

In Re: Sheikh Umar Saheb Alias Umra

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Court : Andhra Pradesh

Decided On : Sep-18-1956

Reported in : 1957CriLJ919

Judge : Chandra Reddy and ;Umamaheswaram, JJ.

Appellant : In Re: Sheikh Umar Saheb Alias Umra

Advocate for Pet/Ap. : Mr. Basi Reddy

Judgement :

Chandra Reddy, J.

1. I would like to add a few words regarding the value to be attached to the evidence of eye-witnesses. In support of the proposition that no weight should be attached to the testimony of child-witnesses Mr. Basi Reddy, counsel for the appellant cited to us, two rulings one of Lahore High Court in Abbas v. Emperor AIR 1933 Lah 667(A) and of the Judicial Committee of the Privy Council in Mohamad Sugul v. King 1946 Mad. W.N. 101 : (AIR 1946 PO 3)(B). In the first of the two cases, it was observed by the learned Judges that, in considering the evidence of child-witnesses, the observations (which will be referred to immediately) should not be lost sight of although each would depend upon its particular facts and circumstances. The passage which was the basis of these observations of the learned Judges is extracted from the Outlines of Criminal Law page 336 by Dr. Kenny, Downing Professor of the Laws of England, Cambridge

University.

Children are a most untrustworthy class of witnesses, for, when of a tender age, as our common experience teaches us, they often mistake dreams for reality, repeat glibly as of their own knowledge what they have heard from others, and are greatly influenced by fear of punishment by hope of reward, and by desire of notoriety.

2. The learned Judges do not say that it is an inflexible rule that in every case of a child witness, the evidence should be disregarded. It is specifically stated by them that it depends upon the facts of each case, and the observations of the learned author should not be lost sight of.

3. In 1946 Mad WN 101; (AIR 1946 PC 3)(B), Lord Goddard who delivered the opinion of their Lordships of the Privy Council merely stated that while in India no corroboration is needed for the evidence of a child witness it is a sound rule in practice not to act on the uncorroborated evidence of a child whether sworn or unsworn but this is a rule of prudence and not of law. It is thus clear that it is more a rule of caution and prudence rather than of principle. All that is required in considering the evidence of a child witness is scanning it carefully and if after doing so it is found that there are no flaws or infirmities in the evidence of a child witness there is no impediment in the way of accepting the evidence of a child. We do not find reason in rejecting that evidence merely because it is that of a child.

Normally, a court should look for corroboration in such cases, but it is more, as already pointed out, by way of caution and prudence and not as a rule of law. Children are pliable and their evidence could easily be shaped and moulded. It is for this reason that a court should see if there are any signs or indications of tutoring. If after carefully scrutinising the evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of such a child witness. In this case the testimony of the four boys rings true. It is not open to doubt on any ground and free from any suspicion,

4. As pointed out by my learned brother in this case, apart from this ample corroboration in the testimony of P. Ws 2 and 6, P.W. 2 had also witnessed the occurrence and she had confirmed the version given by P. Ws 1, 3 to 5. P.W. 6 also corroborated, although her evidence is circumstantial. It lends support to the evidence of P. Ws 1 and 3 to 5. Corroboration need not be in the shape of direct evidence; it may be in the shape of circumstantial evidence.

5. I am in entire agreement with the conclusion reached by my learned brother.

Umamaheswaram, J.

6. The appellant herein was charged under Section 302 I.P.C. for having intentionally caused the death of Subbanna at about 8 P.M. on 3-10-1955 in Chennarayanaswamy temple street, Cuddapah. The learned Sessions Judge, ChddaPah held that the appellant caused the death of the deceased and was punishable under Section 304(1) I.P.C. and he sentenced him to transportation for life,

7. The accused has consequently preferred the appeal.

8. The prosecution story is briefly as follows:

The appellant was having illicit intimacy with the sister of Subbanna examined as P.W. 7. Subbanna drove her out of the house and she consequently went with her mother and was living in Rajampet, The appellant was proceeding to Rajampet often and visting her. Three days before the occurrence, he told P, W. 7 that he would murder subbanna. On the date of occurrence at about 7-30 P.M. or 8 P.M. when Subbanna was returning from his saloon situated two furlongs, from his house, the appellant came out of his house and chased him.

The appellant ran a few yards and when Subbanna bent down near the 'dibba' to pick up a stone, the appellant stabbed him with a dagger. At the time of the occurrence, P. Ws 1 to 5 were present and they witnessed the attack. P.W. 6 was examined to show that she saw the appellant being taken away by his brother Chouse Mohidin to his house and that he had no dhoti at the time. Immediately,

P.W. 1 the son of Subbanna, proceeded to the police station and gave a complaint marked as Ex. P-I.

In the complaint P.W. 1 stated that the appellant was the assailant. He also mentioned the names of the eye witnesses, P. Ws 1 to 5. The Sub Inspector examined as P. W. 14 proceeded to the spot. The Circle Inspector came shortly thereafter and he took up the investigation. The inquest was held between 10 and 12 noon, and Ex. P. 7 is the inquest report. The appellant surrendered himself on 5-10-1955 and the charge-sheet was laid thereafter.

9. The plea of the accused is one of total denial. He stated that M. O. 1 was not his dhoti, but P. W. 12 washerman was examined by the prosecution to show that the dhoti belonged to the appellant.

10. The learned Sessions Judge accepted the evidence of the eye-witnesses P. Ws. 1 to 5 as also the evidence of P. W. 6 that he saw the appellant being taken from the place of occurrence by his brother Ghouse Mohiddin. He convicted the appellant under Section 304(1) and sentenced him to transportation for life.

11. Sri Basireddi, the learned advocate for the appellant, contended that the evidence of P. Ws 1, 3, 4 and 5 ought not to be relied on as they were child witnesses. P, W. 1 was aged 15 : P. W. 3, 13; P. W. 4, 12 and P. W. 5, 12 years. In support of this proposition, he relied on the decision of the Lahore High Court in (AIR 1933 Lah 667)(A). In the particular case there was only one eye witness who was a child. The learned Judges quoted with approval a passage from the outlines of Criminal Law, page 386 by Dr. Kenny which runs in the following terms : --

Children are a most untrustworthy class of witnesses, for, when of tender age, as our common experience teaches us, they often mistake dreams for reality, repeat glibly as of their own knowledge, what they have heard from others, and are greatly influenced by fear of punishment, by hope of reward, and by desire of notoriety.

12. The learned advocate next referred to the Privy Council in 1946 Mad WN 101 : (AIR 1946 PC 3)(B). Lord Goddard in delivering the judgment of the Privy Council

has clearly laid down the law in following terms :

In England where provision has been made for the reception of unsworn evidence from a child it has always been provided that the evidence must be corroborated in some material particular implicating the accused. But in the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a Court can act upon it; corroboration unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, taut this is a rule of prudence and not of law.

13. The learned Sessions Judge keeping the principles laid down by the Privy Council in mind stated in paragraph 12 as follows:

I am considerably impressed with the evidence of P, Ws. 1, 3, 4 and 5 and I am unable to accept the contention that they have drawn upon their imagination and that they testified to what they thought they must have seen. The four boys gave their evidence intelligently and with comprehension and their version appears to be natural and realistic.

14. We have perused the evidence of these witnesses and we see no reason to differ from the conclusion of the learned Sessions Judge, It may be noticed that in this case P. W. 1 is aged 15 years and he immediately proceeded to the police station and gave the complaint, Ex. P-I, setting out all the details. In addition to the evidence of these four witnesses, there is also the evidence of P. W. 2 the wife of the deceased corroborating the evidence of the child witnesses. Excepting very minor discrepancies, nothing has been elicited in the course of the cross-examination. There is further disinterested and independent testimony of P. W. 6 who heard the commotion, came out of the house and saw the appellant being removed to his house by his brother seen after the event. She said that the accused at that time had no dhoti.

15. Reliance was placed by the learned advocate for the appellants on the entries in inquest report marked as Ex. P. 7 for the purpose of showing that the quarrel would not have taken place in Chennarayanawaswamy temple but in Syed Saheb

street near the house of Chakali Palakondur, He relied on the evidence of P. W. 12 for the purpose of showing that Chakali Palakondur lived in Syed Saheb street. It is elicited in the course of cross-examination of P. W. 12 that Chakali Palakondur's house is near the corner of Uppu Chennarayanaswamy temple and it was at a distance of 35 yards from her house. It may be that the quarrel started at that street but as a matter of fact Subbanna was attacked near 'dibba' in Sri Chennarayana-swami temple. Blood-marks were found near the 'dibba'.

16. There is also no force in the contention of the learned advocate for the appellant that the quarrel must have taken place not at 8-O' clock but about 10 or 10-30 P. M. The complaint was given at 8-30 P. M. and it was received by the magistrate at about 10-O' clock. The police authorities examined as P. Ws 14 and 15 say that they were at the scene of offence by about 9 O'clock. We therefore, reject the case of the appellant that the occurrence took place after 10 P. M.

17. Reliance was next placed upon the evidence of the doctor examined as P. W, 8 for the purpose of stating that the occurrence should have taken place two or three hours after Subbanna took food. The learned advocate relied on the statement of P. W. 8 that the stomach contained 12 ozs, of partly digested rice and korra. He also laid stress on a passage in the cross-examination, which is as follows:

I found partly digested food. Within 5 or 6 hours of taking food the stomach should empty itself. It is possible that Subbanna might have died two or three hours after food.

18. Reference was also made to the evidence of P. W. 2 that Subbanna took food at 2 O' clock in the afternoon on that day. It may be that Subbanna took some food in the evening. Under the circumstances, nothing turns upon the medical evidence. As already pointed out, there is the direct evidence of the witness that the occurrence took place at about 8 P. M.

19. Having carefully perused the evidence, we are in entire agreement with the conclusion arrived at by the learned Sessions Judge that it was the appellant that attacked Subbanna and caused his death. We, therefore, confirm the conviction

and sentence passed on the appellant.

20. In the result, the appeal is dismissed.

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