

A KILAKKATHA PARAMBATH SASI & ORS.

v.

STATE OF KERALA

(Criminal Appeal No. 1383 of 2003)

FEBRUARY 4, 2011

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[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

C *Penal Code, 1860 – s.302 r/w s.34 – Accused persons allegedly formed themselves into an unlawful assembly and assaulted PW-1 and his brother with sword, axe and knife due to political animosity – PW-1 was injured while his brother died at the hospital – Trial Court acquitted all the seven accused – High Court, however, reversed the acquittal of four*
D *accused (the appellants) – Justification of – Held: Justified – The findings of the High Court as to the spontaneity of the FIR are fully endorsed – PW-1 is an injured witness and his presence, therefore, cannot be disputed – PW-1 was not an active political worker, and hence question of false*
E *implication at his instance, on account of political rivalry, appears to be remote – Even otherwise, it is difficult to believe that PW-1 would have left out the true assailants of his brother – The prosecution story was entirely correct and was fully supported by the evidence of PW 2 and two independent*
F *witnesses (PWs 3 and 4).*

Appeal against acquittal – Scope for interference – Held: The High Court should not interfere in an appeal against acquittal save in exceptional cases – Interference in such an appeal is called for only if the findings of the Trial Court is not borne out by the evidence and is perverse.
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According to the prosecution, the accused persons belonged to the Bhartiya Janta Party whereas PW-1 and his brother were workers of the Congress Party, and that

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on account of political animosity, the accused persons formed themselves into an unlawful assembly and assaulted PW-1 and his brother with sword, axe and knife, when they just got out of a bus at the bus stand. PW-1 was grievously injured while his brother died at the hospital.

The dead body of PW-1's brother was subjected to post-mortem, on which PW-7, the doctor, found 58 injuries thereon, most of them incised and cutting wounds, some of them of huge dimensions. PW-1 was examined by the doctor PW-8, and three incised wounds were found on him as well.

The accused were charged for offences punishable under Sections 147, 148, 307, 324 and 302 read with Section 149 of the IPC. The Trial Court acquitted all the seven accused. On appeal, the High Court held that the judgment of the trial court was perverse and accordingly reversed the acquittal of four accused (the appellants), who were convicted under Section 302 r/w Section 34 IPC and sentenced to life imprisonment, whereas the acquittal of other three accused was maintained.

In the instant appeals, the conviction of the appellants was challenged on various grounds. It was contended by the appellants that the facts of the case did not justify interference by the High Court in an appeal against acquittal.

Dismissing the appeal, the Court

HELD: 1. The High Court should not interfere in an appeal against acquittal save in exceptional cases, and that interference in such an appeal is called for, only if the findings of the Trial Court is not borne out by the evidence and is perverse. However, it is equally well established that the High Court can re-appraise the

A evidence so as to find out as to whether the view taken
by the Trial Court was justified or not and if it finds that
the Trial Court's findings were not possible on the
evidence, interference must be made failing which there
would be a travesty of justice. In the instant case, the
B High Court was fully justified in interfering in this matter
under the guidelines and principles in Arulvelu's case.
[Para 10] [551-E-G]

*Arulvelu and Anr. v. State represented by the Public
Prosecutor and Anr. [2009 (10) SCC 206] – referred to.*

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2. The incident happened at about 2.30 p.m. and the
police had arrived at the place of occurrence an hour later.
PW-1 and the deceased were taken to the Government
Hospital, Thalassery where the deceased was examined
D at about 3.40 p.m. but referred to the Medical College,
Kozikhode as his injuries were grave whereas PW-1 was
admitted to the Government Hospital. It has also come in
the evidence that the ASI, who had taken the injured to
the Hospital at Thalassery, was on law and order duty but
E he nevertheless had gone to the Kuthuparamba Police
Station and given information about the incident in that
Police Station. The police had arrived, thereafter, at the
General Hospital and recorded PW-1's statement at 5.30
p.m. and on its basis, the formal report had been
F registered at 7.15 p.m. and immediately forwarded to the
Magistrate who received it at 10.00 p.m. The Trial judge
has, however, found fault in this matter by observing that
one of the persons accompanying the injured could have
gone to the police station and given a statement. This
G observation is farfetched and it does not take into
account the realities of life. The deceased had suffered
as many as 58 injuries, most of them incised and cutting
wounds with large quantities of blood spilling out, and
was in a very serious condition and the first anxiety of
everybody, including the attendants and the doctors, was
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to see him to a hospital. He also died at about 4:00 p.m. Therefore, the findings of the High Court as to the spontaneity of the FIR are fully endorsed. [Para 11] [552-A-H; 553-A]

3. PW-1 is an injured witness and his presence, therefore, cannot be disputed. Even as per the defence put up by the accused, PW-1 was not an active worker of the Congress Party. The question of false implication of BJP workers at his instance on account of political rivalry, therefore appears to be remote. Even otherwise, it is difficult to believe that PW-1 would have left out the true assailants of his brother. The Trial Court had however given a finding that in the FIR, PW-1 had given the names of only four of the accused (who are the appellants) whereas he had added three more subsequently by way of a supplementary statement and as such, his story could not be believed. Likewise, the Trial Court had found some doubt as to the story put up by PW-1 as to his medical examination in the Thalassery Hospital where he had told the doctor that he and his brother had been injured by BJP workers but had not divulged the names to him. The Trial court has supported this finding by referring to the doctor's evidence that had the names been given, he would have noted them down in the medical record. This observation is farfetched. First and foremost, it is not the function of the doctor to record the names of those who may have caused the injuries to the person who is being examined by him. On the contrary, the fact that the statement about the involvement of BJP had been made at about 4.00 p.m. in the Thalassery Hospital suggests that the prosecution story was entirely correct. Also PW-1 has given full details as to how he and his brother had happened to meet by chance in the bus and the manner in which the incident had happened at Ayithara bus stand. [Para 11] [553-B-H; 554-A-B]

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A 4. The prosecution story is also fully supported by
the evidence of PWs 2,3 and 4. The High Court has relied
on PW-1's statement with respect to the presence of PWs
3 and 4, but expressed some doubt as to the presence
of PW-2. PW-2 was one of those who had taken the
B deceased and PW-1 to the Thalassery Hospital after the
incident, as his name figures as being present in the
Hospital at the time of the examination of the injured.
Merely therefore because PW-1 does not refer to PW's
presence in the FIR does not mean that he was not
C present. PWs 3 and 4 are independent witnesses.
Significantly, PW-1 and PW-2 did state that PW-3 was also
traveling in the same bus, PW-3 also gave a categoric
statement that she had seen the deceased and PW-1 in
D the bus and had witnessed the incident outside Babu's
shop at the Ayithara bus stand. There is absolutely no
doubt with regard to the presence of PW-4 who is a truly
independent witness. He stated that he was an auto-
rickshaw driver and had come to the place to get his auto-
rickshaw repaired and had seen the incident as it
E happened. There is absolutely no reason as to why his
statement should be discarded. [Para 12] [554-C-G]

F 5. It is true that PW-15, the Investigation Officer, did
testify that he had taken into possession the 'Trip-Sheet'
for the route which the bus had taken. Even assuming,
however, that the bus crew ought to have been examined
as that would have greatly enhanced the value of the
prosecution evidence, but their non-examination case
would not mean that the entire prosecution story would
fall through as there were several other credible
G witnesses including an injured one. [Para 12] [554-H; 555-
A-B]

Case Law Reference:

2009 (10) SCC 206

referred to

Para 10

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No.1383 of 2003.

From the Judgment & Order dated 23.05.2003 of the High
Court of Kerala at Ernakulam in CrI. Appeal No. 198 of 2000.

U.R. Lalit, E.M.S. Anam, Fazlin Anam for the Appellants. B

Dinesh Dwivedi, G. Prakash, Beena Prakash, V. Senthil
for the Respondent.

The Judgment of the Court was delivered by C

HARJIT SINGH BEDI, J. 1. The prosecution story, given
by PW-1 Shaji, who is the brother of the deceased, Sathyan is
as under:-

At about 1:45 p.m. on the 24th March, 1994, Shaji (PW- D
1) was to travel by bus on the route from Thalassery to
Vataparra via Ayitharapuzha and Kuthuparamba. He got into
the bus at Ayitharapara. As he entered the bus, he found his
brother Sathyan also traveling by the same bus and as there
was a vacant seat besides him, he too sat down on the seat. E
10 or 15 other passengers including Prakasan (PW-2),
Shyamala (PW-3) and the accused Sasi and Dasan were also
in the bus. At about 1:55 p.m. the bus reached Ayitharapuzha
but before PW-1 and the deceased could get down from the
bus, Sasi and Dasan shouted out that they would be murdered
and on saying so they pushed PW-1 and Sathyan out on to the F
road. Three other persons then ran towards the bus from
Babu's shop which was alongside the road. Ambu and
Perutheri-accused handed over a sword each to Sasi and
Dasan whereupon Sasi inflicted injuries on the hands of Shaji. G
Ashokan-accused who was armed with an axe caused injuries
on the face and head of Sathyan whereas accused Babu
armed with a long knife caused injuries on the left hand of
Sathyan and Dasan inflicted a stab injury with a sword on the
stomach of Sathyan. The other accused also inflicted some H
injuries on the deceased as well as on PW-1. As per PW-1's

A statement, he had recognized all the seven accused who had inflicted injuries on him and his brother. A police jeep soon arrived at the spot and PW-1 and Sathyan were taken to Kuthuparamba Hospital but as they were in critical condition, they were removed in a car and brought to the Thalassery Government Hospital where both of them were examined by the Doctor and while PW-1 was admitted therein Sathyan was referred to Kozhikode Medical College where he soon died. At about 5:30 p.m., the police arrived in the Thalassery Hospital and recorded the statement of PW-1 leading to the recording of the FIR referring to seven assailants but naming only four, and suggesting that the murder was the outcome of political rivalry as the accused belonged to the Bhartiya Janta Party whereas the deceased and PW-1 were workers of the Congress Party. In the FIR it was also noted that the incident had been seen by Prakasan (PW-2) and Manoharan (PW-4). Sathyan's dead body was also subjected to a post-mortem, and PW-7 the doctor, found 58 injuries thereon, most of them incised and cutting wounds, some of them of huge dimensions. PW-1 was also examined for the injuries by the doctor PW-8, and three incised wounds were found on him as well. On the completion of the investigation, the accused were charged for offences punishable under Sections 147, 148, 307, 324 and 302 read with Section 149 of the Indian Penal Code.

2. The Trial Court held that though PW-1 was an injured witness, yet he could not be believed as in the FIR he had named only four accused i.e. Sasi, Dasan, Ashokan and Babu, although, he had referred to three others and had in a supplementary statement to the circle inspector named these three as well and that he had also admitted to the deep political animosity between the two groups, which cast a doubt on his story. The court also held that the police had admittedly carried PW-1 and his fatally injured brother in the police jeep to the hospital, but as the police officer had made no attempt at recording the statement of PW-1, at that stage, the prosecution story was, apparently, an after-thought and could not be relied

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upon. The Court also observed that the manner in which the injuries had been caused by all the accused, could not be believed as the eye-witnesses were discrepant on this material aspect. The Trial Court went through the evidence of PW-2, Prakasan and found that he had not been able to explain his presence in the bus at the relevant time despite the fact that his presence had been specifically indicated in the FIR. The court then examined the evidence of Shyamala (PW-3), one of the other passengers in the bus, and observed that her presence too was doubtful as her name did not figure in the FIR. The court also found that PW-4, another eye-witness had deposed that he had been present at the bus stop at Ayithara near Babu's shop and that when the bus had stopped and the passengers were getting down, he had heard a great deal of shouting and had subsequently, witnessed the incident in which the four main accused-appellants herein caused a large number of injuries to the deceased and PW-1, but as PW-4 was admittedly an autorickshaw driver operating from Kuthuparamba and as his autorickshaw was stationed at Kuthuparamba, the story projected by him that he had come to Ayithara to get it repaired, appeared to be doubtful. The court also opined that the eye-witness account was not substantiated by the medical evidence in the light of the fact that all the incised injuries appeared to bear clear-cut margins whereas the prosecution had suggested that accused nos.5 to 7 had been armed with a crow bar and sticks.

3. The court also went into the evidence of the primary investigating officer PW-15 and opined that there appeared to be something remiss in the manner in which the investigation had been conducted by him. In conclusion, the Trial Court observed that :

"On an appreciation of the entire evidence available on record, I am to hold that the evidence of the alleged eye-witnesses PWs 1 to 4 are inconsistent regarding the weapon used and also the witnesses have improved their

- A version when they deposed before the Court. Several material points, which have not been stated to the police have been deposed before the court. I have no doubt in my mind that in this case the witnesses have not deposed before this court the real incident that happened.
- B Developments were made and therefore, I am unable to accept the version of the witnesses as true and correct. So also, the medical evidence is not in conformity with the evidence given by PW-2 and the case of the prosecution that murder of Sathyan and Shaji formed themselves into
- C an unlawful assembly and waited at the shop of the 4th accused Babu for the deceased to reach the place in the bus also cannot be believed. In this circumstance, I am to hold that the prosecution has not presented before this court the true incident in this case in which another youth has been murdered allegedly due to the political animosity.
- D Therefore, I am to hold that the prosecution has failed to prove the case convincingly against these accused.”

4. The Trial Court, accordingly, acquitted all the accused. An appeal was thereafter taken by State to the High Court. The
- E High Court re-examined the evidence taking note of the principle, now universally accepted, that if the view taken by the trial judge was reasonable and could possibly be taken on the evidence, no interference by the appellate court was called for as the presumption of innocence of an accused was
- F strengthened by an acquittal recorded by the trial court. The High Court then examined the evidence in the light of the above broad principle and observed that the incident had happened at about 2:30 p.m. and the injured had been removed first to the Kuthuparamba Government Hospital and then to the
- G Thalassery Government Hospital at 4:00 p.m. whereafter Sathyan had been referred to the Medical College at Kozhikode. The court noted that due to Sathyan's serious condition, his family had removed him to the Hospital at the earliest to save him and the FIR had been promptly recorded
- H at about 5:30 p.m. at the instance of Shaji (PW-1) in which the

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accused Sasi, Dasan, Ashokan and Babu, the appellants herein, had been named. The court then considered the evidence of the eye-witnesses and first examined the evidence of PW-1 who was admittedly an injured witness. The court noted that in the FIR, it had been recorded that Sasi and Dasan, two of the appellants and Prakasan (PW-2) and Shymala (PW-3) had been present in the bus when the incident had happened and that his graphic description fitted in the incident with the other circumstances. The court then went into the evidence of PW-2 who was alleged to be a close friend of the deceased and accepted the statement that at 10:00 a.m. on that day he and Sathyan had gone to a film show at Kuthuparamba and as they were to take lunch at home they had taken a bus to get back and when the bus had reached Ayithara bus stand, the incident had happened. He also stated that he too had been in the police jeep which had taken the injured to the hospital. The court also examined the statement of Shymala (PW-3) whose name had also figured in the FIR and the statement of Manoharan (PW-4), a truly independent witness, as he was standing near the shop of Babu to get his autorickshaw repaired and had no connection with either party.

5. In this background of the facts, the court observed that the findings of the Trial Court that there was a delay in the recording of the FIR was perverse and could not be accepted, the moreso as the special report had been delivered to the Magistrate at 7:50 p.m, the same day. The court also found that the first anxiety of the family and friends of the injured was to see them to a hospital and if an hour or two was taken in that effort it was but to be expected in the circumstances. The court also held that the presence of PW-1, who was an injured witness, could not be challenged, and as the dispute was apparently between two rival political parties, it would be difficult to believe that the true assailants would be left out and others involved instead. The court further observed that the evidence of PW-1 was corroborated by PW-2, PW-3 and PW-4 who were truly independent witnesses and though PW-2's name did

A not figure in the FIR but the fact that he was present when the injured had been removed to the hospital which was evident from the wound certificate, his presence had also to be accepted. The court finally found that the judgment of the trial court was perverse and accordingly allowed the appeal qua the appellants herein i.e. Sasi, Dasan, Ashokan and Babu whereas the acquittal of accused Nos.5 to 7 i.e. P. Sudhakaran, V. Sudhakaran and V. Raghu was maintained.

6. The High Court accordingly awarded a sentence of life imprisonment to the four appellants under Section 302 read with Section 34 of the Indian Penal Code.

7. That the matter is before us on these facts.

8. Mr. Lalit, the learned senior counsel for the appellants has raised several arguments before us. He has first argued that there was an unexplained delay in the lodging of the FIR and as there was admittedly serious enmity between the parties, this delay had been utilized by the prosecution to create a false story and to involve innocent persons. He has also been submitted that the High Court too had endorsed the finding of the Trial Court that three of the accused had apparently not been present which caused grave doubts on the veracity of the prosecution witnesses. It has also been pleaded that the eye-witness's account of the four eye-witnesses was discrepant inter-se and was also not supported by the medical evidence of PWs-7 and 8, the two doctors which clearly showed that the eye-witnesses had not been present at the spot. It has further been pointed out that the presence of PWs 2, 3 and 4 was even otherwise to be ruled out more particularly as the presence of PW-2 was not indicated in the FIR and that the best witnesses to depose for the prosecution were the crew of the bus who were not examined, although the investigating officer PW-15 had admitted that he had recovered the trip-sheet from them. In conclusion he has submitted that the facts did not justify interference in an appeal against acquittal.

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9. Mr. Dwivedi, the learned counsel for the State of Kerala, has however, controverted the above submissions and pointed out that the High Court had set aside the order of the trial court fully cognizant of the fact that it was a dealing with an appeal against acquittal wherein the High Court's interference was circumscribed and had observed that interference was called for as the judgment of the trial court was perverse. He has, further, submitted out that there was absolutely no delay in the lodging of the FIR and the finding of the trial court to the contrary, was perverse and could not be sustained on the evidence. It has further been pointed out that there could be no doubt as to the presence of Shaji (PW-1) who was admittedly an injured witness and the brother of the deceased, nor the other witnesses as they were truly independent ones and merely because PW-1 did not name all the seven accused at the first instance, was of no consequence at this stage as the three who had not been named, had been acquitted and were not in appeal before this court.

10. Before we go into the merits of the evidence, we must deal with the question of the High Court's interference in an appeal against the acquittal. It is true that in *Arulvelu and Anr. Vs. State represented by the Public Prosecutor and Anr.* [2009 (10) SCC 206], and a string of earlier & later judgments, it has been held that the High Court should not interfere in an appeal against acquittal save in exceptional cases, and that interference in such an appeal was called for only if the findings of the Trial Court were not borne out by the evidence and were perverse. It is however equally well established that the High Court can re-appraise the evidence so as to find out as to whether the view taken by the Trial Court was justified or not and if it finds that the Trial Court's findings were not possible on the evidence, interference must be made failing which there would be a travesty of justice. We are of the opinion that in the light of what follows, the High Court was justified in interfering in this matter.

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A 11. Mr. Lalit's primary argument is with regard to the delay
in lodging of the FIR. He has submitted that the incident had
happened at about 2.30 p.m. and as per the prosecution, the
statement of PW-1 had been recorded at about 5.30 p.m., but
B as the special report had been delivered to the Magistrate at
about 10.00 p.m., it appeared that the FIR statement had been
recorded at about 7 or 7.30 p.m. and that too after due
deliberation.

It is true, and if it is so found, that a FIR has been lodged
belatedly, an inference can rightly follow that the prosecution
C story may not be true but equally on the other side if it is found
that there is no delay in the recording of the FIR, the prosecution
story stands immeasurably strengthened. The High Court has
re-examined the findings recorded by the Trial Court with
respect to this matter. We notice that the incident happened at
D about 2.30 p.m. and the police had arrived at the place of
occurrence an hour later. PW-1 and the deceased were taken
to the Government Hospital, Thalassery where the deceased
was examined at about 3.40 p.m. but referred to the Medical
College, Kozikhode as his injuries were grave whereas PW-1
E was admitted to the Government Hospital. It has also come in
the evidence that the ASI, who had taken the injured to the
Hospital at Thalassery, was on law and order duty but he
nevertheless had gone to the Kuthuparamba Police Station and
given information about the incident in that Police Station. The
F police had arrived, thereafter, at the General Hospital and
recorded PW-1's statement at 5.30 p.m. and on its basis, the
formal report had been registered at 7.15 p.m. and immediately
forwarded to the Magistrate who received it at 10.00 p.m. The
Trial judge has, however, found fault in this matter by observing
G that one of the persons accompanying the injured could have
gone to the police station and given a statement. To our mind,
this observation is farfetched and it does not take into account
the realities of life. It is to be noted that the deceased had
suffered as many as 58 injuries, most of them incised and
cutting wounds with large quantities of blood spilling out, and
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was in a very serious condition and the first anxiety of everybody, including the attendants and the doctors, was to see him to a hospital. He also died at about 4:00 p.m. We, therefore, fully endorse the findings of the High Court as to the spontaneity of the FIR.

Mr. Lalit has also questioned the evidence of PW-1 who is admittedly an injured eye-witness and whose presence cannot be doubted. It has been contended that as the incident was the outcome of political rivalry between the Bhartiya Janta Party and the Congress workers, and the fact that PW-1 had not named all the assailants to the doctor in Thalassery Hospital when he had been examined by him and merely stated that BJP workers were responsible, cast a doubt on his statement. It has, accordingly, been pleaded that PW-1 apparently did not know the names of the accused and that the accused had been involved after deliberation. We find absolutely no merit in this submission, as admittedly PW-1 is an injured witness and his presence, therefore, cannot be disputed. Even as per the defence put up by the accused, PW-1 was not an active worker of the Congress Party. The question of the false implication of BJP workers at his instance on account of political rivalry, therefore appears to be remote. Even otherwise, we find it difficult to believe that PW-1 would have left out the true assailants of his brother. The Trial Court had however given a finding that in the FIR, PW-1 had given the names of only four of the accused (who are the appellants before us) whereas he had added three more subsequently by way of a supplementary statement and as such, his story could not be believed. Likewise, the Trial Court had found some doubt as to the story put up by PW-1 as to his medical examination in the Thalassery Hospital where he had told the doctor that he and his brother had been injured by BJP workers but had not divulged the names to him. The Trial court has supported this finding by referring to the doctor's evidence that had the names been given, he would have noted them down in the medical record. We find this observation to be farfetched. First and foremost, it

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A has to be borne in mind that it is not the function of the doctor to record the names of those who may have caused the injuries to the person who is being examined by him. On the contrary, the fact that the statement about the involvement of BJP had been made at about 4.00 p.m. in the Thalassery Hospital suggests that the prosecution story was entirely correct. We also see that PW-1 has given full details as to how he and his brother had happened to meet by chance in the bus and the manner in which the incident had happened at Ayithara bus stand.

C 12. The prosecution story is also fully supported by the evidence of PWs 2,3 and 4. The High Court has relied on PW-1's statement with respect to the presence of PWs 3 and 4, but expressed some doubt as to the presence of PW-2. We have examined the findings arrived at by the High Court vis-à-vis the observations of the Trial judge. We see that PW-2 was one of those who had taken the deceased and PW-1 to the Thalassery Hospital after the incident, as his name figures as being present in the Hospital at the time of the examination of the injured. Merely therefore because PW-1 does not refer to PW's presence in the FIR does not mean that he was not present. We also find that PWs 3 and 4 are independent witnesses. Significantly, PW-1 and PW-2 did state that PW-3 was also traveling in the same bus, PW-3 also gave a categorical statement that she had seen the deceased and PW-1 in the bus and had witnessed the incident outside Babu's shop at the Ayithara bus stand. We are further of the opinion that there is absolutely no doubt with regard to the presence of PW-4 who is a truly independent witness. He stated that he was an auto-rickshaw driver and had come to the place to get his auto-rickshaw repaired and had seen the incident as it happened. There is absolutely no reason as to why his statement should be discarded.

H Mr. Lalit has, however, also raised some argument with regard to the non-examination of the bus crew. It is true that

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PW-15, the Investigation Officer, did testify that he had taken A
into possession the 'Trip-Sheet' for the route which the bus had
taken. Even assuming, however, that the bus crew ought to have
been examined as that would have greatly enhanced the value
of the prosecution evidence, but their non-examination case B
would not mean that the entire prosecution story would fall
through as there were several other credible witnesses
including an injured one.

We are, therefore, of the opinion that the High Court was C
fully justified in interfering in this matter under the guidelines and
principles in *Arulvelu's* case (Supra).

The appeal is accordingly dismissed.

B.B.B.

Appeal dismissed.