

Johnson Vs. State of Kerala

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Court : Kerala

Decided On : Oct-25-1996

Reported in : 1997(1)ALT(Cri)43; 1997CriLJ1228

Judge : B.M. Thulasidas and; S. Krishnan Unni, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 231, 311 and 313;
[Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 554 of 1994

Appellant : Johnson

Respondent : State of Kerala

Advocate for Def. : Krishnakumari, Public Prosecutor

Advocate for Pet/Ap. : K.V. Sabu, Adv.

Disposition : Appeal dismissed

Judgement :

B.M. Thulasidas, J.

1. This is a case of matricide and the accused stands convicted and sentenced to imprisonment for life under Section 302, I.P.C. The incident allegedly happened on 16-4-1992 at about 5.00p.m. in the compound of one Pankajakshi, from where he

was stated to have dealt blows upon the deceased with MO-1. She succumbed to the injuries on the way to the Government Hospital, Njarakkal. PW-1 her husband's brother, gave Ext.P1 F.I. Statement to PW-15, Head Constable, Njarakkal Police Station at about 6.30p.m. upon which he registered Crime No. 132 of 1992. The case was investigated by PW-17, who laid the final report.

2. 17 witnesses were examined, Exts.P1 to P12 and MOs.1 to 7 were marked for the prosecution. When questioned under Section 313, Cr.P.C. accused denied the incriminating evidence and circumstances and said that there was a quarrel between his elder sister Philomina and the deceased at about 2.00 p.m., pertaining to sale of the house, that in the midst of the quarrel he went out and returned at about 4.00p.m., to find his mother lying injured in the compound of Pankajakshi. Immediately he took her to the hospital in an autorikshaw, but she was dead by the time the doctor examined her. Later, he was summoned to the Police Station. He maintained his innocence and did not examine any witness in defence.

3. Heard.

4. PW-16, who did the post-mortem, found the presence of blood on the left ear and nose with a lacerated injury on the back of head at the occipito-parietal region measuring 8.5 x 2 x 2 cm. Skull bones on the left occipito parietal region were fractured and depressed into the deep of brain matter, which was however intact but pale. He opined that the injuries could have been caused by beating with MO-1 and that death was due to haemorrhage as a result of head injury, sufficient in the ordinary course of nature to cause death. No doubt, he said in cross-examination that the fleshy part of MO-1 would not have caused the head injury, that indeed was not the prosecution case, which was that the injury was caused with MO-1, which is sufficiently strong and formidable in size. We do not think the medical evidence in any way detracted from the prosecution version as to the cause of death, which was indeed homicidal.

5. In Ext.P1 the incident had been narrated by PW-1, who was alleged to have witnessed it. He had said about the quarrel in the house between mother and son in the course of which allegedly the accused gave vent to his anger by up-turning

the vessels and destroying food the deceased had prepared. There was a big commotion, that he heard and went to the house. He asked the accused what he was doing and advised the deceased and PW-2 to go to some other house and he went back to his. But after some time he heard PW-2 cry aloud that her mother was being killed. He therefore rushed there again and found the deceased in the compound of Pankajakshi with the accused standing by her side, beating her with a splinter of a coconut tree. He went near and pulled him away. The deceased had fallen and was bleeding profusely. He arranged for an autorikshaw and she was taken to the hospital. Indeed, what was said in Ext.P1, which was the first version of the incident, was disowned by him at the trial. He said that he had not seen what was alleged in Ext.P1, whose authorship no doubt he did not disclaim. Obviously, he testified as he did to help the accused, for reasons that are obvious.

6. PW-2, sister of the accused, according to the prosecution had witnessed the incident. ; She was present with the deceased when he assaulted her. It was her cries that brought PW-1 to the scene. When she was examined on 9th May, 1994 she deposed as per the prosecution version. She said that there was a quarrel between him and the deceased in the morning, following her refusal to give him Rs. 100/- he demanded. He then went out and returned by about 3.00 p.m., fully drunk and again made the demand for money. But then her mother was not prepared to give him the amount. There was again a quarrel between them. He indulged in some acts of vandalism in the house and beat the deceased, who ran to the compound of Pankajakshi, but was chased by him and dealt blows upon her with the splinter of a coconut tree. She said her cries a second time brought PW-1 to the place again. Her mother was taken to the hospital in an autorikshaw, which PW-1 had brought. Indeed, her evidence about the incident was natural, free from infirmities and embellishments. In cross-examination, which was completed, nothing was brought out to discredit her. But then, strangely, on 10-5-1994 CrI. M. P. No. 820 of 1994 was filed under Section 311, Cr.P.C., to recall her for further examination, on the ground that 'material evidence was not brought out while she was examined'. The Session Judge allowed the application and she was again cross-examined on 11-5-1994 when she made a volte-face and disowned everything material she said earlier, that ultimately led the Public Prosecutor to cross-examine, declaring her hostile. We have thus two divergent versions from

her about the incident, one as prosecution witness and the other virtually as a witness in defence. As stated already, her evidence was completed on 9-5-1994. The accused did not seek her further cross-examination under Section 231, Cr.P.C. but under Section 311, Cr.P.C., whose scope the Session Judge has, unfortunately, not cared to grasp. No doubt, there is power in the Court under Section 311, Cr.P.C. to 'recall or re-examine any person already examined', but before this could be done, the Court must be satisfied that the evidence appears to it 'to be essential to a just decision of the case'. In other words, it is not that the Court can, for the asking, 'recall and re-examine any person already examined'. It is not to be done as a matter of course or in a perfunctory manner, whenever a request is made therefor. The evidence of the witness, who is sought to be re-examined must be essential 'for a just decision of the case', and, whether it will or not, will depend upon the facts and circumstances of each case and the nature of the evidence that is sought to be brought in. No doubt, the Court is given a discretion, that has to be exercised on sound judicial principles. It must be wary of attempt belatedly undertaken to discredit a witness. It must also be seen whether it is not to make the witness eat his/her words, after he or she had been won over. These and other matters must certainly engage the attention of the Court, before permission is granted to re-examine a witness, who had already been examined. The Session Judge failed to realise that the petition was filed to re-examine PW-2 to undermine the prosecution case, having failed to do so in the first round. In the particular circumstances we will not be justified to take notice of what she had stated after she was recalled and examined on 11-5-1994. In our view; the incident had happened as she said earlier, which she had witnessed.

7. It was said that the deceased manufactured arrack illicitly in her house and had a lot of customers. The accused allegedly was against her making arrack illicitly. But then he did not do anything to stop her activities. He used to collect money from her, that he spent for his personal needs. As stated already, the incident itself happened when she refused to give him Rs. 100/- he demanded. He used to quarrel with her quite frequently, about which PWs-2, 5 and 7 had testified. Indeed, PW-5, who is the wife of the accused, stated that she left him because she could not stand the illegal activities of her mother-in-law. She also complained that the accused very often came home fully drunk and quarrelled with her and the

other in-mates of the house. It was in such a sordid background the incident had taken place. The deceased had been done to death with MO-1 from the paramba of Pankajakshi, where the accused chased her from her house. He was arrested only on the 18th of May, 1994. Obviously, he made himself scarce soon after killing his mother. No doubt, his case was that he was present in the house and had taken part in the obsequies which is belied by the prosecution version. Surely, if he was not involved in the incident, about which he knew only when he came home, and immediately removed her to the hospital, he himself should normally be expected to have gone to the police station and given a statement and not to have let PW-1 do so. His conduct in our view was inconsistent with his innocence.

The Court below has appreciated the evidence and circumstances quite correctly and we endorse the findings and conclusions. The prosecution has made out its case beyond doubt. Accordingly we confirm the conviction and sentence and dismiss the appeal.

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