

Saran Anand vs Shaji

Saran Anand vs Shaji

SooperKanoon Citation : sooperkanoon.com/1456198

Court : Kerala

Decided On : Jan-31-2022

Judge : Honourable Mr.Justice K.Vinod Chandran,Honourable Mr.Justice C. Jayachandran

Appeal No. : CRA(V)/337/2013

Appellant : Saran Anand

Respondent : SHAJI

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN MONDAY, THE 31ST DAY OF JANUARY 2022 / 11TH MAGHA, 1943 CRA(V) NO. 337 OF 2013 AGAINST THE ORDER/JUDGMENT IN SC 212/2010 OF IST ADDITIONAL SESSIONS COURT, KOZHIKODE DATED 6.12.2012 APPELLANT/PW1: SARAN ANAND S/O VIVEKANANDAN, KIZHARIYOOR, KOYILANDI, KOZHIKODE BY ADVS. SRI.P.V.ANOOP SRI.K.V.SREERAJ RESPONDENTS/ACCUSED & STATE: 1 K.P.SHAJI S/O NARAYANAN, KUTTIPARAMBIL HOUSE, KIZHARIYOOR P.O, KOYILANDY, KOZHIKODE 2 STATE OF KERALA REPRESENTED BY

THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI 682031 BY ADVS. T.SHAJITH S.K.SAJU OTHER
PRESENT: SRI.V.S.SREEJITH, PUBLIC PROSECUTOR THIS CRL.A
BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN FINALLY
HEARD ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.
----- Criminal Appeal (V) No.337 of 2013
----- Dated this the 31st day of January, 2022

J U D G M E N T

Jayachandran, J.

In this appeal preferred by the vic
challenge. The first respondent herein, the sole accused, faced indictment for
offences under Sections 341, 323 and 302 of the Indian Penal Code. As per
judgment impugned, he was found guilty of offences under Sections 341 and 323
and was acquitted for offence under Section 302 of the I.P.C. The victim died
pursuant to an assault/hurt on his nose, alleged to have been made by the
accused. The aggrieved son, who was examined as PW1 before the Sessions
Court, is the appellant herein.

2. The prosecution would allege that on 1.9.2009 at 8.30 p.m., the accused, due to
previous

enmity, wrongfully restrained the victim, Vivekanandan, and fisted on his nose.
Besides, the accused dragged the victim, after keeping his leg on his chest and
uttered whether he wants to live or die. According to prosecution, PW1 and others
took the victim to his house, with a bleeding nose. On the next day, the victim was
taken to Aswini Hospital, Koyilandi and he was

brought back to his house, after
unconscious. Thereupon, the victim was taken to Medical College Hospital,
Kozhikode. However, he succumbed on 19.9.2009. The cause of death as per

Ext.P11 postmortem certificate is meningitis following hit to nose. Thus, according to the prosecution, the victim died as a direct consequence of the grievous hurt caused by the accused on his nose, wherefore, the accused is guilty of offences under Sections 341, 323 and 302 of the I.P.C.

3. The prosecution paraded 17 witnesses, through

whom Exts.P1 to P19 were marked. The shirt and dhoti worn by the deceased were marked as MO1 and MO2 respectively. On the defence side, Exts.D1 to D9 contradictions were marked.

4. On an analysis of the facts and evidence, the

learned Sessions Court relied upon the evidence tendered by PW1 to PW4, eye witnesses to the incident, and convicted the accused for offences under Sections 341 and 323 of the I.P.C. However, as regards the offence under Section 302, the learned Sessions Judge found that the accused had neither any intention nor knowledge that he, by his act, is likely to cause the death of the

victim. The learned Sessions Judge placed reliance upon the judgment of this Court in *Thomas v. State of Kerala* [1991 (2) KLT 274] in acquitting the accused for offence under Section 302.

5. Heard the learned counsel for the appellant/victim and the learned counsel for the first respondent/accused.

6. The learned counsel for the appellant

submitted that the court below seriously erred in acquitting the accused of offence under Section 302 of the Penal Code. Having found the overt acts alleged against the accused, relying upon evidence tendered by PW1 to PW4 - the eye witnesses - it should have been found that the accused is guilty of offence under Section 302, as well. This is, all the more so, on account of the findings in Ext.P11 postmortem certificate, duly proved through PW13 Doctor, wherein the cause of death is stated to be meningitis following hit to nose. Thus, the proximity of the hurt on the nose of the victim and meningitis - the immediate cause of death - has

been amply established, which was omitted to be taken note of in the proper perspective by learned trial Judge. According to the learned counsel, the court below has committed a serious mistake in ignoring the utterance made by the accused to the deceased by placing his leg on his chest, that is to say, whether he wants to live or die. This shows the clear intention of the accused, which was sidelined to hold that the accused had no intention to commit the murder of the deceased. At any rate, the Sessions Court ought to have found that the accused is guilty of offences under Sections 307 and 326, if not under Section 302 of the I.P.C.

7. Per contra, learned counsel for the first

respondent/accused submitted that the acquittal of the accused for offence under Section 302 of the I.P.C. is fully justified, there being no incriminating material pointing to the mens rea of the accused. As a matter of fact, even the evidence with respect to the offences under Sections 323 and 341 are far from satisfactory and it was a fit case where the accused ought to have carried an appeal challenging the conviction

therein. Learned counsel pointed out that the accused was not taken to the hospital pursuant to the alleged incident, which would indicate that the injury alleged to have been sustained by the victim was not serious at all. It is an admitted case that the victim was taken back to his home from the place of occurrence. Although a case is set up to the effect that the accused was taken to Aswini Hospital, Koilandi on the next day, no material, whatsoever, is forthcoming in support thereof. No document in this regard is produced; nor is any Doctor examined in support of the said fact. As per records, the victim was taken to the hospital only on 5.9.2009, for a different cause

altogether and he died due to meningitis and pneumonia. PW12 and PW13 gave categorical evidence indicating that the spleen of the victim has been surgically removed years back, which renders the victim prone for infection. It is

also borne out from medical records that the victim was a chronic alcoholic and chain smoker. Learned counsel would contend that there is no rhyme or reason in

concluding that the cause of death is meningitis following hit to nose. PW3 had not explained as to how the two separate and distinct medical conditions are clubbed together to constitute the cause of death. It has not been established whether the alleged hit to the nose has contributed directly to cause the death of deceased. Finally, learned counsel submitted that

the finding of learned Sessions Judge to the effect that accused had no intention, whatsoever, to cause the death of the victim by punching on his nose, cannot be assailed on any legal or factual premise. The prosecution has no case that the accused was aware of the mitigating health condition of the victim and, therefore, the case cannot be brought under Section 300, Secondly. In the absence of a definite intention or knowledge, Section 299 is also not attracted. For the same set of reasons, Section 307 or Section 308 is

also not attracted. The overt act found to have been proved is a punch on the nose of victim by the accused, which is punishable only under Section 323 of the I.P.C. and it was so held and found in the impugned judgment. Therefore, the same warrants no interference by this Court.

8. Having heard the learned counsel appearing for the respective parties, we will now analyse

the issue whether learned Sessions Judge has committed any error in acquitting the accused for offence under Section 302 of the I.P.C. We notice that learned Sessions Judge believed the evidence tendered by PW1 to PW4 to the effect that the accused caught hold of the collar of the shirt worn by the victim and fisted on his nose. It was also found that the accused placed his leg on the victim's chest and asked him 'whether he wants to

live or die'. They have also witnessed the bleeding nose of the victim. The evidence tendered by PW1 to PW4 corroborate each others testimony. Accordingly, learned Sessions Judge found the overt acts alleged against the accused. However, the learned Sessions Judge discounted the offence under Section 302 by placing reliance upon the evidence tendered by PW12 and PW13, as also, for want of intention or knowledge on the part of the accused to commit

the murder of the victim.

9. Having regard to the issue under

consideration, certain facts are required to be noted. The incident occurred on 1.9.2009 at 8.30 p.m. It is not disputed that the victim was not taken to any hospital, pursuant to the incident, but was brought home. It is the prosecution case that the victim was taken to Aswini Hospital, Koyilandi on the next day, i.e. on 2.9.2009, and that he was brought back after treatment on the same day. However, no documentary evidence in the

form of any medical record is forthcoming in respect of the above fact. As per records, the victim was taken to the Government Hospital on 5.9.2009, that is to say, on the fourth day from the date of the incident, where the victim became

unconscious, according to the prosecution. He was, therefore, taken to Medical College Hospital on the same day and had undergone treatment there as an inpatient, until he succumbed on 19.9.2009. The Doctor, who treated the victim in the Medical College Hospital was examined as PW12 and the one who conducted the autopsy, as PW14.

10. PW12 would state that the patient was immediately referred to E.N.T. Department, since he was having some bleeding from the nose. The

patient was referred back to the Medicine Department for evaluation of fever and headache, after ruling out the presence of any local wound, which would account for the bleeding. It could thus be seen that the focus was not on the injury to the nose, but on the general medical condition of the victim, manifested by fever, headache etc.

Thereupon, PW12 admitted the vict

fluid. He was accordingly treated for meningitis. PW12 would state that the blood pressure of the victim was high. The treatment given to the victim from 5.9.2009 to 12.9.2009 occasioned considerable improvement and accordingly, he was

shifted to the Medicine Ward on 12.9.2009. However, his condition worsened on 13.9.2009. The case sheet of the victim was marked as Ext.P10. PW12 would refer to the allegation of the patient (witness would have meant patients by-standers) that there was history of injury to nose four days prior to the symptoms. He opined that the

victim was prone for infection, since had undergone splenectomy and that this, coupled with the injury caused to the nose, may be a reason for meningitis. This however is not conclusive.

11. PW12 would also depose in cross examination

that he cannot say the exact reason for meningitis. It was further elicited that the deceased was suffering from high blood pressure and he was a chronic alcoholic and a chain smoker. PW12 would state that hemorrhage to brain can be expected in such patients. PW12 would state that bacterial infection leading to meningitis could be caused to patients, who do not have spleen and who are alcoholic. PW12 also deposed that it is on account of history of injury to nose that he referred the victim to ENT Section and that as per the case sheet, no injury is found inside the nose. According to PW12, he cannot explain the exact reason for bacterial entry to the brain.

12. It could thus be seen that the evidence tendered by PW12 does not substantiate satisfactorily any proximate connection between the injury to the nose on the one hand, and meningitis and pneumonia on the other hand, the latter leading to death of the victim.

13. PW13 is the Doctor, who conducted the autopsy. The postmortem certificate issued by PW13 was marked as Ext.P11. In Ext.P11, the

opinion as to cause of death is stated to be 'meningitis following hit to nose (evidence of pneumonia present in addition)'. PW13 deposed in confirmation of absence of spleen in the patient, as it is surgically removed. He found two antemortem injuries, of which the first one is a healing contusion, with the dimension 0.3x0.3x0.3 c.m. at the tip of the nose, yellowish in colour. The cause of

death as stated in Ext.P11 is reiterated by PW13 in chief examination. According to PW13, the route of nose connecting brain is vital.

14. In cross examination, PW13 would state that

he got information regarding the history of hit over forehead from the findings in the inquest report and that he does not remember any history available in the case sheet. Instead, the history given in the case sheet is a fall, 6 years back. PW13 would state that he could not find any injury in the skull or in the route of nose, although he cautioned to add a rider that, in the period of 19 days from the incident till the date of death, injury or fracture would have healed. According to PW13, the reason for pneumonia is infection.

15. An analysis of the evidence tendered by PW12

and PW13 would leave some indication regarding the connection between the injury in the nose and the cause of death, namely, meningitis. However, the same is not satisfactorily established to fix the culpability on the accused. Neither PW12 nor PW13 opines with reasonable conclusiveness that the injury in the nose is the proximate cause of meningitis. Coupled with this fact, there exists

several mitigating circumstances making the victim vulnerable for infection. Firstly, the victim had undergone splenectomy surgery and it has been elicited through PW12/doctor that such

patients will be more prone to in

health was otherwise compromised. On top of all this, as per the evidence on record, the patient was taken to hospital for the first time after four days from the incident, which also makes it medically difficult to cull out the proximate connection, if any, between the assault and the medical situation of the victim as on 5.9.2009.

16. Coming back to the legal requirement of intention or knowledge, this Court can only

endorse the findings of the learned Sessions Judge that the accused had neither of the two. No motive is suggested on the accused to do away with the deceased. All that is established in evidence is that the accused fisted on the nose of victim, causing bleeding. It cannot be taken that such hit was sufficient in the ordinary course of nature to cause death of the victim; nor is there any medical opinion to that effect. The same is not spoken to by PW13, who conducted the autopsy. The state of affairs being thus, there exists no tangible material from which the intention, or the knowledge at least, of the accused could be deciphered. There is nothing to

suggest that the accused was aware of the physical and medical condition of the victim, so as to bring the overt act of the accused within the scope of Section 300, Secondly. To bring the case within the ambit of the dictum laid down in *Virsa Singh v. State of Punjab* [AIR 1958 SC 465], it has not been established that the intended injury inflicted is sufficient in the ordinary course of nature to cause death. The injury was

not taken seriously even by the victim, initially, as could be seen from the fact that the victim was taken to hospital after 4 days, going by facts proved. The first information statement was laid only on 9.9.2009, when the victim was shifted to Medical College Hospital on his condition being worsened. This again is a pointer, in the context of lack of any intention or knowledge on the part of the accused to cause death of the victim. In the circumstances discussed, we find no infirmity, whatsoever, with the judgment of the learned Sessions Judge. Resultantly, the same is confirmed and this appeal is dismissed. Sd/- K.VINOD CHANDRAN JUDGE Sd/- C.JAYACHANDRAN JUDGE jg

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com