

Kelu Ayyappan Vs. State

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Court : Kerala

Decided On : Feb-07-1958

Reported in : AIR1959Ker230; 1959CriLJ981

Judge : Kumara Pillai and; Vaidialingam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300, 300(2), 300(4) and 304

Appeal No. : Criminal A. No. 198 of 1957

Appellant : Kelu Ayyappan

Respondent : State

Advocate for Def. : M.U. Isaac, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Kumara Pillai, J.

1. The accused in Sessions Case No. 38 of 1956 of the court of the Additional Sessions Judge at Parur is the appellant in this appeal. He has been convicted by the learned Additional Sessions Judge under Section 304, Part I, I. P. C., and sentenced to undergo rigorous imprisonment for 4 years and also convicted on two counts under Section 324, I. P. C., and sentenced to undergo rigorous

imprisonment for 2 years in respect of each of them. Besides these three convictions he has also been convicted for attempting to commit suicide, under Section 309 I. P. C., and sentenced to undergo rigorous imprisonment for 1 year. All the four sentences are to run concurrently.

The occurrence complained of took place in front, of and inside a car shed used as a house by the divorced wife of the accused and her parents in Talamattam Kara, Thodupuzha Taluk, at about 4-30 p.m. on 24-8-1954 corresponding to 8-1-1130. The accused married about three, years before the occurrence, Pw. 4 a deaf and dumb woman, and he divorced her after about six months of married life. From the time of the divorce till the date of the occurrence she was living with her parents in the car shed mentioned above. Pw. 1 is her mother; and the deceased Kela, the person for causing whose death the accused has been convicted under Section 304, Part I, I. P. C.. was her father.

After divorcing Pw. 4 the accused married another woman, Pw. 11, whose mother is Pw. 10. After the accused's marriage with Pw. 11 troubles arose between him and Pw. 11 on the one side and Pws. 1 and 4 and the deceased Kela on the other. According to the prosecution, even after his marriage with Pw. 11 the accused wanted Kela and Pw. 1 to send Pw. 4 to live with him and they and Pw. 4 were not amenable to comply with this request, and so, the accused was frequently molesting Pws. 1 and 4. According to both the prosecution and the defence, dissatisfied with the accused's marriage with Pw. 11, Pw. 4 used frequently to insult Pws. 10 and 11 by showing improper, gestures and this led to frequent quarrels between them.

Whatever that be, both sides are agreed that the relationship between the accused and Pws. 10 and 11 on the one side and Pws. 1 and 4 and Kela on the other were very strained at about the time of the occurrence. Both sides are also agreed that some time before the occurrence, on 24-1-1954, Pws. 4 and 11 happened to meet in the house of one Varghese when Pw. 11 had gone to buy rice, that Pw. 4 then insulted Pw. 11 by showing improper gestures, and that this led to a quarrel between them. According to the prosecution, Pw. 11 complained about this incident to the accused and Pw. 10 and so, shortly before 4-30 P. M. on the same

day, Pw. 10 went to the car shed where Pws. 1 and 4 were living and took up the matter with Pw. 1. A quarrel then ensued between the three women, Pws. 1 and 4 on the one hand and Pw. 10 on the other, in front of the car shed, and Kela who happened to be nearby went to the car shed, and asked them not to quarrel.

While the three women were quarrelling Pw. 11 told the accused, who was working near his house, about this quarrel and he also went to the car shed. On seeing him Pws. 1 and 4 ran to the car shed and, when the accused attempted to follow them, Kela stood at the gate and prevented him from entering the shed by spreading out his hands. Immediately the accused stabbed Kela on his stomach causing the intestines to fall out and as Kela turned to one side on being thus stabbed the accused stabbed him again on the back. As a result of this attack Kela fell down on road and then the accused entered the shed and stabbed Pw. 4. When Pw. 1 tried to catch him he stabbed her also.

After this he attempted to commit suicide by stabbing himself on the stomach and chest. Subsequently Pw. 1 went to the police station with the assistance of the people who came to the scene and gave the first information statement at about 6-30 P. M. Later, the Police came to the scene and removed all the injured persons to the hospital where dying declarations were recorded from both Kela and the accused. In spite of the treatment given to him in the hospital Kela died at about 10-30 A. M. on the next day as a result of the injuries caused to him. Pws. 1 and 4 and the accused were treated at the hospital and discharged after their injuries were cured. This, in short, is the prosecution case.

3. The defence plea in the Sessions Court was that the accused went to the car shed hearing that his mother-in-law was being belaboured by Pws. 1 and 4 and the deceased Kela and another person named Kunchal, that he was there set upon and attacked by the said four persons and the injuries sustained by him were caused by them, and that he had only acted in pure self-defence. The learned Additional Sessions Judge disbelieved this plea and found the prosecution case true. But, although the accused was charged under Section 301 I. P. C., for the murder of Kela, the learned Judge held that in respect of Kela's death he was guilty only of the offence punishable under Section 304 Part 1, Indian Penal Code.

For the injuries caused to Pws. 1 and 4 he convicted the accused under Section 324 I. P. C., and for the attempt to commit suicide, under Section 300 I. P. C.

4. The appeal petition was sent to this court by the accused from the jail, and no advocate appeared to argue the case on his behalf at the time of hearing. Therefore, Mr. Isaac, the learned Government Pleader who appeared for the prosecution, very fairly placed all the facts before us--both for and against the Prosecution; and after hearing him and perusing the evidence on record, we have absolutely no doubt that the prosecution case is true and the accused's plea false. The witnesses relied upon by the learned Additional Sessions Judge for holding the prosecution case to be true are Pws.. 3, 7 and 9. Pw. 9 appears to be a very respectable person, and Pws. 3 and 7 are neighbours.

All of them appear to be thoroughly disinterested, and they have given evidence in terms of the prosecution case set out in paragraph 2 above. There is absolutely no reason to disbelieve any of them. The facts testified to by these witnesses were also spoken to by the deceased Kela in his dying declaration and by Pw. 1 in the first information statement. Pw. 1 also repeated the same version in the Sessions Court. No doubt, the case of self-defence was put forward by the accused even in his dying declaration. But there is one very important circumstance which belies the plea. According to the version given in the accused's¹ dying declaration, the quarrel between the women took place not in the car shed where Pws. 1 and 4 were living but in front of the house where the accused was living.

The accused must have said this in the dying declaration in order to make out that he had only acted in self-defence. The evidence of Pws, 3, 7 and 9 is clear that the incident took place in front of and in the car shed. The scene roahassar also shows that there was blood -- and plenty of it --at the scene of occurrence mentioned by Pws. 3, 7 and 9 and none near the accused's house. This would indicate that the occurrence had taken place in the manner alleged by the Prosecution and that Pw. 10 must have gone to the house of Pws. 1 and 4 to pick up a quarrel with them. Pws. 10 and 11 gave evidence in the Sessions Court supporting the accused's plea of self-defence. But, in view of their obvious interest in the accused and the clear evidence of Pws. 3, 7 and 9 and the other

circumstances mentioned above, we do not consider their evidence to be reliable. The learned Additional Sessions Judge also has not accepted their evidence.

5. Ext. P 12 is the wound certificate issued by Pw. 6 in regard to the wounds sustained by Kela, and Ext. P5 is the post-mortem certificate issued by Pw. 5 after the autopsy on his body. There were two injuries on Kela's body at the time of his admission to the hospital. They were a transverse incised wound 3' long on the upper part of the left side of the abdomen 3' above the umbilicus through which the intestines were protruding and a transverse incised wound $3/4 \times 1/8 \times 1/2$ ' on the middle line of the back near the iliac crest. Both doctors say that these injuries would be caused by stabbing.

According to Pw. 5, the doctor who conducted the autopsy, Kela's death was caused by syncope as a result of shock and haemorrhage caused by these injuries and 'injury No. 1 was a very serious injury and there was little chance of survival'. At the time of their admission to the hospital Pw. 1 had three incised injuries, one above the right axilla, another on the right breast and the third on the left thigh; and Pw. 4 had two injuries, one to the left of the posterior axilla -- fold and the other on the right knee-joint.

The accused had four incised injuries, they being (1) a transverse incised wound $1/2 \times 1/2 \times 1$ ' situated $1/2$ ' above and a little to the left of the umbilicus, (2) a transverse incised wound $1 \times 1/4 \times 1$ ', one inch to the left of the other end of No. (1) injury, (3) a transverse incised wound $1 \times 1/8 \times 1/2$ ', six inches below and one inch to the left of the left nipple, and (4) an incised wound on the back and inner side of the right index finger. The position of the injuries Nos. (1) to (3) found on the body of the accused is very eloquent and fully supports the prosecution case that he stabbed himself in an attempt to commit suicide. Injury No. (4) was a trivial one caused probably while he was stabbing one of his three victims.

6. Having regard to the evidence discussed above, we find that the learned Additional Sessions Judge was right in holding that the accused had stabbed Kela and Pws. 1 and 4 in the manner alleged by the Prosecution and caused Kela's death and hurt to Pws. 1 and 4 and that he had also stabbed himself and attempted to commit suicide.

7. We are not however, satisfied with the finding of the learned Additional Sessions Judge that, in causing the death of Kela, the accused committed only an offence punishable under Part 1 of Section 304, I. P. C. Although, on account of the invariable practice of this learned Judge in avoiding a conviction for murder on flimsy grounds, his refusal to convict the accused under Section 302 I. P. C. is not a matter of surprise to us, we think that it is high time that measures are taken to prevent such failure of justice by allowing this learned Judge to continue this practice unchecked in the future.

We are constrained to make these observations because we find that the remarks passed by one of us who is in charge of the District of this learned Judge, on his Calendars have not brought the learned Judge to a proper sense of his duty. All the elements for a conviction for murder under Section 302 I. P. C. are present in the case. Kela has died as a result of the accused having stabbed him. Kela had not given him any provocation; nor was he stabbed by the accused on account of any sudden, fight. The medical evidence is clear that death was caused by shock and haemorrhage resulting, from the injuries inflicted by the accused.

We have already called attention to Pw. 5's evidence ('Injury No. 1 was a very serious injury and there was very little chance of survival'). The grounds on which the learned Additional Sessions Judge reduced the offence from one punishable under Section 302 I. P. C. to one under Section 304 Part 1 I. P. C. were that the accused had inflicted only one serious stab, that Pw. 5 had deposed that had prompt and effective medical aid been given chances of recovery were 60 to 70 per cent, that the wound was not therefore fatal in the ordinary course but was only one which was likely to cause death, and that from the facts that the accused had inflicted only one serious injury and there was no such proved enmity as to make the accused deliberately do away with the victims it was safer to hold that he had no intention to cause Kela's death. (See paragraph 17 of the judgment of the learned Judge).

Thus, the learned Judge seems to think that if there was no deliberate intention to cause the victim's death and that if the injury caused was one which would not have led to the victim's death if prompt and effective medical treatment was given

there can be no conviction for murder at all. This betrays his unfamiliarity with the provisions of Ss. 299 and 300 I. P. C. Explanation II to Section 299 of the Indian Penal Code expressly provides :

'Where death is caused by bodily injury the person who causes such bodily injury shall be deemed to have caused the death although by resorting to proper remedies and skilful treatment the death might have been prevented'.

There are four clauses in Section 300, I. P. C., and intention to cause death becomes relevant only for a conviction under the first of those clauses. The second clause covers the case where the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, and the fourth clause covers the case when the person committing the offence knows that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and there is no excuse for incurring the risk of causing the death or such injury as aforesaid.

Thus, for a conviction for murder it is not always essential that there should be an intention on the part of the accused to cause death. It would be sufficient if he had the intention to cause such bodily injury as he knew to be likely to cause the victim's death or if he knew that his act was so imminently dangerous that it must in all probability cause death or bodily injury which was likely to cause death.

When a grown up person in the full possession of his senses stabs another person on the stomach in the region of the umbilicus inflicting a wound 3' long and causing the intestines to protrude through it, and that injury is found by medical officers to be, 1 'very serious injury' with 'very little chance of survival,' and when death also has occurred as a result of that injury, it would amount almost to judicial misconduct to hold that there was no intention to cause such bodily injury as the assailant knew to be likely to cause the death of the victim or that he had no knowledge that his act was so imminently dangerous that it must in all probability cause death or such (bodily injury as is likely to cause death.

In view of Examination II to Section 299 and clauses (2) and (4) of Section 300, I. P. C., it would be no defence at all to a charge of murder to plead that there was no proper medical treatment if the injury which caused the death was inflicted with the intention of causing such bodily injury as the accused knew to be likely to cause the victim's death or that his act was so imminently dangerous that it must in all probability cause the victim's death Or such bodily injury as was likely to cause death.

8. At page 704 of Ratanlal's Law of Crimes, 1956 Edition, it is said :

'Where an injury is intentionally inflicted the defence that no proper medical treatment was forthcoming does not exonerate the person who caused the injury from guilt of murder if he intended that the injury should be sufficient in the ordinary course of nature to cause death, or knew that it was likely to cause death to that person. It does not exonerate him from guilt of culpable homicide if death ensues as a natural or likely consequence. Such a person is deemed to have caused the death and his degree of criminal responsibility must depend on the knowledge or intention to be gathered from the proved facts.'

We agree entirely with these observations, and we have no hesitation in holding that the learned Additional Sessions Judge has acted perversely in refusing to convict the accused under Section 302 I. P. C., for causing Kela's death and convicting him only under Part 1 of Section 304, I. P. C. Although we are not satisfied with the conviction now entered against the accused and we are convinced that he should have been convicted under Section 302, I. P. C., we are not disturbing that conviction as the State has not elected to file an appeal against the, acquittal of the offence under Section 302, Indian Penal Code and we do not consider it expedient at this very late stage to initiate proceedings ourselves to alter the conviction and enhance the sentence by issuing notice to the accused. We trust that the learned Additional Sessions Judge will pay heed to the observations we have made in this judgment and avoid such failure of justice in the future, and we direct that a copy of this judgment be therefore sent to him forthwith.

9. For the reasons stated above, we confirm, the convictions of the accused and the sentences passed upon him by the Additional Sessions Judge and dismiss this appeal.

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