Ummer Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/731722

Court : Kerala

Decided On : Apr-04-2000

Reported in : 2000CriLJ3438

Judge : Arijit Pasayat, C.J. and; K.S. Radhakrishnan, J.

Acts : Evidence Act, 1872 - Sections 103; Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Criminal Appeal No. 854 of 1998

Appellant : Ummer

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor and; P.N. Sukumaran, Adv.

Advocate for Pet/Ap. : Sajan Mannaly, Adv.

Disposition : Appeal dismissed

Judgement :

Arijit Pasayat, C.J.

1. This appeal is by Ummer (hereinafter referred to as accused) challenging conviction made and sentence to undergo imprisonment for life awarded by learned Sessions Judge, Palakkad for an offence punishable under Section 302 of

the Indian Penal Code, 1860 (in short, the Code).

2. Prosecution case, in brief, is as follows : On 31-3-1995, at about 12 noon, at Alanallur-I Village, Vazhangalli Desom, on southern side of Alanallur-Vettathur public road, accused inflicted stab injuries with a dagger on various parts of the body of his elder brother Aboobacker (hereinafter referred to as deceased) allegedly on account of property dispute. At that time, deceased was waiting for the bus bound for Vettathur side. While he was under treatment at Al Shifa Hospital at Perintalmanna, he breathed his last at about 1-45 p.m. on the same day. P.W. 1 gave first information to the police, on the basis of which Crime No. 66 of 1995 was registered. After investigation, charge sheet was filed.

3. During trial, 15 witnesses were examined to further prosecution case. Accused did not choose to examine any witness. V. Velayudhan (CW 1) was examined a Court witness. PW. 1 Abdul Nassar, PW. 2 Sainudeen and PW. 3 Kunhumuhammed alias Mani were claimed to be eye-witnesses to the incident. Placing reliance on the evidence of PWs. 1 to 3 and other connected evidence, learned trial Judge found the accused guilty and convicted the accused.

4. In support of the appeal, learned counsel submitted that on account of the faulty investigation, the real culprit could not be found out and the accused has been implicated at the instigation of the wife and other relatives of the deceased. There was considerable delay in lodging the First Information Report. PWs. 1 to 3 were termed as hired witnesses, whose versions do not have credibility. According to him, ocular versions of P.Ws. 1 to 3 are inconsistent with the medical evidence. It is highlighted that there were certain suspicious circumstances to affect the credibility of PW. 1's version. He did not accompany the deceased and he did not think it even proper to inform relatives. It is submitted that when there was a well-equipped Government Hospital at Perinytalmanna, the fact that deceased was taken to a private hospital is a suspicious circumstance.

5. Learned counsel for the State, on the other hand, submitted that the circumstances highlighted by learned counsel for accused are too brittle to upset the conclusive evidence adduced by prosecution to establish its case.

6. First question to be dealt with is whether there was unexplained delay in lodging first information statement and its effect on the credibility of the prosecution version. It is to be noted that the delay if caused on account of saving the life of the deceased is not fatal. This position was illuminatingly stated by Apex court in Harpal Singh v. Devinder Singh AIR 1997 SC 2914 : (1997 Cri LJ 3561). It is further to be noted that even though intimation was given from A-1 Shifa Hospital to the police by the doctor, intimation also reached from Perintalmanna Police Station at the Nattukal Police Station. PW 1 reached the Police Station to inform about the incident and on getting information from the doctor and the statement given by PW. 1, crime was registered. P.W. 13 took up the investigation on the same day. Therefore, it cannot be said that the investigation suffered from any lethargic inaction or that there was delay in lodging FIR.

7. Evidence of PWs. 1 to 3 have been attacked on the ground that they are interested and chance witnesses. It is to be noted that in view of the accepted position that these witnesses reside near the place of occurrence, their presence at the place of occurrence cannot be doubted. They are not related to the deceased. On the contrary, as noted supra, accused is the brother of deceased. It is brought on record that PW. 2 is a class-mate of accused. That being the position, there is no substance in the plea that evidence of P.Ws. 1 to 3 is untrustworthy.

8. So far as discrepancy between ocular and medical evidence is concerned, it is well-settled law that ocular evidence, if credible, has to be given preference to medical evidence. It is to be noted that there were as many as 15 injuries on the body of deceased. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses account which has to be rested independently and not treated as the 'variable' keeping the medical evidence as 'constant'. It is trite that where the eye-witnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eye-witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any

other evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the 'credit' of the witnesses; their performance in the witness-box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. This position was succinctly stated by Apex Court in State of U.P. v. Krishna Gopal AIR 1988 SC 2154 : (1989 Cri LJ 288).

9. Plea of alibi was pressed into service. But the evidence of PW. 15 has been highlighted to show that the patient meaning the accused was not seen in the ward since 10-00 a.m. on 31-3-1995. That information was recorded by the Duty Nurse, as borne out from the case sheet. He was also not seen in the hospital at 11-10 a.m. at the time of inspection. Though elaborate cross-examination was made, nothing could be elicited from him to discard the factual conclusion available that accused was not in the hospital at the time claimed. A plea of alibi has to be established by the accused. This is clear from illustration to Section 103 of Indian Evidence Act, 1872. In the instant case, accused has clearly failed to establish his plea.

10. Above being the position, we find no merit in the appeal and the same is dismissed.