

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

CRL.A.No. 1224 of 2003 ()

AGAINST THE JUDGMENT IN SC 472/2001 of ADDL.SESIONS COURT (ADHOC)-II,
KOZHIKODE DATED 03-07-2003

APPELLANTS/ACCUSED:

1. PAPPADAM GANESAN @
KARUVANTHARAYIL GANESAN,
S/O. KARAPPUTTY,
KARUVANTHARAYIL HOUSE,
B.C. ROAD, BEYPORE,
KOZHIKODE.

2. SHAJIU, S/O. GANGADHARAN,
CHEMBAYIL HOUSE,
KAITHAVALAPPU COLONY,
BEYPORE, KOZHIKODE.

3. MAHESH, S/O. CHANDU,
AMBALATHARA HOUSE,
KAYYADITHODU,
BEYPORE, KOZHIKODE.

4. SUDHEESH, S/O. JANARDHANAN,
KAKKADATH HOUSE,
BEYPORE, KOZHIKODE.

5. PRADEEPKUMAR @PRADEEPAN,
S/O. KRISHNANKUTTY,
CHANDRATHILPARAMBU,
NADUVATTOM, BEYPORE,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT:

STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA

BY P.P.SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.A.No.1224 of 2003
.....

Dated this the 17th day of September, 2015.

JUDGMENT

Accused 1 to 5 in SC.No.472/2001 on the file of the Additional Sessions Court, Fast Track (Adhoc-II), Kozhikode are the appellants herein. The appellants were charge sheeted by the Circle Inspector of Police, Baypore in Crime No.14/2000 of that police station under sections 143, 147, 148, 341, 324 and 307 read with section 149 of the Indian penal Code.

2. The case of the prosecution in nutshell was that on 12.2.2000 at about 5 p.m, the accused five in number on account of their political rivalry with the defacto complainant/ injured and with a common object of attacking him with an intention to commit murder near Baypore Co-operative Bank on the north of Naduvattam Library bus stop in Baypore amsom of Kozhikode formed themselves into an unlawful assembly with deadly weapons like sword etc and in furtherance of their common object inflicted grievous hurt to PW1 and thereby they have committed the offences punishable under sections 143, 147 148, 341, 324 and 307 read with

section 149 of the Indian Penal Code.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-V, Kozhikode where it was taken on file and thereafter it was committed to Sessions Court, Kozhikode by the learned Magistrate under section 209 of the Code. After committal, the sessions Court, Kozhikode took cognizance of the case as SC.472/2001 and it was originally made over to the Principal Assistant Sessions Court, Kozhikode for disposal. Thereafter when the adhoc courts were established, it was withdrawn and made over to the Additional Sessions Court, Adhoc-III for disposal by the Sessions Judge.

4. When the accused appeared before the court below after hearing both sides, charge under sections 143, 147, 148, 341, 324, and 307 read with section 149 of the Indian Penal Code was framed against all the accused and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 13 were

examined and Exts.P1 to P14 and MOs1 to 4 were marked on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under section 313 of the Code and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that there was no such incident occurred and in fact on the same day at about 4 p.m from another place the second accused was attacked by Pws1, 5 and others and after attacking them when they were running away they sustained some injuries and in order to escape from the same, the present case has been foisted against them. Since the evidence in this case did not warrant an acquittal under section 232 of the Code, the accused were called upon to enter on their defence. In order to prove their case Dws 1 and 2 were examined and Exts.D1 to D9 were marked on their side.

5. After considering the evidence on record, the court below found the appellants not guilty under section 307 of the Indian Penal Code and acquitted them of that charge under

section 235 (1) of the Code. But the court below found the appellants guilty under sections 143, 147, 341, 324 and 326 read with section 149 of the Indian Penal Code and convicted them thereunder and sentenced them to undergo rigorous imprisonment for three months under section 143 read with section 149 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for six months under section 147 read with section 149 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for 9 months under section 148 read with section 149 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for two years under section 326 read with section 149 of the Indian Penal Code and further sentenced to undergo simple imprisonment for one month under section 341 read with section 149 of the Code and directed the sentences run concurrently. Aggrieved by the same, the above appeal has been preferred by the appellants/accused before the court below.

6. Heard Sri.P.V.Kuhikrishnan, counsel appearing for the

appellants and Smt. Seena Ramakrishnan, Public Prosecutor appearing for the State.

7. Counsel for the appellants submitted that having disbelieved the evidence of Pws 5 and 6 and even going to extent of observing that PW6 is a planted witness, the court below should not have relied on the evidence of PW5 for proving earlier part of the transaction. Further PW1 has given a complete gobye regarding the manner in which the incident occurred as stated by him in Ext.P1 First Information Statement when he was examined before the court. There is shift in the place of occurrence and also the manner in which the incident occurred. According to him, he was not aware of the names of the persons at that time when he was attacked and he came to know about the names only when Pws 6 and 7 have told the names and according to PW6, he had divulged the names of the accused persons only after two days of the incident. So there is a possibility for some of the accused persons as mentioned in Ext.P1 at the time of giving Ext.P1

statement being falsely implicated especially when he had a case that he knew the accused persons but not mentioned the names to the doctor at the time he was said to have been examined by the doctor. Further it was brought out in evidence that Pws 1 and 5 were accused in several criminal cases and it was also brought out in evidence that for alleged attacking of the second accused, Ext.D7 Final Information Report was registered and subsequently final report was also filed in that case. If that version of the second accused is accepted then, it is not possible for him to participate in the incident as claimed by the prosecution. That throws suspicion in the entire prosecution case itself. So under the circumstances, it is not safe to rely on the interested testimony of PW1 alone for coming into the conclusion that accused persons have attacked him as found by the court below and conviction entered on that basis is unsustainable in law and they are entitled to get acquittal.

8. Further no attempt was made to recover the weapons

alleged to have been used for committing the offence and MO1 weapon would not be that weapon used for commission of the offence when none of the injured had no case that, that weapon was used for that purpose. It was not sent for chemical examination as well. The court below also came to the conclusion that the prosecution has failed to prove that MO1 weapon was used for commission of the offence as well. He had also argued that there is no evidence given by PW1 that he sustained fracture in the incident on account of any of the overt act committed by any of the accused persons and in the absence of such evidence the conviction under section 326 of the Indian Penal Code is not attracted. So according to him, the accused are entitled to get acquittal.

9. On the other hand, the learned Public Prosecutor submitted that the principle of falsus in uno, falsus in omnibus (false in one, false in all) is not applicable to criminal proceedings. The court is entitled to rely on a portion of the evidence given by the witness though he is being disbelieved

by the court on some part of the transaction for the purpose of getting corroboration of the prosecution case. So the court below was perfectly justified in relying on the evidence of Pw5 to prove the earlier part of the transaction in which they were prevented by the accused persons and chased by them though later part of the transaction causing injury to PW1 was disbelieved by the court below. Further PW1 had categorically stated about the entire transaction and the court below also rightly come to the conclusion that it is not necessary to mention everything in the First Information Statement and subsequent statement given by the witnesses during the course of investigation which lead to the filing of the final report also can be considered by the court below. The court below also discussed the evidenciary value of the case filed against Pws 1 and 5 on the basis of the statement given by the second accused and rightly came to the conclusion that that is not sufficient to disbelieve the case of the prosecution to absolve the second accused from the criminal liability attributed against

him. So according to the learned Public Prosecutor the court below was perfectly justified in convicting the appellants for the offences alleged.

10. The case of the prosecution as emerged from the prosecution witnesses was as follows:

Pws 1 and 5 are the brothers and admittedly they were active workers of Rashtriya Swayam Sevak and also Bharatha Janatha Party. According to the prosecution, on 12.2.2000 at about 5 pm Pws 1 and 5 were returning after attending a marriage in the scooter driven by PW5 and PW1 as a pillion rider and when they reached the place of occurrence, the 5th accused stopped the vehicle by waving his hand and as requested by PW1, PW5 stopped the vehicle. At that time other accused persons came from nearby bus stop with weapons in their hands and 5th accused shouted to kill them and accordingly the second accused inflicted injury with the sword in his hand and attempted to hit the head of PW1 which he prevented and thereafter they started running, the third accused inflicted

injury on him and when he fell down, other accused persons also inflicted injuries on him. When people gathered there, they ran away from the place with weapons. Then PW5 came back and took him to the hospital from where he was seen by PW12, who issued Ext.P14 wound certificate. Thereafter on getting intimation regarding admission of PW1 in the hospital, PW2 went to the hospital and recorded Ext.P1 statement of PW1 and since the incident occurred within the jurisdiction of Baypore police station, it was sent to that police station and on receipt of the same, PW3 had registered Ext.P3 First Information Report as Crime No.14/2000 against Pappadam Ganeshan, Woodcutter Gangadharan's son, Ambalathil Chandu's son Mahesh and other 5 to 10 persons alleging offences under sections 143, 147, 148, and 324 read with section 149 of the Indian Penal Code.

11. Thereafter investigation in this case was conducted by Pws10 and 11. Earlier part of the investigation was conducted by PW10, who went to the place of occurrence and prepared

Ext.P4 scene mahazer. Thereafter he arrested the first accused and seized MO1 knife as per Ext.P2 seizure mahazer in the presence of witnesses. He had also seized Mos 2 and 3 shirt and pant of the injured as produced by his father as per Ext.P5 mahazer. He had also filed Ext.P7 report to add section 341 and 307 of the Indian Penal Code also and also gave Ext.P8 report showing the name and address of all the accused persons. Thereafter investigation was conducted by PW11. He verified the investigation conducted and he arrested the 5th accused and prepared Ext.P9 arrest memo and Ext.P10 inspection memo and produced him before court along with Ext.P11 remand report. He had also filed Ext.P13 report to get custody of the second accused for conducting investigation in Crime No.16/2000 registered on the basis of the statement given by the second accused against Pws 1, 5 and others. He collected Ext.P14 accident cum wound certificate of PW1 and produced the same before court. PW13 is his successor who completed the investigation and submitted final report.

12. The prosecution relies on the evidence of Pws 1, 5 and 6 and Exts.P1, P14 and medical evidence of PW12 to prove their case. On the other hand, the defence relies on the evidence of Dws 1 and 2 and Ext.D1 to D9 in support of their case. The court below had partially disbelieved PW5 regarding later part of the incident narrated by PW1 while totally disbelieved the evidence of PW6 and made even a comment that he is a planted witness by the prosecution. It is also in a way admitted by PW1 and PW5 that they are accused in several cases including the case registered on the basis of statement given by the 2nd accused and he is having political affinity with BJP and also an active worker of Rashtriya Swayam Sevak while the accused persons belong to Communist Party of India (Marxist).

13. It is true as observed by the court below that it is not always necessary that court will have to seek for corroboration in all cases and there is nothing wrong with the court to rely on the evidence of single injured witness alone for the purpose

of convicting the accused if his evidence is trustworthy and believable and not suffered any infirmities as he is the most competent witness to speak about the incident and persons involved in the same. It is settled law that seeking for corroboration is not a rule of evidence but it is a rule of prudence depending upon circumstances of the case. In some cases the court may seek for corroboration of independent witnesses apart from the injured witness to analyze the genuineness of the prosecution case. With this principle in mind, this case has to be considered by this Court.

14. The case of the prosecution as seen from Ext.P1 First Information Statement given by PW1, the injured was that on 12.2.2000 at about 5 p.m while he was returning home from Vattakinar in the scooter driven by PW5, his brother as a pillion rider and when they reached near Naduvattam Bal company bus stop, one person waved his hands to stop the vehicle and since he thought that he wanted to say something to them, he asked PW5 to stop the vehicle and PW5 stopped

the vehicle. At that time a person came there, who was later identified as 5th accused shouted "vettada". At that time Pappdam Ganeshan, Woodcutter Gagadharan's son whose name is not known and Ambalathil Chandu's son Mahesh were with him. Gangadharan's son , who was later identified by the 2nd accused during investigation had attempted to inflict cut injury on his head with sword in his hand which he warded off with his hand and he sustained injury to both his hands. When he tried to escape from there by running away from the place, Amablathil Mahesh (3rd accused) inflicted a cut injury with a sword which fell on his left hand and right leg and thereafter they ran away from the place. He did not mention in Ext.P1 regarding involvement of other accused persons in the commission of the crime or any overt act attributed to them. He had only stated that he is a sympathizer of Bharatha Janatha Party while the persons attacked him are sympathizers of Communist Party of India (Marxist) and he had can identify the person who wanted to stop the vehicle but he did not know

his name. It is also mentioned in the First Information Statement that apart from the above four persons, five or ten persons were also present. But their overt act was not mentioned.

15. But at the time of evidence, he had a different story. According to him, when he was examined as PW1 when they reached near Naduvattam Library Bus stop, one person by name Pradeep who has been arrayed as 5th accused in the case had come and wanted to stop the vehicle and as instructed by him, PW5 stopped the scooter at that time the first accused Pappadam Ganesh, second accused Shaju, third accused Mahesh and 4th accused Sudeesh had come from the side of the bus stop and at that time 5th accused shouted to cut them. Immediately on smelling danger, he asked his brother to flee away from there and accordingly started running from there leaving the vehicle there and at that time the second accused had inflicted a cut injury on him with a sword on his head which he warded off and again when he

rushed forward, he was chased by the third accused Mahesh and when he fell down while running, he attempted to inflict a cut injury which he warded off which fell on his leg and others also inflicted cut injury on him.

16. It will be seen from the evidence of PW1 that the incident started from Naduvattom Library Bus Stop and culminated in front of the house of Karthyayini nearly 10 to 15 metres. In the First Information Statement he had no such case. Further he did not mention the presence of the 4th accused Sudeesh or even made any attempt to describe him as a person who was present as he had done in respect of first, second and third accused in his First Information Statement. Further it was admitted by him in the cross examination that he was not aware of the names of any of the accused persons at the time when the incident occurred and he can only identify them by sight with their father's name. But the name of the persons were disclosed to him when Pws 6 and 7 namely Velayudhan and Balachandran respectively came to the hospital. But PW7

Balachandran had disowned this act. He did not even support the case of the prosecution though according to the prosecution some part of the transaction had taken place in front of his shop before it culminated in front of the house of Karthyayini. Karthyayini was not even cited as a witness. Even according to PWs1, 5 and 6, number of persons gathered there other than these witnesses and there were shops and houses situated near that place as well. The incident occurred at 5 p.m. So it cannot be said that there will be none in the road at that time.

17. Further the court below also came to the conclusion that PW1 had developed his case from stage to stage when he was examined before court. He cannot be said to be an ordinary rustic witness. He is a political worker and involved in several criminal cases including sessions cases. So it cannot be said that he was not aware of the consequences of the statement to be given by him in respect of the incident which according to the prosecution had attempted to be committed

against him. Further, it was admitted by him that he himself and brother PW5 were made accused in a case registered on the basis of the statement given by the second accused. But he had stated that he did not know about the factum of second accused sustained injury and treated in the hospital.

18. It was admitted by the investigating officers PWs10 and 11 that Ext.D7 First Information Report in Crime No.16/2000 was also registered on 13.2.2000 on the basis of the statement given by the second accused from the hospital and Ext.D9 wound certificate coupled with the evidence of DW2 will got to show that he had seen the second accused at 6 p.m on 12.2.2000 and issued Ext.D9 wound certificate. It is also seen from Ext.D9 wound certificate that he was admitted in the hospital and treated as inpatient and he was discharged on the next day. Further it was also brought out in evidence of Pws 10 and 11 that investigation in Crime No.16/2000 of Baypore police station registered against Pws 1, 5 and other three identifiable persons alleging offences under sections

143, 147, 148, 341, 324 and 307 read with Section 149 of the Indian Penal Code said to have been committed on 12.2.2000 at 4 p.m was completed and final report was filed against accused persons including Pws 1 and 5. They have no case that there was any dispute regarding the time of occurrence mentioned in Ext.D8 statement said to have been given by the 2nd accused in respect of that incident. If really no such incident happened, then after investigation, they would have referred the case as false. The fact that after investigation final report was filed charge sheeting accused persons including Pws 1 and 5 in that case will go to show that there was such incident occurred in which second accused was attacked by the accused persons including Pws 1 and 5 mentioned therein and resulted in some injury and he was treated in the hospital.

19. It is not for this Court or the sessions court while trying the case in another case going into the genuineness of the allegations made in that case as it is for the court which is going to try that case has to evaluate evidence and come to an

independent conclusion regarding genuineness of the allegation in that case. Further without proper evidence, the court below is not expected to probe into genuineness of the other case and coming into a conclusion that though it is seen in Ext.D9 that he was seen by the doctor at 6 p.m on 12.2.2000, the possibility of the accused coming and joining with other persons and committed the offence cannot be ruled out is unsustainable in law, especially when the nature of injury is deposed by DW2 as noted in Ext.D2 will go to show that it was an inside lacerated wound 5 x 1 cm left hand bone tip. If it is incised lacerated wound, there must be bleeding coming from that injury. Further it was a fresh injury and it was an old injury he would have noted the same in the wound certificate which is stated by DW2 doctor. So with this background of evidence placed on the side of the defence, court has to consider the improvement and embellishment made by PW1 from stage to stage regarding the manner in which the incident occurred including the shift of incident from Balcompany bus stop

mentioned in Ext.P1 to Naduvattom Library Bus Stop and extended the incident up to the front side of the house of Karthyayini.

20. It is true that PW1 had sustained some injuries including a fracture as seen from Ext.P14 wound certificate as stated by PW12 doctor. He has no case that he sustained fracture in the incident when he had given evidence. But he had no case at the time when he was giving evidence that he knew the names of the accused persons who had attacked him. But in Ext.P1 he had mentioned the names and descriptions of three persons namely Pappadam Ganeshan, Woodcutter Gangadharan's son and Ambalathil Chandu's son Mahesh. It is not known as to how the names of such persons had incorporated in Ext.P1 First Information Statement if he is not able to identify those names by name. Even according to him he knew only the name of their father but as regards the first accused is concerned he had not mentioned the name of the father but he had mentioned his name as Pappadam

Gangadharan and name of the third accused was given as Ambalathil Chandu's son Mahesh. Even according to him the names of the persons were disclosed to him or he came to know about the names of the persons involved in the incident as disclosed by Pws 6 and 7 of which PW7 had disowned that fact. According to PW6 he had disclosed the names only when he went and saw the injured from hospital and that was after two days of the incident which could be only on 14.2.2000 at 7.30 p.m. If that be the case, there was no possibility for PW1 disclosing the names of any of the accused persons involved in the commission of the crime at that time when the police officer came and recorded Ext.P1 statement. Further it is seen from Ext.P3 First Information Report that it reached the court only on 14.2.2000. There is no explanation forthcoming for the delay for sending the First Information Report to court. So coupled with the evidence of Pws 1 and 7, it can only be gathered the names of the accused persons were mentioned in the First Information Report after due discussion with the party

workers and in such circumstances false implication of persons especially when it being a political clash cannot be ruled out. So under these circumstances and also considering the deviation made by PW1 regarding the manner in which the incident occurred, it is not safe to rely on the evidence of PW1 without corroboration from independent witnesses.

21. It was brought out in evidence that there were other witnesses who were present there but none of them were cited as witnesses and none had been examined in this case. All the witnesses cited were either having some political affiliation to which PW1 belongs or related witness namely brother. It is not a case where there was no independent witnesses available but it is a case where independent witnesses were not cited by the prosecution though available at the place of occurrence. So coupled with the evidence and also the stand taken by the defence by producing Exts.D8 and D9 and examining Dws 1 and 2, it can be safely concluded that the incident would not have happened as claimed by the

prosecution or in the manner in which it was alleged to have been happened as deposed by PW1 and they are trying to suppress certain facts or genesis of the incident and that benefit must be given to the accused. In such circumstances and also considering the criminal background of PW1, it is not safe to rely on the evidence of PW1 without corroboration from the independent witnesses so as to come to the conclusion that the prosecution has proved the case against the accused persons beyond reasonable doubt and consequential conviction entered by the court below against the accused persons under sections 143, 147, 341, 324 and 326 read with section 149 of the Indian Penal Code is unsustainable in law and the same is liable to be set aside and the appellants are entitled to get acquittal of the charge levelled against them giving them the benefit of doubt. In view of my finding that the appellants are entitled to get acquittal, the sentence imposed by the court below is also not proper and the same is also set aside.

In the result, the appellants succeed and the appeal is

allowed. The order of conviction and sentence passed by the court below against the appellants under sections 143, 147, 341, 326 read with section 149 of the Indian Penal Code are hereby set aside. The appellants are acquitted of the charge levelled against them giving them the benefit of doubt. They are set at liberty. The bail bond executed by them will stand cancelled.

Office is directed to communicate a copy of this judgment to the court below at the earliest.

SD/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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