

Devassykutty Vs. State of Kerala

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Court : Kerala

Decided On : Feb-15-1996

Reported in : 1996CriLJ3156

Judge : K.G. Balakrishnan and; S. Krishnan Unni, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. A. No. 245 of 1993

Appellant : Devassykutty

Respondent : State of Kerala

Advocate for Def. : G. Krishna Kumari, Public Prosecutor

Advocate for Pet/Ap. : V.B. Narayanan (State Brief), Adv.

Disposition : Appeal dismissed

Judgement :

K.G. Balakrishnan, J.

1. Appellant was found guilty by the Additional Sessions Court, N. Paravur for the offence punishable under Section 302 I.P.C. and was sentenced to undergo imprisonment for life. The conviction and sentence are challenged in this appeal.

2. Deceased Rosa is the paternal aunt of the appellant Devassykutty. Deceased Rosa was slaying with her brother, though she was keeping a separate hearth. The appellant married a woman of Jacobite sect and was residing in an adjacent house close to the family house. On 19-4-91, appellant came to the house of deceased Rosa while the latter was holding water in an earthen pot. According to the prosecution, appellant smashed the earthen pot and picked up quarrel with deceased Rosa. Rosa hurled abusive words against the appellant. Appellant assaulted the deceased, kicked and fisted her. Deceased fell on the ground and the appellant continued to stamp on her body. PW-2 and others intervened and tried to dissuade the appellant from killing the deceased, but the appellant gave fatal kicks on the abdomen and chest of the deceased. Deceased fell motionless on the ground and the appellant left the place.

3. PW-1 got information of the incident from PW-5 and gave Ext. PI - F. I. statement to Varapuzha police station. PW-11 conducted the investigation in this case. He held inquest over the dead body and prepared Ext. P2 report. He arrested the appellant on 22-4-91 at 3 pm. and the 'kaili' worn by the appellant was taken into custody as it was found to be bloodstained. He later filed the final report.

4. On the side of prosecution, PWs 1 to 12 were examined. PWs 2, 3, 4 and 5 are eye witnesses. They supported the prosecution case. Appellant when questioned under Section 313 Cr. P.C. completely denied his involvement in the crime. When questioned under Section 313, he stated that his father was liable to pay a goldchain and some money to deceased Rosa. Rosa demanded this and there arose a quarrel between them. Appellant made enquiries with the deceased and the latter asked the appellant to pay the amount. Appellant was not prepared to pay this amount. Then deceased started to beat him. Then he pushed her down and ran away from the place. The learned Sessions Judge accepted the prosecution case and rejected the version given by the appellant.

5. The fact that deceased Rosa died due to multiple injuries sustained by her on 19-4-91 is not much in dispute. Ext. P4 post mortem certificate shows that she had sustained 15 ante-mortem injuries and according to medical report, deceased died due to head injury. The injuries sustained by the deceased show that there was

transverse fracture of the breast bone at the level of 2nd intercostal space, scalp tissue on the front of (L) side of head contused, and arachinoid haemorrhage over both sides of brain. There was abraded contusion on the left side of lower abdomen 7 cms below the umbilicus.

6. PW-2 is the wife of the brother of the appellant. She deposed that, she along with her husband and children were residing on the northern side of the family house. The appellant and his wife were residing on the southern side. PW-2 had not witnessed the entire incident. At about 3.30 p.m. on 19-4-91, she heard some sound from the tarwad house. Her husband was taking rest as he had some chest pain and her child was sleeping. PW-2 ran to the tarawad house and then she saw the appellant in an infuriated mood. Appellant's mother was trying to dissuade him from attacking the deceased. The garment worn by the deceased was found torn to pieces. Then PW-2 saw the appellant catching hold of the hand of the deceased and pulling her out of the house. Deceased fell on the northern courtyard of the house. PW-2 signalled the deceased to run away from the place. But the deceased stood there and she was having a cudgan piece in her hand. The appellant wrested the cudgan piece and started beating the deceased. Even though PW-2 tried to prevent the appellant from causing injury, the latter threatened her. Deceased fell on the ground and the appellant started stamping on the chest of the deceased. Deceased cried out for help, but the appellant continued to kick her on the head and other parts of her body. Appellant threatened PW-2 by saying that her husband also would have the same fate.

7. The evidence of PW-2 is seriously attacked by appellant's counsel. Many contradictions have been brought out in cross examination. According to her earlier version to the police she had seen the entire incident starting from the quarrel that ensued between the appellant and the deceased. But PW-2 explained that she had seen only the last part of the incident, when the appellant stamped and kicked the deceased. No special enmity is alleged against this witness. This witness is a person residing very close to the place of incident and her testimony is convincing. Moreover, her evidence is supported by the evidence of other evidence which we shall present hereunder.

8. PW-3 a woman aged 60, is none other than the mother of the appellant. PW-3 deposed that there had been quarrel between the appellant and deceased, and the appellant kicked the deceased and as a result of the same, she died. Her husband has brought some water, but she vomitted blood and died. This witness deposed that appellant kicked her while Rosa was lying on the ground. The evidence of PW-3 has certainly got great probative value.

9. PW-4 is another woman residing in the neighbourhood. She heard a sound of commotion from the house of deceased Rosa and she came to that place and saw the appellant attacking the deceased. She deposed that the appellant not only beat but also stamped on her body. She also deposed that because of the violent form of attack by the appellant, the deceased lost all her wearing apparels and this witness also deposed that because of the nature of the attack she could assume that the appellant was under the influence of alcohol.

10. PW-5 is another witness. He is the husband of PW-2. According to this witness, he had also come to the place of incident on hearing a sound and saw the appellant stamping on the deceased while the latter was lying on the ground.

11. There is overwhelming evidence on the side of prosecution to prove that the appellant attacked the deceased in a fierced manner. The learned counsel for the appellant contended that the entire incident happened as a result of a sudden quarrel and there was no pre-meditation on the part of the appellant to cause the death of the deceased. It is also pointed out 'that, the prosecution failed to adduce evidence to prove the motive of the appellant, and it was argued that, the offence if any committed,' by the appellant would not fall within the ambit of Section 302 I.P.C. but would come only under Section 304 Part I. I.P.C. We are unable to accept this contention for various reasons. It is true that, the prosecution failed to prove the motive in this case. Deceased Rosa is the maternal aunt of the appellant. She is a woman aged past 60 years. If at all there ensued a wordy altercation, the appellant who was aged 34 at the time of the incident, should not have been infuriated by such irrelevant utterances. Moreover, the way in which the appellant attacked the deceased gives an insight into the depravity of his mind. The deceased was in a hapless stage. Even though she was holding a cudgan

piece, she was not in a position to give any resistance to the appellant. The appellant stamped on the deceased, even at a time when the latter was lying on the ground. The intention to cause death is so explicit and clear in this case, and we do not think that the offence committed by the appellant is, in any way, lesser than murder punishable under Section 302 I.P.C. We find no reason to interfere with the conviction and sentence rendered by the Sessions Judge.

12. The criminal appeal fails and it is dismissed.

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