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Thomas George Alias Thomas Vs. State of Kerala

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Court : Supreme Court of India

Decided On : Mar-11-1999

Reported in : AIR2000SC3497; 2000CriLJ3475

Judge : G.B. Pattanaik and; M.B. Shah, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302 and 304

Appellant : Thomas George Alias Thomas

Respondent : State of Kerala

Disposition : Appeals allowed

Judgement :

1. The appellant stood charged under Sections 452, 323, 324 and 302 of I.P.C. and was tried by the learned Additional Sessions Judge, Kannur for having caused the murder of deceased Raju. The occurrence took place on 25th March, 1986 at 8-30 a.m. The accused-appellant was a student in a college in the same town. The prosecution case in nut shell is that on the previous day during the evening hours while the accused and his friend Sabu Thomas were going on the road P.W. 2 had assaulted the accused on account of an altercation arising out of the incident that Sabu Thomas had teased the sister of P.W 3. The accused had a grudge on that score and to take revenge of the said incident, he went on the morning of 25th March to the Kerosene shop of P.W. 2 with a Malappuram Knife and dagger. Having reached the shop of P.W. 2 he gave a slap on the neck of P.W. 2 and

thereafter when P.W. 2 and others started asking him as to why he is indulging in such activities he brought out his weapon of offence and in the process when deceased Raju who is the brother of P.W. 2 reached the scene of occurrence he went on giving stabbing blows on him as a result of which Raju ultimately died. The defence plea as if appears from the Section 313 statement of the accused himself is to the effect that no doubt he had gone to the shop of P.W. 2 on the relevant date but not for the purpose of taking any revenge of the previous evening incident. On the other hand he had been there to get some kerosene which was badly needed. At the shop itself when P.W. 2 became agitated and even rushed towards the accused and asked as to how he dared come to the shop, the accused gave a slap on the neck of P.W. 2. It is on this score people present in the shop rushed towardsthe accused but the accused was trying to leave the place and was rushing back to his lodge. But on the way P.Ws. 2, 3 and 6 started following him with the lever and bar and many of them started throwing stones on him which hit his body. Notwithstanding the fact that the accused started walking fast, he could not escape from the place of occurrence and at that point of time when he was bleeding from his nose and forehead on being hit by stones, he met deceased Raju who rushed towards him with Malappuram knife and in fact stabbed him. The accused then wanted to ward off the stabbing as a result of which his nose was injured and the knife fell on the ground and at that point of time when the accused was caught hold of by Raju, and P.Ws. 2 and 3, in order to release himself from the clutches apprehending danger to his life, he had given certain blows on the body of deceased Raju. But the accused fell down and was later on taken to the hospital by a Doctor. The learned Sessions Judge considered the entire evidence on record and in appreciating the said evidence came to the conclusion ultimately that the prosecution story unfolded through the witnesses examined in the case and the manner in which the incident occurred does not appear to be reasonable and probable and on the other hand the defence story as put forth by the accused in his Section 313 statement appears to be more probable and reasonable. The learned Sessions Judge while appreciating the evidence led by the prosecution on different aspects of the prosecution case, came to hold that the prosecution case regarding the beginning of the incident is improbable and unnatural which cast must suspicion on the prosecution story. He

further held that the circumstances indicated in the case ultimately improbabilise the prosecution case and it is not reasonable to hold that the prosecution case is either probable or plausible or acceptable. Having scanned the evidence of P.Ws. 1, 3, 4 and 5 the learned Sessions Judge came to hold that it is not proper to give much reliance on the deposition of the aforesaid witnesses. The Sessions Judge also examined the nature of the injuries which the deceased had sustained and was of the opinion that very presence of the injuries on the deceased probabilise the version of the accused rather than the prosecution story. Ultimately, the Sessions Judge came to the conclusion that when the accused apprehending danger to his life, was trying to save himself from the clutches of the prosecution witnesses had given some blows, it is reasonable to hold that such blows were given in exercise of the right of private defence of person. But on the basis of the injuries found on the deceased, the Sessions Judge was of the opinion that accused exceeded his right of private defence and accordingly convicted him under Section 304, Part II and sentenced him to undergo imprisonment for 3 years. The State went in appeal and the accused also appealed to the High Court. The High Court re-appreciated the entire evidence and then ultimately allowed the State's appeal and dismissed the appeal of the accused. The High Court was of the opinion that the evidence of the prosecution witnesses have not been appreciated in its true perspective and in view of the consistent evidence of P.Ws. 1, 4 and 5 it is reasonable to hold that the incident occurred in the manner as the witnesses have stated and therefore the accused cannot be allowed to claim a right of private defence of person and the Sessions Judge was in error in coming to the conclusion that the blows given by the accused on the deceased Raju was in fact in exercise of right of private defence of person.

2. Mr. Lalit, the learned senior counsel appearing for the appellant contended that notwithstanding that the power of the High Court to interfere with an order of acquittal passed by the Sessions Judge is as wide as its power in an appeal against conviction but the High Court was not justified in the present case by reappreciating the evidence to come to the conclusion that the Sessions Judge either has misread the evidence or has taken a view which no reasonable man can take. Mr. Lalit also further contended that the manner in which and the sequence of events as indicated by the prosecution witnesses itself would be

sufficient to hold that the version as depicted by the accused in Section 313 statement is more probable and therefore the Sessions Judge was justified in coming to the conclusion that it is the defence version which is more probable in the facts and circumstances of the case and not the prosecution version and in such circumstances the High Court was not entitled to interfere with the order of acquittal under Section 302, I.P.C. The learned Counsel for the respondent on the other hand submitted that 3 eye-witnesses having been relied upon by the High Court, there is no infirmity with the approach of the High Court in coming to the conclusion that the charge under Section 302 has been proved beyond reasonable doubt. This Court should not interfere with the said order of the High Court. Having examined the judgment of the learned Sessions Judge and that of the High Court and having borne in mind the rival contentions of the parties, the sole question that arises for consideration is whether from the very nature of injuries sustained by the accused and from the very fact that he had gone to shop of P.W. 2 on the morning on the date of occurrence is it at all probable to take a view that the accused after giving a slap on the neck of P.W. 2 came away from the shop and then on the way gave the stabbing blow to Raju, as deposed to by the prosecution witnesses? If the main reason, as narrated by the prosecution witnesses, for the accused to go to the shop of P.W. 2 was to take revenge of the previous evening incident and he had with him a dagger and a knife there would not be reason for him to give a mere slap on P.W. 2 on the shop itself, when accused is alleged to have met P.W. 2. Further, there was no reason on the part of the accused to give any blows to the deceased Raju when he met him on the way. From the record it transpires that the accused himself had sustained severe injuries and had been hospitalised for 20 days after he was taken by a Doctor and thereafter shifted to another hospital. The Section 313 statement of the accused on the other hand gives a picture which in our view fits into the facts and circumstances of the case, namely, after giving a slap to P.W. 2 when the accused was being chased and attacked not only with stones but by other instruments by the prosecution party and in fact he was caught, it is at that point of time apprehending danger to his life, he gave the blows. In this view of the matter the learned Sessions Judge, in our considered opinion, was justified in coming to the conclusion that the blows given by the accused on the deceased Raju was in his defence though he has exceeded the

same and therefore the conviction under Section 302 cannot be sustained and he was rightly convicted under Section 304, Part II of I.P.C. In our opinion, the High Court was in error in interfering with the conclusions recorded by the learned Sessions Judge. We, therefore, set aside the impugned order of conviction and sentence passed by the High Court of Kerala and affirm the conviction and sentence as passed by the learned Sessions Judge. These appeals are allowed.

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