Marachalil Pakku And Anr. vs State Of Madras on 25 May, 1954

Equivalent citations: AIR1954SC648, AIR 1954 SUPREME COURT 648

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

Mahajan, C.J.

1. The incident with which we are concerned in this appeal by special leave, took place at about 4-30 P. M. on the 31st October 1952 in Meladi Desam (Malabar) in the house of P.W. 1, Mr. P. Achuthan, a vakil of 27 years' standing. The murdered man was his clerk, Kolangarakandi Kannan, who belonged to the Thiyya community, and who was a prominent person in the social circles of that community. He was taking keen interest on behalf of the Hindus and was, disliked by the Moplas between whom and the Thiyyas there was considerable communal tension during that period.

2. The prosecution case is that on account of his active interest on behalf of the Hindu community the Moplas wanted to put an end to his life. A riotous mob had collected that day shortly before the incident at the railway station and within half an hour of the dispersal of the mob, it is said that the present appellants along with accused 3 to 7 proceeded to the house of the vakil and rushing into the room where Kannan was taking refuge, they inflicted serious slab injuries on Kannan which brought about his death. Accused 4 and 5 held Kannan by the hands while accused 3, 6 and 7 held his legs at the time of stabbing. After having inflicted the injuries on Kannan they ran away. P. W. 1 who was in the verandah of his house did not enter the room when his clerk was being stabbed. He was paralysed and frightened and upset and could do nothing to prevent the attack on his clerk.

After the Moplas had gone away he went inside the room and saw Kannan lying in a pool of blood. His condition was dangerous and life was ebbing fast. He then called P. W. 2 and told him that accused 1 and 2 and five other Moplas had stabbed his clerk and that he should go inside and see for himself what had happened. P. W. 2 went inside the room and saw Kannan lying in a pool of blood. At the request of P. W. 1 he proceeded to inform the police about the incident. As he came out of the house he met a police lorry with a sub-inspector and some constables proceeding towards him on the road. He stopped the lorry and informed the sub-inspector about the incident. This report, Ex. P-1 was taken down by P. W. 7, a police constable. All this happened within 15 minutes of the occurrence. This report was then sent to the police station and on the basis of it the first information report was recorded.

3. After investigation, the two appellants along with accused 3 to 7, who have been acquitted by the High Court, were committed to the court of sessions where, as a result of the trial, they were found guilty of the offence of murder under Section 302, I. P. C. and were sentenced to death. Accused 3 to 7 were found guilty under Section 302 read with Section 149, I. P. C. and were sentenced to transportation for life. The conviction of the two appellants came up for confirmation before the High Court, along with the appeals preferred by all the convicted persons. The High Court confirmed the death sentences passed on the two appellants but gave the benefit of doubt to accused 3 to 7. Their convictions and sentences were set aside and they were acquitted.

4. The prosecution case is supported by the testimony of P. W. 1, the vakil, P. W. 2, whom the vakil called immediately after the incident to the house and who was told to make a report to the police, P. Ws. 3 and 4 who were nearby at the time the occurrence took place and P. Ws. 5 and 6 who actually saw Kannan being stabbed. The learned Sessions Judge believed the evidence given by all these eye-witnesses. Before the High Court, an attempt was made to tar the eye-witnesses as liars and have their testimony rejected on the ground that they were all giving false evidence owing to communal feelings.

The defence theory was that deceased Kannan was stabbed as a result of the rioting at the railway station by some unknown persons, that he ran for succour after the stabbing into the house of his master P. W. 1 but fell down and died in the northern room of the house, that the accused 1 and 2, being prominent Muslims of the locality, have been implicated on account of the enmity which Rashtriya Swayam Sewak Sangh has towards them. After a full-dress debate on the merits of the testimony of these eye-witnesses and on a consideration of the theory propounded by the defence, the High Court, in clear and unambiguous language, expressed the opinion that there was no reason whatsoever not to believe the evidence of the vakil P. W. 1 in its entirety.

It was found that his evidence was corroborated in all details by the deposition of P. W. 2 whose evidence also was pronounced as true. The High Court also held that there was no reason to disagree with the learned Sessions Judge as regards his appreciation of the evidence of P. Ws. 3 and 4. As regards the evidence of P. Ws. 5 and 6, who had seen the actual stabbing, the learned Judges said as follows:

> "On a careful perusal of the depositions of these two witnesses we are perfectly satisfied that they were eye-witnesses to the incident though a very thorough and searching cross-examination has brought forth minor discrepancies in certain places..... The evidence of P. Ws. 5 and 6 as to how Kannan was murdered by accused 1 and 2 stabbing him, and the others holding him by the hands and legs must be accepted as true. The minor discrepancies which were brought out by strenuous cross-examination of P. Ws. 3 to 6, who are unaccustomed to the witness-box, do not appeal to us very much".

Regarding the existence of discrepancies and contradictions between the different statements given by the witnesses either before the police or the committing magistrate, the learned Judges reached the following conclusion:

> "What we have to see in assessing the evidence of various witnesses is whether, having an overall picture of the whole matter, the witnesses have resiled or made statements which would in any way detract from the truth of actual incidents spoken to by them. We need hardly say that in our view the so-called discrepancies do not affect the merits of their testimony. The defence has not been able to point out any discrepancy whatever between the earlier statements and deposition in the Sessions Court made by P. W. 1. Therefore the attack on his testimony is only with regard to the general improbability of the situation and the so-called unusual conduct of the witnesses.
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> Even as regards P. Ws. 2 and 3 no portion of their earlier testimony or statement has been marked as a contradiction. With regard to P. W. 4, Exs. P-2, D-3 and D-4 have been put in to show the difference between the deposition in the committing court as well as in the Sessions Court. The learned Sessions Judge has discussed these exhibits in para. 18 of his judgment and stated that Exs. D-3 and D-4 and P-2 have to be read together and so read there can be no contradiction. We are in entire agreement with the learned Judge in his opinion and do not propose to restate the reasons given by him".

Similar view was expressed about the evidence of P. Ws. 5 and 6.

5. It was argued with great vehemence in the High Court as well as in the Court of Sessions that there was trail of blood from the front door of the house of the vakil into the corridor rooms marked H and H-1 in the plan and that supported the defence theory that the deceased Kannan received the stab injuries not in or near the house in question but somewhere far away near the railway station. The High Court took the view that if Kannan had received the injuries somewhere outside the house it was impossible for him to have come into the room in view of the doctor's evidence.

It was concluded on the material placed on the record that there could be no room for doubt that Kannan received the injuries in the room itself and not outside, and that he was carried out of the room while life was still lingering' and therefore there would be dripping of the blood from the body during the course of transit as the injuries were very serious and vital arteries had been cut. An attack was made that Ex. P-1, which was dictated to the police within 15 minutes of the occurrence, was not genuine and that the police had concocted a false case against the accused. The High Court held that the defence failed to prove Ex. P-1 as a spurious document.

6. As a result of these findings the High Court confirmed the conviction of the two appellants and held that it was accused 1 and 2 who stabbed the deceased as a result of which he came by his death. Strangely enough, as regards the participation of accused 3 to 7 in the crime, in spite of the fact that the High Court was not prepared to hold that the prosecution evidence was unreliable, and despite its finding that the evidence of P. Ws. 5 and 6 that these accused persons were holding Kannan by his hands and legs, was true, it gave the benefit of doubt to these persons and acquitted them. The reasoning of the High Court on this part of the case is contained in the penultimate paragraph of the judgment:

> "We have placed reliance chiefly on the evidence of P. W. 1 and the recitals contained in Ex. P-1. P. W. 1 was so upset that he was not able to identify accused 3 to 7. Therefore we have to take it that the evidence of P. W. 1 against accused 3 to 7 is very much neutralized. He is not able to say whether accused 3 to 7 were the five among the seven persons who entered the house that day. That is the reason why their names do not appear in Ex. P-1. If their names also had appeared in Ex. P-1 we would have held that they are as much guilty as accused 1 and 2 are. The absence of their names in Ex. P-1 does not give us sufficient confidence to hold that since seven persons took part in the murder of whom accused 1 and 2 decidedly participated, the remaining five should necessarily be accused 3 to 7.
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> We cannot therefore feel an abiding conviction of a moral certainty about the truth of the participation of the other five accused. Though it is a case where we may be morally convinced, from the evidence of P. Ws. 3, 4, 5 and 6, that these accused were also there, we are inclined to give them the benefit of the doubt. We are fully convinced that seven persons took part in this crime. But in regard to the identity of five of the seven persons, an element of doubt has occurred in our mind in view of the absence of their names in Ex. P-1 and their non-mention by P. W. 1. When we weigh the evidence of P. Ws. 3 to 6 in the scale along with that of P. W. 1 and Ex. P-1, it seems to us that greater weight should be given to that of P. W. 1 and Ex. P-1. In those circumstances we have to give the benefit of the doubt to accused 3 to 7".

7. It is this inconsistency in which the learned Judges fell that led us to the granting of special leave to appeal. The learned Judges positively held that seven persons took part in the crime. Witnesses whom they believed definitely named those seven persons. Their names were not given by P. W. 1 and P. W. 2 in Ex. P-1 because they had not identified the five with certainty. P. Ws. 5 and 6 whose evidence has been held to be true gave their names and identified them.

It was nobody's case that the five who took part in this murder along with the two appellants were some others than those who had been charged and tried for the offence. In this situation the learned counsel for the appellants urged that their conviction was illegal as the charge was that the appellants and other five accused constituted an unlawful assembly and the said five accused having been acquitted, and in the absence of a charge that five other unknown persons constituted an unlawful assembly, the two appellants could not be held members of the unlawful assembly which had the above common object. It was also urged that there was misjoinder of charges and the trial was vitiated on that ground as well.

8. In our judgment, none of the contentions raised by the learned counsel has any force. It is true, as stated in -- 'Dalip Singh v. State of Punjab', (A), that unless a mistaken identity is suggested or where the circumstances shut out any reasonable possibility of mistaken identity, then the hesitation on the part of the judge can only be ascribed, not to any doubt about identity but to a doubt about the number taking part. This proposition has no application here where in very firm language a finding has been given that seven persons took part in the crime. Owing to the names of accused 3 to 7 not having been included in Ex. P-1 the High Court was not prepared to hold that the five named by P.

Ws. 5 and 6 were necessarily the persons who participated in the crime.

In view of this finding the contention that the two appellants could not be convicted under Section 302 read with Section 149 can-not be sustained. Be that as it may, after hearing Mr. Sethi on the merits of the case, we are satisfied that the High Court was in error in acquitting accused 3 to 7 and giving them the benefit of doubt. P. W. 2 who was responsible for Ex. P-1 was not sure about the identity of these five persons. In Ex. P-1 it was said that Pakku, Moosa and five other Muslims had stabbed Kannan with knife. P. Ws. 5 and 6 were not present at the time when Ex. P-1 was dictated and therefore their evidence could not be affected by the circumstance that the names of accused 3 to 7 were not mentioned in Ex. P-1, and there was no reason to doubt the evidence of P. Ws. 5 and 6 on any grounds whatsoever.

We have not been able to understand how the High Court could acquit these persons having held that the evidence of P. Ws. 5 and 6 as to how Kannan was murdered by accused 1 and 2 stabbing him and the others holding him by his hands and legs, was true. It also said that with regard to participation of accused 3 to 7 they could not say that the prosecution evidence was unreliable. On these findings, in our opinion, no scope was left for introducing into the case the theory of the benefit of doubt. We think that accused 3 to 7 were wrongfully acquitted. Though their acquittal stands, that circumstance cannot affect the conviction of the appellants under Section 302 read with Section 149, I.P.C.

In this case there can be no doubt whatsoever that the two appellants along with five others came with the purpose and with the common object of putting an end to the life of Kannan. That being so, the conviction of appellants 1 and 2 for murder under Section 302 read with Section 149 is fully justified. We do not think that there has been any misjoinder of charges in this case. But even if it be so, that misjoinder has not caused any prejudice in the case.

9. For the reasons given above this appeal fails and is dismissed.