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(1993) 07 SC CK 0014

Supreme Court of India

Case No: Criminal Appeal No"s. 490, 490-A and 490-B of 1983

T.V. Eachara Warrier		APPELLANT
	Vs	
T.O. Kunchiraman Nambiar and Others		RESPONDENT

Date of Decision: July 27, 1993

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (1993) 2 Crimes 1176 : (1993) 4 JT 384 : (1993) 2 KLT 547 : (1993) 3 SCALE 238 : (1993) 3 SCC 381 Supp

Hon'ble Judges: K. Jayachandra Reddy, J; G. N. Ray, J

Bench: Division Bench

Advocate: P.H. Parekh, J.B.D., V. Balachandran and K.M.K. Nair, for the Appellant;

Final Decision: Dismissed

Judgement

K. Jayachandra Reddy, J.

All these appeals are connected and arise out of the judgment of a Division Bench of the Madras High Court. The appellant was the father of one Rajan who is alleged to have been murdered. The case was originally on the file of Sessions Judge, Kozhikode, Kerala State but on account of furore raised by the public against the accused and political overtones given to the case, the Supreme Court in order to ensure a fair trial, transferred the case to the file of Sessions Judge, Coimbatore, Tamilnadu State. Seven persons were arrayed as accused in the trial and the learned Sessions Judge acquitted accused Nos. 1,2,4 and 7 and convicted accused Nos. 3,5 and 6 under Sections 348/34, 330/109 and 201 I.P.C. and sentenced each of them to undergo R.I. for six months, one year and four months respectively. The sentences were directed to run concurrently. The three convicted accused filed three separate appeals and the State filed an appeal challenging the acquittal of all the seven accused of the major charges and it also filed another appeal for enhancement of the sentence awarded to accused Nos. 3,5 and 6. The Division Bench dismissed the appeals filed by the State and allowed the appeals filed by the three

convicted accused. Aggrieved by the same, the appellant has filed these appeals challenging the acquittal of accused Nos. 3,5 and 6 in respect of the offences for which they were convicted by the trial court. Neither the State of Kerala nor the State of Tamilnadu has filed any appeal challenging the judgment of the High Court. Consequently there are only three respondents namely accused Nos. 3,5 and 6 before us and the question is whether their convictions as ordered by the trial court should be restored.

2. The gravimeter of the case was that all the seven accused persons, who were police officials, entered into a criminal conspiracy to investigate, by illegal means, a case relating to the attack on Kayanna Police Station by Naxalites in the early hours of 28.2.1976 which was registered as a crime and in pursuance of the said conspiracy wrongfully arrested among others, the deceased Rajan and P.W. 1 and took them to a torture camp at Kakkayam and wrongfully confined them and tortured them. Unfortunately it is alleged that Rajan died and the accused persons caused the disappearance of his dead body in order to conceal the evidence of murder and screen themselves from punishment or their wrongful acts. The charges were framed against the accused under Sections 348, 331, 326, 302, 201, 120-B and 109 I.P.C. but as already stated, the learned Sessions Judge convicted only accused Nos. 3,5 and 6 and acquitted the others.

3. It may be mentioned at this stage that the appellant filed a writ petition in the High Court of Kerala seeking a writ of habeas corpus causing the production of his son. The Secretary, Ministry of Home Affairs and other concerned officers, who figured as respondents, filed counter-affidavits and set up a plea that Rajan had not been taken into custody. The High Court, however, taking the view that Rajan had been taken into custody, directed the respondents to produce him in the court. Thereupon the Inspector General of Police directed that a case be registered against some of the accused persons and in that backdrop of events the case came to be investigated by a special team of officers headed by a Deputy Inspector General of Police, P.W. 59 and others and ultimately the chargesheet was laid against the seven accused. To prove its case, the prosecution examined P.Ws 1 to 59 and filed several documents.

4. The sum and substance of evidence is as under:

There is a Regional Engineering College at Chathamangalam, about 30 Kilometres away from Kozhikode. P.W. 11 was the Principal of the College and P.Ws 10,13 and three others were Lecturers. Among the students studying in the College were Rajan, the deceased, son of P.W. 52 the appellant, P.Ws 1,5,8,9 and 14. It is alleged that Kozhikode and its neighbouring areas including Chathamangalam were infested with a large number of Naxalites who believed in terrorist activities. As part of their activities, they made an attack on the Police Station at Kayanna on 28.2.1976 at about 3.30 A.M. as a result of which some policemen received injuries and fire-arms were stolen. Superior Police Officers were contacted and in order to trace the suspected culprits and to recover the weapons, police personnel were sent to all the nearby places on search duty. It is alleged

that an investigation camp was set up at Kakkayam because of privacy and seclusion/The further case is that the deceased was arrested on 29.2.76 alongwith P.W. 1 and they were taken to the Camp and both of them were tortured by applying third-degree methods. The victims were made to sit in a room and their hands were thrown behind their heads and were tied and they were canned and pestle was rolled on the thighs of the victims with great pressure. According to the prosecution while this was being done, the first accused used to stand in torture room and accused Nos. 2 to 4 used to periodically make their appearance in the torture room. Because of this torture Rajan is alleged to have died and thereafter his body was not traced and according to the prosecution, these accused caused the disappearance of the same. The first question considered by the High Court was whether Rajan and P.W. 1 were arrested as alleged. On this aspect the prosecution mainly relied on the evidence of P.W.Nos. 1,5,6,8 and 25. The evidence of each of these witnesses has been considered in detail and is found to be highly discrepant, contradictory and unsatisfactory.

5. P.W. 25 claims to have stayed in the Engineering College and that he was unemployed and became friendly with Rajan and P.W. 1. According to him he went with a party of students to Faroke and returned on the night of 29.2.76 from Faroke to Chathamangalam. Thereafter he and Rajan proceeded towards the lodge and enroute they saw a van. Then it so happened that the police officials accompanied with a person hand-cuffed came and a college student who was there pointed towards Rajan and he was taken into custody. P.W. 6 was a Sweeper. He deposed that he saw a police van parked near the State Bank and inside the van, he found Rajan and another person sitting. P.W. 8, who is a student of the Engineering College had also gone to Faroke alongwith Rajan and other students of the party. He mainly speaks about the presence of P.W. 25 and Rajan going alongwith him. Then we have the evidence of P.W. 1 who has given a lengthy version. He deposed that when he returned to his room in the morning of 1st March, 1976 he found police officials in that room and he was taken into custody and they also enquired about Rajan and he was also token into custody.

6. The High Court has rightly pointed out that P.W. 25 could not have been a friend of Rajan because he was neither a student nor in any way connected with him. His credentials were rightly doubted. Now coming to the evidence of P.Ws 5 and 8, the High Court has pointed out a number of discrepancies. So far as the evidence of P.W. 1 is concerned, the High Court has rightly pointed out that his evidence is at variance with that of P.W. 9. to whose room he is said to have gone before the arrest. The Court examined C.W.1 who was working as a Watchman in the Engineering College to speak about the arrest. The High Court has considered many admissions made by him and rightly pointed out that even as regards taking into custody of P.W. 1, there are several versions and they are mutually destructive.

7. Likewise, the High Court has also considered the evidence of other witnesses in detail and has confirmed the findings of the trial court in many respects.

8. However, in the instant case, we are concerned only with the acquittal of accused Nos. 3,5 and 6. The learned trial judge having rejected the prosecution case to a large extent, however convicted these three accused on the self-same evidence. The infirmities in their evidence equally ensure to the benefit of these three accused also. The trial court convicted these three accused for the minor offences mainly on the ground that they were incharge of the investigation and the torture must have been done to their knowledge and that the arrest and wrongful confinement of Rajan and P.W. 1 must have been known to them. In that view of the matter the trial court convicted them for those minor offences. But the High Court has rightly held that their convictions cannot be sustained. We can understand the feelings of the appellant at the disappearance of his son and the same causes distress to us also. But unfortunately the prosecution has not proved its case beyond all reasonable doubt by adequate and credible evidence. It is true that the three respondents were police officials incharge of the investigation but even then on the basis of that circumstance alone in the absence of reliable evidence connecting them with the minor offences for which they were convicted by the trial court, the said convictions and sentences cannot be sustained. At any rate in these appeals before us we cannot interfere with the concurrent findings regarding the credibility of many of the material witnesses. The evidence regarding culpability of these tnrce respondents has also been found highly unsatisfactory by the High Court after a detailed discussion and after giving cogent and convincing reasons. We see no grounds to take a different view. Consequently all the appeals are dismissed.