

PETITIONER:
RADHAKRISHNAN NAIR & ORS.

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT 07/12/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 SCC Supl. (1) 217 JT 1995 (1) 14
1994 SCALE (5) 104

ACT:

HEADNOTE:

JUDGMENT:

K. JAYACHANDRA REDDY, J.

1. These three appeals under Section (2) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act read with Section 379 Cr.P.C. are filed against the judgment of the High Court of Kerala. Original accused nos. 2 to 5 and 7 to 15 are the appellants herein. Altogether 15 accused were tried by the Sessions Judge, Alleppey for offences punishable under Sections 143, 147, 148, 149, 286, 452, 323, 324, 326, 436 and 302 I.P.C. A-1 was murdered sometime during the pendency of the trial and the remaining accused were acquitted by the trial court. The State of Kerala filed an appeal against the acquittal in the High Court. During the pendency of the appeal A-6 died and the High Court convicted the remaining accused, who are the appellants before us, and sentenced them to undergo imprisonment for life under Sections 302/ 149 I.P.C. and for other periods varying from six months to five years under the other charges. Hence the present appeals. The prosecution case is as follows:

The accused are said to be the sympathisers of the R.S.S. having political animosity towards the sympathisers of Marxist Party to which the injured witnesses and the deceased belong. One R.S.S. sympathiser by name Sivan was alleged to have been done to death by the Marxists earlier. This aggravated the strained feelings. On the night of 9.11.81 the accused having formed themselves into an unlawful assembly armed with deadly weapons like choppers, sword sticks, axes, lathis and iron rods unleashed terror in Thekkekara at Mankombu in Kuttanad and committed a series of criminal acts. At about 10 o'clock in the night, the accused 16

in the first instance approached the house-cum-tea shop of P.W.4, cut open the fence of the house and A-1 to A-5 entered the house and thereby committed the housebreaking. A-2 inflicted a cut injury with a chopper on the head of

P.W.4. A-3 and A-5 inflicted several injuries on P.W.5 and when P.W.6. wife of P.W.4. intervened. she was kicked and pushed down. Thereafter A-8 poured petrol over the roof and set fire to the tea shop. Then they proceeded to the bunk shop of Thankappan and A-8 set fire to that shop. Thereafter they proceeded to Kuttan Taluk committee office of C.P.I.(M). trespassed into the compound. broke open the front door and some of them entered the building. and damaged the furniture and other articles. A-8 poured petrol and set fire. Thereafter the accused proceeded to the east along the road and reached the house of Thankappan and surrounded the house. A8 poured petrol and set fire to the house. Thankappan woke up and extinguished the fire by pouring water. P.W.7. his wife. got out of the house with the children and she cried out ,to her husband that the assailants we.'e R.S.S. men. When Thankappan go out of the house. A-1 inflicted cut injury with a chopper on his right shoulder. The deceased rushed to the east and was chased by all the accused. The deceased then rushed to the south and stepped into the courtyard of P.W.34. But the accused reached the place and A-4 inflicted a cut injury on the neck with an axe. The deceased fell down. A-1. A-2. A-3 and A-5 inflicted a number of injuries with choppers and swords. Thereafter A-1 cut and severed the head of the deceased and took up the head of the deceased raising war cries and proceeded along the road. On the way they also came to the tea shop of P.W. 11 and set fire to the same. Likewise they damaged the house of P.W. 10. Thereafter the accused went to the local committee office of C.P.I.(M) and set fire to the furniture. After that they proceeded towards the east raising cries and placed the severed head of the deceased on the bridge. Then then proceeded along the eastern side of the bridge and reached the boat shed belonging to the union and they set fire to the same causing a loss of Rs. 1 lac. P.W.39. S.I of Police. attached to Pulincunnu Police Station on getting information about the atrocities proceeded to the place of incident with a party and recorded Ex.P.1. the statement of P.W.I and registered the crime and issued the F.I.R.P.W.40. Dy.S.P., took up the investigation. held the inquest over the dead body and the severed head and visited various places where the damage had been caused. and prepared mahazars in respect of the above said places of occurrence. P.W.29. the Doctor. examined the injured witnesses and issued the wound certificates in respect of the injuries found on them. P.W.31. Assistant Professor of Forensic Medicines conducted the post-mortem on the body of the accused and the severed head and issued the post-mortem certificate. The accused were arrested on various dates and after completion of the investigation, the charge-sheet was filed.

2. The prosecution examined as many as 41 witnesses. The accused pleaded not guilty. During the trial P.Ws. 4.5.6.9.12. 14.15.16.17.19.20.22.23.24.25.27.34.37 and 38 turned hostile. and they did not support the prosecution case. Then there remained P.Ws.1 to 3.7.8.10.11 and 13 who supported the prosecution story and who are admittedly interested and inimical witnesses. The trial court in the first instance discussed the evidence of P.W.I in detail
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and pointed out various infirmities. According to P.W. 1, he gave the report Ex.P. 1 at about 4 A.M. on 10.11.81 and admittedly it reached the Magistrate only on 12.11.1981 and the trial court rightly pointed out that this delay renders Ex.P. 1 suspicious in the absence of any explanation. With that background the trial court proceeded further to discuss

the evidence of the remaining eye-witnesses. P.Ws.1 to 3 formed one group. P.W. 1 had merely identified some of the accused in the group but did not attribute any overt acts to any one of them. He merely stated that there could be 16 to 18 persons. The trial court also pointed various inconsistencies between the version in Ex P. 1 and his present evidence. The version given by P.W.2 is found to be contrary to the one given by P.W. 1. The trial court pointed out numerous inconsistencies in the evidence of P.W.3 and observed that it was extremely difficult to believe him. P.W.7 was the wife of the unfortunate deceased Thankappan but her version is inconsistent with the one given by P.W.1 in respect of movements of some of the accused. She has not, however, witnessed the attack on the deceased fully. She named as many as 9 accused. She was cross-examined at length as to how she could come to know that. The trial court after examining many admissions made by her held that her evidence is totally false when she deposed that she recognised these accused persons and noted that she is an interested witness and she fell in line with the version given by P.W. 1. We may point out that the trial court has pointed out a number of inconsistencies and infirmities in her evidence which totally affects her veracity. Coming to the murder of Thankappan, the prosecution could rely only on the evidence of P.W.8. The trial court noted that not a single neighbor has been cited to prove any part of the occurrence except P.W. 8. P.W.8 deposed that she was a tadi-tapper and that on the night of 9.11.81 he woke up hearing a loud cry. He came out and he saw a man running ahead. Then he saw the occurrence namely the attack on the deceased by A-1 to A-5 and he could not recognise the others. He claimed to have seen the entire incident in the light of the burning electric light on the northern side of the house belonging to P.W.34. Admittedly P.W.8 is also an interested witness. But for the presence of the light, he could not have witnessed the occurrence and the presence of light itself became highly suspicious because P.W.34, Indra, the owner of the house did not support the prosecution case regarding the presence of the light and she stated that during the night time that light in the courtyard would be switched off. That apart there are some tell-tale admissions in the evidence of P.W.8 which throw any amount of doubt about the electric light burning at the relevant time. Several other discrepancies also have been pointed out in his evidence. Yet another grave infirmity in his evidence is that he committed mistake completely in identifying the accused in the court. The prosecution, however, contended before the trial court that P.W.8 was afraid of the accused and in making wrong identification he colluded with the defence. In view of this serious defects in his evidence the trial court held him to be a false witness. In this view of the matter the trial court acquitted all the accused.

3. The High Court in an appeal against acquittal proceeded to examine the evidence of the remaining witnesses who sought to support the prosecution case.

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Then in a very short judgment the High Court sought to place reliance on the evidence of some of the remaining witnesses. The High Court strangely placed reliance on the evidence of P.W.8 who is the sole witness in respect of the murder of Thankappan and on the basis of his evidence convicted all the appellants under Sections 302/149 I.P.C. The High Court pointed out that the evidence given by P.W.8 in the first stage of examination was correct and the later part of his evidence regarding the identification of the accused was

only a result of collusion. We are afraid that on the basis of such hopelessly inconsistent testimony of the sole witness, the convictions of the appellants could not have been awarded. Even with regard to other incidents involving lesser offences, the High Court has not discussed their evidence and has not at all adverted to the various reasons given by the trial court for rejecting their evidence.

4. If we may say so, the High Court has not pointed out any strong grounds warranting interference in an appeal against acquittal. Having examined the entire evidence and having gone through the two judgments of the courts below, we are of the view that the trial court rightly acquitted the accused and that is the only view possible in this case. The High Court without any basis whatsoever reversed the said order of acquittal. Therefore there is no other alternative except to set aside the judgment of the High Court and restore the judgment of the trial court acquitting the accused. Accordingly all these appeals are allowed.