

(2009) 04 SC CK 0037

In the Supreme Court Of India

Case No : Criminal Appeal No's. 32-33 of 2004

State of Kerala

APPELLANT

Vs

Anilchandran @ Madhu and Others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157
Penal Code, 1860 (IPC) — Section 143, 147, 148, 302, 323

Citation : (2009) 2 ACR 1918 : AIR 2009 SC 1866 : (2009) AIRSCW 3340 :
(2009) 5 JT 613 : (2009) 43 OCR 382 : (2009) 13 SCC 564 : (2009) 7 SCR 152 :
(2009) 3 Supreme 333

Hon'ble Judges : P. Sathasivam, J; Lokeshwar Singh Pantaa Panta, J; Arijit Pasayat, J

Bench : Full Bench

Advocate : G. Prakash, for the Appellant; Mathai M. Paikeday Shsishir Pinaki and Sanjay Jain, for the Respondent

Final Decision : Partly Allowed

Judgement

Arijit Pasayat, J.—Challenge in this appeal is to the judgment of the Division Bench of Kerala High Court allowing the appeal filed by the respondent. Five accused persons faced trial for alleged commission of offence punishable under Sections 143, 147, 148, 323, 324 and 302 of the Indian Penal Code, 1860, (in short the `IPC').

2. All the accused persons denied their involvement in the crime. Learned First Additional Sessions Judge, Thiruvananthapuram found A1 to A4 guilty, while A5 was acquitted. The following convictions and sentences were recorded:

A.1 to A.4 are found guilty and A.1 is convicted and sentenced to undergo R.I for one month u/s 341 and also is sentenced to undergo R.I for one year u/s 323 IPC and is also sentenced to undergo imprisonment for life and also to pay a fine of Rs. 20,000/- in default to undergo R.I for 3 years u/s 302 IPC A2 and A3 are convicted and sentenced to undergo R.I for one month each u/s 341 IPC and also

sentenced to undergo R.I for 3 years each u/s 324 IPC and also sentenced to undergo imprisonment for life and also to pay a fine of Rs. 20,000/- each in default to undergo R.I for 3 years u/s 302 IPC. A.4 is convicted and sentenced to undergo R.I for 2 years u/s 324 IPC set off allowed u/s 428 IPC sentences shall run concurrently.

A.1 filed Criminal Appeal No. 529/1999 challenging the order of conviction and sentence. The other accused filed Criminal Appeal No. 444./1999 against the same judgment. Both the appeals were heard together by the High Court.

3. Prosecution version as unfolded during trial is as follows:

Gangadharan Pillai (hereinafter referred to as the 'deceased') father of PW1, and Raveendran, Al's father's brother, were neighbours. A coconut tree belonging to the said, Raveendran was slanting over the building of the deceased. On the allegation of falling of tender coconut etc. from the coconut trees, there were frequent quarrels between the deceased and Raveendran. The deceased Gangadharan Pillai demanded to cut and remove and remove the said coconut tree. On 27.10.1993 at about 8.15 p.m. a quarrel occurred between Raveendran and Gangadharan Pillai and Reveendran sustained injuries, for which the Poonthura Police registered Crime No. 82 of 1993 for offences punishable under Sections 341, 323 read with Section 34 IPC. Ext. D3 is the scene mahazar in respect of crime No. 82 of 1993. On account of the injuries sustained by Raveendran, Al to A4, close relatives of Raveendran, and A5, a friend of A1, decided to do away the deceased and to inflict bodily harm on PWs 1 and 3. In prosecution of their common object they formed themselves into an unlawful assembly with deadly weapons like dagger, sword, Iron rod, iron bar etc. at 8.45 p.m. on 27.10.1993 inside the coconut garden of one Mohammed Shah situated by the side of the pathway that starts from Ambalathara-Poonthura Road at Numari Chantha near the Vedanthara Bridge. Al caught hold of the collar of the shirt of PW1 and fisted thrice on his chest. A4 with the iron rod inflicted a blow on the back of PW1 and A3 with the iron bar inflicted four or five blows on the right shoulder of PW 1. Then PW1 cried aloud. At that time, Al inflicted a stab injury on PW1 with the dagger which was warded off by PW1. On hearing the cry of PW1, his father Gangadharan Pillai (deceased) rushed to the scene and tried to prevent the accused from causing further harm to PW1. At that time A2 and A3 caught hold of the deceased and wrongfully restrained him. Then Al with the dagger inflicted a stab injury on the back at the left side above the waist on the deceased. A4 and A5 inflicted blows on the body of the deceased with iron rods. At that time PW3, mother of PW1 and wife of the deceased, intervened and tried to prevent the accused from causing further harm to the deceased and PW1. A2 with a sword, inflicted a cut injury on the head and two other cut injuries on the thighs of PW3. A3 and A4 inflicted blows on many portions of the body of PW3 with the iron rods. The deceased and PW3 were taken to the General Hospital, Thiruvananthapuram in an autorikshaw. PW3 was admitted at the General Hospital and the deceased was referred to the Medical College Hospital. PW1 also

went to the General Hospital and later accompanied the deceased to the Medical College Hospital. PW1 was admitted there. On the way to the Medical College Hospital itself the deceased succumbed to the injuries sustained by him. The deceased was removed to the mortuary. This is the sum and substance of the prosecution case.

After investigation was completed charge-sheet was filed. Since accused persons pleaded innocence, trial was held for proving the occurrence. Four witnesses were primarily examined as eye witnesses. They are PW.1, PW.3, PW.4 and PW.5. PW.1 is the son of the deceased while PW.3 is his wife. PWs. 4 and 5 turned hostile and resiled from the statements made during investigation. PW.2 is the doctor who examined PW.1 and issued wound certificate. PW.3 was examined by PW.14 Doctor and the wound certificate was issued by him. PW.15 is the Doctor who conducted post-mortem examination and Exhibit P.13 is the post-mortem report.

The trial Court placed reliance on the evidences of PW.1 and 3 to record conviction. As noted above, appeals were filed by the accused persons. Their stand in Court was that the evidence of PW.1 and 3 does not inspire confidence. The original FIR which was produced in Court was not a complete document and a vital part of it had been removed. It was pointed out that there was a considerable delay in sending the report to the Ilaka Magistrate. The High Court found the submissions to be acceptable and directed acquittal of the accused, which is being questioned in these appeals.

4. Learned Counsel for the appellant State submitted that the trial Court on analysis of evidences and the factual scenario, as supported by materials on record, recorded conviction which should not have been set aside by the High Court. It is pointed out that there were minor variations, if any, in the evidences of PW.1 and PW.3 and that they should not have been construed as a ground for directing acquittal. It is submitted that accusations in any event have been substantially established so far as accused No. 1 is concerned, and the High Court should not have directed acquittal. Learned Counsel for the respondents supported the judgment of the High Court.

5. High Court firstly dealt with the authenticity of the First Information Report. The High Court has noted that PW 1 allegedly gave Exhibit P.1 FI Statement. The original of the statement showed that the last page which contained the signature was torn out. The Sessions Judge after seeing the last page of Ext. P1 FI statement observed as follows:

The First Information Statement is shown to the witness. It is seen that the place of which the signature of the informant was there torn off. That portion of the paper is seen torn and removed. From the manner in which is torn away, it is clear that it was not separated due to wear and tear, but that portion alone is deliberately removed. The FIS is handed over to the witness.'

6. The High Court made comparison of the document with other documents and

found that document was suspicious. Added to that it was noted that the Exhibit P.1 was purportedly recorded on 27.10.1993 at 11.00 p.m. It is accepted that Ilaka Magistrate received it on 28.10.1993 at 8.05 p.m. The High Court found that there was unexplained delay in receipt of the occurrence report by the Magistrate.

7. It is true that the delay itself does not make the investigation tainted. (See : Pala Singh and Another Vs. State of Punjab, . The position was reiterated in Sarwan Singh and Others Vs. State of Punjab,) where it was observed that the police should not make unnecessary delay in sending the FIR. Delay in sending the FIR to the Magistrate sometimes afford opportunity to introduce improvement and embellishment thereby resulting in a distorted version of the occurrence. Section 157 of the Code of Criminal Procedure, 1973 (in short the 'Code') mandates that the report should be sent to the Magistrate forthwith. That itself indicates the urgency. It needs to be noted here that where an explanation is offered by the prosecution for the delay, that has to be tested. The unexplained delay by itself may not be fatal, but is a certainly relevant aspect which can be taken note of while considering the role of the accused persons for the offence.

8. In the instant case the High Court found that not only the document appeared to be suspicious but in addition there was considerable delay in sending it to Ilaka Magistrate. Added to the aforesaid aspects, the noticeable variation in the evidence of PWs.1 and 3 have been highlighted by the High Court. The role played by PWs.1 and 3 while the deceased was being assaulted have been analysed in great detail. The High Court has noticed that even if the prosecution version about the role of A.1 is accepted to be true, since the genesis of the incident has not been established, it will be unsafe to record his conviction. The High Court has noticed that crime was not committed in the manner as suggested by the prosecution and the genesis of the incident is not established. Even if a plea of alibi is set up by the accused and is discarded, that does not take away the duty of the prosecution to prove beyond reasonable doubt that the accused persons were guilty. It is certainly the duty of the persons who plead alibi to prove it beyond reasonable doubt. Merely because the accused was not able to prove his defence, it cannot be presumed that the prosecution case is proved against him.

9. Above being so, we find that this is not a case in which interference is called for. The appeals are dismissed.