(1998) 06 KL CK 0056

High Court Of Kerala

Case No: Criminal R.P. No. 249 of 1993

P. Johnson and Others	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision: June 5, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 160
- Penal Code, 1860 (IPC) - Section 143, 147, 148, 320, 323

Citation: (1998) CriLJ 3651

Hon'ble Judges: S. Marimuthu, J

Bench: Single Bench

Advocate: B. Raman Pillai and S. Vijayakumar, for the Appellant; R. Muraleedharan Nair, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Marimuthu, J.
This revision petition is directed questioning the legality, propriety and correctness of the judgment delivered by the Sessions Judge, Manjeri Criminal Appeal No. 20/1990. This judgment of the Sessions Judge has confirmed the conviction rendered by the Judicial First Class Magistrate, Perinthalmanna delivered in C.C. No. 12/89. The learned Magistrate, out of the 12 accused facing the charges before him found only four accused who are the revision-petitioners herein guilty under Sections 143, 147, 148, 323 and 326 of the Indian Penal Code and thereby sentenced to undergo each of them simple imprisonment for 2 years and also to pay a fine of Rs. 500/-. The judgment of the learned Magistrate in the above appeal regarding conviction u/s 326, I.P.C. was confirmed in the Sessions Court. But with regard to the sentence, accused Nos. 1 and 6 were sentenced to undergo simple imprisonment for 6 months, accused No. 8 was sentenced to undergo simple imprisonment for

one year and accused No. 4 was sentenced to undergo simple imprisonment for 2 years and their conviction and sentence under the other Sections 323, 143, 147 and 148, I.P.C. were confirmed.

2. The learned counsel appearing for the revision-petitioners submitted the following points for consideration :

i. There is inordinate delay in registering the case and that was not explained by the prosecution.

ii. Ext. P-9 said to be the F.I.R. with regard to the occurrence is not the real F.I.R. But the true F.I.R. in this case has been suppressed with ulterior motive.

iii. The injury on accused No. 1 who is the first revision-petitioner herein is not properly explained by the prosecution.

iv. No legal evidence has been let in by the prosecution to sustain the conviction u/s 326, I.P.C.

v. No independent witnesses who were available at the time of occurrence were examined in support of the prosecution. That throws doubt on the veracity of the interested witnesses examined.

For the above points raised by the learned Counsel appearing for the revision-petitioners, the learned Public Prosecutor on going through the judgments delivered by both the Courts below contended that they contain sound reasonings coupled with legality and, therefore, they do not call for interference in this revision.

3. Now I will take up the contentions of both the sides and consider them in the light of evidence on record for decision. Needless to say that this Court in the field of revision has got limited jurisdiction. However, when an apparent and incurable infirmities arc committed by the appellate Court, this Court''s interference becomes inevitable. In a criminal prosecution, FIR is an. essential one. If there falls shadow on FIR, it will shake the root of the prosecution case and, therefore, importance has to be attached. No doubt, as observed by the Sessions Judge, FIR is not an encyclopaedia and it puts the wheel of law in motion. However, it has to be borne in mind that a well moulded starling point is the foundation of victory. The inference that the true and first report was screened as it was not supporting the prosecution story has to be ruled out by the prosecution. In this case on hand there is no dispute that all the accused including the revision-petitioners and the injured and the witnesses bail from the same locality. Hence there will not arise the question of mistaken identity as rightly argued by the learned Counsel for the revision-petitioners. In the F.I.R. PW -1 has stated that they were assaulted by named accused Nos. 1 and 7 and a few others. But during the course of investigation, the names of the other accused have been brought in. According to the prosecution, the names of the other accused have been spoken to by the injured witnesses and other eye-witnesses. The evidence of PW-1 in this context assumes

great importance. He gave the names of all the accused and also about their overt acts. But Ext. P-1 shows the names of seven accused and other names are not found therein. The overt acts attributed to the accused are also not found in Ext. P-1. In this situation it gives room to draw an inference that what was really narrated by PW 1 as the first complaint to the Head Constable has been suppressed by the prosecution and the present FIR has been brought into light. To expel such inference there is nothing in support of prosecution. Suppression of the earlier report itself is sufficient to throw a shadow of doubt in the case of the prosecution.

4. Coming to the delay in registering the case, let me consider the case of prosecution. The occurrence was at about 7 p.m. on 26-8-1988. Soon after the occurrence was over, all the 4 injured, PWs 1, 2,3 and 12 were taken to the Govt. Hospital, Perinthalmanna where they were treated by PW -6 at 8 a.m. on that night. From there PW-12 was taken to the Medical College Hospital, Calicut for further treatment. It is not the version of PW-6 that after treating the injured he at once sent communication or memo to the nearest police station. The prosecution has also not taken effort to elicit through PW -6 whether he sent intimation regarding the injured persons to the nearest police station. The Head Constable attached to Perinthalmanna police station came to the hospital leisurely at 10 a.m. on 27-8-1988 and he obtained Ext. P-1 complaint from PW-1 and then he returned to the police station and registered a case in Crime No. 226/TR/88. As the scene of occurrence falls within the jurisdiction of Kolathur police station, the said crime was transferred to Kolathur police station where it was re-registered as Crime No. 83/88. In this case there is a delay, for, the occurrence was at about 7 p.m. on 26-8-1988 and the complaint was lodged by PW -1 to the Head Constable at 10 a.m. on 27-8-1988. Such long delay, necessarily, as per law, should be satisfactorily explained by the prosecution. For, during the time of delay it is possible to rope the innocent in the episode after the due deliberation. To get. over such contingency, the delay must be properly explained by the prosecution. In the instant case, we do not find any explanation in the ocular testimony of PW-1 and PW-6 or any other witness as to why the delay had occurred in registering the case. Non -explanation in this regard from the prosecution for the non examination of the material witnesses also leads to draw an adverse inference against them. Regarding the same occurrence according to the prosecution case, the first and the other accused were injured and a complaint was lodged by the first accused before PW 10 Head Constable who registered the case in Crime No. 83/88 against the CWs 1 to 10 in the charge-sheet including PWs 1 to 4 and 12 and in that case also investigation was conducted by PW-11 the S.I. of Police. He filed two separate final reports in both the cases. The words employed in Section 160 of the Cr.P.C and the spirit therein signify that the investigating officer has to conduct investigation with a judicial approach. During the investigation, the investigating officer finds that innocent people have been brought in the FIR they can be rightly deleted from the final report and the real assailants, if left out, can be brought in the final report. Accordingly, in an

occurrence when both sides are injured, the investigating officer has to find out as to who are the aggressors among the two groups. In the course of investigation if he is satisfied that the aggressors are fully responsible for the occurrence and the other side though used minimum force on the aggressors, the investigation can be accordingly carried on. In case, in the investigation if he is able to choose that the aggressors alone are responsible for the occurrence and for the injuries on the aggressors the opposite party is not responsible then normally there is no necessity to file a final report against those who are not the aggressors, especially when it is trivial in nature. However, during the investigation if he finds that both the parts have committed the: criminal offences then two separate final reports have to be filed against the respective parties. In that case the injury on the accused must he explained by the prosecution, for instance, when the accused in one case who is the complainant in the other case, has sustained injury, the injury on him must be satisfactorily explained by the prosecution by producing medical certificate, examining the doctor etc. Otherwise non '' explanation of the injury on the accused, as per well settled principle of law, assumes importance and it will ultimately demolish the case of the prosecution. In the instant case before me, the evidence of PWs-6 and 10 are sufficient to conclude that the first accused sustained injury and the investigation also would go to show that some other persons on the revision-petitioners'' side have also sustained injuries. But the prosecution is silent to explain this. When there is no explanation, as per the well settled principle of law, the prosecution has to necessarily fail.

4A. Even regarding the conviction brought u/s 326, there is no legal evidence to fix the criminal liability. Section 320,I.P.C. defines grievous hurt. Fracture comes under this Section PW-7 doctor who examined PW -12 in the medical college hospital, Calicut issued Ext. P-6 discharge certificate which goes to show that PW -12 sustained grievous hurt. PW -7 in this context would depose that he gave Ext. P-6 certificate on the basis of X-ray report and that report was not produced and the doctor who took X-ray was not examined. Non-production of the X-ray report and non examination of the doctor who took the X-ray are sufficient to deduce that the criminal liability either u/s 325 or 326,I.P.C. is not established. This flaw is also a stronger one shaking the case of the prosecution.

5. The next submission advanced by the revision-petitioners is that all the witnesses are interested witnesses and no independent witness or any neighbour of the scene of occurrence have been examined. Admittedly, PWs-1 and 12 are brothers and they are the children of PWs -2 and 3. PWs-4 and 5 are also closely related to the injured. The prosecution case is that on hearing the noise of beating and commotion PWs- 2 and 12 rushed to the scene of occurrence. The scene mahazar marked as Ext. P-7 would go to show that there are houses near the scene of occurrence and the final report also contains the names of the other witnesses. But none of the independent witnesses has been examined in Court to lend support to the veracity of the injured persons. When it is the prosecution theory that on hearing the noise from the scene

PWs-2 and 12 rushed to the spot other neighbours also could have come there hearing the quarrel. Thus even according to the prosecution case there ought to have been other independent witnesses witnessing the occurrence. But no explanation is forthcoming from the prosecution about the non-examination of the independent witnesses. And conviction has been fixed only on believing the evidence of the interested witnesses. As I have detailed above, the points raised with regard to the delay in filing the FIR, suppression of first report, non-examination of material witnesses and non-explanation of the injury on the accused stand unanswered by the prosecution. Therefore, I opine that the judgment of the Sessions Judge is not legal, proper and correct and this Court has to necessarily interfere by invoking its revisional jurisdiction.

In the result, the revision is allowed by setting aside the judgment of the Sessions Judge delivered in Crl. Appeal No. 20/90. The accused/revision-petitioners are acquitted. The fine amount, if any paid by them will be refunded.