Vijayan Vs. State of Kerala

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Court : Kerala

Decided On : May-25-2015

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Vijayan

Respondent : State of Kerala

Judgement :

CR IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR MONDAY, THE25H DAY OF MAY20154TH JYAISHTA, 1937 CRL.A.No. 207 of 2010 ( ) ---------- AGAINST THE

ORDER
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JUDGMENT
IN SC3222007 of J.M.F.C.,PERUMBAVOOR DATED2110-2008 APPELLANT(S)/APPELLANT/ACCUSED: ---------- VIJAYAN KANIMANGALAM KARA, AYYAMPUZHA VILLAGE. BY ADVS.SRI.K.SUNILKUMAR SRI.M.V.LALU MATHEWS RESPONDENT(S)/COMPLAINANT: ---------- STATE OF KERALA THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM. BY PUBLIC PROSECUTOR SRI.K.K. RAJEEV THIS CRIMINAL APPEAL HAVING

BEEN FINALLY HEARD ON2505-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CR K.T. SANKARAN & B. SUDHEENDRA KUMAR, JJ.

..... Crl.Appeal No. 207 of 2010 ..... Dated this the 25th day of May, 2015

JUDGMENT

Sudheendra Kumar, J.

The appellant is the accused in S.C. No. 322/2007 on the file of the Sessions Court, Ernakulam, who in this Appeal challenges the judgment of conviction and sentence passed by the trial Court under Sections 447 and 302 IPC.

2. The prosecution allegation is that on 17-01-2006 at about 8 p.m., the appellant stabbed deceased Jayesh, who is the brother-in-law of the appellant, on his chest with MO1 knife at the courtyard of the house of the deceased. The accused sustained Crl.Appeal No. 207 of 2010 2 serious injuries and he succumbed to the injuries at about 10 p.m on the same day while undergoing treatment in the hospital.

3. On the basis of Ext. P1 statement given by PW1, Ext. P1 (a) FIR was registered by PW19. The initial investigation was conducted by PW19. Thereafter, the investigation was taken over by PW20, the Circle Inspector of Police. PW20 conducted inquest on the body of the deceased and prepared Ext. P3 inquest report. He visited the place of occurrence and prepared Ext. P2 scene mahazar. The accused was arrested on 21-1-2006. After completing the investigation, PW20 laid the charge before the Magistrate Court concerned .

4. The learned Magistrate, after complying with the legal formalities, committed the case to the Sessions Court. Crl.Appeal No. 207 of 2010 3 5. Since the appellant did not plead guilty, the trial was conducted. In the trial, PW1 to PW20 were examined and Exts. P1 to P16 were marked for the prosecution, besides identifying MO1 to MO5. Ext. D1 contradiction in the Case Diary statement of PW2 and Ext. D2 series of contradictions in the Case Diary statement of PW5 were

marked during their cross-examination.

6. After completing the prosecution evidence, the appellant was examined under Sec. 313 Cr.P.C wherein he denied the incriminating materials appearing in the evidence of the prosecution witnesses. He filed a written statement explaining the circumstances under which the deceased sustained injuries. According to him, the injury was sustained by the deceased in the scuffle between the appellant and the deceased, which occurred when the appellant came to the house of the deceased to bring Crl.Appeal No. 207 of 2010 4 back his wife and children from there. Thereafter, since there was no scope for an order of acquittal under Section 232 Cr.P.C., the court below called upon the appellant to enter on his defence. However, no evidence was adduced on the side of the defence. After evaluating the evidence, the court below found the appellant guilty under Secs. 447 and 302 IPC and convicted him thereunder and sentenced him to imprisonment for life and a fine of Rs. 50,000/- with a default clause for rigorous imprisonment for one year under Sec. 302 IPC and imprisonment for three months under Section 447 IPC.

7. We heard Adv. Sri. K.Sunil Kumar, the learned counsel for the appellant and Adv. Sri. K.K. Rajeev, the learned Public Prosecutor.

8. In this case, the prosecution mainly relies on the ocular Crl.Appeal No. 207 of 2010 5 testimony of PW1 to PW3 to prove its case. PW1 is the father- in-law of the appellant and the father of the deceased. PW1 stated that the appellant came to his house on 18-1-2006 at about 8 p.m. and called his daughters. However, the daughters of the appellant were not ready to go with the appellant. Therefore, the appellant uttered obscene words. On hearing this, PW1 came out from the house and requested the appellant to go from there and come back in the next day morning. However, the appellant was not ready to go. At that time, the deceased came out from the house. The deceased also requested the appellant to go away from there. There was an exchange of words between the appellant and the deceased. During the course of exchange of words, the appellant inflicted two stab injuries on the deceased. The deceased was immediately taken to the Little Flower Hospital, Angamaly, where he succumbed to the injuries at about 10 p. m. on 18-1-2006. Crl.Appeal No. 207 of 2010 6 9. PW2 is the wife and PW3 is the mother-

in-law of the appellant. PW2 and PW3 had also given evidence corroborating the evidence of PW1 with regard to the occurrence. PW1 to PW3 also identified MO1 knife and stated that the appellant used the said knife to inflict stab injuries on the deceased.

10. The learned counsel for the appellant Sri.K.Sunil Kumar has argued that PW1 to PW3 are close relatives and hence they are interested witnesses and consequently, their evidence cannot be accepted. It has been further argued by the learned counsel for the appellant that eventhough the daughters of the appellant were cited as witnesses, they were not examined by the prosecution and thereby the prosecution withheld the genesis of the case and consequently, the appellant is entitled to be granted Crl.Appeal No. 207 of 2010 7 the benefit of doubt. The incident in this case was at about 8.30 p. m. The probable witnesses at the place of occurrence at that time are only the relatives of the deceased. PW1 is the father of the deceased. PW2 is the wife of the appellant and the sister of the deceased. PW3 is the mother-in-law of the appellant. The term 'interested' postulates that the witness has some direct or indirect interest in having the accused somehow or other convicted due to animus or for some other oblique motive. It is settled law that a close relative cannot be characterised as an interested witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the sole testimony of such witness. The close relationship of the witness with the deceased or the victim is no ground to reject his evidence. On the contrary, a close relative of the deceased would normally Crl.Appeal No. 207 of 2010 8 be most reluctant to spare the real culprit and falsely implicate an innocent person. In this case, we do not understand why PW1 to PW3 must give false evidence against the appellant to implicate the appellant in a case like this. No reason has also been advanced by the learned counsel for the appellant as to why PW1 to PW3 should falsely accuse the appellant in this case. There is also no material before the court to indicate that PW1 to PW3 had any grudge or enmity towards the appellant to falsely implicate him in this case. In the said circumstances, it cannot be said that the witnesses had falsely implicated the appellant in this case. Therefore, it is not correct and proper to disbelieve the above witnesses. The

children of the appellant are daughters aged only 6 and 8 years respectively. The prosecution examined PW1 to PW3 to prove the prosecution case. We are satisfied that the evidence of PW1 to PW3 is reliable, natural and hence Crl.Appeal No. 207 of 2010 9 acceptable. In the said circumstances, the non-examination of the minor daughters of the appellant, who are still residing with PW1 to PW3, cannot be said to be fatal to the prosecution.

11. It has been further argued by the learned counsel for the appellant that the evidence of PW1 is not in consonance with Ext.P1 F I statement given by him and in the said circumstances, his evidence has to be discarded in toto on that reason alone. It appears that Ext. P1 FIR was given by PW1 immediately after the occurrence. In Ext. P1 statement, PW1 did not mention about the two stab injuries inflicted by the appellant, whereas in the evidence before the Court, PW1 stated about the two stab injuries inflicted by the appellant. It is clear from the evidence of PW1 that PW1 was not in a proper state of mind to state everything before the police when Ext.P1 statement was given by him. It is to be remembered that Ext. P1 was the version given by a father Crl.Appeal No. 207 of 2010 10 immediately after the incident whereby he lost his son. That apart, one out of the two stab injuries sustained by the deceased was not a serious injury. For the above reasons, the non-mentioning of all the inflictions, made by the appellant, in Ext. P1 cannot be taken as fatal to the prosecution case.

12. Relying on the decision of this Court in Moideenkutty v. State of Kerala [2005 (2) KLD (Cri.) 498], it has been argued by the learned counsel for the appellant that since the prosecution suppressed the factum of sustaining injuries by the appellant, it has to be held that the prosecution has concealed the genesis of the case and consequently, the appellant is entitled to be granted the benefit of doubt. In Moideenkutty's Case (supra), the accused sustained a lacerated and incised injury on his neck measuring 8x1x1 cm. The injury sustained by the accused in that case was a very serious one . The accused was also treated in Crl.Appeal No. 207 of 2010 11 the hospital as inpatient and there were medical records to prove the same. However, the prosecution did not incline to produce the wound certificate and other medical records before the court to prove the injury sustained by the accused. The prosecution also did not explain as to how the accused

therein sustained injury. In the said circumstance, this Court held that the prosecution had suppressed the factum of the accused sustaining injuries in the same occurrence. The facts of the case on hand are entirely different from the facts in Moideenkutty's Case (supra). In this case, Ext.P13 custody memo shows that the appellant sustained swelling and abrasion on his left thigh. P.W.14, who is the daughter of the elder brother of the appellant, had given evidence that the appellant had sustained contusion and abrasion on his hands and legs. The further evidence of PW14 is that the appellant was found limping. However, there is absolutely no material before the Court to indicate that the Crl.Appeal No. 207 of 2010 12 appellant had taken medical treatment from any hospital. PW14 turned unfriendly to the prosecution and she did not support the case of the prosecution to any extent. Ext.P13 custody memo would show that the appellant sustained only very trivial injuries on his left thigh. There is no material before the court to indicate that the said injuries were sustained by the appellant during the course of the transaction in this case. PW1 to PW3 clearly stated that the appellant did not sustain any injury in the incident. In view of the above discussion, we are of the view that the judgment in the case of Moideenkutty (supra) does not help the appellant. If the accused sustains serious injuries in the course of the same transaction, it is the duty of the prosecution to bring the factum of such injuries before the Court. However, if trivial injuries are found on the body of the accused, it is not necessary that in such cases, the prosecution has to explain as to how the accused sustained injuries. Crl.Appeal No. 207 of 2010 13 13. The Supreme Court in Inder Singh & Ors. v. State of Rajasthan (JT2015(1) SC6held thus :- "The criticism that some of the accused had sustained injuries for which the prosecution has not offered any explanation has rightly been rejected by the trial court because there is no counter version or even a suggestion disclosing that any of the accused had received injuries in the same occurrence and at the same place. None of the persons allegedly injured on the side of the defence have lodged any case disclosing where and under what circumstances they sustained the injuries. In the facts of the case, in the absence of any counter version and any plea of self-defence, it would be hazardous to presume at the instance Crl.Appeal No. 207 of 2010 14 of the defence that the accused persons sustained the injuries in the course of same occurrence and at the same place. Only if these two ingredients

were established, the defence would have been entitled to seek for an explanation from the prosecution in respect of some injuries on three of the accused persons. Their injuries were neither fatal nor they caused any threat to life and that also reduces the burden upon the prosecution to explain injuries on the accused".

14. In the case on hand, there is no evidence to show that the appellant sustained injuries in the same occurrence. The appellant also did not take any plea of self-defence. The injuries stated to have been sustained by the appellant were only very trivial and superficial in nature. The appellant also did not lodge Crl.Appeal No. 207 of 2010 15 any case disclosing where and under what circumstances he sustained the injuries. In the said circumstances, the said injuries are of little assistance to him to throw doubt on the veracity of prosecution case. There is yet another reason to reject the contention of the appellant that the non-explanation of the injuries on the person of the appellant is fatal to the prosecution case. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. In Hare krishna Singh and others v. State of Bihar (AIR 1988 SC863, the Apex Court held as follows:- "The burden of proving the guilt of the accused is undoubtedly on the prosecution. The accused is Crl.Appeal No. 207 of 2010 16 not bound to say anything in defence. The prosecution has to prove the guilt of the accused beyond all reasonable doubts. If the witnesses examined on behalf of the prosecution are believed by the court in proof of the guilt of the accused beyond any reasonable doubt, the question of the obligation of the prosecution to explain the injuries sustained by the accused will not arise". In the case on hand, there is definite and clear evidence of PW1 to PW3 that the appellant inflicted fatal injury on the deceased with MO1 knife. The evidence of PW1to PW3 with regard to the inflicting of injuries on the deceased by the appellant has been found to be natural, creditworthy and hence acceptable. Therefore, the question of obligation of the prosecution to Crl.Appeal No. 207 of 2010 17 explain the injuries on the body of the appellant would not arise, particularly when the injuries are simple and superficial in nature. On the facts and circumstances of the case, the prosecution, in our opinion, is not obliged to account for the injuries found on the person of the

appellant in this case and that, the failure of the prosecution to give a reasonable explanation of the injuries would not go against or throw any doubt on the prosecution case.

15. The evidence of PW1 to PW3 shows that the accused inflicted stab injuries on the deceased on 18-1-2006 at about 8.30 p.m.. The evidence of PW20 is that he arrested the appellant on 21-1-2006 and when questioned, the appellant had given Ext.P15 disclosure statement and pursuant to Ext. P15 disclosure statement and as led by the appellant, PW20 went to the place of recovery and thereafter, the appellant had taken out MO1 knife Crl.Appeal No. 207 of 2010 18 from the bottom of an abandoned granite quarry and handed over the same to PW20, who in turn recovered the same as per Ext.P4 mahazar. PW12 is an attestor to Ext. P4 mahazar, who fully supported the prosecution case with regard to the recovery of MO1 knife at the instance of the appellant. The relevant portion of the disclosure statement of the appellant finds place in Ext.P4 recovery mahazar. The evidence regarding the recovery of MO1 knife by PW20 at the instance of the appellant as per Ext.P4 mahazar is admissible under Sec. 27 of the Evidence Act. Sec. 27 of the Evidence Act is based on confirmation by subsequent events. When the accused gives information to the police officer that a particular object is kept concealed at a particular place or given to a particular person and either points out that place wherefrom the said object is recovered by the police or is produced by the accused or he points out the person who produces the object, the recovery of the object confirms the truth Crl.Appeal No. 207 of 2010 19 of the information given by the accused. The Full Bench of this Court in Ajayan @ Baby v. State of Kerala (2011 (1) KLT8 held that the authorship of concealment is not sine qua non to make information received from a person accused of an offence while in the custody of the police officer admissible under Sec. 27 of the Evidence Act and that, if the information as deposed to by the investigating officer is otherwise admissible in evidence, it would not become inadmissible solely for the reason that the information deposed by the police officer does not reveal authorship of concealment.

16. The evidence of PW1 to PW3 with regard to the incident is corroborated by the recovery of MO1 knife by PW20 at the instance of the accused. MO1 knife is

stained with human blood as per Ext.P11 certificate of Chemical Analyst. Crl.Appeal No. 207 of 2010 20 17. The medical evidence of PW13 and Ext. P5 postmortem certificate also corroborate the evidence of PW1 to PW3 regarding the occurrence. PW13 conducted the autopsy on the body of deceased Jayesh and issued Ext.P5 post-mortem certificate. PW13 noted the following antemortem injuries on the deceased:- 1. A stab wound on the left side of the chest, laterally to left nipple, placed obliquely with the inner end, lower than the upper outer end. Length was 2.5cm. The maximum width at the centre was 9 mm. The Centre of the wound was just below the left nipple in the midclavicular line in the 5th I.C. space. The inner end was sharp with tailing towards the medial object of the nipple and outer end blunt. The leniar margin was undermined. A track is established on the left anterior thoracic wall passes through the 5th inter space, through the left lung. Penetrating the anterior wall of the right ventricle of heart, reaching the cavity of heart to a depth of 7.5 c.m. A left haemothorax of 500 ml. of blood and clotted blood is Crl.Appeal No. 207 of 2010 21 present. 2) Abrasion 1.5 x 0.5cm over left shoulder 3) Abrasion 1x0.5 c.m. back of chest right side 4) Abrasion 6x 1 cm below 5) Abrasion 6 x 1 c.m. back of chest (right side) 18. PW13 stated that the post mortem finding is consistent with the death due to the internal hemorrhage caused by the injuries to vital organs. It is further in the evidence of PW13 that the injury No. 1 was fatal and sufficient in the ordinary course of nature to cause death. It is further in the evidence PW13 that injury NO.1 could be caused with MO1 knife. Injury No. 2 is also possible with MO1 knife as per the evidence of PW13. Thus, the recovery of MO1 becomes very relevant in this case. MO1 is stained with human blood, which fastens the culpability of the appellant. Crl.Appeal No. 207 of 2010 22 19. The learned counsel for the appellant, relying on the decision in Sadanandan v. State of Kerala (1992 (2) KLT760, argued that eventhough the appellant did not take private defence as a defence, he is entitled to get benefit of private defence in view of the evidence available in this case. In Sadanandan's case (supra), it was held that though the burden is on the accused to establish his case of private defence, he can discharge the said burden by preponderance of probabilities on the basis of the very prosecution evidence. However, the burden on the accused is not as onerous as that of the prosecution, which has to establish the prosecution case beyond reasonable doubt. The Apex

Court in Munshi Ram and others v. Delhi Administration (AIR 1968 SC702 held that even if an accused does not plead self-defence, it is open to the court to consider such a plea if the same arises from the material on record. It is now settled that the burden of establishing the plea of private Crl.Appeal No. 207 of 2010 23 defence can be discharged by the accused by showing preponderance of probabilities in favour of that plea on the basis of the materials on record. In this case, the appellant did not take the plea of private defence. The plea of the appellant is that the injuries were sustained by the deceased in the scuffle between the appellant and the deceased. PW1 to PW3 stated that there was no scuffle at all as suggested by the defence. PW13, who conducted the autopsy on the body of the deceased, also opined that injury No.1 in Ext. P5 post mortem certificate could not be caused in a scuffle and fight. It was further stated by PW13 that all the injuries in Ext. P5 cannot be caused in a scuffle and fight. The deceased sustained injuries including a stab injury penetrating to the anterior wall of the right ventricle of the heart, reaching the cavity of the heart to a depth of 7.5 cm. The above injury sustained by the deceased is a very serious injury, which could be inflicted only by stabbing with force. Ext. P13 Crl.Appeal No. 207 of 2010 24 custody memo shows that the only injuries found on the body of the appellant were swelling and aberration on his left thigh. The said injuries are trivial and superficial injures. There is absolutely no material before the court to indicate that there was any scuffle or fight as argued by the learned counsel for the appellant. There is also no material on record to probabilise the plea of private defence. The above discussion makes it clear that the appellant is not entitled to the benefit of private defence, as the same does not arise from the material on record.

20. It has been argued by the Learned counsel for the appellant that since the deceased used to reach his house everyday at about 10 p.m. after his job, the appellant did not expect the presence of the deceased at home when the appellant reached there on the fateful day and in the said circumstances, it has to be held that the appellant had no intention to commit the murder Crl.Appeal No. 207 of 2010 25 of the deceased. It is true that PW1 to PW3 stated that the deceased used to reach the house every day after the job at about 10 p.m. It is further in the evidence of PW1 to PW3 that on the fateful day, the deceased reached the house at about 7 p.m. The appellant was residing 1 = km. away from the house of the

deceased. Since the house of the appellant was near to the house of the deceased, the appellant could very well know the time of arrival of the deceased in the house. There was not even a suggestion that the appellant was not aware about the early arrival of the deceased on that day. The appellant used MO1 knife to inflict stab injury on the deceased. PW1 to PW3 stated that MO1 knife was the knife being used in the house of the appellant while PW2 was residing with the appellant. The evidence on record would show that the appellant carried MO1 knife with him when he reached the house of the deceased on the fateful day. This shows the clear intention of the appellant in Crl.Appeal No. 207 of 2010 26 committing the offence. In the said circumstances, the argument in this regard advanced by the learned counsel for the appellant does not hold good.

21. On a careful evaluation of the entire evidence on record as discussed above, we are satisfied that the prosecution established beyond reasonable doubt that the appellant committed the murder of deceased Jayesh as alleged by the prosecution. The evidence of PW1 to PW3 shows that MO1 knife was the knife being used in the house of the appellant. This shows the intention of the appellant in committing the offence. With that intention only, the appellant trespassed into the courtyard of the house of the deceased and in the said circumstances, we have no doubt that the appellant also committed criminal trespass. Having meticulously gone through the evidence on record as discussed above, we are satisfied that Crl.Appeal No. 207 of 2010 27 the prosecution has successfully established that the appellant committed the offences under Secs. 447 and 302 IPC and in the said circumstances, we do not find any reason to interfere with the verdict of guilty and conviction passed by the trial Court under Secs. 447 and 302 IPC. The sentence awarded by the court below also does not call for any interference by this court. In the result, this Appeal stands dismissed. Sd/- K.T. SANKARAN, JUDGE. Sd/-B. SUDHEENDRA KUMAR, JUDGE. ani/ /true copy/ P.S.toJudge