Rajan Vs. State of Kerala

Rajan Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/726421

Court : Kerala

Decided On : Mar-22-1991

Reported in : 1992CriLJ575

Judge : K.T. Thomas and; P.K. Shamsuddin, JJ.

Acts : Explosives Act - Sections 3; Evidence Act, 1872 - Sections 6 and 157; Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 157

Appeal No. : Crl. A. No. 503 of 1987

Appellant : Rajan

Respondent : State of Kerala

Advocate for Def. : Aysha Yousuff, Public Prosecutor

Advocate for Pet/Ap. : G. Janardhana Kurup

Disposition : Appeal dismissed

Judgement :

K.T. Thomas, J.

1. This case belongs to the series of killing spree indulged in by some R.S.S. loyalists and Marxist Party followers against each other in Kerala. Deceased, an

R.S.S. activist or loyalist earned a sobriquet 'Wayanadan Thampan'. He was earlier involved in another murder case in which a marxist follower was killed. As he was acquitted by the Court, he became the prime target for retaliation by the other side. On 3-8-1984 he was chased by some assailants and was killed by throwing bombs (or hand grenade) at him. One bomb hit him and exploded. It smashed his head. Four persons were indicted for his murder. But, Sessions Court convicted only the appellant (who is none other than the first cousin of deceased) for the offence under Section 302 of the Indian Penal Code and Section 3 of the Indian Explosives Act. He has been sentenced to imprisonment for life for the first Count, but no separate sentence was awarded for the other count.

2. Summary of the case is this : In revenge of what the deceased did in the earlier case, appellant and his companions went near the house of the deceased on two bicycles with bombs. Deceased was walking back to his house after a dip in the nearby stream. The four accused on seeing the deceased, alighted from the cycles and threw a bomb at him. Though the bomb exploded, it did not hurt the deceased. He made a bid to flee from the place. As he ran southwards, all the four accused chased him. Two of them again threw bombs at him which also, though exploded, missed the target. However, appellant succeeded as the bomb hurled by him hit the deceased and exploded. The four accused then left the scene on the bicycles.

3. Deceased's younger sister Ammini (P.W. 1) gave First Information Statement at 3 p.m. when the police went to her house to get fuller information about the occurrence (police had some unauthentic report through a phone message about the incident, hence they went in search of someone who could give more details).

4. After denying any involvement in the murder of the deceased appellant suggested that deceased sustained some injuries in an encounter with his brother Vijayan and that in the next sequence Vijayan would have hurled a bomb at the deceased.

5. Learned Sessions Judge dismissed the defence suggestion as not even remotely probable. He found that appellant and three other persons had chased the deceased and killed him by throwing bomb. However, learned Sessions Judge

found that evidence could establish idenity of appellant alone. Hence appellant alone was convicted for the offences.

6. It is not disputed before us that deceased died as a consequence of explosion of bomb (or a grenade) at the place and time suggested by the prosecution. But a theory was sought to be built up on the strength of certain contusions, abrasions and lacerated injuries found on the left side of the body of the deceased (injuries Nos. 6 to 17 in the postmortem certificate) that they would not have been consequences of bomb explosion. Injuries found on the right side of dead body including smashing of skull bone were, no doubt, the consequences of bomb explosion. But injuries Nos. 6 to 17 (on the left side) need not necessarily be the result of bomb explosion. Dr. Raman Nair (P.W. 28), who conducted the autopsy, advanced a far-fetched theory that those injuries on the left side of the body could have been the offshoot of the impact of bomb explosion. Dr. Umadathan (Professor of Forensic Medicine, Medical College, Thrissur) was examined as D.W. 2. He did not agree with the aforesaid theory. On going through both items of evidence, we are inclined to accept the opinion expressed by Dr. Umadathan. Even so he did not rule out the possibility of those injuries (Nos. 6 to 17) having been caused in a fall or by coming into contact with flying fragments in a bomb explosion.

7. P.W. 1 is the only witness who said that she saw the appellant throwing bomb at the deceased. P.W. 1 deposed that while she was cradling her first child (she was then in advanced stage of pregnancy), she heard the sound of explosion and she instinctively went out and saw her brother (deceased) being chased by the four accused and first accused throwing a bomb at him. P.W. 1 gave First Information Statement at 3 p.m. (Ext. P1) on the same day in which she made a full narration of the incident with vivid details. If Ext. P1 can be relied on, it lends assurance about truth of the core of P.W. 1 's testimony.

8. Learned counsel for the appellant contended that P.W. 1 would not have given any statement to the police on the date of occurrence, and Ext. P1 (First Information Statement) would have been made much later. To support the said contention, learned counsel drew our attention to the signature and date 6-8-1984

put by the Judicial Magistrate of Second Class, Aluva, on the FIR. P.W. 27 Sub-Inspector, when confronted with the said evidence, tried to explain it saying that he entrusted the FIR to the despatch section and the delay would have occurred at that end. Learned counsel cited the decision in Marudanal Augusti v. State of Kerala, AIR 1980 SC 638 : (1980 Cri LJ 446), in which Supreme Court declined to act on an FIR received by the magistrate after a few days of the date of the document.

9. Section 157 of the Code of Criminal Procedure (for short 'the Code') requires that FIR should be forwarded to the magistrate 'forthwith', what is the consequence if it is not forwarded forthwith? Non-compliance with that direction need not necessarily provide room for an inference that FIR was concocted. In such cases court must scrutinise the first information statement and attending circumstance carefully to ascertain whether there is any truth in the allegation that it was actually brought into existence later. A delayed first information and delay in despatching the FIR to the magistrate are two different aspects. Of course, in a case where there is allegation that first information statement was subsequently manipulated by putting an earlier time in it, the delay in despatching FIR to the Court may have a bearing on the allegation. But mere delay in receiving the FIR by the Magistrate is not sufficient to raise a presumption that there was delay in preparing the FIR. The endorsement made by the magistrate on the FIR showing the date or time of receipt thereof may raise a presumption that the FIR was forwarded to him only then. But, no presumption can be drawn from the mere fact of delay in receiving the FIR that the FIR came into existence after such delay.

10. In Sone Lal v. State of U. P., AIR 1978 SC 1142 : (1978 Cri LJ 1122), it was pointed out that delay in despatching FIR to the magistrate is not a circumstance which can affect the case adversely. A Division Bench of this Court consisting of Dr. Kochu Thommen and Fathima Beevi, JJ. pointed out in State of Kerala v. Dasan, 1986 Cri LJ 345, that late receipt of the FIR by the magistrate, in the absence of any other vitiating circumstances, will not make the lapse fatal. It depends upon the facts of each case to decide whether late receipt of an FIR by the magistrate would or would not affect the statements contained therein.

11. We scrutinised Ext. P1 in the light of the said allegation. We have no reason to think that it was not recorded at the time shown therein, despite the delay in forwarding the same to the magistrate. We are fortified by Ext.P4 inquest report (against which no attack has been made by the defence) which was prepared on the next morning. Full details of the case have been mentioned in Ext.P4. If actually Ext.P1 had not come into existence on 3-8-84 itself, it was not possible to have Ext.P4 inquest report with all such details.

12. Four witnesses have deposed that they rushed to the scene on hearing the sound of explosion and heard P.W. 1 saying that appellant and others threw bomb at her brother. P.Ws. 2, 5, 6 and 8 are those witnesses. The evidentiary value of the statement alleged to have been made by P.W. 1 to those witnesses has been questioned by the defence. Learned counsel contended that Section 6 of the Evidence Act cannot be invoked for that purpose. We think that the said contention is correct. Unless that statement was made as part of the same transaction in which the explosion took place, it cannot fall within the purview of Section 6 of the Evidence Act. A transaction may consist of a single act or different acts. When it consists of different acts, they must be connected together by proximity of time, place and continuity of action or design. A Division Bench of this Court consisting of Dr. Kochu Thommen and Fathima Beevi, JJ. has observed in Bhaska-ranv. State of Kerala, 1985 Ker LT 122 : (1985 Cri LJ 1711), that 'the statement uttered or the act done must be a spontaneous reaction of the person witnessing the crime and forming part of the transaction. The bystanders' declaration must relate only to that which came under their observation. The declaration must be substantially contemporaneous with the fact and not merely the narration of a prior event'. Applying the said test it is doubtful whether the statement made by P.W. 1 can be treated as re justea evidence.

13. However, the said statement of P.W. 1 can be admitted under Section 157 of the Evidence Act which provides that 'in order to corroborate the testimony of a witness any former statement made by such witness relating to the same fact, at or about the time when the facts took place...may be proved'. Philosophy of the section is that when mind of the witness is so connected with events as to make it probable, any statement made by him then would be true and accurate. The words

'at or about the time' must mean that the statement must, be made at once or at least shortly after the event. The statement loses its value if the interval between the event and the statement is such as to afford opportunity for reflection. Vivian Bose, J. has observed in Rameshwar Kalyan Singh v. State of Rajasthan, AIR 1952 SC 54 : (1952 Cri LJ 547), that 'the main test is whether the statement was made as early as can reasonably be expected in the circumstances of the case and before there was opportunity for tutoring or concoction'. But it must be borne in mind that a statement referred to in Section 157 cannot become substantive evidence unless the statement falls within the purview of one of the provisions in the second Chapter of the Evidence Act. Otherwise, the statement has only the limited utility of corroborating the witness concerned. In either case the statement is admissible in evidence, though utilitywise it may have some variation. Here, such statement, if reliable, would corroborate the testimony of its maker P.W. 1.

14. Learned counsel severely criticised the evidence of those four witnesses, who deposed that they heard from P.W. 1 immediately after reaching the scene that the bomb was thrown by the appellant. Learned counsel pointed out that P.W. 1 has no such version in Ext. P-1. We do not think that this part of the evidence deserves rejection merely because P.W. 1 did not refer to it in Ext. P-1, as she might not be aware of its utility and significance. P.W. 6 has further said that on hearing the statement from P.W. 1, he went after the assailants and saw the appellant and other accused proceeding on two bicycles. This version of P.W. 8 is sought to be described as unnatural, since it was not probable that P.W. 1 would have asked any one to go and check how far the assailants had gone. How can it be said that P.W. 1 would never have said so, especially since she would have been terribly upset then. We are not disposed to dismiss it as unnatural.

15. We went through the testimony of those four witnesses in full. Despite some minor omissions and insignificant discrepancies we are inclined to believe their evidence. Thus the evidence of P.W. 1, amply corroborated by the aforesaid four witnesses would prove beyond doubt that the bomb was hurled by the appellant.

16. D.W. 1 claimed to have reached the place of occurrence soon after the explosion and removed the deceased to the hospital in a jeep. D.W. 1 was

examined to neutralise the evidence of P.W. 1. According to D.W. 1, after he reached the scene of occurrence, P.W. 1 came there weeping and asked others who did this to my brother.' Learned Sessions Judge declined to place any reliance on the testimony of D.W. 1. The defence did not suggest the name of D.W. 1 to any of the prosecution witnesses, not even to the Investigating Officer. When the trial reached defence stage, D.W. 1.'s name came from the blue. D.W. 1 was not questioned by the police at all since his role was out side the ken of the knowledge of Investigating Officers. As we read his evidence, we concur with the Sessions Judge's disapproval of his testimony.

We confirm the conviction and sentence and dismiss the appeal.