

Sirkar Prosecutor Vs. Ananthan Kuttan

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Court : Kerala

Decided On : Sep-26-1949

Reported in : AIR1950Ker12; 1950CriLJ653

Judge : Koshi and; Sankaran, JJ.

Appellant : Sirkar Prosecutor

Respondent : Ananthan Kuttan

Judgement :

Koshi, J.

1. This is an appeal by Government against the acquittal of accused 1 in Sessions case no. 23 of 1123, on the file of the Sessions Court, Trivandrum, of the offence of murder. There were, in all, 3 accused persons in that case. Accused 1 was charged with causing the death of one Devadasan by stabbing him With a pen-knife and causing hurt to one Kunju. Bankaran (P.W. 2) who was Devadasan's employer. He was also stabbed with the same knife as killed Devadasan. Accused 2 and 3 were charged with abetment of the commission of these offences by accused 1. The learned Sessions Judge who held the trial acquitted accused 2 and 3 and found accused 1 not guilty of the offence Of murder. Though it was found on the evidence that Devadasan died as a result of the injury he sustained by accused 1 stabbing him with a pen. knife, the learned Judge held that accused 1 did it in the exercise of the right of private defence of his own body. Ho

was therefore acquitted of murder. At the same time it was held that he was guilty of the offence of causing hurt to P. W 2 with a deadly weapon. He was accordingly convicted of the offence Under Section- 824, Tr, Penal Code and sentenced to undergo rigorous imprisonment for 6 months. This was on 6-8-1128. There was no appeal against that conviction or sentence. Government preferred this appeal on 20-2-1124.

2. The facts of the case are correctly set out in Para. 2 of the lower Court's judgment as follows :

The deceased Devadasan was an employee under P.W. 2, helping him in buying and dealing in charcoal business. Accused 1 also is a person dealing in charcoal business. Accused 2 is a tea shop owner near the Aryan-Code market and accused 3 is conducting a tailoring shop as also a tea shop, where betel leaves and other allied articles are sold. There was previous enmity between Devadasan and accused 1 in connection with the purchase of charcoal. On 12th Muhunom 1123, Devadasan purchased from P W 11, charcoal vendor some bags of charcoal, at 18 Rs. per bag, for which, accused 1 offered to pay only Rs. 174 for a bag. Accused 1 was sitting, at about 4.30 p.m. on the verandah of accused 2's shop, On 13-11-1122 when the deceased, Devadasan came there, followed by his master P.W. 2, abusing accused 1 downright. He used all kinds of vulgar language towards accused 1 who then came to the yard of the house and gave a blow on the cheek of Devadasan. Devadasan then came forward to catch accused 1, when the latter gave him a stab with a knife on his back. Devadasan immediately fell down. When P.W. 2 approached him, to find out what had happened, he was also stabbed by accused 1, Accused 2 and 3 are said to have abetted the acts of accused 1, P. W 2 gave information to the police, who after completing the investigation, charge sheeted the case, before the Stationary Magistrate, Neyjattinkara whereafter conducting the preliminary enquiry, committed the accused to this Court, to take their trial.

3. That the accused before Court gave a stab to Devadasan with a pen-knife and that the latter died as a result thereof, admit of no doubt on the evidence. P. Wh. 3, Section 4, 5, 6, 7 and in are eye-witnesses to the occurrence and their evidence

together with the inquest report Ex. A and the post mortem certificate Ex. o, proved by P. wSection 17 and 14 respectively establish the above facts in unmistakable terms. The learned Judge, however, thinks that Devadasan was the aggressor and the accused had real apprehension of danger to his life when he used the knife against Devadasan. We are afraid that there is no evidence to sustain these findings. The prosecution evidence does not go beyond showing that Deva. dasan started a volley of abuse as soon as he saw the accused 1 seated on the veranda of the accused's tea shop and that during the course of mutual exchange of abusive words. Devadasan approached the accused or rather went near to the place the latter was seated. Immediately the accused got up and gave a blow with his right hand on Devadasan's cheek. Because Devadasan started the abuse or he went near to the accused, it cannot be taken that he had any aggressive intention, Even taking that the accused apprehended that Devadasan might cause some injury to him, it did not certainly justify the use of the pen-knife against Devadasan. The prosecution evidence taken as a whole gives no countenance to the suggestion that Devadasan had a pen.knife in his hand, when he went near to the place the accused was sitting. Of the 7 eye-witnesses, it is only P.W. 6 who makes a statement that Devadasan had a penknife in his hand when he approached the accused. The prosecution tendered that witness for cross-examination before the Sessions Court. Neither in his statement at the inquest nor in his deposition in the Committing Magistrate's Court did he make a statement to that effect. Even he does not say that it was an open pen-knife, m. O. 3, a pen-knife which was seen lying near Devadasan's dead body at the time of the inquest was lying there folded. No doubt that pen-knife belonged to the deceased. If an open pen.knife was in Devadasan's hand when he approached the accused, it is difficult to believe that the latter who was himself armed with an open pen-knife would have first used his hand rather than the pen-knife itself against Devadasan. Again, the evidence unmistakably shows that what Devadasan did when he received the blow on his cheek was to go further near to the accused with out-stretched hands as if to catch hold of him. If he had a pen-knife ready in his hand open, it is difficult to think that that would have been his conduct, Assuming, therefore, that Devadasan's approach towards the accused caused some apprehension in the mind of the latter that Devadasan

might cause some hurt to him, it is impossible to hold that there could have been any reasonable apprehension for the accused that Devadasan unarmed would have caused his death or even grievous hurt to him. In this view of the matter, the learned Sessions Judge's order of acquittal cannot at all be sustained.

4. Sitting here to hear an appeal against an order of acquittal, we may not, regard being had to the nature of the evidence in the case, be justified in going against the view of the trial Court that Devadaean approached the accused with some aggressive intent. But we do certainly feel that the learned Judge's view that Devada. san approached the accused with an open pen. knife in his hand or that there was a tussle between the two before Devadasan received the fatal stab, is thoroughly unwarranted. These are matters to be found on bare facts appearing in the evidence and not by theoretical reasoning. In arriving at the findings mentioned above, the learned Judge has given free play to his imagination. To hold that there was a tussle between the two persons when no witness speaks about it, or when the medical evidence does not support it, is clearly wrong. Nor could a reconstruction of what really transpired during the occurrence could safely be attempted from such materials as we (?) as the place where the second cloth of the deceased lay after the occurrence or the position of his hands at the time the inquest over his body was held (Sic). The accused's statement in Court was that he knew nothing about the occurrence. He let in no evidence in the case. No doubt, in spite of these he is entitled to raise the plea of self-defence, provided that can be spelled out from the prosecution evidence. In our opinion a reading of that evidence in a manner most favourable to the accused and even giving the accused the benefit of the trial Court's findings that Devadaaan was the aggressor cannot persuade us to hold that the accused could have had any reasonable apprehension that death or grievous hurt would otherwise have been caused to him if he did not use his pen-knife against Devadasan. In other words, accepting the finding that Devadasan was the aggressor and that the accused had a right of private defence against him, it is a clear case of the accused exceeding that right.

5. The prosecution argued that no occasion arose for the exercise of the right of private defence and that it is really a case of murder. We cannot accept that

argument. Even if the finding that Devadasan was the aggressor and that the accused had some occasion to exercise the right of private defence be considered to be unsustainable on the evidence the case would, in our opinion, come under Exception IV to 8. 299, T. P.C. The accused and Devadasan met at the time and place of the occurrence by sheer accident. A sudden quarrel and fight ensued between them and what the accused did was certainly without pre-meditation nor did he take any undue advantage or act in a cruel or unusual manner. There was only one stab given, but unfortunately it hit a vulnerable part of Devadasan's body. As the case would, in our opinion, fall clearly under Exception IV, we have not thought it necessary to pursue the argument the prosecution raised that the finding that Devadasan was the aggressor, cannot be sustained on the evidence. If the case does not come under Exception ii that is if it is not a case of exceeding the right of private defence, it will certainly fall under Exception iv. It cannot therefore be held to be a case of murder.

6. The next question is, under which part of Section 303, the offence would fall. There was only one stab. The knife has not been recovered and the injury does not show that it was any big or heavy pen-knife that was used. On the evidence, it is difficult to hold that the accused intended to cause Devadasan's death or of causing him such bodily injury as is likely to cause death. The offence can therefore be brought only under part II of the section. The accused has to be convicted accordingly.

7. As for the sentence, we are inclined to take a lenient view. The occurrence took place on 13-11-1123 and the accused was once acquitted of the charge as early as 6-8-1123. The Government preferred the appeal only on 20-2-1124 by which time he had already served out the period of 6 months imprisonment awarded to him for causing hurt to P.W. 3 with the same pen-knife with which he killed Devadaaan. The appeal could be heard only on 4-2-1124 and the judgment is pronounced now on 10-2-1125. In view of all these, we think a sentence of 3 years rigorous imprisonment will meet the ends of justice.

8. In the result, we accept the appeal, and set aside the order of acquittal passed by the lower Court. The accused is convicted of the offence of culpable homicide

not amounting to murder under part II of Section 303, T. P. G. and sentenced to undergo rigorous imprisonment for 3 years. Order accordingly.

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