

Manoj Vs. State of Kerala

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Court : Kerala

Decided On : Feb-19-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Manoj

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN & THE HONOURABLE MR. JUSTICE B.KEMAL PASHA WEDNESDAY, THE 19^H DAY OF FEBRUARY 2014 30TH MAGHA, 1935 CRL.A.No. 2457 of 2009 -----
[AGAINST THE

ORDER

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JUDGMENT

IN SC4632004 of SESSIONS COURT, THODUPUZHA DATED 31.10.2009]
APPELLANTS(S)/1ST & 2ND ACCUSED: ----- 1.
MANOJ, AGED 32 S/O. KUNJUMON, RESIDING AT KOLLAKKATTIL HOUSE,
MARADI KARA, MARADI VILLAGE, MUVATTUPUZHA TALUK, ERNAKULAM
DIST.

2. SHIJI, AGED 33 S/O. KUNJUMON, PALLITHAZHATHU HOUSE, EDAVETTIKKARA, KARIKODE VILLAGE NOW RESIDING AT, BRALA P.O. MALANKARA ESTAE THODUPUZHA. BY ADVS. SRI. K.G. SARATHKUMAR SRI. S. RAJKUMAR RESPONDENT(S): ----- STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. ROY THOMAS. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: V.K. MOHANAN & B. KEMAL PASHA, JJ.

----- Crl.A.No. 2457 of 2009
----- Dated this the 19th day of February, 2014

JUDGMENT

Kemal Pasha, J: Accused Nos. 1 and 2 in Sessions Case No. 463 of 2004 of the Sessions Court, Thodupuzha have come up in appeal. Originally, the appellants along with three other persons were indicted by PW14 C.I. of Police, Thodupuzha alleging offences punishable under Sections 143, 144, 147 and 148 of I.P.C. and Sections 294(b), 341, 323, 324 and 302 read with 149 of I.P.C. The court below found the first accused guilty of the offence punishable under Section 302 I.P.C., convicted him thereunder, and sentenced him to undergo imprisonment for life and to pay fine of `25,000/-, in default to undergo simple imprisonment for one year. Further, the court below found the second accused guilty of the offence punishable under Section 324 of I.P.C., convicted him thereunder, and sentenced him to undergo rigorous imprisonment for two years and to pay fine of `2500/-, in default Crl.A.No. 2457 of 2009 :-2-: to undergo simple imprisonment for two months.

2. On 19.10.2002, at about 9 p.m., the accused sprinkled chilly powder on the face of CW4, who is deaf and dumb. One of his relatives, CW3 questioned the said act of the accused. The first accused got furious and beat CW3. Further, the accused persons abused her. PW2 Ebrahim, who is none other than the brother of CW3, intervened to the rescue of CW3. It is alleged that accused Nos. 2 to 5 wrongly restrained PW2. Then, PW1 came to their rescue and intervened in the quarrel and tried to separate them. All of a sudden, the second accused stabbed PW1

with MO1 knife. At that time, deceased Rukkiya, who is the sister of CW3, rushed to the spot, intervened in the quarrel, and attempted to separate the assailants. The first accused inflicted a knife blow on her abdomen by stabbing with MO1 knife, thereby, the deceased sustained fatal injuries, and collapsed. The deceased was taken to the Chazhikattu Hospital at first, from where she was referred to a higher centre and thereby she was taken to the Medical Mission Hospital, Kolenchery. While undergoing CrI.A.No.2457 of 2009 :-3-: treatment there, she met with her death on 29.10.2002.

3. On the next date to the incident, PW1 furnished Ext.P1 F.I.S. before PW10 Head Constable of Police, Thodupuzha at the Chazhikkad Hospital, where he was undergoing treatment at 9 a.m. on 20.10.2002. Ext.P1 was produced before PW11 S.I. of Police, Thodupuzha, whereupon PW11 registered Crime No.533 of 2002 of the Thodupuzha Police Station through Ext.P10 F.I.R., arraigning A1 to A4 as accused alleging the offences punishable under Sections 341 and 324 read with Section 34 of I.P.C. Initial investigation was conducted by PW11. He went to the scene of occurrence and prepared Ext.P8 scene mahazar by which he seized MO2 series chappals.

4. Following the death of deceased, CW26 C.I. of Police took over the investigation and filed a report for adding the offence under Section 302 of I.P.C in the crime. CW26 conducted the inquest of the body of the deceased, and prepared Ext.P2 inquest report at 4 p.m. on 29.10.2002 at the Medical Mission Hospital, Kolencherry. The fifth accused was also arraigned on the basis of the disclosure CrI.A.No.2457 of 2009 :-4-: statement of the first accused. Further, on the basis of the disclosure statement of the first accused, and as led by him, CW26 discovered MO1 knife, taken out and produced by A1. Forwarding note was prepared and the material objects were produced before the court.

5. After the inquest, the body of the deceased was sent for postmortem examination. PW9, while working as Professor of Forensic Medicine and Police Surgeon at the Medical College, Kottayam, on 30.10.2002 at 10.30 a.m., conducted the autopsy and prepared Ext.P9 Postmortem certificate, in which he has noted the following ante- mortem injuries:- "1. Infected healing penetrating

wound 4.5x3 cm horizontal on left side of abdomen, 19cm below armpit and 15.5. cm to the left of midline. Margins of the wound were regular. Lower margin of 10th rib on left side partly cut. Small intestine showed a sutured wound around it involving its full thickness, 9cm below fixed part of jejunum. Another sutured wound 5cm long involving its whole thickness was present in the small intestine 47 cm below the above wound. Proximal part of duodenum showed a sutured wound 2.5 cm stomach shows a sutured wound 6 cm long near its cardia end and another sutured wound 3cm long near its pyloric end. The intestines were lustreless and adherent to each other by flakes of pus. Abdominal cavity contained 50 ml. Of purulent fluid. The wound was directed backwards and to the right for a depth of 8.5 cm. CrI.A.No.2457 of 2009 :-5-: Spleen was found missing and its pedicle was found sutured. 2. Infected wound, 5x2 cm, horizontal on left side of front of abdomen 5cm to left of midline and 10cm below costal margin. The transverse colon was found cut and sutured around the margin of the wound (surgical wound).

3. Incised wound, 2.5x1 cm on the middle of front of neck, 3cm above ten of sternum entering into trachea (surgical wound).

4. Sutured healing wound, 4cm long horizontal on the front and inner aspect of right elbow (surgical wound).

5. Sutured healing wound, 22cm long vertical on the front of middle of abdomen, 5cm above pubic bone entering into its cavity (surgical wound).

6. Healing wound, 2.5x2 cm, on right side of front of abdomen 4.5 cm to the right of midline and 6cm below costal margin (surgical wound).

7. Healing wound, 1.5x1cm on the right side of front of abdomen, 5.5cm to the right of midline and 1.5cm below injury No.6 (surgical wound).

8. Multiple small abrasions over an area, 4x3 cm on right side of face, just outer to mouth.

9. Abrasion, 2x0.5 cm on right side of front of chest, 11cm outer to midline and 3cm above costal margin." 6. The opinion as to the cause of death given by PW9 is that the death was due to the penetrating injury sustained to the abdomen, i.e.

injury No.1 noted in Ext.P9. According to PW9, the said injury could be caused by stabbing with a weapon like MO1.

7. PW14, who is the successor in office to CW26, conducted and completed the investigation and filed a final report. CrI.A.No.2457 of 2009 :-6-:

8. On the side of the prosecution, PWs.1 to 14 were examined and Exts.P1 to P19 were marked. Mos.1 and 2 series were identified. On the side of the accused, Exts.D1 and D2 were marked. After closing the evidence of the prosecution, the appellants were examined under Section 313 of the Cr.P.C. The appellants denied the incriminating circumstances appeared in the evidence against them. The prosecution and the accused were heard. As no grounds were made out to acquit the appellants/accused under Section 232 of the Cr.P.C., they were called upon to enter on their defence. No defence evidence was adduced. Again the prosecution and the accused were heard. The court below acquitted accused Nos.3, 4 and 5. The court below found the first accused guilty of the offence punishable under Section 302 of I.P.C., convicted him thereunder, and sentenced him as aforesaid. Further, the court below found the second accused guilty of the offence punishable under Section 324 I.P.C., convicted him thereunder, and sentenced him as aforesaid.

9. We have heard Advocate Sri.K.G.Sarath Kumar, the learned CrI.A.No.2457 of 2009 :-7-: counsel for the appellant, and the learned Public Prosecutor Sri.Roy Thomas for the State. The learned counsel for the appellant has canvassed an argument that there is no sufficient evidence to connect the appellants with the offences for which they are convicted and sentenced by the court below. It is also argued that the versions of the occurrence witnesses relied on by the court below to find the guilt of the appellants are shrouded with contradictions and inconsistencies and therefore, the court below ought not to have relied on their versions. Per contra, the learned Public Prosecutor has argued that the case against the appellants clearly stands proved and there is absolutely nothing to interfere with the conviction and sentence passed by the court below.

10. The prosecution is relying on the evidence of PW1,PW2 and PW13 and also the contents of Ext.P1 furnished by PW1, to prove the prosecution case.

11. On coming to know that PW1 has sustained injuries and has been undergoing treatment at the Chazhikkattu Hospital, CrI.A.No.2457 of 2009 :-8-: Thodupuzha, PW10 Head Constable of Police reached the said hospital and recorded Ext.P1 F.I.statement at 9 a.m. on 20.10.2002. The versions in Ext.P1 show that he sustained injury as the second appellant had stabbed him with a knife. According to him, at about 10 p.m. on 19.10.2002, a woman in his neighbourhood named Thara, came to his house, and told him that his father's elder brother PW2 was being assaulted by A1 to A4 at Kurisupally Junction. Immediately, he rushed to the spot and on seeing the incident, he intervened and attempted to separate the said accused persons from PW2. Unexpectedly, A2 stabbed him with a knife on his hand muscle. On hearing the hue and cry, deceased Rukkiya, who is his paternal aunt reached the spot and bandaged the injury on his hand by tying with a bathing towel. At that time, the second appellant stabbed the deceased on her abdomen with the knife and thereafter, all the accused ran away from the spot. Just before the incident, the said accused persons had sprinkled chilly powder on the face of one Noushad, a deaf and dumb man, residing near the house of CW3 Sainaba. Noushad immediately CrI.A.No.2457 of 2009 :-9-: rushed to the house of CW3, washed his face and then showed signs that such an atrocity was committed by the said accused persons. When CW3 questioned the accused about it, she was severely abused by them. On hearing it, PW2, who is the elder brother of CW3, went over there and questioned the said acts of the accused. It was, at that time, they beat PW2 and the consequent incidents followed.

12. According to PW1, on getting information that his father's elder brother and his paternal aunt were being beaten, he went to the scene of occurrence at the road near Kurisu Pally. He could see, PW2 and CW3 were being forcibly held and stamped by A1,A2,A3 and A5. When he attempted to release them from the clutches of the accused, A2 stabbed him on his hand with MO1 knife. His father and another person named Konthalu, and the deceased reached the spot on hearing the hue and cry. While his father and the said Konthalu were bandaging the wound on his hand, he could see Rukkiya collapsing by stating that A1 has stabbed her. He could see the stab injury towards the left side of the abdomen of the deceased. The deceased and PW1 CrI.A.No.2457 of 2009 :-10-: were taken to the Chazhikkattu Hospital, Thodupuzha.

13. PW1 furnished Ext.P1 F.I.S. at the hospital before the Police on the next morning. The prior incident in which chilly powder was sprinkled by the accused on the face of Noushad, was also spoken to by PW1 as contained in Ext.P1. He identified MO1 and all the accused. Even though he has stated in Ext.P1 that it was A2, who stabbed him as well as the deceased, it has come out from the evidence of PW1 that he could not see as to who stabbed the deceased. At the same time, it has come out from his evidence that he could see Rukkiya collapsing by stating that A1 had stabbed her. The said statement spontaneously made by the deceased while collapsing, is clearly admissible in evidence under Section 6 of the Indian Evidence Act.

14. PW2 has also clearly supported the versions of PW1 in all material particulars. He has also spoken to regarding the incident in which chilly powder was sprinkled by the accused on the face of Noushad. When CW3, who is the sister of PW2, questioned the said act of the accused, she was severely abused by the accused. He Crl.A.No.2457 of 2009 :-11-: identified all the accused. When he intervened and questioned, he was beaten by the accused. When CW3 interfered for his rescue, she was also beaten. CW5 Sara @ Thara, on seeing it, rushed to the house of PW1 and informed the same. PW1 and the deceased rushed to the spot. When PW1 attempted to intervene, A2 stabbed PW1 with MO1 knife. When the deceased intervened to the rescue of PW1, she was also stabbed by A1. On getting the stab, the deceased collapsed by stating that Manoj (A1) stabbed her. PW1 and the deceased were taken to the Chazhikkattu Hospital, Thodupuzha. PW1 was admitted there, and the deceased was referred to the Medical Mission Hospital, Kolencherry.

15. PW13, who is one of the neighbours, on hearing the hue and cry, went to the road. She could see PW1 running to the spot, followed by the deceased. She also ran behind them. She could see, the injury sustained to PW1 being bandaged. CW3 and the deceased were trying to protect PW1. At that time, he could see A1 stabbing the deceased with a knife. On getting the stab, the deceased collapsed by Crl.A.No.2457 of 2009 :-12-: uttering that she was stabbed by Manoj (A1).

16. From the aforesaid evidence, it has clearly come out that it was A2 who stabbed PW1 on his hand muscle, thereby causing a through and through injury, as is evident from Ext.P5 wound certificate prepared by PW5, who was working as the Casualty Medical Officer at Chazhikkattu Hospital, Thodupuzha, on examining PW1 at 10.20 p.m. on 19.10.2002. According to PW5, the said injury could be caused by stabbing with MO1.

17. PW4, while working as the Chief Medical Officer, Medical Mission Hospital, Kolencherry on 19.10.2002 at 11.10 p.m. examined the deceased aged 37 years and issued Ext.P3 wound certificate, which shows that she had sustained stab wound 3 cm long on the epigastric region on the upper part of the abdomen, left side. According to him, the said injury could be caused by stabbing with MO1. According to him, the said patient expired on 29.10.2002. She was conscious; but she was drowsy and under shock.

18. It seems that the prosecution has not made any endeavour CrI.A.No.2457 of 2009 :-13-: to elicit from PW9 Forensic Expert to bring out whether the injuries, noted on the body of the deceased, were sufficient in the ordinary course of nature to cause death. It has clearly come out that the wound became infected and pus was formed due to the action of bacteria. According to PW9, the injury was to the intestine, which is rich in bacteria. It seems that the deceased had died on the tenth day of the incident while undergoing treatment.

19. From the facts and circumstances of the case, it is evident that the incident, which had resulted in the death of the deceased, had occurred without any premeditation on the part of the first appellant. The said incident had occurred, when the deceased had intervened in an incident wherein PW1 was stabbed by the second appellant. The prosecution has not established any premeditation on the part of the first appellant. At the same time, it has clearly come out that the death of the deceased was caused by the first appellant by causing an injury by stabbing with MO1. It clearly constitutes culpable homicide within the meaning of Section 299 of I.P.C. When the said act was committed CrI.A.No.2457 of 2009 :-14-: without any premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, we are of the view that the said act is covered by Exception 4 to

Section 300 I.P.C. Any intention cannot be attributed on the part of the first appellant.

20. Matters being so, it stands proved that the first appellant has committed culpable homicide not amounting to murder. As there was no intention to cause the death and when there was knowledge on the part of the first appellant that his act was likely to cause the death of the deceased, the first appellant has committed the offence under Part II of Section 304 I.P.C.

21. From the discussions made above, we find that the conviction entered by the court below on the first appellant under Section 302 I.P.C. is liable to be modified as conviction under Part II of Section 304 I.P.C, and consequently, the sentence imposed by the court below under section 302 IPC is liable to be set aside. The conviction passed by the court below on the second appellant is not liable to be interfered with. At the same time, we are of the view that the sentence Crl.A.No.2457 of 2009 :-15-: imposed by the court below on the second appellant requires modification. In the result, this appeal is allowed in part, and we find the first appellant guilty of the offence punishable under Part II of Section 304 I.P.C. The conviction passed by the court below as against the second appellant under Section 324 of I.P.C. is upheld. We are of the view that a sentence of rigorous imprisonment for five years under Part II of Section 304 I.P.C as against the first appellant, will meet the ends of justice in this case. Considering the facts and circumstances of this case and the nature of injury sustained to PW1, we are satisfied that a sentence of simple imprisonment for six months to the second appellant for the offence under Section 324 of I.P.C. will meet the ends of justice in this case. It is made clear that the appellants are entitled to get set off, of the period undergone by them in custody in connection with the investigation, inquiry and trial of this case under Section 428 of the Cr.P.C. The Registry is directed to forward a gist of this judgment to the concerned Prison where the first appellant is Crl.A.No.2457 of 2009 :-16-: undergoing incarceration, immediately for appropriate action in this matter. Sd/- V.K.MOHANAN, Judge sd/- B.KEMAL PASHA, Judge MBS/