K.Ashokan & five

Vs

State of Kerala

(M. K. Mukherjee, Syed Shah Mohammed Quardi JJ)

19.02.1998

JUDGMENT

M.K.MUKHERJEE J

1.17 accused persons, including the six appellants before us, (who were arraigned as A1 to A4, A10 and A11 respectively in the trial Court and will hereinafter be so referred to), were tried by the Court of Session, Kozhikode Division for offences punishable under Sections 143, 147, 148, 341, 449, 452, 307, 302/149 I.P.C. and under Sections 3 and 5 of the Explosive Substances Act. While convicting and sentencing all the appellants under Sections 143, 147, 148, 449, 452 and 302/149 I.P.C.and A3 under Section 3 of the Explosive Substances Act also, the trial Court acquitted the others.Assailing their convictions and sentences the appellants preferred an appeal which was disposed of by the High Court by setting aside the conviction of A3 under Section 3 of the Explosive Substances Act and affirming the common convictions recorded against the six appellants.The above judgments of the High Court is under challenge before us in this appeal.

2.According to the prosecution case, the appellants owe allegiance to the Communist Party of India (Marxist) and the complainant party to Muslim League.There was political rivalry between the two parties which resulted in occasional clashes.A few days before the incident (with which we are concerned in this appeal) one Pakran, who belonged to Muslim League, sustained a gun-shot injury for which he was admitted in the Medical College Hospital, Kozhikode.On October 23, 1988, C.P.Abdulla (the deceased), Moidu (P.W.1), Kannan (P.W.2) and Kunhabdulla Haji (P.W.3) went to see him in the hospital. After visiting him, they first went to Vadakara by a bus and from there boarded another bus to go to kakkad.On the way, when the bus reached Chelakked they found a crowd there.Sensing some trouble the bus driver refused to proceed further.Finding no other alternative they alighted there and started walking.After covering some distance they found Pariyarthu Chandran (A-11) and Pandiampurathu Chandran (A-2) standing on the road.A little later, when they were nearing the village Naripatta they heard a sound of explosion.Apprehending trouble they ran to the nearby house of Kunhikannan (P.W.5) and took shelter.They then saw a mob armed with various weapons, coming towards his house.In the meantimes P.W.5 had bolted and front door of the house from inside.The mob broke open the door and, after entering, caught hold of Abdulla and dragged him to the verandah.To save their own lives P.W.2 ran away and took shelter in this own house in that village, and P.Ws.1 and 3 went to the top of the house of P.W.5.P.W.1 then climbed on a tree and perched himself there.When P.W. 3 tried to escape he was caught hold of by some miscreants.He, however, extricated himself and ran to the house of one Pokkar of that village.After about 15 minutes when the mob left he came to the courtyard of Kunhikaranand saw Abdulla lying near the gate of his house in a pool of blood with multiple injuries on his person.While P.W.1 was inside the house of Kunhikaran police reached there.They took P.W.1 to

Kottiyadi Police Station where his statement was recorded and a case was registered.The Circle Inspector of Police, Kuttipadi took up investigation of the case and came to the scene of occurrence.He held inquest upon the deed body of Abdulla and sent it for post-mortem examination.On completion of the investigation the police submitted charge-sheet.

3.The appellants pleaded not guilty to the charges levelled against them and their defence was that they were falsely implicated due to political rivalry.It was their further case that the investigation was not properly done, in that, the Investigating Officer falsely roped in the members of their party.

4.To give an ocular version of the incident the prosecution relied, upon the testimonies of P.Ws.1,2,3, and Kunhi Koya (P.W.6).In the convicting the appellants the trial Court found that their evidence was trustworthy and it was fully corroborated by the medical and other evidence.The High Court concurred with all the findings of the trial Court, except that it found that there was no evidence to prove that it was A3 who hurled the bomb.

5.After having gone through the entire evidence on record we are of the opinion that the learned Courts below were fully justified in arriving at the conclusion that the incident took place in the manner alleged by the prosecution.We, are, however, unable to share the view of the learned Courts below that the prosecution succeeded in conclusively proving that the appellants were against the miscreants having regard to the fact that in the FIR the names of the appellants do not find place as the miscreants.Indeed, no one hash been named as miscreants therein.From the judgment of the trial Court we find that it negatived the contention of the accused persons raised on this aspect of the matter with the following observation:-

> "It is a fact that the names of the accused and their individual overt act has not been specifically stated in the F.I.Statement.To this aspect in the F.I.Statement, I may qoute what His Lordship Justice Mr.Chettur Sankaran Nair stated in the judgment report in 1993 (1) KLT Page 14 at Page 18 in Para 11:-
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> "First Information Report is not a catalogue not does not expect a just informant, disoriented in mind and in distress to give such graphic details."
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> The circumstance from which P.W.1 was brought to the Police Station in this case and his own explanation that he was under perplexity and fear has to be considered in appreciating Ext. P1 (F.I. Statement)."

The above reasoning of the trial Court cannot be accepted: firstly, because disclosure of the names or identities of the offenders, if known (as in the instant case) by a person who figures as an eye witness is one of the most material facts and such a fact cannot be equated with narration of graphic details and secondly, because, the plea of perplexity and fear raised by P.W.1 is not untenable.The F.I.R.was lodged by P.W.1 after about 3 hours of the incident at the police station and therein he has given all the details of the incident, except naming the miscreants.Incidentally we may mention that the High Court has not at all adverted to this aspect.There is another significant fact appearing on the record which leads us to presume that P.W.1 purposely-(and not due to fear or perplexity)-did not disclose the names of the miscreant, so that, later on, after discussion and deliberation with their party members the names could not be given.It appears that two days after the incident the Investigating Officer (P.W.14) submitted a report (Ext.P-14) before the local Judicial Magistrate stating that during investigation names of some of the miscreants (as mentioned therein) could be gathered.In that report initially names of 5 persons were given and thereafter a host of others.This

subsequent inclusion was found to be an interpolation by the trial Court.Having carefully looked into that document we find that some of those names have been written in different ink and squeezed in, which necessarily means that those were subsequently inserted.In view of the above facts and circumstances appearing on record the defence of the appellants (as stated earlier) cannot be said to be without any substance.We, therefore, feel that the appellants are entitled to the benefit of reasonable doubt.

6.For the foregoing discussion we allow this appeal, set aside the impugned order of conviction and sentence recorded against the appellant.The appellants, who are in jail, be released forthwith unless wanted in connection with any order case.