

Supreme Court of India

Sadasivan Mohanachandran And ... vs State Of Kerala on 24 November, 1993

Equivalent citations: AIR 1994 SC 565, 1994 CriLJ 920, 1993 (4) SCALE 515

Author: K J Reddy

Bench: K J Reddy, G Ray

ORDER K. Jayachandra Reddy, J.

1. The two appellants herein (original accused Nos. 1 and 4) were tried alongwith 19 others for offences punishable under Sections 143, 149, 302, 342, 201, 218, 119 and 114 I.P.C. The trial court acquitted the 19 others and convicted the two appellants under Section 304 Part II I.P.C. and sentenced each of them to undergo R.I. for five years. They were acquitted for all the other charges. They preferred an appeal. The State also preferred an appeal against the acquittal of three of the other accused. The High Court dismissed both the appeals. Hence the present appeal.

2. The prosecution case is that at the relevant time accused Nos. 1 to 3, 7 to 9 and 11 to 21 were police constables attached to the Fort Police Station, Trivendrum. A-10 was a Sub Inspector attached to that Station and A-4 was a police constable in the Central Crime Station, Trivendrum. A-6 was a constable attached to Armed Reserve Camp. On 18.12.80 at about 2 P.M. A-6 went to the shop of Rajappan Nair, C.W.8 to purchase plantains. A wordy quarrel took place between A-6 and Rajappan Nair over the manner in which the price of the fruits was paid. Hearing the quarrel, Bhuvanendran, the deceased in the case, came to the scene and dragged A-6 by his collar out of the premises. A-6 left the place threateningly. He went to the Fort Police Station and complained of the incident to A-5, the Head Constable. A-5 deputed accused Nos. 1,7,8 and 9 to bring the culprit to the Police Station. They accordingly brought deceased as the offender and also P.Ws 5 and 6 as the persons present at the scene at about 2.30 P.M. On reaching the Police Station, A-1 and A-2 slapped Bhuvanendran, the deceased and A-1 hit the deceased on his flanks with his hand. Then A-1 dashed his head against the wall of 3 or 4 times causing injuries on the right side of the head. A-3 then hit the deceased on his back just below the neck with his bent elbow. A-1 made the deceased fall down by kicking him on his legs. Then A-4 kicked the deceased on his back 3 or 4 times. A-1 also kicked the deceased on his back. When the deceased attempted to rise up, A-1 pushed him and again kicked him on his chest. As a result of the injuries inflicted, the victim's condition became very serious. Dr. K.M.K. Nair, P.W.12 was summoned to the Police Station and he found the victim unconscious and his pulse very weak. The deceased was removed to the hospital at about 5 P.M. and he was examined by P.W.I, Dr. K. Sudhakaran there but the deceased died at about 6 P.M. The inquest was held and the dead body was sent for post-mortem. P.W.19, who conducted the post-mortem, found contusions all over the body of the deceased and on internal examination he found that Panchreas, liver and duodenum were bruised. The Doctor opined that the death was the result of blunt injuries to the heart, lungs and brain of the deceased. An intimation was sent to the police and a case was registered and P.W.31, the Detective Inspector took up the investigation and completed the same and laid the charge-sheet. The prosecution examined P.Ws 1 to 31 and the accused when questioned totally denied the offence.

3. The learned trial Judge relying upon the evidence of P.Ws. 5 and 6 held that the prosecution has proved its case only against A-1 and A-4 beyond all reasonable doubt and having regard to the nature

of the attack, convicted them under Section 304 Part II I.P.C. and acquitted others as they were not identified by P.W.5.

4. Learned counsel appearing for the appellants submitted that the evidence of P.Ws. 5 and 6 is artificial and that P.W.5 did not know the names of the accused and no test identification parade was held in respect of either of the appellants and the accused must have been shown to the witnesses and therefore his identification in the court is of no consequence. Learned counsel also submitted that the medical evidence does not support the prosecution case since the kicks and slapping given by the accused could not have resulted in the internal damage.

5. The case mainly rests on the evidence of P.Ws. 5 and 6 which has been accepted by both the courts below. P.W.5 deposed that he was owning a pan shop and used to sell ice also. At the time of occurrence he was standing near his brother's shop which was opposite to the shop of Rajappan Nair and he heard noise and he deposed that A-6 who was identified in the court, was quarrelling with the deceased. He further deposed that after some time some of the police people came and took the deceased, himself and also P.W. 6 to the Fort Police Station. He and P.W.6 were made to stand inside the screen and he saw the deceased being beaten and kicked by the police constables. He identified A-1 and A-4 as the persons who gave kicks and who hit the head of the deceased against the wall etc. He could not identify the other accused. This witness was cross-examined at length. From his evidence it can be seen that he identified only these two appellants having beaten the deceased. Much of the cross-examination is about some minor details as to how the quarrel started etc. Some of the omissions pointed out are also not very material. The evidence of P.W. 6 is also to the same effect. He also deposed that he and P.W. 5 were taken to the Police Station alongwith the deceased and he witnessed the beating. P.W.6, however, did not identify any of the accused but his evidence clearly shows that he and P.W.5 were taken to the Police Station and both of them witnessed the beating. To that extent his evidence corroborates the evidence of P.W.5. The general criticism against the evidence of P.W.5 is that no test identification parade was held and there was every possibility of the appellants-accused being shown to the witnesses. We do not find any such suggestion. So far as the medical evidence is concerned, the Doctor who conducted the post-mortem has clearly stated that the injuries found on the deceased could be caused by the head coming into contact forcefully against hard surface or by using blunt force either by fisting or kicking. The Doctor also stated that injury No. 4 could be caused by hitting with a bent elbow. The description of the beating as given by P.W.5 also shows that the deceased was beaten with hands and legs and his head was dashed against the wall. Therefore we do not agree that there is any conflict between the medical evidence and the testimony of P.W.5 regarding the manner of occurrence. The two courts below have concurrently held that the evidence of P.W.5 as corroborated by the evidence of P.W.6 establishes the guilt of the appellants beyond all reasonable doubt and we see no grounds to come to a different conclusion. Accordingly the appeal is dismissed. Appellants who are on bail shall surrender and serve out the remaining period of sentence.