(1990) 02 KL CK 0022

High Court Of Kerala

Case No: Criminal Appeal No. 521 of 1987

Radhanandan		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: Feb. 14, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 233, 233(3)
- Evidence Act, 1872 - Section 153

Citation: (1990) KLJ 421

Hon'ble Judges: S. Padmanabhan, J; G. Rajasekharan, J

Bench: Division Bench

Advocate: Thomas Mathew and Nellimoottil, for the Appellant; Chincy Gopakumar, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

Padmanabhan, J.

The sole accused is challenging his conviction and sentence for murder by the Additional Sessions Judge, Alleppey. After the prosecution evidence was over, he was called upon to enter on his defence and adduce evidence u/s 233 of the Code of Criminal Procedure. On his application, summons was issued to a witness to produce a document and give evidence. The witness appeared with the document. At that time, Public Prosecutor objected to his examination and proof of the document on the ground that it will offend Section 153 of the Evidence Act. The objection was upheld by a non-speaking order. The case was heard and he was convicted without defence evidence being permitted. This was taken as a preliminary ground before the appeal was argued on merits.

2. Every accused is entitled to a fair trial, which includes opportunity for adducing his own evidence also. That is his right if he is not acquitted u/s 232 on the ground that the judge considers that there is no evidence that be committed the offence. In such

a situation, it is mandatory that he should be called upon to enter on his defence and permitted to adduce oral and documentary evidence of his choice. On his application, the Court has the duty to issue process and secure witnesses, documents or things. The choice in this respect is solely on him. Calling the accused to enter on his defence is not an empty formality. Its omission will be fatal to the prosecution and the conviction will be bad. The application of the accused for issue of process for compelling the attendance of any witness or the production of any document or thing cannot be rejected by the Court as unnecessary. The discretion of the Court to reject such an application u/s 233(3) is only on the ground that it is made for the purpose of vexation or delay of for defeating the ends of justice. Subject to those restrictions, the accused is having the unfettered right to have any witness, document or thing summoned. Entering on defence and adducing evidence marks a special stage in and is an essential part of a criminal trial. If that chance is denied, it cannot be said to be fair trial. The restrictions on the grounds of vexation, delay or defeating the ends of justice are not available in this case.

3. Then the only question to be considered is whether the Sessions Judge was justified, u/s 153 of the Evidence Act, in denying the opportunity for evidence. P.W. 1 is a relative of the man, for whose murder the Appellant was tried and convicted. He is the first informant and an occurrence witness also. The occurrence was at 8.45 p.m. The prosecution case and the evidence of P.W. 1 is that lie happened to witness the occurrence when he was returning home after attending a meeting of the temple committee, in which he is a member. The case of the Appellant is that the meeting was continuing even at 8.45 and since P.W. 1 was attending that meeting, he had no occasion to witness the incident and he was giving false evidence. He was confronted with this fact and he said that he saw the incident. The witness sought to be examined is the Secretary of the committee and the document sought to be proved is the minutes of the meeting. The purpose is to prove that what P.W. 1 said in the box is wrong. The question whether the Appellant could successfully prove that fact is not relevant. What is relevant is whether he is entitled to adduce the evidence.

4. The principle underlying Section 153 of the Evidence Act is to limit the right to call evidence to contradict witnesses on collateral questions and exclude all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal matter in dispute. In other words, a party may not, in general, impeach the credit of his opponent''s witnesses by calling witnesses to contradict him on irrelevant matters. The section must be strictly construed and narrowly interpreted. The rule is founded on two reasons, (i) a witness cannot be expected to come prepared to defend, by independent proof, all the actions of his life, and (ii) to admit contradicting evidence on such points would lead to confusion by raising an almost endless series of collateral issues.

5. The section provides two exceptions, (i) If a witness is asked whether he was previously convicted of any crime and he denies it, evidence may be given of his previous conviction; and (ii) If a question tending to impeach impartiality is denied, he can be contradicted. The section is concerned only with questions to and answers of a witness relevant to the enquiry solely for the purpose of shaking the credit by injuring the character of the witness. Though false answers to such questions may expose the witness to prosecution for giving false evidence, evidence to contradict his answers is not permitted. As the illustrations show, when a witness denied having been dismissed for dishonesty, evidence that he was dismissed for dishonesty is prohibited. That is because the question was to shake his credit by injuring his character. His answer must conclude the matter and on that point further evidence is impermissible.

6. But when a witness was asked and he answered that at the relevant time he was at the scene of occurrence and he saw the incident, evidence that he was not there and he was somewhere else and hence he had no occasion to see the incident is permissible. The question and answer are relevant in the inquiry not only to shake his credit, but also to prove the real controversy in issue. So also, the denial of a witness that he is biased or partial in relation to the parties can be discredited by independent proof. In this case, what is sought to be proved by the oral and documentary evidence is the fact that the claim of P.W. 1 that he was at the scene of occurrence when the incident took place is not correct and not merely to shake his credit by injuring his character. Proof sought to be adduced is to disprove a fact in issue asserted by the witness. Evidence and counter-evidence on such matters are within the rights of parties and it cannot be denied under the cover of Section 153. It is the right of the accused to prove that fact and such a right is necessary to establish his case. Taboo is only on evidence to discredit answers to questions solely relevant directly to shake the credit and injure the character of the witness. If the questions and answers relate to facts otherwise relevant, the answers could be contradicted by independent evidence. Such a right is necessary for a fair decision of the issues. Issues relevant only to shake the credit by injuring the character, but otherwise irrelevant alone are covered by the section.

7. The Sessions Judge has not at all understood the scope and ambit of Section 153 of the Evidence Act. Without any consideration, he allowed the objection and denied the valuable right of the accused to adduce evidence. That has resulted in prejudice, which has to be rectified. The conviction and sentence cannot, therefore, stand. The matter requires re-consideration after the defence evidence is permitted.

Criminal appeal is allowed. Conviction and sentence are set aside. The case is sent back to the Sessions Judge. He will allow the Appellant to adduce the evidence he wanted. Thereafter the case will be heard and decided afresh on the merits in accordance with law. The Appellant, who is now in jail, will be released on bail on executing bonds ordered by the Additional Sessions Judge.