Marudanal Augusti

Vs

State of Kerala

Criminal Appeal No. 7 of 1973

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

29.03.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the appellant has been convicted under Section 302, IPC and has been sentenced to imprisonment for life, by the High Court of Kerala. The accused was tried by the Sessions Judge who after considering the evidence, acquitted the accused of the charges framed against him. Thereafter the State of Kerala filed an appeal to the High Court and the High Court reversed the order of acquittal and sentenced the appellant as indicated above. The facts of the case have been fully detailed in the judgments of the Sessions Court and the High Court and it is not necessary for us to repeat the same all over again. The trial Court appears to have acquitted the appellant on the ground that there were certain infirmities in the investigation conducted by the police officer. The manner in which the FIR was lodged, the delay in despatch of the FIR and the delay on the part of PW 1 in getting the injuries examined by the doctor, were features which according to the Sessions Judge were so gravely suspicious that they went to the root of the matter. The High Court on the other hand was not impressed by the reasons given by the trial Court and was of the opinion that there was no reason to disbelieve eyewitnesses PWs 1 to 6 against whom the accused bore no animus. The High Court was of the opinion that there was thus no reason to throw out the prosecution due to the infirmities noticed by the learned Sessions Judge. The High Court, however, seems to have overlooked the fact that in reversing the judgment of acquittal, the appellate Court has also to keep in mind a very vital consideration, namely, as to whether or not the view taken by the Sessions Judge could be reasonably possible. We have gone through the judgments of the Sessions Judge and the High Court and after hearing the parties we are satisfied that the view taken by the Sessions Judge was, doubtless, reasonably possible. To begin with, the occurrence is said to have taken place on June 23, 1971 at about 6.45 p.m. and FIR was lodged by PW 1 Augusti. The police station was at a distance of about 20 kilometres from the place of occurrence. The FIR contains graphic details of the entire occurrence and care has been taken not to omit even the minutes detail. The names of PWs 4, 5 and 6 as having witnessed the assault are not mentioned at all in the FIR. Secondly, even though PWs 2 and 3 have been mentioned in the FIR as having given first aid to the deceased along with the informant, it is nowhere mentioned that these two witnesses were also present when the deceased was actually assaulted. According to the allegation made in the FIR the attack on deceased was a sudden and short one and was not likely to have been noticed by anybody unless he was actually present there. The most serious infirmity which appears in the case is that although the FIR was lodged on the midnight of June 23/24, 1971, it was dispatched to the sub-Magistrate and received by him at 5-30 a.m. on June 25, 1971, that is to say, there was a delay of as many 29 hours in the receipt of the FIR by the sub-Magistrate. The investigating officer in

spite of being questioned on this matter, does not appear to have given any explanation whatsoever for this delay. On the other hand, he admits that the FIR was dispatched through express delivery. Indeed, if that was so, the FIR should have reached the Magistrate much earlier. That apart, there are intrinsic circumstances which throw serious doubt on the prosecution case. According to the version given by the informant, he had sustained the injury on his fingers while he was trying to snatch the knife from the appellant. The FIR no doubt mentions that the informant received injuries on his fingers, and despite this fact the informant went to the doctor not on June 24, 1971 but on June 25, 1971 at 9-30 a.m. Although the informant claims that he had gone to the doctor on June 24, 1971 but the doctor PW 13 categorically states that PW 1 had come to him with injuries only on June 25, 1971 at 9-30 a.m. The doctor further testifies that the injury was simple one and fresh. This, therefore, completely knocks the bottom out of the prosecution case regarding the circumstances in which the FIR was lodged. If the injury was fresh, then it could not have been sustained during the occurrence and, hence, the story put forward by the informant becomes extremely suspicious. No explanation for any of these doubtful circumstances has been given by the prosecution. There can be no doubt that in these tell-tale circumstances the Sessions Judge was fully justified in entertaining a serious doubt about the truth of the prosecution case. In view of all these facts the view taken by him was, doubtless, reasonably possible. The High Court, however, relied on another respect of the matter, viz., that as there was no animus between PWs 1 to 6 and the accused, there was no reason to disbelieve them. The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence. At any rate we are fully satisfied that the view taken by the Sessions judge was reasonably possible and, therefore, this was surely not a fit case in which the High Court should have interfered with the order of acquittal of the appellant passed by the learned Sessions Judge. For these reasons, therefore, we allow this appeal, set aside the judgment and order of the High Court and acquit the appellant of the charges framed against him. The appellant shall be released forthwith.

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