



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Special Leave Petition (Crl.) No.12926 of 2024

R. Baiju

...PETITIONER

VERSUS

The State of Kerala

...RESPONDENT

JUDGEMENT

K. VINOD CHANDRAN, J.

1. A very common place altercation escalated into a terrorizing attack leading to the death of a person and injuries to three others. The investigation changed hands several times, which also had political overtones, despite which the prosecution resulted in the conviction by the Trial Court of all the accused for the offences punishable under Sections 143, 147, 323, 324, 427, 449 & 302 read with Sections 149 and 120B of the Indian Penal Code, 1860¹.

¹ The IPC

2. The sixth accused, the appellant herein, who was roped in on the charge of conspiracy, for the earlier incidents, his presence at the crime scene and the exhortation made to kill, was handed down the sentence of death, being the main conspirator and the others were sentenced to imprisonment for life. In appeal, the High Court acquitted the fifth accused and modified the conviction of accused No.1 to 4 and altered the conviction under Section 302 read with Section 149 of IPC to Section 304 Part II read with Section 34 of IPC and convicted the sixth accused, who is the sole appellant herein under Sections 323, 324, 427, 450 and 304 Part II of IPC read with Section 120B of IPC. The appellant herein was sentenced under Section 450 read with Section 120B to undergo rigorous imprisonment for 5 years together with fine of Rs.10,000/- and also sentenced to RI for 10 years under Section 304 Part II read with Section 120B of IPC with a fine of Rs. 25,000/- and default sentences of one year each. The sentence for the offences under Section 323, 324, 427 of IPC by the Trial Court stood confirmed.

3. We heard Sh. Abhilash M.R learned counsel appearing for the appellant. It was argued that A6 was roped in as the main conspirator who had not joined the frontal attack alleged by the prosecution on the deceased and his family members. A5 was acquitted and A6, whose role was identical to A5, was convicted, erroneously. It is argued that PWs 1 to 3, the daughter-in-law, son and wife of the deceased did not name A6 in the initial statement given under Section 161 of the Code of Criminal Procedure, 1973² and was included only later in the statements given under Section 164 Cr.P.C. The reliance placed on PW7 is untenable since he belongs to a rival political party and there were cases pending between him and A6, clearly indicating an intention to somehow inculpate A6.

4. Even if the attack based on a conspiracy, as alleged by the prosecution is believed, none of the accused carried any weapons into the house of the deceased. The wooden logs which are alleged to have been used by the accused were lying at the scene of occurrence,

² The Cr.P.C.

the house of the deceased. The learned counsel has also placed before us a number of decisions to rubbish the conspiracy theory, set up by the prosecution, which was also not proved. There was only the interested testimony of PW7 pointing to the conspiracy alleged and there is total failure to establish a common intention under Section 34 IPC. The High Court erred in entering a conviction under Section 304 Part II IPC, since no knowledge that the act is likely to cause death can be attributed to A6.

5. We have anxiously considered the judgment of the High Court, which is rather elaborate and deals minutely with the evidence. On facts, the genesis; which also has a bearing on the conspiracy alleged, is with the incident that happened in the afternoon, on the crucial day, in the house of the deceased. A6 along with others came to the house of the deceased to sell coir mats manufactured by Kudumbasree; a self-help group of women, constituted in every Panchayat under the aegis of the State through the local bodies. PW2 was first approached who directed them to the deceased, his

father, who refused to make a purchase, despite the insistence of A6. Enraged A6 threw a mat at the deceased and asked him to burn it if he does not want it. The deceased then directed PW2, his son to raise a query in the Ward Council Meeting as to whether the purchase of coir mats from the Kudumbasree unit was compulsory or not. Here we pause, to notice that A6 was a Municipal Councillor and the Chairman of the Municipal Standing Committee, and an influential leader of the political party which ruled both the State and Municipality of Cherthala. All the accused were active members of the very same political party.

6. In the evening, PW2 raised a query regarding the coercive sale of coir mats in the Ward Council Meeting, to which A6 reacted combatively. It was later, in the night, that accused 1 to 4, as alleged by the prosecution, in retaliation, along with A5 and A6 went to the house of the deceased where accused 1 to 4 unleashed a frontal attack on the inmates. A5, allegedly entered the house only briefly, to kick the deceased and destroy the window panes, while A6 stood outside exhorting the

accused who entered the house to kill the inmates. The attack unleashed resulted in the death of the deceased and injuries to his son and daughter-in-law.

7. As found by the Division Bench of the High Court the incident that happened in the afternoon is spoken of by PW2 and 3, the family of the deceased & PW4, a neighbour who had been examined to speak on both the incidents; that which happened in the afternoon and at night. PW4 turned hostile and failed to identify the accused who participated in the incident at night, however, she spoke of A6's presence in the house of the deceased in the afternoon, when a wordy altercation ensued. She also spoke of the incident at night when an attack was unleashed, but refused to identify the accused, which she said was out of fear and not the influence of the accused. PW5 another neighbour of the deceased who participated in the Ward Council Meeting held on 29.11.2009 also deposed that there were arguments between PW2 and A6, in the meeting when PW2 raised a question of compulsory sale of coir mats, when A6 again asked PW2 to burn the coir mat, if

he does not want it. There is sufficient corroboration by PW13 an official of the Cherthala Municipality, who attended the Ward Council Meeting held on 29.11.2009. PW13 deposed that a youngster raised a query with respect to sale of coir mats, which was answered by A6. PW13 did not speak of any heated argument between PW2 and A6. However, the fact remains that there is sufficient corroboration for the incident which happened in the afternoon and in the evening at the Ward Council Meeting, which led to the attack on the family members of the deceased. The motive alleged, hence stands established.

8. According to the evidence of PW1 to 3, at around 7 P.M., accused 2 to 4 called out the name of PW2 from outside his house. PW2 called them inside, when accused 1 to 4 attacked him with wooden logs. PW1, PW2's wife, who came to his rescue was also assaulted. PW3 intervened, when the child of PW1 and PW2 was attempted to be harmed, and took the child away from A3 who caught hold of the child. The deceased who was in the adjoining room came out, hearing the commotion

and was beaten by A1 on his head using a wooden log, which blow fell on the back of his head on the right side. A1 again delivered two blows on the head of the deceased with MO1 wooden log. Later, A2 also delivered blows on the deceased with MO3 wooden log. PW1 spoke of having seen A6 standing outside the house and deposed that he exhorted the accused who entered the house, to '*kill them*', meaning the inmates of the house.

9. The evidence of PW1 to 3 stands corroborated by the evidence of PW4 who came to the house of the deceased, hearing the hue and cry. She identified the first accused in a yellow t-shirt and did not identify the others. As we noticed earlier, though PW4 was declared hostile, she spoke of the incident that happened in the house of the deceased in the afternoon and also spoke of having come to the house of the deceased after the incident and her first-hand knowledge of the destruction caused in the house of the deceased. PW6, another neighbour of the accused also corroborated the evidence of PW1 to 3 and identified A1 & A2 who were

standing outside the house, when he came, as also accused A3 and A4 who were smashing the windows of the house. On entering the house, he saw the deceased vomiting and there were indications of a paralytic attack on his face. PW2, standing beside him also had blood on his body. PW6 accompanied the victims to the hospital.

10. That the death was a homicide is clear from the evidence of PW10 who spoke in accordance with Ex.P5, Post Mortem Certificate. The cause of death was by reason of the head injury which is shown as injury No.1 in Ex.P5. The doctor deposed that the injury numbers 1 to 7 found on the deceased could be caused by MOI and MOIII wooden logs and were ante-mortem. Injury No.8, according to the expert could be caused by stamping or by kicking. The accused was admitted to Medical College, Kottayam on 29.11.2009 with a severe head injury and succumbed on 8.12.2009, despite craniotomy and haematoma evacuation having been done on the patient. The death hence was homicidal and it occurred due to the attack unleashed at the house

of the deceased, by the accused. In addition, is the evidence of PW12, the doctor who examined PW1 and PW2, the injured, at the Taluk Hospital on 29.11.2009, providing further support to the prosecution version. The injuries found on the body of PW1 & PW2 were consistent with the narration of the attack on them. PW12 also had noted the cause of injury as '*having been beaten up by identifiable persons*'.

11. We are not, in the instant appeal, concerned with the charges proved against the other accused nor even the acquittal of A5 since the above appeal is only filed by A6. We adjourned the matter at the initial stage, after querying the State as to whether they intend to file any appeal. We were told by the Standing Counsel that he does not have any instructions and hence we proceeded with the matter; which we make clear is only with respect to the conviction of the appellant under Section 304 Part II read with Section 120B IPC and the other provisions, as noticed above and we do not deal with the alteration of sentence from Section 302 to 304B

Part II, since there is no appeal as of now from the State or the injured victims.

12. The first contention of the appellant is the principle of parity of acquittal of similarly placed co-accused. A5 had his house in the neighbourhood of the scene of occurrence; in front of which the accused were found to have held a meeting before the attack unleashed at the house of the deceased. The High Court has found that the presence of A5 was quite natural since he had his house in the neighbourhood. Insofar as the acquittal of A5, PW1 had not mentioned the name of fifth accused in her statement recorded under Section 161, Cr. P.C. The statement of PW1 and PW3 that they saw the fifth accused kicking the deceased and he was also present among the assailants who unleashed the attack inside the house were put to them as an omission in their statement recorded by the Police. However, with respect to A6, the testimony of PW1 is that he stood outside the house and exhorted the accused 1 to 4 who entered the house to '*kill them*'. The First Information Statement of PW1 as noticed by the High Court, is of Kannan having

exhorted to kill PW2 which was alleged to have been changed in the witness box and the said exhortation attributed to A6.

13. While the Division Bench held that the evidence of PW1 regarding the presence of A5 and A6 cannot be believed, the Division Bench believed the testimony of PW1 with respect to A1 to A4. The presence of A6 spoken of by PW1 was disbelieved by the High Court, since even in the FIR she had not stated so. However, this has to be considered along with the biased investigation, highlighted by the High Court itself. A6 was an influential political leader of the ruling party and his name was purposefully not included in the array of accused. We will deal with this more elaborately a little later. Be that as it may, the earlier incidents that happened in the afternoon and the evening which led to the attack at night stood established. The presence of A6 in the vicinity of the crime scene, prior to the crime, in the company of the other accused, also stood established. The High Court rightly relied on ***State of Karnataka v. K. Yarappa***

Reddy³, to find that even when the probity of investigation is suspect, the rest of the evidence must be scrutinised meticulously to ensure that criminal justice is not rendered a causality.

14. The evidence of PW7 who saw A1 to A6 standing in front of the house of A5 just before the incident happened, is the physical manifestation of the conspiracy. The motive and presence of A6 at the scene of crime, is thus established. The motive arises from the incident which happened in the afternoon, where ensued a wordy altercation by A6 with the deceased; which was followed up by another, in the Ward Council Meeting, on the evening of the same day, with PW2. We cannot find the evidence against A5 and A6 to be identical and the culpability of A6 to be roped in under Section 120B is quite evident; his presence at the scene of occurrence established by the ocular testimony, which unlike A5, who had his house in the vicinity, could not be explained by A6; clinching his culpability.

³ (1999) 8 SCC 715

15. In this context we have to necessarily consider the contention of the appellant that he was added later, which raised a reasonable doubt as to his involvement in the incident that occurred at night. Here we have to notice that there was a conscious attempt to divert the investigation and frustrate the prosecution, especially against A6 who is attested to be an influential political leader, by none other than one of the Investigating Officers (I.O.), PW18. PW17 was the officer who commenced the investigation, prepared Ex.P3 scene mahazar and seized MOI and MOIII weapons along with the other articles as also arrested the accused 1 to 4 on 30.11.2009. PW18 took over the investigation from PW17 who deposed that a particular political party was in power in the State as also the Municipality, at the time of occurrence and the sixth accused was an influential political leader and the Chairman of the Standing Committee of the Municipality. PW18 took additional statements of PW's 1 to 3 in which also there was no disclosure of presence of A6 at the crime scene. Later, the investigation was taken over by PW19 on 19.12.2009

who, at the request of PW's 1 to 3 made an application before the Chief Judicial Magistrate, Alappuzha to record the statements of PW's 1 to 3 under Section 164 of Cr.P.C. This was specifically on the complaint raised by PW's 1 to 3 that their statements were not recorded properly and there was a conscious attempt to somehow exonerate A6. The statements of PW's 1 to 3 were recorded under Section 164 of Cr.P.C. and PW20, the Judicial Magistrate, who recorded the statement deposed that PW1 disclosed to PW20 that the Police had not truthfully recorded her statement. The inconsistencies in the FIR, based on the first information of PW1 and the statements recorded by PW17 and PW18 are hence inconsequential. This also has to be viewed in the context of PW21, who eventually filed the charge sheet, having failed to include PW19, I.O. who initiated steps to record Section 164 statements of PW1 to 3, as a witness. It was at the instance of the Court, PW19 was examined in the trial.

16. One other contention taken up is regarding PW7 who is said to be a member of a rival political party. It

has to be observed that PW7 accepted that he was a member of that political party and that there was a case registered against him at the instance of A6, which was settled between them. The correctness of these statements, according to the High Court, was never challenged in cross-examination but for a bland suggestion that there are a number of cases between them. There is no substantiation of the same by the accused. PW7, who admitted his alliance to the rival political party and the case with A6, who was residing near the crime scene, was a truthful witness, as found by the High Court.

17. There is also a contention raised that DW1's evidence was not reckoned by the Trial Court and the High Court. DW1 is a person who is said to have attended the Ward Council Meeting in the evening of 29.11.2009. He specifically deposed that there was no argument between A6 and PW2 in the Ward Council Meeting. We have already found that a wordy duel ensued between A6 and PW2 in the Meeting, spoken of by PW2, corroborated by PW5, a neighbour and also by

PW13, an official of the Cherthala Municipality. Later, DW1, in his deposition also tries to wriggle out of the situation with a statement that he was not listening and hence he cannot surely say as to what happened in the Meeting; a thoroughly unreliable witness.

18. As has been held in *State of Tamil Nadu v. Nalini*⁴,

by the very nature of the offence of conspiracy, being hatched in secrecy, no evidence of the common intention of the conspirators can be normally produced before Court. The offence can be proved largely by inferences from the acts committed or words spoken by the conspirators in pursuance of a common intention.

That an altercation occurred between A6 and the deceased in the afternoon and another wordy duel in public, on the same evening, with PW2, the son of the deceased has been established by the prosecution. The reaction of A6 in the afternoon, to the refusal of the deceased to purchase a coir mat and in the evening, when the question of compulsory sale of coir mats was raised by PW2, was abrasive and violent. On the same

⁴ (1999) 5 SCC 253

day evening, A6 was found with the other accused near the house of the deceased, a few minutes before the crime occurred in the house of the deceased. The accused had called out PW2 from the outside the house when PW2, unsuspectingly invited them inside. The accused belonged to a political party, whose leader was A6. Accused 1 to 4 entered the house and unleashed a frontal attack on the family members with wooden logs. Construction work was going on in the house of the deceased and there were wooden logs lying in the premises. Even if it is found that the accused did not come with deadly weapons, before entering the house they picked up the wooden logs, within the eye-sight of A6. They entered the house of PW2 on his invitation and unleashed an attack without any provocation from the inmates of the house. Obviously, in retaliation of the incidents that happened earlier, on the same day A6 had seen the accused picking up the wooden logs and entering the house and also had exhorted them from outside the house. A6 definitely had the knowledge that the attack perpetrated on the accused could lead to

death and the attack was carried out under his watchful eyes. As rightly held by the High Court, though the heightened intention to cause death cannot be attributed in the incident, the knowledge that the attack, as established in the trial, is likely to cause death can definitely be pinned down on A6, at whose instance and connivance as also active instigation, the attack was carried out.

19. We find absolutely no reason to interfere with the conviction and sentence of A6 and dismiss the Special Leave Petition.

20. Pending applications, if any, shall stand disposed of.

..... J.
(SUDHANSU DHULIA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
APRIL 16, 2025.