

Devan vs State of Kerala

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Court : Kerala

Decided On : Jul-23-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/241/2011

Appellant : DEVAN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946
CRL.APEAL NO. 241 OF 2011 AGAINST THE JUDGMENT DATED
10.02.2011 IN SC NO.93 OF 2004 OF THE ADDITIONAL SESSIONS
COURT (SPECIAL COURT FOR TRIAL FOR MARADU CASES)
KOZHIKODE APPELLANTS/ACCUSED 1 TO 4: 1 DEVAN
S/O.RAGHAVAN,THEKKETHODY VEEDU,BEYPORE AMSOM,
NADUVATTOM, MARAD. 2 ANANDAN S/O.
VELAYUDHAN,CHOYICHANKATH VEEDU, BEYPORE AMSOM,,
NADUVATTAM, MARAD. 3 PRAHALADAN S/O.PRABHAKARAN,
ARAYACHANTAKATH VEEDU, BEYPORE AMSOM, NADUVATTOM,

MARAD. 4 SUJITH, S/O. SURENDRAN, KELACHANTAKATH VEEDU, BEYPORE AMSOM,, NADUVATTOM, MARAD. BY ADV SRI.S.RAJEEV RESPONDENT/COMPLAINANT/STATE: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM (CRIME NO.68/2002 OF BEYPORE POLICE, STATION, KOZHIKODE). BY SMT PUSHPALATHA M K., SR.PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 05.06.2024, THE COURT ON 23.07.2024 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 23rd day of
July, 2024

JUDGMENT

Accused Nos.1 to 4 in S.C.No.93 of 2004 before the

Special Additional Sessions Judge (Marad Cases), Kozhikode are the appellants. After trying them along with accused Nos.5 and 6, the the trial court convicted appellants for the offences punishable under Sections 143, 147, 450, 427, 436 and 153A r/w 149 of the Indian Penal Code, 1860 (IPC). The said conviction and consequent sentence are under challenge in this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (Code).

2. Following the incident of a group clash on the

occasion of a programme at Marad and in connection with erection and conversion of sheds at Marad Beach for religious purposes by Muslims and Hindus, communal disharmony existed in the area. As a sequel to that, at about 8.00 p.m. on 03.12.2002, accused persons along with a few others, who

are Hindus, formed themselves into an unlawful assembly and in prosecution of their common object of destroying the houses of Muslims, reached the dwelling

house where PW1 and others were residing. The assailants broke open the door and set the house on fire after pouring kerosene. As a result, a loss of Rs.50,000/- was occasioned to the occupants of the house. The said acts created communal divide between two religious sects.

3. Based on the said allegations, the accused were

tried for the offences under Sections 143, 147, 450, 427, 436 and 153A r/w 149 of the IPC. The prosecution has examined PWs.1 to 12 and proved Exts.P1 to P10. MOs.1 and 2 were identified. The accused were questioned under Section 313(1)

(b) of the Code and they denied all the incriminating

circumstances appeared against them in evidence. Exts.D1 and D2 were produced on their side. The trial court, after considering the evidence, found accused Nos.1 to 4 guilty and found others not guilty.

4. Heard the learned counsel for the appellants and the learned Public Prosecutor.

5. The prosecution rests essentially on the evidence of

PWs.1 and 2 to establish the charge. They were the residents of the house, which was gutted in fire. PW2 is the sister-in-law of PW1. Besides them, a few others were also the residents of that house. The building was assessed in the name of PW2s husband, who is the brother of PW1. Regarding the ownership and occupation of the building there is not much dispute. Versions of PWs.1 and 2 in that regard cannot be doubted as well.

6. Both PWs.1 and 2 deposed that on noticing a

commotion in the neighbouring houses, they opened the front door of their house. They then saw a group of persons approaching their house and the neighbouring house being burnt. A violent group was shouting to set ablaze the houses of Muslims. Fearing attack, PWs.1 and 2 and others in the house, went to the kitchen and immediately the mob entered the house. They had country torches and cans. Kerosene was

poured from the cans and using matches they lit the country torches and set fire to the house. PWs.1 and 2 along with other inmates left their house and took shelter in a relatives house. Both PWs.1 and 2 identified accused Nos.1 to 6 as the person from among the mob, who took initiative to lit fire to the house. A few among the mob were on masks.

7. While the learned Public Prosecutor would submit

that the evidence of PWs.1 and 2, who are the natural witnesses, is cogent and consistent, and sufficient to prove the atrocious acts committed by the appellants, the counsel for the appellants would submit that on account of the delay in lodging a complaint, want of proper evidence about the identity of the assailants and the inconsistencies crept in the evidence of PWs.1 and 2 the prosecution can only fail. It is further contended that the appellants were falsely implicated to justify the claim for compensation from the Government for the destruction of the house. Thus, the learned counsel would submit that the conviction is not based on any reliable evidence and is liable to be set aside.

8. The incident occurred on 03.01.2002. PW1 lodged

a complaint, which is Ext.P1, on 11.01.2002. The delay in launching the prosecution is highlighted by the learned counsel for the appellants in order to contend that the very genesis of the case is doubtful. The house, where PW1, PW2 and their near relatives resided, was set ablaze cannot be disputed. This fact has been amply proved also by the oral testimonies of PWs.1 and 2 supported by Ext.P4 ownership certificate and Ext.P7 scene mahazar. The photograph of the building is Ext.P3. Not only the said building, but also other residential buildings nearby were set at fire. The evidence concerning setting ablaze PW1s residential building and the mischief thereby caused are established by the said evidence.

9. Evidently, the incident occurred as part of a

communal violence. PW1 and other members of her family could not continue their residence in that house. When they had to shift residence and the tension prevailed in the locality, as rightly pointed out by the learned Public Prosecutor,

PW1 could not have immediately gone to the police station to complain about the incident. Therefore the delay in registering the crime by itself would not fail the prosecution.

10. It is the obligation of the police on getting

information regarding a cognizable offence to register a crime. It is contended by the appellants that following the incidents of fire, police reached the spot, but they did not choose to register a crime regarding this incident and that indicates that this case is a foisted one. PW11, who registered the crime had explained that number of the house could not be identified due to the destruction in fire and hence registration of a crime by the police, suo motu, was not possible. There is no reason to discard that explanation. It is especially so since several houses were destroyed on fire in that area.

11. The pertinent question is whether the evidence let

in by the prosecution is enough to prove that the appellants were the persons who committed the mischief. In order to prove that fact, the prosecution relies on the evidence of PWs.1 and 2 alone. Their credibility is strongly assailed on the grounds that their evidence contains material contradictions and the version in Ext.P1 does not go in tandem with the oral evidence. The learned counsel for the appellants would submit that when there occurred departure from Ext.P1, which itself is tainted by the delay of eight days, the direct evidence

tendered by the prosecution becomes unreliable. After sufficient deliberations only PW1 prepared and submitted Ext.P1. But she made a go-by from the version in it. She as well as PW2 are interested witnesses. Therefore, it is contended that their evidence, which does not get support from any independent evidence or circumstance, cannot be acted upon to reach a conviction.

12. The version of PW1 concerning identification of the

appellants in court would appear to be genuine, at first blush. She asserted that they were persons living in the same locality and she knew them before. Similar is the version of PW2 also. Both of them named the appellants and identified them in

court. But it may be noted that both of them stated that soon the assailants broke open the front door, they left the house along the kitchen door. So possibility of their seeing

and identifying the assailants and their overt acts was doubtful.

13. The version in Ext.P1 is that 11 sovereigns of gold

ornaments and Rs.56,000/- were stolen away from the house by the culprits. PW1 did not have such a case while deposed in court. Both PWs.1 and 2 had a case that some of the assailants were wearing masks. Of course, they did not depose that accused Nos.1 to 6 were wearing masks. While names of accused Nos.1 to 4/appellants alone were stated in Ext.P1, names of accused Nos.5 and 6 did not find a place in it. If PWs 1 and 2 knew them also even prior to the incident as they claimed, non mentioning of their names in Ext.P1 raises eyebrows, especially when that complaint was lodged after due deliberation. It is more so when those witnesses took the stand that accused Nos.1 to 6 were the persons living in that locality and familiar to them.

14. Having regard to the circumstances in which the incident had taken place, non-availability of independent witnesses cannot be a reason to discard the prosecution

case. PWs.1 and 2 are natural witnesses, being the occupants of the house in question. As stated, Ext.P1 complaint was given after eight days. This is a written complaint. PW1 obtained enough time to ponder over and state detailed facts in the complaint. But the names of accused Nos.5 and 6 were omitted in Ext.P1. The departure from Ext.P1 concerning 11 sovereigns of gold ornaments and Rs.56,000/-, also has no justification. Not that PW1 or PW2 spoke false in court, but trusting their evidence concerning the identification of the assailants has become difficult in the above circumstances, particularly when there is absolutely no independent evidence. Therefore, their identification of the appellants before the court becomes doubtful. In that context the delay of eight days in lodging the complaint also becomes fatal to the prosecution.

15. Therefore, the evidence tendered by the prosecution is not enough to prove beyond doubt that appellant Nos. 1 to 4 were the real culprits. Resultantly, the impugned judgment is set aside. The appellants are acquitted, giving them the benefit of doubt. The appeal is allowed and the appellants are set at liberty. Sd/-
P.G. AJITHKUMAR, JUDGE dkr

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