

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 20<sup>TH</sup> DAY OF JUNE 2023 / 30TH JYAISHTA, 1945

CRL.A NO. 1752 OF 2006

[AGAINST THE JUDGMENT IN SESSIONS CASE NO.362/2001 DATED  
30.08.2006 OF THE ADDITIONAL SESSIONS JUDGE, ADHOC-III,  
THALASSERY]

APPELLANTS/ACCUSED NOS.1 AND 2:

- 1 KALLANTAVIDA RAMESAN  
S/O. KUNHAMBU, KANNIVELICHAM HOUSE, MANANTHERI AMSOM,  
VANNATHIMOOLA.
- 2 MADONANDY SUKUMARAN, S/O. GOVINDAN,  
MANANTHERI AMSOM, VANNATHIMOOLA.

BY ADV SRI.S.RAJEEV

RESPONDENT/S:

STATE OF KERALA  
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, (CRIME  
NO.271/1999 OF KOOTHUPARAMBA POLICE, STATION).

BY SRI.SUDHEER GOPALAKRISHNAN,PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22.05.2023,  
THE COURT ON 20.06.2023 DELIVERED THE FOLLOWING:

JUDGMENT

The appellants are accused Nos.1 and 2 in S.C.No.362/2001 on the file of the Additional Sessions Judge (Adhoc)III, Thalassery. The aforesaid case arises from Crime No.271/99 of Kothuparamba Police Station, which was registered against nine persons alleging offences punishable under sections 143,147,148,324 and 307 r/w. Section 149 of the Indian Penal Code (IPC) and sections 3 and 5 of the Explosive Substances Act.

2. The prosecution case is that, on 7.8.1999 at about 9.30 p.m., the accused persons armed with deadly weapons formed themselves into an unlawful assembly, in prosecution of the common object of the unlawful assembly, committed rioting with deadly weapons and attempted to commit murder of CW2 Bhaskaran by throwing a country bomb at him. Consequent to the acts committed by the accused persons, CW2 sustained grievous injuries. He was

taken to the hospital and had undergone treatment for a period of one month. The crime was registered in such circumstances, and after completing the investigation, the police submitted a final report before the Judicial First Class Magistrate Court, Koothuparamba, where it was taken into file as C.P. No.61/2000. Later, the matter was committed to the Sessions Court, Thalassery and was made over to the Additional Sessions Court (Adhoc)-III, Thalassery, where it was tried as S.C.No.362/2001.

3. In support of the prosecution case, PWs.1 to 11 were examined, Exhibits P1 to P12 were marked and MO1 series were identified. After the prosecution evidence, the accused persons were examined under Section 313 Cr.PC and the incriminating materials brought out during the trial were put to them, which they denied. No defence evidence was adduced by the accused. After appreciating the materials placed on record, the

learned Sessions Judge found the accused Nos.1 and 2, the appellants herein, guilty of the offences punishable under sections 324, 307 r/w. 34 of the IPC and sections 3 and 5 of the Explosives Substances Act. They were found not guilty of the offences punishable under sections 143,147,148 r/w. Section 149 of the IPC. The accused Nos.3 to 9, were found not guilty and they were acquitted by the learned Sessions Judge. Consequent to the finding of guilty, the appellants were sentenced to undergo rigorous imprisonment for two years each for the offence punishable under section 324 r/w Section 34 of IPC, rigorous imprisonment for 5 years each and a fine of Rs.10,000/- each with a default sentence to undergo simple imprisonment for six months each for the offence punishable under section 307 r/w 34 of IPC, rigorous imprisonment for 10 years each and a fine of Rs.20,000/- each with a default sentence to undergo simple imprisonment for one year each for

the offence punishable under section 3 of the Explosives Substances Act r/w. 34 of the IPC and rigorous imprisonment for five years each for the offence punishable under section 5 of the Explosives Substances Act r/w.34 of the IPC. It was ordered that the sentence shall run concurrently. This appeal is filed challenging the aforesaid conviction and sentence.

4. Heard Sri. S. Rajeev, the learned counsel for the appellants and Sri.Sudheer Gopalakrishnan, the learned Public Prosecutor for the State.

5. The learned counsel for the appellants submits that, the conviction and sentence imposed upon the appellants by the learned Sessions Judge is without any sustainable materials. According to him, the prosecution mainly relied on the evidence of PWs.1 to 6, which are mutually contradictory. It is also pointed out that there was a delay in recording the statement of the victim, PW2. It was further pointed out that, the incident occurred

between two rival political parties and the victim belonging to a political party which was in power at the relevant time and the entire investigation and prosecution was conducted in a biased manner so as to implicate the appellants on account of the political rivalry. The learned counsel for the appellants highlighted several discrepancies and embellishments in the evidence of the material witnesses examined by the prosecution.

6. On the other hand, the learned Public Prosecutor would oppose the contentions put forward by the learned counsel for the appellants. According to him, the evidence of the PW2-victim clearly supports the prosecution case. His version is corroborated by the evidence of PW4 and PW6, who were the eye witnesses. The evidence of PW1 and PW5 also supports the prosecution case as their version is also in tune with the evidence adduced by PWs.2,4 and 6. It is pointed out that, the discrepancies pointed out by the learned

counsel for the appellants are minor in nature. Hence, much emphasis cannot be given to such minor aspects of the case, as the evidence of the witnesses, when examined as a whole, would clearly reveal the sequence of events which led to the commission of the crime. In such circumstances, the dismissal of the appeal was sought.

7. I have carefully gone through the records placed before me. As mentioned above, the crucial evidence the prosecution relied on is the oral evidence of Pws.1,2 and 4 to 6, among the other witnesses. PW2 is the victim and PWs 4 and 5 are the persons who were along with the victim while the offences were committed. The crime was registered based on the First Information furnished by PW1.

8. Exhibit P1 is the First Information Statement which was recorded at 11.30 p.m. on 7.8.1999, and the Ext P1(a) FIR was registered on the basis of the same by PW9. In the F.I.

Statement, it was stated that on 7.8.1999 at about 9.30 p.m. while PW1 was in his house, he heard a sound of an explosion from the place near the public road at Vannathimoola between the Anganavadi and the bus shelter. Immediately thereupon, he found PW2 rushing to the house of PW1 by making a hue and cry that 'enne bomberinju kollunne rekshikkane'. He had injuries on his neck, face, chest and hands and the blood was oozing from his body. He reached there with the injuries sustained in a bomb explosion and also with cut injuries. When PW2 reached the house, PW1 gave water to him. Upon questioning, he informed that, on account of the political rivalry as PW2 questioned the BJP workers when one Satheesan belonging to CPM was attacked by the BJP workers in a meeting conducted on that day evening at Vannathumoola, with an intention to murder PW2, he was attacked by throwing a bomb upon PW2 and also inflicting cut injuries by using a sword. Even

though PW2 uttered the names of the accused persons, PW1 could not understand the said names, as the sound of PW2 was very feeble due to his weakness owing to the injuries sustained to him. Immediately after that, following PW2 (Bhaskaran), other persons namely Kumaran, Shaji, Aneesh and Hameed reached there. At the relevant time, in PW1's house, his son (Umeshan), his wife and his daughter were there. Immediately thereafter, his son Umeshan and others took PW2 in the vehicle of the said Hameed to the Thalassery Co-Operative Hospital and later, as they were informed that the injuries sustained by the victim were severe in nature, he was taken to Kozhikode.

9. His deposition as PW1, contained certain deviations from the FIS. In his testimony, PW1 had stated that, when he looked after hearing the sound of an explosion, he found PW2-Bhaskaran coming to his residence and when he reached the courtyard of his house, he held him and made him

sit on the veranda. The blood was oozing from all over his body. Immediately, he gave water to him. He was not able to talk clearly. By that time, Kumaran, Nanu, Aneesh, Shaji and Hameed came there and took PW2 to Thalassery Co-operative Hospital in the vehicle of Hameed. Thereafter, on that night, 9.45-10 P.M, police came there, and later he went to the police station and recorded Ext.P1 F.I.S. However, in the cross examination, he stated that when PW2 reached his courtyard, PW2 did not mention the names of any accused persons and the manner in which the said incident occurred was also not stated by him. He stated that PW2 did not tell him that the assailants threw bomb at him. He further stated that if it is so written in Ext.P1, it is not correct. He denied seeing any cut injuries on the body of PW2. It is also stated by him that the motive of the incident, as recorded in Exhibit P1, was not told by PW2. He denied having made any statement before the police

as recorded in Ext.P1, to the effect that PW2 Bhaskaran told him about the motive of the incident. He further stated in the cross-examination that the victim was taken to the hospital by his son Umesh and Hameed. When the police came to his house after the incident at night, PW1 and his wife alone were there. He stated that he is a sympathiser of CPI(M) party.

10. PW2 is the victim. He deposed that, on the date and time of the occurrence, he was going to his house and when he reached near Vannathimoola bus shelter, he saw his friends Anilkumar, Shaji, Babu and Valsan at the bus shelter. So he went to the bus shelter, and they were sitting in the bus shelter and chatting. Thereupon, the accused persons whose names were explicitly mentioned by him in his deposition came towards the bus shelter. The 1<sup>st</sup> accused came to him and asked whether 'Bhaskaranano'. PW2 stated 'yes' and he came out from the bus shelter, then

the 1<sup>st</sup> accused beat him on his back with a stick, and when he attempted to run and escape, the 2<sup>nd</sup> accused threw a bomb on his face by shouting 'kollada avane'. The bomb hit on the right shoulder and face on the right side. On account of the explosion, he sustained injuries. Immediately he fell down and raised hue and cry. Thereafter, he ran to the house of the PW1. When people started coming from all parts after hearing the sound of explosion, the accused persons ran away. Upon reaching the house of PW1, he fell down in the courtyard of his house. PW1 held him and gave him water. Immediately thereafter, he was taken to Thalassery Co-operative hospital by Umeshan, Kumaran, Nanu, Shaji etc. in the jeep of Hameed. From Thalassery Co-operative Hospital, after administering first aid, he was taken to Medical College Hospital, Kozhikode, in an ambulance on the same day. He was admitted at Medical College Hospital, Kozhikode, for a period of one month. He

admitted that he was a CPI(M) worker and accused were BJP/RSS workers. He suggested the motive as the quarrel occurred between him and one Dineshan and Rameshan, on account of certain issues that occurred in a public meeting at Vannathimoola where one Reghuthaman was attacked by BJP workers. He identified the accused. He further stated that he could identify the accused persons, as he had a torch light with him at the relevant time, and he flashed it. Besides the same, there was a light at the gate of the house of PW1 as well. He also gave the details of the place of the incident. He further stated that he did not state to PW1 that somebody hit him with a sword. According to him, after the incident, he was in a semi-conscious stage, and he attained consciousness after he reached the hospital. He further stated that he did not mention about the assailants to the doctor. He was questioned by the police after one week of the incident, and the names of the accused

persons were mentioned by him to the police. He denied the suggestion that he named the assailants after consulting with his political leaders. According to him, he told the police that he was taken to hospital by Nanu and Shaji. According to him, his doubt was that one K.P.Chandran was there among the assailants. He had deposed that he did not state to the police that among the assailants, he could identify K.P.Chandran. He further deposed that he does not know whether it was because K.P.Chandran was under treatment at the Mangalore hospital at the time of the incident, the name of K.P.Chandran was avoided by the police. He further stated that he has no case that one Ratheesan created trouble in the CPI(M) meeting conducted on that day. It was also stated by him that, he lost the torch, as it was thrown away due to the explosion. He admitted that he did not state anything about the light from the gate of the house of Anandan (PW1) to the police. He denied

the suggestion made by the learned counsel for the accused that he sustained injuries when a bomb exploded while he was making it.

11. PW3 is the witness to the Ext.P2 scene mahazar. He supported the prosecution case, but during the cross-examination, he had stated that according to his understanding, the bus shelter was the place of the incident and there were blood stains at the bus shelter. He also admitted that, he is a sympathizer of CPI(M). PW4(Shaji.K) is an eyewitness and is one of the crucial witnesses to the prosecution. He was the person who was there along with PW2 when the explosion took place. His evidence is to the effect that, at the relevant time, along with him Marachi Babu, Prakasan(PW3), Anil and Bhaskaran (PW2) were there in the bus shelter. While so, he found some people coming through the road; the 1<sup>st</sup> accused, who was one among them, asked whether Bhaskaran(PW2) is there. Then PW2 came out from the bus shelter with a

torch. Then the 1<sup>st</sup> accused beat PW2 with a stick, and he shouted 'Kollada". Then the 2<sup>nd</sup> accused threw a bomb at PW2, and that hit on the right side of the face of Bhaskaran(PW2). Along with 1<sup>st</sup> accused, 8 to 10 others were also there and he identified them as well. He identified all the accused persons who were on the dock. Immediately after the explosion, he ran away, and PW2 was behind him with injuries. Two more bombs were also thrown. Later, he saw PW2 at the steps of the house of PW1 and PW2 asked for water. People gathered there, and one T.K.Kumaran gave water to PW2. Immediately thereafter he was taken to hospital by Kumaran, Valsan and Babu in the jeep of one Hameed. He also stated the motive of the attack as the incident occurred in the meeting of CPI(M), and the quarrel occurred thereupon, while Reghuthaman was speaking. According to him, the said act of BJP workers was questioned by PW2, and the attack was due to the enmity on account of the

same. He stated that he could identify the accused persons when PW2 flashed the torch. From Thalassery Co-operative Hospital, PW2 was taken to Kozhikode Medical College Hospital and treated there. In the cross-examination, PW4 asserted that after he reached the residence of PW1, PW2 reached there. On the next day, his statement was recorded by the Police. When PW4 entered the bus shelter, Anil, Babu and Prakashan were also there and PW2 reached thereafter. He stated that he has nothing to say if the presence of Prakashan is not seen recorded in his statement given to the Police. He reiterated in the cross-examination that it was PW2 who flashed the torch and did not state to the police that he (PW4) flashed his torch at the relevant time. It is further explained by him that if it is seen recorded in the statement made before the police that he flashed the torch light and found the 1<sup>st</sup> accused, he has nothing to say. He also explained that if it is not recorded in

his statement made before the police that it was PW2 who flashed the torch, he has nothing to say. He further stated that there were three explosions, and he was in the bus shelter at the time of first explosion, and he ran away after that. In cross examination, it was stated that, he reached the residence of PW1 before PW2 reached there. Even before (PW2) Bhaskaran reached, PW4 told PW1 that PW2 sustained injuries due to throwing a bomb by the accused persons. Pw4 was also admitted as an active worker of CPI(M). He further stated that, the police came to PW1's house on the date of the incident by 10 p.m. He was present when PW1 told the incidents to the police. He further clarified that, on that day at 10 p.m., the police came to the place of the incident and then went to PW1's house. There were blood stains at the home of Anandan (PW1) and they have shown it to the police.

12. T.K.Kumaran (PW5) is the person who

reached the house of PW1 upon hearing the sound of the explosion. He stated that he heard the sound of bomb explosion three times. Upon reaching the house of PW1, he found Bhaskaran lying on the verandah of the house and blood was oozing from his body. Immediately, they got the jeep of Hameed and PW5 himself, Nanu, Valsan and Prakasan, took PW2 Bhaskaran to Thalassery Co-operative Hospital. While taking PW2 to the hospital, PW2 told PW5 in jeep that he sustained injuries due to throwing a bomb. He did not tell the name of the person who threw the bomb at him. In the chief examination, he stated that Bhaskaran (PW2) told him about the incident while he was in the jeep, later, he clarified in the cross-examination that he told about the incident while he was being taken to the hospital and not in the jeep. According to him, PW2 had stated that he sustained injuries in a bomb explosion at the bus shelter near Anganavadi. But he did not mention the name of the assailants.

He denied having made any statement to the police to the effect that on the way to the hospital, PW2 told him that, it was Kallen Rameshan, Kumar, Ashokan, Shasi etc. assaulted him. He also admitted that, he was a CPI(M) worker. He denied the suggestion that PW2 sustained injuries while handling the bomb.

13. PW6 (Valsan) is another eye witness who was there along with PW2 at the relevant time. According to him, at the relevant time, he was sitting along with PW2, Anilkumar and Shaji in the bus shelter. Then the 1<sup>st</sup> accused came with a gang of about ten persons and asked 'Bhaskaranalle'. Then PW2 flashed the torch and he entered the road from the bus shelter. One person from the gang shouted 'Kollada avene', then the 2<sup>nd</sup> accused threw a bomb that hit the right side of the face of PW2 and exploded. Immediately, all of them ran away and while running away, he heard the explosion of two more bombs. He stated that he could identify

the gang when PW2 flashed the torch. Thereafter, they ran towards the house of PW1. After some time, PW2 also came there, and PW1 gave water to Bhaskaran. Thereafter they got a jeep and took Bhaskaran to Thalassery Co-operative Hospital. After giving blood to Bhaskaran, he was taken to Medical College Hospital, Kozhikode. PW6 further stated that he also had a torch with him, and it was in the light of the torch flashed by him and Bhaskaran, he identified the accused persons. He also admitted that he was a sympathiser of CPI(M). He stated that, he did not tell the police that he had a torch with him and seeing the persons coming, flashed the torch. He also stated that after he reached PW1's house, Bhaskaran reached there. He further stated that in the jeep, he told the names of assailants to the others. He further stated that from the hospital, the police recorded what he stated about the incident and the name of the assailants and according to him, that was on

7.8.1999 before 10.30 p.m.

14. PW7 was the doctor who examined PW2. The wound certificate was marked through him as Exhibit P3. He described in detail the nature of injuries sustained by PW2 which are mentioned in Exhibit P3 as well. According to him, the cause of injuries could be due to the explosion of bomb. He stated that the history of injury was mentioned as alleged bomb attack by identifiable BJP activists at Vannathimoola. According to him, the names of the assailants were not mentioned to him either by patient or bystander.

15. PW8 is the Village Officer who prepared Exhibit P4 site plain in response to Exhibit P2 scene mahazar.

16. PW9 is the Head Constable who recorded the F.I. statement given by PW1. According to him, they got information at 11.30 p.m. on that day, as it was reported by PW1. He denied that they got information at 10 p.m. itself and had gone to the

place of the incident and recorded the statement of PW1. He also denied that they had gone to Thalassery Co-operative hospital and recorded the statement of PW6 at 10.30 p.m. He confirmed that while recording Ext.P1, PW1 told him that he was cut with a 'vadival", (a sword). According to him, PW1 also stated that in the CPI(M) committee, meeting speaker was assaulted by one Ratheesan and he was assaulted by CPI(M) workers and it was on account of such enmity that PW2 was attacked.

17. PW10 was the Sub Inspector of Police, Koothuparamba Police Station at the relevant time. He conducted the initial investigation of the said case. Scene Mahazar was prepared by him on the next day of the incident. He questioned some of the witnesses and recorded the statement, and the further investigation was conducted by PW11. He stated that, he did not see any blood stain in the bus shelter or its premises. It was clarified that even in scene mahazar, the place of incident was

shown as 70 meters of north-east of the northern end of bus waiting shelter. But actually, it was a mistake, and the correct distance is 7 meters. From the place of incident he seized wet jute threads and paper pieces from the place of incident. He questioned CW5 K.Shaji, CW3 Prakashan, CW4 Umeshan and CW6 Vikas. In the FIS, it is seen that Umeshan was one among the persons who took PW2 to the Thalassery co-operative hospital with an injury. He clarified that, in the statement given by said Umeshan, he stated that he came to know of the incident on the morning of the day on which he prepared scene mahazar, i.e. on the next day of the incident. PW10 further stated that, in the statement of PW4, he did not state that when he reached the bus shelter, Babu, Anil and Valsan were there. According to him, PW4 also did not state that Prakasan was also there in the bus shelter. PW5 did not state that the 1<sup>st</sup> accused shouted the word 'Kollada' and beat Bhaskaran with

stick.

18. PW11 was the Circle Inspector of Police, Kollam Police Station, who conducted further investigation of the case. He obtained prosecution sanction from the District Collector for the offences under the provisions of Explosives Substances Act. After completing the investigation, he submitted a charge sheet against the accused persons. According to him, PW2 stated to him that after he fell down with injuries, PW1 and his son Umeshan got him up. PW2 did not say that after the incident, on his way to the house of PW1, he fell down with injuries on the way and they took him to the house of PW1. PW2 did not state that the 1<sup>st</sup> accused beat him with a wooden stick. PW2 also did not say that P.K.Nanu and Shaji were taken him to the hospital. PW2 stated in his statement that he could identify one K.P.Chandran among the assailants. PW2 did not note that, it was in the light from the gate of

PW1 that, he identified the accused persons. PW2 also did not state one Rameshan created a problem in the CPI(M) meeting. In his deposition, PW11 also deposed about the statement given by PW5 Kumaran to him. PW5 did not state that when he reached the house of PW1, he had seen PW2 with bleeding injuries. In fact, what PW5 stated was that he saw one person coming slowly to the house of PW1 by walking. According to PW11, PW5 did not state that PW2 told him that he sustained injuries on a bomb explosion at the bus shelter. According to PW11, PW5 further stated that PW2 told PW5 on the way to the hospital that, Kallen Rameshan, Reghuvaran, K.K.Kumaran, Sukumaran, Kandiyath Ashokan and Shasi were the persons who injured him. PW6 did not state that he had seen 10 persons coming towards them when he and Bhaskaran (PW2) flashed the torch. He denied having recorded any statement of PW6 on the day of the incident before 10.30.P.M, while they were at Thalasserry Co-

operative Hospital.

19. These are the depositions of witnesses relied on by the prosecution. The specific case put forward by the learned counsel for the appellants is that there are serious discrepancies and contradictions in the evidence of the material witnesses. I have carefully gone through the contents of the depositions of the said witnesses, and I find some force in the contention put forward by the learned counsel for the appellants in this regard. The discrepancies and contradictions start from the FIS and the deposition of PW1 itself. As mentioned above, in the FIS, the specific statement given by PW1 was to the effect that immediately upon reaching the house, PW2 revealed the nature of the incident, the motive behind the same etc., to PW1. Although, PW2 mentioned the names of the accused persons, PW1 could not understand the names as he said the names in a feeble voice due to physical weakness

owing to the injuries. The version given by PW1 when he was examined in the court was completely different. He specifically denied that PW2 revealed the details of the incident and the motive behind the same. Another crucial aspect to be noticed in this regard is that, according to PW1, the victim was taken to the hospital in the jeep of Hameed by his son Umeshan and others. However, as per the evidence of PW10, Sub Inspector of Police, Umeshan had given a statement before him to the effect that he came to know about the incident on the following day. Apart from the above, as per the evidence of PW4, PW2 was taken to the hospital by Kumaran, Valsan and Babu in the jeep of Hameed. He did not mention the name Umeshan. PW5 Kumaran was the person who accompanied the victim to the hospital. His evidence is to the effect that, the victim was taken to the hospital by him along with Hameed, Nanu, Valsan and Prakashan. The names of Umeshan

and Babu were not mentioned by PW5. PW6 is Valsan. According to him, the victim was taken to the hospital by himself, Kumaran, Nanu and Umeshan. The name of Prakashan is not mentioned. From the above it is evident that, there are serious discrepancies/differences as to the persons who accompanied the victims to the hospital.

20. There are certain other discrepancies in the manner in which the sequence of events occurred. According to PW1 and PW2, immediately after the explosion, PW2 reached the house of PW1. Thereupon, PW1 held PW2 and gave water. However, the evidence of PWs.4 and 6 is to the effect that they came to the house of PW1 immediately after the explosion and PW2 reached thereafter. On the other hand, the specific version given by PW1 and PW2 is to the effect that it was PW2 who reached the place first and all the other persons reached thereafter. This is yet another discrepancy. Now when coming to the incident that

occurred, certain other differences can also be seen. According to PW2, when the incident occurred, he was sitting in the bus shelter with Anilkumar, Shaji, Babu and Valsan. According to PW4 (Shaji), at the relevant time, PW2, Babu, Prakashan and Anil were there. The name of Valsan was not mentioned by PW4, and instead, he mentioned the presence of Prakashan. The evidence of PW2 is contrary to the same. He did not mention the name of Prakashan instead, he mentioned the name of Valsan. The evidence on this point given by PW6 Valsan is to the effect that at the relevant time, he was sitting along with PW2, Anilkumar and Shaji. The presence of Prakashan is not mentioned by him.

21. With regard to the source of light, which enabled the witnesses to identify the accused also, there are certain glaring discrepancies. PW2 had clearly stated that, immediately when the 1<sup>st</sup> accused called him, he came out of the bus shelter

flashing a torch light which was in his hand. He identified the accused persons in the light of torch light and also in the light from the gate of PW1. First of all, it has come out in the evidence of PW11 that, while the statement of PW2 was being taken, he did not mention about the light from the gate of PW1. Similarly, PW6 stated that, he could identify the accused person as he flashed the torch in his hand and also in the light of the torch flashed by PW2. The existence of torchlight in the hands of PW6 is not mentioned by PW2.

22. Another crucial discrepancy is that, PW5 Kumaran stated that while being taken to the hospital, PW2 told him in the jeep that he sustained injuries due to throwing of bomb. But PW2 did not disclose the names of the assailants. During cross-examination, PW5 had stated that PW6 Valsan also accompanied him to the hospital along with them and PW6 did not tell about the incident of the assailants in the jeep. PW5 further

mentioned that PW6 told the name of the assailants to the doctor. The evidence of PW6 on this point is to the effect that he revealed about the incident to the others while he was in the jeep. He also stated that he did not tell the names of the assailants to the doctor. PW7 is the doctor who examined PW2. He said that neither PW2 nor the persons who accompanied him revealed the name of any of the assailants. Thus when the evidence of the aforementioned witnesses is taken into consideration on this point, it can be seen that there are inconsistent versions about the same.

23. Another aspect is that, as per the statement given by PW4, the police came to the residence of PW1 at about 10 p.m. on the date of incident. PW4 also stated that the police initially came to the place of occurrence at 10 p.m. and thereafter went to the house of PW1. PW9 is the Head Constable who recorded the FIS given by PW1. According to him, the police came to know

about the incident only at 11.30 p.m. on that day when PW1 went to the police station and gave the First Information Statement. He denied that the police visited the place of the incident and recorded the statement of PW1 at 10 p.m. on that day. Similarly, PW6 also stated that he revealed about the incident while he was at Thalassery Co-operative Hospital at 10.30 p.m. on that day to the police. However, PW10 stated that, no such statement have been recorded at 10.30 p.m. on that day. PW9 had also stated that, before the information was furnished by PW1, they were not aware of the incident. This is yet another inconsistency which affects the credibility of the prosecution case.

24. The learned counsel for the appellants relies on various judgments regarding the credibility of the evidence of eye witnesses when there are inconsistencies/contradictions in their evidence. In **Krishnegowda and Others v. State of**

**Karnataka [AIR 2017 (13) SCC 98]** at paragraph 20 of the decision, it was observed as follows:

*"20. Generally in the criminal cases, discrepancies in the evidence of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the Court, but if these contradictions create such serious doubt in the mind of the Court about the truthfulness of the witnesses and it appears to the Court that there is clear improvement, then it is not safe to rely on such evidence."*

In paragraph 23 of the said decision, it was held that the variations in the evidence of prosecution witnesses in respect of the exact time when the incident had happened, who were the people present at the scene of offence, the time of police reaching the spot etc. are matters fatal to the prosecution case. The learned counsel for the appellants further places reliance upon **State of Andhra Pradesh v. Pullagummi Kasi Reddy Krishna Reddy [2018(7)SCC 623]**. It was held by the Hon'ble Supreme Court in the said decision that oral evidence in the cases of factional fights has to be scrutinized carefully in view of the tendency of the

implication of innocent persons belonging to the opposite group. In this case, it is evident from the materials placed on record that, the incident occurred owing to rivalry between two political parties viz. CPI(M) on one side and BJP-RSS workers on the other side. The victim and all the material witnesses other than the official witnesses were admittedly the members or sympathizers of CPI(M), whereas all the accused persons were BJP-RSS workers. The motive of the act is alleged to be that of rivalry on account of the quarrel that occurred between the CPI(M) and BJP-RSS workers during a meeting of CPI(M) on that evening. Thus in such circumstances, as held by the Hon'ble Supreme Court in **Pullagummi Kasi Reddy Krishna Reddy's** case(supra), as all of the independent witnesses including the victim belong to a particular political party, and the accused belong to the rival political party, the evidence has to be scrutinized with care and

caution. In such circumstances, the discrepancies and contradictions as mentioned above have to be given much more emphasis. When considering those discrepancies in the light of the principles laid down by the Hon'ble Supreme Court in the aforementioned decisions, it appears to be fatal to the prosecution case. The contradictions referred to above are relating to the manner in which the incident occurred, persons who were present at the time of occurrence, the persons who accompanied the victim of the hospital, the details of the persons who furnished the information to the police etc. When considering the nature of discrepancies with regard to the aforesaid aspects, the same cannot be treated as minor discrepancies, but on the other hand, those are something which affects the credibility of the prosecution case as such. The fact that all the independent witnesses whose depositions are mutually contradictory in several material

points, were belonging to a rival political group as against the accused persons also compels this Court to give more weightage to such inconsistency.

25. Another contention raised by the learned counsel for the appellants is with respect to the delay in recording the statement of the victim and also in disclosing the name of the accused person. It is true that, in this case, FIS was given by a person who did not witness the incident, and it is clearly stated in the FIS that the names of the assailants were not properly communicated to him by the victim. PW6 has stated that he revealed the names of the assailants to the others while in the jeep. However, PW5 deposed that, while travelling in the jeep, the PW6 did not tell about the incident or the assailants. PW5 further stated that PW6 revealed the name of the assailants to the doctor at the time of the examination which was not the

case of PW6 when he was examined. Evidence of PW8 doctor also indicates that no one has revealed the names of the assailants. Thus, there are contradictions on this point as well. It is also a crucial aspect that when PW2 was taken to the hospital, PW5 and PW6 were aware of the names of the assailants, but yet no one furnished the details of the assailants to the doctor. Similarly, PW6 further states that he furnished the details of the incident and the names of the assailants to the police at 10.30 p.m. on that day while he was at Thalassery Hospital. But the said fact was denied by PW9, the Police Officer who recorded the FIS. Similarly, it is also discernible from the evidence of PW2 that his statement was recorded after one week, and according to him, he revealed the names of the accused only before the police when that statement was taken. In this case, the accused have a definite case that, since the incident

occurred due to the political differences between two rival parties and the political party to which PW2 and other witnesses belonged was in power at the relevant time, the investigation was conducted in such a manner as to implicate the persons in the opposition parties with false allegations. Considering the fact that, all the witnesses are followers of a rival political party, the aforesaid aspects gain importance. The fact that despite having knowledge of the details of the accused persons, the same was not immediately revealed is something fatal to the prosecution case. In **Harbeer Singh v. Sheeshpal and Others [(2016)16 SCC 418]**, it was observed by the Hon'ble Supreme Court in paragraph 15 as follows:

*"15. We have given careful consideration to the submissions made by the parties and we are inclined to agree with the observations of the High Court that PW 3 and PW 9 were not witnesses to the alleged conspiracy between the accused persons since not only the details of the conversation given by these two prosecution witnesses were different but also their presence at the alleged spot at the relevant time seems unnatural in view of the physical condition of PW*

9 and the distance of Sheeshpal's Dhani from Sikar Road. Besides, it appears that there have been improvements in the statements of PW 3. The Explanation to Section 162 CrPC provides that an omission to state a fact or circumstance in the statement recorded by a police officer under Section 161 CrPC, may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every improvement is not fatal to the prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. (See *Ashok Vishnu Davare v. State of Maharashtra* [*Ashok Vishnu Davare v. State of Maharashtra*, (2004) 9 SCC 431 : 2004 SCC (Cri) 1468] ; *Radha Kumar v. State of Bihar* [*Radha Kumar v. State of Bihar*, (2005) 10 SCC 216 : 2005 SCC (Cri) 1507] ; *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* [*Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375] and *Baldev Singh v. State of Punjab* [*Baldev Singh v. State of Punjab*, (2014) 12 SCC 473 : (2014) 6 SCC (Cri) 810] .) In our view, the High Court had rightly considered these omissions as material omissions amounting to contradictions covered by the Explanation to Section 162 CrPC. Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of PW 3 and PW 9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for condolence (शोक) meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard."

In *Shahid Khan v. State of Rajasthan* [(2016) 4 SCC 96] there was a delay of three days in recording the statement of the relevant witnesses. After

considering the aforesaid discrepancy in the light of the material contradictions of the witnesses examined, it was found by the Hon'ble Supreme Court that it is unsafe to rely upon their evidence to hold the accused guilty of the offences. Thus, in the light of the principles laid down in the above mentioned decisions, the delay in recording the statement of the witnesses is fatal to the prosecution.

26. There is yet another aspect. PW6 has clearly stated that he gave a statement to the police at 10.30 p.m. on the very same day of the incident while he was at Thalassery Hospital. It was contended by the learned counsel for the appellants that if that be so, the police should have registered the FIR on the basis of the information furnished by PW6, who was the eye witness to the incident but instead, they registered the FIR based on PW1 who was not at all an eye witness at a later point of time.

Reliance was placed on **State of M.P. v. Ratan Singh and Others** [2020(12)SCC 630] rendered by the Hon'ble Supreme Court. It was observed by the Hon'ble Supreme Court that when suppression of the actual FIR, coupled with the conflicting versions of the so-called eye witnesses relating to different scenes of offence and different stories collectively would reveal that the prosecution wanted to suppress and suppress the actual incident and culpability of real culprits. Thus, if the evidence of PW6 on this point is believed, it has to be concluded that, there is suppression of the first information furnished by an eyewitness and therefore there is a discrepancy in the registration of the FIR. However, even though PW6 claimed to have furnished information to the police with respect to the incident, it was denied by the police officers examined as PW9 and PW11. This fact is yet another addition to the series of

discrepancies. Thus, as mentioned above, if the evidence of PW6 is accepted, it makes out a case of suppression of actual First information by an eyewitness, and if the said evidence of PW6 is doubted in the light of the denial of the said fact by PW9 and PW11, then it becomes a discrepancy in the prosecution evidence. In either case, the prosecution case becomes doubtful. Moreover, when the said aspect is taken into consideration along with the conflicting versions of the incident by the material witnesses, as discussed in the above paragraphs, I find the prosecution case is shaky and not at all safe to convict the accused.

27. Thus, when considering all the materials placed on record, it could be seen that even though the prosecution makes out a probable case or a case in which it can be concluded that the prosecution case may be true. However, that level of degree of proof is inadequate for conviction.

It is the bounden duty of the prosecution to establish the case beyond reasonable doubt and by ruling out every hypothesis of innocence of the accused. In **Ashish Bathem v. State of Madhya Pradesh [(2002) 7 SCC 317]**, it was observed by the Hon'ble Supreme Court in paragraph 8 as follows:

*"8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusions" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."*

Thus, suspicion, however strong or probable it may be, is not sufficient to hold the accused guilty. The distance "may be true" to "must be

true" has to be covered by the prosecution by adducing proper and positive evidence.

28. In this case, after considering all the materials placed on record, in the light of the principles laid down by the Hon'ble Supreme Court in the decisions referred to above, I find that the prosecution could not establish the guilt of the accused persons beyond a reasonable doubt. The decision rendered by the learned Sessions Judge was without properly taking into account the aforesaid crucial discrepancies and the principles laid down by the Hon'ble Supreme Court. In such circumstances, I am of the view that the interference in the judgment rendered by the learned Sessions Judge is required, and I do so.

In the result, this appeal is allowed. The judgment dated 30.08.2006 in S.C.No.362/2001 rendered by the Additional Sessions Judge (Adhoc) III, Thalassery, is hereby set aside. The

appellants who are accused Nos.1 and 2 are found not guilty, and accordingly, they are acquitted of all the charges.

Sd/-

ZIYAD RAHMAN A.A.  
JUDGE

pkk