Narayanan Pushkaran Vs. State

Narayanan Pushkaran Vs. State

SooperKanoon Citation : sooperkanoon.com/717526

Court : Kerala

Decided On : Mar-26-1956

Reported in : 1956CriLJ1362

Judge : Koshi, C.J. and; Nandana Menon, J.

Appellant : Narayanan Pushkaran

Respondent : State

Judgement :

Nandana Menon, J.

1. This is an appeal by Narayanan Pushkaran alias Kuttan the accused in Sessions Case No. 58 of 1955 of the Sessions Court of Quilon and is directed against his conviction there under Section 302, Penal Coda and sentence of rigorous imprisonment for Life for causing the death of one Neelakantan Damodaran on 1-3-1955 corresponding to 17-7-1130 M. E.

The prosecution case is as follows : The deceased Damodaran and the accused though relatives had been on inimical terras for some time prior to the occurrence. Both of them were residing in Koru-vila in Enathimangalam Pakuthy adjoining the Reserve Forest, On 1-3-1955 there was some quarrel between them in connection with the destruction of the topics cultivation in the accused's compound by a cow belonging to the deceased at about 4 P.M.

Just after dusk on that day the accused and P. W. 3 Kochucherukkan went for a bath in an adjoining pool. Damodaran also went over there. The accused and P. W. 3 after finishing their bath left the place. Near the steps leading to P. W. 1 Cheeralan's house there was a small bund. The accused took his seat on that. P. W. 1 was then frying fish for the evening meal in the open court-yard. His brother-in-law, P. W. 2, Adichan, also was there. They were all talking together. At that time Damodaran came after finishing his bath and entered the-court-yard of P. W. 1.

Seeing him the accused rose up and advancing stabbed Damodaran on his abdomen. Damodaran calling for help collapsed within a few feet from the place where he was stabbed. The accused ran, away. Damodaran was laid on a cot there itself and he passed away within a few minutes of the occurrence. P. W. 1 and P. W. 3 went and informed P. W. 12, Narayanan who is the brother of Damodaran who immediately went over to the place of occurrence. He gave information at the Adoor Police Station, about 12 miles away, on the next day at 4-30 p.m.

On the basis of that the crime was registered and investigation started. The accused surrendered himself to the Police on 8-3-1955 at about 2 p.m. His confession was recorded by the First Class Magistrate of the station on that day itself. Now he stands convicted for the murder of Damodaran.

2. The fact that Damodaran passed away on 1-3-1955 as a result of a stab injury sustained by him is clearly proved by the evidence of P. Ws. 1, 2, 3, 11 and other witnesses on the prosecution side. That the injury was caused with a knife which was in the hand of the accused is also proved and is not questioned on behalf of the defence.

The statement of the accused himself when-questioned under Section 342, Criminal P.C. in the Session Court itself shows that the said injury could have been caused only in that way, But what is contended on his behalf is that as stated by him the injury was caused accidentally and even otherwise only while he was exercising his right of private defence. According to the defence, the occurrence took place not as alleged by the prosecution but by the accused' in his statement.

It was Damodaran who was the aggressor. He attacked the accused with a wooden stick while ho was sitting at the entrance, to the court-yard of P. W. 1. Then a tussle followed between the accused and the deceased during which the deceased happened' to sustain the injury in question. It is contended on behalf of the accused that the learned Sessions Judge; was wrong in rejecting the aforesaid defence case in view of the nature of the evidence before Court

P. Ws. 1 and 2 are the eye-witnesses relied upon by the prosecution. It is on their evidence and the confessional statement of the accused filed as Ex. P(13) that the learned Additional Sessions Judge has based the conviction of the accused. What is urged on behalf of the accused is that though P, Ws. 1 and 2 supported the prosecution case in their chief-examination in the Sessions Court in their cross-examination they have an entirely different version of the occurrence and fully supported the defence position.

It is argued that in the face of that the learned Additional Sessions Judge was wrong in relying on their evidence in chief-examination and the statements of P. W. 1 under Section 164, Criminal P.C. and their statements in the committal Court. It is pointed out that Section 288, Criminal P.C. was wrongly applied by the learned Judge. The evidence of P. W-2 is further challenged on the ground that his presence at the time of the occurrence was not divulged when the inquest was conducted and hence the statement that he was an 'eye-witness itself cannot be believed.

Regarding the presence of P. W. 2 at the time of the occurrence it is clear that there is no ground at all to doubt it. Apart from P. Ws. 1 and 2, in the statement of the accused under Section 342, Criminal P.C. itself his presence there is referred to. The accused says that he came to know that P, W. 2 was in P. W. I's house and talked to him about the work in his place. So what we have to consider is whether the learned Sessions Judge was wrong in relying upon the evidence of P. Ws. 1 and 2 as going to prove the prosecution version of the occurrence.

Both of them in their chief-examination fully support the prosecution case that when Damodaran came that way after his bath the accused who was sitting there on a bund rose up and advancing stabbed him on his abdomen suddenly. But in

cross-examination they resiled. According to P. W. 1 when he ran out from his house hearing the cry of the deceased the stabbing was already over and he did not see the actual occurrence.

The Public Prosecutor declared him hostile and with the permission of the Court confronted him with Ex. P (3), his statement under Section 164, Criminal P.C. and Ex. P (4) his statement in the committal Court. According to him though he gave statements as found there they were all given due to the fear of the Police.

Similarly, P. W. 2 while supporting the prosecution case in his chief examination in cross-examination stated that the deceased beat the accused before the occurrence. This witness also was declared hostile by the Public Prosecutor and confronted with his deposition in the lower Court filed as Ex. P (3). His explanation also is that it was under duress that all the prior statements in support of the prosecution were given.

Now the version of these two witnesses given in chief-examination is fully corroborated by the version found in Ex. P being the statement of P. W. 1 recorded under Section 164, Cr. P.C. Ex.P (4) his statement in the committal Court and Ex. P (5) the statement of P. W. 2 in that Court. But according to the accused's counsel the lower Court was wrong in admitting this evidence. If that is rejected there is only the conflicting version from the box of these witnsses on the basis of which, it is urged, it will be quite improper to sustain a conviction in a case like this it being further contended that no value can be placed upon a retracted confession like Ex. P (13) the recording of which itself was irregular.

Regarding the admissibility of Exs. P (3) to P (5) what is urged is Section 288 Criminal P.C. can be invoked only on such sufficient grounds and in exercise of proper judicial discretion, in the present case such discretion being not properly exercised. In the present case both the witnesses fully deposed in support of the prosecution case in their chief examination and gave an entirely different version when cross-examined.

As can be seen from the statement recorded in their depositions the Public Prosecutor sought the permission of the Court to declare the witnesses hostile and

let in their evidence before the committal Court and the statements under Section 164, Criminal P.C. With the Court's permission the witnesses were confronted with these statements. It is not a case of merely filing the depositions and the statements. The attention of the witnesses was drawn to what was stated there which was in accordance with what was deposed to in chief-examination.

The committal Court records show that the accused was represented by a counsel there. So the accused had the opportunity of cross-examining witnesses in that Court. The learned Sessions Judge was right when it was under such circumstances that he relied upon these statements as corroborating the statements given in chief-examination.

'Gopal Khaitan v. The King' AIR 1949 Cal 597 (A), is one of the authorities relied upon by the accused's counsel. That decision is of course to the effect that evidence under Section 288, Criminal P.C. is to be admitted only when the presiding Judge in exercise of proper discretion allows it. It is also rightly stated that such discretion should be exercised most carefully and for very good reasons. The circumstances in that case can be seen from the following observations at page 601:

'However, there might be cases where a learned Judge could properly admit a deposition under Section 288 where the witness had given a different version in the Sessions Court in cross-examination. If, for example, it was obvious that the witness was simply taking advantage of the cross-examination to resile from his previous statement, or, in other words, if the cross-examination showed that the witness had been won over, in such case possibly the deposition before the committing Magistrate could be admitted under Section 288. Criminal P.C.

But it is not necessary for me to decide that question because in the present case there is nothing to show that the learned Judge was of opinion that the cross-examination was not a perfectly genuine cross-examination which had resulted in the witness telling a very different story from what he had told earlier.

This makes clear the ground on which it was held that the evidence in question was wrongly relied upon. In the present case the presiding Judge had exercised

his discretion clearly after adverting his mind to the propriety of letting this evidence. So there is no irregularity on that point.

Yet another decision relied upon on behalf of the accused is Gunadhar Das v. State' : AIR1952 Cal618 . That also was a case where it was held that the Judge did not address his mind to the question whether the committal Court depositions could be admitted and whether circumstances had been established to justify their admission. Further, there the depositions were not put to the witnesses in the manner required under Section 145, Evidence Act. That is not the case here.

Here pointed attention of the witnesses was drawn to the various portions in the depositions. So what these decisions lay down is that Section 288, Criminal P.C. could be. invoked only on very sufficient grounds and evidence allowed to be let in on proper consideration of all circumstances and in the exercise of judicial discretion. In the present case it is clear that the learned Additional Sessions Judge has rightly exercised his discretion, and hence was quite right in relying upon the evidence of P. Ws. 1 and 2 in their chief examination as corroborated by their evidence contained in Exs. P (3) to P (5) and holding that it was a case of murder, there being no right to inflict the fatal injury by way of private defence.

On this evidence alone conviction can be sustained. But there is the confessional statement Ex. P (13) which further corroborates the prosecution case. There is no merit in the argument advanced on behalf of the accused that the confessional statement is vitiated by irregularities. The fact that it was recorded in the house of P. W. 6, the Magistrate, does not vitiate it as according to him die rules issued in that matter were brought to his knowledge only after that.

Even Rule 51 (5) of the Criminal Rules of Practice relied upon by the accused's counsel allows such recording for exceptional reasons, as rightly pointed out by the learned Additional Sessions Judge. Other defects alleged are minor ones not affecting the evidentiary value of the confession.

3. Thus nothing has been brought out in this appeal to show that the conviction of the accused under Section 302, I.P.C. merits any interference. The learned Judge has awarded only the lesser sentence under the section and so no modification of

that is called for.

4. In the result, the appeal is dismissed and the lower Court's conviction and sentence confirmed.