

Vikraman Vs. State of Kerala

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Court : Kerala

Decided On : Oct-10-1986

Reported in : 1987CriLJ1703

Judge : U.L. Bhat and; P.K. Shamsuddin, JJ.

Appellant : Vikraman

Respondent : State of Kerala

Judgement :

U.L. Bhat, J.

1. On the night of 27-2-1981 the now deceased Unni sustained stab injury at the hands of the appellant and died subsequently on the way to hospital. The appellant was tried on a charge under Section 302, I.P.C. On the basis of the evidence adduced and overruling the plea of right to private defence set up by the appellant, Sessions Court convicted and sentenced him to undergo imprisonment for life. This is now challenged in the appeal.

2. P.Ws. 3, 1 and 2 are sisters of the appellant. Till about a year prior to the occurrence, appellant was living in the house in Adimali, left by his father. He sold the same and then started residing with his sisters in the house hi which the occurrence subsequently took place. Now deceased Unni was the younger brother of appellant's mother. He also was living in this house. There is no dispute that

Unni and P.W. 1 were living as man and wife. It appears, Unni and P.W. 1 wanted to construct a house for themselves in the two acre plot in which they were residing. This is a plot lying in a slope, the lowest portion abutting a road. They wanted to put up the house at the lowest portion abutting the road. Appellant was not happy about it and wanted them to construct the house in the upper region of the land and away from the road. The house in which the occurrence took place has one room and a verandah. All the inmates of the house sleep in the room. On the night of 27-2-1981 all the inmates of the house except appellant took food and went to bed. Appellant came at about 11 p.m. and called his youngest sister, P.W. 2. She lighted a lamp and served food to him. After taking food, appellant went to the verandah. Thereafter, he talked to P.W. 2 and Unni. He told Unni that the house should not be built near the road. Unni did not like this and asserted that he will build the house near the road. According to the prosecution, thereupon, appellant whipped out M.O. 1 dagger and inflicted a stab injury on the abdomen of Unni, at a time when Unni was lying down beside P. W. 1 on a mat in the room near the door. Appellant aimed a second stab but that was foiled because P.W. 1 pushed him away to the verandah. Meanwhile, P.W. 1 was crying out. P. Ws. 2 and 3 woke up. They called the neighbours including P.W. 5. Local Panchayat member, P.W. 4 also was fetched. . The injury was bandaged and Unni was taken in a jeep to the Government Hospital, Painav. Medical Officer, P.W. 11 gave him first aid, prepared wound certificate and recorded Ext. P-12 dying declaration and referred him to the Medical College Hospital, Kottayam. On the way to the Medical College Hospital, Unni died and his body was taken to Government Hospital, Kattappana.

3. At 9.30 a.m. on 28-2-1981, P.W. 1 went to the Kattappana Police Station and gave Ext. P-1 statement on the basis of which Head Constable of Police, P.W. 14 registered a case against the appellant under Ext. P-14 F.I.R. He held inquest over the dead body in the ' presence of P.W. 8 and seized the clothes found on the body, M. Os. 2 to 4.' Post-mortem was conducted by P.W. 10. On 1-3-1981 at 6 a.m., appellant surrendered before P.W. 13, Additional S. I. of Police, Idukki with M.O. 1 knife. C.I. of Police P.W. 15, who went to the station seized M. O. 1 under Ext. P8 mahazar attested by P.W. 9 and arrested the appellant. P.W. 1 also had some injuries and had been sent to the Government Hospital, Kattappana where

she was examined by P.W. 10. After completing investigation, P. W. 15 laid the charge.

4. The testimony against the appellant consists of the oral evidence of P.Ws. 1 to 3 corroborated by P. W. 5, the evidence regarding recovery of M.O. 1 and the presence of blood stains in the room as well as the dying declaration recorded by P.W. 1 (P.W. 11?),

5. P.Ws. 1 to 3 are sisters of the appellant. Of them, P.W. 1 was living as wife of the deceased Unni. The occurrence took place on the night of 27-2-1981 at about 11 or 11.30 p.m. Ext. PI 1 is the wound certificate issued by P.W. 11 relating to Unni who was taken to Painav Hospital at 3.30 a.m. The version given to the Doctor was that Unni was stabbed by the appellant. At 9.30 a.m. first information statement was given by P.W. 1. It contains the same version as the one presented in Court and Spoken to by P.W. 1.

6. Suffice to say that P.W. 1 had given a version fully supporting the prosecution case. In particular, she deposed that the appellant returned home late and called P.W. 2 who lighted a lamp and served food to the appellant and the appellant after taking food went out. Meanwhile, P.W. 1 and Unni were sleeping on a mat in the room. The house has only one room and a verandah. It was then that the appellant told Unni that the house proposed to be constructed by Unni and P.W. 1 should not be built near the road but should be built up on the higher regions of the plot. Unni did not agree and asserted that the house will be built where it was proposed to be built. Appellant, asking '(text in vernacular omitted - Ed.)' (will you construct the house), stabbed him with M.O. 1 dagger, after coming into the room from the verandah. At that time Unni was lying on a mat on his back. Witness warded off the second stab aimed by the appellant. S he caught hold of the knife and pushed the appellant out. In the process, she injured her finger. Hearing her cries, her sisters woke up and the sisters cried out. Later, appellant looked at Unni and said (text in vernacular omitted - Ed.) (are you not dead; if you are not already dead, you will die). Appellant's shirt was kept inside the room. He asked P.W. 2 to hand over the shirt to him ensuring that no drop of blood touches the shirt. Immediately, P.W. 1 took the shirt, dipped it in the blood lying on the floor and

handed it over to the appellant. Appellant took the shirt and also the saw and left the house. Neighbours were called and the injured was taken to hospital. She identified the knife as M.O. 1 and the appellant's shirt as M.O. 4. Ext. P5 shows that M.O. 4 had stains of human blood and M.O. 1 had stains of blood, the quantity being too small for further analysis.

6-A Even though P.W. 2 did not witness the actual stabbing, she has otherwise corroborated the evidence of P.W. 1. She went to bed after taking food inside the room. She was called by the appellant when he returned home late. She woke up, lighted a lamp and served him food and went back to bed. She woke up hearing P.W. 1's cries and saw Unni lying in a pool of blood and injured and P.W. 1 pushing the appellant to the verandah. She also spoke about the incident regarding the shirt and the appellant's subsequent utterances. She also asserted that at the time of the occurrence, the lamp was burning. She identified M.Os. 1 and 4.

7. P.W. 3, eldest among the three sisters, was treated hostile by the prosecution. Therefore, her evidence deserves more careful scrutiny. She deposed that all the inmates of the house except the appellant went to sleep in the room. Appellant came late and was served food by P.W. 2, who had lighted a lamp and subsequently went back to bed. Unni and P. W. 1 went to sleep, beside each other. After the appellant took food, she went to the yard and came back and went to sleep. There was a talk about the construction of the house. She did not see the stabbing incident. When examined by the learned Prosecutor, she stated that she heard Unni cry out (text in vernacular omitted - Ed.) (Vikraman, are you killing me?). She also identified M. Os. 1 and 4. It may be that this witness did not actually see the stabbing part of the occurrence. That is no reason to disbelieve her. Her evidence fully corroborates the evidence of P.W. 2 and substantially corroborates the evidence of P.W, 1.

8. The above evidence has to be taken along with the version given to the Doctor, P.W. 11, as seen in the wound certificate and the dying declaration of Unni recorded by the Doctor, where Unni clearly stated that he was stabbed at his house by the appellant.

9. P.W. 10, who conducted post-mortem, deposed that there was a transverse penetrating wound on the midline of the abdomen through which loops of intestine protruded - 10 cms X 6 cms - and a superficial transverse wound on the front of right wrist. 8th, 9th and 10th rib cartilages were cut. The pleural cavity on the left side¹ contained blood and blood clots. The left lung had collapsed. There was a penetrating wound 3 cms. X 2 cms. in the lower lobe. Peritoneal cavity contained large quantity of blood. Liver had a penetrating wound at the lower border of the left lobe. Diaphragm also had a penetrating wound. P.W. 10 deposed that death was on account of bleeding and shock due to the injury and the internal injuries which could be caused with a weapon like M.O. 1. He also deposed that the first injury was sufficient in the ordinary course of nature to cause death. He also indicated that the injuries could be caused while the victim was lying on his back.

10. On a careful consideration of the evidence and circumstances referred to above, we have no hesitation in agreeing with the conclusion arrived at by the learned Sessions Judge that the injuries on Unni were inflicted by the appellant with M.O. 1 knife and one of the injuries caused death.

11. Appellant set up a case of private defence before the learned Sessions Judge. When questioned by the Court, he stated that he was lying on the bench in the verandah. At that time, Unni and P.W. 1 came out of the room. P.W. 1 pressed his neck. Unni caught him around his body. He fell suffocated. Apprehending danger to his life he took out his knife and stabbed Unni from below. Evidence given by P.Ws. 1 and 2 is absolutely inconsistent with this version of the appellant. Going by the evidence of P.Ws. 1 and 2, the stabbing took place at the place where Unni was lying down inside the room. Blood stains were found inside the room. There is no suggestion anywhere that there were blood stains near the bench. P.W. 2, though she did not witness the occurrence, had seen P.W. 1 pushing the appellant out of the room to the verandah. At that time, she had seen Unni lying inside the room with bleeding injuries. We have already indicated that the evidence of P.Ws. 1 and 2 is acceptable. Accepting this evidence, there is no difficulty to hold that the version given by the appellant is absolutely unbelievable. This version does not receive any degree of support from any part of the evidence or circumstances proved in the case. Therefore, we find that the learned Sessions Judge was

justified in rejecting the plea of private defence. The evidence and circumstances clearly indicate that after an exchange of words, at a time when Unni was lying on a mat inside the room, appellant, who was in the verandah, went to the room and used the knife against the latter.

12. learned Counsel for the appellant would contend that the act brought home to the appellant would not attract any of the clauses of Section 300, I.P.C. but would, if at all, attract only third clause of Section 299, I.P.C. and therefore appellant should not be found guilty of culpable homicide amounting to murder. It is contended that, at best, appellant could be punished only under Section 304, Part II, I.P.C. learned Counsel for the appellant contended that there was a quarrel between the appellant and Unni on the night regarding the location of the house, the quarrel was sudden it must have generated passion leading to sudden fight and there was only one fatal injury. These circumstances, coupled with the extreme youth of the appellant, would necessarily lead to the conclusion that he had no intention to cause the death and he had no intention to cause this particular injury, which, according to medical evidence, is sufficient in the ordinary course of nature to cause death. learned Counsel for the appellant referred us to decisions in *Kulwant Rai v. State of Punjab* : AIR 1982 SC126 and *Jagtar Singh v. State of Punjab* : 1983 CriLJ852 .

13. Culpable homicide is dealt with in Section 299, I.P.C. which contains three clauses. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide. Section 300 deals with culpable homicide amounting to murder. Subject to the five exceptions enumerated in Section 300, culpable homicide is murder in four circumstances viz., if the act leading to death is done with the intention of causing death, or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the victim or, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or if the person committing the act knows that it is so imminently dangerous that, it must, in all probability, cause death or such bodily injury as is

likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. First clause of Section 299 is the same as 'firstly' of Section 300. Acts contemplated in 'secondly' and 'thirdly' of Section 300 are aggravated forms of act contemplated in second clause of Section 299. The act contemplated in 'fourthly' of Section 300 is an aggravated form of act contemplated in the third clause of Section 299. (See 1983 Ker LT (Short Notes) p. 42, Case No. 69 : 1983 Cri LJ NOC 206 - Cri. Appeal 384/1981).

14. Act that falls within the mischief of the first clause of Section 299 and the four clauses of Section 300, subject to the five exceptions contained in Section 300, will amount to murder. Acts which fall within the mischief of only second and third clauses of Section 299 but not within any of the four clauses of Section 300 would be culpable homicide not amounting to murder. Acts which fall within one or the other of the four clauses of Section 300 will be only culpable homicide not amounting to murder if they attract any of the five exceptions in Section 300. While murder is punishable under Section 302, culpable homicide not amounting to murder is punishable under Part I or Part II of Section 304.

15. We are concerned in this case with 'thirdly' of Section 300. This clause takes in an act leading to death and done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. Prosecution must prove objectively that a bodily injury is inflicted and also the nature of the injury. Prosecution must also prove that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional or some other kind of injury was intended. It must be further shown - objectively - that the injury of the particular type is sufficient to cause death in the ordinary course and this has nothing to do with the intention of the offender. That is how the law on the point has been explained by the Supreme Court speaking through Vivian Bose J. in the leading case of Virsa Singh . In the Judgment, the learned Judge quoted with approval the : 1958 CriLJ818 following observations of Lord Goddard in R. v. Steane, (1947) 1 All ER813:

No doubt, if the prosecution prove an act the natural consequences of which would be a certain result and no evidence or explanation is given, then a jury may, on a

proper direction, find that the prisoner is guilty of doing the act with the intent alleged.

The learned Judge, dealing with the facts of the case in Virsa Singh's case observed:

No evidence or explanation is given about why the appellant thrust a spear into the abdomen of the deceased with such force that it penetrated the bowels and three coils of the intestines came out of the wound and that digested food oozed out from cuts in three places. In the absence of evidence or reasonable explanation, that the prisoner did intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did.

16. Before the Supreme Court, in the above case, reliance was placed on the decision of the Bombay High Court in Sardarkhan Jaridkhan v. Emperor AIR 1916 Bom 191 : 1916 (17) Cri LJ 530, where it had been observed:

Where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended.

Dealing with these observations, the Supreme Court said:

With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap. The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it.

17. In *Gudar Dusadh v. State of Bihar* : 1972 CriLJ587 , the Supreme Court dealt with a case of single blow with a lathi on the head of the deceased which led to instantaneous death. It was argued before the Supreme Court that the act would not attract thirdly of Section 300, I.P.C. Dealing with this aspect, the Court observed:

So far as the first part is concerned, the Court has to see whether the injury which was found on the deceased was the one intended by the accused or whether it was accidental without his having intended to cause that bodily injury.... As observed earlier, the injury which was inflicted by the accused on the head of Ramlal was not accidental. It is not the case of any one that the appellant aimed a blow on some other part of the body and because of some supervening cause like sudden intervention or movement of the deceased the lathi struck the head of the deceased. The fact that the appellant aimed a blow on the head of Ramlal with the lathi would go to show that it was the intention of the appellant to cause the precise injury which was found on the head of the deceased.

18. In the two decisions relied on by learned Counsel for the appellant viz., *Kulwant Rai case* : AIR 1982 SC126 and *Jagtar Singh's case* : 1983 CriLJ852 the Court was dealing with cases leading to death by a single stab with knives, without an attempt to give a second blow, the assailant being either an immature boy or a person acting without malice. The Court held that thirdly of Section 300 is not attracted and the act will only attract third clause of Section 299 punishable under Part II of Section 304, I.P.C. Both these decisions rested on the particular facts of the cases. These decisions did not lay down any principle contrary to the dictum in *Virsa Singh's case*, (1958 Cri LJ 818). In fact, in the latter of the two cases, Desai J., who was party to both decisions, specifically referred to the decision in *Jagrup Singh's case* : 1981 CriLJ1136 and quoted' with approval the following passage:

The whole thing depends on the intention to cause death and the case may be covered by either clause 'firstly' or clause 'thirdly'. The nature of the intention must be gathered from the kind of weapon used, part of the body hit, the amount of force employed and the circumstances attended upon death.

It has to be noticed that Desai J., was a party to the decision in Jagrup Singh's case. In that case, the Court followed the dictum laid down in Virsa Singh's case and described the same as locus classicus and has now ingrained in our legal system and become part of the rule of law.

19. It is thus clear that the question to which the Court must address itself relates to mens rea. If thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter for inference to be drawn from the proved circumstances of the case. Court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

20. No doubt, there was an exchange of words between the appellant and Unni before the latter was stabbed. Going by the evidence, at that time, appellant was in the verandah and Unni was abed inside the room by the side of P.-W. 1. At the end of the exchange of words, appellant entered the room whipped out a knife and inflicted a fatal stab injury. Even some time later, before he left the house, he looked at Unni, saw that he was still alive and declared that he would die. Evidence of P. W. 1 would clearly indicate that he aimed a second stab which was foiled by the act of P. W. 1 in pushing the appellant out. P.W. 1 had a minor injury on her fingers. She sustained the injury, as explained by her, when she was pushing the appellant out. The weapon used was a knife which has been identified by P.Ws. 1 to 3 as the knife belonging to the appellant. It is difficult to accept that the appellant went to bed with a knife on his person. In other words, the circumstances would indicate that he took the knife out for the purpose of attacking Unni and actually he inflicted the stab. We have already adverted to the external and internal injuries found on the body. Three rib cartilages were cut through. The stab penetrated the lung, liver and the diaphragm. This would indicate that considerable amount of force had been used in inflicting the stab. There is also the positive evidence of the witnesses that at the time when the stab was inflicted there was a lighted lamp inside the room. It is not as if the appellant used the knife in the dark without knowing which part of the body the knife would

strike. The above circumstances would clearly indicate that he was aiming the stab at a particular place and the knife entered the body at that place. It was a deliberate stab, not an accidental one. There is no suggestion anywhere that the stab aimed at some other part of the body accidentally pierced the abdomen. In these circumstances, we have no doubt that the appellant intended to inflict this injury. injury was of such a nature that it was sufficient to cause death, in the ordinary course of nature. His act therefore squarely falls under thirdly of Section 300, I.P.C. He was rightly convicted and sentenced under Section 302, I.P.C.

The appeal is therefore dismissed.

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