

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). 1151 OF 2004

M.K. BABU @ V.G. BABU & ORS.

Appellant (s)

VERSUS

STATE OF KERLA & ORS.

Respondent(s)

(With appln(s) for permission to file additional documents and office report)

Date: 25/11/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE J.M. PANCHAL

For Appellant(s)

Mr. P.V. Dinesh,Adv.
Mr. Surendra Singh,Sr.Adv.
Mr. Nishe Rajen Shonker ,Adv

For Respondent(s)

Mr. R. Sathish,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[MITHLESH GUPTA]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1151 OF 2004

M.K. BABU @ V.G.BABU & ORS.

.. APPELLANT(S)

vs.

STATE OF KERALA & ORS.

.. RESPONDENT(S)

O R D E R

The prosecution story is as under:

At the end of October, 1998, one Pavithran belonging to the CPM was killed by some members belonging to the BJP. Consequent to this murder the relations between the parties

represented by the deceased and the accused became extremely strained. Three days later i.e. on 2nd November, 1998, about 2.45 p.m. the appellants herein accompanied by several others (who have been acquitted by the High Court) came to the house of Govindan (PW.1) and then moved on to the house of K.P.Chandran (PW.2) looking for supporters of the BJP. As no one from this party could be found in the houses of Govindan and Chandran they moved on to the house of the deceased Kunhiraman and found him present in his home. It is the case of the prosecution that the appellants herein caused serious injuries to Kunhiraman whereas A.1 i.e. Sumohan also threw a bomb damaging his house. Kunhiraman was removed to the Thalassery Government Hospital accompanied by PWs.1 to 3 Govindan, Chandran and Bagesh, respectively and also some police officials and was examined at about 3.30 p.m. by (PW.4) Dr. Sujata. She certified that Kunhiraman was dead on reaching the hospital. Information with regard to the death of Kunhiraman was sent to the police station Thalassery by the Doctor at 8.15 p.m. and the formal FIR was recorded half an hour later in the police station. On the completion of the investigation the accused were charged under Sections 302 etc. of the IPC as also under Sections 3&5 of the Explosive Substances Act. The trial Court relying on the evidence of the three witnesses (PWs.1-3) all close relatives of the deceased, and residents of the same complex in which the deceased was also residing, and also the medical evidence of Dr. Sujata convicted all the 10 accused and sentenced them to various terms of imprisonment. An appeal was taken to the High Court which in its judgment dated 5/2/2004 observed that some of the accused had not been attributed specific roles in the incident and accordingly acquitted those who fell in that category but maintained the conviction of the other five who are the appellants before us.

Mr. Surender Singh, the learned counsel for the appellants has raised two basic arguments in the course of hearing. He has first and foremost pointed out that in the peculiar facts of the case in that the FIR had been lodged about 5 hours after the witnesses and the dead body had reached the hospital, there was a clear doubt as to the identity of the assailants. He has accordingly submitted that in such a background the delay of five hours would be fatal to the prosecution and it would be reasonably possible for the defence to argue that the eye witnesses had not been present. He has also relied on AIR 1988 (SC) 1158 (Awadhesh vs. State of M.P.), AIR 2002 (SC) 1949 (Bijoy Singh and Anr. vs. State of Bihar) and AIR 2004 (SC) 3055 (Bachhu Narain Singh vs. Naresh Yadav). In addition he had urged that 161 statements of PW.2 and PW.3, Chander and Bagesh, did not reveal the presence of A.3 and A.4 that is two of the appellants and their presence had to be ruled out even on the basis of the evidence as adduced.

The learned counsel for the State has, however, submitted that the delay of five hours had happened as a close member of the eye witnesses had been killed in a brutal manner and the fact that the accused belonged to the CPM and the complainant belonged to the BJP and the relations between them were strained, the possibility that some attempt had been made to help the accused could not be ruled out. He has also submitted that in the FIR A.3 and A.4 had been named as two of the primary assailants with specific injuries caused on the person of the deceased and the mere fact that there were some omissions in their statements under Sec.161 of the Cr.P.C. could not be said to be fatal to the prosecution story.

From the arguments advanced by the learned counsel certain facts are evident, first that the relations between the parties were extremely strained on account of murders and counter murders and that the two groups represented

bitter rivals in the political field, and second that the complainants belonged to the BJP whereas the accused belonged to the CPM which was the Government in power in Kerala in those days. It is in this background that the evidence would have to be examined.

It is true, as contended by Mr. Surender Singh, that Police Officer who had instigated the matter had not been examined. This fact, to our mind, would not by itself determine the fate of the appeal for the reasons given above. Even otherwise we are of the opinion that there is no justification in not accepting the statements of the three eye witnesses Govindan, Chandar and Bagesh, all very close relatives of the deceased.

It is equally true that there is a delay of about 5 hours in the lodging the FIR i.e. from 3.30 to 8.30 p.m. but to our mind this has been explained. It cannot be ignored that the eye witnesses had given full details of the incident even though they had witnessed a brutal murder of a close relative as Govindan PW.1 was the brother in law of the deceased, Chandar was his brother and Bagesh PW.3 was his son. The judgments cited by the learned counsel do not advance his case any further. In all the cited cases the incidents had happened either in the street far away from the home or on the road or in the market yard where the possibility of the witnesses not being present could be raised. In the case before us today the incident happened in the residential complex belonging to the deceased and the three witnesses. All the witnesses were therefore expected to be present.

We also find that the second argument with regard to the omission to mention A.3 and A.4 in the statements under Sec.161 PW.2 and PW.3 cannot be taken as a serious

omission. It would be seen that in the FIR specific roles had been attributed to A.3 and A.4 as well and these statements were reiterated in the evidence in Court. Even assuming therefore that there was some omission with regard to the exact role given to A.3 and A.4, the lacuna has been filled in by the statements made in Court. There is thus no merit in the appeal. It is accordingly dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(J.M. PANCHAL)

New Delhi,
November 25, 2009.