

Chellappan Mohandas And Others vs State Of Kerala on 29 September, 1994

Equivalent citations: AIR1995SC90, JT1994(6)SC361, 1994(4)SCALE351, 1995SUPP(1)SCC259, 1994(2)UJ614(SC), AIR 1995 SUPREME COURT 90, 1994 AIR SCW 4098, 1994 AIR SCW 4107, (1994) SCCRIR 305, (1994) 6 JT 361 (SC), (1994) 3 JT 295 (SC), 1994 UJ(SC) 2 614, 1994 (2) SCC(SUPP) 471, 1994 (6) JT 361, (1994) 2 CRICJ 535, 1994 CRILR(SC&MP) 466, (1994) ALLCRIC 468, (1994) 2 ALLCRILR 213, (1994) 2 CURCRIR 439, (1994) 1 CRIMES 1155, 1995 SCC (SUPP) 1 259, (1994) 3 SCR 136 (SC), 1994 CRILR(SC MAH GUJ) 466, 1995 SCC(CRI) 366, (1995) 1 EASTCRIC 86, (1995) 32 ALLCRIC 11, (1994) 3 ALLCRILR 418

ORDER

K. Jayachandra Reddy, J.

1. These two appeals filed under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act read with Section 379 Cr. P.C. arise out of a judgment of Kerala High Court. Chellappan Mohandas alias Mohanan (A-1) and Joseph alias Kunju (A-2) are the appellants in Criminal Appeal No. 288/86 and Kutty Soman alias Somy (A-3) is the appellant in Criminal Appeal No. 207/87. These three accused alongwith Joseph alias Ponnachan (A-4) were tried for offences punishable under Sections 302/34 I.P.C. by the Additional Sessions Judge, Kottayam and were acquitted. The State preferred an appeal and a Division Bench of the High Court allowed the same and convicted all the four accused under Sections 302/34 I.P.C. and sentenced each of them to suffer imprisonment for life. A-4 has no preferred any appeal in this Court.

2. All the four accused were active workers of the Marxist Communist Party. The deceased Sukumaran @ Suku was an I.N.T.U.C. worker belonging to the Congress (I) group. There were criminal cases between them and in one such case the deceased was acquitted on 20.3.82 a day prior to the present occurrence and that is said to be the immediate provocation. On 21.3.82 at about 2.30 P.M. 9 persons including the deceased and P.Ws. 2,3,9,10 and 11 were engaged in carrying hay belonging to one Ammine from her paddy field to her house. The deceased with a head load of hay was proceeding along the field towards the house of Ammine. P.Ws. 2 and 3 were returning after carrying the hay. At that juncture all the four accused armed with sword sticks came from behind and cut the deceased with their weapons indiscriminately and ran away from the scene of occurrences with the weapons. On getting information, P.W.1, the brother of the deceased, came and alongwith P.Ws. 2,3,10 and others he removed the injured deceased in a taxi to the Medical College

Hospital, Kottayam. P.W.5., a Doctor, examined the deceased at about 3.30 P.M. and issued Ex. P.3, the wound certificate. The deceased, however, died at about 3.45 P.M. P.W.1 gave a report Ex. P.I before the Sub Inspector, P.W.14. A case was registered under Sections 302/34 I.P.C. and the F.I.R. was issued. P.W.15, the Circle Inspector of Police took over the investigation, held the inquest and sent the dead body for post-mortem. P.W.6, Assistant Professor of Forensic Medicines conducted the autopsy and issued Ex. P.4, the post-mortem certificate. He found a number of incised injuries all over the body. He opined that the deceased died as a result of bleeding and shock due to multiple injuries. The prosecution relied on the evidence of P.Ws. 1 to 4, 8 and 13 and also on the evidence of P.Ws. 5 and 6. Out of them P.Ws. 2, 3, 4 and 8 figured as the main eye-witnesses. The accused denied having anything to do with the incident and pleaded that they were falsely implicated because of the political enmity. A-3i pleaded alibi stating that he was engaged in the work of cutting a road leading to KSRTC Bus-stand at the relevant time and examined D.W.I in support of the plea. A-4 pleaded that at that time he was attending the staff council conference of Prakash Tutorial College and examined D.W.2, the Principal and also relied on some documents in support of the plea. The trial Court rejected the plea of A-3 but accepted the alibi pleaded by A-4.

3. P.W.2, though figured as an eye-witnesses, turned hostile and gave a distorted version. The trial Court examined the evidence of all these witnesses and noticed several infirmities. The learned trial Judge also pointed out that out of the so-called eye-witnesses namely P.Ws. 2 to 4 and 8, P.Ws. 2 and 8 turned hostile and that the remaining witnesses namely P.Ws. 3 and 4 did not bother to inform anybody and their conduct was unnatural and therefore the learned trial Judge was not prepared to place reliance on their evidence and consequently acquitted all the accused.

4. The High Court, however, held that the prosecution established the motive aspect of the case and after discussing the evidence of the above mentioned witnesses as well as that of P.W.1 who spoke about the oral dying declaration held that the evidence of hostile witnesses should not be discarded in toto and that the evidence of P.W.1 to the extent of oral dying declaration can be relied upon and taking the evidence of these witnesses in entirety held that the prosecution established the guilt of the four accused and accordingly set aside their acquittal. The High Court also held that the evidence adduced by A-3 and A-4 in support of alibi does not inspire confidence.

5. Since this is a regular appeal we have examined the evidence of the material witnesses carefully. P.W.1 is not an eye-witness and is alleged to have got the information about the assailants from P.W.2 who turned hostile. In Ex. P.1, P.W.1, mentioned the names of the four accused. P.W.14 who recorded Ex. P.I deposed that he tried to get more details but P.W.1 was not able to give any further details. P.W.1 also deposed that the deceased while being carried in the taxi told him about the details regarding the assailants. If that were to be true, there is no reason why he did not give the details revealing the identity of the assailants in Ex. P.1. It is also the case of the prosecution that P.W.3 also accompanied the deceased but P.W.3 testified that he did not tell anyone about the assailants till he was examined by the Circle Inspector. An examination of the evidence of the investigating officer would show that he obtained the details regarding the accused on 22.3.83 and as rightly pointed out by the trial court, there is no basis as to how he got those details. The trial Court found force in the submission of the defence that these four accused were implicated on suspicion as they belong to the Marxist Communist Party and also because of previous enmity.

There is no reason as to how this view can be said to be wholly erroneous. Having gone through the evidence of P.Ws. 1 and 3 and the investigating officer, we are of the view that the alleged oral dying declaration made by the deceased to P.W.1 in the taxi has rightly been rejected by the trial court.

6. Then we are left with the evidence of P.Ws. 2,3,4 and 8. As already mentioned P.Ws. 2 and 8 turned hostile and they have given a distorted version. The High Court, however, taking some part of the evidence into consideration, held that their evidence of these two witnesses, we do not think that any reliance can be placed on the same in view of the political enmity and the background. Then we are left only with the evidence of P.Ws. 3 and 4. P.W.3 deposed that he himself and P.W.2 after carrying one head load of hay each were returning to the field and when they reached the stopping portion they saw the deceased carrying one bundle of hay and then all the four accused ran towards the deceased with sword sticks and inflicted injuries and thereafter ran away. In the cross-examination, P.W.3 stated that he had gone to the Medical College Hospital on the morning of 22.3.82 and that either on 21.3.82 or 22.3.82 while at the Medical College Hospital, he did not tell either the police or anyone else as to who were the assailants. He also admitted that he did not tell anyone that these accused committed the offence before he was examined by the Circle Inspector. Various other discrepancies are also elicited in the cross-examination. The trial Court rightly pointed out that the evidence of P.W.3 would give rise to suspicion namely that he had not actually witnessed the injuries being inflicted on the deceased. According to P.W.3 the distance from the place of occurrence and the place where he deposed the hay at 12 Noon was about 500 yards. The occurrence took place at 2.30 P.M. P.W.3 could not give any explanation as to why he took 2-1/2 hours to reach the field and witnessed the occurrence which took place at 2.30 P.M. P.W.3 also is an interested witness. For all these reasons the trial Court was not prepared to place reliance on his evidence and has given good reasons for the same.

7. P.W.4, a cousin of P.W.3 was a chance witness. He deposed that he was returning after fishing P.W.3, however, stated that apart from himself, P.W.2 and the accused none else was near the scene of occurrence. If P.W.4 was present, P.W.3 would not have failed to notice him. Yet another serious infirmity in the evidence of P.W.4 is that he did not inform anybody till he was examined by the police. P.W.4 admitted that he was present when the inquest was held and what is more he also attested the inquest report but P.W.4 stated that even then he did not tell that he saw the occurrence. His explanation that he was not asked is wholly unacceptable. P.W.4 was a co-accused with the deceased and some of the answers elicited in the cross-examination would show that he was anxious to rope in these accused. Therefore the trial Court rightly held that the evidence of P.W.4 does not inspire confidence at all.

8. The prosecution also relied on the evidence of P.W.5 who also deposed about the alleged oral dying declaration in which A-1's name was mentioned. P.W.5 deposed that it was possible for the deceased to have spoken few words and also stated that because of the cut piece of the nose upper jaw was hanging down and the injured was not able to speak and that he put the piece in the correct alignment and then the deceased could answer a few questions. P.W.5's evidence would show that at the time when the deceased disclosed the name of A-1 as his assailant some others also were present including P.W.1 and 11. P.W.5 admitted that he could not find out as to whether the deceased was tutored by the by-standers. Even if Ex.P.3 recorded by P.W.5 is to be accepted as a whole, it would

not conclusively lead to the inference that it was the first accused who inflicted the injuries as P.W.1 admitted that there is another Mohandas hailing from the same Village. Therefore the alleged dying declaration can not be held to have conclusively proved the complicity of any one of the accused. In any event when once it is held that the evidence of the alleged eye-witnesses is unreliable then the evidence of P.W.5 does not advance the prosecution case for the reasons stated above. In the view we are taking, it may not be necessary to examine the evidence of the defence witnesses.

9. It is well-settled that even if two views are possible the appellate Court should not interfere in an appeal against acquittal as long as the view taken by the trial Court is not unreasonable. For all these reasons, we set aside the judgment of the High Court and confirm the judgment of the trial Court acquitting the accused. In the result both the appeals are allowed. Though Joseph @ Ponnachan, A-4 has not preferred any appeal he should also get the benefit and we accordingly also acquit him. If he is in jail he shall be released forthwith. A copy of the judgment shall be sent to the concerned jail.