

Gopal and Others

Vs

State of Tamil Nadu

Criminal Appeal No. 234 of 1973

(V. B. Eradi, B.C. Ray JJ)

30.01.1986

JUDGMENT

B.C. RAY, J. -

1. This appeal on special leave is directed against the judgment and order of the High Court of Judicature at Madras dated August 4, 1972 in Criminal Appeal No. 23 of 1971 whereby the appeal was dismissed and the conviction and sentences passed by the Court of Sessions, East Thanjavur Division at Nagapattinam against the accused 1, 2, 12, 13, 17, 18, 19 and 20 were confirmed.

2. The prosecution case is as follows :

3. All the accused appellants are residents of various villages within Keevalur Police Station. The first accused is the leader of the Left Communist Party and also of the Harijan Kisans of five neighbouring villages. Accused 17 and 18 are the leaders of the Left Communist Party at Keezha Venmani village. There were serious differences between the mirasdars and the Harijan labourers regarding the fixation of wages for harvest. These troubles started in 1967 and the kisans have been agitating for higher wages by taking processions and convening meetings. There was a settlement in 1967 whereby the Mannargudi agreement was made between the parties providing for additional half measure of paddy to the Harijan labourers. This settlement was enforced from January 1968, but in November 1968 the Harijan labourers demanded uniform wages of six measures of paddy per kalam of paddy harvested and in case this six measures of paddy was not paid, the labourers trespassed into the lands and illegally harvested paddy crops. This created the trouble as the local Harijan labourers refused to work at a low wage and demanded higher wages. There was the Paddy Producers' Association having its offices in several villages. PW 1 Gopal Krishna Naidu was the President of Paddy Producers' Association of Nagai Taluk and PW 19 Ramu Pillai was the President of the Association at Irukkai and the deceased Packiriswamy Pillai was a member of the Association. The mirasdars used to bring labourers from outside for harvest of paddy from their fields as local labourers were reluctant to harvest paddy at the wage of 4 1/2 measures of paddy. The local labourers were very much aggrieved by this bringing of men from outside for harvesting of paddy.

4. On December 25, 1968 Packiriswami Pillai, since deceased, alongwith other labourers of Irukkai came to harvest the paddy crops from the fields of the mirasdar PW 15 at about 9 a.m. It appears that on apprehending trouble PW 15 sent Ex. P-9 to the Inspector at Keevalur Police Station and Ex. P-8 to the Valivalam Police Station requesting for sending some policemen so that harvesting of crops might be done peacefully. The harvesting of crops was over by 5.30 p.m. and each of the labourers were fed with sambar satham. Each of them were paid 4 1/2 measures of paddy per kalam.

PWs 25, 26 and one Rangayyan left immediately as they wanted to go to Thevur for seeing a picture. The seventeen Irukkai people started for home sometime thereafter. The Irukkai labourers reached the east-west Harijan Street at about 7.30 p.m. PWs 42 and 43 purchased betels in the shop of PW 30, Subramaniam, of the main road. There was moonlight and electric light. There were bamboo clusters in the form of a hood on either side of the east-west Harijan Street near the second electric lamppost from the west. At the east-west Harijan Street, PWs 31, 32, 34 to 44 saw a crowd of 10 to 15 persons standing. In that crowd PWs 31, 32, 34 to 37 saw accused 1 and 2 armed with aruvals. The crowd questioned them as to which place they belonged to, whereon they replied that they belonged to Irukkai. Immediately, accused 1 Gopal cried out, "Do not leave Irukkai people, cut them, beat them". A crowd of about 50 persons being armed with aruvals, sticks etc. came running towards the Irukkai people. PWs 31, 32, 34 to 37 while running from Packiriswami Pillai tripping and falling down near the electric lamppost on the Harijan Street. Accused 1 and 2 and some others in the crowd also lifted him by hands, legs and cloths. Then he was carried to some distance towards the east. At that time Packiriswami Pillai cried out that he was being cut by Gopal (accused 1) and they were leaving him behind and running. PWs 31, 32, and 34 to 37 saw the first accused cutting Packiriswami Pillai with aruval on his neck and on his head. PWs 31, 32, 34, 35, 36 and 37 ran towards the Caste Hindu Street and ultimately entered into the house of PW 47. Another crowd of 50-60 persons armed with aruvals and sticks came from the south and they caused injuries on the persons of PWs 54 and 55 who came out of their house. On the same day at about 8 p.m. PW 79, Inspector of Police, Keevalur Police Station on getting information that some persons armed with lethal weapons were parading on a main road beyond Thevur and towards south, after requisitioning a vehicle (van) from Nagapattinam Police Station sent PW 72, the Head Constable with the van for road patrolling between Thevur and Killukudi. PW 72 with some SAP men went to Keezha Vanmani and after collecting the injured persons from the house of PW 47 as well as collecting the injured PWs 54 and 55 in the van came to the Keevalur Police Station, where PW 79 (Inspector of Police) recorded the statement of PW 54 who was lying seriously injured in the van and registered the same as Crime No. 326 of 1968 of Keevalur Police Station. He thereafter recorded the statements of PW 55 in the van and recorded the statements of other PWs 34 to 37 in the police station. Thereafter PW 79 at about 11.45 p.m. left for Keezha Vanmani and reached at about 12 midnight. He met PW 31 there. PW 79 then went to Nadu Street alongwith PW 31 and found the dead body of Packiriswami Pillai kept leaning against a coconut tree with multiple injuries. PW 79 recorded the statement of PW 31 and registered the same as Crime No 328 of 1968.

5. The learned Sessions Judge after duly weighing the evidences of prosecution witnesses found inter alia that there was electric light and also moonlight at the time of the occurrence. PWs 31, 32 and 34 to 37 witnessed the fatal injuries caused by aruvals on the head and neck of Packiriswami Pillai by Gopal (accused 1). It was also held that the crying out by the deceased Packiriswami Pillai that Gopal (accused 1) was cutting him was in the nature of dying declaration and no motive could be ascribed for the deceased to falsely implicate accused 1 Gopal at that moment. Moreover, the injuries sustained by PWs 34 to 36 with all probabilities establish the presence of these prosecution witnesses at a close range and seeing the occurrence. There was also overwhelming evidence as to the presence of accused 1 in the crowd. The learned Sessions Judge found accused 1 guilty of offence under Section 302 IPC and sentenced him to imprisonment for life. He also found accused 1 alongwith accused 2, 13, 17 and 18 guilty of murder under Section 148 IPC and sentenced each of them to undergo rigorous imprisonment for two years. Accused 1 and 2 were also held guilty of the offence under section 364 IPC and sentenced each of them to undergo rigorous imprisonment for 5 years. All these sentences will run concurrently. Out of 22 accused, 14 of the accused were acquitted and 8 of them i.e. accused 1, 2, 12, 13, 17, 18, 19 and 20 were convicted under various offences and

they were sentenced to suffer rigorous imprisonment for various terms.

6. Against the aforesaid judgment and order of conviction, all the 8 accused persons filed Criminal Appeal No. 23 of 1971. The appeal was dismissed and the conviction of all the accused appellants for various offences and sentences of imprisonment awarded against each of them were confirmed.

7. Mr Garg, learned counsel, appearing only on behalf of the accused appellant 1 has submitted before this Court that he will argue in this appeal only on behalf of the accused appellant 1 Gopal and as regards accused appellant 2 he further submitted before us that the appellant 2 Ramayyan who was convicted under Section 364 IPC and sentenced to undergo rigorous imprisonment for five years may be granted exemption from undergoing the remaining term of the sentence.

8. It has been firstly contended by Mr Garg, learned counsel, that the statement of PW 54 Packiriswamy Poraiyar (Ex. P-11) which was recorded by PW 79 and registered in Crime No. 326 of 1968 did not mention about the attack on deceased Packiriswami Pillai or any Irukkai people. It has also been submitted that PW 72 (Head Constable) who collected the injured persons PWs 54, 55 and 34 to 37 in the van and took them to the police station at Keevalur also did not tell about the attack on the deceased Packiriswami Pillai. It has been, therefore, submitted that the statements of PWs 34 to 37 were recorded not at the police station immediately after recording statement of PW 54 i.e. Ex. P-11. It has also been submitted that the accused Gopal (accused 1) who is well known to the mirasdars has been falsely implicated at the instance of PW 1, who as stated by PW 72 came to the place where PW 72 was bringing the injured persons in the van i.e. PWs 54, 55 and 34 to 37 for bringing them to the police station. This submission has no legs to stand upon. It has been held by both the courts below that the evidences of PWs 34 to 37 were recorded by the Inspector, Keevalur Police Station (PW 79) as soon as they were brought to the police station at about 10.30 a.m. All these witnesses have clearly stated in their depositions that they witnessed accused 1 inflict cutting injuries on the neck and head of Packiriswami Pillai after lifting him alongwith other accused and carrying him to the east of Harijan Street. The court of appeal below has rightly held that PW 54 was only concerned with the incident that occurred before his house and as such in Ex. P-11 there was only the reference to the said incident. It was also held that PW 79 in his deposition refuted the suggestion that he did not examine PWs 34 to 37 at the time alleged by him. Moreover all these PWs 34 to 37 suffered several injuries being chased by the crowd while running towards the house of PW 47. Therefore evidences of all these eye-witnesses as well as of PW 31 were believed by both the courts below that accused 1 caused fatal cut injuries on the person of deceased Packiriswami Pillai. PW 65 Dr Madan Gopal, Assistant Surgeon, Government Hospital, Nagapattinam, who conducted post mortem also stated in his deposition that out of the 11 injuries caused on the person of deceased Packiriswami Pillai, the injuries Nos. 1 and 2 which could have been caused by single cut was sufficient in the ordinary course of nature to cause death. The doctor has also stated in his evidence that after the infliction of injury No. 1, the injured could have shouted out. There is, therefore, ample evidence to negative the submission that the accused 1 was falsely implicated. Moreover, PW 72 has stated in his deposition that he is deaf and as such he could not hear whether PWs 34 to 37 stated about the injuries caused by accused 1 on deceased Packiriswami, Pillai. He also stated that he heard PWs 34 to 37 uttering Packiriswami. It was rightly held by both the courts below that PW 72 was deaf and could not hear what they told him. The non-mentioning of attack on Packiriswami Pillai by PW 54 in his statement does not in any way lead to the inference that the statements of PWs 34 to 37 were recorded after recording of the statement of PW 31. It has been tried to be submitted in this connection that the statements of these prosecution witnesses were recorded in plain sheet of paper instead of recording in diary form, and this raises suspicion that the statements of the PWs 34 to 37 were not recorded immediately after the recording of the statement

of PW 54. This submission was also set at naught by the courts below by holding that PW 79 recorded the statements of PWs 34 to 37 in the police station after recording of the statements of PWs 54 and 55. The mere recording of statements in plain sheet instead of in diary form in these circumstances does not lead to anywhere in view of the clear evidence of PW 79 which was believed by both the courts below that the statements of these prosecution witnesses were recorded by him immediately after recording the statement of PW 54 (Ex. P-11).

9. It was submitted that had PWs 31, 32 and 34 to 37 known about the attack on deceased Packiriswami Pillai and his being carried away, it was unlikely that they would not have informed PW 1, who came there as stated by PW 72 and PW 1 in that case would have taken further action in the matter with the help of PW 72. This submission has also no merit. It has been held by the court of appeal below that PWs 31, 32 and 34 to 37 clearly stated in their evidence that they did not see PW 1 at all. The evidence of PW 1 was that he did not go to Caste Hindu Street at that time. In view of these evidences, the court of appeal below held that the evidence of PW 72 to the effect that PW 1 came near the house of PW 47 could not be accepted. It was also pointed out by the court of appeal below that PW 72 has not spoken about presence of PW 1 at that time either in Crime No. 326 or in Crime No 328 of 1968. It was only during the investigation in Crime No. 327 of 1968 namely the connected arson case PW 72 made the above statement. Therefore, this submission is not sustainable.

10. It was submitted by Mr Garg that had PWs 34 to 37 stated in their statements which were recorded by PW 72 at Keevalur Police Station about the attack on Packiriswami Pillai, then that statement would have been recorded separately and a separate crime number would have been given to it as was done in recording statement of PW 31 and registering it in Crime No. 328 of 1968. It was, therefore suggested that PWs 34 to 37 were examined by PW 79 only after recording statement of PW 31. This submission was also urged before the court of appeal below and it was held that it was not improbable that because at the time of the recording of statement of PWs 34 to 37, PW 79 was not aware of the death of Packiriswami Pillai, so he did not consider it a grave crime and did not register it separately as spoken to by him. PW 79 further stated in his evidence that both the occurrences namely attack on PWs 54 and 55 and Packiriswami Pillai formed part of one and the same transaction. PW 79 further admitted that he ought not to have registered a separate case in Crime No. 328 of 1968 on the statement of PW 31. It was rightly held by the court of appeal below that PW 79 adopted irregular procedure in registering separate crime number on the basis of the statement of PW 31 and this cannot lead to the inference that PWs 34 to 37 were examined only after examination of PW 31. It was rightly held by the court of appeal below that these irregularities committed by PW 79 in not recording the statement of PWs 34 to 37 in case diary form and registering the separate crime number on the statement of PW 31 could not militate against the prosecution case. No motive has been suggested against PW 79.

11. It was lastly submitted before us by Mr Garg that in view of the sentence already suffered by accused 1 and accused 2 this Court should remit the remaining period of their sentence. We are unable to accept this submission advanced by Mr Garg. Mention may be made in this connection of the observations of this Court in *State of Maharashtra v. Mayer Hans George* (AIR 1965 SC 722, 744 : (1965) 1 SCR 123 which are as follows :

(I)t is...the settled rule of the Supreme Court that it would not interfere with the sentence passed by the courts below unless there is any illegality in it or the same involves any question of principle.

12. As we have already stated hereinbefore that the accused 1 and 2 have been convicted by the courts below on the finding that the offences charged against them have been proved by the eyewitnesses beyond any reasonable doubt. There was no illegality not any question of principle involved in the matter of making order sentencing them to imprisonment as provided in Sections 302 and 364 of the Indian Penal Code. Therefore, we are not inclined to interfere with the sentences passed by the courts below.

13. It is pertinent to mention here the observations made by this Court in Pritam Singh v. State (AIR 1950 SC 169 : 1950 SCR 548) which are as follows :

(I)t will not grant special leave to appeal under Article 136(1) of the Constitution unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against and that only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave is asked for. It is well established that this court does not by special leave convert itself into a court to review evidence for a third time. Where, however, the court below fails in apprehending the true effect of a material change in the versions given by the witnesses immediately after the occurrence and the narrative at the trial with respect to the nature and character of the offence, it seems to us that in such a situation it would not be right for this Court to affirm such a decision when it occasions a failure of justice.

14. This decision has been relied upon and followed in a subsequent decision of this Court in Sadhu Singh Harnam Singh v. State of Pepsu (AIR 1954 SC 271, 276 : 1954 Cri LJ 727).

15. In the premise aforesaid, we do not find any infirmity far less any illegality or failure of justice which would impel us to interfere with the order of conviction and sentence concurrently arrived at by both the courts below.

16. We, therefore, dismiss the appeal and confirm the conviction and sentences passed on accused 1 and 2 as well as on other appellants.

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