Supreme Court of India
Chellappan And Ors. vs The State Of Kerala on 1 April, 1975
Equivalent citations: AIR 1975 SC 1808, 1975 CriLJ 1551, (1975) 4 SCC 238
Author: Y Chandrachud
Bench: K Mathew, V K Iyer, Y Chandrachud
JUDGMENT Y.V. Chandrachud, J.

1. This is an appeal from the judgment of the High Court of Kerala setting aside an order of acquittal passed by the learned Sessions Judge, Kottayam, and convicting the appellants under Section 302 read with Section 149 of the Penal Code. The High Court has sentenced each of the eight appellants to imprisonment for life.

2. The incident but of which the prosecution arises happened at about 9 p.m. on December 25, 1969 in Baison Valley of Rajakkadu Village. It is alleged that the appellants formed themselves into an unlawful assembly on the road in front of the ration shop of appellant No. 1 and in prosecution of the common object of the assembly they committed the murder of one Kunjukunju. Kunjukunju received 19 injuries and died on the spot. The First Information Report about the incident was lodged next afternoon by P.W. 1 at the Udumbanchola police station, which is at a distance of about 35 miles from the scene of occurrence.

3. Relying on the decision of this Court in Ram Jag v. State of U.P. learned Counsel for the appellants contends that the High Court was in error in disregarding the cogent reasons given by the trial court in support of the order of acquittal. Even assuming that two views of the evidence are reasonably possible the High Court, it is urged, ought not to have substituted its own view for that of the trial court

4. We are unable to accept this submission. The High Court, in our opinion, was justified in holding that the reasons given by the learned Sessions Judge were far too slender to justify the acquittal of the appellants. The principal reason given by the learned Sessions Judge for acquitting the appellants is that the evidence of the eye-witnesses is "patently artificial". Considering the evidence in the case, it seems to us impossible to say that the evidence led by the prosecution is in any sense artificial. The Sessions Judge thought it unnatural that the appellants should commit the murder of the deceased in front of the shop of appellant No. 1 and that after the murder they should permit the dead body to lie at the scene of occurrence. He also felt that if the appellants were acting in prosecution of a common object, appellant No. 2, instead of pushing the victim from behind, would have straightway stabbed him on the chest. The eye-witnesses, according to the learned Judge, could not have seen the incident closely as the victim must have been surrounded by the assailants. This seems to us a very unrealistic view to take as it overlooks the background and some of the basic facts of the case. There is fair reason to believe that on the Christmas night, the appellants had helped themselves to a rather generous dose of alcohol. There is evidence showing that they had purchased four or five bottles of Arrack. They had enmity of a sort with the deceased and on seeing him passing by, they started assaulting him in a vainglorious way. It does not appear that the attack was premeditated, in the sense that the appellants were lying in wait for the deceased. An assault on a so-called enemy in the vicinity of one's own dwelling or allowing the victim to lie where he was slain

are not of uncommon occurrence so as to infuse into the case an air of unreality. Nor indeed could the eye-witnesses have failed to notice what happened under their very nose. The trial Judge more or less imagined that these features Were patently artificial. The High' Court was therefore justified in re-appreciating the evidence in order to determine whether the charge of murder was brought home to the appellants'

5. The evidence of P.Ws. 1, 2, 5 and 6 to which counsel for the appellants has drawn our attention is clear and consistent. It establishes that the appellants participated in the attack on the deceased, though in an unequal measure. The High Court has considered fully the evidence of these witnesses and we see no reason to take a different view of that evidence.

6. Appellants 1 to 4 and 8 took a leading part in the assault on the deceased and the evidence leaves no doubt that their common object was to commit the murder of the deceased. While the deceased was passing by the shop of appellant No. 1, appellant No. 2 shouted: "See, he is going. Catch him. Don't let him go". Appellant No. 8 came out of the shop and held the deceased. Appellant No. 2 caused two stab injuries to the deceased immediately thereafter. Appellants 1, 2 and 8 then dragged the deceased to the shop of appellant No. 1'. Appellant No. 8 hit the deceased with a stone and appellant No. 3 followed suit. Appellant No. 4 hit the deceased with an iron rod.

7. It is, however, doubtful whether appellants 5, 6 and 7 shared the common object of the unlawful assembly to commit the murder of the deceased. Appellants 6 and 7 assaulted the deceased with kicks and that was almost after the deceased fell down motionless. Appellant No. 5 also did not take any part in the earlier stage of the incident. He hit the de ceased with a piece of firewood. Considering the various facts and circum stances we are of the opinion that these three appellants could only be convicted of lesser offences. Unfortunately, neither the Sessions Court nor the High Court considered the evidence separately, as against each of the accused.

8. In the result, we confirm the order of conviction and sentence passed by the High Court on appellants 1, 2, 3, 4 and 8 and dismiss their appeal The order of conviction and sentence passed by the High Court on appellants 5, 6 and 7 is set aside and their appeal is partly allowed. We convict appellant No. 5 under Section 324 of the Penal Code and sentence him to suffer rigorous imprisonment for three years. We convict appellants 6 and 7 under Section 323, Penal Code, and sentence each of them to suffer rigorous imprisonment for one year.