Chonampara Chellappan And Ors. vs State Of Kerala on 30 March, 1979

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Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. In these appeals the appellants' have been convicted under various sections of the Indian Penal Code as fully indicated in the judgment of the High Court. The main charges against the accused related to a conspiracy said to have been hatched tat Calicut and Tellicherry in pursuance of which a number of illegal acts like raiding police station, committing dacoities had been committed.

2. The prosecution case in its essential details has been elaborately indicated in the judgment of the High Court and it is not necessary for us to repeat the same all over again. There were a very large number of accused, some of whom were convicted and there was another category of accused who were acquitted by the Sessions Judge and on appeal by the State convicted by the High Court. Apart from other prosecution witnesses, the prosecution relied on the testimony of accomplice witnesses P.ws. 119, 126 and 165 as also P. Ws. 76 and 85 who were also more or less in the nature of accomplice witnesses.

3. Broadly speaking, the prosecution case was that the accused were members of the Communist Party Marxist which believed in the ideology of capturing power by force and by bringing about an armed revolution and in pursuance of this conspiracy the appellants attacked various police stations and committed dacoities in order to seize arms, weapons and explosives so that they may be able to achieve their objective. According to the prosecution, there were several limbs of the main conspiracy one of which was held at Calicut on the night of 30th October, 1968 and the other at Tutorial College at Tellichefry in the house of accused No. 2 who was the proprietor of the College. At these two places it was decided to raid the police stations and. commit various illegal acts. Thus, a close analysis of the case reveals the following incidents which form the basis of the charges against the accused:

1. Conspiracy in the house of accused No. 1 at Calicut on 30-10-1968;

2. Conspiracy in the Tutorial College at Tellicherry owned by accused No. 2 on 17-11-1968;

3. Attack on Tellicherry Police Station between 3 to 3-30 a.m. on 22-11-1968;

4. Attack on Pulpally wireless station at about 3-30 a.m. on 24-11-1968;

5. Decoity in the house of P.W. 106 at Chekati;

6. Dacoity in the shop of P.W. 116 on 24-11-1968.

7. Dacoity in the house of P.W. 117 on 24-11-1968.

4. After having heard counsel for the parties and having gone through the entire record of the case we feel that the prosecution has not been able to lead satisfactory evidence to prove that a conspiracy was hatched either at Calicut or at Tellicherry as alleged. Furthermore, as regards the decoities committed in various places there is no legal evidence to prove the identification of the accused as participants in any of those decoities. There is, however, clear evidence to prove the participation of some of the accused with respect to the attack on Pulpally wireless station where some police officers were injured and one of them was killed. So far as the attack on Tellicherry Police Station is concerned, there is no reliable evidence to prove that the appellants concerned had participated in the occurrence which took place at Tellicherry. We may also note that although some of those incidents have undoubtedly been proved by the accomplice witnesses, namely, P.Ws. 119, 124 and 165 as also P. Ws. 76 and 85 yet we do not find any material on the record which may furnish a sufficient corroboration of their evidence. The law is well settled that the Court looks with some amount of suspicion on the evidence of an accomplice witness which is a tainted evidence and even Section 133 of the Evidence Act clearly provides that the evidence of an accomplice witness should not be accepted unless corroborated. At the same time, it must be remembered that corroboration must be in respect to material particulars and not with respect of each and every item however minor or insignificant it may be. Actually the requirement of corroboration is a rule of prudence which the courts have followed for satisfying the test of the reliability of an approver and has now been crystallized into a rule of law. It is equally well settled that one tainted evidence cannot corroborate another tainted evidence because if this is allowed to be done then the very necessity of corroboration is frustrated.

5. In the case of Piara Singh v. State of Punjab this Court observed as follows:

> As accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious taint in his evidence and Courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence.

> It is well settled that the appreciation of approver's evidence has to satisfy a double test. His evidence must show that he is reliable witness and that is a test which is common to all the witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration.
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> 5-A. This view was reiterated by this Court in the case of Mohd. Hussain Umer Kochra v. K.S. Dalip singh ji where Bachawat, J. speaking for the Court observed as follows:
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> The combined effect of Sections 133 and 114 Illustration (b) is that though a conviction based upon accomplice evidence is legal the Court will not accept such evidence unless it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from an independent source. One accomplice cannot corroborate another.

6. Similar view was expressed by the Court of Appeal in the case of The King v. Baskerville (1916) 2 KB 658 where the following observations were made:

> We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed...it The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime.
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> Baskerville's case (supra) referred to above has been followed by this Court in a number of cases.

7. Having regard to the decisions refer red to above some of which have been relied upon by the High Court, we have excluded the evidence of the accomplice witnesses from consideration particularly where we find that the evidence of the witnesses examined in order to corroborate the evidence of the accomplice was not satisfactory or did not inspire confidence. We have, however, called into aid the evidence of the accomplices, where there is independent evidence corroborating the version given by the accomplice witness.

Conspiracy alleged to have been hatched at Calicut.

8. We would now proceed to the first plank of the case of the prosecution, namely, the hatching of the conspiracy at Calicut and Tellicherry. So far as the hatching of the conspiracy at Calicut apart from the evidence of the accomplice witnesses the only other evidence which was led by the prosecution to corroborate the evidence of the aforesaid witnesses is that of P.W. 21. This witness

was himself declared hostile by the prosecution as he made some statements which were not palatable to the prosecution. Even so, we have carefully perused his evidence and we are not satisfied that his evidence in any way proves the case of conspiracy being hatched by the accused persons at Calicut. According to the evidence of this witness, on 30th October, 1968 at about 9-30 P.M. there was a meeting in the upstairs in the first story of the building which lasted till 4-30 in the morning. This witness does not claim to be present either in the room where the meeting took place or any place nearby. He was in the ground floor and over-heard the discussion from down stairs. The witness clearly admits that he had not seen the persons who had come there on that date. In view of this admission, it is manifest that he would not be in a position to identify any person much less the accused who is said to have participated in the meeting. The witness, however, merely draws from his imagination in order to prove the presence of accused Nos. 1, 3, 7, 71, 10 and 90. He, however, makes it clear that he thought that these persons' were present. The actual words used by him are these:

> I think that Narayan, Mandakini, Ajita, Balaraman, Balkrishnan, T.V. Appu were present at the meeting.

> The witness, however, went on to state that he did not hear how the weapons of thoughts should be propagated among the people and on this he was declared hostile. Thus, taking the evidence of this witness ex facie it does not prove anything nor does it show that any of the appellants concerned participated in that meeting. No conviction can be recorded on what the witness may have thought which is more or less a matter of pure speculation. If the evidence of this witness is ruled out then there remains no material which may go to corroborate the evidence of the accomplice witnesses on this point. For these reasons, therefore, we are clearly of the opinion that the prosecution case of conspiracy being hatched at the house of A-1 at Calicut on 30th October, 1968 has not been proved by the prosecution.

> Conspiracy alleged to have been hatched at Tutorial College owned by A, 2 at Tellicherry

9. Regarding this matter the prosecution case is that a meeting was organised by Accused No. 2 who was the proprietor of Tutorial College at Tellicherry in the College on 17-11-1968. Apart from the accomplice witnesses the only witness examined by the prosecution to prove the holding of the meeting and the hatching of the conspiracy is P.W. 23. The witness states that he reached the College at about 6.00 p.m. and saw A. 1, A. 2, A. 8, A. 10, A 5. A 11 and A 01 but as Master A. 2 did not show friendship, he thought he would not disturb the meeting and so he left the place. He, therefore, got down and waited at the varandah for some time and thereafter moved beneath the staircase for smoking a beedi. At that time the meeting was going on and the witness could hear the noise. From the talks which he over-heard he could guess that there was some discussion about the organising of an armed revolution and somebody was addressing that an attack has to be made on Tellicherry and Pulpally Police Stations. The witness further states that it was A. 1 and A. 2 who had addressed the meeting, and he had heard all of them expressing their view agreeing with the proposal placed by A. 1 and A, 2. We find it very difficult to believe that the witness would over-hear

so many things from such a great distance, that is to say, while remaining beneath the staircase and would be able to give such graphic details of the discussions that took place in the meeting without at all being able to see who were the participants of the meeting and what they were doing. The witness tacitly admits that when he enquired as to what was happening, he was told that there was some strike in the Ganesh Beedi Company and this matter was being discussed. It appears from his evidence that before the police he had given a different version. There he had said that he was present in the hall and that the meeting (took) place to his hearing and in his presence. The witness has tried to resile from his previous statement and the reason is not far to seek. In the first place, the witness himself admitted that the Master was not friendly to him. Indeed, if this was so, then the leader of the party, viz., A. 2 would not allow an unfriendly person to be present in the hall where the meeting was convened and the discussions were held. He would immediately take the precaution of sending him out. Realising the inherent improbability of this story, the prosecution made the witness to give a different version when he came to depose in the Court, viz., that he was not in the hall but had heard the entire story from beneath the staircase .where he was lighting a beedi. In these circumstances, therefore, the evidence of this witness does not impress us and does not appear to be worthy of credence. If the evidence of this witness is rejected, then, apart from the evidence of the accomplice witnesses nothing remains. In those circumstances, therefore, we hold that the meeting at the Tutorial College regarding the conspiracy as alleged has not been proved by the prosecution by cogent and reliable evidence. This disposes of the prosecution case regarding the conspiracy in which the appellants had participated.

Attack on Tellicherry Police Station

10. We then come to the third item, namely, attack on Tellicherry police station on 22-11-1968. According to the prosecution, a number of persons variously armed with spears, sharp cutting weapons, fire-arms and explosives raided the Tellicherry Police Station and the raid lasted for a short period of 4-5 minutes and the mob of the appellants ran away when they were chased by the police party. The F.I.R. of the raid at the Tellicherry Police Station is Ex. P-93. Exhibit P-93 was lodged by P.W. 63 K. P. Itten. After giving a narrative of the raid, the informant mentions the following facts regarding the identity of the culprits:

> I made arrangements to send information to Cannanore through a special messenger, Exh. 93(b) myself and some of the men could identify some of the members of the mob, but none knew their names. The two arrested accused are being searched and locked up.
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> The statement of the informant clearly discloses two things: In the first place, it is clearly stated that the witness as also some of his men could identify some of the members of the mob only by face and secondly that none knew their names. This recital stands falsified by the evidence of P. Ws. 63 and 64 in the Court. The F.I.R. also mentions that the two arrested accused, namely, A. 42 and A, 43 had been caught at the spot. In his evidence P.W. 63 identifies A. 58, A, 15 and one Devassy. Indeed, if this witness had known these persons by name then there was no reason why he should not have mentioned their names in the F.I.R. lodged by him

> immediately after the occurrence. Again, if the witness whom he identifies in the Court as indicated above was not known to him from before, then his identification of the accused for the first time in Court with-put any T.I. parade is absolutely valueless. Finally, as regards A. 42 and A. 43 the persons who have been caught at the spot, the evidence of this witness does not appear to be very reliable. The witness says that after the raid people ran away helter-skelter and some one among them staggered and fell down when they reached near Vimal Store and this man was A. 42. The evidence further states that these two accused who were armed had thrown away their arms but no arms were seized. It would appear from the evidence of this witness that the raid at the police station must have created a great sensation as a result of which a number of people gathered and ran helter-skelter pursued by the police. The possibility, therefore, that A. 42 and A. 43 may have been the spectators rather than the raiders cannot be safely excluded. Indeed, if these accused were armed and they had thrown their weapons, the weapons should have been seized by the police and produced to Court to corroborate the evidence of this witness. Thus, having regard to the facts mentioned by this witness in the F.I.R, we are not in a position to place any reliance on the evidence of this witness regarding the identity of the concerned appellants.

11. Similarly, the other witness who proved the participation of some of the appellants in the raid is P.W. 64. This witness states that the other policemen did not tell the names of the persons identified by them. He further states that when P.W. 63 came to the spot he was informed that two persons were identified. The witness further states that he also told the names of the persons whom he had identified. This part of the statement is absolutely false because no names are mentioned in the F.I.R. lodged by the Sub-Inspector P.W. 63. On the other hand, there is a clear statement that some of his people had identified the accused only by face which rules out the possibility of any witness having identified the participants by name. For these reasons therefore we are unable to accept the evidence of this witness.

12. Apart from these two witnesses, there is no other evidence to prove the participation of the accused in this occurrence. The evidence of the accomplice witnesses not being corroborated cannot be called into aid for the purpose of convicting the appellants concerned.

Attack on Pulpally Wireless Station on 14-11-1968

13. According to the prosecution, some of the accused had a clear object to raid the Pulpally Police Station but instead of doing that they entered the Pulpally Wireless Station, raided the same and assaulted some of the police personnel and killed one of them, namely, Havildar Kunhikrishnan Nair. So far as this incident is concerned, in our opinion, the prosecution stands on much sounder grounds. The F.I.R. with respect to this incident was lodged on 24-11-1968 at about 7.00 a.m. According to the prosecution, a mob entered the police station, broke open the door with spear and the window shutters and killed Havildar K. Nair. They also assaulted Constable P.W. 94 and the Sub-Inspector Sankunny Menon as also one Constable Muralidharan. It is true that the accused are not named in the F.I.R., but there is plenty of evidence to prove the participation of some of the

accused. We may note one thing at this stage that although three names had been mentioned and were called out by the accused them selves namely. Gopala, Panicker and Vijaya, the name of A-14 is completely conspicuous by its absence from the F.I.R. The evidence to prove the participation of the accused concerned consists of the evidence of P.W. 92,P.W. 94 and Ex. P-107 statement of Sankunny Menon recorded by the committing court which has been tendered under Section 33 of the Evidence Act and treated as substantive evidence. P.W. 92 states in his evidence that he identified A. 145 and A. 146 and he also saw Sankaran Nambiar A. 14 standing on his right side holding a rifle. So far as A. 14 is concerned the witness states that he did not remember to have taken the name of this accused in his earlier statement before the police. Moreover, P.W. 92 in his statement before the Sub-Inspector, Medical College on 24-11-1968 did not name A. 14 as one of the persons who had participated in the attack at the Pulpally Wireless Station. In view of this significant and material omission we are not in a position to place any reliance on the evidence of this witness so far as the participation of A. 14 is concerned. As regards P.W. 94 he also stated that he identified only A. 7 among the persons who had entered the police station and he could not identify the others.

14. This takes us to the statement of Sub-Inspector Sankunny Menon Ex. P-107. This witness was injured in the raid and is a very competent witness to identify his assailants. According to the evidence of this witness which has been believed by the courts below A.5, A. 16, A.7, A. 128, A. 147, A. 146 A. 145 and A. 135 were the persons who had participated in the occurrence at the police station. The names of these accused persons are to be found in the evidence of the accomplice witness also and, therefore, the evidence of the accomplice witness is substantially corroborated by the evidence of Sankunny Menon. We have gone through his whole evidence and we see no reason to distrust his evidence. He was an injured witness and had every opportunity to see and identify the accused persons. Learned Counsel for the appellants, however, submitted that Accused Nos. 145, 146 and 147 were carrying on agitation against the local police and that is why they have been falsely implicated in this case. We are, however, unable to conclude that merely because there was some agitation carried on by these accused against the police in general that would compel Sankunny Menon to falsely implicate his assailants. The evidence, therefore, establishes the participation of A.5, A.7, A.16, A.128, A.135, A.145, A. 146 and A. 147. The other question that remains is as to what is the exact offence that was committed by these appellants. There can be no doubt that the appellants mentioned above were variously armed with dangerous weapons and had committed lurking house trespass by entering the wireless station after breaking open the doors and windows and assaulted the witness Sankunny Menon. In these circumstances, all the appellants must be deemed to have shared the common object of committing lurking house trespass punishable under Section 455 of the Indian Penal Code as the assault on Narayanan and Constable P.W. 92 was an individual act of an unknown person, and the appellants cannot be responsible for the same. We would, therefore, alter the conviction of the appellants mentioned above to one under Section 149/455 Indian Penal Code and sentence all of them to 7 years' rigorous imprisonment.

Dacoity in the house of P.W. 106.

15. The F.I.R. of this occurrence is Ex. P-132 dated 24-11-1968. According to the F.I.R., the accused persons entered the house of the complainant and committed dacoity in the course of which they

removed sovereign gold ornaments, cash, paddy, rice toches, crow bar, pen knife etc. in all worth Rs. 7000/-. Two accused are mentioned in this F.I.R. namely, Kissan Thomman (who is since dead) and Barber Raman kutty, A.5. P.W. 106 is the only wit ness who identifies A.5. It appears from his evidence that, a number of dacoits entered his house, terrorised him and looted away properties. A.5 does not appear to have been identified by any other witness and we find it unsafe to rely on the single identification of this witness made under serious strain and stress as deposed by him. In these circumstances, therefore, there does not appear to be any legal evidence against A.5 so far as this occurrence is concerned, and, therefore, the accomplice evidence cannot be called into aid.

Dacoity in the shop of P.W. 116.

16. The F.I.R. of this occurrence is Ex. P-134. According to the FIR. lodged by P.W. 116 about 40 persons variously armed came to his shop and demanded a gun from him and after entering his shop took away articles worth Rs. 300/-. It is not at all mentioned in the F.I.R. whether any of the accused were identified either by name or by face, but P.W. 116 in his evidence in Court stated that he was able to identify Kissan Thomman (since dead), Muhammed A. 19, Barber Ramankutty A.16. He also identified A.5 and A.7 by face. It is obvious that if A.l6 and A.19 had participated in the occurrence and were known to him, their names must have been mentioned in the F.I.R. As the names were not at all indicated in the F.I.R. the evidence of this witness cannot be accepted. Similarly, as A.5 and A. 7 were persons who were not known to the witness from before and were identified in Court for the first time by face, the evidence of this witness in the absence of T. I. parade was valueless. Finally, in the F.I.R. lodged by this witness, he has not even mentioned the fact that he had identified any of the dacoits by face. Thus, the prosecution has miserably failed to prove the incident of dacoity in the shop of P.W. 116 as alleged.

Dacoity in the house of P.W. 11

17. The F.I.R. of this occurrence is Ex. P-133. It was alleged that the dacoits entered the house, demanded the key of the safe and after threatening the informant, they took the key and removed Rs. 8000/- and 40 sovereigns along with some copper vessels. In this F.I.R. also it was not mention ed that any of the dacoits were identified either by name or by face. In his evidence in Court P.W. 117 tried to Improve his version by identifying A. 16, but as the name of A. 16 was not mentioned in the F.I.R. no reliance can be placed on the evidence of this witness. P.W. 18 was another witness who had proved the dacoity but he does not identify any of the accused. Thus, there is absolutely no evidence to prove the dacoity said to have been committed by the appellants in the house of P.W. 117.

18. Summarising therefore the position is that the prosecution has failed to prove that there was any conspiracy as alleged either in Calicut or in Tellicherry. It has also failed to prove the participation of the appellants in the various occurrences referred to above. The only occurrence that has been proved by the prosecution and that too against accused Nos. 5, 7, 16, 128, 135,145, 146 and 147 is the case of raid at the Pulpally Wireless Station for which these accused persons are liable to conviction under Section 149/455, I.P.C. and are sentenced to 7 years' rigorous Imprisonment. The result is that all the appellants excepting accused Nos. 5, 7, 16, 128, 135, 145, 146 and 147 are acquitted of all

the charges framed against them and the appeals of these accused are accordingly allowed. The appellants mentioned above are also acquitted of all other charges excepting the charge for which they have been convicted, under Section 149/455, Indian Penal Code. We have altered the convictions of these appellants because the accused were charged with much more serious offences like Sections 395, 302 (sic) even with respect to Pulpally Wireless Station which have been altered to minor offences under Section 149/455, Indian Penal Code under which they are sentenced to 7 years' rigorous imprisonment. Thus all the appeals are disposed of accordingly.