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Appukuttan and ors. Vs. the State

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Court : Kerala

Decided On : Aug-17-1989

Reported in : 1989CriLJ2362

Judge : M.M. Pareed Pillay and; P.K. Shamsuddin, JJ.

Appellant : Appukuttan and ors.

Respondent : The State

Judgement :

P.K. Shamsuddin, J.

1. Accused 1 to 3 in Sessions Case No. 6 of 1986 on the file of the Additional Sessions Judge, Parur are the appellants. Criminal Appeal No. 450 of 1986 is filed by accused 1 and 2 and Criminal Appeal No. 482 of 1986 is filed by. accused 3. They were convicted for offences punishable under Section 302 read with Section 34, I.P.C. and each of them was sentenced to undergo imprisonment for life. The 4th accused who was tried along with the appellants was found not guilty of any offences and he was acquitted.

2. The occurrence took place on 21-1-1984 at 8.30 a.m. at a place near Chattukulam Temple on the side of the Binanipuram Road in Kadungallur. Muraleedharan, who died in the occurrence, was the first accused in Sessions Case No. 12 of 1982 which was charge-sheeted for the murder of one

Rajagopalan. Muraleedharan was acquitted as per Ext. P15 judgment dated 15-9-1983. The motive for the occurrence in this case is alleged to be the acquittal of the deceased in the above Sessions case, It is the prosecution case that the appellants along with the 4th accused proceeded to the place of occurrence on two bicycles, A1 and A2 riding on one bicycle and A3 and A4 riding on another bicycle along the Binanipuram Road north to south. The deceased was coming on a bicycle from the south to the north along the same road. When the accused saw the deceased, they got down from the cycles. A4 stopped the cycle of the deceased by holding the handle and A1 inflicted a cut on the deceased with MO 34 sword. The deceased fell down along with the bicycle on which he was riding. Thereupon A2, A3 and A4 attacked the deceased with daggers M.Os. 1 to 3. A1 also dealt one more cut with the sword on his right hand. A2 and A3, after inflicting the injuries on the deceased, went towards east from the place of occurrence along with the compound of Chattukulam Temple. A1 and A4 went on bicycle towards north. PW 5 Abdurahiman tried to stop A4's cycle and thereupon A4 left the cycle and ran towards east and A1 escaped. PW 1 Karunakaran and PW 2 Sridharan were also present there. PW 1 went to the Alwaye Police Station at 9.15 a.m. and gave Ext. P1 first information statement, which was recorded by PW 21, the Assistant Sub-Inspector of Police, Alwaye. On the basis of Ext. P1, PW 21 prepared Ext. P17 first information report and registered Crime No. 16/84. PW 21 went to the scene of occurrence and conducted inquest over the dead body and prepared Ext. P8 inquest report. He took into custody MO 23 Hero Jet Cycle and MO 32 Hercules Cycle along with some other material objects : PW 18, Civil Surgeon, Govt. Hospital, Alwaye conducted post-mortem on the body of the deceased and prepared Ext. P14 post-mortem certificate.

3. On 22-1-1985, PW 22, the Circle Inspector of Police took over the investigation, On the next day, he searched the houses of A1, A2 and A3. Nothing was recovered from there. He arrested the accused 1 to 3 on 28-1-1984 at 12.30 p.m. at Alwaye-Parur Junction. After arrest, the blood-stained dress of A1, M.Os. 4 and 5, were recovered from his body under Ext. P6 mahazar. M.Os. 35 and 36, the dresses of A3, were also recovered as per Ext. P11 mahazar. Pursuant to the information furnished by A3, MO 3 dagger was recovered under Ext. P10(a) disclosure statement of A2, MO 2 dagger was recovered under Ext. P12 mahazar.

He also recovered the clothes of A3, M.Os. 6 and 7 under Ext. P7 mahazar on the information furnished by A3. Similarly, the disclosure statement made by A1 led to the discovery of MO 34 under Ext. P9 mahazar. The correct addresses of Al to A3 were collected by PW 22 from them and he sent Ext. P18 report on 29-1-1984 furnishing the correct addresses of the accused 1 to 3. PW 22 arrested A4 on 30-8-1984 and pursuant to the statement given by A4, MO 1 dagger was recovered under Ext. P13 mahazar. After completing the investigation, PW 22 laid the charge before the Judicial IInd Class Magistrate, Alwaye, who committed the four accused to stand trial before the Court of Additional Sessions Judge, Parur.

4. On the accused pleading not guilty to the charge, the prosecution examined P.Ws. 1 to 12, marked Exts. P1 to P19 and also identified M.Os. 1 to 36. In their statement under Section 313, Cr.P.C, all the accused denied the incriminating circumstances appearing against them in the prosecution evidence. No witness was examined on behalf of the defence, but Exts. D1, D1(a) and D2 were marked on their behalf.

5. The prosecution has clearly established that Muraleedharan died in an occurrence which took place on 21-1-1984 at a place near Chattukulam Temple on the side of the Binanipuram Road. This is revealed from the inquest report Ext. P8 prepared by PW 21 and also Ext. P4 post-mortem certificate and the evidence of PW 18, Civil Surgeon attached to the Government Hospital, Alwaye. Ext. P14 shows that the deceased had sustained 16 injuries, and all the injuries were ante-mortem and injury Nos. 7, 8 and 16 were fatal and Muraleedharan died as a result of Haemorrhage, shock and coma due to the injuries sustained.

6. The prosecution examined P.Ws. 1, 2 and 4 as occurrence witnesses. PW 1 Karunakaran is a labourer. He deposed that he witnessed the occurrence in which Muraleedharan died and that the incident took place after 8.30 a.m. on 21-1-1984 near Chattukulam Temple. PW 3 Koyakutty had told him that he required sand and in order to enquire about that that he went to PW 3's house in the morning along with PW 2 Sridharan. PW 3 told him that he did not require sand on that day. Thereupon, P.Ws. 1 and 2 proceeded to Jammath Mosque along with the Binanipuram Road to enquire about the sand required by them. While so, they saw

A1 Appukuttan and A2 Thambi crossing them on a bicycle and A3 Rajappan Nair and A4 Radhakrishnan Nair crossing them on another bicycle. He knew A1 to A3 and he met A4 on that day and thus he had familiarity with him also. The accused are R.S.S. activists. Muraleedharan was the 1st accused in a case relating to the murder of one Rajagopalan. After some time, they saw the deceased coming towards north on his cycle. The deceased was conducting a tea shop and he used to go to Alwaye along Binanipuram road for purchasing provisions. A4 stopped the cycle of the deceased by holding its handle and A1 took out a sword from a bag behind his cycle and inflicted a cut on the head of the deceased. The deceased cried out '(Vernacular omitted-Ed.)' and fell on the ground. A1 inflicted one more cut with the same sword on the deceased, which fell on his hand. Others stabbed and kicked the deceased with daggers in their hands, which fell on his chest, shoulder and back. Thereafter, A4 went towards east. A1 went to Valanjambalam Junction, turned east and proceeded towards south along the Panchayat road in front of the temple. A1 had a sword in his hand and A2 and A3 had daggers in their hands. But he was not sure whether A4 had anything in his hand. He identified M.Os. 1 to 3 as daggers used by the accused and stated that the sword used by A1 was not among the weapons showed to him. A4 went towards east along the canal bund. Several persons came to the scene of occurrence and he told them about what transpired. He went to the Alwaye Police Station and gave Ext. P1 first information statement, which was recorded by PW21.

7. PW 2 is also an eye-witness to the occurrence. He also deposed that while he was going to the house of PW 3 along with PW 2, he found A1 and A2 engaged in a conversation at the school junction. His version regarding the occurrence is similar to that of PW 1 and he corroborates the evidence of PW 1 in all material particulars. He stated that he knows A1, A2 and A3 earlier and he had acquaintance with A1 for the past four to five years and he had seen A4 on that day. He also testified that the accused are R.S.S. workers. He further stated that the deceased was the 1st accused in a case involving the murder of one Rajagopalan and the deceased was acquitted and that formed the motive for the accused to attack the deceased. He also stated that the deceased was running a tea shop and he used to go to Alwaye for purchasing provisions for the shop along the Binanipuram Road. He identified MOs. 1 to 3 as the daggers found in the

hands of the accused. He told the police that the fourth accused is a person who could be identified by sight.

8. The learned Counsel for the appellants invited our attention to the statement of PW 2 that both PWs 1 and 2 are Marxist sympathisers. He also pointed out that in Ext. P1 statement PW1 only stated that he had gone to meet a person in connection with the supply of sand and was returning and there is no specific mention about PW 3 as the person he met in connection with the supply of sand. He pointed out that there is also no mention in Ext. P1 that PW 1 and PW 2 were proceeding to mosque to enquire about the requirement of sand by the mosque committee, that the version of PWs. 1 and 2 in Court is that they happened to witness the occurrence while they were proceeding to the mosque to enquire about the requirement of sand and that the introduction of this version by PWs. 2 and 3 for the first time in Court was a deliberate embellishment to bring out an occasion for them to witness the occurrence. The learned Counsel submitted that in these circumstances the evidence of PWs. 1 and 2 has to be rejected as improbable. It is true that Ext. P1 does not mention either the name of PW 3 or their trip to the mosque, but in our view this omission is not a material circumstance which would cast suspicion on the presence of PWs. 1 and 2 at the scene of occurrence. The fact that PWs. 1 and 2 had gone to enquire about the requirement of sand is clearly stated in Ext. P1. In our view an omission to mention all the details of the circumstances in which they happened to be at scene, will not render the evidence of these witnesses worthless or unworthy of credence.

9. In this connection, we may refer to the evidence of PW 3 that he had told PW 1 that he required some more sand and PWs. 1 and 2 had come to his house on the date of occurrence, but he told them that he did not have sufficient funds on that day and therefore. they could supply the sand after two days. PW 3 also stated that he went to the tea shop of Kochunni and met PW 6 and at that time, he heard a cry from the direction of the house of PW 6 at about 8.30 a.m. and he and PW 6 went to the scene of occurrence and he was a person in a fair complexion proceeding' towards east and another person coming in the opposite direction and people were shouting out 'catch him, catch him'. PW 3 stated that PW 5 was going ahead and PW 5 tried to stop the second bicycle which came that way, but the

rider turned the bicycle and in that process he dashed against PW 8 and fell down. PW 3 also stated that that person left the cycle there and ran along the canal bund. PW 3 further stated that the person who went first on the bicycle had a sword in his hand, and he could not identify that person who came on cycle for the second time and that when he went to the scene of occurrence, he saw the deceased lying with injuries and PW 7 giving water to him. The evidence of PW 3 corroborates the evidence of PWs. 1 and 2.

10. In this connection the learned Counsel for the appellants, invited our attention to the decision of the Supreme Court in Ram Kumar Pande v. State of Madhya Pradesh : 1975 CriLJ870 . In that decision the Supreme Court observed that though the first information report is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it, omissions of important facts therein affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case. In the case which came up before the Supreme Court, there was a significant omission to mention the injuries inflicted by the appellant on the deceased. But in the instant case there is no such omission to mention any details regarding the overt acts committed by the accused and therefore the above ruling has no application to the instant case.

11. We are not satisfied with the contention of the learned Counsel for the appellants that since PWs. 1 and 2 are sympathisers of Marxist Communist party their evidence is highly interesting. Though PW2 stated that both of them are sympathisers of Communist party, in the re-examination, he deposed that he does not know whether PW 1 is a sympathiser of Communist party. PW 1 has categorically denied the suggestion that he is a sympathiser of the Communist party. In such circumstances, much weight cannot be attached to the inference of PW 2 that PW 1 might also have sympathy with the Communist party. Further the interestedness of PW 2 as a party sympathiser cannot be a reason for rejection of his evidence. It only requires that his evidence should be scrutinised with caution. If it is found that his evidence is otherwise acceptable the Court can very well act upon it.

12. We are also not prepared to agree with the contention of the learned Counsel that PWs. 1 and 2 are casual witnesses. The evidence of PWs. 1 and 2 clearly indicates that they are residing in the locality not far away from the scene of occurrence and that they are quite familiar with the locality and the people residing in the locality. PW 3 is an independent witness. It had not been suggested to him that he had any sympathy to the Marxist party or had any political connection with the Marxist party or that he had any axe to grind against the accused so as to give false evidence in support of the prosecution version. His evidence lends considerable support to the prosecution version that PWs. 1 and 2 were present at the scene of occurrence.

13. It may also be mentioned that soon after the occurrence, PW 1 went to Alwaye Police Station and his statement was recorded at 9.15 a.m. and it contained the names of accused 1 to 3. Learned Counsel heavily relied on the circumstances that PW 1 stated that he did not know the house name of the 1st accused and nevertheless Ex. P1 contains family name of A1 'Kuruppamparambath'. On the basis of this, the learned Counsel argued that Ext. P1 is not a true statement given by PWJ, that it did not come into existence at the time when it purports to have been recorded and that this fact alone is sufficient to reject the prosecution evidence. No doubt, this required an explanation, but no question seems to have been put to the Investigating Officer on this aspect and in the circumstances we are unable to reject the evidence of PWs. 1 and 2 on this ground alone.

14. The learned Counsel submitted that though Ext. P1 was recorded at 9.15 a.m. on 21-1-1984 it reached the Court only on 23-1-1984. Learned Public Prosecutor met this argument by contending that 22nd January, 1984 was a holiday for the Court and Ext. P1 reached the Court on the next day itself and there is not much delay in Ext. P1 reaching the Court. It is however pointed out by the learned Counsel for the appellants that what Section 157 requires is that the report of the first information should be sent forthwith to a Magistrate and not to the Court and that this requirement has not been complied with. He also submitted that though 22nd was a Sunday, nothing prevented the Investigating Officer in sending Ext. P1 to the Magistrate. In this connection, learned Counsel placed before us the decision of the Supreme Court in Ishwar Singh v. State of U.P. : 1976 CriLJ1883

and Awadhesh v. State of Madhya Pradesh 1988 SCC (Cri) 361 : 1988 Cri LJ 1154. In Ishwar Singh's case (supra), the Supreme Court pointed out that Section 157 of the Cr. P.C. requires the first information report to be sent 'forthwith' to the Magistrate competent to take cognizance of the offence and that no explanation was offered in that case for the extraordinary delay in sending the report to the Magistrate and this is a circumstance which provides a legitimate basis for suspecting that the first information was recorded much later than the time of occurrence affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. The Court also pointed out that this suspicion hardens into a definite possibility when one finds that the case made in Court differs at least in two very important particulars from that narrated in the F.I.R. Informant in that case stated in the Court that some people were invited to his house to effect a settlement between him and Ishwar Singh and that he had also sent Ghanshyam to call Ishwar Singh there. The F.I.R. in that case did not mention anything like this. From the FIR it appeared as if the accused persons came uninvited to his house, demanded why he had demolished the drain and started assaulting him and the other persons who were present there. The Court also has made mention of Various other omissions in the FIR in that case.

15. In Awadhesh's case (1988 Cri LJ 1154) (SC) (supra), which arises out of an appeal against the acquittal of the accused, the Supreme Court pointed out that the F.I.R. was not recorded or launched at the time it purported to have been lodged. The Court said in that case that there are material contradictions in the testimony of PW 14 and the Investigating Officer in regard to the recording of the F.I.R. and those circumstances would indicate that the names of the assailants were not known by the alleged witnesses and that they were not present at the scene of occurrence at the time the shooting took place and in all likelihood they arrived at the scene after the incident and that the F.I.R. was lodged with delay and deliberation.

16. However, we are not in a position to hold that the FIR in this case suffers from any infirmity pointed out in the cases referred to above. The version in Ext. P1, the version of PW 1 in his evidence in the Court and the testimony of the Investigating

Officer are substantially the same and there is no contradiction or variation as in the case of Awadhesh (1988 Cri LJ 1154) (SC) (supra), which came up for consideration of the Supreme Court.

17. In this connection we may refer to a ruling of a Division Bench of this Court in Balakrishnan v. State of Kerala (1989) 1 Ker LT(SN) 26 R.T. No. 4 of 1988 and Crl. Appeal Nos. 232 and 341 of 1988 to which one of us is a party. In that case the Division Bench pointed out that even taking it for granted there was some delay in lodging the first information statement and the first information report reaching Court, that by itself is not a ground to reject the provision case that due to various reasons, there may be delays in the information reaching the police and the first information report conning to the Magistrate and that if the delays are property explained, the matter ends there. The Division Bench further pointed out that if the delays are not properly explained they are of no consequence in the absence of suspicious circumstances indicating concoction, embellishment or prejudice. The object of recording the earliest version and it reaching the Magistrate forthwith is to avoid embellishments and keep the Magistrate informed of the investigation. When no infirmity is brought to the notice of the Court and no prejudice occasioned to the accused, the delay itself cannot be urged as a technical ground to contend that investigation is tainted and the prosecution is unsupportable.

18. There is not much delay in recording the first information report in this case and it reached the Court on 23-1-1984. 22nd was a holiday. No doubt the Investigation Officer ought to have sent the FIR to the Magistrate at least on the 22nd itself without waiting for the next working day. However, we have not understood the decision of the Supreme Court in Awadhesh's case, (1983 Cri LJ 1154) to mean that in all cases where there is delay in the FIR reaching the Court, the Court should reject the prosecution case and come to the conclusion that the first information report did not come into existence on the stated date or that the delay had occasioned since the names of the accused were not known to the assailants or that the accused were not at the scene of occurrence at the time when the incident took place. In Pala Singh v. The State of Punjab : 1973 CriLJ59 the Supreme Court held that where the FIR was actually recorded without delay

and that investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court, then, however improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable. However, we may emphasise the necessity of sending the FIR forthwith to the Magistrate without any delay and point out that there is no justification in putting off the communication of the FIR to a working day as what is contemplated by Section 157 is forwarding the report 'forthwith to the Magistrate and not to the Court. We are mentioning this because we find that in large number of cases the Investigating Officer are not sending the report to the Magistrate expeditiously on the ground that a particular date is not a working day. The expression used is 'forthwith' and this requirement should not be taken lightly since it was intended to safeguard the interests of the accused and to plug the possibility of creating the FIR after consultation and deliberation. However, in the instant case, we do not find sufficient reason to reject the FIR as having been created subsequent to the stated date.

19. The learned Counsel for the appellant has challenged the identification of the accused by P.Ws. 1 and 2 and P.W. 4. In this connection the learned Counsel also contended that the absence of a test identification parade is fatal to the prosecution case. The learned Counsel invited our attention to the decision in State (Delhi Administration) v. V.C. Shukla : 1980 CriLJ965 . The Supreme Court in that decision has pointed out that the identification of a person by witness for the first time in Court without being tested by a prior lest identification parade is valueless. This is the view taken by the Supreme Court in Kanan v. State of Kerala : 1979 CriLJ919 and Mohanlal Gangaram Gehani v. State of Maharashtra 1982 SSCC (Cri) 334 : 1982 Cri LJ 630 (2) also.

20. A Division Bench of this Court in Chandran v. State of Kerala (1987) 1 Ker LT 391 : 1986 Cri LJ 1865 (to which one of us was a party) has elaborately considered the question regarding identification and pointed out that it an accused is known to a witness it would be a futile exercise to put him for identification. If an accused is not previously known to a witness, the investigating agency has to consider whether a test identification parade should be arranged. It furnishes to

the investigating agency an assurance that the investigation is proceeding on correct lines. It also furnishes corroboration of the evidence to be given by the witness in Court at the trial stage. The result of the test identification parade is not substantive evidence. When a stranger witness makes identification of an accused in Court, the Court, by way of caution or prudence, seeks some assurance before accepting the identification as correct and that assurance would be available from the positive result of test identification parade. As pointed out in the above ruling, it cannot be said that the absence of test identification parade is fatal in all cases as assurance could be available from other sources and circumstances and it ioamnoi be held as a general principle of law that after lapse of a period, witness would, in no case, be able to identify a person whom he had seen for the first time earlier. Witness might have had a fair chance of seeing the accused and of noting his features and appearance. There may be other circumstances which render it easy for the witness to fix the memory of the accused in his mind. Presence of these circumstances may lend assurance to the Court as to the correctness of the identification by the witness in the Court.

21. The learned Public Prosecutor pointed out that P. Ws. 1, 2 and 4 had previous acquaintance with A1 to A3 and that therefore there was no necessity to arrange for a test identification parade.

22. P.Ws. 1 and 2 were cross-examined regarding their acquaintance with the accused. P.W. 1 stated that A1 was residing at Veliyathunadu and he did not know his family name or the name of his father. We have already made reference to the criticism made by the learned Counsel in regard to the statement about the family name of the first accused in the F.I. statement. P.W. 1 stated that he had been A1 when he went for collecting sand from the rubber estate near his house. He also stated that he had met him in the tea-shop. Similarly he had stated that he knew A2 since he belongs to his native place and that he resides on the eastern side of Valanjambalam Junction and that he knew the 3rd accused and was familiar with him from his childhood. He had also seen the 3rd accused in the route-march of R.S.S. P.W. 2 stated that he was familiar with A2 from the time he was engaged in the supply of sand and that he used to meet A2 and A3 often at the junction. He also identified all the accused in Court. P.W. 4 also staled that he knew A1 to A3

for the past three to four years and that A4 was known to him for several years, though he did not know A4's name and that he used to meet A4 often at Kadungallur Junction. He also stated that he had spoken to the 3rd accused on several occasions and that the 3rd accused had come to his house for collection for temple and for parayeduppu.

23. The learned Counsel for the appellants pointed out that P.Ws. 4 and A4 were studying in Kadungallur Government High School in the Vth Standard together in 1969-70, that they were members in the Ayyappa Arts Club and that P.W. 4 was taking the role of a female while A4 was taking some other role, and that the pretention of P.W. 4 that he did not know the name of A4 is to explain his omission to mention his name before Police. P.W. 4 however stated that he did not remember whether A4 was his classmate in the Vth Standard and denied that A4 was a member of Ayyappa Arts Club and was taking the role of female. The counsel for the appellant submitted that as a matter of fact P.Ws. 4 and A4 were classmates but P.W. 4 was evading a positive answer to the question regarding that aspect as he had no answer for not mentioning the name of A4 before the Police if really he had identified the person, A4 was given the benefit of doubt and acquitted on the ground that his identity has not been clearly established. In regard to the identification of A1 to A3 by P.W. 4 the counsel was not able to shake the evidence of P.W. 4. In the circumstances, we are unable to agree with the contention of the learned Counsel that the testimony of P.Ws. 1, 2 and 4 should be rejected by reason of failure to conduct a test identification parade.

24. We shall now examine the evidence of other witnesses examined by the prosecution to prove the case.

P.W. 4 Sahadevan stated that he had seen the occurrence and he was familiar with the accused and the deceased. He was proceeding to the house of Azeez (P. W. 7) along the road in front of the temple and then he saw the deceased crossing him. When he went forward to some distance, he saw four persons coming on two bicycles. The riders on the first bicycle were identified by him as A1 and A2 and of the 2nd bicycle as A3 and another person, who could be identified by sight. He further stated that A2 stopped the bicycle by holding its handle when A2 saw

Murali coming on a bicycle. The persons who were riding on the other bicycle also stopped. A1 took out a sword from the carrier of the bicycle and inflicted a cut on the head of the deceased. The deceased fell down on the western side of the road. Again A1 inflicted a cut which fell on his right palm. A1 again inflicted three or four cuts. Thereafter A2, A3 and other person who could be identified by sight stabbed the deceased incessantly causing injuries on his right shoulder, left side of the abdomen and on the chest. A2 and A3 went towards east along the pathway to Chattukulam temple. Thereafter A1 and the person who could be identified by sight went towards north on the two bicycles. A1 had sword in his hand. Some persons came to the scene from the north stopped the person who could be identified and thereupon that person left the bicycle there and ran towards east. Among the persons who came to the scene included P.W. 7, whom he wanted to meet. P.W. 7 brought some water and gave to Murali. After drinking water he breathed his last. He also stated that P.Ws. 1 and 2 were present at the scene when the incident took place.

25. P.W. 5 gave evidence that he was in his house when the incident in which Muraleedharan died took place. He heard an outcry and saw people running and a person riding on a cycle and people chasing him shouting 'catch him, catch him'. He tried to stop the cycle, but the rider swerved the cycle and in that process, dashed against P.W. 8, The rider ran along the canal bund. He could not identify the rider. He went to the scene of occurrence and found Muraleedharan lying dead. He saw P.Ws. 1 to 4 and 6 among others at the scene of occurrence, P.W. 5 was declared hostile by the prosecution since he did not subscribe to his version to the police that he identified the rider of the cycle. He also deposed that A1, A3 and A4 were known to him. It was suggested to him that he was afraid of R.S.S. activists and that was the reason why he gave evidence contrary to the version given by him to the police in regard to the identification of the accused but he denied the suggestion. However, the evidence of P.W. 5 corroborates the evidence of P.Ws. 1 to 4 that they were at the scene of occurrence.

26. P.W. 6 gave evidence that he was familiar with Muraleedharan. On his Way to his house after tapping he got into the tea shop of Kochunni and took tea. Then he heard an outcry from the southern side and proceeded to the scene from where he

heard the cry. While going he saw a person riding on a cycle and proceeding towards east with something like a sword in his hand. However, he could not identify the rider. He also saw another person coming towards north on bicycle and P.W. 5 trying to stop the bicycle. The rider swerved the cycle to the left and in that process, the cycle dashed against P. W. 8, The rider left the cycle there, got up and ran towards east, P.W. 6 went to the place of occurrence and found several persons collected there and Muraleedharan lying in a pool of blood. He saw P.W. 7 fetching water from the neighbouring house and giving to the deceased. Soon after that, Muraleedharan died. He also stated that while he was drinking tea, P.W. 3 was also in the shop and both of them came together from the shop to the scene. Though this witness also has not identified the accused, the evidence of this witness corroborates the evidence of P. Ws. 1 to 5, in many particulars.

27. P.W. 7 Abdul Azeez stated that he was a bus conductor, but on the date of occurrence, he did not go for duty. On hearing the cry of Muraleedharan, he ran towards the scene of occurrence and saw a person leaving the scene on a bicycle with a sword in his hand. There was another bicycle behind that. He saw Muraleedharan lying unconscious. Several persons had collected there. Among whom he mentioned the names of P.Ws. 1 to 6, Rajasekharan Nair and Kultan Warrier. He slated that P.W. 4 is his friend and P.W. 4 had promised him to give some loan. He also stated that he could not identify the accused. The evidence of this witness also fully corroborates the evidence of P. Ws. 1 to 4 that they were present at the scene of occurrence.

28. P.W. 8 Unnikrishnan Nair turned hostile and refused to subscribe to his version to the police. The contention of the learned Counsel for the appellants that for this reason, we should reject the evidence of P. Ws. 1 to 4 regarding the dashing of cycle against P.W. 8, cannot be accepted.

29. P.W. 9 Devadas is the brother of the deceased. He gave evidence that Muraleedharan was running a tea shop at Western Kadungallur and that he used to go to Alwaye for purchasing provisions along the Valanjambalam Junction and Thottakkatukara. He also stated that the accused are R.S.S. activists and his

brother was the first accused in the case relating to the murder of one Rajagopalan who was a R.S.S. activist. P.W. 9 testified that his brother was acquitted in that case and his brother was hiding himself for sometime for fear of the R.S.S. activists.

30. PW 11 is an attestor to Ext. P6 mahazar, under which the clothes produced by A1 were taken into custody, PW 12 is an attestor to the clothes produced by A2 as per Ext. P7, PW 14 is an attestor to Ext. P9 mahazar, under which MO. 34 was recovered and PW 15 is the attestor to Ext. P10 mahazar, under which MO. 3 was recovered on the information furnished by A2 and also Ext. P11, under which the clothes by A2 were recovered. PW 15 gave evidence that he had witnessed the recovery of M.Os. 35 and 3d and that there were blood-stains in M.Os. 35 and 36 produced by A2. PW 12 stated that there were blood-stains in M.Os. 6 and 7 clothes produced by A2.

31. Learned Counsel for the appellants submitted that the prosecution has not examined the persons in the locality and that among the persons examined, none of the witnesses who belong to the locality has identified the accused. He submitted that it could have been easy for those witnesses to identify (he accused if really the accused had attacked Muraleedharan. We are unable to accept this contention of the learned Counsel. We have already pointed out that PWs. 1, 2 and 4 are not living far away from, the scene of occurrence and we do not find any reason to reject their evidence that they identified A1 to A3 as the persons who allacked Muraleedharan, We cannot also forget the fact that the attack and counter-attacks made by R.S.S. and Communist Party factions have created terror in the minds of the people living in the locality and that naturally they would be very hesitant to come to the Court and give evidence for fear of violence from these factions. In this context we can understand the reluctance of some of the witnesses who have witnessed the occurrence to divulge out the fact that they really identified the accused though they have witnessed the occurrence. Further there is also no evidence to show that any person of the locality other than those who have been examined in the case has witnessed the occurrence. In the circumstances, we do not think that there is any substance in the contention of the learned Counsel that the prosecution version has to be rejected for the failure to

examine the witnesses in the locality.

32. Another contention raised by the learned Counsel for the appellants is that where the identity of the assailants is in doubt, it is the duty of the investigating agency to resort to scientific evidence. The Counsel submitted that there must have been finger prints on the cycle left at the scene. Learned Counsel argued that n6 attempt was made to collect the finger marks and compare them with the finger prints of the accused. Several persons collected at the scene of occurrence and it is likely that they would have /meddled with the cycles. No question was put to the Investigating Officer as to why he did not resort to the scientific method. PW 18 has stated that the accused properly identified the witnesses prior to the arrest of the accused. In a case where there is direct evidence of ocular witnesses, who inspire confidence in the truth of what they stated, we do not find any necessity of resorting to such method.

33. The learned Counsel havily relied on the statement of PW 22 the Investigating Officer, in the chief examination that he did not get any incriminating materials from the house of the accused on search and that it ; was during the investigation in continuation that he located Al to A3. According to the learned Counsel this would mean that before that, he could not locate the accused from what he gathered from PWs. 1, 2 and 4. We are unable to agree with the interpretation given to the statement of PW 22 by the learned Counsel for the appellant. Ext. P1 which reached the Court on 22-1-1984 itself gives the names of the accused; the name of the first accused has been mentioned as Kuruppanparambath Appukuttan of Veliyathunadu and the name of the 2nd accused as Thambi of Kizhakke Kadangallur and of the 3rd accused as S. Rajappan Nair of Kizahakke Kadungallur. The details regarding the 4th accused are lacking in Ext. P1 but as far as A1 and A3 are concerned there are sufficient details to locate them. The details regarding A2 are meagre, but investigation brought to light sufficient materials to locate him also.

34. Another contention raised by the learned Counsel is that one of the cycles of the assailants was left at the scene, but no investigation was directed in regard to the ownership of that cycle. It is true that if the investigating agency had directed

investigation in this direction some more items of evidence would have been available for the prosecution, but for this reason alone, it is not possible to reject the prosecution case, if the evidence already available is sufficient to connect the accused with the crime.

35. Another serious attack made by the counsel for the appellants is that the medical evidence would indicate that the incident had not taken place as alleged by the prosecution. Learned Counsel invited our attention to Ext. P14 post-mortem certificate and the evidence of PW 18, Civil Surgeon, Govt. Hospital, Alwaye, who conducted autopsy and pointed out that there are injuries on the back of the accused. PW 18 stated that injuries Nos. 10, 12 to 16 are on the back. It was also suggested to him that if a person with injuries on his body rolls on the ground there will be foreign materials like dust, sand etc., in those injuries. He stated that it depends upon the place where he rolls. The learned Counsel for the appellants submitted that the post-mortem certificate does not disclose any dust or sand and that would indicate that the incident had not taken in the manner as alleged by the prosecution. He invited our attention to the evidence of PWs. 1, 2 and 4 that the deceased fell flat. PW 1 stated that on receiving cut injuries on the head, the deceased fell down and A1 again inflicted another cut with the sword which fell on his right arm and A2 and A3 inflicted stabs which fell on his chest, shoulder and back. In the cross-examination PW 1 stated that it could not be said that after falling on the ground the deceased rolled on the ground while receiving injuries. PW 2 also in his chief examination stated that the deceased received injuries on his chest and on the right side of the abdomen and other parts of the body. He did not see the deceased rolling. PW 4 also in the chief examination stated that the injuries fell on the right shoulder abdomen and chest of the deceased and in the cross-examination he stated that while the deceased received injuries he was lying flat, and one of his legs was on the cycle and another leg was under the cycle. However, he was not sure whether the deceased rolled. On the basis of this evidence the learned Counsel argued that the medical evidence destroys the ocular testimony of PWs. 1, 2 and 4. The learned Counsel submitted that if the deceased had received injuries while he was lying flat, it was not possible to receive the injuries on the back. He also pointed out that the evidence of these witnesses would indicate that the deceased did not roll. We are not in a position to

accept these contentions also. While receiving injuries the deceased in all probability would have made some movement, and that in that process there is every likelihood of the deceased receiving the injuries on the back as well. In fact PW 1 stated that the deceased received some of the injuries on his back. There is no indication that there was any dust or sand at the scene and in this respect also it cannot be said that the medical evidence destroys the ocular testimony.

36. The prosecution has also relied on the recoveries made pursuant to the information furnished by the accused in support of the prosecution case. However, the learned Counsel challenged the evidence relating to recovery. In regard to the recovery of MO. 3 dagger under Ext. P10 pursuant to the information Ext. P10(a) furnished by the 3rd accused the counsel submitted that what he stated is that the dagger is placed in a bush on the eastern side of his residence and if it is found there he would produce the same. Learned Counsel submitted that the author of the concealment has not been mentioned in the statement and that the statement only mentions that he would produce the weapon if it remains there and in the circumstances this recovery would not fall under Section 27 of the Evidence Act. In regard to the discovery of MO. 2 dagger pursuant to the information Ext. P12(a) furnished by A2, the learned Counsel submitted that what is stated in Exl. P12(a) is that he had thrown the dagger in the plantain garden on the southern side of his house and if it was found there he would produce the same. This also according to the learned Counsel cannot fall under Section 27 of the Evidence Act. We are unable to find any infirmity in regard to this recovery and this can very well be acted upon. Learned Counsel also submitted that the recovery of MO. 34 sword pursuant to the information Ext. P9(a) furnished by A1 under Ext. P9 mahazar also is of no use since the witnesses have stated that MO. 34 is not the sword which was found in the hands of A1. In these circumstances we do not place reliance on this item, of evidence. There is direct evidence furnished by PWs. 1, 2 and 4 available in this case and even if we eschew the evidence of recovery there is ample evidence in this case to connect Al to A3 with the crime.

37. The foregoing discussion would show that the prosecution has clearly established that A1 to A3 attacked the deceased Muralidharan with the intention of causing his death or causing grievous injuries to him which are sufficient in the

ordinary course of nature to cause death. The prosecution has succeeded in establishing that A1 to A3 are RSS activists and that they had sufficient motive to kill the deceased, as the deceased was acquitted in Sessions Case No. 12 of 1982 on the file of the Sessions Court, Parur, which was relating to the murder of one Rajagopalan a RSS activist. Though there is no direct evidence of prior concert or premeditation, it is clear from the facts emerging from the prosecution evidence that all the accused shared the common intention to cause the death of Muralidharan and to cause grievous injuries to him which are sufficient in the ordinary course of nature to cause death. The assailant came armed with weapons on bicycles and the manner in which the attack was made is also indicative of the common intention shared by them.

38. In the circumstances the conviction of the accused 1 to 3 for offence under Section 302 read with Section 34, IPC and the sentence of imprisonment entered on them are correct and do not call for any interference.

In the result. Criminal Appeals fail and they are accordingly dismissed.

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