2025:KER:6743

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 29TH DAY OF JANUARY 2025 / 9TH MAGHA, 1946

CRA(V) NO. 309 OF 2014

AGAINST THE JUDGMENT DATED 10.06.2013 IN CRIMINAL APPEAL NO.67 OF 2007 ON THE FILE OF THE COURT OF SESSION, THALASSERY ARISING OUT OF THE JUDGMENT DATED 07.02.2007 IN SC NO.202 OF 1997 ON THE FILE OF THE PRINCIPAL ASSISTANT SESSIONS JUDGE, THALASSERY.

APPELLANT/VICTIM/PW1:

SADANANDAN,
AGED 49 YEARS,
S/O KUNHIRAMAN NAMBIAR,
MANJULALAYAM,
PERINCHERI P.O,
KAYANI,
PAZHASSI AMSOM,
THALASSERY,
KANNUR DISTRICT

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENTS/STATE & ACCUSED NO.1 TO 12:

1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM -682 031.

2 K. SREEDHARAN,
AGED 49 YEARS,
S/O KRISHNAN,
KAPPANAKANDI PARAMBIL HOUSE,
MUNORAPOYIL,
PAZHASSI AMSOM,
KUZHIKKAL DESOM.

3 MATHAMANGALAM NANU,
AGED 54 YEARS,
S/O AMBOOTTY,
PALATHARACHIL HOUSE,
PAZHASSI ASMOM,
KUZHIKKAL DESOM.

4 PUTHIYAVEETTIL MACHAN RAJAN,
AGED 52 YEARS,
S/O KRISHNAN,
PUTHIYAVEETTIL,
MACHAN HOUSE,
PAZHASSI AMSOM,
PERINCHERI DESOM.

5 P. KRISHNAN @ KUNHIKRISHNAN,
AGED 57 YEARS,
S/O NARAYANAN NAMBIAR,
PUTHUSSERY HOUSE,
PAZHASSI AMSOM,
KUZHIKKAL DESOM.

6 CHANDROTH RAVEENDRAN @ RAVI,
AGED 49 YEARS,
S/O KUNHI RAMAN,
K.K.R. NIVAS,
PAZHASSI AMSOM,
MANAKAI DESOM.

7 PULLANHIYODAN SURESH BABU @ BABU,
AGED 43 YEARS,
S/O BALAN,
KARAKANDI HOUSE,
PAZHASSI AMSOM,
KARAYATTA DESOM.

8 MAILAPRAVAN RAMACHANDRAN,
AGED 37 YEARS,
S/O KUNHIRAMAN NAMBIAR,
CHEMATHAKANDY HOUSE,
PAZHASSI AMSOM,
PERUCHERY DESOM.

9 K. BALAKRISHNAN @ BALAN,
AGED 44 YEARS,
S/O RAMAN NAIR,
KALLIPPARAMBATH HOUSE,
PAZHASSI AMSOM,
KUZHIKKAL DESOM.

10 AKKANISSERI KOOMULLIL HARINDRANATHAN,
S/O MADHAVAN NAMBIAR,
MADHAVA SADANAM,
PAZHASSI AMSOM,
NELLUNNI.

11 K. SREEDHARAN,
S/O KUNHIRAMAN,
KOORAMVELLI HOUSE,
KEEZHUR AMSOM,
PUNNAD DESOM.

12 PUTHIYEDATH PURUSHOTHAMAN,
S/O KRISHNAN,
PERUMPRA HOUSE,
PAZHASSI AMSOM,
KARA DESOM.

13 VAZHAYIL MUKUNDAN,
S/O. GOPALAN,
VAZHAYIL HOUSE,
PAZHASSI AMSOM,
EDAPPAZHASSI.

BY ADVS.
P.M.RAFIQ
SRI.CIBI THOMAS
SRI.LOHITHAKSHAN CHATHADI KANNOTH
SRI.T.G.RAJENDRAN
P.VIJAYA BHANU (SR.)
MITHA SUDHINDRAN
RAHUL SUNIL
SRUTHY N. BHAT
AJEESH K.SASI
POOJA PANKAJ
M.REVIKRISHNAN

BY ADV.SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY HEARD ON 21.01.2025, ALONG WITH CRL.REV.PET.1270/2013, THE COURT ON 29.01.2025 DELIVERED THE FOLLOWING:

2025:KER:6743

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 29TH DAY OF JANUARY 2025 / 9TH MAGHA, 1946

CRL.REV.PET NO. 1270 OF 2013

AGAINST THE JUDGMENT DATED 10.06.2013 IN CRIMINAL APPEAL NO.67 OF 2007 ON THE FILE OF THE COURT OF SESSION, THALASSERY ARISING OUT OF THE JUDGMENT DATED 07.02.2007 IN SC NO.202 OF 1997 ON THE FILE OF THE PRINCIPAL ASSISTANT SESSIONS JUDGE, THALASSERY.

REVISION PETITIONERS/APPELLANTS/ACCUSED:

1 K.SREEDHARAN,
S/O. KRISHNAN,
AGED 55 YEARS,
KAPPANAKANDI PARAMBIL HOUSE,
MUNORAPOYIL,
PAZHASSI AMSOM,
KUZHIKAL DESOM.

2 MATHAMANGALAM NANU,
AGED 60 YEARS,
S/O. AMBOOTTY,
PALATHARACHILIL HOUSE,
PAZHASSI AMSOM,
KUZHIKAL DESOM.

3 PUTHIYAVEETTIL MACHAN RAJAN,
AGED 58 YEARS,
S/O. KRISHNAN,
PUTHIVEETTIL MANCHAN HOUSE,
PAZHASSI AMSOM,
PERINCHERY DESOM.

4 P.KRISHNAN & KUNHIKRISHNAN,
AGED 63 YEARS,
S/O. NARAYANAN NAMBIAR,
PUTHUSSERY HOUSE,
PAZHASSI AMSOM,
KUZHIKKAL DESOM.

5 CHANDROTH RAVEENDRAN @ RAVI,
AGED 55 YEARS,
S/O. KUNHIRAMAN,
K.K.R.NIVAS,
PAZHASSI AMSOM,
MANAKAI DESOM.

6 PULLANHIYODAN SURESH BABU @ BABU,
AGED 49 YEARS,
S/O. BALAN,
KARAKANDI HOUSE,
PAZHASSI AMSOM,
KARAYATTA DESOM.

7 MAILAPRAVAN RAMACHANDRAN,
AGED 43 YEARS,
S/O. KUNHIRAMAN NAMBIAR,
CHEMATHAKANDY HOUSE,
PAZHASSI AMSOM,
KUZHIKKAL DESOM.

8 K.BALAKRISHNAN @ BALAN,
AGED 50 YEARS,
S/O. RAMAN NAIR,
KALLIPARAMBATH HOUSE,
PAZHASSI AMSOM,
KUZHIKKAL DESOM.

BY ADVS.
P.M.RAFIQ
P.VIJAYA BHANU (SR.)
SRUTHY N. BHAT
M.REVIKRISHNAN
MITHA SUDHINDRAN
RAHUL SUNIL
AJEESH K.SASI
POOJA PANKAJ

RESPONDENTS/COMPLAINANT & FORMAL PARTY:

1 **STATE OF KERALA,**
TO BE REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2 **STATION HOUSE OFFICER,**
MATTANNUR POLICE STATION.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21.01.2025, ALONG WITH CRA(V).309/2014, THE COURT ON 29.01.2025 DELIVERED THE FOLLOWING:

C.S.SUDHA, J.

Criminal Appeal (V) No.309 of 2014
&
Criminal Revision Petition No.1270 of 2013

Dated this the 29th day of January 2025

J U D G M E N T

The aforesaid criminal revision petition under Section 401 read with Section 397 Cr.P.C. has been filed by the appellants/accused in Crl.A.No.67/2007 on the file of the Court of Session, Thalassery, which appeal in turn was against the judgment dated 07/02/2007 of the Principal Assistant Sessions Judge, Thalassery in S.C.No.202/1997, in which case accused persons 1 to 8 were found guilty and sentenced for the offences punishable under Sections 143, 147, 326, 342 and 307 IPC. Accused nos. 1, 6 and 8 were also convicted and sentenced of the offence punishable under Section 148 IPC. Against the said judgment, they filed Crl.Appeal No.67/2007 which was dismissed by the impugned judgment confirming the sentence of the trial court. Aggrieved by the

judgment in Crl.Appeal No.67/2007 dated 10/06/2013, the criminal revision petition has been filed by accused nos.1 to 8. Crl.Appeal (V) No.309/2014 under the proviso to Section 372 Cr.P.C. has been filed by PW1, the injured against the judgments in S.C.No.202/1997 and Crl.Appeal No.67/2007.

2. The prosecution case is that accused 12 in number who are CPI(M) workers and local leaders, hatched a conspiracy to murder PW1, the upa karyavahak of RSS. In furtherance of the conspiracy, on 25/01/1994 at about 8:30 p.m., A1 to A8 formed themselves into an unlawful assembly armed with deadly weapons like iron rod, crowbar, chopper etc., wrongfully restrained PW1 and hacked him several times due to which both his legs were severed. The accused persons also hurled a country made bomb at the place of occurrence to create a situation of terror in the area so that nobody would come to the rescue of PW1. Hence, as per the final report, accused persons 1 to 12 were alleged to have committed the offences punishable under Sections 143, 147, 148, 120B, 342, 326, 307 read with Section 149 IPC and Sections 3 and 5 of the Explosive Substances Act, 1908 (the Act).

3. Crime No.18/94, Mattannur police station, was registered by PW5, Assistant Sub Inspector of police, Mattannur, that is, Ext.P6 FIR, based on Ext.P1 FIS of PW1. The initial investigation was conducted by PW14, Dy.S.P., Thalassery. During the course of his investigation, Sections 3(1), (2) and (3) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 was also incorporated. The case records were transferred to the designated TADA court, Thiruvananthapuram. Later the offences alleged under TADA were deleted by the investigating agency and case records were sent back to the jurisdictional magistrate. Further investigation was conducted by PW15, Circle Inspector of police, Mattannur, and thereafter by PW16, C.I., Mattannur, who completed the investigation and submitted the final report/charge sheet against the accused persons alleging the commission of the offences punishable under the aforementioned Sections.

4. On appearance of all the accused persons, the jurisdictional Magistrate after complying with all the necessary formalities contemplated under Section 209 Cr.P.C., committed the case to the Court of Session, Thalassery. Thereafter the case was

made over to the Principal Assistant Sessions Judge, for trial and disposal. The trial court framed a charge for the offences punishable under Sections 143, 147, 148, 342, 326, 307, 120B read with Section 149 IPC and Sections 3 and 5 of the Act, which was read over and explained to the accused persons, to which they pleaded not guilty.

5. On behalf of the prosecution, PW1 to PW16 and Exts.P1 to P16 were marked in support of the case. After the close of the prosecution evidence, the accused persons 1 to 12 were questioned under Section 313(1)(b) Cr.P.C. regarding all the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied those circumstances and maintained their innocence.

6. As the trial court did not find it a fit case to acquit the accused persons under Section 232 Cr.P.C., they were asked to enter on their defence and adduce evidence in support thereof. DW1 to DW3 were examined and Exts.D1 series to D3 series were marked on behalf of the accused persons.

7. On a consideration of the oral and documentary

evidence and after hearing both sides, the trial court by judgment dated 07/02/2007 in S.C.No.202 of 1997, found no evidence to find accused persons 9 to 12 guilty of the offences charged against them and hence they were acquitted under Section 235(1) Cr.P.C. However, accused persons 1 to 8 were found guilty of the offences punishable under Sections 143, 147, 326, 342 and 307 IPC and hence A1 to A8 have been sentenced to undergo rigorous imprisonment for three months for the offence punishable under Section 143 IPC ; rigorous imprisonment for six months for the offence punishable under Section 147 IPC ; rigorous imprisonment for one year for the offence punishable under Section 342 IPC ; rigorous imprisonment for five years for the offence punishable under Section 326 IPC and with fine of ₹5,000/- and in default to rigorous imprisonment for one year and rigorous imprisonment for seven years with fine of ₹20,000/- and in default rigorous imprisonment for two years for the offence punishable under Section 307 IPC. A1, A6 and A8 have also been convicted and sentenced for the offence punishable under Section 148 IPC to rigorous imprisonment for one year. The sentences have been

directed to run concurrently. A1 to A8 have been acquitted under Section 235(1) Cr.P.C. of the offences punishable under Section 3 and 5 of the Act. The fine amount of ₹25,000/- each, if realized, has been directed to be paid as compensation to PW1 under Section 357(1)(b) Cr.P.C. Set off under Section 428 Cr.P.C. has also been allowed. Aggrieved, A1 to A8 filed Crl.A.No.67/2007 which has been confirmed by the impugned judgment. Hence, the revision by A1 to A8.

8. The appeal has been filed by PW1, the victim, under the proviso to Section 372 Cr.P.C. aggrieved by the acquittal of accused nos.9 to12 and by the inadequacy of the sentence given to A1 to A8. Admittedly, PW1 did not challenge the judgment of the trial court before the appellate Court. If he was aggrieved by the acquittal of A9 to A12 or against the inadequate compensation granted, he ought to have preferred an appeal before the Sessions Court as provided under the proviso to Section 372 Cr.P.C., which course has apparently not been followed. Moreover, it is only the State who can file an appeal under Section 377 Cr.P.C. on the ground of inadequacy of the sentence. That being the position, the

aforesaid appeal filed by PW1, the injured before this court is held to be not maintainable.

9. Now coming to the merits of the revision filed by the accused persons. It was quite strenuously and persuasively argued by the learned senior counsel Sri. P. Vijaya Bhanu for A1 to A8 assisted by advocate Sruthy N. Bhat, that apart from the oral testimony of PW1, there is only the testimony of PW2, a RSS worker, who is clearly an interested witness. No independent witnesses have been examined to prove the prosecution case. Ext.P1 FIS does not refer to the overt acts of the accused persons. Even Ext.P2, which is the 164 statement of PW1, does not refer to the overt acts of the accused. It is only in the box that PW1 has described the alleged overt acts of each of the accused persons, which is an improvement made to the prosecution case. PW1 was taken to the hospital by his party workers and not by PW5 as claimed by the prosecution. PW1 was instructed by his party to give the name of the accused persons and thus A1 to A8 who are innocent, came to be falsely implicated in the present crime. The weapons alleged to have been used for the assault have not been

recovered by the police. The aforesaid defects must enure to the benefit of the accused persons, and they be given the benefit of doubt. *Per contra* it was submitted by the learned Public Prosecutor that the materials on record are more than sufficient to prove the prosecution case and that no interference into the impugned judgment is called for.

10. Before I go into the arguments advanced, the scope of revision also needs to be kept in mind. The scope for appeal and revision are different. An appeal is a continuation of the proceedings; in substance the entire proceedings are before the appellate court which can review the evidence subject to certain well-defined principles. The scope of revision is, however, different, as would be clear from the scheme of Section 397 Cr.P.C. A revisional authority cannot review the evidence unless the statute expressly confers that power. Here the Section does not confer such power. The provisions contained in Section 395 to Section 401 Cr.P.C. read together do not indicate that the revisional power of the High Court can be exercised as second appellate power. In revision, the High Court can consider the correctness, legality or propriety of

any finding, sentence or order recorded or passed and as to the regularity of any proceeding of any inferior court. However, this jurisdiction is not exercised in every case of impropriety or illegality unless it causes a failure of justice. As a broad proposition, this jurisdiction may be exercised where – a) the decision is unjust and unfair ; b) the decision is grossly erroneous; c) there is no compliance with the provisions of law; d) finding of fact effecting the decision is not based on evidence; e) material evidence of the parties is not considered and f) judicial discretion has been exercised arbitrarily or perversely. The High Court in revision is exercising supervisory jurisdiction of a restrictive nature and therefore it would be justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent findings of fact reached by the trial court and the appellate court are correct (**Duli Chand v. Delhi Administration, 1975 KHC 831 : 1975 (4) SCC 649**).

11. Having thus reminded myself of the law on the point, I will presently consider whether there has been any impropriety, illegality or irregularity committed by the trial court or

the appellate court causing failure of justice, for which I shall briefly refer to the evidence of the material witnesses on record. According to PW1, the injured on 25/01/1994 at about 08:30 p.m. when he alighted from a bus at the place called Uruvachal, A1 to A8 surrounded him. A1 Sreedharan and A3 Rajan threatened him by saying that he would be taught a lesson (നിന്നെ ശരിയാക്കുമെടാ). A3 Rajan caught him by his neck and A4 Krishnan master caught him by his right hand. A5 Ravi master caught hold of his left hand; A2 Nanu caught hold of his right leg and A7 Chandran caught hold of his left leg. He was then dragged and laid on the road. A1 Sreedharan and A6 Babu with choppers repeatedly hacked on both his legs, at which time A8 Balan with a chopper inflicted injuries on his head. PW1 identified A1 to A8 by specifically referring to their overt acts. According to PW1, he could not even budge due to the combined attack by the accused persons. After chopping off his legs, a bomb was thrown at him which exploded with a loud noise. At the time of the incident, there was streetlight and light from the shop rooms in the locality. When the bomb was hurled, all the people in the locality ran away and no one came forward to help

him. The shopkeepers immediately downed their shutters and fled from the place. PW1 further deposed that the place of occurrence is a strong hold of CPI(M) and therefore nobody dared to come forward to help him. When he attempted to stand up, he fell and then he realised that both his legs had been severed. He lost consciousness. He regained consciousness in the hospital at Thalassery. Thereafter, the police recorded Ext.P1 statement. His statement was also recorded by PW9, the Additional Chief Judicial Magistrate, Thalassery, which has been marked as Ext.P2. From the hospital at Thalassery, he was referred to the Medical College Hospital, Kozhikode for expert treatment. He was treated for two months and discharged on 26/03/1994. Surgery was conducted on both his legs and thereafter artificial limbs fitted.

11.1. PW1 deposed regarding the motive of the attack also. According to him, all the accused involved in the incident are CPI(M) and DYFI workers. He is the district upa karyavahak of RSS, Kannur District. He was a member of the SFI during his school and college days. A6 and A11 were his colleagues. However, in 1983 he joined the RSS. Since then, the accused

persons and other Marxist party workers have been maintaining a hostile attitude towards him. Before the incident in this case, on Bharath bandh day the CPI workers removed a cement bench constructed by the RSS workers for a bus shelter and used it for causing obstruction on the road. The RSS workers interfered in the matter and took back the cement bench to the bus shelter. This resulted in an altercation between the RSS workers and CPI(M) workers. The RSS workers including PW1 were beaten up by the CPI(M) workers. After the said incident, one Janardhanan, a CPI(M) worker was attacked at Mattannur, in which case he has been implicated as an accused.

11.2. PW2 supports the prosecution case. He also spoke about the attack of PW1 by the accused persons. On seeing the attack, he became frightened and hence ran away. While running away, he heard a bomb exploding.

11.3. PW5, Assistant Sub Inspector, deposed that on 25/01/1994 at about 08:30 p.m., he received a telephonic message that a person who had sustained injuries was lying on the road at Uruvachal. He, along with another Head Constable proceeded to

the place in the departmental jeep, where he found PW1 lying on the road with injuries to his head and legs. All the shops in the locality were found closed. There was streetlight at the place of occurrence. No one was available for help. So he, along with the Head Constable took the injured in the jeep to the hospital. The severed legs were also taken in the jeep. The injured was first taken to a hospital at Koothuparamba. As there was no doctor available in the said hospital, PW1 was taken to a hospital at Thalassery. First aid was given to PW1. At about 09:45 p.m. when PW1 regained consciousness, he recorded Ext.P1 FIS of PW1. The doctor informed him that the condition of PW1 was quite critical and that his statement needs to be recorded. Therefore, he approached PW9, the Additional CJM and submitted a requisition. PW9 immediately arrived at the hospital and recorded Ext.P2 statement. After entrusting the severed legs to the doctor, he returned to Mattannur station and registered the crime based on Ext.P1 FIS given by PW1. The FIR alleging the commission of the offences punishable under Section 143, 147, 148, 307 read with Section 149 IPC and Section 3 of the Act has been marked as Ext.P6. PW5 further deposed that

since PW1 could not affix his signature, his thumb impression had been taken in Ext.P1 FIS. PW5 also deposed that PW1 had stated the names of the persons involved in the attack in Ext.P1.

11.4. PW1 was examined by Dr. Balamani who issued Ext.P13 wound certificate. The said witness was reported to be no more and so the wound certificate was marked through PW12, who identified her signature in the same. PW12 deposed that he had worked as a surgeon at the Government Hospital, Thalassery, and that Dr. Balamani was his colleague. He deposed that he had seen the patient mentioned in Ext.P13 at the hospital. After first aid and necessary management, the patient was referred to the medical college hospital. The injuries noted are-

> *"(1) Traumatic amputation of lower 1/3rd of left leg, bones clearly cut, muscles pulled inwards, skin edges clean, regular anteriorly, irregular posteriorly, bleeding profusely.*
> *(2) Traumatically amputated at the middle of right leg c¯ both bones falling out-bleeding profusely -Bones clearly cut .*
> *3) Fresh lacerated injury ....cm (not legible) from the medial aspect of right eyebrow extending to the lateral end of his eyebrow through its upper part.*

4) Fresh lacerated injury of right palm 3cm long extending to the underlying structure c̄# at the Metacarpo phalangeal joint."

11.5. PW11, Lecturer, Surgery, Medical College Hospital, Kozhikode deposed that on 26/01/1994 he had examined PW1, who was discharged on 26/03/1994. Ext.P12 is the discharge certificate. The testimony of PW11 shows that both the legs of PW1 were amputated from below the knee. According to PW11, had medical aid not been given timely, the injuries would have proved fatal. The injuries seen in PW1 could have been caused by hacking with a chopper. PW1 sustained 50% disability on account of the amputation of his legs.

12. It is true that the overt acts of each of the accused persons have not been mentioned in Ext.P1 FIS or in Ext.P2 164 statement. But the FIS/FIR is not supposed to be an encyclopedia of the entire event. The essential material facts alone need to be disclosed in the FIR. **(Budh Singh v. State of M. P: 2007 KHC 4257 : 2007 (10) SCC 496**). Moreover, as rightly pointed out by the trial court, PW1 gave Ext.P1 FIS and Ext.P2

statement within hours of the incident, in which incident both his legs were severed, and he was profusely bleeding. Materials have come on record to show that PW1 was lying unconscious and unattended at the scene of occurrence for some time, at which time also he must have lost considerable amount of blood. His condition seems to have been quite critical and that appears to be the reason why the police got his statement recorded by PW9. That being the condition of PW1, it cannot be expected of him to give a detailed description of the incident specifying each of the overt acts of the accused persons. Though the overt act of each accused is not stated in Ext.P1 FIS and Ext.P2 statement, they do refer to the names of all the accused persons, i.e. A1 to A8. Though the defence has taken up the contention that it was the friends of PW1, who are RSS workers, who had taken him to the Hospital, no materials have come on record to substantiate the said version. On the other hand, the testimony of PW5 which has not been discredited shows that the police had arrived at the spot as per telephonic information received and had taken PW1 to the Hospital. The incident took place on 25.01.1994 at 8.30 p.m.

Ext.P1 was recorded on the same day at 9.45 p.m. and Ext.P2 was recorded at 10.13 p.m. The FIR is seen to have been lodged at the quickest possible time. Finding the condition of PW1 to be quite critical on the advice of the doctor, the police are seen to have taken prompt steps to get his statement recorded. PW5 deposed that while being taken to the Hospital, PW1 was unconscious and that he regained consciousness only when first aid was given at the hospital. Before Ext.P1 FIS and Ext.P2 statements were recorded, no materials have come on record to show that there was the interference of a 3rd person to tutor PW1 regarding the names of the assailants to be given to the police.

13. Apart from PW2, it is true that there are no other witnesses to support the prosecution case. According to the defence, PW2 is an interested witness and hence his testimony cannot be relied on. But the testimony of PW1 and PW2 show that all the other people available in the locality took to their heels and the shop owners downed their shutters and left the place as the accused persons had hurled a bomb creating a situation of terror. Hence, there appears to have been no witness apart from

PW2. Even assuming PW2 to be an RSS worker, the same is no reason to disbelieve his testimony, because nothing was brought out to discredit his testimony. Moreover, the term 'interested' postulates that the witness must have some interest in having the accused somehow or the other convicted for some animosity or for some other reasons (**Kartik Malhar v. State of Bihar, (1996)1 SCC 614**). There is no rigid or inflexible rule that the evidence of a related or interested witness shall be viewed with suspicion under all circumstances. While acting on the evidence of an interested witness, it is only that the court must act with discerning circumspection and utmost prudence.

14. I went through the testimony of the defense witnesses also. The same does not in any way help in disproving the prosecution case or discredit the testimony of PW1 and PW2.

15. It is true that the weapons used for the attack were not recovered by the police. But, recovery of weapon(s) used in the commission of an offence is not a *sine qua non* to convict the accused (See **Mritunjoy Biswas v. Pranab alias Kuti Biswas, AIR 2013 SC 3334 ; Sanjeev Kumar Gupta v. State of**

U.P., (2015)11 SCC 69 ; Yogesh Singh v. Mahabeer Singh, (2017)11 SCC 195 ; Rakesh v. State of U.P., (2021)7 SCC 188 ; State through the Inspector of Police v. Laly alias Manikandan, AIR 2022 SC 5034). Here the medical evidence supports the testimony of PW1 regarding the injuries sustained by him. PW1 was repeatedly hacked by the accused persons with some sharp edge weapon. After hacking PW1 leading to both his legs being severed, they made sure that nobody approached to rescue him by hurling a bomb which burst with a loud noise. The intention seems to have been to let PW1 bleed to death. Therefore, the intention was certainly to cause the death of PW1. Fortunately for PW1 and unfortunately for the accused, the former survived the attack to tell the tale. There are no reasons to disbelieve the version of PW1 and PW2 and hence I find no infirmity or illegality in the findings of the trial court which has been rightly confirmed by the appellate court.

16. Now coming to the sentence that has been imposed on the accused persons. It was pointed out by the learned counsel for PW1 that the compensation awarded is too meagre

and hence the court may enhance the compensation for which it has got ample power. In support of the argument reference was made to the dictum in **Neeraj Sharma v. State of Chhattisgarh, 2024 KHC 6004 : AIR 2024 SC 271** in which case the injured therein had lost his left leg below his knee. The apex court awarded compensation of ₹5,00,000/- under Section 357 (a) in the place of ₹1,00,000/- that was ordered by the High Court. Relying on the aforesaid dictum, the argument of the learned counsel is that this Court has got ample power to enhance the compensation to be given to PW1. However, the learned senior counsel appearing for the appellants/A1 to A8 made a fervent plea not to enhance the compensation. It was also pointed out that all the accused persons are senior citizens above the age of 75 and hence a lenient view may be taken regarding the substantive sentence of imprisonment imposed.

17. I do not think that the accused persons deserve any sort of leniency in the light of the overt acts committed by them. The incident did not happen in a fit of rage/anger or on a sudden provocation. The attack seems to have been premeditated

and well planned. As noticed earlier and at the risk of repetition, it needs to be noted that not only had A1 to A8 hacked PW1 repeatedly leading to both his legs being severed, they also made sure that nobody approached PW1 to rescue/save him. This makes the offences all the more grave/severe. The attack seems to have been made only because PW1 switched loyalty and joined a rival party. In paragraph no.33 of the trial court judgment it is stated that PW1 a charismatic and efficient leader was making his mark in the locality and his efforts helped in spreading and strengthening the roots of his party in the area. The accused persons belonging to a rival political party just could not accept/digest it. It seems to have become the norm of the day of some to silence political opponents by either killing or maiming them severely for the rest of their life. If this is not intolerance, then what is? This sort of activity by any person, let alone a political party can at no cost be encouraged and such offences will have to be dealt with an iron hand. Political parties have to deal with or finish their political opponents in the electoral battlefield and not engage in bloodshed and remove the opponents from the face of the earth itself. This Court would

certainly have considered the fervent pleas made by the learned senior counsel appearing for the accused considering the age of the accused persons. However, the facts and circumstances of the case deter me from doing so in the light of the brutal, dastardly and near fatal attack on PW1. If the sentence is in any way brought down, that would only send a wrong message to society at large and encourage the commission of such offences in the future also. PW1 was a young man aged 27 years at the time of the incident. 31 years have elapsed. He is still awaiting justice. Therefore, this is not a case in which any sort of interference is liable to be made especially in revision when no illegality, irregularity has been brought out from the materials on record. In the light of the gravity of the offence committed, the sentence of seven years appears to be very light. However, the State, for reasons best known to them, has not filed an appeal under Section 377 Cr.P.C. Since both the legs of PW1 have been amputated, it would only be just and proper that the compensation amount be increased appropriately. In the facts and circumstances of the case and considering the fact that 31 years have elapsed since the incident,

A1 to A8 are directed to pay compensation of ₹50,000/- each to PW1 under Section 357(3) Cr.P.C. The substantive sentence of imprisonment imposed is confirmed and is not enhanced in the exercise of the inherent powers of this Court in the light of the age of the accused and as the compensation amount has been enhanced. The sentence of fine imposed by the trial court and confirmed by the appellate court is set aside.

In the result, the criminal revision petition is disposed of as aforesaid. The Criminal Appeal is dismissed.

Interlocutory applications, if any pending, shall stand closed.

SD/-
C.S.SUDHA
JUDGE

ak