Edakkandi Dineshan@ P.Dineshan vs State Of Kerala on 6 January, 2025

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

2025 INSC 28

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 118 OF 2013

EDAKKANDI DINESHAN
@ P. DINESHAN & ORS. Appellant(s)……

VERSUS

STATE OF KERELA Respondent(s)…….

JUDGMENT

PRASANNA B. VARALE, J.

1. The present criminal appeal arises out of judgment and order dated 12th April 2011 passed by High Court of Kerala at Ernakulam, in Cri. Appeal No. 1040/2006. By the impugned judgment and order, the Appellants/Accused- A4 to A10 and A13 to A15 have been acquitted under Sections 302 r/w 149 of the Indian Penal Code, 1860 (hereinafter 'IPC') while conviction and Reason:

sentence against A1 to A3 and A11 and A12 was confirmed.

Additionally, A3 was convicted and sentenced under Section 5 of the Explosive Substance Act,1908.

FACTS

2. For the sake of brevity and for maintaining continuity the accused persons are referred as per their sequence in the trial.

3. The factual matrix of the case are that on 01.03.2002, Rashtriya Swayam Sevak Sangh/Vishva Hindu Parishad (in short 'RSS/VHP') had called for a hartal. The Hartal led to clashes between members of the Communist Party of India (M) (in short 'CPI (M)') and RSS. A group of 11 persons, afraid of the mob led by CPI(M), hid and stayed near a shed situated near the Meloor river. At midnight, they saw 11 persons coming from the eastern side and 5 persons coming from the northern side carrying deadly weapons like, axe, dagger and chopper. All the 11 but for the 2 deceased persons were alerted and rushed towards the river to save themselves. The two deceasednamely Sunil and Sujeesh, were asleep and thus, the mob inflicted fatal injuries on them. The body of Sujeesh was taken to a hospital in Thalassery where he was pronounced dead and based on the statement of PW-1, FIR No. 53/2002 dated 02.03.2002 was registered under Section 43, 147, 148, 341, 506(ii), 307, 302 r/w 149 IPC & Section 3, 5 of Explosive Substances Act, 1908 at P.S. Dharmadam on receipt of the report investigating agency was set in motion. PW-19 conducted the investigation and on 02.03.2002 body of the 2nd deceased person Sunil was found at a marshy land near the spot of occurrence in the morning. The inquest of both the dead bodies was conducted and inquest reports were prepared. Subsequently, post-mortem was done on the same day. A1, A9 and A11 were arrested on 06.03.2002. Pursuant to the disclosure statement of A11 made under Section 27 of The Indian Evidence Act, 1872 (hereinafter 'IEA'), recovery of the axe used in the murder was made from the bushes near the spot of occurrence. A2, A4, A10, A15 were arrested on 10.03.2002 and, based on the disclosure statement of A12, a chopper was recovered. A3, A5 to A8 and A12 were arrested on 16.03.2002. It is pertinent to note here that though one Ashraf was named in the FIR as A13, subsequently on 10.03.2002 a report for deletion of his name was moved by PW19 before the Ld. Magistrate stating that Ashraf was undergoing treatment at Mangalore on the date of incident. On completion of investigation, Chargesheet was filed against all the accused persons (A1 to A15). The Trial Court vide its judgment dated 24.04.2006 found all accused persons guilty under Section 143, 147, 506 (ii), and 302 r/w. 149 of IPC. A2,3,11,12 were also found guilty under Section 148 of IPC and under Section 5 of the Explosive Substance Act and A15 was completely acquitted of all charges.

4. On appreciation of evidence on record, the High Court in its elaborate judgment dated 12th April 2011 convicted A1 to A3 and A 11 & 12 while acquitting A4 to10, A13 & A14 and confirmed the acquittal of A15.

5. Aggrieved by the said judgment of the High Court, A1 to A3 and A11 and 12 are before us. For the sake of convenience, we will refer to the parties by their respective nomenclature before the Trial Court.

6. It may be useful for our purposes to note that since A1 had died, proceedings against stood abated.

CONTENTIONS

7. The Ld. counsel for appellants vehemently submitted that FIR is ante-timed, the prosecution story is not palpable. According to the prosecution, the FIR was registered on 3 am on 02.03.2002 which was communicated to the police station at 3:45 am. The Magistrate has only noted the date of

FIR as 02.03.02 and did not note the time. The prosecution has failed to examine the handwriting of the person who had noted the time of the FIR as 3:45 pm. Moreover, the FIR records the death of Sunil at 3 am whereas the knowledge of death of Sunil was only at 7:30 am. It was vehemently argued that there are major interpolations in the FIR which needs consideration like insertion of names of A14 and A15 and correction of date. It was submitted that the prosecution has tried to implicate innocent persons and the same can be seen from testimonies of eyewitnesses PW1, PW2, PW4 who gave their statements about Ashraf being present on the spot of the alleged incident. Further, it was argued that there is violation of statutory provision of Section 154 of Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C') as the FIR came to be lodged belatedly.

8. It was stressed upon by the Ld. Counsel for the appellant that Sunil was murdered elsewhere, and the body was brought to the scene of occurrence to implicate the appellants. The FIR mentioned death of Sunil but his body was recovered only at 7:30 am 6 meters away from the spot towards the landside near the mangroves implying chances that the body was brought to the scene of occurrence to implicate the appellants. It is further submitted that the recovery made under Section 27 of IEA is not credible. It was contended that an prudent man would mention a police jeep as a 'police jeep' itself. There was no mahazar suggesting examination of jeep for blood stains. It was submitted that the doctor who had examined Sujeesh had not recorded the names of persons who brought the dead body to him. As per the appellants, the body of Sunil was found not even close to the river and as such there cannot be any high tide. The eyewitnesses could not have seen the incident as alleged because of the obstacles such as heap of coconut husk, mangrove and shed. It was vehemently argued that inquest report was not made properly and the eyewitnesses were giving parrot like statements only to implicate the accused persons due to political enmity. It was submitted that it is an improbable human conduct for the eyewitnesses to keep standing when a bomb is being thrown at them rather than fleeing from the spot and that recovery of bomb was not made in a proper manner.

9. On the other hand, Ld. counsel for the State of Kerala argued that the judgment passed by the High Court is a very well-reasoned judgment. The High Court has rightly convicted the accused persons on appreciation of evidence and the appeal of the appellants needs to be set aside.

ANALYSIS

10. Crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilized society, the purpose of criminal administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge of their duties are tasked with balancing of interests of the accused on one hand and the state/society on the other.

11. Having said this, let us consider the evidence on record to see as to whether the High Court has appreciated the evidence in a proper manner to partly allow the appeal.

12. Admittedly, there was a long-standing political rivalry between RSS and CPI. As has been stated by PW1, he and 11 others were earlier a part of CPI and they had defected and joined RSS and hence there were estranged relations between the two groups. Admittedly, a call of Hartal was given by one organization and the same was opposed by another political party, leading to a clash between the followers of these two parties. The version of witnesses discloses that the group of 11 members rushed to a shed near river Meloor to save their lives from the violent mob. This group of 11 members were hiding themselves near the river and in the night the accused persons led a deadly attack on them and ultimately, two persons lost their lives as a result of this incident.

13. In the postmortem report issued by PW7, it was opined that the death of Sunil was due to injuries caused to vital organs like liver, lung, heart and shock resulting from loss of blood. Similarly, the postmortem report pertaining to Sujeesh submitted by PW8 concluded that the death of Sujeesh was due to injuries to vital organs like liver, lung, spleen, hemorrhage, and shock. A cumulative reading of both the reports sufficiently establish that death of both the victims was homicidal.

14. It was urged by the counsel for the appellants that there are material contradictions in the testimonies given by the prosecution witnesses, particularly the eyewitnesses. In this context, the question arises, whether these contradictions are material enough for the benefit of doubt to be given to the appellants so as to set aside their conviction.

15. The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of Rammi vs State of MP 1. It was held that:

> (25)“It is common practice in trial court to make out contradictions from the previous statements. Merely Because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No Doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. Only such of the inconsistent statement which is capable to be “contradicted” would affect the credit of the witness’’ The abovementioned settled position of law was again reiterated by this Court in the judgment of Birbal Nath vs State of Rajasthan2 wherein it was held as under:
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> “(19)No doubt statement given before police during investigation under section 161 are “previous statements” under section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this only for a limited purpose, to “contradict” such a witness. Even if the defense is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is ere that we feel that the learned judges of the High Court have gone wrong.

> (21) In the landmark case of Tehshildar Singh v State of UP3 this Court has held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of 1999 8 SCC 649.

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AIR 1959 SC 1012.

"discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgement, including Rammi (Supra)".

Bearing in mind the abovementioned settled position of law, this court is of the considered opinion that though there is a variance in the statements of the witnesses, it is minor and not of such a nature which would drive their testimony untrustworthy. This court finds the deposition of witnesses PW1, 2 and 4 to be honest, truthful, and trustworthy. Hence, the observations made by the High Court in this regard are well reasoned.

16. It is worthwhile to mention that in his examination in chief, PW1- V K Jithesh had mentioned that Sunil was not seen. In his cross examination, PW1 had stated that he had told the police at the picket post that Sunil was missing. This was apparently in contradiction to the stand of the defence that death of Sunil was mentioned in the FIR at 3 am itself while his body was found only at 7:30 am in the morning. The statement of PW1 to the police mentioning that Sunil is "missing" cannot be seen in an abstract. "Noscitur a sociis" is a well-recognized principle used for interpretation of statutes. It means that the meaning of a word can be determined by the context of the sentence; it is to be judged by the company it keeps. Though this principle Is used for interpretation of words in a statute, the inherent principle can very well be applied to the facts of the present case which have be seen in the context of the entire set of events that had transpired that night. The High Court has also, in its well-reasoned judgment considered the fact that while struggling for his life, injured Sunil might have made some movements and while so he might have fallen into the slushy area and happened to be amidst the bushes which is the reason for him being allegedly "missing".

17. In the FIS, PW1 had stated that Sujeesh was taken in a jeep to the hospital. However, the defence had submitted before this Court that there was no explicit mention of "police jeep" when the statement before the police was recorded. As per the appellants, this holds importance since there is no mahazar suggesting the particulars of the jeep or examination of the jeep for bloodstains or any other evidence to show that his body was carried in a police jeep showing that theory of police jeep was introduced by the police. This court is of the opinion that it is a natural human conduct that to save the life of someone, the entire focus of the person in such a situation would be to take the injured to the hospital rather than wasting time on giving minute details. It was a prudent conduct on the part of PW1. The omission to state "police" jeep does not constitute a material omission or contradiction. The same has also been rightly dealt by the High Court in great details.

18. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons etc. At this stage, it may not be out of place to refer to the principle called as 'falsus in uno, falsus in omnibus'.

19. It is a settled position that 'falsus in uno, falsus in omnibus' (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgements. In the case of Ram Vijay Singh vs State of UP4, a Three Judge bench of this Hon'ble Court had held that:

> "..(20) We do not find any merit in the arguments raised by the learned counsel for the Appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the Court. The maxim falsus in uno, falsus in omnibus is not the rile applied by the courts in India. This Court recently in a judgement IIangovan vs State of T.N. held that Indian Courts have always been reluctant to apply the principle 2021 SCC Online SC 142.
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> as it is only a rile of caution. It was held as under: (SCC Pg 536, Para 11)" "..(11) The Counsel for the Appellant lastly argued that once the witnesses had been disbelieved with respect to the co accused, their testimonies with respect to the present accused must also be discarded. The Counsel is, in effect, relying on the legal maxim "falsus in uno, falsus in omnibus", which Indian Courts have always been reluctant to apply. A three Judge bench of this Court, as far back as in 1957, in Nisar Ali v. State of UP, held on this point as follows (AIR p 368, Para 9-10) "(9) This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of Caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. (10) The Doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of Evidence" (21) Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony if the said witness cannot be disregarded qua the present Appellant. Still, further it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality if evidence which is relevant in criminal trial and not the quantity." Hence, as can be seen from above, it has being a consistent stand of this Hon'ble Court that the principle 'falsus in uno, falsus in omnibus' is not a rule of evidence and if the court inspires confidence from the rest of the testimony of such a witness, it can very well rely on such a part of the testimony and base a conviction upon it.

20. Though the learned defence counsel vehemently submitted that the dead body of Sujeesh was found at a different place away from the dead body of the other victim Sunil and as such, on this count alone, the prosecution case is to be discarded. We are unable to accept the submissions of the

learned counsel for the reason that the evidence of eye witnesses clearly reveal that this mob of 11 persons being apprehensive of their life rushed towards the river. It is further disclosed in the version of witnesses that members of this group took shelter near a shed in bushy area. In this process, it is quite natural that all the members may not find a suitable place for hiding at a particular spot or one spot. This being the situation, it was also natural and possible that Sujeesh might have rushed to another spot to hide and save himself and as such his body is found away from the dead body of another victim Sunil. The violent mob of accused persons led a deadly attack on the members of the mob and was successful in killing two members of the mob.

Thus in our opinion, merely because the dead body of Sujeesh was found at a place little away from the place of body of other victim Sunil, it cannot be the sole and decisive factor to discard the entire case of prosecution.

21. One more thrust of argument from the appellants was that the prosecution has not conducted the investigation in a fair and impartial manner as they have tried to rope in innocent persons who were not present at the spot. There was an attempt to rope in one Ashraf and there was a consistency in the statements of the eyewitnesses that they had seen Ashraf when the crime was taking place. Admittedly, there is a rivalry between the two groups so the possibility of exaggeration cannot be ruled out. When the fact that Ashraf was not at all present during the crime and that he was present in the hospital came to light of the prosecution, they had moved a report and sought deletion of his name.

22. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a properly investigation could have strengthened its case. In the case of Paras Yadav & ors. vs. State of Bihar5, the Apex Court observed as under:

> “Para 8 - ..the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar and others, J.T. (1998) 3 SC 290.
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> "In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the [1999 (2) SCC 126].
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> confidence of the people not merely in the law enforcing agency but also in the administration of justice."

Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts

to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW1 Jitesh, PW 2 and PW4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 am, it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defense. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the Accused and the witnesses were well acquainted with each other as PW1, PW 2 and PW4 had defected from the CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry.

23. It has been held by this court in the case of Raju alias Balachandran and ors. vs. State of Tamil Nadu6:

> "... 29 The sum and substance is that the evidence of a related or interested witness should be meticulous and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh [AIR 1963 SC 364] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369] in the following words: (Sarwan Singh case [(1976) 4SCC 369, p.3376, para 10) "10 .....The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, to as a rule of law, that the evidence of such witnesses should be scrutinized with little care. Once that approach is made and the court is satisfied that the evidence of the witnesses has a ring of truth such evidence could be relied upon even without corroboration." Bearing in mind the above legal position of the interested witnesses the testimonies of PW1, PW2 and PW4 is the only piece of evidence available of the eye- witnesses. Even if it is assumed that they are interested witnesses there is no such inconsistency in their (2012) 12 SCC 701.

statements which would raise a reasonable suspicion about their evidence being concocted and untruthful. They were present at the spot where the incident took place and they have delivered a version which is palpable one. Their versions about seeing and hearing the appellants inflicting injuries on the bodies of the deceased Sunil and Sujeesh are in harmony with each other.

24. As regards the conviction of A3 under Explosive Substances Act, 1908 is concerned, this court is of the opinion that the mere act of throwing the bomb by A3 would give rise to reasonable suspicion that he did not have the bomb in his control for a lawful object. The High Court has rightly upheld the conviction of A3 for Section 5 of Explosive Substances Act, 1908.

25. The entire submissions of the appellants were that since there are contradictions, the entire story of the prosecution is false. As we have already mentioned above, the principle of 'falsus in uno, falsus in omnibus' does not apply to the Indian criminal jurisprudence and only because there are some contradictions which in the opinion of this Court are not even that material, the entire story of the prosecution cannot be discarded as false. It is the duty of the Court to separate the grain from the chaff. In a given case, it is also open to the Court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons, like in the present case.

26. On appreciation of the evidence, we are unable to find any fault with the judgment and order dated 12.04.2011 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.1040/2006. Accordingly, we arrive at the conclusion that the present appeal deserves to be dismissed.

27. The present appeal is accordingly dismissed. Pending application(s), if any, shall be disposed of accordingly.

.....J. [SUDHANSHU DHULIA] .....J. [PRASANNA B. VARALE] NEW DELHI;

JANUARY 6, 2025.