

Arunachalam

Vs

P. S. R. Sadhanantham and Another

Criminal Appeal No. 170 of 1973

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

06.03.1979

JUDGMENT

CHINNAPPA REDDY, J. -

1. P. S. R. Sadhanantham and four other were tried by the learned Sessions Judge, Tirunelveli, on various counts. Sadhanantham (A1) was convicted under Sections 148 and 302, Indian Penal Code while the four others were convicted under Sections 147, 323 and 149 end with 323. The first accused was sentenced to imprisonment for life on the charge of murder and to rigorous imprisonment for a period of two years on the charge under Section 148. The others were sentenced to suffer imprisonment for a period of one year on each of the counts on which they were convicted, the sentences to run concurrently. All the five accused preferred an appeal to the High Court of Madras. The High Court allowed the appeal and acquitted all the accused of all the charges. Arunachalam the brother of the deceased has preferred this appeal against the judgment of the Madras High Court after obtaining special leave from this Court on July 26, 1973. The special leave was granted against the first accused Sadhanantham only.

2. The case of the prosecution, briefly, was that there was enmity between the deceased Soundarapandian and his brother Arunachalam (PW 2) and Natesan (PW 3) on one side and Rajapalavesmuthu Nadar, his sons A1 and A2 and his nephews A4 and A5 on the other. There were the usual disputes arising out of elections to the Gram Panchayat and to the local co-operative stores. In connection with the village Amman festival, PW 3 was arranging to have a dance performance on the night of August 20, 1970, in the Gandhi Maidan. About a week earlier, Sadhanantham, the first accused demanded that the dance should be performed under his presidentship but PW 3 did not agree. On the night of August 20, 1970, PW 3 along with one Gopalakrishnan (PW 6) was decorating the stage. Tubelights were burning and several persons had gathered in front of the stage. At about 8.45 p.m. accused 1 to 5 came there and got up on the stage. A1 questioned PW 3 how he dared to conduct the show without his presiding over it. PW 3 replied that the dance performance would be conducted without the presidentship of A1. A1 then slapped PW 3 on the cheek. A2 to A4 also started beating PW 3 with their hands. PW 6 and several others who were there ran away apparently not wanting to get involved in the fracas. PW 3 jumped down from the stage and attempted to run away when A3 caught him and began to throttle his neck. A1, A2 and A4 joined in beating him with their hands. The deceased, PW 1, PW 2 and PW 5 came running towards PW 3. The deceased asked the first accused why they were beating his younger brother. A3 and A5 who were holding PW 3 by the neck let him free. A1 asked the deceased who he was to question him and saying so he took out a knife from his waist and stabbed the deceased on the left flank. The deceased fell down dead shouting "stabbed, stabbed". Accused 1 to 5 then ran towards the north. PW 3 chased them over a distance of about one and half furlongs. They ran

inside the forest. PW 3 stopped chasing them further. In the meanwhile the injured Soundarapandian was taken by PWs 1, 2 and 5 to the Police Station and then to the hospital at Kayalpattinam. At the Police Station, the writer PW 14 recorded a statement Exh. P1 from Soundarapandian at 9.15 p.m. Soundarapandian when asked to sign the statement insisted on signing the statement after dipping the pen in the blood that was coming out of the wound. He was taken to the hospital in a jeep requisitioned by the police. PW 4 the Medical Officer in charge of the hospital examined the injured and found that the injury was of a serious nature. He sent the injured to the Government Headquarters Hospital at Tuticorin for further treatment. The District Medical Officer, PW 8 examined him and finding his condition very serious, sent a requisition Exh. P5 to the Sub-Magistrate, Tuticorin, to record the dying declaration of Soundarapandian. Exh. P6, the dying declaration was recorded by the Magistrate PW 7 at 1.30 a.m. At 7.45 a.m. next morning, PW 8 performed an operation but Soundarapandian could not be saved. He died at about 1.30 p.m. The autopsy was conducted by PW 9 who, on dissection found that the diaphragm and the upper lobe of the left lung had been pierced. The police after completing the investigation laid a charge-sheet against Sadhanantham, Nithiyantham, Thamilan, Kumaresan and Karthikeyan.

3. In support of its case, the prosecution examined PWs 1, 2, 3 and 5 as direct witnesses to the occurrence and relied upon Exhs. P1 and P6, the two dying declarations made by Soundarapandian. The prosecution also examined PW 6 to speak to the earlier part of the incident. All the accused denied the offence and stated that they were falsely implicated on account of enmity. In the cross-examination of the witnesses it was suggested that one Ramalingam was also injured at the same time and place. It was suggested that PWs 2 and 3 had prevailed upon the deceased to name A1 as the person who stabbed him. The learned Sessions Judge accepted the dying declarations as true. He also accepted the evidence of the eyewitnesses. He convicted and sentenced the five accused as mentioned earlier. The High Court acquitted the accused primarily on the ground that neither the direct witnesses nor the dying declarations explained the serious injury caused to Ramalingam, who it appeared from the evidence of the Doctor, PW 4, had received a stab injury 5cms x 2 cms x 2 cms near the left side of the abdomen on the back. The High Court thought that though Exh. P1 was purported to have been recorded earlier than Exh. P6 in point of time, it was in fact recorded later. The High Court took the view that the first accused must have been implicated by the deceased as the assailant in Exh. P6 at the instance of PW 3 who met him in the hospital at about 1 a.m. The evidence of the direct witnesses, PWs 1, 2, 3 and 5 was rejected on the ground that they were interested and had not explained how Ramalingam sustained the injury found on him. The conduct of PW 3 was also severely commented upon. The High Court acquitted all the five accused.

4. Before proceeding to discuss the evidence and the findings of the High Court we remind ourselves of the confines of our jurisdiction to deal with appeals by special leave against judgments of acquittal by the High Court. Article 136 of the Constitution of India invests the Supreme Court with a plenitude of plenary, appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court in arriving at those findings, has acted "perversely or otherwise improperly". (See *State of Madras v. A. Vaidyanatha Iyer* (1958 SCR 580 : AIR 1958 SC 61 : 1958 Cri LJ 232) and *Himachal Pradesh Administration v. Om Prakash* ((1972) 1 SCC 249 : (1972) 2 SCR 765)). In dealing with an appeal against acquittal,

the Court will, naturally, keep in mind the presumption of innocence in favour of the accused, reinforced, as may be, by the judgment of acquittal. But, also, the Court will not abjure its duty to prevent violent miscarriage of justice by hesitating to interfere where interference is imperative. Where the acquittal is based on irrelevant ground, or where the High Court allows itself to be deflected by red herrings drawn across the track, or where the evidence accepted by the trial Court is rejected by the High Court after a perfunctory consideration, or where the baneful approach of the High Court has resulted in vital and crucial evidence being ignored, or for any such adequate reason, this Court may feel obliged to step in to secure the interests of justice, to appease the judicial conscience, as it were.

5. A doubt has been raised about the competence of a private party, as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution against a judgment of acquittal by the High court. We do not see any sub-stance in the doubt. Appellate power vested in the Supreme Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. As we said earlier, it is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice (vide *Durga Shankar Mehta v. Thakur Raghuraj Singh* ((1955) 1 SCR 267 : AIR 1954 SC 520 : 1954 SCJ 723)). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of the Supreme Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in the Supreme Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice the Supreme Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We do not have slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of private parties also. The circumstance that the Criminal Procedure Code does not provide for an appeal to the High Court against an order of acquittal by a subordinate Court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136. We may mention that recently in *Mohan Lal v. Ajit Singh* ((1978) 3 SCC 279 : 1978 SCC (Cri) 378), this Court interfered with a judgment of acquittal by the High Court at the instance of a private party. An apprehension was expressed that if appeals against judgments of acquittal at the instance of private parties are permitted there may be a flood of appeals. We do not share the apprehension. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this court, special leave is not granted as a matter of course but only for good and sufficient reasons, as well established by the practice of this Court.

6. As earlier mentioned. The primary reason given by the High Court for rejecting the testimony of the direct witnesses and the dying declaration; was the supposed failure of the prosecution to explain the serious injury found on the person of one Ramalingam alleged to have been injured at the same time and place as the deceased. We may at once say that nothing is known about this Ramalingam. He is not shown to be connected, even remotely, either with the prosecution party or with the faction of the accused. He was very surreptitiously and dexterously introduced into the case in the course of the cross-examination of the prosecution witness and thereafter made to loom large. He was, as we shall presently point out nothing more than a "red herring" across the track. We will refer to the whole of the evidence where Ramalingam was made to appear in the case to examination on the ground that the injury on Ramalingam was not explained. PW 1 was put but one question whether he was aware that injuries were caused to one Ramalingam Nadar at the place of the occurrence on the night of occurrence. He stated that he was not aware of that fact. No. further

question was put to PW 1 pursuing the matter. Similarly PW 2 was also asked in cross-examination whether he was aware of the stabbing of one Ramalingam Nadar at the time of occurrence. He stated that he was not and that was the end of the matter and it was not pursued further. PW 3 was also asked the same question. He too denied knowledge of injuries sustained by Ramalingam Nadar on the night of occurrence. PW 5 was also asked a similar question and he too gave a similar answer. PW 4 the Medical Officer, Kayalpattinam, deposed in his evidence that he examined one Ramalingam at about 11.30 p.m. on August 20, 1970, and found an incised wound 5 cms x 2 cms x 2 cms near the left side of the abdomen on the back and one small irregular edged wound on the inner side of the first injury. The Doctor also stated that Ramalingam told him that he was assaulted by some unknown person when he was witnessing the dance show. PW 10 who had gone to witness the dance performance but who ran away when trouble started stated that when he was running away he saw one Ramalingam Nadar running along with him and that the said Ramalingam Nadar was keeping his hand near his waist and that the hand was blood stained. PW 15 the Head Constable attached to the Arumuganeri Police Station stated that 4 or 5 days after the occurrence he came to know that a case was registered in Arumuganeri Police Station on the strength of a complaint given by one Ramalingam. PW 16, the Investigating Officer also stated that the First Information Report registered on the strength of Ramalingam's complaint had also been sent to the Magistrate and that a final report had also been sent. He denied the suggestion made to him that the First Information Report in respect of Ramalingam's complaint was suppressed as it was not in favour of the prosecution. These are all the appearances which Ramalingam made, on the stage of this case, in the mouth of the witnesses, though Ramalingam did himself not enter upon the scene. None of the accused made any reference to Ramalingam in his statement. It would be noticed that it was not suggested to any of the prosecution witnesses that Ramalingam was connected with either the prosecution party or the party of the accused. It was not suggested that the injury to Ramalingam was caused by a member of either group. It was not suggested that Ramalingam intervened in the fight and received an injury. In fact there was nothing to suggest that Ramalingam and the deceased received their respective injuries in the course of the same transaction. The only suggestion was that Ramalingam received an injury that night at the place of occurrence. It is in evidence that as soon as trouble started, the people who had gathered there started running helter skelter. While so running Ramalingam apparently received a stab injury accidentally or deliberately from someone. In fact according to the evidence of the Doctor, Ramalingam told him that he did not know who his assailant was. There was, therefore, absolutely nothing to connect the stabbing of Ramalingam with the stabbing of the deceased Soundarapandian. The evidence of PW 10 also was to the effect that Ramalingam himself was one of those who ran away from the scene along with him and that was before the deceased was stabbed. There was thus nothing to indicate that the deceased or any of the direct witnesses were aware or could possibly be aware of the injury caused to Ramalingam. In our opinion the High Court was entirely wrong and wholly unjustified in rejecting the testimony of the direct witnesses and the dying declarations on the irrelevant consideration that they did not explain the injury found on the person of Ramalingam.

7. In regard to the dying declarations the reason given by the High Court to conclude that Exh. P1 must have been recorded later than Exh. P6 was that Exh. P1 contained several statements not to be found in Exh. P6. We are afraid that the High Court was merely indulging in speculation and approaching the question from the wrong end. Exh. P1 which was recorded by PW 14 was as follows :

Arumuganeri is my native place. I am doing shop business. Record dance was arranged to take place in Gandhi Maidan at Arumuganeri. I went to see the record dance along with Arunachala Nadar my elder brother, Gunasekaran younger sister's

husband, and Somasundaram son of Adinarayana Perumal. We were talking, standing in front of Ramaswami temple. Sadhanantham, Nithianandam, sons of P. S. Raja Nadar, Tamilam alias Subramaniam Kumarsan son of Thangapla Nadar, Karthikeyan son of Raja Pandia Nadar were beating my younger brother Natesan, on the north of the dancing stage. Myself, and the persons with me ran to that place. I questioned as to why you beat my younger brother. Sadhanantham son of P. S. Raja Nadar forcibly stabbed me with the greece knife in his hand, on my left flank, below the rib I cried to the effect "Ayyoh : stabbed". I covered the stab injury with my hand. My elder brother and Sonasundaram, took me to Police Station. There is prior enmity between myself and P. S. Raja Vagararia in connection with the elections. I read the statement. It has been recorded as narrated by me.

(Sd.)

Soundarapandian

Exhibit P6 which was recorded by the Sub-Magistrate, was as follows :

There is one Gandhi Maidan in Arumuganeri. Record dance was to be performed there. I went to see it. The dance was not begun. Myself, Arunachalam, my elder brother, Gunasekaran, my sister's husband were all talking. There was quarrel at the place of performance of the record dance. At that time, the record dance was not begun. Myself and others ran to the place where the quarrel took place. A boy called Sadanandam son of P. S. Raja Nadar stabbed me with a knife. I cried to effect "Ayyoh Stabbed, stabbed" ? The Police Station is very near. We all went there. My hand was stained with blood. There is no reason for stabbing me.

L.T.I. of Thiru Soundrapandian.

It is true that Exh. P1 gives more details than Exh. P6. Exh. P1 mentions the names of A2, A3, A4 and A5 also in connection with the beating of PW 3. It also mentions that the deceased was stabbed on the left flank below the rib. It further mentions the prior enmity between the deceased and P. S. Raja Vagararia. On the contrary Exh. P6 gives fewer details, and does not mention the names of the participants in the fight which preceded the stabbing of the deceased. The stabbing of the deceased by A1 alone is particularly mentioned. What is important to be noted in Exh. P6 is that it refers to the circumstance that the deceased first went to the Police Station. That statement lends support to the prosecution case that the deceased and others went to the Police Station and a statement was recorded at the Police Station from the deceased. What is more important is the circumstance that while Exh. P1 was recorded within a very short time after the occurrence, Exh. P6 was recorded a few hours after the occurrence by which time the condition of the deceased had apparently deteriorated and he was not in a position to make as detailed a statement as P1. The evidence of the District Medical Officer, PW 8, shows that when he saw him at 1 a.m. the condition of the deceased was very bad. P6 was recorded, it may be noted at 1.25 a.m. It would also be seen that the condition of Soundarapandian at that time was such that the thumb impression and not his signature could be taken on Exh. P6. The reason for less particulars in Exh. P6 was quite obvious but yet the High Court completely missed it because of its wrong approach. There was no reason

whatsoever to doubt the genuinences of Exhs. P1 or P6. The High Court thought that PW3 might have met the deceased in the Tuticorin hospital at 1 a.m. and induced him to implicate the first accused. This was nothing but speculation. As we mentioned the condition of the deceased was very bad at 1 a.m. and it is too much to think that anybody would have been allowed to go near the deceased in the critical condition in which he was in the hospital and to tutor him to implicate someone falsely.

8. The evidence of three of the eye-witnesses namely PWs 1, 2 and 5 was dealt with by the High Court in a most summary and perfunctory way. It was said :

The name of this witness PW 1 was not mentioned by the deceased in Exh. P6. It has been elicited from this witness that there was bitter enmity between him and the family of the accused. This witness was appointed by the deceased as a clerk in Arumuganeri Cooperative Stores and in the Panchayat election, PW 1 proposed the name of the person who stood against the father of accused 1 and 2. He was a prosecution witness in a criminal case instituted against the father of accused 1 and 2. This witness is not only interested in the deceased as he was employed under the deceased as a clerk but also inimically disposed towards the family of the accused. It will, therefore, be unsafe to rely upon his evidence. PW 2 is the brother of the deceased and PW 5 is the brother-in-law of the deceased. They are very much interested in the deceased and they were also inimically disposed towards the accused. They are not telling the truth. They have not explained as to how Ramalingam sustained the injury. They have fallen in line with the statements made in the dying declaration. We do not accept their evidence.

The reasons given were that the witnesses were interested and that they had not explained the injury found on the person of Ramalingam. In the case of PW 1 it was also stated that his name was not mentioned in Exh. P6. We do not think that the criticism of the High Court bears any scrutiny. We have perused the evidence of PWs 1, 2 and 5 and we are unable to discard their testimony for the sole reason that they are interested witnesses. With regard to PW 3 however, there is scope for much criticism having regard to his conduct subsequent to the incident. According to his evidence after he chased the accused he stopped for about an hour near the forest and returned to the village thereafter. While he was on his way back he saw his uncle's jeep on the road and learnt from his uncle that Soundarapandian had been taken to the hospital at Tuticorin. Therefore, he went to Tuticorin and saw his brother in the hospital at about 1 a.m. Thereafter he went to a hotel where he slept for the night. Next morning without going to the hospital to find out the condition of his brother he returned to the village and made himself available to the police for questioning at about 1 p.m. Though there cannot be any doubt that he witnessed the occurrence his subsequent conduct does not inspire such confidence as to place implicit reliance on his evidence. We, therefore, agree with the High Court that PW 3 was not a reliable witness.

9. In our view the two dying declarations Exhs. P1 and P6 may be relied upon without any reservation and the evidence of PWs 1, 2 and 5 may also be safely accepted. We have considered the reasons given by the High Court for acquitting the first accused and we find them wholly unsatisfactory. In the light of the principle set out by us earlier we think that the interests of justice demand that we should interfere with the order of acquittal in the present case. Accordingly, we allow the appeal, set aside the judgment of the High Court and restore the judgment of conviction and sentence passed by the learned Sessions Judge of Tirunelveli against the respondent (first

accused) on the charge under Section 302, Indian Penal Code.

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