State Of Kerala vs Raneef on 3 January, 2011

Equivalent citations: AIR 2011 SUPREME COURT 340, 2011 (1) SCC 784, 2011 AIR SCW 306, AIR 2011 SC (CRIMINAL) 246, 2011 (3) AIR JHAR R 500, 2011 (1) AIR KANT HCR 838, (2011) 1 MADLW(CRI) 385, 2011 CRILR(SC MAH GUJ) 90, (2011) 2 PAT LJR 49, (2011) 1 DLT(CRL) 1, (2011) 73 ALLCRIC 319, 2011 CRILR(SC&MP) 90, (2011) 48 OCR 480(2), (2011) 1 CRILR(RAJ) 90, (2011) 1 UC 198, (2011) 101 ALLINDCAS 132 (SC), (2011) 1 CRIMES 177, (2011) 1 CURCRIR 132, (2011) 3 MAD LJ(CRI) 761, (2011) 1 DLT(CRL) 308, (2011) 1 ALLCRIR 333, (2011) 1 SCALE 8, (2011) 2 BOMCR(CRI) 767, (2011) 2 MH LJ (CRI) 12, 2011 CALCRILR 2 14, (2011) 1 KER LT 242, (2011) 1 RECCRIR 381, (2011) 1 CHANDCRIC 143, 2011 (1) SCC (CRI) 409, 2010 (4) CRIMES 738 SN, 2011 (1) KCCR SN 39 (SC)

Author: Markandey Katju

Bench: Gyan Sudha Misra, Markandey Katju

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _ 3____OF 2011
[Arising out of Special Leave Petition (Crl.) No.7999/2010]

State of Kerala .. Appellant

-versus-

Raneef .. Respondent

JUDGMENT

Markandey Katju, J.

1. Leave granted.

2. Heard learned counsel for the parties.

3. The appellant has filed this appeal challenging the impugned order of the Kerala High Court dated 17.9.2010 granting bail to the respondent, Dr. Raneef, who is a medical practitioner (dentist) in Ernakulam district in Kerala, and is accused in crime no.704 of 2010 of P.S. Muvattupuzha for offences under various provisions of the I.P.C., the Explosive Substances Act, and the Unlawful Activities (Prevention) Act.

4. The facts of the case are that on 4.7.2010 soon after 8 a.m. seven assailants came in a Maruti Van and assaulted Prof. T.J. Jacob of Newman College, Thodupuzha and chopped off his right palm from the vicinity of his house when he was returning home after Sunday mass. The role attributed to the respondent is that he treated one of the injured assailants (who was injured when Prof. Jacob's son tried to protect his father) by suturing (stitching) his wound on the back after applying local anesthesia at a place 45 kms. away from the place of the incident.

5. The alleged motive for attacking Prof. Jacob was that he incorporated a question for the internal examination of B.Com. paper criticizing Prophet Mohammed and Islam.

6. The prosecution case is that the respondent gave medical aid to one of the wounded accused in pursuance of a previous plan that if and when any of the assailants got injured in the attack on Prof. Jacob then immediate medical treatment would be given by the respondent to the injured. The respondent stitched the back of an assailant, which is not the job of a dentist. The respondent, along with the other accused is a member of the Popular Front of India, a Muslim organization, and was head of its medical committee. Certain documents, C.D.s, mobile phone, books, etc. including a book called `Jihad' were allegedly seized from his house and car.

7. The prosecution has placed reliance on the proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 which states that the accused shall not be released on bail if the Court, on perusal of the case diary or the report under Section 173 Cr.P.C. is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

8. On the other hand, the case of the respondent as disclosed in the counter affidavit filed before us is that even according to the prosecution case the respondent was not one of the assailants, and he is not named in the FIR. In para 13 of the counter affidavit the respondent has stated that the attack on Prof. Jacob is a crime which is to be condemned. However, as a pretext to the investigation the police had lashed out a rein of terror on innocent people of the minority community, people who are totally innocent or even had no knowledge of the crime have been falsely implicated. 54 persons have been made accused in the crime. Many residential houses, mosques and offices were raided and searched, and even minor children and women were cruelly tortured both physically and mentally. Holy books and other religious books were thrown out, seized and taken away and bundled in police stations. War like atmosphere was created in mosques, daily prayers were disrupted and men illegally detained, and physically tortured in custody and false cases booked against innocents.

9. It is further alleged in the counter affidavit that the Popular Front of India (PFI) or the Social Democratic Party of India (SDPI) are not militant or terrorist organizations. There is no history of

crimes against the party or its workers. They are not banned organizations. The SDPI is a political party recognized by the Election Commission and the PFI is registered under the Societies Registration Act.

10. The respondent has alleged that he is a dental surgeon hailing from a respectable family in Aluva. His father Late Dr. Abdul Karim was a doctor loved and respected by all, who died as a Civil Surgeon while working in the Government Hospital, Perumbaroor. In 2001 the respondent started Al Ameen Multi-Speciality Dental Hospital in Aluva. Five other doctors including the respondent's wife, who is also a dental surgeon, are working in the said hospital. The respondent has a son aged 9 years and daughter aged 5 years. He claims that he has a very good reputation and is loved by all due to the services rendered by him to the poor and needy. The respondent's elder sister is a post graduate in zoology, and his younger sister is a law graduate. The book entitled `Jihad' said to have been found in his house was a Malayalam translation of a book written in Urdu in 1927 by a well known and respected religious scholar, Maulana Sayyid Abul Ala Mandoodi and has been in circulation for 83 years, and is available in many book shops.

11. The respondent has alleged that he has been falsely implicated only because he medically treated one of the alleged assailants.

12. At this stage we are not expressing any opinion as to whether the allegations in the versions of the prosecution or defence are correct or not, as evidence has yet to be led. However, we would like to make certain observations :

> 1) We are presently only considering the bail matter and are not deciding whether the respondent is guilty or not. Evidence has yet to be led and the trial yet to commence. Hence the prosecution is yet to establish by proof beyond reasonable doubt that the respondent was part of a conspiracy which led to the attack on Prof. Jacob.
>
> 2) The case against the respondent is very different from that against the alleged assailants. There is no allegation that the respondent was one of the assailants.

We are of the opinion that at this stage there is no prima facie proof that the respondent was involved in the crime. Hence the proviso to Section 43D(5) has not been violated.

The respondent, being a doctor, was under the Hippocratic oath to attempt to heal a patient. Just as it is the duty of a lawyer to defend an accused, so also it is the duty of a doctor to heal. Even a dentist can apply stitches in an emergency. Prima facie we are of the opinion that the only offence that can be leveled against the respondent is that under Section 202 I.P.C., that is, of omitting to give information of the crime to the police, and this offence has also to be proved beyond reasonable doubt. Section 202 is a bailable offence.

3) As regards the allegation that the respondent belongs to the PFI, it is true that it has been held in Redaul Husain Khan vs. National Investigation Agency 2010 (1) SCC 521 that merely because an organization has not been declared as an `unlawful association' it cannot be said that the said

organization could not have indulged in terrorist activities. However, in our opinion the said decision is distinguishable as in that case the accused was sending money to an extremist organization for purchasing arms and ammunition. That is not the allegation in the present case. The decision in State of Maharashtra vs. Dhanendra Shriram Bhurle 2009(11) SCC 541 is also distinguishable because good reasons have been given in the present case by the High Court for granting bail to the respondent.

In the present case there is no evidence as yet to prove that the P.F.I. is a terrorist organization, and hence the respondent cannot be penalized merely for belonging to the P.F.I. Moreover, even assuming that the P.F.I. is an illegal organization, we have yet to consider whether all members of the organization can be automatically held to be guilty.

In Scales vs. United States 367 U.S. 203 Mr. Justice Harlan of the U.S. Supreme Court while dealing with the membership clause in the McCarran Act, 1950 distinguished between active `knowing' membership and passive, merely nominal membership in a subversive organization, and observed :

> "The clause does not make criminal all association with an organization which has been shown to engage in illegal activity. A person may be foolish, deluded, or perhaps mere optimistic, but he is not by this statute made a criminal. There must be clear proof that the defendant specifically intends to accomplish the aims of the organization by resort to violence."

In Elfbrandt vs. Russell 384 US 17-19 (1966) Justice Douglas of the U.S. Supreme Court speaking for the majority observed :

> "Those who join an organization but do not share its unlawful purpose and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. A law which applies to membership without the `specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of `guilt by association' which has no place here."

In Joint Anti-Fascist Refugee Committee vs. McGrath 341 US 123 at 174 (1951) Mr. Justice Douglas of the U.S. Supreme Court observed :

> "In days of great tension when feelings run high, it is a temptation to take shortcuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within."

We respectfully agree with the above decisions of the U.S. Supreme Court, and are of the opinion that they apply in our country too. We are living in a democracy, and the above observations apply to all democracies.

4) In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if

the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.

13. In the present case the respondent has already spent 66 days in custody (as stated in paragraph 2 of his counter affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel `A Tale of Two Cities', who forgot his profession and even his name in the Bastille.

14. With the above observations, this appeal is dismissed.

.....J. (MARKANDEY KATJU) .....J. (GYAN SUDHA MISRA)
NEW DELHI;

3RD JANUARY, 2011