

Karuppa Valayan Vs. State of Kerala

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Court : Kerala

Decided On : Oct-30-1959

Reported in : AIR1960Ker238

Judge : S. Velu Pillai, J.

Acts : [Evidence Act, 1872](#) - Sections 9 and 27; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342

Appeal No. : Criminal Appeal No. 156 of 1959

Appellant : Karuppa Valayan

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : P.S. Usuph, Adv.

Disposition : Appeal allowed

Judgement :

S. Velu Pillai, J.

1. The third accused, who is the appellant in this appeal, and accused 1 and 2 have been convicted by the Sessions Judge at Palghat, for offences under Sections 395 read with Sections 397 of the Indian Penal Code. Accused 1 and 2

have not preferred any appeal. The third accused has been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 100/-. The case against the accused is, that at about 9 P. M. on 12-10-1958, they and two others not identified, committed dacoity in the house of Pw. 1 and caused hurt to him and his wife. Pw. 3.

The third accused was said to have caused hurt to Pw. 2, by cutting him with a chopper and by beating him. Pws. 1 to 3 were removed to the hospital on the next morning and Pw. 1 gave the first information of the occurrence at 11-15 A. M. on that day. After the case was registered, the Police Inspector arrested the accused on 22-10-1958, when they were found hiding in a forest. It is the prosecution case, that some weapons and some of the stolen properties were recovered from them at the time of their arrest, and some more property was recovered afterwards, on the same day, pursuant to information furnished by them. The Assistant Sessions Judge, believing Pws. 1 to 3 and acting upon the evidence as to the recovery of the stolen articles, came to the conclusion, that the case was proved as against the three accused, and accordingly entered the conviction.

2. The evidence as against the third accused consists of only the testimony of Pws. 1 to 3 and the alleged recovery of some of the stolen articles. It would appear, that there was an identification parade before the Magistrate on 17-12-1958, at which, the third accused was identified only by Pw. 1, and not by Pws. 2 and 3. The identification of the accused by Pws. 2 and 3 in court, is of very little value, and their evidence as against this accused has to be discarded on that ground. The prosecution is therefore left with the testimony of Pw. 1 who stated in his evidence before the Sessions Court, that after he was attacked by accused 1 and 2, he fell down, and could not see clearly what happened afterwards. He admitted, that the third accused had come to the scene only after he had fallen. It is unsafe therefore to act upon the identification of this accused by Pw. 1 in court, and also before the Magistrate, at the time of the identification parade.

3. Admittedly, at the time of the arrest, only the knife, M. O. 16, had been recovered from this accused. It was not proved by the prosecution, that this weapon had been used by him or by any one of the offenders or participants in the

crime at the time of the dacoity. The recovery of M. O. 16 is inconsequential.

4. The next item of evidence consists of the recovery of the stolen property. It would appear, that after the accused were arrested on the 22nd, they were taken in a body to a hut, wherefrom some of the articles, which have been proved to be stolen articles, were recovered. But no statement or confession under Section 27 of the Evidence Act was proved to have been made by the third accused, pursuant to which the recovery was made: It is seen, that the seizure list, Ext. P13, says only, that the articles were recovered pursuant to information furnished by the 'accused' using the word in the plural. '

The Police Inspector deposed, that individual statements had been recorded from each of the accused, the admissible parts of which were proved. Ext. P11 being the statement of the third accused. They are all of the same pattern, and refer to the same articles, and all of them declared that if the Inspector accompanied them, they would point out the place at which they were hidden. These statements but constitute one composite statement about the same articles, which does not serve to fasten the individual guilt. It is only necessary to refer to *Peria Guruswami Gounder v. Emperor*, 1941 Mad WN 766: (AIR 1941 Mad 765) where Wadsworth, J, observed as follows;

'It seems to us improper to treat as individual statements of two different persons, a composite statement of this kind, which appears to have been made up of information gathered from the two persons, it being impossible to say how much of the statement was made by one of them and how much was made by the other.'

In the present case there is a distinction, in that the same statement is said to have been made to the Police Officer by the three accused, but the principle applies equally for there is no knowing on whose information the material fact was discovered, The recovery of these articles is therefore no incriminating circumstance against this accused. The fact remains, that this accused was found in the company of accused 1 and 2 at the time they were arrested on the 22nd October, 1958. This was several days after the occurrence, and this in itself is not a circumstance of great evidentiary value in fixing the accused's guilt. The learned Judge has not dealt with or considered the case of each of the accused

separately.

5. The questioning of the accused under Sections 342, Cr. P. C. has been improper. The learned Judge has framed a series of questions, each question covering almost a whole page and the accused was called upon to answer them. This hardly serves the object, which underlies Sections 342, Cr. P. C. In this connection the observations of Bose, J. in *Tara Syigh v. The State*, AIR 1951 SG 441 may be referred with advantage:

'It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended) to be used against him..... .The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.'

I commend these weighty observations, to the learned Judge to follow.

6. It therefore follows that the conviction of the accused cannot be sustained. He is therefore acquitted and set at liberty, if not wanted on any other charge.

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