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Mani Joseph Vs. State

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Court : Kerala

Decided On : Sep-22-1953

Reported in : 1954CriLJ1181

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

Appellant : Mani Joseph

Respondent : State

Judgement :

Koshi, C.J.

1. Joseph the appellant In the appeal, was convicted by the learned Additional Sessions Judge, Kottayam for the commission of an offence of culpable homicide not amounting to murder falling under Section 304 part (ii) I.P.C., and sentenced to undergo rigorous imprisonment for a period of seven years. He stood charged for the murder of his deceased brother's son, by name Joseph and for attempting to murder his brother Varkey, P. W. 1 in the case. The learned Judge acquitted the appellant of the charge of attempt to murder in that there was no evidence to connect him with the said crime, but found that his nephew Joseph died as a result of the injuries he sustained at the hands of the appellant and convicted and sentenced him as above. For reasons not very explicable the prosecution conceded that the offence was not murder but only culpable homicide not amounting to murder. The appeal is against the conviction for that offence and the

sentence passed in respect thereof.

2. The deceased's father predeceased the deceased's grand-father. The grand-father had four sons of whom the deceased's father was the eldest. The appellant is the second son and P. W. 1 the third, the fourth being one Deavasia. The appellant's father died intestate some two or three years prior to the occurrence. The mother was in possession of the properties and some time before the occurrence on 11-2-1125 she executed a settlement deed (Ext. D) under which the deceased son's branch and P. W. 1 did not have a fair deal. The bulk of the properties was given to the appellant and Devasia. The deceased was the eldest son of his father and he complained to the grand-mother about the inequality of the division she effected.

It would appear P. W. 1 also used to complain about it and the grand mother one day asked the deceased to go over to the house of the appellant together with P. W. 1 and told that she would try to make the appellant and Devasia agree to make the necessary adjustments in the division. Accordingly on the afternoon of 6-3-1125 the deceased went to the appellant's residence, P. W. 1 and Devasia went up a little later and the prosecution case is that during the discussion the appellant felt offended at the deceased and gave him not less than four Blows on his head with a heavy bar made of cocoanut or palmyra stem and that when p. W. 1 tried to intercede he was beaten on his head twice by the appellant, The deceased was rendered senseless immediately and P. W. 1 escaped from the place. Soon afterwards both the injured were removed to the Lalam Government Dispensary for medical aid. Joseph however succumbed to the injuries that night itself at 9-30 P. M, and P. W. 1 remained in the hospital an inpatient for over a month.

3. The evidence in the case has established that the deceased Joseph got injured at the tune and place mentioned by the prosecution and that he died as a result of those injuries. It is also equally clear on the evidence that at the same time and place P. W. 1 also sustained injuries which necessitated his remaining an inpatient in the Lalam Dispensary for over a month. The prosecution was however labouring under very heavy handicaps to establish as to who the person or persons responsible for inflicting injuries on those two persons were,

The first information in the case (Ext. A), which was one the police took from P. W. 1 after he and Joseph reached the Lalam dispensary, would show that when he went to the appellant's house on the afternoon of the date of the occurrence, Joseph was already rendered senseless as the result of the injuries he sustained on the head and that after his advent the appellant gave one or two blows on Joseph's head stating that he won't rest content unless he succeeded in sending his body to the hospital mortuary that day. His statement further shows that when he interceded Devasia gave two blows with an iron bar, one on the right side of the head and the other on the back of the head and that thereafter he escaped. The statement is then taken up with his removal to the dispensary etc.

On all accounts Joseph had become senseless right from the time of the first blow or blows and he never recovered consciousness thereafter, P. W. 1 reaffirmed his statement to the police in a statement he made before the First Class Magistrate of Meenachil the same night at 8 P. M. Though the police sent the first information report implicating the appellant and Devasia, when it came to the charge-sheet Devasia's name was omitted and according to that document the appellant it was who inflicted injuries both on the deceased and on P. W. 1. The explanation for this variation in the prosecution records is that P. W. 1. had later on told the investigating police officer that Devasia was innocent, that the appellant it was who inflicted injuries on both himself and the deceased Joseph and that Devasia was falsely implicated in the first records on account of domestic feud. Whether that explanation be true or false, in his evidence both in the Committing Magistrate's Court and at the Sessions trial P. W. 1 stuck to his earlier version in the first information and the statement before the Magistrate.

There was no other evidence in the case to prove the infliction of injuries on P. W. 1, with the result that the charge against the appellant of the attempt to murder P. W. 1 failed. The learned Judge was therefore compelled to acquit the appellant of that charge.

4. As for the infliction of injuries on the deceased, the prosecution sought to prove it by the direct evidence of P. W. 1. P. W. 16 and P. W. 17 and by the evidence of some witnesses who arrived at the scene of the crime soon after the occurrence.

P. W. 16 is the appellant's mother and P. W. 17 is the appellant's wife. Both of them even denied their presence in the house when the occurrence took place and the prosecution gained absolutely nothing by their examination. Both in the Committing Magistrate's Court and at the Sessions trial P. W. 1 went back upon his statement (Ext. A) to the police and his statement (Ext. B) before the Meenachil First Class Magistrate and said that he had no direct knowledge as to who inflicted the injuries on the deceased.

When confronted with his earlier statements, he began by saying what was read over to him from those statements contained a true record of what he then said. The Prosecutor did not at that stage ask the witness whether what he said in the earlier statements was true, but in answer to questions put to him after reading out specific portions he feigned forgetfulness and said finally what those statements contained, as to how the deceased was injured was all based on hearsay information. The learned Judge below has quoted in his judgment the first question put to the Witness about the prior statements and the answer to it and understood the latter to mean that he had admitted the truthfulness of those statements at the Sessions trial.

We have carefully read through the evidence of P. W. 1 and our definite opinion is that the statement is not capable of that interpretation. All that the witness said in answer to the first question about the prior statements was those statements contained a true record of what he said. He did not go beyond that nor did the Prosecutor ask him then whether what he stated in the previous statements was true. The subsequent answers even nullified the effect of the first answer inasmuch as' the witness gave out the source of his knowledge to be hearsay.

5. The learned Judge was therefore not right in his view that there was any confirmation by the witness of his earlier statements and that there was substantive evidence in the case to connect the appellant with the crime of which he has been convicted. Mr, Achen, the learned Public Prosecutor freely conceded that the first information (Ext. A) P, W. 1 gave to the police was no substantive evidence and that it could only be used for the purpose of corroboration or contradiction. He however, entertained some doubts whether the statement before

the Magistrate (Ext. B) could not be used as substantive evidence. We cannot understand how such a view could have been entertained by the learned Public Prosecutor, especially in view of the Privy Council's pronouncements in - 'Brij Bhushan Singh v. Emperor' AIR 1946 PC 38 (A) and - 'Mamand v. Emperor' AIR 1946 PC 45 (B). In - 'Bhuboni Sahu v. The King' AIR 1949 PC 257 (O, the Privy Council reaffirmed its view in the cases mentioned above and the Supreme Court adopted it in - 'Tara Singh v. The State' : [1951]2SCR729 . In fairness to the learned Public Prosecutor, it must be said here that afterwards on reflection he conceded that even the statement before the Magistrate will not constitute substantive evidence in the case. The learned Judge below had appreciated the legal position correctly but went wrong in thinking that P. W. 1 had in his evidence at the Sessions trial affirmed the truth of his earlier statements (Exts. A and B).

6. The Public Prosecutor however brought to our notice that P, W. 1 had told P. Ws. 7 and 18 confirming his statements to the police and the Magistrate and contended that those prior statements could be treated as substantive evidence. We do not know how those statements even if true could be placed on a better footing than the statements to the police and the Magistrate. With reference to the statements to the police and the Magistrate there is at least the guarantee ensuing from the existence of the written records about them, but regarding the statements to P. W. 7 and 18 there is only their oral testimony that the statements as they swear to were made to them. P. W. 1 was not also asked whether he had made such statements to these witnesses.

7. The net result of the discussion so far is there is no direct evidence at all in the case of a substantive nature to connect the appellant with the crime. The learned Judge refers to a number of items of evidence which he calls as circumstantial evidence. We do not know how the result of the enquiries P. W. 13 made or the fact that P. W. 5 or P. W. 7 or P. W. 12 saw the accused at the scene of the crime when they went there immediately after the occurrence would form circumstantial evidence of the kind to establish the appellant's guilt.

It must be remembered that according to the early prosecution records Devasia was also there and he was armed with an iron bar which he is alleged to have

used against P. W. 1. The presence of P. W. 1 was also beyond question. The appellant was not the only able-bodied person by the side of Joseph when he sustained the injuries. P. W. 7, who has married the deceased's sister, said that he saw the appellant standing by the side of the deceased with the wooden bar before the court (M. O. 1) in his hand. P. W. 7 was not on good terms with the appellant or his brothers. Nor are we impressed with his evidence that he went there soon after the occurrence. That statement of his is in a sense belied by the evidence P. W. 6, his mother-in-law, gave before the Committing Magistrate's Court in Ext. II.

According to her P. W. 7 was in their house till 4 P, M. The appellant's house is about two miles away from there and the time of the occurrence is itself at about 4 P. M. No doubt these statements as to time will only be approximate but varying versions are given by P. Ws. 6 and 7 as to whether P. W. 7 accompanied the deceased when he left his house to meet his grandmother or whether he went alone. On the whole from the testimony of P. W. 7 that he saw the appellant standing by the side of Joseph with M. O. 1 in his hand it will be a big Jump to conclude that it was he who inflicted the injuries on Joseph of which the latter died.

8. We are therefore constrained to hold that the prosecution has not proved that the appellant was responsible for killing his nephew, the deceased. There is neither direct evidence nor any circumstantial evidence worth the name to connect the appellant with the cause of Joseph's death. It is really unfortunate that such a grave crime should go unpunished, but the question before us is whether the appellant is proved to have been the murderer of his nephew. There is no doubt the strongest suspicion against him, but suspicion however strong, is no substitute for proof. The prosecution had indeed a difficult task when the only eye-witnesses to the crime - whoever perpetrated it - happened to be inmates of the house where the occurrence took place.

We cannot now say whether there was justification on the part of the police to leave out Devasia and lay the charge-sheet against the appellant alone in variance with the early records. AS observed by the learned Judge below when that was done Devasia should at least have been made a witness. We invite the attention of

the authorities concerned to look into this matter carefully and take appropriate action, if such action is found to be called for.

9. Before leaving this case we must also place on record that in our view the Public Prosecutor was not justified in conceding that the offence disclosed did not amount to murder and the learned Judge in accepting that concession. No doubt for paucity of evidence we have been constrained to acquit the appellant. Time and again we have been pointing out that the Penal Code recognises no exception to a case of murder than the five exceptions enacted in Section 300 and that no court will be justified in reducing a crime of murder into one of culpable homicide not amounting to murder without advertence to those exceptions.

10. In the result we allow the appeal, set aside the appellant's conviction and sentence and acquit him. His bail bond is cancelled. Order accordingly.

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