

**Balakrishna Vs. the State**

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**Court :** Kerala

**Decided On :** Mar-23-1959

**Reported in :** AIR1960Ker149

**Judge :** M.S. Menon and; Anna Chandy, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300 and 302; ;[Evidence Act, 1872](#) - Sections 5

**Appeal No. :** Referred Trial No. 2 of 1959 and Criminal Appeal No. 34 of 1959

**Appellant :** Balakrishna

**Respondent :** The State

**Advocate for Def. :** Public Prosecutor, Adv.

**Advocate for Pet/Ap. :** C.J. Balakrishnan, Adv.

**Judgement :**

**Anna Chandy, J.**

1. This appeal and the reference for confirmation arise out of the sentence of death passed by the Sessions Judge of Trivandrum on the appellant Balakrishnan for having committed the murder of one Joseph Vaidyan on 14-8-1958 at about 8 P.M.

2. The deceased Joseph Vaidyan alias Kuttan Vaidyan. a member of the Aryanad Panchayat, and the second accused Narayana Pillai were at logger heads for some time past due to civil and criminal litigation between them. At about 5 P.M. on 14-8-1958 Joseph Vaidyan went to the shop of P.W. 2 Anandan and sitting on the bench placed in front of the shop began to chew betal. At about 5-30 P.M. the second accused, Narayana Pillai also took his seat on the same bench and began to talk ill of the administration of the Aryanad Panchayat. and even went to the extent of saying that it has become necessary for them to conduct a 'Bhagavan Mackroni Kathaprasangam' to tone up the Panchayat administration.

At about 7 P.M. the first accused arrived and asked the deceased to get him a chew. When the deceased expressed his inability the first accused's brother Lakshmanan who was present in the shop got chewing materials for his brother. The second accused gave his knife to the first accused for splitting arecanuts for the chew. The first accused cracked the nut and kept the knife with him without returning. After a while the first accused invited the deceased to go out with him from the shop. Before that he whispered something into the second accused's ear and the second accused shook his head as if in assent. The first accused got out, leading the deceased to a distance of about ten feet westwards, and then suddenly stabbed him on the right side of the abdomen with the knife the second accused had given him earlier.

3. As soon as Joseph Vaidyan was injured, the second accused went near him and laying him on the ground rendered him first aid. The injured was then removed to the verandah of the shop of P.W. 9 and promising to come back with a car to remove the injured to the hospital, the second accused left the place, and never returned. The injured Vaidyan succumbed to the stab wound on the spot. P.W. 1, the brother of the deceased, was informed first and he then lodged the first information with the Kattakada police. P.W. 13 Circle Inspector of Police investigated the case and charged the first accused under Section 302 of the Indian Penal Code and the second accused under Section 302 read with Section 34 of the Indian Penal Code. The learned Sessions Judge acquitted the second accused, and convicted the first accused as mentioned above.

4. Both the accused pleaded not guilty. The first accused contended that he was not even present on the spot or in the locality on the date of occurrence. He further stated that on 15-8-1958 the second accused met him and told him that he should take upon himself the responsibility of murdering Joseph Vaidyan and if he (the first accused) would appear before the Magistrate with the knife that he (the second accused) gave him and admitted the act of stabbing, he would get him acquitted in the case and also would give him Rs. 2,000/-. The first accused got frightened at that proposal, but when he knew that the second accused appeared in Court and was released on bail, he also appeared before the Magistrate and gave the statement. The second accused raised a plea of denial and stated that his enemies in the Communist party have deliberately implicated him out of spite,

5. Joseph Vaidyan's death and its cause are not disputed and are amply borne out by the medical and the other evidence in the case.

6. The authorship of the injury is hotly contested. The learned Sessions Judge has very elaborately discussed the prosecution evidence and acquitted the second accused on the ground 'that the prosecution has failed to prove beyond reasonable doubt that the second accused either instigated the first accused or shared the intention with the first accused in murdering Joseph Vaidyan.'

7. There is no State appeal against the acquittal of the second accused. So we have to confine OUR attention to the conviction of the first accused.

8. The learned Sessions Judge has relied upon the evidence of P.Ws. 2, 3, 5 and 6 to bring home the guilt of the appellant. P.W. 2 is a betal and beedy shop-keeper at Ayithi Junction at Aryanad pakuthy. He speaks to the prosecution case in all its details, from the time when the deceased came to his shop to purchase chewing materials, the second accused's coming to the shop and criticising the administration of the Aryanad Panchayat and the first accused coming there at that time. As soon as the first accused came, he asked Joseph Vaidyan to purchase chewing materials for him. Vaidyan replied that he had no cash with him, P.W. 2 gave chewing materials to the first accused at the request of the first accused's brother.

The second accused gave the first accused a knife to split arecanut, and after splitting the arecanut the first accused kept the knife with him. After sometime the first accused invited the deceased Vaidyan to go along with him and patted thrice on the shoulders of the second accused, and told him that they were going, and the second accused shook his head in consent. After proceeding for about 10 feet from the shop, the first accused stabbed the deceased Vaidyan on the right side of his abdomen. In cross-examination the only contradiction pointed out about the part played by the first accused is that he stated to the police that the first accused was holding the deceased with his right hand while they went out of the shop while in the Court he stated that it is by the left hand that he held the deceased.

This is not a contradiction worth the name. The occurrence took place just in front of his shop and he swears that there was a hurricane light in his shop and he could see the stabbing with the aid of the light. The witness was questioned the very next day by the police at the time of inquest. There appears to be no animosity for the witness should swear away the life of the first accused falsely. P.W. 3 is a labourer. On his way borne after the day's work by the road in front of the shop of P.W. 2, he stepped in there to purchase beedi, when he witnessed the occurrence. He gives evidence in the same terms as P.W. 2. He is no partisan of the Vaidyan, nor is he an enemy of the accused. He was also questioned the next day by the police at the time of the inquest. P.W. 5 is a tea shop owner who says that he witnessed the occurrence while he was passing along the road.

He swears to the incident in the same terms as P.Ws. 2 and 3. He was not asked anything in cross-examination to shake his credit. He has no animosity against the accused nor any partisanship with the deceased. P.W. 6 is another eye-witness who is admittedly a relation of P.W. 2. He was also questioned at the inquest. He went to the shop to purchase beedi, when he witnessed the incident. It was suggested to the witness that as he is a member of the same ward he was displeased with the enhancement of the house tax by the Pauchayat. He denied the suggestion. Thus we see that there is overwhelming direct evidence in this case so far as the appellant's act of stabbing the deceased is concerned.

9. The main argument of the learned counsel for the appellant was that as the lower Court has discredited the evidence of the prosecution witnesses, as regards the second accused, the Court ought not have acted on the self-same evidence to convict the appellant. In other words, it was argued that the well-known maxim, 'falsus in uno falsus in omnibus' should have been acted upon by the learned Sessions Judge, and the appellant acquitted. This maxim just as many other maxims contains a generalisation but is not an absolute rule of law. In *Nisar Ali v. State of Uttar Pradesh*, (S) AIR 1957 SC 366, His Lordship Kapoor J. quoting from *Wigmore on Evidence* has stated that it is a controversial rule which has been termed as 'worthless' 'absolutely false as a maxim of life' and 'in practice pernicious.'

The facts of that case are somewhat similar to the facts of this case. There also the shop-owner who handed over the knife to the first accused for stabbing the deceased was acquitted, and the appellant who stabbed the deceased was convicted and sentenced to the lesser penalty for murder on the same evidence. The acquittal of the one and the conviction of the other were confirmed by the Supreme Court, thereby declaring that the maxim is not a rule of law of universal acceptance. 'It is very well a rule of caution and not a mandatory rule of evidence.' After a very careful and anxious consideration of the evidence in this case, we have no hesitation in accepting the evidence of P.Ws. 2, 3, 5 and 6 to find that the appellant had stabbed the deceased as alleged by the prosecution.

10. The one curious factor we noticed in this case may be referred to here. It relates to the evidence of the motive in this case. Motive may be immaterial in cases like this where there is plenty of direct evidence to connect the accused with the crime, but it has great relevance in assessing the punishment. The prosecution from the very inception had been stating that the two accused who had reasons not to be cordial with the deceased have conspired together with and the hand of the appellant and the brain of the second accused worked together in procuring the death of Joseph Vaidyan.

But in spite of the documentary evidence Exts. P-2 to P-6 the second accused's animosity had nothing recent to be mentioned. At the shop nothing personal about

the Vaidyan had been spoken by the second accused. So also, it is mentioned that three years ago the appellant threw stones at the deceased's house and the deceased complained to the police and for some time the appellant vowed vengeance and grew beard as a token of his vow. These suggestions are not proved at all. Even if there was any such ill-feeling that also is an ancient history and nothing happened on 14-8-1958 or near about.

The deceased Vaidyan unsuspectingly goes out with the appellant. If there was anything seriously wrong between them, that was not the attitude we should expect of the deceased. P.W. 1, the brother of the deceased, even goes to the extent of saying that the appellant and the deceased were on good terms. As found by the learned Sessions Judge himself 'there is no evidence that the appellant and the deceased were on good terms or bad terms at the time of the occurrence,' though there is overwhelming evidence of the eye-witnesses that the appellant is the person who stabbed Joseph Vaidyan to death.

11. The question of punishment is not free from difficulty. The sentence of death is not called for in any view of the case. It is freely conceded that there is no premeditation to kill and no motive for murder, (in this case. Either there must be a missing link or there is something which the prosecution did not care to bring out. There is only one stab by a knife which is not recovered and which need not have been as formidable a weapon as M.O. 5. It was suggested that something in the nature of a provocation, must have taken place before the actual stabbing, and that accounts for the first accused who has no recent hatred against the Vaidyan to stab him to death.

It appears to us that there is a missing link that gives the offender the benefit of doubt so far as the sentence is concerned. The meeting of the appellant and the Vaidyan in the shop of P.W. 2 is sheer accident. There are some cases where, in the absence of premeditation, the lesser penalty was considered the proper one. The absence of premeditation, lack of motive to murder, and the probability of some provocation before the actual stabbing force us to conclude that the sentence of death is not the proper punishment.

12. In the result, we confirm the conviction entered by the learned Sessions Judge and alter the sentence of death into one of rigorous imprisonment for life. With this modification in the sentence the appeal is dismissed.

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