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Chacko @ Jacob Vs. State of Kerala

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Court : Supreme Court of India

Decided On : Apr-29-1998

Reported in : 1998IVAD(SC)713; AIR1998SC2250; 1998(2)ALD(Cri)30; 1998(2)ALT(Cri)126; 1998CriLJ3281; 1998(2)Crimes336(SC); JT1998(4)SC220; 1998(3)SCALE659; (1998)5SCC602

Judge : G.T. Nanavati and; S.P. Kurdukar, JJ.

Acts : Arms Act, 1959 - Sections 27; Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1973 - Sections 2; Indian Penal Code (IPC) - Sections 34, 302 and 324

Appeal No. : Crl.A. No. 741 of 1991

Appellant : Chacko @ Jacob

Respondent : State of Kerala

Judgement :
ORDER

Nanavati, J.

1. This appeal, filed under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1973 and under Section 379 of the Criminal Procedure Code, 1973 is directed against the judgment of the High Court of kerala

in Criminal Appeal No. 58/ 1985. The High Court convicted the appellant for the offences punishable under Section 302 read with 34 IPC, 324 IPC and 27 of the Indian Arms Act.

2. The appellant was tried along with three other accused. The charge against them was that on 24.12.1981 at about 9.30 p.m. they had gone to the house of Pullery John (the deceased) and challenged the inmates of the house to come out. When John asked as to who they were, the appellant said that it was he and immediately thereafter a shot was fired by accused Thambi which injured John and caused his death, P.Ws. 1 to 5 were present in the verandha of the house at that time. P.W. 2 flashed his torch to find out who were the assailants. Immediately thereafter appellant fired a shot which caused injuries to P.W.1, 2 and 4. As a result of the cries raised by the witnesses and the neighbours coming there all the accused ran away from that place.

3. The trial court disbelieved the evidence of P.Ws 1 to 6 on the grounds that their relations with the accused were inimical, they had made consistent improvements and their evidence stood contradicted by their police statements and the F.I.R. In the F.I.R. Exhibit P.1, presence of P.W. 5 was not referred to and it was stated that both the shots were fired by the appellant. Therefore, the trial court held that in all probability the accused were implicated falsely because of previous enmity.

4. Aggrieved by their acquittal the State filed Criminal Appeal No. 58/1985. The original informant also filed a revision petition to the High Court against their acquittal. The appeal and the revision petition were heard together and were disposed of by a common judgment. The High Court found appreciation of the evidence by the Sessions Court unreasonable and it also noticed that various important aspects were not at all considered by the trial court. The trial court without considering the evidence of P.W. 16 had wrongly rejected the evidence regarding recovery of the appellant's gun. The explanation given by the eye witnesses as regards the contradiction that both the shots were fired by the appellant was not considered by the trial Court. The High Court after re-appreciating the evidence held that the evidence of P.Ws 1 to 4 deserved to be accepted as it was consistent and their presence at the place of incident was

natural. Accepting their evidence the High Court held that all the accused had gone together to the house of the deceased, at that time the appellant and accused Thambi were armed with guns, and after reaching there the appellant had challenged John to come out. If further held that these circumstances clearly established that the appellant and Thambi were acting in furtherance of their common intention of committing murder of John and causing hurt to other members of his family. The High Court, therefore, set aside the acquittal of the appellant and Thambi but did not convict Thambi as he had died during the pendency of the appeal. The High Court convicted the appellant alone for the offences stated above. As no over act was done by the remaining two accused their acquittal was confirmed.

5. Aggrieved by his conviction and the order of sentence the appellant has preferred this appeal. It was contended by the learned counsel for the appellant that the evidence of eye witnesses ought not to have been believed as all of them stood contradicted by their police statements wherein they had stated that both the shots were fired by the appellant whereas before the Court they deposed that the first shot was fired by Thambi and second shot was fired by the appellant. They had changed their version in view of the report of the ballistic expert which shows that the two shots were fired from two different guns. It is true that the witnesses had stated like that before the police and even the Investigating Officer had carried on investigation on that basis till the report of the ballistic expert was received. What the Sessions Court had failed to consider and what the High Court has accepted is the explanation given by the witnesses that when the first shots was fired it was dark and the Witnesses had not seen who had fired it but when P.W. 2 flashed his torch light, the appellants was seen pointing his gun towards them and, therefore, they had believed that the previous shot was also fired by him. In view of this explanation it was not proper for the trial court to discard their evidence on the ground that their evidence stood contradicted by their previous statements and that indicated that they were trying to implicate falsely both these accused. Neither before the trial court nor before the High Court identity of the accused including the appellant was challenged. P.Ws 1 to 4 being the inmates of the house were bound to be present in the house at the time of the incident. P.Ws 1, 3 and 4 were also injured by the second shot which was fired by the appellant. Therefore, there was

no good reason for discarding their evidence.

6. It was next urged that the High Court having disbelieved the evidence of P.Ws 1 to 4 as regards the remaining two accused ought not to have accepted it against Thambi and the appellant without any independent corroboration. It was also contended that even though independent witnesses were available they were not examined by the prosecution and, therefore, also the appellant ought not to have been convicted on the basis of the testimony of the interested witnesses only. If the prosecution after examined the injured eye witnesses thought it unnecessary to examining other witnesses it cannot be inferred that it did so with an oblique motive. No objection was taken by defence when they were dropped. No such point was raised before the High Court. The appellant, therefore, cannot now make any grievance in this behalf. The remaining two accused were given benefit of doubt on the ground that possibly they had gone along with the appellant as they were his employees and were told to accompany him. They might not have known where and for which purpose the appellant was taking them. The reasoning of the High Court with respect to them does not appear to be correct but there being no acquittal appeal against them, we need not pursue this point any further. Their acquittal, therefore, cannot be regarded as a good ground for holding that the eye witnesses had falsely implicated them and therefore their evidence did not deserve to be accepted without independent corroboration.

7. As we do not find any substance in any of the contentions raised by the learned counsel for the appellant this appeal is dismissed. As the appellant was released on bail by this Court his bail is cancelled and he is ordered to surrender to custody to serve but the remaining part of his sentence.

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