

Pappan Narayanan Vs. Kerala State

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Court : Kerala

Decided On : Dec-23-1958

Reported in : AIR1959Ker354; 1959CriLJ1324

Judge : T.K. Joseph and; P.T. Raman Nayar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 361(1)

Appeal No. : Criminal Appeal No. 183 of 1958

Appellant : Pappan Narayanan

Respondent : Kerala State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C.A. Balakrishnan, Adv. (State Brief)

Disposition : Appeal dismissed

Judgement :

Raman Nayar, J.

1. The appellant accused, a man of 28, has been convicted of the murder of his wife, aged 25, and the attempted murder of his wife's first cousin, who has been examined as P. W. 1 in' the case. He has been sentenced to imprisonment for life for the former offence and to rigorous imprisonment for seven years for the latter,

the sentences to run concurrently.

2. About three months before the occurrence, which took place on the night of the 28th November 1957, the deceased quarrelled with the accused and went to live in the house of P. W. 1, about six miles away. At the instance of the accused and his father, a panchayat was held in respect of this matter on 28-11-1957 by P. W. 5, the President of the local Panchayat. No agreement was however reached since the deceased was un-willing to go back to her husband and her uncle.

P. W. 6, who had given her in marriage (her parents being dead) declined to pay the accused his marriage expenses as suggested by P, W. 5. The evidence of P. W. 1 shows that later in the day, at about dusk the accused went to P. W. 1's house and demanded that the deceased should go with him. The deceased refused to go with him, and he left the place alone.

3. That night the deceased and P. W, 1 slept in the house of their father's first cousin, P. W. 7, hardly a 50 feet north-west of P. W. 1's house. They did so at P. W. 7's request because P. W, 7, and his wife were going to spend the night slicing tapioca and spreading it out to dry on a rock called Parachirapara about 100 yards north of their house. The only other inmates of their house were their little daughter, aged eight, and P, W. 1's sister, P. W. 2, who was in the tenth month of her pregnancy and had come to P. W. 7's house for her confinement. (P. W. 2, being an orphan, had been brought up by P. W. 7 & his wife, & that is why she went to them for her confinement. Moreover, apart from the deceased who was there only for temporarily and was expected to go back to her husband at any time, there were no womenfolk in the house of P. W. 2's brother, P. W. 1). It was against the possibility of P. W. 2 requiring assistance in the course of the night that P. W. 1 and the deceased went to sleep there, and there was also a country lamp kept burning in the house on the wall separating the verandah from the room in which the deceased and P. W. 2 and P. W. 7's daughter were sleeping. P, W. 1 was sleeping in the verandah.

4. Sometime after midnight, between one and two O' clock P. W. 1 woke up on being stabbed on his left shoulder, and he saw the accused standing over him. He got up crying out aloud, and the accused stabbed him once again in the back. On

hearing P. W. 1's cries, the deceased and P; W. 2 got up and came to the verandah, the deceased in front of P. W. 2. The accused thereupon struck the deceased a blow with his bare hand and nulled her out, catching her by her tuft. P. W. 1 then ran away northwards towards Parachirapara.

While he was still in the courtyard of the house, P. W. 3 who lives just by the side of P. W. 1's house, came running on hearing the cries, and P. W. 1 told him that he had been stabbed by the accused. Then, when P. W. 3 looked towards the house, he saw the accused stabbing the deceased. P. W. 2, who was standing close at hand, also saw this, and when she attempted to intervene the accused shook her off and ran away southwards and escaped.

5. The deceased fell down unconscious on the spot, while P. W. 1 fell down at a spot about 50 yards to the north of the house. Soon P. W. 7 and others gathered at the spot and they along with P. W. 3 took the deceased and P. W. 1 to the Changanacherry hospital in a bullock cart. They reached the hospital at about 3 A. M., where the doctor, P, W. 9, rendered them first aid and then sent intimation to the local sub-inspector of police and Magistrate.

6. The sub-inspector, P. W. 10, reached the hospital at 4 A. M. and the deceased being unconscious, he recorded from P. W. 1 the statement. Ext. P-I, on which the case was registered and investigated. The magistrate arrived at about 5 A. M, and recorded from P. W. 1, the statement Ext. B 2. The deceased was still unconscious.

7. The deceased died at five in the morning, and the medical evidence shows that (apart from a petty incised wound on the left upper arm which might well be ignored) she had suffered an incised wound on the left flank which had pierced the chest cavity and then the diaphragm and had reached the abdominal cavity and had cut the spleen on its upper surface. The injury was a necessarily fatal injury and must have been caused by a sharp pointed weapon like a knife.

8. P. W. 1 suffered two injuries, one on the left side of the back, and the other behind the left shoulder. The former had penetrated the chest cavity and was therefore an injury likely to cause death and, in fact, P. W. 1's condition was grave

for about 48 hours. He however recovered rapidly and was discharged on the 11th December 1957.

9. On his way back to the police station from the hospital on the 29th after recording Ext. P-I, the sub-inspector, P. W. 10, had met the accused on the road and arrested him at about 6 A. M. The knife, M. O. 2, he had with him was seized.

10. The accused was not properly questioned at the preliminary inquiry. Nevertheless, on being asked to say what he had to say, he replied that he wished to say nothing there and would reserve his statement for the court of session. At the trial, he pleaded alibi and said that, after the mediation on the 28 November had failed, he went away, and that from about 8 P. M. till the morning he was engaged in baling water and carrying stones near the house of P. W. 4, a member of the Panchayat of his village. He added that the evidence of P. W. 1 that he went to P. W. 1's house at dusk to fetch his wife back, and the evidence of P. Ws. 1, 2 and 3 that it was he that stabbed P. W. 1 and the deceased was completely false.

11. The accused examined one witness in support of his alibi, and the evidence of that witness is that on the night before the accused's arrest the accused was engaged in loading stones for him into a lorry, from about 10 P. M. till about 4-30 A. M

12. The plea of alibi need not detain us long. The evidence of D. W. 1 is not in accord with the statement of the accused either with regard to the place where the accused was at the time, or with regard to the work on which he was engaged. D. W. 1 stated that he kept accounts which would show the names of the labourers employed by him and the dates on which they were employed. But these accounts were not produced. He knew of the arrest of the accused soon after it was effected, and yet he did not go and tell the police that the accused was with him at the time of the alleged murder.

And, although it is true that the accused mentioned the name of D. W. 1 as a witness, when questioned at the preliminary inquiry, he did not then choose to put forward any plea of alibi, and this plea, put forward for the first time at the trial seems to be in the nature of an after-thought. It was in our view, rightly rejected by

the learned Sessions Judge.

13. Coming now to the prosecution evidence, we agree with the learned Sessions Judge that the testimony of P. Ws. 1, 2 and 3 is natural and probable and has to be accepted. P. W. 1's presence at the spot cannot be disputed in view of the fact that he was himself one of the victims of the assault, and we can see no reason why he should falsely name the accused as the assailant.

Immediately after the occurrence, he told P. Ws. 3, 7 and others that the accused was the assailant, and this he repeated when, hardly two or three hours later he made the statements, Exts. P-1 and P 2. P. W. 3 is a perfectly disinterested witness, and all that can be said against P. W. 2 is that she is the sister of P. W. 1. These three witnesses have given a consistent account of what happened, and that account is substantially in accord with the account given in Exts. P-1 and P-2.

14. It is pointed out that both in Exts. P-1 and P-2. P. W. 1 said that the occurrence had taken place in his house. The evidence, as we have seen, is that it took place not in P. W. 1's house but in the house of his relative, p. W. 7, about 50 feet distant from P. W. 1's house. Obviously the statement in Exts. P-1 and P-2 is, as explained by P. W, 1, a mere slip. He made these statements when he was in great distress and he has said that what he meant by 'my house' in those statements was the house of P. W. 7 where he was sleeping that night.

The statements refer to the fact that, on hearing P. W. 1's cries, the deceased and P. W. 2 came out of the house to the verandah, and also to the fact that P. W. 1's brother was sleeping in a house nearby. The evidence clearly shows that P. W. 2 was at the time living in P. W. 7's house and that P. W. 1's brother was in P. W. 1's house. It might also be remarked that while the investigating officer found blood marks and a blood-stained mat, M. O. 8, in the verandah of P. W. 7's house, he found no traces whatsoever of blood in the house of P. W. 1. We have little hesitation in accepting P. W. 1's explanation that the house referred to by him in Exts. P-1 and P-2 was P-W. 7's house, and we see no reason for suspecting that the scene of the offence has been shifted by the prosecution.

15. In Exts. P-1 and P-2, P. W. 1 said that soon after the accused struck the deceased and pulled her out by her tuft, he himself fell down in the courtyard and did not know what happened thereafter. He did not refer to the arrival of P. W. 3, or to his conversation with the latter or to his having run away towards Parachirapara. P. W. 2's evidence is that when she came out, she found P. W. 1 lying fallen in the courtyard and that a moment later he got up and ran away. It was actually at a spot, about 50 yards north of the house, that P. W. 1 was found lying injured by P. Ws. 3 and 7 and others, and we see no inconsistency between the version given in Exts. P-1 and P-2 and the version spoken to by P. Ws. 1, 2 and 3 from the box.

It would appear that P. W. 1 fell down in the courtyard and almost immediately got up and ran away only to fall down unconscious after proceeding about 50 yards, and that when he made the statement, Exts. P-1 and P-2, he could not recollect what had happened after his first fall in the circumstances, his omission to mention the arrival of P. W. 3 is no reason for thinking that P. W. 3 is a subsequently got un witness. We might also mention that P. Ws. 2, 3 and 7 were questioned by the investigating officer on the morning of the 29th a few hours after the occurrence.

16. That chemical examination was able to detect no blood on the knife, M. O. 2, seized from the accused when he was arrested, is a matter of no consequence. We do not know what the accused did with the knife after he stabbed P. W. 1 and the deceased with it. He might have washed it and, moreover, nothing turns to this case on whether M. O. 2 Was the knife be actually used. The prosecution is committed to no such case, and none of the eye-witnesses has pretended to identify M. O. 2 as the knife used by the accused.

17. The evidence of the doctor, P. W. 9, was recorded in English, apparently the language in which it was given. At the bottom of the deposition there is the usual rubber-stamp certificate signed by the Judge to the effect that the evidence was read over and interpreted to the witness and admitted by him to be correct. It is argued that it must be inferred from this that the evidence of this witness was not interpreted to the accused as required by Section 361(1) of the Crl. P. C., and the decision in Mathai Thommen v. State, 1958 Ker LT 1125: (AIR 1959 Kerala 241),

is relied upon for saying that when, as in this case, the pleader defending the accused is not a pleader engaged by him but one engaged for him by the court, shelter cannot be taken under Section 361(2) on the score that the evidence was given in a language understood by the pleader.

Our attention has not been drawn to any rule which requires that the fact that the evidence given in a language not understood by the accused has been interpreted to him should be certified in the deposition itself, and there seems to be no basis for the inference that in this particular case it was not. That the accused cannot follow English is again a matter to be inferred; and, in any case, though the accused has submitted an elaborate memorandum of appeal he has not complained that he was unable to follow the evidence of the doctor. That apart, in the circumstances of the present case, where the defence was one of alibi, we fail to see what conceivable prejudice the accused could have suffered even if he did not quite follow what the doctor said.

The decision relied upon on behalf of the accused was rendered on very special facts. There the plea was one of private defence. The doctor's evidence in chief-examination was favourable to this plea, and it was only as a result of questions put to him by the court that answers were elicited to provide the basis for its rejection. And, in the memorandum of appeal, a specific ground was taken that the evidence of the doctor having been given in English, the accused was unable to follow it or to cross-examine the doctor effectively.

18. In the course of the cross-examination of the prosecution witnesses, it was suggested that the deceased was in illicit intimacy with P, Ws. 1 and 6, and it was put to P. W. 1 that he and the deceased were sleeping together on the same mat when they were stabbed. All this was denied, and on the evidence we see no reason for thinking that the accused acted in circumstances which would bring his acts within exception (1) to Section 300 1. P. C. That is not the case of the accused himself.

19. The injuries inflicted on P. W. 1 and the deceased were on vital parts of the body. That inflicted on the deceased was necessarily fatal, and that inflicted on P. W, 1 might well have proved fatal. The murderous intent behind the accused's

assault, both on P. W. J and the deceased, fa apparent.

20 We see no reason to interfere either with the convictions or the sentences recorded against the accused, and we dismiss his appeal.

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