Rangaswami Chettiar Vs State

Court: High Court Of Kerala

Date of Decision: Jan. 16, 1953

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 28
Criminal Procedure Code, 1898 (CrPC) â€" Section 242, 342

Citation: AIR 1953 Ker 280 : (1953) CriLJ 1334

Hon'ble Judges: Subramonia Iyer, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Subramonia Iyer, J.
Two persons, a father and son, were charged before the Special First Class Magistrate of Ernakulam u/s 7(2)(a) of

Act 24 of 1946 amended up to August 1950, read with Section 17(4) of the same Act, read with Clauses 6(2) and 12(2), Sugar and Gur Control

Order, 1950 and Section 3, Cochin Essential Articles Control and Requisitioning Power Act 8 of 1122, Clause 3, Sugar Control Order, 1125 and

Government Notification. No. C.L. 3-5077/49/S.D, continued to be in force by the United State of Travancore-Cochin Administration and

Application of Laws Act, 1124 and Section 28, Civil P.C. in that at about 1.30 p.m. on 25.11.1950 the two accused in furtherance of their

common intention unauthorized sold to Kunhu-tnuhammad examined as the third witness for the prosecution a bag of sugar for Rs. 200/- which

was in excess of the permissible price which was Rs. 105. The Magistrate convicted both of them and sentenced accused 1 to pay a fine of Rs.

2000/- and in default of payment of fine to undergo rigorous imprisonment for six months and accused 2 to undergo rigorous imprisonment for

three months and to pay a fine of Rs. 1500/- and in default of payment of fine to undergo rigorous imprisonment for live months, but in appeal the

Sessions Judge of Anjikaimal acquitted the father Who was accused 1 and confirmed the conviction of the son, accused 2. It is against this

conviction that this revision is filed.

2. Shri M.K. Nambiar who appeared for the petitioner raised four points and urged that a decision in his favour on any one of them would be

sufficient to quash the conviction. The points railed by him were (1) that no proper questions were put to the accused by the Magistrate as required

by Section 259, Cochin Criminal P.C. corresponding to Section 342 of the Indian Code; (2) that the circumstances favourable to the accused had

not been considered by either of the Courts below; (3) that there is no evidence on which the conviction could be based and that whatever

evidence is given by the first and third witnesses cannot be acted upon in the absence of corroboration as the witnesses are accomplices; and (4)

that there is no law whose violation entails a penalty as the law that is alleged to have been violated does not pe00000nalise such violation. The

facts may be briefly stated. Accused 1 is a merchant in Mattanchery doing wholesale business and holding a license for the sale of sugar. The son

who is accused 2 is in management of the business. The price of sugar was regulated and the sale for a price in excess thereof prohibited by the

law and the rules detailed in the charge. Having heard that sugar was being sold at higher than the permissible rate from this business the Circle

Inspector of Police wanted to entrap the accused and with that object instructed Kunhumuhammad, the third witness for the prosecution, to

purchase one bag of sugar therefrom. Kunhumuhammad approached Pareedkunhi, examined as the first witness for the prosecution, who was a

broker. Pareedkunhi arranged for the purchase. The prosecution case is that accordingly two currency notes of the face value of Rs. 100 each

marked for future identification were given by the Inspector to Kunhumuhammad which were given by him to Pareedkunhi who in his turn gave

them to accused 2 who handed them over to accused 1. The said Rs. 200/- was given as the price of one bag of sugar according to the

prosecution. The sugar was purchased and carried from the godown to a jetty by two boatmen, Vasu and Kochu kunhumuhammad examined as

the 7th and 11th witnesses respectively for the prosecution. It is on the evidence of these four witnesses, namely, prosecution witnesses 1, 3, 7 and

11, that the prosecution depends.

3. The Magistrate posed the question in para. 6 of his judgment thus:

The point for consideration is whether the sugar was sold to P.W. 3 from the godown of the accused and if so, whether the accused have jointly

sold it".

and in para. 8 of his judgment makes the following remarks on the evidence:

The prosecution argues that P. W. 1 is giving hostile evidence. It is significant that the prosecution has not treated him as hostile and cross-

examined. But from the earlier part of his deposition it is seen that P.W. 1 is a dependent of all the big merchants of Mattanchery including the

accused. On going through the Whole evidence of this witness I am inclined to think that he is not speaking out the entire truth for obvious reasons.

Even in the evidence of P.W. 3 in his further cross-examination it is seen that he is giving evidence against the prosecution in that P.Ws. 7 and 11

were standing at the western gate of the godown. P.W. 3 is a merchant at Mattancherry. The accused are also merchants at Mattancherry and I

am inclined to hold that the position of the accused might have induced him to give such evidence in his further cross-examination. P. Ws. 7 and 11

are independent witnesses and they swear that Al and A2 were present at the time of the transaction. There is absolutely no reason for P.Ws. 7

and 11 to give false evidence against that accused.

Believing that evidence the learned Magistrate answered the question posed by him as aforesaid in the affirmative holding that the two accused

jointly sold the bag of sugar and accordingly convicted both of them.

4. In appeal the learned Sessions Judge reached the conclusion on the evidence and circumstances of the case that accused 1 was not present in

the shop at the time of the alleged sale of sugar and that the evidence of the aforesaid four witnesses to the effect that he was present cannot be

believed and acquitted accused 1. As regards accused 2, the learned Sessions Judge in para. 6 of her judgment says that

the fact that accused 2 sold a bag of sugar for Rs. 200 is amply established by the evidence and circumstances of this case.

Later in that paragraph she says:

P.Ws. 1 and 3 and P.Ws. 7 and 11 swear that accused 2 sold one bag of sugar and two hundred rupee currency notes were handed over to him.

There are no doubt some discrepancies and contradictions in the evidence of P.Ws. 1 and 3 regarding the time at which the notes were handed

over, the person who handed them. over etc. However, a careful reading of their evidence would indicate that these discrepancies were more

purposeful than real ones. The accused are very rich and influential traders of the locality. P.W. 1 who is a broker whose services are engaged by

the accused usually, as well as P.W. 3 who is also a tea shop owner in need of sugar are obliged to the accused and are naturally inclined to help

him. It is true that the witnesses have not been declared hostile and cross-examined, but questions were put to the witnesses challenging the

correctness of the purposeful deviation made by them. The evidence of P.W. 3 was attacked on the ground that he is a dependent of the police

and one who is himself engaged in shady transactions and black-marketing. P.W. 3 does not appear to be quite a respectable sort of person, and

he is also one who was made use of by the police for similar purposes. However, in the circumstances of this case, when his engagement by the

police for the purpose is definitely mentioned in Ex. H, the sugar was seized from him by P.W. 14 at 2 p.m. and the currency notes were

recovered from Ai''s table at 3.15 p.m. the same day, there is no reason why the evidence of the witness corroborated by these items of

unimpeachable evidence should not be accepted.

And accused 2 was accordingly convicted by her.

5. The third point urged before me may be taken up first. Learned Counsel for the petitioner urged that there is no evidence of a sale of one bag of

sugar for Rs. 200. The evidence that there is, is only to the effect that there was a sale of one bag of sugar, that two currency notes of the lace

value of Rs. 100 each were handed over to accused 2 by Pareedkunhu besides another Rs. 100 at a time when he owed the accused a sum far In

excels of Rs. 100 besides the price of one bag of sugar purchased. Learned Counsel for the petitioner challenged the learned Advocate-General

appearing for the State to point out any portion Of the deposition of the first ''witness for the prosecution to the effect that there was a sale of one

bag of sugar for Rs. 200. I also invited the learned Advocate-General to help the Court by pointing out that passage, if any, in his deposition which

can be regarded as evidence in proof of the alleged sale of one bag of sugar for Rs. 200. In fact, I invited the learned Advocate-General to collect

every material piece from his evidence to see whether there is at all anything in the shape of proof of the sale of one bag of sugar for Rs. 200. The

invitation was made in order to enable me to translate that part of the evidence into my judgment.

Learned Advocate-General could not point out any part of the deposition which could be depended upon as proof of the alleged sale for Rs. 200.

The evidence only shows that there was a sale of one bag of sugar, that there was payment of Rs. 200 thereafter by Pareedkunhu who owed the

business, as already stated, a large amount at the time. There was at the time of the delivery of the two currency notes for Rs. 200 payment of

another Rs. 100 by Pareedkunhu to accused 2. There is no mention made by him that the Rs. 200 was paid as the price of one bag of sugar

purchased by him. in the absence of this link there is no case made out against accused 2. Sale of sugar is permissible and what Is prohibited is

only the sale at a price in excess of the permitted price. The price permitted is Rs. 105 as shown by the First Information Report, to cover which

both the currency notes had to be delivered though the purchaser would be entitled to get back Rs. 05. Had the permitted price not been Rs. 105

but Rs. 100 or a smaller sum delivery of one not would have been enough. That not being the case the mere delivery of both the notes would not

necessarily show that both of them were delivered as the price though delivery was in respect of the price. The significance of this link and of its

absence has not been adverted to or appreciated by either of the Courts below who referred only to the broad circumstances of sale of one bag of

sugar and delivery of the two currency notes. Those circumstances are quite consistent with the sale being only for Rs. 105 which is permitted.

6. The first and third witnesses for the prosecution are accomplices and their evidence ought not to be depended upon to base a conviction in the

absence of corroboration and one accomplice cannot corroborate another and there is no other corroboration in this case. See - Bhuboni Sahu v.

The King 1949 2 MLJ 194 (A), the head note of which is as follows:

The law in India relating to the evidence of accomplices is that whilst it is not illegal to act upon the uncorroborated evidence of an accomplice it is

a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is

corroborated in material respects so as to implicate the accused and that the evidence of one accomplice cannot be used to corroborate the

evidence of another accomplice and 13 thus substantially the same as In England.

The learned Sessions Judge disbelieved a part of the deposition given by these witnesses and witnesses 7 & 11 as regards accused 1 and

accepted their evidence as regards accused 2. This is not a proper thing to do. In - AIR 1944 1 (Federal Court) Spens C. J. said as follows:

This leaves us with the evidence given by the three school boys. The position with regard to this is little better. It appears that these boys. were

taken into custody on the day of the riot, and were only released on certain persons standing surety for them. At the time of giving evidence at the

trial they were living with the sureties and not with their parents. One of them stated that he had been told that he could go home only after giving

evidence. They; made completely contradictory statements in their examination-in-chief and cross-examination. The trial Judge observed with

regard to two of them that they had probably been won over by the defence and with regard to the third that he was making a tutored statement.

The learned Judge of the High Court was Of the opinion that these boys had been influenced against the prosecution and that they were not willing

witnesses. He concluded from this, however, that anything that they had stated against the appellants was worth a good deal more than it would

have been if they had been friendly to the prosecution. We do not consider this a correct or fair approach. Once a witness has been found to be

wholly unreliable it is unsafe to place any reliance upon any part of his testimony. It would not be open to the prosecution to pick out a bit here and

there from the evidence of a witness whom they themselves are not willing to accept as a witness of truer, and to use these salvaged bits, from

testimony which is otherwise contaminated to bolster up their case against particular accused persons. See also - Eapen v. State 1051 KLT 405

(C).

There is thus no evidence on which any conviction could be based. This point by itself is enough for the petitioner to succeed.

7. I may, However, refer to the first of the points urged before me by learned Counsel for the petitioner. The only question put to accused 2 after

the evidence is ""Have you heard and under stood the examination of the witnesses for the prosecution?"" No circumstance appearing against him in

evidence was drawn to his attention. There has thus been no compliance with the provisions contained in Section 253, Cochin Criminal P.C

corresponding to Section 242 of the Indian Code. In - Tara Sinkh v. The State AIR 1951 EG 441 (D), Boso J. said at p. 445:

I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342, Criminal P.C. It is not proper

compliance to read out a long string Of questions and answers made in the committal Court and ask whether the statement is correct. A question

of that kind is misleading. It may mean, either that the questioner wanted to know whether the record is correct, or whether the answers given are

true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place it is not1 sufficient compliance to string

together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material

circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of

explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or

illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is

facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that

each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily

appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I cm of opinion that

errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and

upon whether prejudice has been occasioned or is likely to have bean occasioned. In my opinion, the disregard of the provisions of Section 342,

Criminal P.C. is so gross in this case that I feel there, is grave likelihood of prejudice.

Disregard of the provision of Section 342 in this case is, in my judgment, as gross as it was in the case before their Lordships of the Supreme

Court and I feel as their Lordships did in that case that there is likelihood as prejudice. The Supreme Court reaffirmed this point more recently in -

Ittiravi Nambudiri v. Slate of Trav-Coslim Crl. Appeal No. 31 of 1952 (E), which was filed by special leave against the judgment of this Court in -

State v. Narayanan Ittiravi Nambudiri AIR 1952 Trav C 128: Cri. Appeal No. 134 of 1050 (P). Their Lordships have in the last case cited,

mentioned to necessity and importance of having regard to the circumstances in favour of the accused which is the second of the points urged by

learned Counsel for the petitioner. I do not thick it necessary to discuss this or the last of the points raised by Shri Nambiar as in my judgment the

petitioner should succeed on the third as also on the first point discussed by me.

6. In the result, I allow this revision petition and quash the conviction of and acquit the petitioner, accused 2. Cancel bail bond and refund fine if

recovered. The material objects will be returned to the respective persons from whose possession they were taken.