

Eapen Eapen and ors. Vs. State

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Court : Kerala

Decided On : Mar-07-1951

Reported in : 1954CriLJ491

Judge : Kunhi Raman, C.J. and; Subramania Iyer, J.

Appellant : Eapen Eapen and ors.

Respondent : State

Judgement :

Kunhi Raman, C.J.

1. In this Sessions Court of Mavelikara, in Sessions Case No. 27 of 1950 ten persons were charged under Sections 140, 141, 301, 326, 324 and 20, Travancore Penal Code. The case against them was that they or some of them brutally assaulted a man by name Gopala Pillai who died as a result of the attack. The learned Sessions Judge after hearing the evidence acquitted accused 4 to 10 on the ground that the versions given by the witnesses for the prosecution who posed as eye-witnesses could not be believed, because they were full of contradictions and improbabilities, But with regard to accused 1, 2 and 3 the learned Judge has chosen to accept the evidence of these self-same witnesses who were found to be not witnesses of truth and he has reached the conclusion that each of these three accused persons dealt severe blows on the body of Gopala Pillai and consequently they are liable under Section 324, Travancore

Penal Code.

After convicting them under Section 324 for the offence of grievous hurt, the learned Judge has sentenced these three accused persons each to undergo rigorous imprisonment for three months and to pay a fine of Rs. 50; in default of payment of fine, each of them is directed to undergo rigorous imprisonment for a further term of two weeks. If the offence is made out against these three accused persons, then the sentence is unduly light. There is, however, no revision petition brought on behalf of the State for enhancing the sentences.

2. On perusing the judgment we feel that the learned Judge himself entertained a doubt in his mind as to whether a case has been made out even against accused 1, 2 and 3. This is evident from the language used by him in Para. 19 of his judgment wherein he says:

It has to be conceded that some of these discrepancies and circumstances really create some doubt in the mind of the Court regarding some of the accused also regarding certain acts of certain accused.

He then adds:

but I am definitely of opinion that on this ground the whole of the prosecution case cannot be rejected.

It is a little difficult to follow the reasoning in this part of the judgment. If the evidence of the witnesses examined on behalf of the prosecution cannot be accepted on the ground that there are serious discrepancies in their versions, it is undesirable for a Court to pick out sentences from the evidence of such witnesses and say those sentences must be true and that the remaining sentences are false.

It seems to us that this is clearly a case which gives rise to a reasonable doubt as to whether the persons who posed as eye-witnesses and who were examined as P. Ws. 1, 3 to 7, 11 and 12 were really speaking the truth. Their evidence has not been accepted by the learned trial Judge with regard to accused 4 to 10. Their evidence has been disbelieved with regard to the injuries alleged to have been inflicted on the persons of P. Ws. 1 and 3. Their evidence has not been believed

with regard to some of the injuries inflicted on the body of the victim Gopala Pillai and in spite of the discrepancies in their evidence on all these vital points, the learned Judge has recorded an opinion in his judgment that he feels that they may be believed with regard to the three injuries alleged to have been inflicted by the three accused persons viz., accused 1, 2 and 3 and that if their evidence is believed in respect of these three accused, then the accused are liable under Section 324, Travancore Penal Code.

On considering the judgment of the learned trial Judge we are prepared to accept the contention of the learned Counsel for the accused appellants who have filed these three Criminal Appeals Nos. 226, 227, and 228 of 1950 that it is, to say the least, extremely unsafe to rely upon the evidence of those witnesses whose testimony has been disbelieved with regard to the major portion of the incident. We feel that this is a case in which there is scope for a reasonable doubt and that the benefit of doubt should be given to accused 1, 2 and 3. In the result, the convictions and sentences of the three accused appellants are set aside and they are directed to be set at liberty. The fines, if collected, shall be refunded. Cancel bail bonds.

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