

# SUPREME COURT OF INDIA

N.H. Muhammed Afras

Vs.

State of Kerala

CrI.A.No. 1234 of 2006

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

25.11.2008

## JUDGMENT

### **Dr. Arijit Pasayat, J.**

1. Challenge in these appeals is to the judgment of a Division Bench of the Kerala High Court disposing of two separate appeals by a common order. The two appeals were filed by the present appellants who faced trial for commission of offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the 'IPC'). They were found guilty and convicted by learned Sessions Judge Kasaragod.

2. Background facts in a nutshell are as follows:

“Babu (PW 1) on 3.9.1996 at about 9.30 pm closed his Bakery shop and proceeded towards his house in his scooter. When he reached near B.Ed Centre, Nellikkunnu, he saw a person lying on the road and three persons were standing near him and among the three persons, two persons, namely Ashraf (A1) & Afras (A2), stabbed the person lying on the road with knife. He saw the incident with the help of the Head Light of his scooter. He was able to identify that the persons were Ashraf (A1) & Afras (A2). When they saw PW 1, they ran away from the place of occurrence. Immediately he went to the shop of Ganghadharan, PW3, a local councilor and informed this to him. Both of them came to the scene of occurrence. PW3 was able to identify the person lying and told PW1 that he was one Jayachandran known to him. Since the police picket was posted near the place of occurrence, as there were frequent communal clashes, PW3 went to the police picket post and informed them of the incident and then PW4 the police officer and others came to the scene of incident and took the injured to the Kasargod Taluk Hospital along with PW3. The Doctor at the hospital examined the injured and declared him dead. Thereafter, PW1 went to the Kasargod Police Station and lodged the complaint Ex.Pl. A case was registered by Inspector of Police (PW17) as Crime No.606 of 1996 for offence under Section 302 read with Section 34 IPC at 10.45 pm on 3.9.1996 against two known (A1 & A2) and one unknown person. On 4.9.1996, PW17 conducted inquest and prepared inquest report

(Ex.P13). On 4.9.1996 doctor (PW15) conducted post mortem and issued postmortem certificate Ex.P9. On 12.9.1996 A1 & A2 were arrested by PW 17. M.O. 1 knife was recovered from A1. After completion of investigation charge sheet was filed on 7.4.1997 for the offence under Section 302 read with Section 34 IPC against both the accused. On behalf of the prosecution PWs 1 to 17 were examined Ex.P1 to P16 were marked. The accused were questioned under Section 313 of the *Code of Criminal Procedure, 1973* (in short `Cr.P.C.'). They denied the allegations. On their behalf DW1, the SHO was examined and Ex.D1 and Ex.D4 were marked. CI Court Exhibit was also marked.

After completion of investigation, charge sheet was filed. As the accused persons pleaded innocence, trial was held. As noted above, the prosecution based its version primarily rested on the evidence of Babu- PW1. The appellants highlighted before the trial court that the evidence of PW1 is not believable. It is highly improbable that he would identify two persons in the light of the scooter with whom he was not acquainted. If the names of the accused persons were known to the witnesses, more particularly, the police constable who is supposed to have accompanied the deceased, he would have certainly not stated that the deceased had suffered injuries at the hands of unidentified persons. There was considerable unexplained delay in dispatch of the special report. The distance from the police station to the Court is hardly 250 yards but the report was received after more than 24 hours after the FIR was purportedly lodged. The trial court referred to all the aspects to hold that they were all of no substance. In appeal the stand was reiterated but the High Court by the impugned judgment rejected the same.”

3. In support of the appeal learned counsel for the appellant submitted that the fate of the case depends only on the acceptability of PW1's evidence. It is stated that according to the prosecution, the earliest document is Ex. P1. The complaint is stated to have been given by PW 1. As per Exh. P1 Jayachandran was stabbed to death by Ashraf and another man. In his statement under Section 161 Cr.P.C. which was referred to bring out the contradictions, it was stated that two persons were standing near the person who was lying on the road and were stabbing him and they were A1 & A2. He admitted to have stated earlier that he had actually seen two persons. In his evidence in court he stated that he had seen three persons assaulting the person lying on the road and it was A1 who stabbed the victim and A2 who beat with stick. The trial court disbelieved PW 1's evidence with reference to the role of A2 beating the deceased and the witness with the stick. PW 17 the Investigating Officer initially denied to have seen the intimation of the doctor (Ex. C1), but later on admitted that he had received it. He also accepted that in the said Exh. C1 it was clearly stated that at 10 PM an unidentified body was produced by the police. In view of this position, statement of PWs. 1&3 that they had informed PW4 about the identity of the deceased cannot be said to be true. Added to that there has been unexplained delay of considerable time gap between the time when the FIR was supposedly lodged and the time it reached the court at a short distance of 250 yards.

4. Learned counsel for the State on the other hand supported the judgment of the High Court.

5. There are several factors which, as rightly contented by learned counsel for the appellant, corrode the credibility of the prosecution version. Firstly, the combined effect of the evidence of PW 4, Exh.C1 and the evidence of PW17 and PWs. 1&3 is that there is marked contradiction between the statements of the witnesses and the documents. If in Exh. C1 it was stated that an unidentified body was brought to the hospital, it is not explained as to how and why PW 4 the police constable did not tell the doctor that the identity was known. The modes of investigation of the police would be in different directions if an unidentified body is brought and when a known person's body is brought. It is strange that PW 4 who is supposed to have known the name of the deceased from PWs 1&3 chose not to tell the name of the deceased to the Doctor. Further PW 17's statement is full of contradictions. Initially he denied to have received Exh.C1, but later on he accepted to have received the same. Even thereafter he did not offer any explanation as to how and why it was stated in the Doctor's intimation that an unidentified body was brought. This could have been clarified had the doctor being examined. For reasons known to the prosecution, he was not examined as a witness. Though the High Court noted that there was no dispute that the FIR was lodged at 10.45 PM, that is factually incorrect. In fact from the very beginning the accused persons have been taking the stand that the FIR was not lodged at 10.45 PM as claimed, otherwise it would not have reached the Court which is situated at a distance of 250 yards after about 15 hours. No explanation has been offered as to why this delay had occurred. Had any explanation been offered by the prosecution the Court could have considered acceptability or otherwise of the explanation. That has not been done. Though ignorance of PW1 about the scooter number, model and other relevant factors may not in all cases be suspicious circumstances, but in the present case this assumes importance.

6. Above being the position, the inevitable conclusion is that prosecution has failed to establish the accusations, and appellants are entitled to acquittal which we direct. The appellants be released forthwith from custody unless required to be in custody in any other case. The appeal is allowed.