

State of Kerala Vs. Sanku

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Court : Kerala

Decided On : Jan-14-1987

Reported in : 1988CriLJ1377

Judge : M. Fathima Beevi and; K.G. Balkrishnan, JJ.

Appellant : State of Kerala

Respondent : Sanku

Judgement :

M. Fathima Beevi, J.

1. The appeal by the State is directed against the order of acquittal of the respondent who was tried on charge of murder for causing the death of one Suseela by administering poison at about 4.30 P.M. on 4-12-1980. Suseela 15 year old unmarried daughter of P.W. 1 Krishnan was seen vomiting. She was rushed to the hospital There she died at about 7.30 P.M. P.W. 1 reported a case of suicide by consuming poison. P.W. 12, the Sub-Inspector of Police, on recording the statement of P.W.1, registered a case of 'unnatural death'. The inquest on the dead body was held on 5-12-1980. P.W. 11, the Doctor, conducted the autopsy and certified in Ext. P-9 that her uterus contained a male foetus. Viscera was sent for chemical analysis. Ext. P-10 report of the chemical examiner showed that a poisonous organochloro compound along with ethyl alcohol was detected in the stomach, intestine, liver etc. P.W. 11 who reserved the opinion as to cause of

death pending result of the chemical examination confirmed that the death was due to poisoning. P.W. 12, in the course of further investigation arrested the respondent, Sanku, on 8-12-1980. On information furnished by the respondent recovery of M.O. 1 empty bottle from the estate near the house of P.W. 1 was effected. Final report was laid against the respondent on the allegation that he had illicit intimacy with the deceased Suseela, her pregnancy was considered to be detrimental to his interest and thus motivated. He procured the poison Corobon 20 from the shop where P.Ws. 4 and 5 were employed and administered the poison to Suseela while they were in the estate near their house and thereby caused the death of Suseela. P.Ws : 2 and 3 were cited to prove that the deceased and the respondent were regular in the estate from where the empty bottle was recovered. The prosecution thus relied on circumstantial evidence in support of the charge against the respondent.

2. At the trial P.Ws. 1 to 14 were examined and Exts. P-1 to P-11 were proved. M.O. 1 was also identified. The respondent had only a simple denial of the charge. The learned trial Judge found that the prosecution has not proved the charge against the respondent beyond reasonable doubt and accordingly acquitted the respondent. Aggrieved by the order of acquittal the State has preferred the appeal.

3. In a case where the definite charge is that the accused caused the death of victim by administering poison, the prosecution has necessarily to establish in the absence of direct evidence the circumstances that the accused had a strong motive, that he had procured the poison in question had the opportunity to administer the same to the deceased and that the victim died of the particular poison. If there is failure on the part of the prosecution to establish any one of these essential elements, two irresistible inferences of guilt can be drawn and a conviction is not warranted. Vide *Ramgopal v. State of Maharashtra* : 1972 CriLJ473 .

4. The fact that Suseela died due to poisoning is a matter which should be established by cogent evidence. P.W. 11 who conducted the autopsy, after noting the condition reserved the opinion as to the cause of death in Ext. P-9. Ext. P-10 certificate of chemical analysis has received on 8-12-1980. No further certificate is

seen to have been issued by P.W. 11. It is only in the witness box that P.W. 11 has confirmed that the cause of death was due to poisoning. P.W. 11 deposed that poison might have been consumed along with alcohol. The witness stated that a poisonous organochloro compound along with ethyl alcohol was detected. In the opinion of P.W. 11 powerful insecticide was consumed by the girl. The point of time at which the death occurs will depend upon the presence of food and quantity of poison consumed. P.W. 11 could not say whether 'coroban 20' is metallic, vegetable poison or animal poison. He could not say about the chemical composition of 'coroban 20'. He could not say whether coroban 20 and organochloro compound are one and the same. Apart from the fact that the deceased died due to poisoning and that it was- a kind of insecticide that had been consumed, the medical evidence is not positive that the poison consumed was coroban 20' as alleged by the prosecution.

5. The fact that the respondent had procured coroban 20 on 4-12-1980 was sought to be established by examining P.Ws. 4, 5 and 6. P.W. 6 denied having sold any empty bottle to the respondent. He did not identify M.O. 1 as the bottle the respondent had procured. M.O. 1 was recovered from an open compound. No trace of any poisonous substance was detected in the bottle. P.Ws. 4 and 5 claim that they are employed in the shop from where the respondent had purchased two ounces of coroban 20 on 4-12-1980. P.W. 4 stated that he was the salesman, that the purchase was made and the cash was collected by P.W. 5. P.W. 4 further stated that the respondent brought a bottle like M.O. 1 for collecting the insecticide. P.W. 6 stated that he had received the cash. According to P.Ws. 4 and 5 the purchase was made 2 or 3 days before the respondent was taken to the shop by the police. The witnesses, on cross-examination, pleaded their inability to recollect the particulars of all sales. Even if the witnesses were able to identify the respondent as one of the customers who had purchased the insecticide the evidence cannot advance the prosecution case so long as it is not established that what had been consumed by the victim is the identical commodity that was sold by P.Ws. 4 and 5.

6. The only other item of evidence which the prosecution tendered is the evidence of P.Ws. 2 and 3 to the effect that the deceased and the respondent were seen in

the afternoon of 4-12-1980 near the estate. While P.W. 2 deposed that he had seen Suseela and Sanku emerging from the estate and proceeding in opposite direction at about 4 P.M. P.W. 3 who is said to have been in the company of P.W. 2 had given a contradictory version that Suseela and Sanku were seen at different point of time at an interval of half an hour and they were seen going in opposite directions. P.W. 3 was treated hostile. His evidence which does not support the version of P.W. 2 is also not helpful to the prosecution. There is no conclusive evidence that they were together at a place at or about 4 P.M. or at that time the respondent had in his possession any poison or that he had the occasion to administer the poison or persuade the deceased to consume the poison. If the prosecution has succeeded in establishing that the respondent was responsible for the pregnancy of Suseela by showing that he had been intimate with the girl and had access to her place and was thus motivated in either terminating the pregnancy or doing away with the girl to save his reputation and honour, that would have been a strong circumstance in favour of the prosecution. There had been no whisper in Ext. P-1, the report by P.W. 1 about any such relationship. Even when examined P.W. 1 does not assert the fact that the respondent had been on intimate terms with his daughter. The respondent happens to be a nephew of P.W. 1. P.W. 1 has no direct information that he used to visit the house. The best witness to speak on that aspect was the wife of P.W. 1. She was not examined. It would have been possible to prove at least through the neighbours that there had been occasion for the respondent to have access to the deceased. No attempt has been made by the prosecution to tender such material evidence. The motive attributed to the respondent has not been proved by any legal evidence. The fact that the deceased a teenaged unmarried girl was pregnant would indicate a stronger motive for the deceased to commit suicide. The death of Suseela though unfortunate is not proved to be a case of homicide. The order of acquittal has, therefore, to be upheld

The appeal is accordingly dismissed