

(2000) 04 MAD CK 0093

In the Madras High Court

Case No : Criminal Appeal No. 731 of 1989 and C.R.C. No's. 754 of 1989 and 47 of 1990

Sivanupandi Thevar and five others

APPELLANT

Vs

State and 8 others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Evidence Act, 1872 — Section 137, 141, 143, 3, 8

Penal Code, 1860 (IPC) — Section 109, 147, 148, 149, 302

Citation : (2000) 4 CTC 603

Hon'ble Judges : S. Jagadeesan, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Mr. R. Regupathi, for M/s. S. Ashok Kumar, for the Appellant; Mr. C.M. Gunasekaran, Government Advocate (Criminal Side), for the Respondent

Judgement

K. Raviraja Pandian, J.—The above criminal appeal is directed against the judgment of the Sessions Court of Tirunelveli in S.C.No.237 of 1988 dated 16.8.1989 whereby the third accused is found guilty of an offence punishable u/s 147 of I.P.C. and sentenced to undergo rigorous imprisonment for six months and found guilty of an offence punishable u/s 302, IPC read with 109, IPC and sentenced to undergo an imprisonment for life.

2. The fourth accused and fifth accused are found guilty of an offence punishable u/s 148 of IPC and sentenced to undergo rigorous imprisonment for one year each and further each of them found guilty of an offence punishable u/s 302, of IPC and sentenced to undergo life imprisonment.

3. The sixth accused is found guilty of an offence punishable u/s 148 of IPC and sentenced to undergo rigorous imprisonment for one year and further found guilty of an offence punishable u/s 307, IPC and sentenced to undergo rigorous imprisonment for three years.

4. The 7th accused is found guilty of an offence punishable u/s 148, IPC and

sentenced to undergo rigorous imprisonment for one year.

5. The accused Nos.3 to 6 are directed to serve out the above sentences concurrently.

1.The first, second and 8th accused are acquitted against the charges leveled against them.

2. Criminal Revision Case No.754 of 1989 is filed against the order of acquittal of A1, A2 and A8 and Criminal Revision Case No.47 of 1990 is filed for enhancement of sentence against A-6 and A-7. Both the above said criminal revisions were filed by P.W.3.

3. The prosecution of the accused is an outcome of the dispute in respect of participation in the auction held for leasing out the right to quarry sand in the river Pachiaru.

The case of the prosecution is as follows:-

For the fasli 1396 which corresponds to 1.7.1986 to 30.6.1987 P.W.3 Uyyankondal Mandiri was the leaseholder of the sand quarry from Pachiaru. He determined to take the quarry on lease for the next fasli year also through his relative one Sivanupandian, since he has committed some default in payment of the lease amount. Likewise, the deceased, the fourth accused, Koraikattu Sivanupandian along with other accused were also determined to take the quarry on lease for the fasli year 1397 and thus they locked horns with each other.

4. While that being so, on 31.8.1987, at about 9.30 A.M, each of the party is awaiting before the Tharuvai Panchayat office to participate in the auction to be held for the Pachiaru river quarry right. At that time, the deceased, the fourth accused made a request to P.W.3 Uyyankonadan Mandiri and others to leave the auction in their favour which was turned down. The accused being filed with anger they formed the unlawful assembly and accused Nos.1 and 2 instigated the other accused to finish away the persons who participate in the auction against them. The third accused catch hold of one Muthupandi the deceased, who was the brother of P.W.3. The 4th accused stabbed the deceased on his right chest and the right forearm with a sun knife.

5. The fifth accused stabbed one Essaki Pandi another deceased, the elder brother of P.W.3, on the left lateral side of lower part of the chest and middle of the left upper arm with a suri knife. The 7th accused stabbed P.W.3 on the abdomen with suri knife. The 8th accused launched a cut on P.W.3 on the left ear and left hand fingers by Aruval. The 9th accused attacked on the back of P.W.3 with stone. The said Muthu Pandi and Essaki Pandi were succumbed to their injuries when they were taken to hospital. Hence, charges were laid against the accused under Sections 109, 147, 148, 149, 323, 324 and 302 of IPC.

6. To drive home the case, the prosecution examined 14 witnesses, marked 15 exhibits and produced 15 material objects.

7. The learned Sessions Judge after full trial and after considering the evidence both oral and documentary and upon hearing the arguments advanced on the side of either parties, found accused Nos.3 to 7 guilty of offence as stated above and acquitted the remaining accused viz., accused Nos.1,2 and 8 from the charges levelled against them in its judgment dated 16.8.1989 made in S.C.No.237 of 1988. As against the said judgment, the present appeal is filed by the appellants No.1 to 5 who are accused No.3 to 7. As stated above, P.W.3 filed Criminal Revision Case No.754 of 1989 against the acquittal of accused Nos.1,2 and 8 and Criminal Revision Case No.47 of 1990 for enhancement of sentence of accused Nos.6 and 7.

8. It is stated across the bar by the learned counsel for the appellants that A4, the second appellant Veerapandian died on 28.12.1989 during the pendency of the appeal and recording his statement, the appeal is dismissed as abated against the second appellant herein.

9. The learned counsel for the appellant assailed the conviction of the appellants as found by the trial Court raising the contention that the motive as put forth by the prosecution is too flimsy to warrant a conviction of the appellants and that the occurrence as projected by the prosecution took place after a wordy quarrel between the parties and as such, the appellant cannot be punished u/s 302 of IPC. Further even as per the prosecution version, there are more than two hundred persons assembled before the Panchayat Office and in the melee some other person would have caused the injuries on the persons of prosecution party. The trial Court having disbelieved the evidence of P.Ws.1 to 4 in respect of A1, A2 and A8, the same benefit ought to have been given to the appellants. The learned counsel also relied on a decision Shiv Ram and others v. State of U.P.1998 SCC (Crl) 278 to draw support for his contention. On the other hand, the learned Public Prosecutor refuted the contention of the counsel for the appellant by pointing out that the evidence of eye witnesses are cogent and cohesive and proved the occurrence beyond any reasonable doubt and submitted that no interference is called for from this court. He also relied on the decision Amarjit Singh and others v. State of Punjab, 1993 SCC (Crl) 509 and decision Banwariram and others v. State of U.P., 1998 SCC (Crl.) 835 to consider the value of the injured eye witnesses.

10. Now, let us consider the evidences made available in the above appeal with particular reference to the contention raised by the parties concerned.

11. The first accused is the Revenue Inspector of Munnerpallam village. He is related to the deceased and fourth accused. The second accused is a friend of deceased and 4th accused. The deceased and accused Nos.3 to 9 are all related to each other.

12. P.Ws.1 to 4 are the eye witnesses. P.W.1 is the brother in law of deceased Essaki Pandi. In his evidence he says that the second accused is native of Munnerpallam. All other accused are of Tharuvai village. On 31.8.1987 at about

9.00 A.M he alongwith Essaki Pandi, Muthu Pandi, Uyyankondan Mandiri (P.W.3), Kandasamy (P.W.4) and one Sivasubramaniam went to the panchayat office of Tharuvai village to participate in the auction to be conducted to lease out the quarry right in the Pachiaru river. At that time, the accused alongwith some other persons were also present there to participate in the auction and the prosecution party were standing on the south side of the road and they were all waiting for the Tahsildar to conduct the auction. At that time, the deceased and the fourth accused made a request to P.Ws.1 to 4 and others to give out the auction in their favour by not participating in the same. Since P.W.3 who is the earlier leaseholder sustained a huge loss during the previous lease period, P.Ws.1 to 4 and others refused to heed their request and determined to knock the auction at any cost. On that score, there was some wordy quarrel between the prosecution party and the accused parties for about ten minutes. The first accused who is the Revenue Inspector came out of the Panchayat Office and asked about what is the response of P.W.3. For that, the reply of P.W.3 and others is in negative. Immediately A1 said that P.W.3 failed to give the commission in respect of the previous year. If he was allowed to take the quarry on lease for the present, he would not give the commission for the current year also and added to do away with those people. Immediately, the second accused shouted saying when the first accused himself gave such a permission, do not waste time and kill them. Immediately, thereafter, the third accused caught hold of the left hand of Muthu Pandi, the deceased, and the fourth accused. Koraikattu Sivanupandian stabbed with the suri knife on the chest and upper arm of the deceased Muthupandi. The fourth accused stabbed on the left chest and left upper arm of the another deceased Essaki Pandi with a suri knife. The fifth accused launched a cut on the right upper arm and left hand fingers of the deceased Essaki Pandi. The sixth accused stabbed P.W.3 in the abdomen with his suri knife. The seventh accused launched a cut on the left fore arm of P.W.3 with Aruval. Thereafter deceased Muthupandi ran for a short distance and fell on the pial of one Paramasivathevar and deceased Essaki Pandi ran for a distance and fell near the shop in front of Amman Kovil. P.W.3 also ran and fell near the mud wall of Paramasivathevar house. Their further evidence is that P.W.4 took both the deceased Muthu Pandi, Essaki Pandi along with P.W.3 to Palayamkottai Medical College Hospital by engaging a taxi where both the deceased were declared dead and P.W.3 was admitted in the hospital for treatment for his injuries.

13. P.W.4 Kandasamy is a cousin brother of both the deceased Muthu Pandi and Essaki Pandi. He deposed in all material facts as that of the other eye witnesses with regard to the assembling of the persons before the Panchayat Office and the instigation by the first and second accused and the stabbing, cutting by the other accused with particular reference to each of the injuries and he further deposed that immediately after the occurrence he rushed to the Village Administrative Officer. In the mean time, all the accused took their heels. Since the Village Administrative Officer is not available in his office, he ran to the main road and procured a taxi and send both the deceased Muthu Pandi, Essaki Pandi and P.W.3

with P.Ws.1 and 2 to the Hospital. Immediately, he went to Munneerpallam police station and gave a complaint to the Sub-Inspector of Police which is Ex.P.1 at about 10.45 A.M.

14. P.W.12, the Sub-Inspector attached to Munneerpallam police station registered the complaint Ex.P.1 as Crime No.398 of 1987 under Sections 147, 148, 323, 324 and 307 of IPC and he prepared the express first information report Ex.P.20. Then, he telephonically informed the same to the Inspector of Police. Thereafter, he sent Ex.P.1 the complaint alongwith Ex.P.20 the F.I.R to the Court and the superior officers.

15. P.W.14 is the Inspector of Police. He on receiving information reached the police station by 11.30 A.M. on 31.8.1987 and started investigation. He went to the scene of occurrence by 12.00 Noon and prepared the observation mahazar Ex.P.2 attested by one Thavidan and P.W.5. He also prepared a rough sketch of the scene of occurrence which is Ex.P.21. On receipt of the death intimation Ex.P.22 from the outpost police station at Tirunelveli Medical College Hostel. P.W.14 altered the case u/s 302 of IPC and prepared the express report Ex.P.23 and send the same to the Court. By 12.30 P.M.he seized the blood stained earth M.O.4, blood stained stone M.O.6 and blood stained earth M.O.5 where P.W.3 fell down after sustaining injury and blood stained earth M.O.4 which has been recovered near Paramasivan's house and blood stained palm leaves box M.O.3 under Ex.P.3 which has been attested by P.W.5 and Thavidan. Thereafter, on 31.8.1987, at about 1.30 P.M, he went to the T.V.M.C. Hospital and he held inquest over the dead body of Essaki Pandi between 1.30 to 3.00 P.M and the inquest report is Ex.P.24. He examined P.W.4 one Tavisi and Essaki Pandi alias Thavidan. Then, he sent the dead body of Essaki Pandi for post-mortem to P.W.7 with a request under Ex.P.5. Thereafter between 3.00 to 5.00 P.M, he conducted the inquest over the dead body of Muthu Pandi and the inquest report is Ex.P.25 and he also examined one Tavisi P.W.4 and Essaki Pandi and P.Ws. 1 and 2. Thereafter, he sent the dead body of Muthu Pandi for post-mortem with a request under Ex.P.8 and thereafter by 5.00 P.M. he recovered M.Os. 1 and 2 from P.W.3 under Ex.P.26.

16. P.W.7 is a Professor of Forensic Medicine at Tirunelveli who received the dead body of the deceased Muthu Pandi. He deposed that at 11.30 A.M on 1.9.1987 he conducted the autopsy over the dead body of Muthu Pandi. He found the following injuries on the dead body.

- "1. Abrasion 1 x 0.5 cm on the left infra auxiliary region,
2. 0.5 x 0.5 cm on the inner aspect of left elbow (abrasion)
3. An oblique incised stab wound from below upwards in right to left direction measuring 5x3x2 cms seen on the front and inner aspect of middle of right upper arm. The edges of the wound were found contused.
4. Another stab wound of 2x1x1 cm seen in line with the above said wound. It

was 1 cm away from inner aspect of the wound No.(3). The intervening area of skin between the wounds No.3 and 4 was found very thin. The edges of the wound were not bruised.

Wound No.3 appeared to be a wound of entry and wound no.4 wound of exit. Both the wounds No.3 and 4 exposed the cut surfaces of muscles, nerves and blood vessels of that region. The clotted blood was found firmly adherent to the above said wounds.

5. An oblique beveled stab wound from below upwards, from left to right direction measuring 2.5x1.5 cm on the right side of chest 13 cms away from the midline and 18 cms below the right acromion process and also lateral to the right nipple. The edges of the wound were found bruised. On dissection, 5th rib was found cut with bruising of soft tissues wound it. The wound was found communicating into the right thoracic cavity. The right lung was found collapsed. The right pleural cavity contained 50 cc's of pale blood stained fluid."

The post-mortem certificate issued by him is Ex.P.9. He is of the opinion that the deceased would appear to have died of stab injuries to the regions of right upper limb and right side of chest. On the same day, he received Ex.P. 10 request for post-mortem of the dead body of Essaki Pandi and he conducted post-mortem examination over the dead body by 12.45 P.M. He found the following injuries on the dead body:

"1. abrasion with a slight curve 6 x 1/4 cm on the front of right shoulder. The upper end of wound showed an oblique beveled cut of 1 x 0.5 x skin deep,

2. Slightly curved abrasion of 11 x 1/4 cm on the back of right shoulder over the posterior axillary fold.

3. Abrasion 1.5 x 1/4 cm on the left back of chest 3 cms away from midline in the interscapular region.

4. Irregular abrasion of 4 x 3 cms on the left middle of back 10 cms away from the midline.

5. Irregular abrasion 6 x 4 cms on the left lateral side of lower part of chest, it was more on the back 1.4 cms away from the midline.

6. An oblique stab wound of 2 x 0.5 x 2.5 cm on the outer aspect of middle of left upper arm. It was 14 cms above the lateral epicondyle. The edges were found bruised.

7. Horizontal cut wounds on the back of proximal phalanges of index finger middle finger and ring finger each measuring 0.5 x 1/4 x bone deep, 1 x 1/4 1/4 cm of thickness of bone 0.5 x 1/4 and bone deep respectively. The edges were found bruised. The proximal phalange of left middle finger showed a clean cut to a 1.4 cm of its depth with complete fracture at the site of the wound.

8. An oblique horizontal stab wound 4 x 1.5 cm seen on the left lower lateral part

of the chest. It was 21 cms away from midline and 15 cms above the iliac crest (hip bone). The blood was found oozing out through the wound while turning the body. Dried blood stains were seen over the abdomen and back. It also lies 6 cms above the lower border of left costal margin.

On Dissection:- The left 9th intercostals muscle is found cut and bruised. The wound is found communicating into the left thoracic cavity and then it made a cut in the left diaphragm. The left lung is found collapsed. The left pleural cavity contained 15 ccs of fluid blood. The peritoneal cavity contained 500 cc of fluid blood. The small and large intestines which were found close to the wound were contused, On further dissection, the left perinephric hematoma was seen with a clean out of 3.5 x 0.5 x 2 cms in the front of middle of left kidney.

The wound further continued to the right by making a clear cut of the major blood vessels and the vertebra between T12 and L1. to a depth of 1 cm. Further, the wound traveled on the upper pole of right kidney and it made a clear cut of 2 x 1 x 0.5 cms. Perinephric hematoma is also seen on the right kidney. The mesenteries of small and large intestines were filled with blood. The depth of the wound was 18 cms."

The post-mortem certificate issued by him is Ex.P.11. He is of the opinion that the deceased would appear to have died of stab injury to the regions of lower part of the left side of the chest and abdomen.

17. P.W.14 the Investigating Officer on information arrested the first and second accused on 31.8.1987 at 6.30 P.M near Mela Munnirupallam road and remanded them to custody. Thereafter, he visited the T.V.M.C and there he examined P.W.3 and obtained his statement. He also enquired P.W.12. On 1.9.1987 he examined P.W.2, one Arumuga Thevar, Vishnu Thevar alias Venkatesa Thevar and Venkateswaran on 1.9.1987. He sent a request under Ex.P.12 to send the material objects for chemical examination. On 5.9.1987, he received information from Magistrate II, Virudhunagar that the third accused surrendered before the Court on 3.9.1987. On 12.9.1987, he examined P.W.11 the Tahsildar. On 13.9.1987, he examined P.W.7 and received the copy of the post mortem certificates Ex.P.9 and P.11. On 18.9.1987, he received information that the other accused have surrendered before the Thiruchandur Magistrate's Court. On 24.9.1987, he filed a petition to get the accused to police custody. On 13.10.1987, he examined P.W.6 and obtained a wound certificate of P.W.3 which is Ex.P.4 and on 1.9.1987, he examined P.Ws.8 and 9. Thereafter, he completed the investigation and laid the chargesheet on 7.2.1988.

18. From the evidence available on record it is clear that the overact of each of the accused i.e., A3 to A7 has been specifically attributed. This evidence of P.W.1 has been corroborated in all material facts by other eye witnesses viz., P.Ws.2 to 4 also. Their evidence to that effect has not been dislodged by the defence by any of the modes known to law particularly in their cross examination. P.W.3 being an injured witness we don't find any reason to discard his evidence.

19. P.W.11 is the Tahsildar who enjoins the duty of leasing out the said quarry at Pachiaru river. In his evidence, he deposed that the auction was originally fixed to 17.8.1987. On that day, the first accused the Revenue Inspector, the Village Administrative Officer and Thalayari were present. The upset price for the quarry was fixed at Rs.11,250. Since there were no bidders for that amount, the same was reduced to Rs.9,500. Even for that amount there were no bidders. Hence, the auction was postponed to 31.8.1987. On that day, A1 and the Village Administrative Officer reported him that Tharuvai village was in a disturbed state in respect of the auction sale and on that score, he adjourned the auction under Ex.P.19. This evidence of P.W.11 an independent witness also proves that the person assembled for participating in the auction were furious against each other and the state of affairs in the Tharuvai village was in a tense mood over the sand quarry. Furthermore, P.Ws.1 to 4 in their cross examination have stated that the accused Nos.3 to 8 related to each other and belongs to the same village and there were previous enmity between the prosecution party and the accused and the 7th accused was punished by the Court of law at the instance of the prosecution party. It is common knowledge that the sand quarry business is a money making business and in every such auction there are keen and cut through competition in knocking out the quarry. Hence, having this common phenomenon in mind, if we scan the evidence of eye witnesses P.Ws.1 to 4 as stated above coupled with the independent witness P.W.11 Tahsildar, we are of the view that there were previous enmity between the prosecution party in respect of some property dispute with the dispute with the accused and even in respect of the auction of the subject sand quarry they were locked horns with each other and there were also heated wordy quarrel for more than ten minutes among the said two parties just prior to the occurrence and that we are of the view that the prosecution has established the motive without any doubt.

20. The other contention of the learned counsel for the appellant that even as per the prosecution, more than 200 persons were assembled for participating in the auction and in the melee which took place some other person not identifiable by the prosecution party would have caused the injury is raised for the purpose of rejection of the prosecution evidence made available by the prosecution. The evidence of the eye witnesses P.Ws.1 to 4 is particular and categorical about the overacts of each of the accused which has not been dislodged by the defence by way of cross examination. As a matter of fact, it has revealed from the evidence of P.Ws.1 to 4 no such attempt was made by the defence by way of suggestion to P.Ws.1 to 4. Each and every injury inflicted by each of the accused have been clearly spoken to by the eye witnesses very cogently and without any contradiction even in minute aspect. In such circumstances, the evidence of P.Ws.1 to 4 is left with no option but to accept the same and hence the said contention of the learned counsel for the appellants is rejected as devoid of any merit.

21. The other contention put forth on behalf of the appellants is that the trial Court having disbelieved the evidence of P.Ws.1 to 4 in respect of A1 and A2, the

same benefit ought to have been given to the appellants also. In our view, this contention is also made only for the sake of contention. The trial Court on a detailed analysis of the evidence of P.Ws.1 to 4 has come to the conclusion that A1 was not the member of the unlawful assembly. Even as per the evidence of P.Ws.1 to 4, A1 was in the office of the Panchayat along with his subordinate staffs, Village Administrative Officer and Thalayari. On the contrary, the incident took place in the front and eastern and western side of the Panchayat Office. The only overact against A1 is as alleged by the prosecution is the instigated the other accused to do away with the prosecution party and the motive against A1 as projected by the prosecution is that P.W.3 the previous year lessee has not paid the commission to first accused and if P.W.3 is allowed to knock down the auction even though this year he would not paid the commission. This aspect of motive also disproved particularly from the evidence of P.W.11 the Tahsildar who spoke that A1 was directed to realise the balance lease amount due from P.W.3 and by his persistent act, A1 recovered Rs.6,000 out of Rs.11,000 from P.W.3 and the trial Court also took note of the discrepancies in respect of inclusion of A1's name in Ex.P.23 and P.24 with reference to Exs.P.8 and P.10 and on appreciating the totality of the evidence as stated above, the trial Court has disbelieved the evidence of P.Ws.1 to 4 as against A1.

22. Likewise, in respect of A2 also, the evidence of P.Ws.1 to 4 is categorical to the effect that A1 is the resident of Munnerpallam village. There is no previous enmity between A2 and the prosecution party and there was no wordy quarrel even between A2 and prosecution party and no overact is attributed to him. Only in such circumstances, the trial Court disbelieved the case of the prosecution against A2.

23. Thus, the trial Court has disbelieved the prosecution case for the specific reasoning as elicited from the evidence of P.Ws.1 to 4. But the same is not the case as against the appellant herein. As stated already, P.Ws.1 to 4 specifically stated in their evidence about each and every injury inflicted on the body of deceased Muthu Pandi and on the body of deceased Essaki Pandi and P.W.3 by each of the appellants i.e., A.2 to A.7. Hence, the contention that the benefit as given to A1 and A2 by the trial Court has to be given to the other accused also is vanished in thin air.

24. Now, let us deal with the decisions cited by the counsel on either side. The learned counsel for the appellant cited the decisions Shiv Ram and another v. State of U.P., 1998 SCC (Cri) 278. In that case, A6 members of an unlawful assembly having common object to commit murder fired from his gun which hit a boy who fell down and thereafter other accused throwing him into fire and the body was totally charred. No injury was found on the dead body and no pellet was recovered from the body of the deceased nor from the ashes. In such circumstances, the Apex Court held that there being no conclusive evidence that A6 caused fire arm injuries to the deceased, the High Court is not justified in awarding A6 the extreme penalty of death and confirmed the sentences into one

of life.

25. So far as the present case is concerned that the evidence of P.Ws.1 to 4 the eye witnesses are categorical in the sense each and every injuries inflicted on the body of the deceased Muthu Pandi and deceased Essaki Pandi and P.W.3 by the appellants have been spoken to by P.Ws.1 to 4 established by the prosecution and in such circumstances, the decision cited above would not in any way applicable to the facts of the present case and further advance the case of the appellant. One of the two decisions cited by the Public Prosecutor is *Amarjit Singh and others v. State of Punjab*, 1993 SCC (CrI) 509. In that case, the appellants were found to be armed with fire arms as well as other lethal weapons. They went in ft body and participated in the occurrence wherein four persons succumbing to gun shot injuries and several others belonging to prosecution party also receiving injuries. On the fact of the case, the Supreme Court held that Section 149 was attracted and the plea of defence that some of the accused have not used their arms not material in the circumstances and the further plea that some other miscreants in the unruly crowd had gone beyond the common object and committed murder cannot be accepted to absolve the appellants. The other case is *Banwari Ram and others v. State of U.P.*, 1998 SCC (CrI) 835 which is to the effect that once it is held that the accused were members of an unlawful assembly, they will be liable for unlawful activities of the members of the said assembly. As far as the present case is concerned, the facts and circumstances as narrated above and the evidence of P.Ws.1 to 4 which were very cogent and clinching with definite overacts in respect of each and every injury on the body of A1 and A2 which caused the death and the injury inflicted to P.W.3 are spoken to with specific particulars about the accused attempts and has been established by the prosecution beyond reasonable doubt as stated by us in the previous paragraphs and conclusion as reached by us is based on an unassailed evidence adduced by the prosecution, we are not dealing with the judgments cited above in detail to seek support of the case.

26. For the foregoing reasons, we feel that there is the necessity for us to interfere with the judgment of the trial Court and hence the appeal is dismissed.

27. The Criminal Revision Petition No.754 of 1989 has been filed against the Order of acquittal of accused Nos.1,2 and 8. We have discussed the relevant issue in answer to the third contention raised by the appellants wherein they have stated that when the trial Court disbelieved the evidence in respect of A1 and A2, the same benefit has to be given to the other appellant also. Since as discussed by us, A1 the Revenue Inspector is not one of the members of the unlawful assembly and he was within the Panchayat Office alongwith his subordinate officers at the time of occurrence and the reasoning given by the trial Court for acquittal is convincing, in respect of A2, the evidence of P.Ws.1 to 4 itself categorically proves that there was no enmity between the prosecution party and A.2.

28. Further the revisional jurisdiction of the court against the order of acquittal

has to be very sparingly exercised, that too, only if the court finds that the reasoning given by the trial Court is totally perverse and unacceptable. As we have already held that the reasoning of the trial Court will hold good both in respect of conviction of the appellant herein and the acquittal of the other accused, no interference is called for in the revisional jurisdiction. Accordingly, the same is dismissed.

29. As far as the criminal revision case filed to enhance the sentence is concerned, here again, we do not find any exceptional reason to come to the conclusion that the sentence imposed by the trial Court is inadequate. Hence, we dismiss this revision petition also.

30. In fine, the Criminal Appeal No.731 of 1989 and Criminal Revision Case Nos.754 of 1989 and 47 of 1990 are all dismissed.