
(2012) 07 KL CK 0207

In the High Court Of Kerala

Case No : Criminal Appeal No's. 1922 of 2011 and 207 of 2012

Ajith T.P., C. No. 9850, Central Prison, Kannur

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 142, 21

Criminal Procedure Code, 1973 (CrPC) — Section 235(1), 313, 435, 482

Penal Code, 1860 (IPC) — Section 34, 392, 398, 414

Citation : (2012) 4 KLJ 62 : (2012) 4 KLT 73

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : V. Sreevalsan, State Brief, for the Appellant; P.M. Saneer, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mohanan, J.—As the above two appeals are arising out of the same judgment and the facts and circumstances as well as the question of law involved are identical, these two appeals are heard together and being disposed of by this common judgment. The judgment, under challenge in these appeals, is dated 27/08/2011 in S.C. No. 468 of 2009 of the court of Sessions, Thalassery, in which, the prosecution, laid charge against altogether five accused for the offences punishable under Sections 392, 398 read with Section 34 and 414 of the I.P.C., among which A5 was absconding and out of 4 accused, who faced the prosecution, A4 is acquitted of all the charges. A1 to A3 are found guilty under Sections 392 and 398 of I.P.C. But they are acquitted for the offence u/s 414 and 34 of the I.P.C. Thus challenging the conviction and sentence imposed against A3, he preferred CrI.A. No. 1922 of 2011, whereas CrI.A. No. 207 of 2012 is preferred by the first accused. Suffice to say, A2 in the above case has not chosen to file an appeal, challenging his conviction and the sentence.

2. The prosecution case is that on 06/03/2009 at 5.30 a.m., near the third

platform of Kannur Railway Station, at a trolley path, the accused A1 to A4 committed robbery of a chain worn by PW. 1 and while committing robbery they voluntarily caused hurt to PW. 1 and the further case of the prosecution is that the 5th accused assisted A1 to A4 in concealing the stolen chain. On the basis of the above allegation, Crime No. 5 of 2009 was registered in the Railway Police Station, Kannur against the accused 5 in numbers for the offences punishable under Sections 392, 398 read with Section 34 of the I.P.C. and Section 414 of I.P.C. On completing the investigation, charge was laid before the Judicial First Class Magistrate-II, Kannur where C.P. No. 31 of 2009 was instituted and by order dated 22/09/2009 of the learned Magistrate in the above proceedings, the case was committed to the Sessions Court, where S.C. No. 468 of 2009 was instituted and subsequently made over to the present trial court for disposal,

3. A1 to A4 were arrested and produced before the court and A5 appeared before the court and thus in the presence of all the accused, a formal charge was framed against them for the offence punishable under Sections 392, 398 read with Section 34 and 414 of I.P.C., after hearing the prosecution as well as the defence. When the said charge was read over and explained to the accused, they denied the same and pleaded not guilty and thus the prosecution adduced its evidence by examining PWs. 1 to 14 and producing Exts. P1 to P15 documents. MOs. I to V are marked and identified as material objects. When the prosecution evidence was over, the court below proceeded to examine the accused u/s 313 of Cr.P.C. But during that time, A5 was not available and the other accused denied the evidence and circumstances, when the same was put to the accused which brought during the prosecution evidence. No evidence either oral or documentary were adduced from the side of the defence. After having considered the evidence and materials on record, the learned Judge of the trial court is of the opinion that the prosecution has proved that A1 and A2 committed robbery and while committing so, they carried the deadly weapon like knife and thus the learned Judge has concluded that A1 to A3 have committed the offences punishable under Sections 392 and 398 of the I.P.C. whose identity is proved. According to the learned Judge, the prosecution has not proved the identity of A4 and therefore he is entitled to get an acquittal. Thus, while acquitting A4 u/s 235(1) of Cr.P.C., A1 to A3 are convicted for the offence under Sections 392 and 398 of I.P.C. On such conviction, A1 to A3 have been sentenced to undergo rigorous imprisonment for seven years each under Sections 392 and 398 of the I.P.C. and they are also sentenced to pay a fine of Rs. 20,000/- each u/s 392 of I.P.C. It is also directed that from the fine amount, if the same is realised, a sum of Rs. 25,000/-, shall be paid to PW. 1, being the victim, as compensation. In default of payment of fine, A1 to A3 are directed to undergo rigorous imprisonment for one year each. Set off is allowed for the period they have already undergone as under trial prisoners.

4. The third accused, while undergoing imprisonment, in pursuance of the impugned judgment, preferred the above appeal (Crl.A. Nos. 1922 of 2011 and 207 of 2012) from the jail and on receiving the same as ordered by this Court,

the registry has appointed Adv. Sri. V. Sreevalsan, from the panel of State Brief to prosecute the appeal on behalf of the appellant. The first accused preferred Crl. Appeal No. 207 of 2012, by engaging a counsel of his own choice. Thus I have heard Sri. V. Sreevalsan, counsel for the appellant in Crl.A. No. 1922 of 2011 and Shri. Sunil Nair, Palakkad, Counsel for the appellant in Crl.A. No. 207 of 2012 and Sri. P.M. Saneer, learned Public Prosecutor for the State. As I indicated earlier, the second accused in the above case has not chosen to file an appeal.

5. To prove the incident, the prosecution mainly depends upon PW. 1, who is the injured and P.W. 2 an independent witness who is the neighbour of PW. 1, When PW. 1 was examined, he had deposed that, while he was working as the priest of Sree Bala Venugopala Temple at Delhi, he arrived at about 5 a.m. on 06/03/2009 in the Kannur Railway Station and since he alighted in the railway station during the night, he waited for half an hour and at about 5.30 a.m. he proceeded to the bus stand. When he reached the end of the plat form No. 3, four persons were seen coming from the opposite direction, along the trolley way and out of that four persons, two persons approached him and among the two, one person took a knife and showing the same, snatched the gold chain worn by him. According to him, as there were two bags in his possession, he could not do anything. He had deposed that out of 4 persons in the dock, the persons, who approached him, were standing in the dock as the second and fourth from the left side. He had also identified A1 as the person who pointed the knife and snatched the chain, who was standing as the 4th person from the left in the box. He had also identified A2 as the person approached him wearing red shirt and Kavi Mundu. He had deposed that A1 was wearing green shirt and white Mundu at that time. He had also deposed that, though the second accused tried to take away mobile phone from his pocket, the same was not materialised as the mobile was tied with his body. According to PW. 1, when the chain was snatched, after putting the bag, he held the chain and thus a broken piece of chain was with him and the accused went away with the another broken piece of chain. According to him the chain was having four sovereign. He had also deposed that while snatching away the chain, he had sustained injury on his neck. When he was examined, he had identified Ext. P1 F.I. Statement and the same was marked through him. He had also identified MO. 1 part of his chain. During the cross-examination of PW. 1, the defence has succeeded in showing that after giving Ext. P1 F.I. Statement, he went along with the police in search of the accused and the accused were caught within 2 hours and at that time he saw the accused. He had also deposed that A1 was one among the two persons caught by the police. He had also deposed about the fact with respect to the arrest of the accused as stated to the police, during the cross-examination for A3. PW. 1 has also stated A2 was seen and identified on that day itself and the remaining accused were seen for the first time in the court. PW. 1 further answered to the question put on behalf of A3 that A3 is not connected with the incident and he said that he has no knowledge about it.

6. The other witness to prove the incident examined by prosecution is PW. 2.

When PW. 2 was examined, he had deposed that when PW. 1 came from Delhi, his chain was snatched away by a group of people, and it was told to him by the brother of PW. 1. According to PW. 2, he along with the brother of PW. 1 reached at the Kannur Railway Station. PW. 2 has categorically stated during the chief examination itself that he had seen two persons in the Railway Police Station and he had identified A1 and A2 as the two persons he had seen in the Kannur Railway Station. He had also deposed that the portion of gold chain, which was in the possession of PW. 1, was produced before the police and the police had prepared mahazar for the seizure of those broken piece of chain and himself and the brother of PW. 1 were put signature in that mahazar and the same is marked as Ext. P2.

7. Among the other prosecution witnesses, PW. 3 is an attester to Ext. P3 scene mahazar. PW. 4 is an attester to Ext. P4 arrest memo dated 09/03/2009 with respect to the arrest of A1 and he is also an attester to Ext. P5 seizure mahazar for MO. 2 knife. PW. 5 is the then Police Constable attached to Kannur Railway Police Station and he is an attester to Ext. P6 mahazar for the seizure of dress of A2. PW. 6 is also an attester to Ext. P7 arrest memo dated 09/03/2009 with respect to the arrest of A2. PW. 6 is also an attester to Ext. P8 mahazar, with respect to the seizure of lottery ticket of A2. PW. 7 is the owner of jewellery, from where MO. 3 was seized as per Ext. P9 seizure mahazar. PW. 8 is the then doctor attached to District Hospital, Kannur who issued Ext. P10 wound certificate dated 06/03/2009 with respect to PW. 1-the injured.

8. PW. 9 is the then A.S.I. of Kannur Railway Police Station who recorded Ext. P1 F.I. Statement of PW. 1 and registered Ext. P1(a) F.I.R. PW. 10 is another A.S.I., of the Kannur Railway Police Station who undertook the preliminary investigation and he had seized railway ticket of PW. 1. PW. 11 was the salesman of jewellery shop of PW. 7 and he produced MO. 3 gold ingot. PW. 12 is a person through whom the prosecution has identified MO. 2 knife as the one stolen from his house. PW. 13 is the then S.I. of Railway Police Station, Kannur through whom MO. 4 dhoti and MO. 5 shirt worn by A2 were seized as per Ext. P6 seizure mahazar, when he arrested the said accused. PW. 14 is the then S.I. of Railway Police who arrested A3 and A5. When PW. 14 was examined, the prosecution has got marked Ext. P12 report dated 10/05/2009 filed in the court giving the full name and address of 4 accused. Ext. P13 is another report dated 05/05/2009, which is also marked through PW. 14, by which A5 was arrayed as an accused. Ext. P14 is a formal arrest memo dated 05/05/2009 with respect to A5 which is marked through PW. 14. Ext. P15 report dated 28/04/2009 was also marked by the prosecution, by which A3 is implicated in the above crime. These are the evidence and materials referred to and relied on by the learned Judge of the trial court in support of her finding and for convicting the accused.

9. Adv. Mr. Sunil Nair Palakkad, the learned counsel for A1 has strenuously submitted that the entire prosecution case is clouded with doubt and the arrest of the accused are under suspicion. In support of the above submission, it is

pointed out that though the arrest memo with respect to the arrest of A1 and A2 is dated 09/03/2009, PWs. 1 and 2, during their evidence, stated that they have seen A1 and A2 within two hours from the time of incident. To disbelieve the case of the prosecution, the learned counsel has pointed out that it is quite unbelievable the version of the police that A1 was arrested with MO. 2 knife while, he was sleeping, since, according to the counsel, it is practically impossible to hide the knife because of its length and width. According to the learned counsel, as per the charge it was A1 who showed the knife and the gold chain was snatched away by A2. But the prosecution case is that it was A3, who entrusted the broken piece of gold chain with A5 for sale and there is no explanation as to how the broken chain reached in the hands of A3. Thus, according to the learned counsel, a close scrutiny of entire prosecution version and evidence and materials, would show that the chain of the incident is not properly proved by the prosecution.

10. The learned counsel appearing for the 3rd accused-the appellant in CrI.A. No. 1922 of 2011 has submitted that the identity of A3 is not proved properly and no distinguishable identification marks were observed and deposed by PW. 1 to the police authorities. So the prosecution has miserably failed to prove the involvement of A3. It is the further case of A3 that the prosecution has miserably failed to produce any evidence and materials to connect A3 with A5. It is also the submission of the learned counsel that even as per the evidence of PW. 13, A1 and A2 were arrested on 09/03/2009 and the same cannot be believed since Pws. 1 and 2 stated that they have seen A1 and A2 along with the police within two hours from the time of incident. Thus, according to the learned counsel, the prosecution has miserably failed to prove the involvement of A3 beyond reasonable doubt.

11. On the other hand, the learned Public Prosecutor has submitted that regarding the incident, there is no doubt and Ext. P1(a) F.I.R. came into existence on the date of the incident which was prepared on the basis of Ext. P1 F.I. Statement given by PW. 1. It is also the contention of the learned Public Prosecutor that the appearance of accused Nos. 1 and 2 tallies with the description given by PW. 1 when he lodged Ext. P1 F.I. Statement and hence, there is no doubt about the identity of A1 and A2 and their arrest. It is the further submission of the learned Public Prosecutor that on questioning A1 and A2, the role of other accused was revealed and consequently, A3 to A5 were arrested and to connect the accused with the incident, the evidence of PW. 14 is supported by Ext. P9 for the seizure of MO. 3 gold ingot. The above evidence would show that all the accused are involved in the commission of the said offences. According to the learned Public Prosecutor, the evidence of PW. 1 and PW. 8, supported by Ext. P10 wound certificate would show that PW. 1 had sustained injuries in the incident at the instance of the accused on the date of the incident. Thus, according to the learned Public Prosecutor, the findings of the court below are purely based upon the evidence and materials on record and no interference is warranted.

12. I have carefully considered the submissions made by the learned counsel for the appellants and the learned Public Prosecutor. I have also perused the judgment of the trial court as well as the evidence and the materials on records.

13. In the light of the rival arguments advanced by the learned counsel for the appellants and the learned Public Prosecutor, particularly in the light of the evidence and materials on record, the question to be considered is whether the prosecution has succeeded in proving its case against the accused beyond reasonable doubt and whether the trial court is justified in its finding and convicting the accused for the offence charged against them. The crux of the prosecution allegation is that the accused, four in number, at about 5.30 a.m. on 06/03/2009 robbed the chain worn by PW. 1, while he was proceeding to the bus stand through the third platform of Kannur Railway Station and in that incident, PW. 1 sustained injury and therefore, the accused has committed the offences punishable under Sections 392, 398 and other offences alleged against them. Going by the evidence of PW. 1, it can be seen that he had preferred Ext. P1 F.I. Statement and consequently Ext. P1 (a) F.I.R. was registered in the Kannur Railway Police Station. In Ext. P1 F.I. Statement, PW. 1 has stated the description of the person of A1 and A2. According to the prosecution, while PW. 13 and Kannur Railway police were doing combing duty, found A2, who was hiding under the railway bridge after three days from the date of the incident. According to the prosecution, on his arrest and questioning, he revealed his involvement and the involvement of other accused in the crime. It is the further case of the prosecution that on such information furnished by A2, they have arrested him on 09/03/2009 and consequently, on the basis of the revelation made by A2, A1 was also arrested on the same date. To prove the arrest of A1 and A2 the prosecution placed much reliance on Ext. P4 arrest memo with respect to A1 and Ext. P7 arrest memo with respect to A2. So, the specific case of the prosecution is that A1 and A2 were arrested on 09/03/2009. To controvert the above claim of the prosecution, the defence very much relied upon the deposition of PWs. 1 and 2, who are loyal witnesses of the prosecution. PW. 1 is the de facto complainant and the victim. When these witnesses were examined, as I indicated earlier, PW. 1, during his cross-examination, it has been stated

A1. P1

[Emphasis supplied]

whereas PW. 2, during his chief examination itself, has deposed that

railway station-Railway police station-2

[Emphasis supplied]

Thereafter he had deposed regarding the identity of the accused A1 and A2. Suffice to say, though these witnesses deposed against the very base of the prosecution case, particularly on material point regarding the arrest of A1 and A2, they were not declared as hostile. It is also pertinent to note that no attempt

is made from the part of the prosecution to seek any clarification from them so as to justify the version of prosecution that these accused were arrested only on 09/3/2009. The Apex Court in the decision reported in Mukhtiar Ahmed Ansari Vs. State (N.C.T. of Delhi), has held that the defence can rely upon the evidence of witnesses, who are not declared as hostile though they deposed against the prosecution, in support of their plea for acquittal. Thus, in the present case, the defence has succeeded in making out a case, that too on the basis of the materials on record and prosecution evidence, that the accused were in the custody particularly A1 and A2 were in the custody of police on the date of the alleged incident itself and much prior to the date of formal arrest recorded by them as per Exts. P4 and P7 arrest memos with respect to arrest of A1 and A2. So the defence has succeeded to establish that Exts. P4 and P7 arrest memos respectively with the arrest of A1 and A2 and the consequent seizures of MO. 2 and the lottery ticket from A2 and the records prepared in support of the above seizures etc are false and concocted.

14. In this juncture, it is relevant to note that the entire prosecution case is built upon the arrest of A1 and A2. A1 and A2 are claimed to have been arrested by PW. 13. During the examination of PW. 13, he had deposed that as per Ext. P7 arrest memo, the 2nd accused was arrested. PW. 13 has further stated that on questioning accused No. 2, he had disclosed the involvement of other three accused and as led by A2, PW. 13 proceeded and arrested A1. To prove the arrest of A1, the prosecution has produced and marked Ext. P4 arrest memo. He had also stated that from the possession of A1, M.O. 2 knife was seized as per Ext. P5 mahazar. Suffice to say, no confession statement of A1 or A2 is recorded and produced by the prosecution. Thus the entire deposition of PW. 13 became unbelievable and unacceptable and the documents mentioned by him and marked though him have no legal sanctity and the same are only concocted documents. It is also relevant to note that though PW. 13 has claimed that A2 revealed the involvement of other 3 accused, he arrested only A1 on the basis of the information furnished by A2 and he has no claim that he had conducted any further investigation. But surprisingly, PW. 14 deposed that he undertook the further investigation on 07/03/2009 and thereafter he had arrested A3, A4 and A5. PW. 14 also does not say anything as to how he realised the involvement of A3, A4 and A5 in the present case. Though he had claimed that he received information about the involvement of A3 to A5 in some other cases, the details of those cases including the crime numbers and name of police stations are not furnished. Therefore it can be seen that as rightly pointed out by the counsel for the first accused, absolutely there is no link evidence to connect A3, A4 and A5 with the commission of the offence in this case. Therefore the resultant conclusion that can be arrived is that no legal sanctity can be attached for the alleged recovery of M.O. 3 from the shop of PW. 7 as per Ext. P9 seizure mahazar. It is also relevant to note that no confession statement of A3, A4 or A5 are recorded and produced in this case. Therefore the case of the prosecution about the arrest of A1 and A2 and their involvement and the involvement of

other accused is not proved properly, supported by clinching and satisfactory evidence or materials. The Hon"ble Apex Court in the decision reported in State of Haryana Vs. Jagbir Singh and others [1977 SCC (Cri.) 638] has held when main planks in the circumstantial evidence give way, no conviction can be sustained. Similarly in another decision reported in Devi Lal and another Vs. The State of Rajasthan [1971 SCC (Cri.)719] the Apex Court has held that if the pivot of the prosecution case is not accepted, a new prosecution case cannot be made to imperil defence.

15. On examination of the facts and circumstances and evidence and materials in the present case, in the light of the above decisions of the Apex Court, it can be seen that the tap root of the prosecution case is uprooted, since the very basis of the prosecution case, that is, the arrest of A1 and A2 on 09/03/2009, is proved as false. It is relevant to note that no disclosure statement of A1 or A2 is recorded or produced before the court to connect the involvement of A3. Except the claim of PW. 14 and other police officers, there is no material or legal evidence to connect A3 with any of the incident. It is also relevant to note that according to the prosecution, MO. 3 gold ingot was seized from the shop of PW. 7 since MO. 3 is made up of the broken piece of gold chain given to PW. 7 by A5. But there is no link evidence to prove as to how this broken gold chain piece reached in the hands of A5 and the police got lead to reach at PW. 5. No confession statement of any of the accused is recorded and produced. Therefore, absolutely there is no satisfactory and acceptable evidence to connect any of the accused with the incident. By the introduction of unbelievable and concocted document regarding the arrest of A1 and A2, the prosecution case has lost its sanctity and the further prosecution case and evidence are rendered as false. Thus, when the foundation stone of the prosecution case is shaken, the collapse of the further prosecution case, is inevitable and the prosecution cannot press into service any other materials and evidence, which rendered as illegal and unacceptable and not free from doubt. Therefore, I am of the definite opinion that the prosecution has miserably failed to prove its case against the accused who faced the prosecution beyond reasonable doubt.

16. In the light of the above discussion and the evidence and materials on record referred to above, I am unable to endorse the conviction recorded by the trial court against the accused and according to me, the prosecution has miserably failed to prove its allegation against the accused and their role in the commission of the offence alleged against them beyond reasonable doubt. Therefore, they are entitled to get the benefit of doubt. Thus, by extending the benefit of doubt, according to me, the accused are entitled to get an acquittal and the impugned judgment is liable to be set aside.

17. During the consideration of these appeals, 1 came across with a recent decision of the Hon"ble Apex court in Sahadevan and Another Vs. State of Tamil Nadu reported in [AIR 2012 SC (Cri) 1022]. In the above decision extending the benefit of appellate judgment to non-appealing accused has held in paragraph 41:

41. It is very difficult to set any universal principle which could be applied to all cases irrespective of the facts, circumstances and the findings returned by the Court of competent jurisdiction. It will always depend upon the facts and circumstances of a given case. Where the Court finds that the prosecution evidence suffers from serious contradictions, is unreliable, is *ex facie* neither cogent nor true and the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt, the Court will be well within its jurisdiction to return the finding of acquittal and even suo-moto extend the benefit to a non-appealing accused as well, more so, where the Court even disbelieves the very occurrence of the crime itself. Of course, the role attributed to each of the accused and other attendant circumstances would be relevant considerations for the Court to apply its discretion judiciously. There can be varied reasons for a non-appealing accused in not approaching the appellate Court. If, for compelling and inevitable reasons, like lack of finances, absence of any person to pursue his remedy and lack of proper assistance in the jail, an accused is unable to file appeal, then it would amount to denial of access to justice to such accused. The concept of fair trial would take within its ambit the right to be heard by the appellate Court. It is hardly possible to believe that an accused would, out of choice, give up his right to appeal, especially in a crime where a sentence of imprisonment for life is prescribed and awarded. Fairness in the administration of justice system and access to justice would be the relevant considerations for this Court to examine whether a non-appealing accused could or could not be extended the benefit of the judgment of acquittal. The access to justice is an essential feature of administration of justice. This is applicable with enhanced rigour to the criminal jurisprudence. Where the court disbelieves the entire incident of the occurrence or where the role of the accused who has not appealed is identical to that of the other appealing accused or where the ends of justice demand, the Court would not hesitate and, in fact, is duty bound, to dispense justice in accordance with law. The powers of this Court, in terms of Articles 136 and 142 on the one hand and the rights of an accused under Article 21 of the Constitution on the other, are wide enough to deliver complete justice to the parties. These powers are incapable of being curtailed by such technical aspects which would not help in attainment of justice in the opinion of the Court. In light of the above principles, this Court is required to consider the effect of these judgments on the case of the non-appealing accused in the present case.

From the conclusion in paragraph 41 of the above judgment of the Apex court it can be seen that the benefit of that judgment was extended by the Hon'ble Apex Court to the non-appealing accused by exercising its powers conferred under Articles 136 and 142 of the Constitution of India. But admittedly, no such powers as contemplated under Articles 136 and 142 are conferred upon this Court.

18. In the light of the above decision of the Apex court, I put to the learned Public Prosecutor that whether the benefit of this judgment can be extended to the second accused who has not filed an appeal before this Court against the very same impugned judgment. Mr. K.S. Madhusoodanan, counsel for the

appellants who is present in the court is also asked to look into the matter and to render assistance to this court on the above point, and he in turn, on the basis of the decision of the Karnataka High Court in *Jilani Vs. State of Karnataka* reported in [1978(2) Kar LJ 121] wherein the Karnataka High Court, placing reliance upon the Division Bench decision of the Calcutta High Court referred to therein, submitted that this Court can, by exercising powers u/s 482 of Cr.P.C., extend the benefit of this judgment in the above appeals, to the other accused, who has not chosen to file an appeal. In the above decision of the Karnataka High Court, after having considered the various provisions contained in the Code of Criminal Procedure and the decision of the Calcutta High Court reported in *Parbati Devi Vs. The State*, has held thus:-

Even if there be any doubt about the extent of the jurisdiction of this Court under the revisionary powers, there is no doubt that under the inherent jurisdiction of the Court it has the power to pass a proper order when a manifest injustice is being done. Therefore, even if there had been any doubt as to the applicability of Sec. 435, CrI.PC, we can have no doubt whatsoever that the Court has, in the absence of any direct provisions in the Code, the inherent power to adopt a procedure to secure the ends of justice. Thus inherent power had always been recognized even before the introduction of Sec. 561A CrI.PC.

19. In *Sahadevan and Another Vs. State of Tamil Nadu* [AIR 2012 SC (Cri) 1022] the Hon''ble Apex Court has held thus:

Where the Court disbelieves the entire incident of the occurrence or where the role of the accused who has not appealed is identical to that of the other appealing accused or where the ends of justice demand, the Court would not hesitate and, in fact, is duty bound, to dispense justice in accordance with law. The powers of Supreme Court, in terms of Articles 136 and 142 on the one hand and the rights of an accused under Article 21 of the Constitution on the other, are wide enough to deliver complete justice to the parties.

20. In the light of the foregone discussions, I have found that the prosecution has miserably failed to prove beyond reasonable doubt, the allegation against the accused, not only the accused who are in this court in appeal, but against the other accused who faced the trial and also found that the prosecution allegations are false and the foundation stone as well as structure of the prosecution case stands demolished. Thus, I have already found that the prosecution case is unreliable and the same is not true and the prosecution case has miserably failed to discharge its traditional duty of proving the guilt of the accused beyond reasonable doubt. The moment at which this Court arrived into the conclusion that the findings of the court below are wrong and illegal for the reason assigned above, the further incarceration of the accused, whether he appealed or not, is illegal. Therefore, irrespective of the fact whether an appeal is filed or not, further imprisonment of the accused, on the basis of a judgment, which is found to be illegal, requires interference. It is not out of context to say that this Court can anticipate and it is quite probable also that on the basis of the present

judgment acquitting the two accused who preferred these appeals, the non-appealed accused, who is undergoing imprisonment is likely to approach this Court by filing an appeal for which time will be taken, during which he has to undergo the imprisonment. According to me, being a criminal court and while dispensing criminal justice, there is nothing illegal in extending the benefit of this judgment to an accused who has not filed an appeal before this Court. It is true that the Apex Court, while deciding the case in the decision cited supra, exercised its jurisdiction under Articles 136 and 142 of the Constitution of India and this Court is not having such constitutional powers. As the courts are designed and established with the prime task of dispensation of justice, unless the courts overcome the procedural technicalities, the above solemn duty cannot transform into realities, especially when the major section, real beneficiaries of the system governed by rule of law, are unable to approach the courts as they are marginalised because of their fiscal limitations and social constrictions. Therefore, according to me for the ends of justice, in exercise of the inherent powers vested with this Court u/s 482 of Cr.P.C., especially as held by the Karnataka High Court in the decision reported in Jilani Vs. State of Karnataka [1978(2) Kar LJ 121] and the Calcutta High Court in Parbati Devi Vs. The State, , the benefit of this judgment can be extended to the 2nd accused in the above sessions case as well.

21. Indeed it is relevant to note the judicial scenario in India is entirely different when comparing with the situation at which the Calcutta and Karnataka High courts pronounced their judgments. Now, Indian Judiciary is fed up with heavy arrears and therefore one of the present tasks of Indian Judiciary is at least to reduce the arrears for which several measures are adopted and being implemented. In such a situation, it is out of context to await to file another appeal and the ultimate result of the same would be multiplication of appeal and delay in dispensation of justice. Therefore it is only just and proper to extend the benefit of this judgment to the non-appealed accused who faced the prosecution and undergoing imprisonment. Therefore I am of the view that even though the second accused in the above Sessions Case has not filed an appeal, he is entitled to get an acquittal in the light of the findings of this Court with respect to accused Nos. 1 and 3 in the very same Sessions case. Before parting, I appreciate the assistance that I had from Mr. K.S. Madhusoodhanan, learned counsel of this Court.

In the result, for the reasons stated above, these appeals are allowed setting aside the judgment dated 27/08/2011 in S.C. No. 468 of 2009 of the court of Additional Sessions Judge, Ad hoc-III (In Charge), Thalassery and accordingly, the appellants herein who are accused Nos. 1 and 3 and the second accused therein, who has not filed an appeal, are acquitted of all the charges leveled against them and they are set at liberty. If the above accused are not required in any other case, they are entitled to get released from jail forthwith including the 2nd accused.

As the appeals are allowed and the accused are ordered to be released from the jail, the registry is directed to forward a gist of this judgment to the Superintendent of Central Prison, Kannur forthwith.