

**Parappurath Cholayil Beeran Vs. State**

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**Court :** Kerala

**Decided On :** Jun-26-1991

**Reported in :** 1992CriLJ2225

**Judge :** M.M. Pareed Pillay and; K.G. Balakrishnan, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

**Appeal No. :** Crl. A. 141 of 1988

**Appellant :** Parappurath Cholayil Beeran

**Respondent :** State

**Advocate for Def. :** Thomas John, Public Prosecutor

**Advocate for Pet/Ap. :** K. Kunhirama Menon and; P.C. Mohsin, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

Pareed Pillay, J.

1. Appellant is the first accused in SC 24 of 1987 of the Sessions Court, Manjeri. He along with the second accused stood charged Under Section 302 read with Section 34 of the I.P.C. Appellant (A-1) was found guilty Under Section 302 of the I.P.C. and he was sentenced to undergo imprisonment for life. A-2 was acquitted.

2. The prosecution case is that on account of previous enmity appellant and A-2 assaulted Makkayi alias Marackar causing him fatal injuries on 22-4-1986 at about 1 p.m. Marackar (deceased) was standing in front of a stationery shop in Edavannappara bazaar. The incident happened in between the stationery shop and a stationary bus. According to the prosecution, appellant came there with a bag carrying M.O. 1 sickle and cut Marackar on his neck from behind with M.O. 1 sickle and also inflicted many more cut injuries. A-2 inflicted injuries on Marackar with M.O. 2 dagger. P.W. 1 and others took Marackar to the Government Hospital, Manjeri. On the way to the hospital Marackar succumbed to the injuries. Motive for the crime is stated to be on account of a previous incident in which Marackar caused the death of the brother of the appellant and A-2. Ext. P-1 first information statement was lodged by P.W. 1 and it was recorded by the Asst. Sub Inspector of Police, Areacode. P.W. 14 doctor conducted autopsy and issued Ext. P-15 postmortem certificate. P.W. 16 Circle Inspector of Police investigated the case and laid the charge before the Court.

3. Prosecution examined P.Ws. 1 to 5 as eye-witnesses. P.Ws. 2, 3 and 5 turned hostile to the prosecution. Prosecution mainly relies on the testimony of P.Ws. 1 and 4 and portions of the evidence of P.Ws. 2, 3 and 5 to support its case against the appellant.

4. P.W. 1 stated that he saw the appellant coming with a bag from the southern side of the stationary bus and

moving towards the stationery shop. Marackar was standing in front of the stationery shop facing towards the east. P.W. 1 deposed that the appellant took out M.O. 1 sickle from his bag and cut Marackar on the right side of his neck and continued to assault him thereafter, that Marackar fell down and that A-2 came there running and stabbed him with M.O. 2 dagger several times. P.Ws. 1, 3 Kunhali, Muhammed Kutty and others rushed to the place of occurrence. Appellant shouted that anyone who came near would be stabbed, Appellant and A-2 ran away towards the west carrying the weapons with them. P.W. 1, P.W. 3, P.W. 6 and Muhammed Haji took Marackar to the Government Hospital, Manjeri. On the way Marackar breathed his last. P.W. 1 stated that after examining Marackar the doctor pronounced him dead. P.W. 1 proceeded to the Police Station and lodged Ext. P-1 first information statement. P.W. 1 identified the weapon used by the appellant as M.O. 1 and the weapon used by A-2 as M.O. 2.

5. P.W. 4 stated that on hearing a commotion in between the stationery shop and the stationary bus he rushed to that direction and saw Appellant and A-2 assaulting Marackar. He deposed that appellant inflicted a cut injury on the right side of the neck of Marackar and continued to inflict injuries on him. Presence of P.Ws. 2, 3 and others at the place of occurrence and the removal of Marackar to the Hospital is spoken to by P.W. 4. He identified M.Os. 1 and 2 as the weapons used by the appellant and A-2. P.W. 4 stated that he happened to see the incident as he came to the bazaar for purchasing medicines.

6. Learned counsel for the appellant argued that both P.Ws. 1 and 4 are chance witnesses and hence their evidence is throughly unreliable. It is pointed out that though the incident happened at a bazaar none of the shop owners there was examined and the prosecution chose to examine only chance witnesses and their evidence is of doubtful character. Wholesale condemnation of the evidence of a witness on the ground that he is a chance witness without analysing it cannot be justified. No court of law can adopt such a short cut method. There is no rule of law that the evidence of a chance witness deserves automatic rejection. Evidence regarding the presence of P.Ws. 1 and 4 finds corroboration from the testimony of P.Ws. 2 and 3 though they were hostile to the prosecution. This is definitely a circumstance to lend assurance to the testimony of P.Ws. 1 and 4.

7. As the incident happened on the public road it cannot be presumed that P.Ws. 1 and 4 who happened to be at the place of occurrence are not natural witnesses. There cannot be any controversy regarding the competency of a pedestrian being a natural witness to an incident happening on the road. Merely because some shops are there at the place of occurrence it cannot be assumed that if the shop owners are not examined the evidence of pedestrians like P.Ws. 1 and 4 is open to suspicion. Trust-worthiness of a chance witness is dependent upon the intrinsic quality of his evidence and so a sweeping generalisation that such evidence is per se inferior cannot be made. It may often happen that a shop owner engrossed in his business might not have witnessed an incident which happened near his shop. At the same time a person who happened to be there might have witnessed the occurrence. Merely on the ground that he happened to be at the place of occurrence by sheer coincidence to witness the incident his testimony cannot be discarded for the sole reason that he is only a chance witness. When a pedestrian's evidence that he saw the incident which happened on the road inspires confidence it cannot be condemned outright characterising it as the testimony of a chance witness. Rejection of the evidence of a witness without proper analysis on the sole score that he is a chance witness is not a healthy practice to be followed by the Court and has to be shunned. In *Rana Partap v. State of Haryana* AIR 1983 SC 680 : 1983 Cri LJ 1272, the Supreme Court had occasion to consider the nature of such evidence and observed that the rejection of the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence. The Supreme Court observed thus (at page 1274 of Cri LJ) :

Murders are not committed with previous notice to witnesses : soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passers by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'.

As the evidence of P.Ws. 1 and 4 stands unscathed in cross-examination and as their presence at the place of occurrence is corroborated by the testimony of P.Ws. 2 and 3 defence contention that they are mere chance witnesses and that their testimony cannot be accepted by the Court is not tenable. Discarding such evidence would amount to adoption of a hyper technical attitude and not a judicial appreciation of the evidence. Whenever there is cogent evidence of a person who witnessed the occurrence it cannot be eschewed on the ground that a person who has a fixed abode at the place of occurrence or a shop or business in the neighbourhood was not examined.

8. Another contention of the counsel for the appellant is that as the Sessions Judge did not believe the evidence of P.Ws. 1 and 4 with regard to the complicity of A-2 with the crime, their evidence to connect the appellant with the crime is open to serious doubt and therefore the appellant is really entitled to benefit of doubt. While appreciating the evidence the Court can always separate the chaff from the grain and probe into the entire mass of evidence to arrive at the truth and if in that process the Court did not believe certain portion of the evidence of a certain witness it cannot lead to the summary rejection of the entire prosecution case. If such an approach is adopted it would lead to most undesirable and unsavoury results and the criminal administration of justice would become a mockery. There is no rule of law that if some accused are acquitted evidence regarding others should automatically be discarded. What is required of the Court is to subject such evidence to very close scrutiny. In *Sat Kumar v. State of Haryana AIR 1974 SC 294 : 1974 Cri LJ 345* the Supreme Court held thus (at page 348 of Cri LJ) :

There is no rule of law that if the court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. It will, however, call for a closer scrutiny of the evidence and the court must feel assured that it is safe to rely upon the witness for the conviction of the remaining accused.

So long as the evidence before the Court is not inextricably intertwined and the court can come to its own conclusion on the basis of the evidence against certain accused it cannot be held that merely because some of the accused were acquitted remaining others cannot be convicted. In *Amir Hussain v. State of U.P. AIR 1975 SC 2211 : 1975 Cri LJ 1874 : 1975 (4) SCC 247* the Supreme Court held that acquittal of co-accused would not vitiate the conviction of another in case the evidence adduced against him is found to be satisfactory and convincing.

9. Another contention is that the Sessions Judge was not justified in finding the appellant guilty of the murder charge in view of the very prosecution case that both A-1 and A-2 assaulted the deceased and as there is no evidence as to which of the injury caused by A-1 proved fatal. There is no merit in the above submission as the evidence of P.Ws. 1 and 4 clearly shows that it was A-1 who inflicted the cut injury on the neck of the deceased. That injury is described as No. 1 in the postmortem certificate. P.W. 14 who conducted autopsy stated that injuries 1, 5, 10 and 17 are fatal. As the evidence of P.Ws. 1 and 4 shows that injury number 1 which is found on the neck of the deceased was caused by A-1 and as it proved to be fatal there is considerable force in the contention of the Public Prosecutor that notwithstanding the fact that A-2 was acquitted there is clear evidence that the appellant had caused the fatal injury on the deceased. Appellant has used M.O.1 which is a formidable weapon to cause injury No. 1. There is categorical evidence that A-1 had caused injury No. 1 on the neck of the deceased with M.O. 1 which was sufficient to cause death in the ordinary course of nature. Injury No. 1 in the postmortem certificate is an incised wound 9 x 4 cms, obliquely placed on the right side of neck, the upper end being 3 c.m. below the right ear lobule; the muscles and the vessels underneath were severed; the lower end of the wound was sharp and the upper end blunt. As P.W. 14 has stated that injury No. 1 is a fatal one and as there is the evidence of P.Ws. 1 and 4 that it was caused by the appellant there is no merit in the defence contention that once A-2 has been acquitted A-1 cannot be convicted on the same set of evidence. As already pointed out, even without invoking the aid of Section 34 it is possible to find the appellant guilty Under Section 302 as he caused the fatal injury on the vital part of the body of the deceased.

10. Another contention is that the first information statement is a concocted one and it came into existence only on 23-4-1986 and that too after the inquest report. Apart from that mere assertion there is no evidence in support of the same. When the investigating officer was examined before the Court no such suggestion was put to him. To P.W. 15 who recorded the first information statement not even a faint suggestion was made to that effect. In *Zahoor v. State of U.P.* 1991 Cri. LJ 56 : AIR 1991 SC 40 the Supreme Court held that the delay in filing the first information report by itself is not sufficient to reject the prosecution case unless there are clear indications of fabrication. As there is total absence of evidence to show that the first information report is concocted the challenge against it is totally unwarranted.

On going through the entire evidence we hold that the Sessions Judge was justified in finding the appellant guilty Under Section 302 of the I.P.C. and sentencing him to imprisonment for life. We find no reason to interfere with the conviction and sentence. The Appeal is dismissed.

11. After pronouncing the judgment counsel for the appellant prayed for leave to appeal before the Supreme Court. We do not consider it as a fit case where leave to appeal to the Supreme Court is to be granted. Leave refused.

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