

D. V. Shanmugham and Another

Vs

State of A.P.

Criminal Appeal No. 647 of 1994

(G. B. Pattanaik, G. N. Ray JJ)

25.04.1997

JUDGMENT

PATTANAİK, J.

1. This appeal is directed against the judgment of High Court of Andhra Pradesh dated 15-4-1994 in Criminal Appeal No. 695 of 1993 arising out of Sessions Case No. 251 of 1991. The two appellants along with three others stood charged of having committed several offences and were tried by the Additional Sessions Judge, Chittoor at Tirupati and by judgment dated 9-7-1993 all of them were convicted under different sections of the Penal Code. All of them except A-2 were convicted under Sections 302/149 IPC and were sentenced to imprisonment for life. They were also convicted under Section 148 and sentenced to imprisonment for one year, under Sections 307/149 they were sentenced to imprisonment for five years and under Sections 324/149 were sentenced to imprisonment for one year, all the sentences have been directed to run concurrently. A-2 was convicted under Section 302 for causing murder of Mohan and Sekhar and was sentenced to imprisonment for life, convicted under Section 307 and sentenced to rigorous imprisonment for 5 years and a fine of Rs. 200 in default imprisonment for 2 months, convicted under Section 324 IPC and sentenced to imprisonment of one year, and Sections 324/149 IPC and sentenced to imprisonment for one year, sentences to run concurrently. In appeal, the High Court by the impugned judgment set aside the conviction of Accused 3, 4 and 5 and acquitted them of all the charges. The High Court also set aside the conviction and sentence of Accused 1 under Sections 148, 307/149 and 324/149 IPC. His conviction under Sections 302/149 was modified to one under Sections 302/34 and sentence of imprisonment for life was confirmed. His conviction under Section 324 for causing hurt to PW 2 was also maintained. So far as Accused 2 is concerned the High Court confirmed the conviction and sentence passed by the learned Sessions Judge for the offence under Sections 302 and 307 IPC. His conviction under Sections 148 and 324/149 and the sentence passed thereunder was set aside and thus the present appeal.

2. The prosecution case in a nutshell is that all the accused persons belong to Village Dasarimatam and the complainant party belongs to the same village. Some incident had happened between the two groups on 6-5-1990 in respect of which a complaint had been lodged by Accused 1. On account of the same there was ill-felling between the two groups and on the date of occurrence on 22-9-1990 at 8.00 p.m. when one Natarajan was coughing on account of fever Accused 1 was passing by that road on his scooter. He took this to be a taunt, and therefore, brought his brother Accused 2 and picked up a quarrel and challenged him. The said Natarajan was a relative of the complainant. Shortly thereafter at 10 p.m. the complainant PW 1 and the deceased, Mohan, were returning from a theatre and when they had reached the house of one V. Murli the five accused persons formed themselves into an unlawful assembly and attacked the complainant and the deceased with deadly

weapons. While Accused 1 caught hold of the deceased, Mohan, Accused 2 stabbed him with a knife in the abdomen and Mohan fell down wounded. When the complainant, PW 1 intervened he was also stabbed with a knife by Accused 2 on his left hand and Accused 1 dealt a blow with a stick on the right hand. PW 1 then raised an alarm and on hearing the cries his relatives including Sekhar who is the other deceased came out of their houses and rushed towards Mohan. The five accused persons then also attacked these people and while Accused 3 caught hold of Sekhar, Accused 2 stabbed him with a knife in his abdomen and caused fatal injury. These accused persons more particularly Accused 4 and 5 hurled stones which caused injury to the members of the complainant group. Accused 1 also stabbed one Ravi Kumar with a knife on his left elbow, as a result of which the said Ravi Kumar was injured. The injured persons were taken to the hospital for treatment and Mohan died during midnight on account of shock and haemorrhage as a result of the injuries sustained by him. The Sub-Inspector of Police, East PS, on receiving the information about the incident rushed to the hospital and recorded the statement of the injured Sekhar at 5 a.m. on 23-9-1990 and Sekhar ultimately died in the hospital on 24-9-1990 at 9.25 p.m. On the basis of information given by PW 1 the investigation proceeded and on completion of investigation charge-sheet was submitted against the five accused persons as already stated and on being committed they stood their trial.

3. The prosecution to establish the charges against the accused persons examined as many as 23 witnesses and exhibited a large number of documents. The defence did not examine any witness but exhibited several documents including the former statements of the prosecution witnesses recorded under Section 161 CrPC for the purpose of contradicting them during the course of their examination during trial. The learned Sessions Judge on scanning the evidence on record came to the conclusion that the prosecution witnesses are reliable and basing upon their testimony convicted the accused persons and sentenced them as already stated. The High Court, however, in the appeal reappraised the evidence led by the prosecution and came to the conclusion that the prosecution has been able to establish the charge beyond reasonable doubt with regard to the role played by Accused 1 and 2 for causing injuries to the deceased, Mohan, on account of which Mohan ultimately died. But so far as the injuries caused to Sekhar are concerned though the prosecution has been able to establish the role ascribed to Accused 2 on that score but the role ascribed to Accused 3 and 5 have not been established beyond reasonable doubt. In other words, the High Court discarded the evidence of the eyewitnesses so far as they ascribed different parts played by Accused 3, 4 and 5 in forming the alleged unlawful assembly and in assaulting the complainant party essentially because none of them in their earliest version to the police had implicated these accused persons. Having come to the aforesaid conclusion the High Court held that none of the charges against Accused 3, 4 and 5 can be said to have been established by the prosecution and as such they were acquitted of the charges. But relying upon the evidence of the selfsame prosecution witnesses the High Court came to hold that the role ascribed to Accused 1 and 2 in causing injuries on the deceased, Mohan and Sekhar, may be held to have been established beyond reasonable doubt, and therefore, convicted A-2 under Section 302 IPC and A-1 under Sections 302/34 IPC. The High Court also convicted these Accused 1 and 2 who are the appellants in this appeal under Section 324 IPC for causing hurt to PW 2 and PW 1 respectively and further convicted Accused 2 under Section 307 IPC for attempting to commit the murder of PW 7. It may be stated that the High Court gave a positive finding on reappraising the evidence that Accused 4 and 5 have not pelted stones as narrated by the prosecution witnesses and this finding will have a vital bearing in deciding the present criminal appeal. It may also be stated that the State has not preferred any appeal against the acquittal of Accused 3, 4 and 5 which order of acquittal has thus become final.

4. Mr. K. Parasaran, the learned Senior Counsel appearing for the two appellants, argued with

emphasis that no doubt two persons Mohan and Sekhar have died in the course of the occurrence but the prosecution story as unfolded through a number of prosecution witnesses who are alleged to be the eyewitnesses to the occurrence is not the correct version and the prosecution is guilty of suppressing the genesis and the origin of the occurrence inasmuch as no explanation has been offered for the injuries sustained by the two appellants as well as their father Subramaniam, more particularly, the injuries on the head of Accused 1 on account of which the said accused had multiple stitches and was required to be removed to the Neurological Surgical Centre and the injury is grievous in nature. Mr. K. Parasaran further argued that the prosecution is also guilty of shifting the place of occurrence inasmuch as though according to the prosecution witnesses the incident including the stabbing of Mohan and Sekhar took place in front of the house of accused Murli but the blood and bloodstained stone could be recovered from the verandah of one Mr. Reddy which is far away from the house of the accused Murli and the prosecution is totally silent as to how such blood and bloodstained stone could be recovered from the verandah of Shri Reddy. Mr. K. Parasaran also contended that all the prosecution eyewitnesses are related to each other and they have repeated the version in the same manner and the only independent witness PW 10 did not support the prosecution case at all and in such circumstances when other independent witnesses were available as narrated by the prosecution witnesses themselves, non-examination of such other independent witnesses available affects the prosecution case also. Mr. K. Parasaran, lastly urged that the role ascribed to Accused 1 and Accused 3 being identical namely Accused 1 caught hold of Mohan when Accused 2 stabbed Mohan and Accused 3 caught hold of Sekhar when Accused 2 stabbed Sekhar and the High Court having reappreciated the evidence has already rejected the same so far as the role ascribed to Accused 3 is concerned, the same infirmities in relation to the role ascribed to Accused 1 also vitiates the ultimate conclusion of the High Court in convicting Accused 1 and Accused 1 is entitled to get benefit of doubt. Mrs. Amreshwari, learned Senior Counsel appearing for the State, on the other hand contended that when two courts of fact have already appreciated the evidence and have recorded their conclusions to the effect that the prosecution has been able to establish the charges against Accused 1 and 2 beyond reasonable doubt it would not be proper for this Court to interfere with the same conclusion in exercise of power under Section 136 of the Constitution more particularly when two precious lives have been lost. The learned counsel also urged that it is true that the prosecution has not been able to explain injuries on the accused persons but the said question has also been considered by the High Court and yet in view of the clear cogent evidence of the prosecution witnesses when the High Court has convicted the two accused persons, the same need not be interfered with by this Court. According to the learned counsel the substratum of the case is that Accused 1 caught hold of Mohan when Accused 2 stabbed Mohan with the knife in his abdomen has been fully established through the several witnesses who themselves have been injured in the course of the incident, and therefore, the conviction of the two appellants maintained by the High Court need not be interfered with by this Court. Mrs. Amreshwari, however, in her ultimate submission stated that though Accused 1 may be entitled to benefit of doubt by applying the same reasoning and the same infirmities in the prosecution witnesses on which Accused 3 had been acquitted, but so far as Accused 2 is concerned, conviction being based upon clear and cogent evidence which gets corroborated by the medical evidence the same cannot be interfered with.

5. Coming to the question of non-explanation of the injuries on the accused, it appears from Exhibit D-6, Private Wound Certificate, the accused Appellant 1 sustained a lacerated injury of 5 X 1/2 cm on parietal eminence - clot formed and was admitted in MS III under Neurosurgery Ward but discharged against the medical advice and the said injury is grievous in nature but might have been caused by a blunt object. It is also clear from Exhibit P-10 issued by Dr. S. Koteswara Rao, Casualty Medical Officer of the hospital at Tirupati that Appellant 1 was discharged from the hospital on 24-

4-1990 at 10 p.m. to get treatment for Neurosurgery care at a higher centre. The doctor (PW 15) in his evidence stated :

"A-1 was examined by me on the requisition sent by East PS Tirupati on 23-9-1990. A-1 was sent to the hospital with an escort of five police constables. I examined A-1 on 23-3-1990 at 4.45 a.m. As per accident register A-1 told me at that time that he was assaulted with iron rods, sticks and chains. I found a lacerated injury 5 x 1/1 cms on right parietal eminence. Blood clots were found. X-ray was also taken. A-1 was admitted in MS III ward under Neurosurgeon. The injury found on A-1 was grievous and there are 12 to 13 stitches and after the receipt of the said injury to A-1, he should have had profuse bleeding."

6. Exhibit D-11 is the certificate given by the said doctor indicating that on 5-10-1990 the accused Appellant 1 attended the hospital for suture removal and dressing and even on that date the wound was not completely healed up and according to the doctor it would take another month for healing. The aforesaid injury on accused Appellant 1 on vital part of the body is undoubtedly a grievous injury and the injured must have had profuse bleeding as stated by PW 15. The accused Appellant 2 had sustained the following injuries as is apparent from Exhibit D-7, which was the certificate issued by PW 15 :

1. Multiple abrasions with swelling of 2 x 1 cms size over right eye.
2. Right black eye present.
3. Swelling of right molar bone present."

PW 15 in his evidence also stated :

"The same police brought A-2 at 4.45 a.m. and I examined him on police requisition. He identified A-2 comparing his identification marks. A-2 also stated before me that he was assaulted with iron rods, chains and sticks. I found the following injuries on A-2 at that time. 1. Swelling of 2 x 1 cms size on the right molar bone. 2. A black eye present. 3. Swelling in right molar bone. The injuries are simple in nature. Ex D-7 is the certificate issued in favour of A-2."

The aforesaid injuries on accused Appellant 2 are undoubtedly simple in nature. The father of both the accused appellants, Subramaniam also sustained the following injuries as is apparent from the certificate, Exhibit D-8 issued by PW 15 :

1. An abrasion 5 cms in length over the vault of the skull. Red in colour.
2. Swelling in left eyebrow.
3. Swelling in upper part of leg.
4. Abrasion of 6 x 3 cms over left calf muscle.
5. Abrasion of 7 x 4 cms below left calf muscle.

X-ray No. 1505/14536 of skull AP - No bone injury noted on left leg. No bone injury noted.

He has been admitted in MS III ward under Neurosurgery and discharged against medical advice.

The injury is simple in nature, might have been caused by blunt object and the age is about 6 hours.

#Station : Tirupati Sd/-20-10-90 (Dr. S. Koteswara Rao) Civil Asst. Surgeon,  
S.V.R.R. Hospital, Tirupati.###

PW 15 also in his evidence reiterated the same by stating :

"I found the following injuries on him. I have examined him at 4.45 a.m. 1. An abrasion 5 cms in length over the vault of skull. 2. Swelling on left eyebrow present. 3. Swelling of Upper part of the left leg. 4. Abrasion of 6 x 3 cms over the left calf muscle. 5. An abrasion of 7 x 4 cms below right calf muscles. He was also admitted in Ward No. 3 in charge of Neurosurgeon. The injuries are simple in nature and the age is about six hours. 5 x D. 8 is the said certificate."

The aforesaid injuries no doubt are simple in nature as opined by PW 15.

7. The High Court came to the conclusion that both the accused appellants as well as their father, Subramaniam received the injuries in course of the occurrence. The question that arises for consideration is whether the prosecution has offered any explanation for such injuries on the accused appellants as well as their father and if no explanation has been offered then for such non-explanation the prosecution case in anyway gets affected. The law in this regard has been well discussed in a judgment of this Court in the case of Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394 : 1976 SCC (Cri) 671]. It has been held by this Court in the aforesaid case that where the prosecution fails to explain the injuries on the accused then two results may follow :

1. That the evidence of the prosecution witness is untrue; and
2. that the injuries probalilise the plea taken by the appellants.

8. It has also been held in the aforesaid case that in a case of murder, non-explanation of the injuries sustained by the accused at about the time of the occurrence is a very important circumstance from which the court can draw the following inferences :

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

9. It has further been held that omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses. But it is equally well settled that the prosecution is not obliged to explain the injuries sustained by the accused if the injuries are minor and superficial and where the injuries are not sustained in course of the occurrence. On a bare examination the injuries found on the two

appellants as well as their father, Subramaniam, we found that though the injuries on Appellant 2 as well as their father, Subramaniam were minor in nature and quite superficial and as such the prosecution was not obliged to explain those injuries but the injury on Appellant 1 was of such nature that it cannot go unnoticed by the witnesses to the occurrence more so when the medical evidence is to the effect that there must have been profuse bleeding. In respect of such grievous injury sustained by Appellant 1 the prosecution is bound to offer some explanation and if explanation is not offered then the court is entitled to draw inference as held by this Court in the case of Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394 : 1976 SCC (Cri) 671] referred to supra. PW 1 who is admittedly an eyewitness to the occurrence and was at the spot right from the beginning, in his evidence stated : "It is not true to say that in the incident A-1 and A-2 received bleeding injuries on the head and A-1 sustained serious head injury. It is not true to say that at the time of the incident Subramaniam - the father of A-1 and A-2 was present and he received injury on his head and other parts of his body." PW 2 who is also an eyewitness to the occurrence stated : "I have seen the bleeding injuries on the head of A-1 and A-2 but the said injuries were caused due to hurling of stones by A-4 and A-5 from the building." It was elicited from his cross-examination : "Police asked me as to how A-1 and A-2 got bleeding injuries and I did not state to the police at that time that A-1 and A-2 received bleeding injuries due to hurling of stones by A-4 and A-5." PW 3 who is also an eyewitness to the occurrence did not state anything about the injuries being sustained by A-1 and A-2 and how such injuries were sustained. PW 6 is also an eyewitness to the occurrence and was himself also one of the injured. He also in his evidence stated that there were no injuries on A-1 and A-2 at the time of occurrence and further he states that he does not know whether A-1 and A-2 and their father were admitted to the hospital by the police. PW 7 is also a witness to the occurrence and he stated in his evidence that at the time of occurrence there were no bleeding injuries on the head of A-1 and A-2. PW 8 is equally a witness to the occurrence and he no doubt had stated that he had marked the bleeding injuries on the head of A-1 and A-2 but did not state as to how accused A-1 and A-2 sustained those injuries. PW 10 though was examined by the prosecution but did not support the prosecution and therefore was permitted by the Court to be cross-examined by the prosecution. PW 12 is a witness to the assault by Accused 2 on Sekhar as well as the assault on PW 7 by Accused 1. He in his evidence has stated : "At the scene of occurrence I did not see any bleeding injuries on A-1 and A-2." Thus, out of the aforesaid 7 eyewitnesses to the occurrence except PW 2 and PW 8 rest did not even state to have seen the injuries on the head of the two accused appellants. PW 8 though stated to have seen the injuries but did not offer explanation as to how those injuries were sustained by the accused appellants. PW 2 though offered an explanation namely the injuries are sustained on account of hurling of stones by A-4 and A-5 but the High Court on appreciating the evidence came to the positive conclusion that the prosecution story that A-4 and A-5 were hurling stones is not believable and in fact they had not hurled the stones as alleged. That apart as has been indicated earlier PW 2 had not stated before the police while being examined under Section 161 CrPC about the existence of injuries on the head of the accused persons or as to how those injuries were caused. In the aforesaid circumstances the conclusion is irresistible that the prosecution has not offered any explanation for the grievous injuries on accused Appellant 1 which the prosecution was obliged to explain and such omission on the part of the prosecution to explain the injuries on accused Appellant 1 assumes greater significance since all the eyewitnesses to the occurrence are related to the deceased and thus were interested in the prosecution, inasmuch as PWs 1 and 2 are brothers of deceased Sekhar, PW 3 is the mother of deceased Sekhar, PWs 6 and 7 are brothers of deceased Mohan, PW 8 is the brother-in-law of Mohan and PW 12 is the elder brother of Mohan. In the aforesaid premises, we find considerable force in the submission of Mr. Parasaran, the learned Senior Counsel for the appellants, that prosecution has not explained the grievous injury on the head of accused Appellant 1 and such

non-explanation persuades us to draw an inference that the prosecution has not presented the true version at least so far as the role played by accused Appellant 1 and the witnesses who have been examined and who have ascribed a positive role to Appellant 1 that he caught hold of Mohan when Appellant 2 stabbed Mohan are not true on material point and their evidence thus has become vulnerable. Even though the accused Appellant 2 also sustained some injuries as indicated earlier but those injuries being simple and superficial the prosecution may not be obliged to offer the explanation to the same but the same principle will have no application when an injury of such grievous nature as was sustained by accused Appellant 1 had not been explained by the prosecution witnesses who are grossly interested in the prosecution being all related to one another.

10. At this stage it would be proper for us to notice the contention advanced by Mrs. Amreshwari, the learned Senior Counsel appearing for the State, that the prosecution evidence having been scrutinised by the learned Sessions Judge and the High Court and having been accepted by the two courts below it would not be proper for this Court to interfere with the conviction in exercise of powers under Article 136 of the Constitution. We, however, are unable to persuade ourselves to agree with the submission since we are not appreciating the evidence in this case but we are only applying a principle of criminal jurisprudence which casts an obligation on the prosecution to explain the injuries on the accused particularly when the injuries are of grievous nature and the consequences of such non-explanation of the injury. That apart in appropriate cases there is no bar on the powers of this Court even to examine the evidence if the appreciation of such evidence by the courts below on the face of it appears to be erroneous and such erroneous appreciation causes miscarriage of justice. However, we are not delving further into the question since we are not appreciating the evidence in the case in hand. The High Court in our opinion committed gross error in coming to the conclusion that non-explanation of the injuries on A-1 is not material. The very approach of the High Court that since the police did not confront the witnesses about the accused receiving injuries while examining them under Section 161 CrPC, no explanation is forthcoming is erroneous.

11. It would also appear from the materials on record that though according to the eyewitnesses the incident occurred in front of the house of Accused 3 where both deceased Mohan and Sekhar were stabbed by Accused 2 and while taking the injured persons Mohan fell down in front of the house of Prabhakar as a result of which blood fell down in front of the house of Prabhakar, yet it is difficult to imagine as to how bloodstains were found from the house of Prabhakar up to house of Venkat Reddy and even on the verandah of the house of Venkat Reddy as has been stated by PW 2 and PW 22, one of the investigating officers and according to the said PW 22 the distance between Prabhakar's house and Venkat Reddy's house is more than 120 feet. Though Mohan and Sekhar were stabbed in front of the house of Accused 3 as stated by the prosecution witnesses but bloodstains being available up to the house of Prabhakar is explained from the fact that the injured persons were carried up to that place but beyond that it is nobody's case that the injured persons were carried any further and as such no explanation is forthcoming as to how bloodstains could be found up to the verandah of the house of Venkat Reddy and then bloodstained stones were also recovered from the verandah of the said Venkat Reddy. This feature also indicates that the prosecution witnesses are not sure as to where the occurrence took place. It also appeared from the evidence of PW 2 and PW 8 that there were several other people who witnessed the occurrence and they are not the residents of that locality. If such independent witnesses were available and yet were not examined by the prosecution and only those persons who are related to the deceased were examined then in such a situation the prosecution case has to be scrutinised with more care and caution. Further Mr. Parasaran is right in his submission that the witnesses ascribed the role of catching hold of Mohan by Accused 1 and the role catching hold of Sekhar by Accused 3 and the High Court gave the

benefit (sic of doubt) to Accused 3 since the witnesses had not narrated the same to the police when examination under Section 161 CrPC took place and therefore the selfsame infirmities having crept in when the prosecution witness stated about catching hold of Mohan by Accused 1, the said Accused 1 is entitled to the benefit of doubt. In fact as stated earlier Mrs. Amreshwari, the learned Senior Counsel appearing for the State, also fairly stated that possibly it would be difficult to sustain the conviction of Accused 1 when Accused 3 has got benefit and has been acquitted and no appeal against the said order of acquittal has been filed by the State. On account of such infirmities in the prosecution case as indicated above and more particularly when the prosecution has filed to offer any explanation for the grievous injuries sustained by Accused 1 on his head and High Court has already found that the said injury was caused in course of the incident, we have no hesitation to hold that the accused Appellant 1, D. V. Shanmugam is entitled to the benefit of doubt and we accordingly set aside the conviction and sentence of the said accused Appellant 1 both under Sections 302/34 IPC as well as under Section 324 IPC and direct that he shall be set at liberty forthwith if his detention is not required in any other case.

12. But coming to the case of Appellant 2 the same stands on a slightly different footing. Mr. Parasaran no doubt had argued with vehemence that the entire case must be discarded inasmuch as the prosecution has not presented the true version and has suppressed the genesis and origin of the occurrence which inference is to be drawn for non-explanation of the injuries on the injuries on the accused person. But as we found that the injuries on the accused Appellant 2 are all simple and superficial in nature and the prosecution is not bound to explain such minor and superficial injuries. That apart where the evidence is absolutely clear, cogent and consistent coming from an independent source that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries on the accused, in such a case a conviction can be based notwithstanding injury is not being explained as has been held by this Court in the very case of Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394 : 1976 SCC (Cri) 671] on which Mr. Parasaran, the learned Senior Counsel placed reliance upon. So far as the substratum of the prosecution case of the accused Appellant 2 is concerned it has been consistently stated by all the eyewitnesses to the occurrence that Accused 2 stabbed Mohan in his abdomen with the knife and stabbed Sekhar also in the abdomen with the knife. Their evidence also gets corroborated from the medical evidence as well as from the post-mortem examination of the dead bodies of the two deceased persons. Even in the earliest version, in the FIR it had been categorically stated that Accused 2, D. Vadivelu stabbed Mohan with a knife in his abdomen and also stabbed Sekhar with knife in his stomach and the intestines came out. In view of the aforesaid clinching evidence so far as the role ascribed to the accused Appellant 2, notwithstanding the infirmities indicated earlier for which we have given benefit of doubt to accused Appellant 1, it must be held that the prosecution case as against Appellant 2 has been proved beyond reasonable doubt and therefore the conviction and sentence against the said accused Appellant 2 as affirmed by the High Court does not warrant any interference by this Court. In the net result, the conviction and sentence of Appellant 1 - D. V. Shanmugam passed by the High Court is set aside and he is acquitted of the charges. He be set at liberty forthwith unless required in any other criminal case but conviction and sentence as against Appellant 2 passed by the High Court stands affirmed and the appeal so far as A-2 is concerned is dismissed. This appeal is allowed in part.