

2009(6) SCR 10
STATE OF KERALA

v.

SURESH @ SUBHASH & ORS.
(Criminal Appeal No. 1207 of 2004)

APRIL 1, 2009

**[DR. ARIJIT PASAYAT, D.K JAIN AND DR. MUKUNDAKAM
SHARMA, JJ.]**

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard learned counsel for the parties.

2. The Kerala High Court by the impugned order dismissed the appeal filed by the State questioning acquittal of five accused persons who faced trial in the Court of Additional Sessions Judge, Pathanamthitta. The trial court acquitted them of the charges relatable to Sections 143, 147, 148, 109, 449 and 302 read with Section 149 of the Indian Penal Code, 1860 (in short 'IPC').

The basic reason which weighed with the trial court to direct acquittal was the unexplained delay relating to the FIR reaching the concerned Magistrate. Added to that the authenticity of the report given by PWI was doubtful. The High Court found that the evidence of PWI was not believable. There was doubt about the authenticity of Ex. P1 and the unexplained delay in FIR reaching the Magistrate Court. Because of the aforesaid factors the High Court found that there was no scope for any interference. Learned counsel for the appellant submitted that PWI was an injured witness and merely because the investigation was not done in proper manner, the acquittal should not have been directed. Learned counsel for the respondent supported the judgment.

We find that both the trial court and the High Court have analysed the evidence in great detail to find the prosecution version to be not cogent and credible. According to PW1 she gave Ext. P1 FIR before ASI PW17 at 2.30 A.M. on 6.9.1996. According to PW17 he recorded at 3.00 A.M. on 6.9.1996. But Ext. P1 reached the Ilage Magistrate at 10.30 A.M. on 7.9.1996. The Investigating Officer has not explained the delay. Further the trial court found it impossible physically for giving a lengthy report (Ext. P1) while in Intensive Care Unit. The occurrence is stated to have taken place on 5.9.1996 at 8.15 P.M. According to PW5, he examined the injured and deceased at 9.30 P.M. If that be so, it has not been explained as to how the FIR came to be lodged at 2.30 A.M. on 6.9.1996. That being so, We find no scope for interference in this appeal which is accordingly dismissed.

