Supreme Court of India
Chinnamal vs State Of T.N. And Ors. on 20 November, 1996
Equivalent citations: 1996 VIIIAD SC 611, 1996 (4) Crimes 211 SC, 1996 (8) SCALE 502, (1997) 1 SCC 145, 1996 Supp 8 SCR 927
Bench: M Mukharji, S Kurdukar
ORDER

1. The six accused-respondents were tried for and convicted of offences punishable under Sections 147, 148, 307 and 302 IPC (3 counts). In appeal, the High Court set aside their convictions and acquitted them. Aggrieved thereby the appellant, who happens to be the wife of one of the three deceased and figured as an eye witness to the incident, filed this appeal after obtaining special leave.

2. On perusal of the impugned judgment we find that the principal reason which weighed with the High Court in setting aside the convictions of the accused-respondents is that the statement (Ext. D1) made by the appellant (who also claimed to have been assaulted by the accused persons during the incident) before a Magistrate which was initially recorded as her dying declaration but was subsequently tested as a statement recorded under Section 164 Cr. PC in view of her survival and the report (Ext. P1) that she lodged with the police (which was treated as the First Information Report) contradicted each other materially. In our considered view, this approach of the High Court in dealing with the evidence was patently wrong. It is trite that a case has to be decided on the basis of the evidence adduced by the witnesses during the trial and any previous statements made by any of such witnesses can be used by the defence for the purpose of only contradicting and discrediting that particular witness in the manner laid down in Section 145 of the Evidence Act. Under no circumstances can such previous statements be treated as substantive evidence as has been treated by the High Court in the instant case. In view of these well settled principles of law, the High Court was first required to consider the statements made by the prosecution witnesses during trial and decide for itself whether those statements should be relied upon in view of their contradictions (if any) with their earlier statements, provided those contradictions had been brought on record under Section 145 of the Evidence Act. The other patent infirmity in the impugned judgment is that the High Court discarded the evidence of the witnesses who gave ocular version of the incident with a sweeping observation that they were artificial and unnatural and that it was not possible to place any reliance upon their testimonies, without referring, much less discussing the same.

3. For the foregoing discussion we set aside the impugned judgment and remand the matter to the High Court for disposal of the appeal in accordance with law. Since the matter is long pending, the High Court is requested to dispose of the appeal as expeditiously as possible, preferably within a period of two months from the date of communication of this order. The accused respondents, who are in bail, will continue to remain so till disposal of the appeal by the High Court.