produced. It is, therefore, clear that the fact discovered need not merely be the physical object like an axe, and not only the place from where these objects are found, but the fact discovered may also be the knowledge of the accused of the place where the articles were concealed. Their Lordships at page 70 further observed that:

Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant.

From a consideration of the provisions of Sections 25, 26 and 27 and the leading cases referred to above, the following points emerge:

(i) No confession made to a Police Officer by an accused person whether in custody or not can be proved against the accused unless it be made in the immediate presence of a Magistrate;

(ii) So much of the information received from a person accused of an offence in custody of a Police Officer as relates distinctly to the fact thereby discovered is admissible under Section 27, Evidence Act, and can be proved against him but any statement made to a Police Officer which connects the fact discovered with the offence charged is inadmissible;

(iii) Where a fact is discovered as a consequence of information furnished by several accused, only the information, which is first given by one of the accused is admissible if it leads to the discovery;

(iv) The statement of the accused while in. Police custody regarding the concealment of any article or the accused's knowledge of its whereabouts and the discovery in consequence of the said statement is admissible in evidence.

Applying these principles to the statements recorded in the Panchnama and proved by P.Ws. 2, 8, 9 and 14, the following statement of Sopan alone is admissible under Section 27, Evidence Act, against him:

Myself and Lakshman have buried the axe in the Farkandi Number of Venkatrao in which there is Jawari cultivation and I will show it. So saying he took us and the Police to the said field where there is Jawari cultivation and an axe with blood-stains was dug out from that place.

The rest of the statement whether of Sopan or Narayan is clearly inadmissible.

8-15. We propose now to deal with the third and fourth contentions of the appellants' Advocate relating to the evidence of motive and the commission of the offence. (After reviewing the evidence of prosecution witness, his Lordship proceeded).

16. This leaves for consideration the evidence of P.W. 2 Babu, P.W. 5 Thatayya, C.W. 2 Bapu, C.W. 3 Rustum. From the evidence of these four witnesses, it is apparent on their own admission that none of them tried to prevent the commission of the murder by the three accused, even though all of them saw the accused chasing Jivan Rao. Even if, as admitted by Babu P.W. 2, Thatayya P.W. 5, and Rustum C.W. 3 Babu alone tried to Intervene, the fact remains that after the incident none of the witnesses tried to arrest the accused, but carried on their work as if nothing had happened and want home after their work was finished. This conduct on their part is not what in the ordinary course of human conduct one would expect of them. If they were in fact present on the scene as stated by them, then their conduct would incline us to the belief that they were accomplices and assisted the commission of the offence by their inactivity or alternatively they came on the scene immediately after the commission of the crime. There is no reason for Bhawane making a false statement that he has seen these witnesses after the incident. It must not be forgotten that (on their own admission) they were working for Venkat Rao who is one of the absconding accused in this case at the instance of Shanker who is his Bataidar and at Venkat Rao's instigation it is alleged this offence was committed. Even on the basis that these witnesses were in some way accomplices to the commission of the crime, their evidence will have to be looked at, applying the salutary rule of practice which has acquired the force of law, only on being corroborated in material particulars by independent evidence. Bhawane P.W. 1, whose evidence we have believed, corroborates the presence of these witnesses on the scene and the fact that Sopan was with them at the time when he came and found Jivan Rao lying dead with wounds on the neck and body. He further states that none of these witnesses said anything when Sopan asked him to tie the horse to the tree and go away. This evidence clearly confirms our view that the aforesaid witnesses were in the nature of accomplices. The learned

Advocate has argued that if these witnesses were present on the scene, as they alleged, they could have observed the axe being buried by the accused, but they did not say anything about this fact in their evidence. He further submits that it is quite contrary to human conduct for the accused to be burying the axe in the presence of these persons who had witnessed the incident. These contentions would be valid if they were independent witnesses without having become accomplices in the commission of the offence.

17. P.W. 4 Nago Rao, who is an independent witness and on whom there was practically no cross-examination of any worth tending to discredit his evidence, has stated that he was working in his field, which is outside the village of Mangrool, at about breakfast time in the morning when he saw Jivan Rao going to Ambadh on horse-back followed by Bhawane and these three accused Lakshman, Sopan and Narayan were going by a short-cut which met the road taken by Jivan Rao to Ambadh. (His Lordship reviewed his evidence and proceeded). There is, in our view, corroboration on material particulars in the evidence of these eye witnesses by the evidence of other independent witness as to make them credible.

18. Apart from this evidence there is also strong circumstantial evidence to connect the accused with the guilt of the offence, which is as follows:

(i) P.W. 1 Bhawane who speaks of the three accused chasing Jivan Rao into a field and of his finding Jivan Rao lying dead in the field with injuries on the neck and body and of Sopan asking him to tie the horse to a tree and go away;

(ii) P.W. 4 Nago Rao speaks of having seen Jivan Rao on a horse followed by Bhawane proceeding towards Ambad and the three accused (of whom Lakshman was carrying an axe) proceeding by a short-cut which meets the road to Ambad;

(iii) the discovery of the axe which was hidden in the ground on the information given by Sopan from near the scene of occurrence;

(iv) the seizure of a blood-stained shirt from Narayan through a Fanchnama Ex. 5 which was admitted by Narayan in his statement under Section 342 to be his;

(v) the certificate of the Chemical Examiner showing that the said Khudta of Narayan and the axe recovered had stains of human blood on them;

(vi) the total absence of any explanation by the accused either as to their presence on the scene of occurrence or as to the chasing of Jivan Rao or of the bloodstains on the shirt of the accused Narayan or on the axe, except for the plea of alibi which has been disbelieved by the lower Court and with which we are in agreement;

All the aforesaid proved facts are links in the chain of circumstantial evidence which forge the conclusion that the accused have committed the offence as alleged.

19. The learned Advocate for the accused has submitted that the evidence as to the motive is unreliable. Ordinarily when there is sufficient direct and circumstantial evidence connecting the accused with the commission of the offence as in this case the proof of motive becomes unimportant. In this case it is alleged by the prosecution that the three accused were tnimically disposed towards Jivan Rao because Mina Bai, P.W. 11 who belongs to their brotherhood wanted to adopt Jivan Rao's son Kishen which was disliked by the accused. Apart from this, it is also alleged that Venkatrao who instigated this murder was also Inimically disposed towards Jivan Rao because of certain disputes over land. (His Lordship reviewed the evidence in this respect and proceeded).

20. There is one other point about which a good deal of stress has been laid by the Advocate for the accused and that is that even if it is proved that Lakshman had inflicted the blows on Jivan Rao, the other accused Sopan and Narayan could not be convicted under Section 243 for the reason that no common intention under Section 7 has been established. In the alternative the prosecution has not made out a case of abetment under Section 66, Hyderabad Penal Code, corresponding to Section 109, Indian Penal Code. In the case of - Mahboobshaw v. Emperor A.I.R. 1945 PC 118 (I), their Lordships of the Privy Council held that common intention within the meaning of Section 34 implies a pre-arranged plan. To convict the accused of an offence applying Section 34 it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is no doubt difficult if

not impossible to procure direct evidence to prove the intention of an, individual; it has to be inferred from his act or conduct or other relevant circumstances of the case. Care must be taken not to confuse same or similar intention with common intention; the partition which divides 'their bounds' is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice.

In the case of - Sulaiman v. The King AIR 1941 Rang 301 (J), cited by the learned Advocate, the accused were held not to have a common intention to cause injury known to be likely to cause death though the combined effect of the injuries caused was likely to cause death. In that case a common assault on the deceased was made by the accused and his party with fists and one of them made an assault with a stick. On these facts it was held that the offender knew that he was likely to cause not only hurt but grievous hurt and that the common intention of his party was to cause grevious hurt. The facts of the case justified that conclusion but in the instant case where v the facts are that the accused (one of whom had an axe in his hand) chased the deceased and two of them caught hold of the deceased and the other Inflicted injuries on the neck and body with the axe, common intention to commit murder can be inferred from their act. The learned Sessions Judge in the charge framed by him left no doubt in the minds of the accused that each one of them along with the other two assaulted Jivan Rao and inflicted injuries with an axe causing his death, on account of previous enmity at Mangrool and thereby committed an offence of murder. In other words, he has made it clear that they had common intention to commit an offence of murder. Of course, the accused were not charged under Section 7, Hyderabad Criminal Procedure Code. Whether in order to sustain such a conviction under the substantive section read with Section 7 of the said Code, a charge should be specifically framed, there is a divergence of opinion in the different High Courts, but it is clear that where the accused has suffered no prejudice and the Advocate for the accused was unable to show any prejudice the omission to specifically charge under Section 7 will not materially affect the conclusion in the case. The case of Sopan and Narayan in assisting Lakshman in the commission of the crime also constitutes abetment under Section 66, Hyderabad Penal Code (corresponding to Section 109, Indian. Penal Code). We, therefore, hold the

accused Lakshman, Sopan and Narayan guilty of the offence under Section 243 and confirm the conviction and sentence passed by the learned Sessions Judge.

21. We would, however, pause here to observe that the reasoning assigned by the Sessions Judge for awarding sentence of life imprisonment on the ground that the accused appear to have been hired assassins is not, in our view, correct. Nevertheless, we confirm the conviction and the sentence and dismiss the appeals.