

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1327 OF 2004

MUNDATHANATHU SUNNY ... APPELLANT

VERSUS

STATE OF KERALA ... RESPONDENT

O R D E R

This appeal is directed against the judgment and order dated 5th November,

2003 passed by the Division Bench of the Kerala High Court in Cr1.A.No.989 of

2001 (C) whereby and whereunder the appeal preferred by the appellant against a

judgment and order dated 30th July, 2001 passed by the Additional Sessions

in Sessions Case No.96/2000 was dismissed.

The basic fact of the matter is not in dispute.

Allegedly, while drawing an overhead electric line in the morning of

18.10.1997 a dispute arose between Vinod (the deceased) and the appellant. The

accused Nos.2 and 3 were stated to be close friends of the appellant herein. On the

same day at about 9.30 p.m., allegedly when the deceased was proceeding to his

house along the pathway

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starting from Pulikkayam Vidyanagar to Andhakarappara Panchayat road and

through the property of one Thankachan,

the appellant herein restrained him and stabbed with knife on the back, chest and

below the left armpit. The deceased cried stating that he has been stabbed by the

appellant herein and on hearing such cry, PWs 1, 4 and 5 (wife of the elder brother

of the deceased) came to the place of occurrence with torches. They allegedly saw

the accused and wife of 2nd accused running away from the place of occurrence. On

reaching there, the deceased allegedly uttered "Sunny enne patticheda (Sunny has

cheated me)", purportedly meaning that 'Sunny has stabbed me'. PW1-Vilakkunnel

Saji Joseph, PW2-Vazhayil Jojo and PW3-Mundathanam Satheesh amongst others

rushed the deceased to the Medical College Hospital in a jeep, Kozhikode where he

was pronounced dead.

A First Information Report was lodged by PW1-Vilakkunnel Saji Joseph

at about 10.30 a.m. on 19.10.1997. The learned trial Judge, while convicting the

appellant herein, passed a judgment of acquittal against the other two accused. An

appeal preferred by the appellant was dismissed by the High Court.

Dr. M.P. Raju, learned counsel appearing on behalf of

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the appellant took us through the evidence of some of the prosecution witnesses, as

also the First Information Report purported to have been lodged by PW1. He

submitted that

the prosecution case, on the face of it, appears to be doubtful as the father of the

deceased had categorically stated that he lodged a First Information Report in the

morning of 19.10.1997. The learned counsel has also drawn our attention to these

statements of PW10, the I.O., and submitted that the explanation offered by him to

the effect that PW4 submitted his complaint at about 11 O'clock and thus it was not

received by him, is doubtful. It was further submitted that not only there had been a

delay in lodging the First Information Report, evidently, PW1 made improvement in

his statement before the Court. Though, in the First Information Report he only

stated that he heard the deceased uttering 'Ayyo', but in his evidence he disclosed

that the deceased said 'oh father, Sunny stabbed me'. It was further pointed out

that the other witnesses also, including PW4, had also improved their statements. It

was submitted that in fact nobody had seen the actual occurrence and the evidences

of the witnesses do not lead to the conclusion that the appellant has committed the

offence.

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It was urged that the defence raised a specific plea that it was PW1

himself who had murdered the deceased had not been considered by the learned

courts below. In this connection our attention has further been drawn to the fact

that even the 'chappal' of PW1 had been found at the place of occurrence.

Learned counsel appearing on behalf of the State, however, supported the impugned judgment.

PW4 is the father of the deceased. He stated that at the time when he

reached the place of occurrence, the deceased had already been taken to the

hospital. He went to the hospital separately but came back home at about 12.30 in

the night. On the next day morning when his daughter and son came, he got the

complaint written by his daughter, went to the police station and gave it to PW10. It

is not in dispute that the police station is situated at about 3 kms. from the place of

occurrence. PW10 - P.K. Viswanathan, who was the Sub-inspector of the said police

station at the relevant point of time, was also examined and according to him PW4

had not come to him in the morning but he came to the police station by 11 O'clock

and by that time the case had already been registered, so he did not accept and even

did not read the complaint.

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No material has been brought on record to show as to what happened to the

said complaint. PW4 in his deposition did not state that the said complaint was

returned to him. He also did not corroborate the statement of PW10 that he reached

the police station at about 11.00 a.m. on 19.10.1997.

The fact that the deceased was immediately taken to the Government

hospital in a jeep is neither in doubt nor in dispute. It is also not in dispute that

ordinarily the doctors working in the hospital would inform the police. Why it was

not done would remain a mystery. If the dead body of Vinod reached the hospital

even at about 10 O'clock in the night, we fail to understand as to why the First

Information Report would be lodged by PW1 at 10.30 a.m. next morning.

PW1 in his evidence has sought to explain the same by alleging that he

was in the hospital for the whole night. PW4 in his deposition had categorically

stated that he came back home by 12.30 at night and his another son was helping

him. We fail to see any reason as to why PW4 and his son could not lodge the First

Information Report within a reasonable time.

Further more, having perused the evidence of the

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witnesses examined on behalf of the prosecution, we find a lot of contradictions in

the statements of PW1 and PW4. The prosecution case is that having heard the cry

of the deceased, not only PW1 but also PWs 2 and 3 reached the place of occurrence almost simultaneously and that they saw the accused persons running away from that place. PW4 curiously also stated that when he heard the cry of his son, he immediately 'rushed to him'. It is not in dispute that the distance between his house and the place of occurrence was nearly 30 metres. It, therefore, seems strange to us as to how despite PW 4's rushing to the scene and seeing the appellant herein and also accused No.3 - T.P. Surendran running towards the appellant's house, he did not see his injured son as, according to him, by that time he had already been taken to the hospital.

PW1 categorically stated that for the purpose of taking the deceased to the hospital, a vehicle was brought by Vazhayil Jojo - PW2 and only in the said vehicle the deceased Vinod was taken to the hospital. PW2 - Vazhayil Jojo and PW3 Mundathanam Satheesh, although declared hostile, alleged that when they reached the place of occurrence, Vinod was alive but he did not speak anything. The evidence of PW4, therefore, must be considered keeping

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in view the said statements of PW2 and PW3. PWs 1 and 2 and CW3 who took Vinod to Medical College Hospital, must have been on the place of occurrence at least for a few minutes, as they saw the occurrence, the accused persons fleeing away and then sent for a vehicle and only after the vehicle came, took the deceased to the

hospital. There is, thus absolutely no reason why the father of the deceased who

must have been more concerned about the welfare of his son than the other persons

could not reach the place of occurrence to find the deceased either dead or injured

condition. Further more, there was no reason as to why PW4 did not

accompany PW1 and others to the hospital. It is also admitted that PW1 did not

inform PW4 or brother of the deceased before taking him to the hospital. It does

not appeal to us as to how PW1 or the other witnesses could leave the place of

occurrence with the deceased in a jeep without informing the family members of the

deceased although his house was situated about 30 metres from the place of

occurrence.

For the reasons aforementioned, we are of the opinion that the appellant

herein is entitled to benefit of doubt. This appeal is, accordingly, allowed. The

impugned judgments of the High Court as well as the Additional Sessions Judge are

set aside.

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We are informed that the appellant is in jail. He shall be set at liberty

forthwith, if not required in connection with any other case.

.....J.

.....J.

New Delhi,

[R.V. RAVEENDRAN]

September 27, 2005.

ITEM NO.101

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1327 OF 2004

MUNDATHANATHU SUNNY

Appellant (s)

VERSUS

STATE OF KERALA
t(s)

Respondent

(With appln.(s) for exemption from filing O.T. and with office
report)

Date: 27/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Dr. M.P. Raju, Adv.

Ms. Leni Susan, Adv.

Mr. Ashwani Bhardwaj, Adv.

For Respondent(s)

Mr. Balraj, Adv.

Ms. G. Indira, Adv.

Mr. K.R. Sasiprabhu, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the appellant from 10.30 a.m. to 11.00 a.m. and learned counsel for the respondent-State for five minutes.

The appeal is allowed in terms of the signed order. The impugned judgments of the High Court as well as the Additional Sessions Judge are set aside.

The appellant shall be set at liberty forthwith, if not required in connection with any other case.

Sarita

(Pushaplata Bhardwaj)

Court Master

(Signed order is placed on the file)