

Kunhootty Alias Ulahannan Vs. State

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Court : Kerala

Decided On : Apr-18-1959

Reported in : AIR1960Ker120; 1960CriLJ477

Judge : Sankaran, C.J. and; Anna Chandy, J.

Acts : [Evidence Act, 1872](#) - Sections 32(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

Appeal No. : Criminal Appeal No. 311 of 1958

Appellant : Kunhootty Alias Ulahannan

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : V. Bhaskaran Nambiar, Adv.

Disposition : Appeal dismissed

Judgement :

Anna Chandy, J.

1. The appellant Kunhootty has been convicted under Sections 302 and 324 of the Indian Penal Code and sentenced to suffer life imprisonment with a concurrent sentence of six months rigorous imprisonment by the Sessions Judge of

Telhcherry for causing the death of one Joseph and causing hurt to P.W. 1, John by a dagger at about 7 P.M. on 15-4-1958.

2. The prosecution case may be stated as follows ;

The deceased Joseph aged 27 and the accused Kunhootty aged 26 belonged to two Christian families, which migrated from Travancore and settled in North Wynaad. their houses being one mile apart. On 15-4-1958 at about 7 P.M.. P.W. 1 and his elder brother the deceased Joseph were herding their cattle home when they met the accused on his return from his day's work, near the Neeli tree marked X in the plan Ex. P-19. The accused asked P.W. 1 and his brother to make way for him and when he passed them he asked for P.W. 1's name.

The question from the accused who knew P.W. 1 and his family well, appeared to them to be making fun of them. So P. W. 1 replied to the accused, 'brother why you want to know the name.' On hearing this the accused ran-towards P. W. 1 and Ktabbed him on his back with a dagger. P.W. 1 caught bold of the accused's neck and pushed him and called for his brother Joseph's help. Joseph turned back and rushed to the place when the accused stabbed him with a dagger on his chest. P.W. 1 tried to ward off the stab which grazed his cheek. Joseph fell down.

The accused and P.W. 1 tussled and the accused fell down, but he got up immediately and went to the north. P.W. 1 rushed to his house and informed P.W. 2 and others who reached the spot and removed Joseph in a chair to the house first and then to the Mananthody Hospital at about 12 in the night. P.W. 12 finding his injury serious sent for the Magistrate and the police. P.W. 13 the Magistrate recorded Joseph's dying declaration Ex. P-7 and P.W. 15 the Sub-Inspector of Police recorded the First Information statement from him. Under the leadership of P.W. 6 the Circle Inspector of Police the investigation was completed and the accused was charge-sheeted.

3. The accused stated in the trial Court that when he was returning from his work in the estate, he saw the brothers P.W. 1 and the deceased fully drunk and bearing each other. He caught bold of P.W. 1's hand to stop the quarrel. P.W. 1 resented this and asked him 'what business he had to interfere' and stabbed him

with a knife. He ward off the stab when the injuries on his palm and left hand were caused. He then wanted to go home and on his way home in the darkness P.Ws. 6 and 7 accompanied him to his house. He admitted the ownership of the dagger M. O. 8, but denied that he took it out with him

4. The fact of Joseph's death is not disputed and it is amply proved by the evidence at the Medical officer, P.W. 12, who conducted the post-mortem examination and issued the post-mortem certificate, and the oral evidence of Joseph's father, brother and others. Ex. P-9 post-mortem certificate notes the following injury :

1. Transverse gaping incised wound 5 1/2' x 2, 1/2' x 4' on left side front of chest 1/2' below the left nipple passing through the left fourth intercostal space.

The doctor gives evidence that death was due to shock and haemorrhage on account of the injury to the left lung.

5. The accused's guilt is established by the oral evidence of P.W. 1, the dying declaration of the injured Joseph and also the circumstantial evidence afforded by P.Ws. 5 to 7. Ex. P. 7 is the dying declaration. Joseph has stated therein that while himself and his brother John (P.W. 1) were returning at about 7 P. M. with their cattle they met the accused who was returning from the estate. The accused asked them to make way for him and they did so. The accused then stabbed P.W. 1 twice on his back, and when the deceased rushed towards him he stabbed him also once and the deceased fell down unconscious, and does not know what happened thereafter.

6. The dying declaration suffers from no infirmity generally alleged against such declarations. The doctor certifies that the deceased was conscious and fit enough to give a statement. The police had not arrived at the time when Ex. P-7 was recorded and so nobody could have inspired the dying man, to give a false statement. It is held in *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, that when the dying declaration has passed the test of reliability it is substantial evidence which does not require any corroboration. Further in this case Ex. P-7 is corroborated in essential particulars by the directive evidence of P.W. 1.

After mentioning the exchange of words that passed between himself and the accused, P.W. 1-swears how he was stabbed first, and then when he cried bow his brother Joseph rushed up and was also stabbed by the accused who was drunk. Nothing to discredit him is brought out in his cross-examination. He is interested in the deceased, but he owes no grudge against the accused whom he scarcely knew. No enmity to inculcate the absolute stranger exists. The learned Sessions Judge before whom the witness gave evidence has believed him and we find no reason to differ. The learned counsel for the defence attacked the witness as wanting in brotherly feeling as he left the injured brother behind to rush himself home.

In the circumstances of the case P.W. 1's conduct does not appear to be unnatural or strange. The accused who was drunk and recklessly using a lethal weapon cannot be over-powered by P.W. 1 alone. So he wanted to inform his people and to save himself and his brother. The evidence of P.W. 1 corroborates the dying declaration and vice versa. The conduct of the accused after the event was tell-tale. He cried in the forest for help as he thought the devil blind-folded him. P.Ws. 5, 6 and 7 gave evidence about the subsequent conduct of the accused. P.W. 5 is the father of the deceased, P.W. 6 is a neighbour of the accused and P.W. 7 and his father live some 2 to 3 furlongs from the house of P.W. 5.

That evening all of them had gone to a house near the accused's house where a death had taken place. On their way back when they were near one Mudoor Kunhu's house they heard the cry of the accused that devil had blind-folded him and taken him to the forest to kill him. P.W. 7 and Mudoor Kunhu went into the forest and found the accused with a dagger in his hand. They took him out of the forest when he told them that he had stabbed two of the sons of Varkeyhettan (P.W. 5). The accused was then taken by P.W. 6 and Mudoor Kunhu to his house. They also gave evidence that the accused was drunk and that he told them that he had stabbed the two sons of P.W. 5. P.W. 7 then took the dagger from him and returned it only after he got home.

P.Ws. 6 and 7 are not shown to be interested in the prosecution or inimical towards the accused and there is no reason why their evidence should not be

accepted. The accused's case that P.W. 1 and his brother Joseph stabbed each other and that he interfered to stop them is not borne out by any evidence. The accused himself had no such case in the committal court though he was questioned in detail regarding the several items of prosecution evidence. There is no suggestion that there was enmity between the deceased and P.W. 1. So there is no reason why they should fight unless it be that they were drunk.

The doctor examined them both at 12 the same night and no suggestion was made by the doctor about the fact that they were drunk. Their wound certificates also do not disclose the effect of recent drinking. The circumstance that the accused had two abrasions one on the left palm and the other on the lower part on the left side of his back was relied upon in support of the case that the accused interfered when the brothers were fighting. No such inference is possible. The accused is proved to have lost his way and was in the forest.

The two abrasions noted on his person could very well have been caused by coming into contact with thorny shrubs or thistles. The fact that Joseph was found 70 yards away from the Neeli tree was relied upon by the learned counsel for the defence to shew that the occurrence had not taken place as alleged. This criticism has no substance. After John left the place, the injured Joseph might have struggled to go home and after moving some distance, he might have stumbled down again at the place where he was found. There is thus overwhelming evidence that it was the accused who stabbed both Joseph and John.

7. The only other point urged by the defence counsel was that the proved intoxicated condition of the accused would reduce his act to an offence under Section 304 of the Indian Penal Code. The learned Sessions Judge basing his argument on the ruling reported in *Basdev v. State of Pepsu*, (S) AIR 1956 SC 488, has come to conclusion that as the degree of the accused's intoxication falls short of a proved incapacity in the accused to form the necessary intent to constitute murder, the offence is murder. That conclusion is correct.

8. In the result, the conviction and sentence passed by the learned Sessions Judge are confirmed and this appeal is dismissed.

