

Thommen Thomas Vs. State of Kerala

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Court : Kerala

Decided On : Dec-19-1956

Reported in : AIR1957Ker53; 1957CriLJ635

Judge : Koshi, C.J. and; Varadaraja Iyengar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 96, 300, 302 and 304

Appeal No. : Criminal Appeal No. 99 of 1956 (E)

Appellant : Thommen Thomas

Respondent : State of Kerala

Advocate for Def. : C.M. Kuruvilla, Public Prosecutor

Advocate for Pet/Ap. : R. Sankaradasan Thambi, Adv.

Judgement :

Koshi, C.J.

1. Thomas alias Kunju who was accused No. 2 in Sessions Case No. 38 of 1955 on the file of the Parur Sessions Court has preferred this appeal against the convictions made against him by the learned Sessions Judge under Sections 302 and 324. I. P. C. and the sentences passed therefor. Finding him guilty for the murder of one Thornman he has been sentenced to undergo rigorous imprisonment for life. For causing hurt with a dangerous weapon to Thomman's

younger brother Ouseph (P. W. 1) and to their mother Annam (P. W. 2) he has been sentenced to undergo rigorous imprisonment respectively for 4 months and 3 months. The judgment directs that all the three sentences shall run concurrently.

2. The case against the appellant was that in the afternoon of 14-12-1953 he stabbed one Thomman to death and that he also inflicted stab wounds on Thomman's brother and mother - with the self-same weapon to wit, a pen-knife, with which he killed Thomman. Accused No. 1 in the case, one Kurian Kurian alias Chacko, the appellant's master, was alleged to have abetted the commission of these offences, but the learned Sessions Judge found that the prosecution had not succeeded in proving that part of the case and accordingly acquitted accused No. 1.

It would appear that accused 1 and accused 2 met Thomman in the afternoon of 14-12-1953 at a toddy shop conducted by P. W. 13. The two accused persons in the case would seem to have been spending the best part of the day in the toddy shop. After Thomman went to the shop for a drink a quarrel arose between the appellant and Thomman as the latter consumed the curry purchased by the appellant. When the quarrel looked like assuming serious proportions, P. W. 9, who was in the shop at that time, sent all the three out of the shop. They went southwards towards the direction of one Cheenikuzhi Bridge, but Thomman returned to the shop, purchased a cup of toddy and going back where the accused persons were offered the toddy to the appellant who refused to take it.

Thomman threw away the toddy and its container, the cup. At that time the appellant had a pen-knife in his hand which he was keeping open. P. W. 1 came along that way, fearing that the appellant might do some harm to his brother, improvised himself with a stick by breaking a branch of a 'Vetti' & approached the place where the three people were. Thomman snatched away the stick from his brother and threw it away. P. W. 1 took two small stones presumably to throw at the appellant, but as some school children passed along that way he dropped the stones down without using them against the appellant.

At that time P. W. 2 appeared on the scene with a small stick and tried to persuade her sons to return home. Her attempt was unsuccessful, but P. W. 1

however crossed the bridge after crossing which alone he could reach his house, Thomman was not bold enough to do that and asked the appellant to keep his knife folded. When he declined to do that Thomman caught hold of the hand which had the knife. Immediately P. W. 1 approached them and he caught hold of the appellant from behind. A tussle ensued between the three and all of them fell down.

Thomman sustained some minor injuries from the knife in the hand of the appellant and when the three got up a scuffle ensued between accused 1 and p.. W. 1 and another between Thomman and accused 2. Struggling for some time each trying to get the better over the other, both Thomman and the appellant fell down, the former on his back and the appellant at once sat on the abdominal region of Thomman. The prosecution alleged that at that time accused 1 called out to the appellant to stab and the case of the prosecution is while Thomman was lying flat on his back the appellant sitting over the abdominal region of the latter gave a stab to Thomman on his chest.

P. W. 1 then tried to drag the appellant away from Thomman, but the appellant turning round to P. W. 1 gave three stabs to him who fell down immediately on receiving the stabs. P. W. 2 went to the side of her sons when the appellant gave a stab to her right ankle with his knife and she also fell down. The prosecution would have it that at this stage accused 1 ran away and the appellant soon followed him throwing down his knife, cloth, baniyan and belt at the scene. He had only a pair of knickers on while -running away.

Thomman died shortly afterwards and P. Ws. 1 and 2 were first taken to the Thodupuzha police station and then to the Thodupuzha hospital. The police recorded P. W. 1's statement at the latter place and as his injuries appeared to be serious he was removed to the Moovattupuzha hospital.

Afterwards the police registered a case against the two accused persons pursued the investigation and in due course charge-sheeted them before the Thodupuzha First Class Magistrate, who after the usual preliminary enquiry committed both of them to the Parur Sessions Court to stand their trial, the appellant for committing murder and causing hurt with a dangerous weapon to P. Ws. 1 and 2. and

accused 1 for abetment of those offences. Mention has been made earlier as to the result of the trial and our task now is to consider whether the convictions and sentences passed against the appellant can be sustained.

3. The medical and other evidence on the record of the case leave no room for doubt that Thomman died of a stab wound on the chest and that P. Ws. 1 and 2 had also sustained injuries inflicted with a sharp instrument. Exhibit P-II is the report of the inquest held over Thomman's dead body and Ext. P-9 is the post-mortem certificate. The evidence of P. W. 5, who conducted the post-mortem examination and Ext. P-9 show that Thomman died of the wound over his chest which had injured his right lung.

Exhibits P-'G and P-7 are the wound certificates respectively of p. W. 1, and P, W. 2. The former shows that P W. 1 had three incised injuries on the left side of his chest and Ext. P-7 shows that P. W. 2 had an incised wound on her right ankle. There is overwhelming direct evidence that the appellant inflicted the injuries on these three persons. Before the committal Court his plea was one of complete denial, but at the Sessions trial his statement was to the effect that he did not remember anything of what happened on that fatal day.

P. Ws. 1 to 3 and 7 to 15 have given direct evidence regarding the occurrence. Their evidence stands corroborated by the medical evidence in the case and the recoveries which the police made from the scene of the crime of articles belonging to the appellant. The learned Sessions Judge had therefore no difficulty to find that the appellant was responsible for killing Thomman and that he had also inflicted injuries on P. Ws. 1 and 2 with a pen-knife. On a careful consideration of the evidence and circumstances we have very little hesitation to agree with his conclusion.

4. The better part of the judgment of the lower Court is devoted to the prosecution as to how far accused 1 has been proved to have abetted the offences the appellant committed and to consider whether the appellant had any right of private defence. We are here not concerned with the case of abetment, but the question whether the act of killing Thomman really amounted to the diffence of murder requires serious consideration.

The fact that the appellant did not specifically plead the light of self-defence would seem to have influenced the learned Judge's conclusion that the plea of self-defence was not available to the appellant to any degree.

We are afraid that is too narrow a view and opposed to well-established principles, A dispassionate consideration of the circumstances which led up to the infliction of the fatal stab on Thomman makes us feel that the appellant had reason to apprehend some danger to his body at the hands of Thomman and his brother, P. W. 1. Thomman was known to be a dangerous and desperate character. He and his brother are both middle aged men, while the appellant was only 18 or 19 at the time of the occurrence. At the toddy shop it was Thomman who started the quarrel and though he went when the drinking party was sent away, he was not prepared to leave accused 1 and the appellant alone.

He went and brought back a cup of toddy and offered it to the appellant, certainly not to extend hospitality to him, but to tease or provoke. It is difficult to say that the appellant kept his knife open with a view to attack Thomman, it might as well have been to defend himself if Thomman were to attack him. When he declined to keep the knife folded it was Thomman who first caught hold of him and P. W. 1 joined Thomman. After the three got up after they fell down P. W. 1 engaged accused 1 in a scuffle and Thomman did likewise with the appellant.

Thomman and the appellant fell down and according to the evidence the appellant succeeded to have the better over Thomman and was able to sit over his body. Though it was while the two persons were in those positions, that the fatal injury was inflicted, we are not prepared to say that it was not done out of apprehension to his own person that unless Thomman was seriously disabled the tables might be turned against him. There is no gainsaying that he exceeded the right the law gave him, but it was without pre-meditation and in the awfully drunken state the appellant was, we cannot predicate that he intended to cause more harm than was necessary for the purpose of defence. At the same time we cannot say that he did not intend to cause such bodily injury as was likely to cause death.

The offence committed against Thomman would in the circumstances. In our opinion, amount only to an offence of culpable homicide not amounting to murder

falling within the first part of Section 304 I. P. C, The conviction for murder is therefore set aside and reduced to one under Section 304(1). Though the sentence passed by the lower Court is one that could be awarded under Section 304(1) as well, we think regard being had to the appellant's youth and the fact he was over-drunk a sentence of 10 years' rigorous imprisonment will meet the ends of justice and we decide accordingly,

As for the offence under Section 324 with respect to the injuries inflicted on P. Ws. 1 and 2 or the sentences passed therefor no interference whatever is called for. We confirm that part of the lower Court's judgment. The direction that all the sentences shall run concurrently is affirmed. The appeal succeeds to the extent of altering the conviction for murder into one under Section 324(1) and reducing the said imprisonment awarded into rigorous imprisonment for 10 years. For the rest as stated above the lower Court's judgment is confirmed.

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