

# SUPREME COURT OF INDIA

State of Kerala

Vs.

Thomas

CrI.A.No.1259 of 1997

(Doraiswamy Raju and Arijit Pasayat JJ.)

04.02.2004

## JUDGMENT

1. The above appeal has been filed by the State of Kerala against the judgment of a Division Bench of the Kerala High Court dated 19.12.1996 in Criminal Appeal No.253 of 1995 whereunder the accused appellant before the High Court, who suffered conviction under Section 302 of the Indian Penal Code with sentence for life imprisonment in Sessions Case No.33 of 1994 on the file of the Sessions Court, Wayanad, Kalpetta, came to be acquitted.

2. The case of the prosecution was that there was previous enmity between the accused and the deceased Gopi in view of a previous criminal case on account of the accused, his brother and some others were said to have assaulted the deceased Gopi, PW 5 and others on 8.1.1993 and that when the deceased Gopi was sitting inside the tea shop of PW-3, on 20.1.1993 at about 3.00 PM and dosing and leaning on the desk, the accused who was sitting on a bench placed in the varandah, came and pulled the deceased Gopi by his right hand and stabbed him on his chest with a knife he had, in his waist. As a result of the injuries sustained due to stabbing Gopi was said to have collapsed on the spot and succumbed to those injuries. On a complaint lodged by PW 1 the case was registered by the police and after completion of all the formalities of investigation the respondent came to be charged for an offence under Section 302 IPC, for the murder of deceased Gopi. The respondent pleaded not guilty and after completion of the trial during which PWs 1 to 11 were examined besides marking of Exts. P-1 to P14 and M.O.s 1 to M.O. 10 and examination of the accused under Section 313 of the Code of Criminal Procedure the learned Sessions Judge came to the conclusion that the prosecution substantiated the charge against the accused respondent and convicted him under Section 302 IPC. On the view that this is not a 'rarest of a rare case', sentence of life imprisonment alone came to be imposed.

3. Aggrieved, the respondent pursued the matter on appeal before the High Court. As indicated earlier, a Division Bench of the High Court of Kerala on a reappraisal of the evidence on record differed from the findings of the learned trial Judge, to record a verdict of acquittal. The High Court, in our view, has given cogent and convincing reasons as to why PWs 1 and 2 could not be believed to have witnessed the incident. Even PW 4 who was

doing business in the adjacent shop also was held, could not have seen the alleged occurrence. On an overall consideration of the materials on record the High Court came to the firm conclusion that the incident could not be believed to have occurred in the manner it has been spoken to by the prosecution witnesses and improbabilities are writ large in their evidence. Keeping into account the previous enmity and appreciating the materials on record in the light of the over all circumstances of the case the High Court further came to the conclusion that the true genesis and real picture of the case has not been either placed on record or substantiated by the prosecution to arrive at a firm conclusion that the charge has been proved against the respondent beyond reasonable doubt.

4. Heard the learned counsel for the appellant-State and learned counsel for the respondent. Learned counsel appearing on either side invited our attention to the relevant portions of the judgments of the courts below and the evidence on record. On a careful consideration of the materials on record, in the light of the submissions made, we are of the view that no exception could be taken to the well merited findings recorded by the High Court, though by way of reversal of the conviction recorded by the learned trial judge. When the High Court has found the witnesses to be not truthful, for sufficient reasons disclosed in the absence of any serious infirmities pointed out either as to the manner of appreciation of evidence or in the findings recorded by the High Court as to the innocence of the respondent there is hardly any scope for our interference. Hence, this appeal which is bereft of merit, fails and shall stand dismissed.