

P K. Narayanan vs State Of Kerala on 27 October, 1994

Equivalent citations: 1995 SCC (1) 142, 1994 SCALE (4)740

Bench: M.M. Punchhi, M.K Mukherjee

PETITIONER:

P K. NARAYANAN

Vs.

RESPONDENT:

STATE OF KERALA

DATE OF JUDGMENT 27/10/1994

BENCH:

REDDY, K. JAYACHANDRA (J)

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REDDY, K. JAYACHANDRA (J)

PUNCHHI, M.M.

MUKHERJEE M.K. (J)

CITATION:

1995 SCC (1) 142

1994 SCALE (4)740

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- In Sessions Case No. 35 of 1987 on the file of the IIIrd Additional Sessions Judge, Ernakulam, four accused were tried for offences punishable under Sections 120-B, 323, 326, 302 and 201 IPC. The trial court acquitted A-4 and convicted A-1 under Section 120-B read with Section 302 IPC and also convicted A-2 and A-3 under Sections 302 read with Section 120-B IPC and sentenced each of them to undergo imprisonment for life. On appeal, the High Court acquitted A-3 but confirmed the convictions and sentences of A-1, PK. Narayanan and A-2, V.V Salim @ Sasi. Hence, A-1 has filed Criminal Appeal No. 315 of 1990 and A-2 has filed Criminal Appeal No. 316 of 1990 in this Court. The prosecution case is as follows.

2.A-1 is the owner and proprietor of Polakulath Tourist Home at Palarivattom, Ernakulam and two

such other tourist homes in other places in addition to being an abkari contractor. V.V Salim @ Sasi, A-2 was his driver and personal bodyguard. A-3 was a room boy in the tourist home and A-4 was the Manager of A-1. The deceased Peethambaran was in employment of A-1 since June 1982. He was an honest young man and was a faithful and trusted employee. He was also a personal friend of A-1 and enjoyed considerable freedom in the house of A-1. A-1 had duplicate accounts of his income and some of them were kept in the house of the deceased. PW 1, father of deceased, had close relations with A-1 and he was a member of the administrative committee of the Palarivattom Hariharasutha temple of which A-1 was the President. PW 1 was looking after the administration of the temple. Sometime before the present incident which took place in the early hours of 21-4-1983, A-1 began to distrust the deceased and he also suspected that the deceased was pilfering money from the cash collection of the tourist home. He therefore directed A-3 to keep a watch on the deceased. Being alerted about the growing hostility about him, the deceased decided to leave the employment in the tourist home and was in search of some other job. A1 apprehended that if deceased left him he might disclose the inconvenient information regarding unaccounted wealth and so A-1 wanted to eliminate the deceased somehow or the other. On the fateful day the deceased and A-3 were on night duty in the tourist home and they along with another room boy occupied Room No. 41 1. PW 3 had taken a room on 21-4-1983 and had to leave early in the morning on the new motor cycle to Trivandrum. PW 3 checked out of the tourist home at 4 a.m. and left for Trivandrum on the motor cycle. At that time PW 3 came down to the counter and found the deceased and A-3 sleeping in the visitors' room adjoining the counter. They were woken up. PW 3 was the last person who saw the deceased alive before leaving and at that time he was in the company of A-

3. Sometime around 4.30 a.m. the residents and employees of the tourist home and some of the neighbours heard cries and simultaneously they heard something heavy falling from the terrace of the tourist home. Hearing the cries and the sound, A-4 and PW 17, the accountant who was staying together in one room and PW 11, a Probationary Sub-Inspector came down to the counter and they found the southern door of the tourist home near the counter locked. As that could not be opened they went to the western door. A-4 opened the door through which some of the inmates entered the southern courtyard and found the body of Peethambaran who was then profusely bleeding. At the same time they saw a person running away towards the north along the main road. PW 4 identified that person as A-2. At the behest of A-4 somebody fetched a car in which the deceased was taken to the hospital. Meanwhile PW 1 also was informed about the incident and PWs 1 and 2 rushed to the City Hospital and from there to the Medical Trust Hospital, Ernakulam where they saw PW 17 talking on the phone. PW 17 led PW 1 to the room where the deceased was lying with injuries. PW 10, the medical officer, examined the deceased and declared him to be dead. A-4 and PW 17 went to the police station and ultimately the Circle Inspector, PW 57, rushed to the police station and saw A-4 and PW 17 there. PW 23, the SI recorded the FIR, Ex. P-59, and registered the crime as one of unnatural death. PW 57 along with PW 23 proceeded to tourist home and posted a constable there for guard duty. He held the inquest on the dead body at the hospital and examined PWs 1 and 2. PW 55, the Assistant Professor of Forensic Medicine conducted the postmortem and he opined that the death was not due to fall alone but there was evidence of violence. A case was registered under Section 302 IPC. PW 58, DSP, took up the investigation. He recovered chappals, MO 11 from the terrace belonging to the deceased. He prepared a mahazar regarding the topography of the area. After investigation, the case was referred as one of suicide. PW 1, however, filed an application

before the High Court which set aside the referred report and ordered reinvestigation. The State filed a petition before the Supreme Court and while dismissing the special leave petition this Court directed the reinvestigation by CBI. CBI thereupon proceeded with the reinvestigation. PW 61, the CBI Officer included a number of witnesses including the Forensic Expert and Psychiatrist. He also conducted a dummy experiment by PW 53 Director of Central Forensic Laboratory with the help of PWs 54 to 56 and PW 60, the Senior Scientific Officer. PW 61 arrested the accused and also subjected them to polygraph (lie detector) test. After completion of the investigation, he laid the charge-sheet under Sections 120-B, 323, 326, 302 and 201 IPC. The prosecution examined PWs 1 to 61 and marked several exhibits. The plea of the accused has been one of denial. As stated above ultimately A-1 and A-2 are found guilty. On the basis of the evidence the trial court formulated six points for determination and they are:

"48. The points that arise for determination in this case

1. Whether the death of Peethambaran is a case of homicide or suicide?
2. If it is a case of homicide, whether A-2 and A-3 voluntarily caused grievous hurt to Peethambaran by beating with a stick and torch on the terrace of the Polakulath Tourist Home at Palarivattom and then threw or pushed him down to the southern courtyard with the intention to cause his death on 22-4-1983 at about 4.30 a.m.?
3. Whether A-2 and A-3 caused the death of Peethambaran at the instance and instigation of A-1 and in pursuance of a criminal conspiracy, between A-1 to A-3?
4. Whether A-4 is privy to the conspiracy to cause the death of Peethambaran?
5. Whether A-1 to A-4 in pursuance of a criminal conspiracy, tampered with the evidence of murder to screen the offenders from legal punishment and gave false information to the police?
6. Whether the accused are guilty and if so for what offence?"

So far as point 1 is concerned, the medical evidence assumes lot of importance in this case. The trial court, however, finally held that the death of deceased was a case of homicide and not suicide. On point 2 the trial court held that A-2 and A-3 voluntarily caused grievous hurt to the deceased on the terrace and threw him down from the terrace to the southern courtyard at a depth of 65 feet. On point 3, the trial court held that it was at the instance and instigation of A-1 that A-2 and A-3 caused the death of the deceased in pursuance of a conspiracy among A-1 to A-3. Point 4 was decided against the prosecution and A-4 was acquitted. Point 5 was also decided against the prosecution and it was held that there is absolutely no evidence to find that any of the accused or anybody under the direction tampered with the evidence of offence or gave false information to screen the offenders from legal punishment. On the basis of conclusion the trial court answered point 6 by holding A-1 guilty under Section 120-B read with Section 302 IPC and A-2 under Section 302 read with Section 120-B IPC and accordingly convicted and sentenced them.

3. In appeal, the High Court, however, held that so far as A-3 is concerned, there is no positive evidence against him and accordingly acquitted him and confirmed the rest of the findings of the trial court.

4. Shri Ram Jethmalani, learned Senior Counsel appearing for the appellants strenuously contended that the death of the deceased was not at all homicidal and it was a case of suicide or it can also be due to an accident. It is also his submission that there is neither direct evidence nor circumstantial evidence worth mentioning which connects any of the appellants with the alleged crime and the two courts have completely failed to note that the ingredients of the offence punishable under Section 120-B read with Section 302 IPC have not been made out and that on mere suspicion the appellants have been convicted.

5. We shall first deal with the submission whether there is sufficient evidence to convict the accused. Then, if necessary, we shall go into the medical evidence on the question whether the death of the deceased is a case of homicide or suicide. The trial court as well as the High Court in the first instance have held that A-2 and A-3 have voluntarily caused grievous hurt to the deceased by beating him with a stick on the terrace and then threw or pushed him down into the courtyard. The courts below started with a presumption that the alleged murder is an inside job and no stranger could have access to the scene of occurrence at that untimely hour. Assuming it to be so, the prosecution has still to prove that A-2 and A-3 inflicted injuries and threw the deceased down. The High Court, as a matter of fact, acquitted A-3. It is interesting to note at this stage that the trial court took upon the exercise of eliminating one or other inmates who could have committed the crime and by strange process of reasoning fixed the liability on A-2 and A-3. Both the courts below have referred to the evidence of PWs 4, 5, 7, 8, 11, 12, 13, 15 and 17. Out of them PW 17 turned hostile. PW 13 simply stated that as the doors were closed they could not go out and that as usual, he and some other employees were sleeping in the dining hall. PW 3 stated that before the incident he saw the deceased in the company of A-3 at the time of his checking out. His evidence in any manner does not incriminate A-2. The categorical finding of the trial court is that the deceased was last seen in the company of A-3 and the High Court, however, took the view that the case against A-3 is not at all proved. The main evidence relied upon by the courts below to connect A-2 is that of PW 4. PW 4 deposed that he heard something heavy falling from the terrace of the tourist home. He is employed in another hotel on the southern side of the tourist home and in between there is a piece of vacant land. According to him he used to sleep on the terrace and after hearing the sound he saw a person running away from the tourist home direction and the said person jumped out of the compound wall and ran towards the north. PW 4 immediately got down from the terrace and called his friend Sudhakaran and told him what he had heard. Then they went to the courtyard and recognised the deceased who was lying injured. It is very important to note that PW 4 in the initial stages did not mention that the person whom he saw running away was A-2. It is only at a highly belated stage when CBI came into picture that he appears to have told them that he saw A-2 running away. Even before the CBI admittedly he did not disclose everything but when he was again questioned, according to him, he told the CBI that he saw A-2 running away. We fail to appreciate as to how reliance can be placed on such unsatisfactory evidence for convicting A-2 under Section 302 read with Section 120-B IPC. This witness was cross-examined at length. There are quite a few other infirmities in his evidence but it may not be necessary for us to refer to them. We have perused the

evidence of other witnesses. They do not in any manner improve the prosecution case. There is no other evidence worth mentioning which connects A-2 with the crime except mere suspicion on the basis that he was a driver and trusted bodyguard of A-1.

6.The trial court having in the abovesaid manner held that A-2 and A-3 caused grievous hurt to the deceased, then proceeded to consider the third point namely whether there was a criminal conspiracy and whether A-2 and A-3 caused the death of the deceased at the instance and instigation of A-1 and in pursuance of the alleged conspiracy. The trial court, however, observed that A-2 and A-3 had no personal enmity or grudge towards the deceased but inferred that they would have committed the offence only at the behest of A-1. Strong reliance is also placed on the motive aspect. The evidence of PW 1, the father of the deceased, has been strongly relied upon. At this stage it is relevant to point out that motive and preparation by themselves do not amount to conspiracy. It also relied on the evidence in respect of some of the investments made by A-2 and took the view inferentially that the said investments made by A-2 speaks a lot about A-1 namely that A-1 must have paid the same to A-2 for committing murder of the deceased. The trial court at one stage clearly pointed out that there is not even an allegation that A-1 paid A-2 for the murder of the deceased but proceeded to consider the evidence in respect of some of the investments made by A-2 for drawing the said inference. This is all the evidence relied upon to come to the conclusion that it was at the instance and instigation of A- 1 that A-2 and A-3 caused the death of the deceased. The High Court proceeded somewhat in the same manner.

7.No doubt in the case of conspiracy there cannot be direct evidence but the view taken by the High Court that the motive, opportunity and possible complicity in the offence are inferential from the available facts and circumstances and on that basis an offence of conspiracy would be made out, is not justified on the basis of the evidence on the record. It may not be necessary for us to discuss that part of the evidence dealing with motive. Assuming that A-1 was apprehensive that the deceased might disclose his trade secrets, that by itself cannot prove the conspiracy. The High Court, however, pointed out that the conduct of the parties would be a relevant circumstance to make out an offence of conspiracy. The conduct of A-1 referred to in this context is that he went to the tourist home at 9 a.m. and that he did not go or meet or console PW 1 on that day and that he rewarded A-2 sufficiently to purchase ornaments and make investments. According to the High Court, these circumstances which indicate that A-2 was a close associate of A-1 coupled with the circumstance that A-2 was found running away, would be sufficient to make out a case that A-1 and A-2 conspired to eliminate the deceased. Having given our anxious considerations, we cannot agree with the view taken by the High Court. On the other hand, the evidence relied upon by the prosecution to prove the conspiracy is wholly insufficient. After having perused the judgments of both the courts below, we find that the convictions are based more on suspicion particularly on the ground that A-1 had motive to eliminate the deceased.

8.On the question whether the death was homicidal or suicidal, so much of medical evidence has been adduced. Learned counsel for the appellants strenuously contended that the entire medical evidence given by the doctors, even if taken together, there is a grave doubt whether it was really a homicidal death. Two courts below mainly relied on the evidence of PW 54, Dr Jayapalan, the Director of Forensic Medicines who opined that injury Nos. 1, 2 and 16 were not due to fall and all

other injuries were due to fall and that injury Nos. 1, 2 and 16 could have been sustained before the fall. It is on the basis of this evidence that the prosecution wanted to make out a case that the deceased was first beaten up and then was thrown. As mentioned above, the CBI also conducted a dummy test to show that the deceased must have been thrown by somebody from the terrace. We have perused the evidence in this regard and from that alone it cannot be concluded that the death was homicidal. As a matter of fact, the medical experts PWs 53 to 55 admitted in their cross-examinations that all the injuries found on the deceased and noted in the postmortem certificate can as well be sustained in an assault by several persons with different weapons. In view of such halting type of medical evidence, we do not think that the only inference can be that the death was homicidal.

9. It is pertinent to note that the accused were also charged under Section 120-B read with Section 201 alleging that in pursuance of the criminal conspiracy the accused tampered with the evidence of murder after the occurrence to screen the offenders and that a false information was given to the police. Both the courts below have held that there is no material whatsoever to establish the same. It can thus be seen that there is no material whatsoever to show that the accused who are alleged to have conspired did anything to cover up the crime. Therefore the only evidence relied upon by the prosecution in proof of the conspiracy is with reference to the few above mentioned circumstances prior to the murder and the only other subsequent circumstance relied upon by the prosecution is the conduct of A-1 in not consoling the father of the deceased. An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

10. The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other reasonable interpretation.

11. After a careful examination of the entire material on record, we are of the view that the prosecution has completely failed to establish the guilt of A-1 and A-2. Accordingly we set aside the convictions and sentences passed against A-1 and A-2 and allow Criminal Appeal Nos. 315 and 316 of 1990. SLP (Crl.) Nos. 3329-31 of 1994 (Arising out of Crl. M.Ps. Nos. 4831-33 of 1990)

12. These Crl MPs have been filed by Shri S.K. Viswambharan, Superintendent of Police, Pathanamthitta District, Kerala who figured as PW 59 in this case seeking permission to file the special leave petition with a prayer that certain adverse remarks made by the High Court against him may be expunged and for condonation of delay and for stay. By our order dated 28-9-94 we condoned the delay and granted the permission to file the special leave petition.

13. The petitioner at the relevant time was a DSP and the investigating team consisted of himself, another DSP, 2 SPs, DIG and the IG. This team after due investigation came to the conclusion that the death of the deceased was due to suicide. Subsequently by an order of the Supreme Court reinvestigation was conducted by the CBI and the charge- sheet was laid against the four accused. As mentioned above three out of them were convicted by the Sessions Court and the High Court while dismissing the appeal of two accused passed certain adverse remarks and strictures against the petitioner. The High Court observed that the conduct of PW 59 (the petitioner) in reporting the case as of suicide without contacting PWs 54 and 55 justifies drawing an inference that powerful influences were at work to deflect and distort the investigation. There are some more observations in this context against the petitioner. It can therefore be seen that the High Court entertained doubts regarding the honesty of the petitioner's participation in the investigation and as to how he came to the conclusion that it was a case of suicide which largely depends on the appreciation of the medical evidence. We have already referred to the relevant evidence on record in this context including the medical evidence. It has also come on record that the deceased was treated by a Psychiatrist and certain drugs also were purchased by the deceased and therefore the possibility of the investigating officer having an honest impression that the deceased might have committed suicide, cannot be ruled out. As a matter of fact the trial court after a consideration of the relevant evidence also made a similar observation. We have also noted that the medical evidence is not conclusive. Under these circumstances and in view of the fact that we have set aside the judgment of the High Court, the adverse remarks and strictures passed against the petitioner stand expunged. The special leave petition is disposed of accordingly.