Padmanabhan Vijaykumar vs State Of Kerala on 24 February, 1993

Equivalent citations: 1993 AIR 2641, 1994 SCC SUPL. (2) 156

Author: N.P Singh

Bench: N.P Singh

PETITIONER:
PADMANABHAN VIJAYKUMAR

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT24/02/1993

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
SINGH N.P. (J)

CITATION:
1993 AIR 2641 1994 SCC Supl. (2) 156
JT 1993 Supl. 502

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. For an occurrence which took place on May 4, 1981 at about 10.30 p.m., the appellants were arrayed by the police and put up for trial in Sessions Case No. 97 of 1981 for offences under Sections 302, 452 and 34 Indian Penal Code. In that occurrence, the appellants were alleged by the prosecution to have trespassed into the house of Chandran at Muttada and while appellant 1 inflicted chop wounds on the hands and left leg of Chandran with a chopper, appellant 2 had flashed a torchlight thus aiding the first appellant while the third appellant stood guard at the entrance of

the house with an iron rod. The deceased Chandran, after the receipt of injuries, was removed to the hospital by his brother PW 1 in the taxi of PW 14 Gopakumar. Chandran succumbed to the injuries after being admitted in Ward No. 5 of the hospital during the night. The learned Sessions Judge after appraisal of the evidence and consideration of the material on the record, acquitted the appellants of all the charges by its judgment dated June 25, 1982. On an appeal by the State to the High Court, the judgment of acquittal was set aside and the appellants were convicted. The High Court convicted them for an offence under Section 304 Part 1 and sentenced each one of the appellants to rigorous imprisonment for a term of ten years. They were also convicted for an offence under Section 450 IPC and sentenced to suffer rigorous imprisonment for a period of one year each. Both these sentences were, however, directed to run concurrently. The appellants are in appeal before us.

2. The trial court found that the evidence with regard to the lodging of the first information report both as regards the time and place was shrouded in mystery. After analysing the evidence, the trial court observed:

> "PW 15 was the then Head Constable of the Peroorkada Police Station. It was he who recorded Ext. P-1 F.I. Statement of PW 1 and registered the case. He would swear that on May 5, 1981 at 2.30 a.m. he received a phone message from the Sub-Inspector. Immediately he went to the Medical College Police Station. On reaching the Police Station, he came to understand that a person with cut injuries was brought from Muttada and that he died at 3 p.m. in the hospital and that his body had been removed to the mortuary. Then he proceeded to the mortuary where he saw PW 1 and recorded Ex. P-1 F.I. Statement. After recording Ex. P-1, he returned to the Police Station and registered the case after preparing Ex. P-9 FIR. It is seen from Ex. P-9 that PW 15 has recorded the full details about the incident and the names of the accused as also the nature of the injury sustained by Chandran. According to PW 15, all these details were furnished by the Sub- Inspector of Police over the phone. But when the Sub-Inspector was examined as PW 16 he would say that he did not give any such. information to PW 15. It still remains a mystery as to who furnished these details to PW 15. These facts and circumstances show that the prosecution is suppressing some material facts from the court and the only possible inference is that the incident would not have happened in the manner alleged by the prosecution. PW 17 is the investigating officer."

3. After having doubted the manner in which and the place at which the first information statement was made, the trial court also dealt with the evidence of PW 1 and commented upon the circumstances emerging from his evidence which give a lie to the prosecution version with regard to the recording of the first information statement, in the hospital at the instance of PW 1, the brother of the deceased. The trial court noticed :

> "PW1 would also say that by about 3 o'clock, immediately before the death of Chandran, a head constable came there. At that time Chandran was lying in Ward No. 5. PW 1 told the head constable about the incident and the latter reduced the

> same to writing. PW 1 proved Ex. P-1 as the statement so recorded. To a leading question put by the Addl. Public Prosecutor, PW 1 answered that he gave Ex. P- 1 F.I. Statement while Chandran's body was lying in the mortuary. In his cross-examination he would say that when the police came to the hospital, a mahazar was prepared on the body of Chandran. When he was asked whether his statement was recorded after the preparation of the said mahazar, he would say that his statement was recorded only on the next day after the dead body was brought home and that the said statement is Ext. P-1. This version of PW 1 is contrary to the prosecution case and against his own earlier version. Again PW 1 would say that he saw the police for the first time only on the next day at 10.30 a.m. near the mortuary. This also is against his own version given in his examination-in-chief. In the next sentence PW 1 would say that at 3 a.m. he saw a head constable attached to the Peroorkada Police Station in Ward No. 5 near the bed of Chandran. He is definite that he did not do anything except helping them while they were in the mortuary. He would categorically state that even though he mentioned to the head constable about the incident, he did not do anything except listening to it. According to him, his house as well as Chandran's house are facing towards east which is also against the prosecution case. From a reading of his testimony it is not possible to find that Ext. P- 1 F.I. Statement was recorded by PW 15 at the Medical College Hospital on the night of May 4, 1981 itself or that PW 1 was able to see and identify the accused at the scene of occurrence."

The indictments by the trial court were severe on the bona fides of the investigation and the trial court was justified in coming to the conclusion that the prosecution had suppressed the manner in which the first information statement was recorded and therefore the possibility that it had been recorded after due deliberation could not be ruled out. The circumstances emerging from the discussion of the trial court would show that the discrepancies and the contradictions amongst the evidence of the witness in the matter of recording of the first information report were of a serious nature and discredited the prosecution case and cast serious doubts on the conduct of the investigation. The learned Judges of the High Court, however, dealt with this aspect of the matter in the following manner:

> "The fact that there is some minor discrepancy as regards the time and place at which the FIR was lodged is of no significance. After all the witness deposed in court more than a year later. The FIS contains the relevant details fully corroborating on the material particulars what the witnesses spoke. The names of the accused are mentioned in the FIS. It contains a clear and cogent narrative of the incident. It is not correct to disbelieve the prosecution case because of such minor insignificant discrepancies."

4. We are unable to agree and appreciate the approach of the High Court in treating the discrepancies as insignificant or of no consequence. Since, the High Court was upsetting the order of an acquittal, it was expected that it would furnish reasons to show as to how the findings recorded by the trial court were either perverse or unreasonable and not sustainable on the basis of the

material on the record. No such attempt was made by the High Court. The opinion of the High Court that the discrepancy with regard to the time of visit of the Police Officer or the place where FIS was recorded was of no significance or consequence does not appear to us to be correct. The very fact that PW 15 had stated that whatever he had recorded in the first information report as regards the occurrence was on the basis of the information given to him by the SubInspector and not on the information allegedly furnished to him by PW 1, would go to show that reliance could not be placed on the said first information statement. The very basis of the prosecution case, therefore, had been rendered doubtful and on account of the tainted nature of the investigation, it would not be safe to rely upon the evidence led by the prosecution, which the trial court found as not inspiring confidence. We are, therefore, of the view that the High Court was not justified in setting aside the well considered judgment of the Sessions Court and reversing the order of acquittal ignoring serious flaws in the prosecution case. The appeal, therefore, succeeds and is allowed. The conviction and sentence recorded by the High Court against the appellants are set aside and they are hereby acquitted. Their bail bonds shall stand discharged.

5. In the view that we have taken, we need not express any opinion on the question whether the High Court was justified in sentencing the appellants to a term of imprisonment, after recording their conviction, without affording them an opportunity of hearing on the question of sentence as envisaged by Section 235 of Criminal Procedure Code.