

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1874-1875 OF 2010

KOOLI SASEENDRAN & ORS.

...APPELLANT(S)

Versus

STATE OF KERALA ETC.

...RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

1. These appeals are directed against the judgment dated 23.05.2009 passed by the High Court of Kerala whereby it allowed the appeal filed by the State, set aside the acquittal of the appellants recorded by the trial court and remanded the matter to the trial court for fresh consideration.

2. Briefly stated the prosecution story is that on 12.10.1999 at

about 8.30 a.m. 14 accused persons and 10-20 others formed an unlawful assembly. These persons were armed with deadly weapons like country-made bombs etc. They hurled bombs at Parayil Sasi. One of the bombs exploded and said Parayil Sasi received grievous injuries and succumbed to the same. Report in this regard was lodged by Kollam Kunnummal Achuthan (PW-1) in which he stated that at about 8.30 a.m. on 12.10.1999 he was sipping tea at the tea shop run by Rajeevan (not examined) at Ayithara. He heard the sound of a loud explosion of bomb from the side of L.P. School ground. He got down from the tea shop and stood on the ground. At that time, he saw the 14 accused (named) and about 10-20 other accused (unnamed) running and rushing towards Parayil Sasi and 3 of his associates who were walking through the paddy field on the raised boundary of the same. Kooli Saseendran (Accused 1) said 'kill him' and hurled bomb at Parayil Sasi. This bomb hit the face and body of Parayil Sasi, who fell down on the bund of the canal. The other persons with Parayil Sasi turned back and ran away. According to this witness, in addition to bombs, the accused were armed with choppers, spades etc. Immediately after the occurrence they went away. The reason for the attack was that Parayil Sasi was an RSS activist whereas those who hurled bombs at Parayil Sasi and killed

him were all CPM workers. The motive of the crime was stated to be political animosity. First information report (FIR) in this behalf was registered at 10.00 a.m. Thereafter investigation was carried out by the police and the accused were charged with having committed offences punishable under Sections 143, 147, 148, 302 read with Section 149 of the Indian Penal Code 1860 and Sections 3 and 5 of the Explosive Substances Act, 1908. The case was committed to the Court of Sessions. The accused pleaded not guilty and claimed trial. The trial court acquitted the accused. The High Court set aside the order of acquittal and remitted the case to the trial court giving permission to both the prosecution and the defence to lead fresh evidence.

3. We have heard learned counsel for the parties.

4. As far as the death of Parayil Sasi is concerned, the same is not denied. The only issue is who killed him and who was responsible for his death. The prosecution case is totally based on the testimony of PW-1 and PW-3. They are stated to be the eye-witnesses to the occurrence. PW-1 while appearing in court virtually repeated what has been said in the FIR. He has made some improvements. According to him, one bomb was thrown by Kooli Saseendran (Accused 1) while shouting 'kill the son of a dog'. This bomb hit the

deceased Parayil Sasi, who fell down. Thereafter, 3 or 4 bombs were thrown. They also exploded. People who were accompanying Parayil Sasi ran away. He then identified 14 accused persons. He said that after the incident, the accused ran away and he saw the injured Parayil Sasi lying dead at the place. By then the police came and he told the police about the incident. Subsequently, he went to the police station and gave a statement (Exhibit P-1). He was questioned and then the police came to the spot, inspected the dead body and prepared the inquest report. He again repeated that the accused are CPM workers and killed the deceased because he belonged to the RSS. In cross-examination, he states that he reached the spot where Parayil Sasi was lying within 1 or 2 minutes after he fell down and the police also arrived in 3 or 4 minutes. There was a picket post near the place of incident in which there was an ASI and police men on duty. He states that the police came to the place of incident at about 8.30 a.m. According to him, the police officials remained at the spot for about one hour and then took him in a police jeep to the police station. After the FIR was recorded, he was brought back to the spot and then Dy. SP also came for investigation. According to him, he had gone to the tea shop of Rajeevan at about 8.00 a.m. to have tea. He also states that before he heard the sound of the explosion at 8.30 a.m., he did

not hear any other sound of bomb explosions. He admits that the house of Mulloli Valsala is about 200 metres from the shop. He also admits that the house of Kunhikannan was destroyed by bomb between 8.00 a.m. and 8.30 a.m. on the same day. He has been cross-examined at length and he admits that he is an accused in the case relating to destruction of house of Kunhikannan by fire and bomb. He also admits that he is also an accused in the case of destroying the house of Valsala by bomb explosion and for setting fire to the trees in her compound between 8.00 a.m. to 8.30 a.m. on the same day. He also admits that Suresh Babu (PW-3) and Smijith, who are supposed to be the eye-witnesses are also co-accused in the case of destroying the house of Kunhikannan by bomb explosion. He also admits that his elder son Sudhakaran as also his second son are the accused in the murder case of son of Valsala. He feigned ignorance as to whether his son Manoharan was a co-accused in the case registered for destroying the house of Nanu and Govindan on the same day at about 8.15 a.m. He further admits that one of his sons Vinodan is accused of setting fire to the house of Nanu and Anandan. In the FIR statement (Exhibit P-1), he had only stated that he had seen some persons accompanying the deceased but in Court he states that Smijith and Suresh Babu were accompanying the deceased. The

suggestions put to these witnesses were that in fact he along with other family members, Smijith and Suresh Babu and deceased Parayil Sasi had thrown bombs at various houses and damaged the property of others and while running away Parayil Sasi had tripped over a wooden log and one of the bombs in his hand had exploded killing him. Obviously, the suggestion was denied.

5. PW-3 states that he along with deceased Parayil Sasi and Smijith and 1 or 2 other persons had gone to the house of Janu for a meeting in connection with Vijayadashmi. The meeting was over by about 8.00 a.m. in the morning and then they heard a sound of the explosion from the side of the L.P. School. Then this witness along with Parayil Sasi and Smijith walked towards the place from where the sound of explosion came. They reached the tea shop of Rajeevan. Parayil Sasi (deceased) was in front and the others were a little behind. A number of people had gathered there and Accused 1 shouted 'kill the son of a dog' and a bomb was thrown at the deceased. Thereafter, other accused threw 2-3 bombs. This witness and Smijith ran away to the place where meeting was being held and told them about the incident. After some time, they came back to the place of incident. Parayil Sasi was lying dead. In the cross-examination, he states that Janu lives alone in his house. According to him, they came back at about 8.45

a.m. He states that he did not go to the police station and give any statement. He also states that there is a police picket about 100 metres away from the place of incident but he did not report the matter to the police picket post. However, according to him, immediately after the incident, the police came and questioned them. This witness could not tell the exact time when the Circle Inspector (PW-10) came to the spot, but, according to him, he did not give the details to the Circle Inspector. His statement was recorded by the police only in the afternoon. Suggestions were put to him that the police had registered a case against him, Achutan and Smijith for destroying the houses of Kunhikannan, Anandan and Valsala. He admits that a case has been registered against him and Smijith for attempting to murder Sudheeran by throwing a bomb. This witness is an accused in two murder cases relating to Vijesh and Sreejith. According to this witness, when he came from the house of Janu on hearing the sound, the tea shop of Rajeevan was not open. The crowd had already gathered and there were 10 to 30 people. He states that he was not injured in the bomb explosion. He then states that there was a distance of 8 metres between him and Parayil Sasi. Assainar (PW-9) was the Sub-Inspector of the Police Station within whose jurisdiction the incident occurred. According to him, on 12.10.1999,

PW-1 came and made a complaint on the basis of which he lodged the FIR. However, in the same statement he said that he reached the place of incident at about 9.15 a.m. on the basis of information received and this information was given by the police men at the police picket post near the place of occurrence. This information was received at 8.45 a.m. and he informed the Circle Inspector. He states that this information was recorded in the General Diary Register. He also states that when he went to the place at 9.15 a.m. he enquired about what had happened but he did not record the statement. He admits that the police officials from the police post were present at the place where the dead-body was lying. Suggestion was put that the FIR was lodged only after 5 p.m. which he denied.

6. The trial court held, and in our opinion rightly, that there were so many contradictions in the statement of PW-1 and PW-3 that no reliance could be placed on the same. Whereas, according to PW-1, he had tea at Rajeevan's shop, according to PW-3, Rajeevan's shop was already closed. Another important aspect of the matter is that both these eye witnesses are accused of indulging in arson and throwing bombs at the houses of various residents of that area between 8.00 a.m. to 8.30 a.m. If that be so, and there was a police post nearby, the police should have been there at the spot itself. Unfortunately, the

prosecution has not been fair and has withheld all this material about the witnesses being prosecuted as accused in the other cases. We find that Rajeevan, an important witness had not been examined. He would have been the most important witness, had his shop been actually open. Further, none of the police officials present in the police post have been examined. They would have been the best witnesses. There is no explanation for their non-examination.

7. The matter does not end here. Admittedly, PW-9 came to the spot at 9.15 a.m. and enquired from others. The daily diary report has not been proved or produced. Once the police official knew that a murder had taken place, which is a cognizable offence, he could have immediately sent a message to the police station to record an FIR instead of waiting for PW-1 to come to the police station to record the same. We also find that the statement of A.N. Venugopalan, Dy.SP (PW-11) does not inspire confidence. He states that he reached the scene of occurrence at 1.15 p.m. The occurrence took place at 8.30 a.m. The police station is close to the place of occurrence and the Court is at a distance of 10 minutes from the police station, as stated by PW-9. If the FIR was lodged at 10.00 a.m., why was it sent to the Magistrate at 6.15 p.m.? There is no explanation. Why did the Dy.SP reach the place of occurrence after four hours? There is no answer.

8. In view of these various contradictions and deficiencies in the prosecution case and also the fact that both PW-1 and PW-3 are political rivals of the accused and are also alleged to have committed various offences on that very day prior to the occurrence in question and even earlier, no reliance can be placed on their testimony. The trial court was justified in acquitting the accused. We are constrained to observe that the High Court set aside the well-reasoned judgment of the trial court in a casual manner. The evidence has not been discussed in detail and we are surprised to note that after discussing the entire case and observing that the scope of interference in an appeal against acquittal is very limited, the appellate court set aside the judgment of the trial court. It is obvious that the High Court also did not find material evidence to convict the accused and, therefore, set aside the judgment and remitted the matter to the trial court. In a criminal case, remand is not to be ordered as a matter of course. It is only if there is a mis-trial or some technical issues have arisen that such an order may be made but in very rare circumstances. This should not have been done especially in the facts of the case discussed hereinabove.

9. In view of the above discussion, we allow the appeals, set aside the judgment of the High Court and restore the judgment of the trial

court. Bail bonds, if any, stand discharged. Pending applications(s) if any, shall also stand disposed of.

.....**J.**
(DEEPAK GUPTA)

.....**J.**
(ANIRUDDHA BOSE)

New Delhi
December 17, 2019