

Varghese

Vs

State of Kerala

(G.T.Nanavati, V.N.Khare, JJ.)

03.03.1998

JUDGMENT

NANAVATI J

1.The appellant was tried along with two others for the offences punishable under Sections 394 and 397 IPC.The trial court acquitted all the three accused.Their acquittal was challenged by the State before the High Court.The appeal was partly allowed by setting aside the acquittal of A.1 and A.2 and convicting them for the offence punishable under Section 394 IPC. Acquittal of the third accused was confirmed.

2.Both the convicted accused applied for leave of this Court to file an appeal.Leave was granted to petitioner No.2(A.2-Varghese @ Lali) only.

3.What is contended by the learned counsel for the appellant is that only evidence on the basis of which the appellant has been convicted is that of discovery of knife and gloves by him.It appears that three persons committed robbery and at that time they had concealed their faces by putting on masks and, therefore, they could not be recognised either by PW1- Gouri or PW2- Bindu. The appellant has been connected with the crime on the basis of recovery of knife and gloves made pursuant to the statement made by him in presence of PW8, while he was in police custody.PW8 has denied that the appellant had made such a statement and that pursuant to any information given by him any knife or gloves were recovered.Though he has admitted his signatures on Ex.P.6-Mahazar, the contents have been denied.No doubt, PW 18-the Investigating Officer has proved that Mahazar but it clearly appears from the Mahazar that the knife and gloves were found lying in open in a paddy field.In absence of any statement indicating concealment by him of any weapon or other incriminating articles, the statement of A.2 cannot be regarded as sufficient for his conviction.What the evidence of PW.18 and the Mahazar prove is that a knife and gloves were recovered in presence of A.2 but that cannot be regarded as sufficient for connecting A.2 with the commission of crime.In absence of any other evidence A.2 ought not to have been convicted by the High Court under Section 394 IPC.We, therefore, allow this appeal, set aside his conviction and acquit him.His bail bonds are ordered to be cancelled.