

Mohamad Rafi Vs. Jayakumar and Others

Mohamad Rafi Vs. Jayakumar and Others

SooperKanoon Citation : sooperkanoon.com/788115

Court : Chennai

Decided On : Mar-28-1995

Reported in : 1995CriLJ2941

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 324; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161

Appeal No. : Cri.L.R.R. Case No. 31 of 1990

Appellant : Mohamad Rafi

Respondent : Jayakumar and Others

Advocate for Def. : Mr. P. Govindaraju C.A. (Crl), Adv.

Advocate for Pet/Ap. : Mrs. Ambika for ;Mrs. S. Manjula, Adv.

Judgement :

ORDER

1. This private revision is against the order of acquittal passed by the learned I Additional Sessions Judge, Coimbatore, in S.C. No. 85 of 1989, for the offences under Sections 302 read with Sections 34 and 324 Indian Penal Code. The petitioner was PW1 before the lower Court.

2. The prosecution case is as follows :-

On the night of 24-6-1988, PW1, his brother deceased Nazar, PWs 2 to 4 and two other persons, all belonging to Kuniamuthur, had been to see the Second show (night show) film in Aruna Theatre. By about 11.20 P.M., during the interval time, PW1 and his brother deceased Nazar went to the toilet room situated outside the theatre near the canteen, followed by their other friends at some distance. These two respondents/accused were coming from the opposite side and the first respondent happened to dash against PW1, on account of which there was wordy quarrel between them. PW1 slapped the first respondent on his cheeks twice and immediately the first respondent whipped out the knife M.O. 4 from his waist and attempted to stab PW1. Immediately deceased Nazar intervened and obstructed. The first respondent got enraged at his intervention, stabbed at his right side abdomen and near the arm pit. The second respondent also beat Nazar with his M.O. 5 waist belt. PW1 attempted to catch the second respondent and at that time, the first respondent stabbed PW1 also on his back. Immediately, both the respondents ran towards the main gate of the theatre and scaling over the wall, they escaped with the knife. PWs 2 to 4 and the watchman of the theatre PW5 witnessed the occurrence. As the condition of Nazar was very serious, immediately, he was taken to Coimbatore Medical College Hospital in an autorickshaw. PW1 was taken in tempo vehicle to the same hospital. Both of them were admitted in the hospital but by 12.10 A.M. Midnight, Nazar was dead. Message was given to the out post Police Station, who conveyed it to Pothanur Police Station and PW15, the Sub-Inspector of Police attached to Pothanur Police Station came to the Medical College Hospital on 25-6-1988 at 8.20 A.M. and recorded the statement Ex. P1 from PW1 and PW16, the Inspector of Police, Pothanur, took up the investigation. He arrested the respondents on 6-7-1988 and on their confession recovered MO4 knife and MO5 belt.

3. To prove the prosecution case, 16 witnesses were examined of whom PWs 1 to 5 have spoken about the occurrence and PWs 6 and 7 have stated that they were able to see these respondents when they were running from the scene of occurrence with a knife in the hands of the first respondent. The learned Additional Sessions Judge, after analysing the evidence of these witnesses, has found that the prosecution has not established the guilt of these respondents beyond reasonable doubt and therefore acquitted them.

4. The learned counsel for the petitioners Mrs. Ambika argued that the learned trial Judge has completely failed to consider the evidence of the eye-witnesses PWs 1 to 5 but has given more importance to the unimportant features and circumstances and therefore the Judgment of the learned trial Judge is not according to law, on account of which the same has to be set aside for the re-trial of the case.

5. The learned counsel Mrs. Ambika argued that PW1 who is also an injured person in the occurrence, has spoken about the occurrence identifying the accused persons who were the assailants and his evidence also is corroborated by the testimonies of PWs 2 to 5 and in addition to that, PW 6 and the canteen owner PW7, who is having the canteen close to the place of occurrence have identified these respondents as the persons who ran with the weapon in their hands soon after the occurrence to escape from the scene of occurrence and the learned trial Judge has rejected the testimony of these witnesses without valid reasons and there is no reason to disbelieve the evidence of PW1 the victim of the occurrence and hence the order of acquittal is liable to be set aside. The learned counsel further argued that for the reason that PWs 2 to 4 belong to the same village to which PW1 and the deceased belonged to and that they all belong to the same religion, discarding their testimony by the lower Court, is not unreasonable and when the evidence is that all these persons who are friends went together to see the film, naturally they might have been in the place of occurrence together when the deceased and PW1 were attacked and therefore their evidence cannot be rejected on the ground that they belonged to the same religion and same village.

6. I went through the entire judgment and I find that the learned I Additional Sessions Judge has given sound reasons for not accepting the testimonies of PWs 1 to 7. He has also considered certain other circumstances creating suspicion in his mind, as to the truth of the prosecution version.

7. It is the defence version that there was clash within the cinema theatre between two groups and at that time, the deceased Nazar and PW1 were attacked by some unknown persons in the group for which these respondents have been implicated. Even according to the prosecution case, the occurrence took place within the

compound of the theatre in the open space near the toilet rooms and the canteen, run by PW7. But PW7 has not spoken about the assault on PW1 and the deceased. He is able to identify these respondents as the persons who ran towards the main gate with knife in the hand of the first respondent. The evidence of PW6 also is to that effect only. The learned trial Judge would observe that when the occurrence had taken place during the interval time, most of the persons in the theatre would have come out to go to the toilet room and they also could have witnessed this occurrence because the occurrence had taken place on the way to the toilet room near the canteen, but the eye witnesses to the occurrence are only PWs 1 to 5 of whom PWs 2 to 4 are the close friends of PW1 and therefore the learned Additional Sessions Judge has commented upon for not examining any other independent witness except PW5. He has thoroughly considered the evidence of PW5, who has spoken about the occurrence, and according to the learned Judge PW5 could not have witnessed the occurrence. In the evidence, PW5 has admitted that he was the watchman for the southern gate and in his Section 161 Code of Criminal Procedure statement, he has stated that he was standing near the door of the southern entrance. From the sketch Ex. P23, the place of occurrence, cannot be seen from the southern entrance. PW16, the Investigating Officer also has accepted this fact. Therefore, the learned Judge has ruled out possibility of PW5 witnessing the occurrence. Nothing can be said against this finding of the learned trial Judge because in Section 161 statement of PW5 he has stated that he was able to witness the occurrence only from the southern entrance of the theatre. Therefore excluding the evidence of PW5, the other witnesses to the occurrence are PWs 1 to 4, who are close friends to each other and all of them belong to the same place and religion. They all together came to the cinema theatre as they happened to be friends. Therefore, the learned trial Judge has observed that when so many people could have witnessed this occurrence as it was interval time, it created suspicion in his mind for the non-examination of the other independent witnesses.

8. So far as the evidence of PWs 6 and 7 are concerned, they have simply stated that they saw these respondents running towards the main gate and their escapement by scaling over the wall. It is not the evidence of these two witnesses that the respondents were known to them already. As it was a night time and when

they were running from the scene of occurrence, these two witnesses could have seen them only in the flash of the moment. Therefore, unless any identification parade was conducted to ascertain their identify, as the occurrence took place during the night time, it is doubtful whether their testimony of identifying these two respondents while running from the the scene of occurrence, could be true. Further, the conduct of PWs 6 and 7 also have been commented by the learned Sessions Judge. Even though PW6 would state that he saw the accused running and that he heard that PW1 and Nazar were stabbed by them, he did not even go near these victims lying with bleeding injuries. PW7 in his evidence has stated that one Cycle was left unclaimed in the cycle stand and he brought that cycle to his canteen for safe custody wheareas PW16 the Investigating Officer would state that the unclaimed cycle was kept only in the cycle stand itself. Therefore, considering the inconsistencies in their testimony, the learned trial Judge was not prepared to accept their testimony. Further these respondents also might have been in the crowd and might have run away for certain other reasons also. When PWs 6 and 7 were not able to say that these respondents were the assialants of the deceased and PW1, their testimony cannot connect the respondents with the crime.

9. With regard to the injuries on the deceased persons, he had two stab injuries namely one in the right arm pit and another one in the right abdomen close to the 7th rib. Apart from these two stab injuries, the deceased had abrasions on his front side neck, right upper arm and also left flank near the 4th rib. It is the prosecution case that these lacerations were caused on account of the beating with belt MO5 by the second respondent. But PW12, the doctor, has given his opinion that these lacerations would not have been caused by beating with waist belt, the learned trial Judge felt that these lacerations on the body of the deceased could have been caused in some other manner, which has not been spoken to by the prosecution witnesses and the entire truth was not placed before the Court.

10. Another important aspect noted by the learned I Additional Sessions Judge is that the deceased had drunk arrack at the time of the occurrence as alcohol was found in his stomach in the forensic examination.

11. Apart from these circumstances, the most serious suspicions in the prosecution case have come out on account of the long delay in registering the case and also the suppression of the earliest statements to the police. Even though the occurrence took place at 11.20 P.M. and the place of occurrence is only just 3 kms. from Pothanur Police Station, the complaint was registered only on the next day at 09.00 A.M. The learned Sessions Judge has observed that when PWs 2 to 4 and two others had accompanied PW1 and the deceased, one of them could have gone to the Police Station which is at a distance of 3 kms, immediately after the occurrence or at least after the death of Nazar by 12.10 A.M. to inform the police about the attack on these two persons. But only on the next day morning by 8.10 A.M., the statement Ex. P1 has been recorded. Therefore, the delay of more than 9 hours has been found to be a suspicious circumstance by the learned trial Judge, in the prosecution case. The most significant factors are, the evidence, disclosing the recording of two statements from PW 1 before Ex. P1 was recorded PW5 has stated in his evidence that soon after the occurrence, the Manager of the cinema theatre rang up to Pothanur Police Station, which is only about 3 kms. distance and 2 or 3 policeman who came to the cinema theatre enquired PW1 and also PW5 and thereafter recording the statement of PW1, they also obtained his signature. This statement of PW2 cannot be lightly ignored because prosecution case is that he was present in the scene of occurrence and he accompanied PW1 to the Medical College Hospital. This witness himself would admit that soon after the occurrence, which took place at 11.20 P.M., the police came to the cinema theatre examined himself and also PW1 and recorded the statement also in which the signature of PW1 has obtained. This statement has not been registered by the police or placed before the Court. There is another piece of evidence coming from the mouth of PW1 himself and that is the recording of his statement by 1.30 midnight on the same night after the death of his brother Nazar. PW1 has narrated that when he was admitted in Coimbatore Medical College Hospital at about 1.30 midnight, the police men who came there enquired him and recorded the statement and his signature also was obtained in the statement. This statement also has not been registered by the police or placed before the Court. Therefore, the learned Sessions Judge found that there must be some reason for suppressing these two statements made by PW1 on the night

itself and suppressing those statements, another statement was recorded on the next day morning at about 8.20 A.M., which was later on recorded as Ex. P1 complaint. When there is clear evidence from PWs 1 and 2 that the statements were already recorded even before Ex. P1 and those statements are also signed by PW1, Ex. P1 cannot be treated as the First Information Report and there was no reason for suppressing those statements unless the prosecution had found that the contents therein were not helpful to the prosecution. The learned Sessions Judge therefore has viewed that Ex. P1 should have been prepared subsequently to suit the prosecution case making alterations. No one can say that this view taken by the learned Sessions Judge is improper or erroneous.

12. There is one other piece of evidence also available from the statement made by PW2 before the Investigating Officer. PW2 seems to have stated to the Investigating Officer at the time of investigation that in the cinema theatre, there was quarrel between two groups of persons and thereafter they were attacked. This information found in the Section 161 Code of Criminal Procedure statement to the Investigating Officer is in conformity with the defence theory that in the fight between two groups of persons, PW1 and his brother Nazar were attacked by some unidentified persons but the accused were wrongly implicated in the offence.

13. The learned trial Judge has referred to the inconsistency in the evidence between PW9 and the Investigating Officer PW16 with regard to the recovery of MO4 knife, added to the fact that this knife had no blood stains as found by the Forensic Expert. Any how, the unexplained lacerations on the deceased person in the proper manner, the non-examination of the independent witnesses and the suppression of two statements from PW1 on the same night and the inadmissibility of Ex. P1 because of its existence subsequent to the earliest statements, naturally lead to the great suspicion in the prosecution case as to whether the occurrence could have happened in the manner as stated by the prosecution witnesses or as suggested by the defence counsel that in the group clash between two groups in the cinema theatre. PW1 and his brother Nazar could have been attacked by unidentified persons. When such doubts are open, the learned Sessions Judge, having given the benefit of doubt to the accused, cannot be said to the unreasonable or manifest illegality in the order. The Courts have taken the

consistent view that in a private revision unless the manifest illegality or the perverse approach of the trial Court is not brought out, the revisional Court cannot interfere with the order of acquittal. Applying this dictum, this Court cannot disturb the findings of the learned I Additional Sessions Judge, Coimbatore and the result will be the dismissal of revision.

14. In the result, the revision is dismissed.

15. Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com