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Court : Kerala

Decided On : Jun-13-1955

Reported in : 1956CriLJ276

Judge : Sankaran and; Nandana Menon, JJ.

Appellant : The State

Respondent : Narayanan Asaan and Ramachandran Asaan

Judgement :

Nandana Menon, J.

1. This is an appeal by the State against the acquittal of one Narayanan Asaan Ramachandran Asaan who was charged for an offence punishable under Section 302, I. P. C by the Additional Sessions Judge of Quilon in S. C. 21 of 1954.

The prosecution case is that the accused had sold some bundles of cadjans to deceased Echambi Kesavan in the beginning of Kumbhom 1127 in which connection some balance amounts were due to the accused and when the same was demanded by the accused at about 1 P.M. on 11-4-1952 while they were in the Chengamanad-Anchal Road an altercation took place between the accused and the deceased during which the accused gave some fatal stabs to the deceased.

The deceased passed away on 12-4-1952 at the Hospital and the accused was arrested and charge-sheeted. The lower court held that though the injuries were caused by the accused it was only in the exercise of private defence and hence acquitted him. On behalf of the State it is contended that the evidence shows that there was no right of private defence in the accused when he did the deed and that the acquittal was without justification.

2. Coming to the evidence as to how the occurrence took place, Ex. C is the statement of the deceased given to the Kottarakara Police forming the basis of the First Information Report. There it is said that the accused asked the deceased to pay him the amounts due in connection with the sale of cadjans, that the deceased said that he had not the money in his hands then, that then the accused caught hold of his waist cloth, that the umbrella and other things in his hand fell down, and that there was a scuffle between them during which the accused took his dagger and stabbed the deceased.

Exhibit Q is the statement recorded by the Magistrate while the deceased was lying in the Hospital. That also is on the same lines it being stated that the stabs were inflicted when the scuffle was going on. As pointed out by the counsel for the accused the deceased stated that he was not in fear of death then. Hence Ex. Q cannot be given the sanctity attached to a dying declaration as such. None of these statements referred to any exchange of blow between the accused and the deceased.

Coming to the eye-witnesses, in Ex. C three names are mentioned, namely, Kochukunju Nair, Sukumaran and Podiyattuvila Narayanan. The first was examined as P. W. 3 and the second as P. W. 4. The third name does not correspond to that of P. W. 1 as the house names are different. It is not shown that in the evidence the identity between these two persons has been established.

P. W. 1's evidence is to the effect that he was coming with the deceased when the occurrence took place. If so, the failure to establish the identity between P. W. 1 and the person referred to in Ex. C is a fatal flaw in the prosecution evidence. Then regarding the occurrence as described by these eye-witnesses, all of them depose that there was an exchange of blows, the accused being the first to begin

and there was a subsequent scuffle during which the occurrence took place.

P. Ws. 1 to 4 depose that something fell down from the waist of the accused on the road which the deceased tried to keep under foot but the accused managed to take it up. Then it was that the stab took place. The version given by the deceased is that the dagger was taken by the accused from his waist. Thus, there are certain clear developments in the prosecution case. If, as stated in Ex. C, the dagger was suddenly taken from the waist and the injuries inflicted it shows an absence of any premeditation whereas the prosecution witnesses' evidence will go to show deliberation on the part of the accused.

Anyhow, the statement of the deceased as well as the evidence of the prosecution witnesses are consistent with regard to the stab being inflicted after the scuffle had been going on for some time. The defence contention which has been accepted by the lower court is that during the scuffle the accused was in mortal danger and the act was done only under such circumstances.

The Public Prosecutor's contention is that the evidence did not go to show that the accused had any reason to be apprehensive of his safety. Here the stabbing takes place after the altercation had been proceeding for some time and admittedly during a scuffle and according to Ex. C statement the dagger being taken suddenly from the waist. It is also in evidence that some of the relatives of the deceased were appearing on the scene from the neighbourhood.

Under such circumstances the lower court's finding that the accused was justified in having some apprehension of his safety at that moment cannot be considered as erroneous. There is one aspect of the case which has not been borne in mind by the lower court. In a case where the accused pleads the right of private defence it is the duty of the court to see whether the accused had been the aggressor.

As laid down in - 'Gorie Sankar v. Sultan' AIR 1917 Low Bur 12 (1)(A) an act done in the exercise of the right of private defence is not an offence and does not, therefore, give rise to any right of private defence in return. Here, according to the eye-witnesses and Ext. O statement the quarrel was started by the accused. That aspect ought to have been gone into by the lower court but in view of the

discrepancies regarding the occurrence as given in Ext. C statement and the evidence of the prosecution witnesses and the absence of definite evidence regarding the nature of the scuffle we do not think that it will be proper to interfere with the lower court's order of acquittal.

The guiding principle to be followed with regard to interference with an acquittal by a trial court is referred to in - 'Ajmer Singh v. State of Punjab' : 1953 CriLJ521 . There it is observed as follows:

After an order of acquittal has been made presumption of innocence is further reinforced by that order and that being so the trial court's decision can be reversed not on the- ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and compelling reasons.

So we hold that sufficient ground has not been made out to interfere with the lower court's finding.

3. In the result, the appeal is dismissed and calender revision dropped.

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