State Vs. Kachara Sada

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Court : Gujarat

Decided On : Aug-05-1960

Reported in : AIR1961Guj20; 1961CriLJ255; (1960)GLR103

Judge : Shelat and; Raju, JJ.

Acts : Evidence Act, 1872 - Sections 134; Code of Criminal Procedure (CrPC) , 1898 - Sections 342, 364, 364(1) and 364(2); Indian Penal Code (IPC), 1860 - Sections 397

Appeal No. : Confirmation Case No. 1 of 1960 (with Criminal Appeal No. 282 of 1960)

Appellant : State

Respondent : Kachara Sada

Advocate for Def. : V.J. Desai, Adv.

Advocate for Pet/Ap. : B.R. Sompura, Asst. Govt. Pleader

Judgement :

Raju, J.

1. This Judgment will dispose of Confirmation case No. 1 of 1960 and Criminal Appeal No. 282 of 1960 arising out of the judgment of the learned Sessions Judge

at Mehsana, convicting the appellant Kachara Sada Dhed-Harijan under Section 302, I. P. Code, for having murdered Bai Mangu aged 17 years, wife of one Ishwar and under Sections 394 and 397 I. P. Code, for having robbed her of her ornaments and for having used a deadly weapon while committing robbery.

2-9. It is contended that Keshavlal is the only eye-witness, who, according to the prosecution,had seen the appellant at the scene of offence and that when the prosecution case depends on the evidence of only one eye-witness, his evidence requires to be corroborated, and for this purpose the learned counsel for the appellant relies on a ruling reported in (S) AIR 1956 SC 379, Vemireddy Satyanarayan Reddy v. State of Hyderabad.

10-12. This case is distinguishable from the present case, because in that case a person who had seen the perpetrator of a crime had not given information of it to any one else, and it was held that such a person can be regarded in law as an accomplice. But, in the instant case Keshavlal, who had seen the crime at about 11-30 a.m., went immediately to the house of Aminchand and had given information to Bai Pashi. The remarks of Their Lordships in this case, therefore do not apply to the facts of the present case. The principles relating to corroboration have been laid down by Their Lordships of the Supreme Court in Vadi-velu Thevar v. State of Madras, (1957) SCR 981 at p. 991: ((S) AIR 1957 SC 614 at p. 618), as follows :

'The following propositions may be safely stated as firmly established:

(1) As a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, Courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example, in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must, depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

13-20. At this stage it would be convenient to deal with the contentions of the learned counsel for the appellant that the answers given by the appellant in his examination at the Sessions trial cannot be taken into consideration for two reasons, firstly because in the certificate attached to the examination of the appellant, it has not been stated that the questions and answers had been read over to the appellant; and secondly because the learned Judge put lengthy questions sometimes covering sixteen to 17 lines of the printed page and this has caused prejudice to the accused. It is also contended that even in the case of the evidence of witnesses, the Court records a certificate that the deposition had been read over to the witness. It is therefore urged that in the case of the examination of an accused, such a certificate is, all the more, necessary. Section 360, Cri. P. Code, requires that the evidence of each witness should be read over to him in the presence of the accused or of his pleader,if he appears by pleader. Similarly Section 364, Cr. P. C., requires that the whole of the examination of an accused person including every question put to him and every answer given by him shall be recorded in full and such record shall be shown or read over to him or wherever necessary the answer shall be interpreted to him in a language which he understands. Sub-section (2) of Section 364, Cr. P. C., provides that when the whole is made conformable to what he declared is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused. Although Sub-section (1) of Section 364, Cr. P. C., requires that the record of the examination of an accused person should be shown or read over to him, the certificate referred to in Sub-section (2) does not require that this fact should be included in the certificate. Of course, there is no harm in including this fact also in the certificate and it would perhaps be advisable to do so. It is urged that as the certificate does not contain a statement that the record of the examination of the accused person was shown or

read over to the accused, the examination is vitiated and the record cannot be looked at. The notes of proceedings at the Sessions trial are signed by the learned Sessions Judge, and the Rojnama for the date on which the accused was examined shows clearly that the examination of the accused was read and recorded. This is a sufficient compliance with the requirements of Section 364 of the Cr. P. Code. As the procedure of attaching a certificate to the examination of an accused person is to be followed under Sub-section (2) of Section 364, Criminal Procedure Code, It may be advisable to include a statement in the certificate that the record has been shown or read over to the accused person.

21. The next contention is that the mannerof the examination of the accused is most unsatisfactory and it caused serious prejudice to the accused. The examination of the accused by the learned Sessions Judge covers 10 printed pages. Some of the questions run into 17 to 18 printed lines. The length of questions appears to be due to the fact that several portions of the evidence of the witnesses are summarised and then the accused is asked whether he wished to say anything in relation to the evidence referred to in the question. No doubt, the examination of an accused person must be as complete as the law requires, but there appears to be some misunderstanding as to the scope of Section 342 of the Criminal Procedure Code. The relevant portion of this section reads as follows r

'342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage, of any inquiry or trial without previously warning the accused put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.'

It is therefore clear that the whole purpose of the examination of an accused person is to enable him to explain any circumstances appearing in the evidence against him. For this purpose, the Court may, at any stage of an inquiry or trial, put such questions to him as the Court considers necessary. It is also provided that for the aforesaid purpose, namely for enabling the accused to explain any circumstance appearing in the evidence against him, the Court shall question him

generally after the evidence for the prosecution has been examined and before he is called for his defence. It is therefore clear that the sole purpose of the examination of an accused person is to enable him to explain any circumstances appearing in the evidence against him. If the prosecution witnesses have deposed to any incriminating circumstances from which the guilt of the accused can be inferred, the accused person must have been given an opportunity to explain the incriminating circumstances, because in the case of circumstantial evidence if the circumstances are open to a reasonable explanation consistent with the innocence of an accused person, he is entitled to an acquittal. But, sometimes the prosecution witnesses give evidence which does not relate to incriminating circumstances. For instance, in this case Bai Pashi has stated that Bai Mangu had come to her house 12 days prior to the date of the offence and that she had sent Prahtad to fetch Bai Mangu home. Again a witness might say that he had got prepared certain ornaments for the father of the deceased. No doubt these facts are relevant, but they are not incriminating circumstances, and in relation to such points it is impossible for an accused person to offer any explanation. It is not necessary that important portions of the entire evidence given by a witness should be put to the accused person in his examination and that he should be questioned about every important statement made by a witness in the witness box. It is only the portions of the evidence of the witness on which the accused person can give an explanation that should be put to the accused in his examination. Of course, the accused should be asked whether he wishes to say anything about every one of the prosecution witnesses. If a prosecution witness has not given evidence of any incriminating circumstance requiring explanation of the accused, portions of the evidence of such a witness need not be put to the accused in his examination.

22-23. Moreover, questions should be put in such manner as to be easily understandable and they should not be lengthy. Long questions and questions which are omnibus or composite or complicated should not be put. Referring to 10 to 20 statements made by a witness and asking the accused whether the evidence is true is also not proper. It may be that when the accused answered in the affirmative he was referring to only the last portion of the question put to him. If to such a question the accused answers 'yes', it would not be proper to interpret the answer as meaning that the entire evidence given by the witness and put in the

question is true. Then such a lengthy question is put and the answer is given in the affirmative, such answer should not be considered in fairness to theaccused persons. We do not propose to consider such answers whenever the question is lengthy.

24-26. We are therefore satisfied that the guilt of the appellant is proved beyond reasonable doubt in respect of the offence of causing the death of Bai Mangu notwithstanding the fact that the name of the assassin was not mentioned in the first information report. The evidence proving the guilt of the accused consists of the evidence of Keshavlal, the evidence of Prahlad, the corroborative evidence of Bai Pashi and Bai Rai and the circumstantial evidence relating to the possession of the ornaments of the deceased immediately after the death of Bai Mangu, their disposal by the appellant either by way of pledge or sale and the finding of human blood on the sweater (Art. 15) which was worn by the appellant on the morning in question. There are also the additional circumstances that the accused had absconded after 1 p.m. on the day in question and that the appellant stayed at various hotels under assumed names. No doubt, the last two circumstances do not have much value, but even if these circumstances are excluded, the other circumstantial evidence is sufficient to justify the inference that it was the accused only and none else who had committed the murder of Bai Mangu. As already observed, we have considered only those answers given by the accused in his examination at the Sessions trial about which there is no ambiguity. We, therefore, confirm the conviction of the appellant under Section 302, Indian Penal Code, for the murder of Bai Mangu. But, as regards the offence under Section 397, Indian Penal Code, the prosecution, has not led evidence to show that Bai Mangu was alive when the ornaments were removed from her body. For a conviction under Section 397, I. P. Code, a deadly weapon must be used or grievous hurt caused or an attempt to cause death or grievous hurt must be made at the time of committing robbery or dacoity, and not before the commission of the robbery or dacoity. Therefore we acquit the accused under Section 397 I. P. Code.