Sambasivan & Ors vs State Of Kerala on 8 May, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2107, 1998 (5) SCC 412, 1998 AIR SCW 1986, (1998) 3 JT 742 (SC), (1998) 1 KER LT 94, 1998 CRILR(SC&MP) 405, (1998) 3 SCR 280 (SC), 1998 (2) APLJ(CRI) 290, 1998 (3) SCALE 462, 1998 (4) ADSC 505, 1998 CRIAPPR(SC) 378, 1998 SCC(CRI) 1320, 1998 CRILR(SC MAH GUJ) 405, 1998 (3) JT 742, (1998) 1 RECCRIR 791, (1998) 4 ALLCRILR 19, (1998) 25 CRILT 237, 1998 CHANDLR(CIV&CRI) 517, (1998) 2 EASTCRIC 1045, (1998) 2 PAT LJR 174, (1998) 2 RECCRIR 693, (1998) 3 CURCRIR 5, (1998) 4 SUPREME 562, (1998) 3 SCALE 462, (1998) 2 CHANDCRIC 190

Bench: M.K. Mukherjee, Syed Shah Mohammed Quadri

PETITIONER:
SAMBASIVAN & ORS.

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 08/05/1998

BENCH:
M.K. MUKHERJEE, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T QUADRI, J.

In this statutory appeal under Section 379 Cr. P.C. accused 1 to 3 in Sessions Case No. 154 of 1984 on the file of the 1st Additional Sessions Judge, Trivandrum, are the appellants. They assail the validity of the judgment of June 8, 1989 passed by a Division Bench of Kerala High Court in Criminal Appeal No. 87 of 1986 setting aside their acquittal by the trial court and convicting and

sentencing them as follows: under Section 302 read with Section 34, I.P.C.- imprisonment for life; under Section 307 read with Section 34, I.P.C. - rigorous imprisonment for seven years and Section 3 of the Explosive substances Act, 1908 - imprisonment for five years. All the sentences were directed to run concurrently.

In this case Trade Union rivalry between INTUC and CITU on the one hand and BMS on the other culminated into the atrocious incident of April 21, 1983 in which one Thanukuttan @ Nanukuttan died and three persons PW-1, PW-2, and PW-4, suffered injuries. In respect of this incident the police filed charge-sheet against the appellants and twenty other persons of whom A-13 dies and the remaining were tried on the following facts for offences under Sections 120B, 143, 147, 148, 149, 324, 307, 302 and 109 of the I.P.C. and Section 3 of the Explosive Substances Act, 1908. The headload-workers employed in the industrial Estate of Pappanamcode are members of either INTUC or CITU (hereinafter referred to as 'the complainant group') whereas 'the accused group' belongs to BMS union. The members of 'the complainant group' were preventing the members of 'the accused group' from working in the Industrial Estate. For this reason accused 1 to 20 of the accused group hatched a conspiracy to murder the headload-workers of the complaint group pursuant to which A-23 had agreed to supply the country made bombs on April 20,1983. On the morning of April 21, 1983, accused A-21 and A-22 took the bombs to a bylane at Vettukuzhi near the Pappanamcode Industrial Estate and gave them to A-1 at 10.15 a.m. Thereafter with the common object of causing voluntary hurt and causing death of the members of the complainant group, A-1 to A-20 formed themselves into an unlawful assembly at 10.45 a.m. ; among them A-1 to A-3 were carrying bombs, A-4, A-5, A-10 to A-15 were carrying bricks and A-6 to A-9 and A-16 to A-20 were holding sticks. They proceeded to the said Industrial Estate where PWs 1 to 5 and 7 among others were relaxing on the platform in from of General Metals as there was no work on that date. While one of them was reading magazine "Kumari" weekly, the others were hearing ad Nanukuttan was sleeping. After reaching there A-1 threw bomb at PW-1 who suffered injuries on hands and thighs; A-2 threw bomb at nanukuttan who was severely injured and A-3 also threw bomb which fell in front of PW-2. A-4 and A-5 threw a brick at PW-2. A-6 to A-9, A-19 and A-20 attempted to beat PWs 3,4 and 5. A-6 and A-19 beat PW-3 with sticks A-10 to A-15 threw bricks at PW 1 and others whereas A-16 to A-18 attempted to beat PW-1 and others. Nanukuttan and P.W. 1 were taken to the Medical College Hospital, Trivandrum where nanukuttan was declared dead at about 11.15 a.m. In the Medical College Hospital PW- 1, PWs 2 and 4 were given treatment. PW-14, the doctor, examined PWs 1,2 and 4 and issued wound certificates Ext. P- 3, P-4 and P-5 respectively. PW-19 , another doctor, conducted the post mortem examination of Nanukuttan, the deceased, the issued post-mortem certificate Ext. P-9.

To prove its case the prosecution examined PWs-1 to 22, marked Exts. p-1 to P-17 and got M.O.S. 1 to 7 identified. The accused marked Exts. D-1 to D-11 and XI. The accused denied the charges and claimed to be tried.

On considering the evidence on record, the trial court acquitted all the twenty two accused by its judgment dated February 22, 1985. The State appealed against that judgement and confined its submissions to accused A-1 to A-3. The High Court having considered the evidence on record found A-1 to A-3 guilty of various offences, convicted and sentences them as mentioned above.

Mr. U.R. Lalit, the learned senior counsel, appearing for the appellants, contended that the eye witnesses PWs 1 to 5 and PW-7 were interested witnesses being the members of the rival union, therefore, their evidence was rightly rejected by the trial court but the High Court did not take into account union rivalry between the two groups and the possibility of the complainant group falsely implicating the accused who belonged to the rival group and thus erred in relying upon their testimony. He argued that throwing of bombs in its very nature is so sudden that it was not possible that the witnesses could have actually seen the same; PWs 8 and 9 who are independent witnesses and came to the scene of occurrence did not say that they had seen any of the accused. persons there. In any event, submits the learned counsel, where two views are possible, as in this case, the High Court, in the appeal against acquittal, ought not to have upset the acquittal of the appellants by the trial court. Shri G. Prakash, the learned counsel appearing for the State, invited our attention to the evidence of eye witnesses, P.Ws. 1 to 5 and 7, and submitted that the trial court had arrived at erroneous conclusions from the evidence and that the approach of the trial court was patently untenable and that no reasonable person could have taken such a view, as such the High Court had rightly interfered with in the appeal against acquittal.

On the submissions of the learned counsel, the short point that arises for consideration is whether the judgment of the High Court under appeal warrants interference.

The principles with regard to the scope of the powers of the Appellate Court in an appeal against acquittal, are well-settled. The powers of the Appellate Court in an appeal against acquittal are no less than in an appeal against conviction. but where on the basis of evidence on record two views are reasonably possible the Appellate Court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial court in acquitting accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the Appellate Court can interfere with the order of acquittal. There is plethora of case law on the subject but we consider it unnecessary to quote any decisions here; suffice it to refer to a recent judgement of this Court in Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225, on which reliance is placed by MR. Lalit. In that case one of us (Justice Mukherjee) speaking for the Court restated the principles as follows:

> "This Court has repeatedly laid down that the more fact that the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions.

> In keepings with the above principles we have therefore to first ascertain whether the findings of the trial court are sustainable or not".

We have perused the judgment under appeal to ascertain whether the High court has conformed to the aforementioned principles. We find that the High court has not strictly proceeded in the manner laid down by this court in Doshi's case (supra), viz; first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High court has rendered a well considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the Court which is considering the validity of the judgment of an Appellate Court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the Appellate court is free from those infirmities ; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the Appellate Court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of trial court does not suffer from any infirmity, it cannot but be held that the interference by the Appellate Court in the order of acquittal was not justified; then in such a case the judgment of the Appellate Court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.

In this case, the trial court framed as many as eight points for determination which are as follows:

(1) Whether Thanukuttan alias Nanukuttan died of injuries sustained at 10.45 a.m. of 21.4.1983? (2) Whether PW1 sustained injuries at 10.45 a.m. of 21.4.1983?

(3) Whether PWs 2 and 4 sustained injuries soon after the occurrence at 10.45 a.m. of 21.4.1983?

(4) Whether the prosecution has succeeded in proving a conspiracy punishable under Section 120B of the I.P.C. ?

(5) Whether the prosecution succeeded in proving the charge against A21 to A23?

(6) Whether the prosecution evidence has proved beyond reasonable doubt that offences under sections 143,147,148 and 149 of the I.P.C. have been committed by A1 to A20?

(7) Whether the prosecution evidence has proved beyond reasonable doubt that Nanukuttan had a homicidal death? (8) Whether the prosecution evidence has proved beyond reasonable doubt the commission of the offences punishable under sections 302, 307 and 324 of the I.P.C. and the offence under Section 3 of the Explosive Substances Act, 1908?"

On point Nos. 1 to 3, the trial court recorded findings in the affirmative, that is, in favour of the prosecution and against the accused; on point Nos. 4,5, 6,7 and 8 it recorded the finding in the negative, that is, in favour of the accused and against the prosecution. In view of the limited submissions made by the prosecution before the High Court we are not concerned with point Nos. 4,5 and 6; the points which are material for our discussion are point Nos.1 to 3 and 7 and 8. In answering the points noted above, the trial court considered each point in isolation and thus arrived at conclusions which are inconsistent and erroneous. having recorded the finding on point No.1 in the affirmative it held that Nanukuttan had not died a homicidal death at the place alleged by the prosecution. In drawing the above inference the trial court relied upon certain statements made by some of the eye-witnesses. The portions in the case diary statements marked as Exts. D-1 and D-1(a) on which the trial court placed reliance are to the effect that the deceased was sitting at the time of the incident whereas in the evidence given in Court it was stated that he was sleeping. The aforesaid contradictions are hardly material to decide whether he died of a homicidal death at the place of the incident. While considering point No.1, the trial court accepted the testimony of PWs-1 to 5 and 7 on the ground that the same was corroborated from the evidence of PWs 8 and 9. It also relied on the evidence of PWs 8 and 9 in coming to the conclusion that the deceased sustained fatal injuries at the slanting platform in front of the General Metals in the Industrial Estate at Pappanamcode. From that evidence, the conclusion that A-2 threw bomb at the deceased who was seriously injured and died of a homicidal death, was irresistible but the trial court held otherwise which is patently untenable. We have gone through the evidence of eye witnesses, PWs 1 to 5 and 7; their presence on the scene of occurrence cannot be doubted because PWs-1, 2 and 4 are injured witnesses and their names are also found in the FIR (Exh. P-1). Further, PWs. 8 and 9 are independent witnesses; though they do not speak of the presence of the accused on the scene of occurrence that is for the reason that they came after the accused and some of the injured persons had fled from the scene of occurrence, they, however, spoke that they had seen PWs.3 and 4 on the scene of occurrence. From their testimony, it becomes evident that the deceased and some others were taking rest on the concrete platform in front of General Metals. While one of them was reading magazine 'Kumari' and others were hearing, they noticed magazine 'Kumari' and others were hearing, they noticed that A-1 was having something in the shape of the tennis ball which was wrapped in a paper and which was thrown by him at PW-1; this was followed by throwing of similar object by A-2 on the deceased, which hit him on his stomach and his intestine came out. Immediately thereafter, the third bomb was thrown by A-3 which fell amidst them. Mr. Lalit, however, contended that the said witnesses were interested witnesses being members of the rival union and, therefore, it would not be

safe to rely on their evidence. We find no substance in this argument because on examination of their testimony, we do not find that any of them were shaken in the cross-examination on any material particulars. Merely because they belong to the complainant group, it cannot be said that their testimony cannot be given due weight. It is nobody's case that at the time of occurrence, persons other than the members of the rival unions were present there. After hearing the sound of explosion, some persons no doubt came to the scene of occurrence, of whom PWs 8 and 9 have been examined and obviously they have spoken to the facts which they noticed only after the explosion of the bombs. The other witnesses, if any, would have been of no avail to the defence nor were they necessary for purposes of establishing the quilt of the accused. Therefore, union rivalry would not be a ground to brush aside their evidence after having found that the same is consistent and truthful. It is no doubt true that throwing of bomb is a sudden act but the witnesses have clearly stated from which direction the accused came and who among them threw the country-made bombs and who hit with bricks and sticks. It is not a case where the incident took place in wee hour of the night when everybody was sleeping and then they got up after the explosion and would not have been in a position to see the actual throwing of bombs. They were all sitting on the platform and were obviously conscious of what was happening in the surrounding as is evident from their statements. We also find no substance in the issue as to whether the deceased was sitting or lying - a fact which weighed with the trial court to disbelieve the prosecution story. It is quite possible that the witnesses who stated that Nanukuttan was sitting must have seen him before he lied down on the platform and the witnesses who stated that he was sleeping must have seen him lying and stated that he was sleeping. This contradiction, in our view, does not affect the prosecution case. We also find that the case of the prosecution is corroborated by medical evidence of PWs-14 and 19. PW-14 is the doctor who examined PWs. 1,2 and 4 and issued Exh. P-3, P-4 and P-5 respectively. PW-19 is the doctor who conducted autopsy on the dead body of the deceased and issued post-mortem certificate, Exh. P-9. PW-19 sent the pieces of body of the deceased to Forensic laboratory for report. Exhs. P-10 and P-11 are the reports which show the presence of explosive substance in the body of the deceased The blood clotted newspaper pieces and twine etc. collected from the scene of occurrence, MOS 5 and 6 , were also found to contain explosive substance which also corroborates the prosecution story of throwing of bomb by the accused persons. There cannot be any possibility of falsely implicating the accused because soon after the occurrence, Exh. p-1 was lodged wherein the overt acts attributed to the appellants were noted. For these rightly found the appellant guilty of offences mentioned in the judgement under appeal.

From the above discussion, it follows that the approach of the trial court was patently erroneous and the conclusions arrived at by it were wholly untenable. It is thus mot the case where two reasonable views on examination of the evidence on record are possible and so the one which supports the accused, should be adopted. The view taken by the trial court can hardly be said to be a view on proper consideration of

evidence much less a reasonable view. Therefore, interference by the High Court in the appeal against acquittal of the appellant and recording the finding of their conviction for offences under Sections 302,307 read with Section 34 IPC and Section 3 of the Explosive Substances Act, 1908, on consideration of the evidence, is justified. The judgement under appeal does not warrant any interference. We find no merit in this appeal; it is accordingly dismissed.

Appellants 1 and 3, who are now on bail will surrender to their bonds to serve out their sentece confirmed by us. IN THE MATTER OF :