

Devendra Prasad @ Devendra Pratap Vs. State of Kerala

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Court : Kerala

Decided On : Nov-05-2009

Judge : K. Balakrishnan Nair and; P. Bhavadasan, JJ.

Acts : Evidence Act - Sections 8 and 27; ;Indian Penal Code (IPC) - Sections 120B and 302; ;Code of Criminal Procedure (CrPC) - Sections 232 and 313

Appeal No. : Crl. A. No. 2032 of 2005

Appellant : Devendra Prasad @ Devendra Pratap

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Grashious Kuriakose, Adv.

Disposition : Appeal allowed

Judgement :

P. Bhavadasan, J.

1. An uncle and a nephew were sought to be prosecuted for the offences punishable under Sections 302 and 120B of the Indian Penal Code. The uncle absconded and the nephew namely, Devendra Prasad @ Devendra Prathap alone stood trial. He was found guilty of the offence punishable under Section 302 IPC.

He was therefore convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-, in default of which, he had to suffer rigorous imprisonment for six months. If the fine amount is paid, it shall be paid over to the legal heirs of the deceased as compensation. The court below acquitted him of the offence punishable under Section 120B IPC.

2. The deceased, namely, Bijay Kumar Misra was working as Work Supervisor of M/s. P.K. Steels, Kozhikode. P.W.1 was working as the Safety Supervisor. On 9.2.2003 his shift was from 5 p.m. till 10.30 in the next day. On 10.2.2003 while P.W.1 along with Sri. Sreedharan had gone for a stroll in the factory premises as usual, they went towards the rolling unit. They found Bijay Kumar Misra sitting in the security room. They returned about half an hour thereafter. P.W.1 went to the safety officers room and Sreedharan to the security room. He found bleeding unconscious Bijay Kumar Misra sitting in the chair. There was pool of blood on the floor. He summoned a few employees of the Company and removed the injured to MIMS Hospital at Calicut. By about 3.40 a.m. he was pronounced dead. The Company officers were informed. P.W.1 laid Ext. P1 First Information Statement before Nallalam Police Station. P.W. 18, who was then functioning as Sub Inspector of Police in that Station recorded the First Information Statement given by P.W.1 and on that basis registered Crime No. 67 of 2003 as per Ext. P1(a) First Information Report.

3. P.W. 19 took over investigation on 10.2.2003. At about 8 a.m. he went to the hospital and prepared Ext. P2 inquest report. He had the body send for autopsy. Autopsy was conducted by P.W. 14, who furnished Ext. P13 report. In the meanwhile, by about 12.30 in the noon P.W. 19 went to the scene of occurrence and prepared Ext. P6 scene mahazar. He seized the articles found at the place of incident. During investigation P.W. 19 claims to have come to know that it was the accused who was involved in the incident and they were arrested on 10.2.2003. Based on the confession statement furnished by the accused, M.O. 3 was seized. As per Ext. P3 mahazar, M.Os. 1 and 2, the dress worn by the first accused was seized. He recorded the statements of witnesses, completed investigation and laid the charge before court.

4. JFCM-V, Kozhikode, before whom final report was laid took cognizance of the offences. On appearance of the accused before the said court, all legal formalities were complied with. The learned Magistrate found that the offence is one exclusively triable by a court of Sessions and accordingly committed the case to Sessions Court, Kozhikode. The said court made over the case to IInd Additional Sessions Court, Kozhikode for trial and disposal.

5. Before the latter court only the first accused appeared. After hearing both sides, charges were framed against the accused. To the charges the accused pleaded not guilty and claimed to be tried. The prosecution therefore examined P.Ws. 1 to 21 and marked Exts.P1 to P21. MOs. 1 to 6 were identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 of the Criminal Procedure Code. He denied all the incriminating circumstances brought out against him and pointed out that he was innocent. Presumably finding that the accused could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence. On a consideration of the materials before it, the court below came to the conclusion that the prosecution has succeeded in establishing the case against the accused and accordingly convicted and sentenced him as already mentioned. The said conviction and sentence are assailed in this appeal.

6. The question that arises for consideration is whether the court below is justified in finding the accused guilty.

7. That Bijay Kumar Misra was working in P.K. Steel Company and that he died as a result of the injury suffered by him are facts not in dispute. Ext. P2 inquest report and Ext. P13 postmortem report show the nature of the injuries suffered by him. P.W. 14 in Ext. P13 has detailed the autopsy findings. The opinion is that the victim died due to blunt injuries, which are shown as injury Nos. 1, 3 and 5 in Ext. P13 report. In fact, there is not much controversy in this regard.

8. The crucial question is whether the evidence available on record is sufficient to come to the conclusion that it was the accused who has committed the gruesome act. The court below has relied on the extra judicial confession said to have been made by the accused and also the recovery based on a statement admissible

under Section 27 of the Indian Evidence Act.

9. Learned Counsel Sri. Gracious Kuriakose, appearing on behalf of the appellant pointed out that the court below was not justified in holding that the accused was guilty. The so called extra judicial confession has no value in law. The learned Counsel pointed out that going by the evidence of some of the witnesses, the so called extra judicial confession said to have been made by the accused herein when Umesh, the uncle of the appellant was taken to the police station. He is stated to have declared that it was he who had done the act. Learned Counsel raised an argument that the statement would be deemed to be to the police officer and it is totally inadmissible in evidence. It was also contended that a declaration such as the one available in the case under no circumstances could be treated as an extra judicial confession. A close scrutiny of the evidence in the case, according to the learned Counsel would indicate that there is no uniformity or consistency in the prosecution evidence regarding the time, place and the manner in which the confession statement was made by the accused. As regards recovery falling within the ambit of Section 27 of the Act, learned Counsel drew attention of this Court to the fact that since the statement which led to the recovery do not include authorship of concealment, it cannot be taken aid of by the prosecution. According to learned Counsel there is no evidence whatsoever against the accused in the case to hold him guilty.

10. Per contra, learned Public Prosecutor submitted that the court below analysed the evidence in considerable detail and has found that the accused had made an extra judicial confession which had been spoken to by a number of witnesses and which has been accepted by the court below. There is no reason to discard the same. As regards the recovery under Section 27 of the Evidence Act is concerned, the learned Public Prosecutor pointed out that authorship of concealment is inherent in the statement and the statement suffers from no infirmities. At any rate, the learned Public Prosecutor pointed out that even assuming that the statement does not qualify to fall under Section 27 of the Act, the act of the accused in handing over the weapon is a conduct relevant under Section 8 of the Indian Evidence Act. The learned Public Prosecutor wound up by pointing out that no grounds are made out to interfere with the judgment of the court below.

11. It has to be said at the outset that the evidence is too thin in this case. All that the prosecution has relied on is the so called extra judicial confession statement said to have been made by the accused and the recovery based on the confession stated to have been made by the accused, admissible under Section 27 of the Evidence Act.

12. One shall not forget that Umesh is the uncle of the appellant and it was he who had brought him from his native place. He got him employed in the Company. The evidence disclose that there was bitterness between Umesh and the deceased. On the day of the incident, it is said that Umesh came for work drunk and the deceased prevented him from entering duty. Though initially he was prevented him from doing so, later in the night he was allowed to join duty. Annoyed by the said conduct of the victim, he was put to death.

13. Quite a few workers of the Company have been examined. P.W.1, as already stated has laid first information statement. The main anchor of the prosecution case is the extra judicial confession. It will be useful to examine that aspect first. Going by the evidence adduced by the prosecution, what is stated is that when the matter was informed to the police, they came to the Company and first took steps to detain Umesh by taking him in the police jeep. At that time, the accused is said to have yelled out that it was he who had beaten the deceased. It was this act of the accused that is said to be the extra judicial confession.

14. In the case of extra judicial confession, it is well settled that the persons who speak about the extra judicial confession should as far as possible use the same words uttered by the accused. In the case on hand there seems to be no circumstance, which would have compelled him to make an extra judicial confession. According to P.W.7, who is the Director of the Company, he had gone to the place hearing about the incident. While he was enquiring about the incident, he claims that the accused came and told him .

He says that at that time Contractor Unnikrishnan, Manager Nazer, Jebbar and Nawas were nearby and they too heard the same. He would say that when they were all standing outside the security room, the accused came and said that he had done it. It was later that police was informed and they had taken him to the

police station.

15. P.W. 8 is a contractor, who supplies labourers to the Company. He speaks about the incident in the previous night between Umesh and the deceased. He would also say that initially Umesh was prevented from joining duty, later he was allowed to do so. Hearing this incident, he had gone to the premises of the Company. When the Assistant Sub Inspector of Police had come and told that he was taking Umesh with him, this witness claims that then the appellant herein came and said'....'

16. P.W.10, who was the General Supervisor of the Company on the other hand would say that the officers of the Company came to the office and they handed over Umesh to the police. Then the appellant came and told the Managing Director of the Company that it was he who did the act. Then M.D asked him how did you do that? This witness claims that, then the accused told him that he hit the deceased with a rod.

17. It could thus be seen that there is no consistency or uniformity regarding the actual words alleged to have been used by the appellant and the time at which he made the confession. Even the words spoken by the accused earlier do not at all show that it was the accused who had beaten the deceased. There was no reason for him to do so also. The suggestion by the learned Counsel for the appellant that in a bid to save his uncle, the accused might have said so cannot be ruled out. One must recollect that it was his uncle who had brought him there and got him a job. It is also significant to notice that there is material contradiction regarding the time at which the declaration is alleged to have been made by the accused. Some of the witnesses would say that it was while the Sub Inspector was taking away Umesh that the declaration was made. Some of them say that it was before and some of them say that it was after that. In fact one of the witnesses go to say that after the declaration was made by the accused, the police was given information and they came and took him away. Whatever that be, the words said to have been used by the accused do not at all qualify to form an extra judicial confession.

18. Coming now the recoveries said to have been made admissible under Section 27 of the Indian Evidence Act, that too is slippery. The relevant sentence reads as

follows: Translated it should read as follows:

The rod was dropped. If you take me, I will show where it is.

It can at once be seen that the above sentences do not disclose the authorship of concealment. The words are capable of three interpretations.

They are:

- i) it was the accused, who had concealed the article or
- ii) he knew that it was concealed or
- iii) or that he had seen somebody else concealing there.

It is well settled that when such probabilities are possible, the benefit should go to the accused. This vital aspect has been omitted to be noticed by the court below. The statement relied on by the prosecution falls short of the evidence admissible under Section 27 of the Indian Evidence Act. However, the conduct of the accused in recovering the weapon will be a conduct relevant under Section 8 of the Act.

19. What now remains to be considered is the blood stains and hairs found on M.O. 3 by Forensic Lab, which greatly impressed the court below. Going by the FSL report, the hair of the deceased matched with the hair found on M.O. 3 and the blood belonged to A group, which was the blood group of the deceased, was seen on M.O. 3. It must be noticed that M.O. 3 was seized as per Ext. P7 mahazar. Ext. P7 mahazar does not state that at the time of seizure of M.O. 3 had any hair on it. There is no whisper at all with regard to that. Of course there is mention of blood stains on it. But the description does not show that there is sufficient blood for the FS Lab to do grouping. The fact that the recovery mahazar does not show the presence of hair on M.O.3 also casts doubt regarding the presence of blood on M.O.3. Whatever that be, it will be hazardous to enter a finding that it was indeed the weapon used by the accused.

20. All that we are left is the conduct relevant under Section 8 of the Indian Evidence Act. At best it could be treated as a corroborative item of evidence. There is no other circumstance or fact to prove in this case that the appellant had

any role to play in the incident.

In the result, this appeal succeeds. The appeal is allowed, conviction and sentence passed by the court below in S.C. 85 of 2004 before the IIInd Additional Sessions Judge, Kozhikode are set aside and the accused is held not guilty of the offence punishable under Section 302 IPC. He had been acquitted of the charges under Section 120B IPC also. He shall be released forthwith unless his custody is necessary in connection with any other case. If the fine amount is paid, it shall be refunded to him.

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