Vasudevan Vs. State

Vasudevan Vs. State

SooperKanoon Citation : sooperkanoon.com/721446

Court : Kerala

Decided On : Apr-06-1976

Reported in : 1977CriLJ83

Judge : Balagangadharan Nair and; Kader, JJ.

Appellant : Vasudevan

Respondent : State

Judgement :

Kader, J.

1. Vasudevan, 23, the first accused in Sessions Case No. 2 of 1975 in the Court of Sessions, Trichur, who has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life, is the appellant. He was tried along with five other accused on a charge that he and the others constituted an unlawful assembly the common object of which was to murder Kesavan and that in prosecution of the said common object, he committed the murder of Kesavan by cutting him with a chopper (M.O.I.). The other accused were acquitted of all the charges and the appellant was acquitted of the charge under Section 143 of the Indian Penal Code.

2. The occurrence was at about 1 P.M. on October 15, 1974. The scene of offence is on the Trichur-Mulayam Road near the junction where the road leading to

'Laksham Veedu' branches-off and about 41 metres to the south of the shop of kuttan situated on the western side of the Trichur-Mulayam Road.

3. The first accused is the elder brother of the 5th accused; and the younger brother of the third accused is the husband of the younger sister of the first accused's mother. The fourth accused is the wife of the third accused and accused 2 and 6 are their sons. Kuttappan (P.W. 7) is the elder brother of Kesavan (the deceased), and Ammini (P.W. 9) is their paternal aunt. There was a quarrel between the fourth accused and her children on the one side and P.W. 7 and the deceased on the other on account of some kuri transactions. Two days prior to the occurrence, while Kesavan was playing cards in a reading room in Kozhukuly along with others accused 1 and 2 and Gopalan (P.W. 12) went to the reading room and Gopalan called out the deceased, but the deceased refused to go out. The next day evening while P.W. 7 was returning home, accused 2, 5 and 6 followed him and one of them gave him a blow, when P.W. 7, fled for his life and got into the house of Sankarankutty (P.W. 6). The fifth accused pursued P.W. 7 there, but somehow P.W. 7 escaped. On the date of occurrence, while Sreedharan (P.W. 1), Thankappan (P.W. 2) and Gopalan (P.W. 3) were in the shop of Kuttan, the husband of Thanakamani (P.W. 4), the 5th accused came there at about noon with a bunch of plantains for sale. But Kuttan said that he did not want the plantains. In the meanwhile, Kesavan along with Petta Kuttan came to the shop and on seeing the 5th accused Kesavan asked him about the previous evening's quarrel between him and P.W. 7. It was at this time that the first accused came to the shop. Talking about the said quarrel, Kesavan and the 5th accused came to the road in front of the shop. By this time, the third, accused along with his sons, accused 2 and 6, came there; and the second accused rubbing the shoulders of Kesavan said that his own elder brother (Kesavan) was responsible for the quarrel and when the second accused repeatedly rubbed the shouders Kesavan protested and cautioned that he should not touch his body. The second accused retorted 'mandu thottaan nee endu chayum' when the deceased walked southwards along the road saying 'eppoll ningal moonu naalanju parally allangil endu chayumaayirunnh endu Kamickummajirunnu.'

The appellant followed Kesavan and the other accused also went behind the appellant. Apprehending that something untoward might happen, P. Ws. 1 to 3 got down to the road and by then Kesavan and the accused had covered a distance of about 50 feet from the shop of Kuttan. Immediately, at the instigation of the fourth accused, the appellant took out M.O. 1. chopper which he had concealed beneath his shirt and inflicted a cut on the right shoulder blade of Kesavan who pressing the injury with his hand and crying 'ayyo' quickened his pace when the appellant inflicted another cut with the chopper on his right elbow. Feeling helpless Kesavan hurried towards south, when the appellant chased him and again cut him with the same chopper on his back above the hip and as Kesavan was falling down, the appellant inflicted a cut on the right side of his neck. Sustaining injuries on different parts of his body, Kesavan fell down in a pool of blood and died on the spot. P.Ws. 1 to 3 saw the occurrence. The appellant left the place carrying the weapon with him, P.W. 1 went to the Mannuthy Police Station which is 8 kms. away and laid Ext. P-1, the first information statement, at 2.30 P.M. before P.W. 20. the Head Constable, who recorded the same and registered a case on its basis. P.W. 17, Circle Inspector of Police, held inquest over the dead body which was found lying at the junction of Trichur-Mulayam road and the road leading to the Laksham Veedu. Ext. P-4 is the inquest report prepared by him. P.W. 10 held autopsy over the dead body. On the same day at about 5 p.m., P.W. 21, the Circle Inspector of Police, Crime Branch, visited the scene taking up investigation from P.W. 17, and questioned the witnesses. The accused were absconding. On October 24, 1974, at 8 A.M. the appellant and accused 2 and 5 surrendered before the Crime Branch Police and they were arrested. In pursuance of the information furnished by the appellant. M.O., I. chopper was recovered from the place where it was concealed, under Ex. P-2 mahazar attested by P.W. 14.

4. The case of the appellant and the other accused was one of bare denial of the entire incident.

5. No witness was examined on the side of the accused.

6. The learned Sessions Judge on a consideration of the entire evidence found that the prosecution has failed to prove that the accused were members of an

unlawful assemply or that they shared any common intention to murder Kesavan and acquitted accused 2 to 6 and on relying on the evi-denc of P. Ws. 1, 3 and 4 and other circumstances, convicted and sentenced the appellant as aforesaid.

7. Smt. Vanajakshy, learned advocate appearing for the appellant, strongly assailed, the conviction and sentence of the appellant on the grounds that one Petta Kuttan, who was present near about the scene was not examined, that the evidence of P. W, 2 that he came to the shop of Kuttan for purchasing beedi cannot be believed, that while according to the prosecution, only four cuts were inflicted on the deceased, he had 8 injuries on his person, that this is a strong circumstance to show that the eye-witnesses have not seen the occurrence and that therefore, the appellant is entitled to an acquittal.

8. That Kesavan died of injuries sustained on the date of the incident is not in dispute and is even otherwise fully established by the evidence of P, W. 10 and Ext. P-3, the post-mortem certificate, issued by him. During autopsy, the doctor noticed altogether 8 injuries, of which injury No. 1 is an incised gaping wound on the right side of the neck at its root, cutting across the lateral aspect of the root, 12 cms. X 7 cms. in depth reaching upto the apex of right lung exposing the pleura. This injury had cut off a piece of bone from the middle of right clavicle and also all structures upto the 6th cervical vertebra. According to the doctor, this injury is necessarily fatal and Kesavan died as a result of this injury.

9. The next point, which is the vital one, for decision is whether the appellant was responsible for causing the injuries which resulted in the death of Kesavan. The case of the appellant, as mentioned earlier, is one of bare denial. To prove its case the prosecution relies on the direct testimony of P. Ws. 1, 3 and 4 and the other circumstances brought out in evidence. The dead body of Kesavan was found lying in a pool of blood on the Trichu Mulayam road about 41 metres to the south of Kuttan's shop. Preceding the stabbing incident, tiiere was some wordy altercation from near the shop of P. Ws. 1 to 4 were at that time in the shop of Kuttan and it is seen from paragraph 26 of the judgment of the trial court that the presence off P. Ws. 1, 3 and 4 in the shop of Kuttan was not seriously disputed by the accused. The attack against the evidence of P.W. 2 is that the explanation

given by him for his presence in the shop at that time cannot be believed as it is quite unlikely that he, being the nephew of the shop keeper Kuttan, would have come there for purchasing beedi from his uncle. During cross-examination, this witness stated that he is residing about 50 feet away from the shop of Kuttan, who is his uncle and that on the date of occurrence he went to the shop for purchasing beedi. This cannot be taken as a striking improbability sufficient to discard the evidence of this witness. The first information statement in this case was laid by P.W. 1 within 1 1/2 hours of the occurrence and the name of P.W. 2 finds a place therein. It was also argued that the conduct of the witnesses in not interfering and wresting away the chopper from the appellant is improbable and suspicion and that has to be taken as a circumstance which seriously affects the credibility of the witnesses. Along with the appellant, there were five others who were his close relations and all were said to be inimically disposed towards Kesa-van. All of them were following Kesa-van and the appellant was almost chasing and persistently attacking him. In the circumstances, normally nobody would have dared a risk by interfering in the quarrel and wresting away the chopper from the hands oil the appellant. All the eye-witnesses mentioned in Ext. P-1 have been examined and it is not always necessary that all the eye-witnesses to an incident should be examined multiplying the evidence. These eye-witnesses are independent witnesses and they have no motive or grudge against the appellant to falsely implicate him in a case of this nature. Nothing lias been brought out in the evidence that Petta Kuttan was deliberately kept back by the prosecution with an ulterior motive. There was not even a suggestion to that effect. Therefore the non-examination of Petta Kuttan is of no consequence. Commenting on the medical evidence, the counsel for the appellant argued that, this evidence is in direct conflict with the testimony of the eye-witnesses, the appellant inflicted only 4 cuts while there were 8 injuries on the body of Kesavan and that this is a strong circumstance which will show that these witneses have not actually seen the incident. There is no hard and fast rule that in every case, irrespective of its facts and circumstances, the prosecution is bound to explain each and every injury found on the deceased and that the failure of the prosecution in this regard is fatal to its case. It might be noted that the chopper M.O.J. used by the appellant was a curved, sharp-edged instrument, P.W. 10, the doctor, has deposed that injury No.

6 could have been caused by a fall and that part coming into contact with rough surface, that injury No, 4 could have been caused in the course of inflicting injury No. 1 with M.O.I., that it is possible that injury No. 7 could have been caused while causing injury No. 2, if the victim had turned to the right at the time of infliction, that injury No. 7 also could have been caused while inflicting injury No. 3 and that the possibility that injury No. 8 could have been sustained while inflicting injury No. 1 could not be ruled out. The suggestion put to the doctor on behalf of the appellant was that injuries Nos. 1,2, 3 and 5 could have been caused by those portions of the body coming into contact with sharp and hard substance during a fall and this has been denied by the doctor. The medical evidence is not inconsistent with the prosecution case and does not rule out the probability that the incised injuries found on the deceased were caused as a result of cuts with the chopper M. O, I. as alleged.

10. It was relying on Viswambharan v. State 1974 Ker LT 71 that the counsel contended that non-explanation of the three incised injuries on the person of the deceased belies the testimony of the eye-witnesses who have deposed that only four stabs had been inflicted by the appellant. This decision was rendered relying on the decision of the Judicial Commissioner of Goa, Daman and Diu reported in AIR 1968 Goa 72 : 1968 Cri LJ 929, The case cited has no application to the facts of the instant case. In that case, the doctor did not approve of the suggestion put to him explaining the two injuries and it was found that the medical evidence ruled out the possibility of the injuries found on the deceased having been sustained in the manner alleged by the prosecution. This apart, the trial Judge took the view that it was enough if the prosecution proved the fatal injury and in that case even if other injuries remained unexplained that could not be urged as a ground for acquittal of the accused. We have already discussed and referred to the medical evidence in the case on hand and noticed that the medical evidence does not preclude the prosecution story or is in no way inconsistent with the prosecution version of the incident. We find that the medical evidence in the present case is not open to doubt or suspicion and the ocular evidence is satisfactory, cogent and convincing.

11. In a case where there is direct testimony of physical violence, the value of medical evidence adduced by the prosecution in support of its case is only corroborative in that it proves the nature of injuries, the cause of death and that the injuries could have been caused in the manner alleged. Ordinarily the use which the defence can make of medical evidence is to prove by it that the injuries could not possibly have been caused in the manner alleged or death could not possibly have been caused by the injuries sustained. In a case where there is conflict between the medical evidence and the ocular account of witnesses, the court can either believe the prosecution witnesses without reservation or rely upon the medical evidence and approach the oral testimony with caution testing it in the light of the medical evidence. Medical evidence cannot override cogent. and convincing testimony of eye-witnesses. It is only in a case where the medical evidence goes so far as that it completely rules out all possibility that injuries could take place in the manner alleged by the prosecution, such evidence constitutes an important factor or circumstance in assessing the direct evidence and in deciding whether the direct testimony could safely be accepted.

12. The mere fact that in a murder case the evidence of eye-witnesses is not consistent with the medical evidence will not by itself render the direct testimony unreliable. Vide Bajwa v. State of U.P. : 1973 CriLJ769 . The effect of non-explanation of the injuries on the accused or of some injuries on the deceased is a question of fact which in some cases may undermine the evidence and shake the foundation of the case, while in others it may have little or no adverse effect on the prosecution case. No doubt in such cases, the evidence of the prosecution witnesses had to be carefully examined. It cannot be laid down as an invariable rule of law of universal application that as soon as it is found in evidence that the accused had received injuries in the course of the same transaction the plea of private defence would stand prima facie established or the failure of the prosecution to explain some of the injuries on the deceased would override and nullify the effect of cogent and convincing direct testimony. The observations made in Viswambharan's case (1974 Ker LT 71) must be read in the light of the facts proved in that case and were not intended to lay down a principle of universal application.

13. The First Information Statement was laid by P.W. 1 at the earliest opportunity and the names of the eye-witnesses and the material facts of the case have been stated therein. P.W. 1, the first informant has sworn to the entire incident and his evidence is corroborated in all the material particulars by the evidence of P. Ws. 2, 3 and 4 and also the medical evidence. The cross-examination of these witnesses did not yield any fruitful result. There is also the evidence of P.W. 8 blacksmith, that on October 15, 1974, at about 9 A.M. the appellant approached him with a chopper and got it sharpened and left the place at about 10 A.M. It was in the presence of the appellant that this witness was questioned. There was no serious cross-examination of this witness. P.Ws. 1 and 3 are persons residing in the proximity of the place of occurrence. They came to the shop of Kuttan to make certain purchases. It was in pursuance of a statement given by the appellant that M.O.I. chopper was discovered and taken into custody under mahazar Ex. P-2. P.W. 21 has spoken to this and his evidence in this regard is corroborated by the evidence of P.W. 14 and Ex. P-2 and there is no reason to disbelieve these witnesses.

14. No other point was urged on behalf of the appellant.

15. We have carefully scrutinised the evidence of the eye-witnesses and we do not find any material defect or improbability in their evidence to disbelieve their evidence against the appellant.

16. It is clear from the nature of the injuries inflicted, the type of the weapon used and the persistent way Ke-savan was attacked, that the appellant intended to kill Kesavan and that the offence committed by him is murder, pure and simple.

In the result we confirm the conviction and sentence passed against the appellant and dismiss this appeal.