Kanan and Others

Vs

State of Kerala

Criminal Appeal No. 245 of 1973

(Syed M. Fazal Ali, A. D. Koshal JJ)

07.03.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against a judgment of the Kerala High Court upholding the conviction and sentence passed on the appellants. The appellants were convicted under Section 120-B read with Section 308 and sentenced to eight years' R.I. They were also convicted under Sections 147 and 148 other offences. The charge against the accused was that they had entered into a conspiracy as members of naxalite party to raid the Police Station, Kuttiadi on the night/morning of December 17/18, 1969. In the course of the raid the police station was attacked and its articles were burnt. No member of the police station or staff was able to identify the raiders. The only evidence on the basis of which the appellants have been convicted may be categorised as follows :

1. Evidence of PW 17 and 18 to the effect that there was conspiracy to raid the police station in question in which the appellants have participated;

2. The evidence of PW 25 who identified the appellants running away near the scene of occurrence after the raid took place on the police station;

3. The extra judicial confession of appellant Piyachi (accused 5) to PW 27 widow of Velayudhan who died in the course of the occurrence.

This is all the evidence on the basis of which the appellants have been convicted. We have gone through the evidence of all these witnesses and we are unable to agree with the High Court that there was any legal evidence to support the conviction of all the appellants. So far as PW 25 is concerned, his evidence is full of serious infirmities. To begin with, he had come to the village in question in order to consult a dentist which was the only occasion for his presence in the village. As there was no accommodation in the travelling bungalow, he persuaded the Chowkidar to let him stay in his room. The evidence of PW 25 is that he consulted Dr. Sabestian and got his tooth extracted. Neither Dr. Sabestian was examined by the prosecution nor was any register produced to show that the witness had actually got himself examined by the Doctor. This serious omission raises a serious doubt about the very presence of PW 25 on the night of the occurrence. Secondly, PW 25 says that he heard an explosion, and if this was so, as he was ill, his first impulse and natural conduct would be to remain confined in the room rather than to go out to look as to what was happening around and invite danger. At any rate, the witness only identified the

appellant Kanan and M. P. Velayudhan as persons who were running away near the place of occurrence. The witness, however, did not say that he saw these witness either entering the police station and attacking it or coming out from the police station with explosives or arms. There was a huge crowd after the police station was attacked and if these two appellants were seen running away that by itself would not show that they had taken part in the raid. Finally the witness has clearly admitted that he knew these two appellants by face and yet named them while identifying them in court. It is not understandable as to how the witness gave the names of the appellants when he knew them only by face which indicates that names of the accused must have been supplied by someone else and this introduces an element of doubt in his testimony. Both the trial Court and the High Court have found that the mere fact that no T. I. Parade was held would not destroy the evidence of PW 25. With due respect, we feel that the High Court erred in law in taking this view. It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T. I. parade to test his powers of observation. The idea of holding T. I. Parade under section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have only once. If no T. I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court. In these circumstances, therefore, we feel that it was incumbent on the prosecution in this case to have arranged T. I. parade and got the identification made before the witness was called upon to identify the appellant in the Court. On this ground alone, the testimony of PW 25 becomes unworthy of credence and must be excluded from consideration. In this view of the matter, even if the evidence of PWs 17 and 18 regarding the participation of the accused in conspiracy to raid the police station be accepted, the evidence being of very vague nature, the appellant cannot be convicted because there is no evidence to show that the appellants were members of that conspiracy. Apart from this, PWs 17 and 18 named Piyachi as being the person in the meeting where it was decided to raid the police station. Form the evidence of these witnesses, it appears that they were also co-conspirators. In the circumstances, the evidence of these witnesses was that of an accomplice and could not be accepted without further corroboration.

2. Coming to the extra judicial confession of Piyachi before PW 27, we find it difficult to accept this evidence which is a very weak type of evidence and has made to PW 27 who was the widow of one of the conspirators and was helping her husband in making spears and other weapons. For these reason, therefore, we are unable to rely on the evidence furnished by the extra-judicial confession. Thus the position is, that there is absolutely no legal evidence on the basis of which the appellants could be convicted. The result is that the appeal is allowed, judgment of the High Court is set aside and the appellants are acquitted of the charges framed against them. The appellants are directed to be released forthwith unless released on bail already.

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