

Rajeevan And Anr. vs State Of Kerala on 17 February, 2003

Equivalent citations: AIR2003SC1813, 2003CRILJ1572, JT2003(2)SC206, 2003(2)SCALE176, (2003)3SCC355, AIR 2003 SUPREME COURT 1813, 2003 AIR SCW 1262, (2003) 2 DMC 173, 2003 CRILR(SC&MP) 457, 2003 (2) SLT 150, 2003 (2) ACE 531, 2003 ALL MR(CRI) 820, 2003 (2) SCALE 176, 2003 (3) SCC 355, 2003 SCC(CRI) 751, (2003) 1 KHCACJ 666 (SC), 2003 CRILR(SC&MP) 190, (2003) 4 ALLINDCAS 959 (SC), (2003) 2 JT 206 (SC), 2003 CRILR(SC MAH GUJ) 190, 2003 (2) JT 206, 2003 (4) SRJ 152, (2003) 2 SCALE 176, (2004) SC CR R 1210, (2003) 1 CHANDCRIC 313, (2003) 1 CURCRIR 384, (2003) 25 OCR 134, (2003) 2 RECCRIR 95, (2003) 2 SUPREME 852, (2003) 2 ALLCRIR 1029, (2003) 4 INDLD 139, (2003) 46 ALLCRIC 656, (2003) 2 ALLCRILR 825, (2003) 2 CRIMES 268

Bench: S. Rajendra Babu, P. Venkatarama Reddi

JUDGMENT

Rajendra Babu, J.

1. This is an appeal against conviction for offences under Section 302 read with Section 34 Indian Penal Code passed by the High Court in reversal of an Order of Acquittal passed by the Court of Sessions.

2. The prosecution case is as follows:

3. That consequent to an election in the local High School Meppayur, Kozhikode, Kerala there was some clash between two student political factions. The baton of clash was handed over to the respective parent political parties. During the ongoing clash, it is alleged that the deceased Ibrahim-a worker of Communist Party of India (Marxist) had entered into the nearby temple and beaten up some BJP/RSS workers. It is also alleged that his entry had rendered the temple impure. Later on a meeting was said to be convened to condemn the entry of non-hindu Ibrahim to the temple. This incident was cited as the motive of the accused to murder Ibrahim.

4. That on 28.12.1987 at about 7 PM PWs-2 and 3, brothers of deceased Ibrahim, came to his bakery for some money. While the three brothers were talking about the money matters in the verandah of the adjoining shop room, four persons who had come running attacked Ibrahim with lethal weapons. While trying to protect him PWs-2 and 3 also got injured. After the quick attack, a bomb exploded. Smoke engulfed the area. A whistle was blown. A jeep suddenly rushed to the spot, the

four assailants got into the jeep and escaped. PWs-1, 4 and 22, who were talking in the nearby office of the CPI (Marxist), saw the incident and immediately went to the spot with some others. They saw Ibrahim sitting on a bench, leaning forward. PWs 1 and 4 took deceased Ibrahim, PWs 2 and 3 to Medical College Hospital which is about 48 Kilometrs away from the spot. Within one hour after reaching the hospital, Ibrahim succumbed to the injuries.

5. That the local Sub-Inspector reached the place of occurrence within half- an-hour of the incident. He went back and made a brief note about the confrontation in the General Diary maintained in the Police Station. PW1 who went to the hospital returned on 29-12-1987 and lodged the FIR at 7.40 AM. It was sent to the Court at 5.40 PM on 30-12-1987. After investigation the police filed the charge sheet on the aforesaid facts.

6. After trial, on due appreciation of the evidence Trial Court acquitted all the eleven accused. On appeal High Court reversed the finding regarding 1st and 2nd accused and held that they were punishable under Section 302 read with Section 34 IPC. Regarding other accused High Court confirmed the finding of Trial Court. This appeal is by the two-convicted accused.

7. The Trial Court noticed that there were many weak spots in the prosecution case such as, the delay in lodging First Information Statement. The spot of incident is only 100 meters from the Police Station. But the FIR was lodged in the Police Station only at 7.40 AM on the next day; that though FIR was filed on 29-12-1987 in that morning, it was sent to the Magistrate only at 5.40 PM on 30-12-1987; that the Sub-inspector (PW-28) did not register the crime on the basis of information collected by him immediately after the incident; that Ex.P30 is the counter foil file of the FIR and between the entries relating to Crime Nos. 5 and 7, certain blank sheets were found; that this circumstance was not satisfactorily explained by the concerned Police Officer during examination. The Trial Court is of the view that this was done to fill up details regarding the instant case subsequently; that Ex. P1 First Information Statement given by PW1 also seemed to have been subsequently written on a blank signed paper; that this inference was drawn due to the cramped handwriting in the paper towards the end portion, just above the signature though there was adequate space in the next page.

8. Based on these factors the FIR was found to be a concocted document and delay in lodging the FIR with the Magistrate also influenced the Trial Court in holding that innocent persons were being implicated as a result of political vendetta or for any other reason as there was enough fire for manipulation and the manner in which record was maintained gave rise to grave suspicion regarding the same.

9. The Trial Court also noticed that immediately after the incident PWs-1 and 4 took the injured ibrahim (deceased) along with PWs-2 and 3 to the Medical College Hospital which is 48 kilometers away from the place of incident but found that it is improbable that none in the jeep had talked about the incident or accused during the long journey. The Trial Court also took note of the fact that it is unnatural not to mention the names of the assailants to the Doctor who examined them; that evidence relating to the recovery of weapons was found to be suspicious; that the Trial Court noticed many inconsistencies between the observations noted in the scene mahazer and the version given by

occurrence witness. Hence the Trial Court concluded that the possibility that the incident might have happened in some other manner and not as stated by the Prosecution cannot be ruled out. The trial Court also relied upon interested nature of evidence of the witnesses and the possibility of taking political revenge and that there was no evidence regarding the conspiracy by the accused. With these conclusions the Trial Court acquitted all the accused.

10. The High Court held that the evidence given by the witnesses could not be rejected merely on the ground that they are interested. The High Court found that the evidence given by the witnesses was corroborated in all material aspects. Based on this premise, the High Court further proceeded to hold that there is no possibility of implicating innocent persons or to prepare a false FIR. The Court also found the delay in filing FIR and its delayed placing before Magistrate is justified in the facts and circumstances of the instant case. The blank sheets in the counter foil of FIR, non-mentioning of details regarding the accused to the doctor, absence of discussion in the jeep regarding the identity of the accused, and inadequate explanation regarding the objects recovered from the scene were found to be not sufficient to impeach the credibility of the prosecution story regarding the involvement of A1 and A2. Upon these findings, the High Court that the various grounds stated by the Trial Court to reject the Prosecution case is not sustainable. The High Court concluded that A1 and A2 are punishable.

11. In this context, based on the accepted facts, it is necessary to look into the possibility of involvement of the appellants in the murder of Ibrahim.

12. There are five witnesses who claim to be eye witnesses of whom two are injured. All the witnesses deposed in unequivocal terms regarding the incident. It is in concurrence with the Prosecution case that while the deceased was talking with Pws 2 and 3, the assailants suddenly came and attacked them. All of them also deposed that the assailants immediately escaped in a jeep. this version is not at all tallying with the scene mahazer prepared by PW 29. Scene mahazer accounts for some material objects that are not explained by the Prosecution. The non-explanation of several objects that found place in the scene mahazer will go on to dilute the Prosecution case. Such unexplained objects point towards the possibility of a preceding clash and some happenings other than those portrayed by the Prosecution and accounted by the witnesses.

According to all the witnesses the attack was with sword and knife. But deceased had injuries other than those which could have been inflicted by the said weapons. Moreover, Prosecution could not explain MO11 danda (stick) recovered from the scene of incident. This also casts certain amount of doubt upon the Prosecution case. Thus it is not safe to rely upon the account of witness which chose the Prosecution version.

13. Another doubtful factor is the delayed lodging of FIR. The learned counsel for the appellants highlights this factor. Here it is worthwhile to refer Thulika Kali v. State of Tamilnadu. , wherein the delayed filing of FIR and its consequences are discussed. At Para 12 this Court says -

"...First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose corroborating the oral evidence adduced at the trial. The

importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed the names of the actual culprits and the part played by them as well as the names of eye-witness present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after- thought. On account of delay, the report not only gets benefit of the advantage of spontaneity danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging the first information report should be satisfactorily explained."

(Emphasis supplied) (P.397)

14. This is the position consistently followed by this Court in *Maharaj Singh v. State of U.P.* , and recently in *Thanedar Singh v. State of MP.* .

15. As feared by the learned counsel for the appellants, the possibility of subsequent implication of the appellants as a result of afterthought, may be due to political bitterness, cannot be ruled out. This fact is further buttressed by the delayed placing of FIR before the Magistrate, non-satisfactory explanation given by the Police Officer regarding the blank sheets in the Ex. P30 counter foil of the FIR and also by the closely written bottom part of Ex.P1 statement by PW 1. All these factual circumstances read with the aforementioned decisions of this Court lead to the conclusion that it is not safe to rely upon the FIR in the instant case. The delay of 12 hours in filing FIR in the instant case irrespective of the fact the Police Station is situated only at a distance of 100 meters from the spot of incident is another factor sufficient to doubt the genuineness of FIR. Moreover, the Prosecution did not satisfactorily explain the delayed lodging of FIR with the Magistrate.

16. This Court in *Marudanal Augusti v. State of Kerala* , while deciding a case which involves a question of delayed dispatch of the FIR to the Magistrate, cautioned that such delay would throw serious doubt on prosecution case, whereas in *Arjun Marik v. State of Bihar*, 1994 Supp. 2 SCC 372, it was reminded by this Court that:

"...the forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word 'forthwith' occurring in Section 157 CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation..."(pp. 381-382)

17. One more aspect considered by the trial court was that though P.W. 28 (S.I. of Police) proceeded to the spot on getting information of clash within half-an-hour and although he had definite information and details of the incident which he noted in general diary (Ex. P-32), F.I.R. was not registered on the ostensible ground that the name of assailants were not known.

18. We are of the view that when the case against the appellant is not proved beyond reasonable doubt that these appellants have murdered Ibrahim and it is not safe to convict them. When the Trial Court had given good and weighty reasons for its conclusion, the High Court need not have substituted its view to that of the Trial Court. We cannot say that the view of the Trial Court is not a reasonable conclusion on facts. Hence, the High Court need not have interfered with the verdict of acquittal by the Trial Court.

19. We, therefore, allow this appeal setting aside the order of the High Court while restoring that of the Trial Court.

The appellants stand acquitted of the offence with which they were charged and the bail bonds furnished by them are cancelled.