

Kelu Kurup Vs. State

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Court : Kerala

Decided On : Jun-01-2004

Reported in : 2005(1)KLT399

Judge : K.A. Abdul Gafoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 100 and 304

Appeal No. : Crl. A. No. 107/96 and Crl. R.P. No. 843/96

Appellant : Kelu Kurup

Respondent : State

Advocate for Def. : Viju Thomas, Public Prosecutor

Advocate for Pet/Ap. : T.G. Rajendran and; P. Ramakrishnan Nair, Advs.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. I will consider first the Criminal Appeal. This appeal is by the first accused. There were altogether three. First accused is the husband, second accused is wife and third accused is their son. Accused 2 and 3 were acquitted. The charges faced by all of them were under Sections 302 and 307 read with Section 34 I.P.C.

Accused No. 1 was convicted for the offence punishable under Section 304 Part II I.P.C. and was sentenced to undergo rigorous imprisonment for 7 years. This conviction is under challenge in this appeal.

2. The plea set up by accused No. 1 was that of right of private defence. The Court below accepted his case of right of private defence; but found that he had exceeded that right. Therefore, it was found that the case came under exception No. 2 of Section 300 I.P.C. and was accordingly convicted under Section 304 Part II as mentioned above.

3. It is submitted by the Counsel for the appellant that the entire incident took place in the courtyard of appellant's residential building. There was a subsisting boundary dispute between the first accused and the mother of the deceased whose property was just abutting the northern boundary of his property. Even on the date of occurrence; namely 1st October 1992, the Village Officer had come to the property to measure the same and to determine the boundary. At that time there was a scuffle between the deceased and the appellant/accused No. 1 and by reason of that, the measurement did not take place. The Village Officer advised the parties to get the services of a Taluk Surveyor to measure and determine the boundary. It was on the evening of the same day the incident had occurred. When the deceased came with P.W.1 to the property, there was reasonable apprehension in the mind of accused No. 1, the appellant, that they may cause danger to his life, as P.W. 1 and the deceased were healthy persons. There was scuffle between the deceased and accused No. 1. It was during the scuffle, in order to avert the danger to his life that the accused had to make use of M.O.4. Therefore he was exercising his right of private defence. He cannot, in order to avert the threat from the hands of the deceased, but inflict injuries. Therefore, it cannot be taken that he had exceeded the right of private defence. The Court below had went wrong in finding that he had exceeded the right of private defence.

4. This is not the property of the deceased. There lies the property of Janaki teacher, the mother of the deceased. The boundary dispute is admitted. Even on the morning on 1st October, 1992, at the time of measurement of the property there was scuffle between the deceased and appellant. This is also an admitted

case. According to the prosecution, on the evening, after visiting the shop of PW.4, both the deceased and his friend PW.1, thought of returning to their home, through the property of the mother of the deceased. It was at that time the accused came to them with weapon. The deceased resisted and caught hold of the hand of the appellant/accused and repelled the attack and threw away the chopper in his hand. Thereafter there was further scuffle between the two. PW.1 attempted to separate them. At that time accused 2 and 3, the wife and son of accused No. 1 also came there with stones and started to beat not only the deceased; but also PW.1. It was at that time the appellant/ accused No. 1 drew up a dagger from his waist and inflicted injuries one after another on the deceased. By that time the accused had dragged the deceased to his courtyard. Hearing the hue and cry of PW.1, the local people assembled there and took both the deceased and PW.1 to hospital where it was declared that the deceased had breathed his last. PW. 14 conducted investigation and laid charges under Section 302 and also under Section 307 read with Section 34. It was in that case that private defence was set up by appellant/ accused.

5. PW.1 had clearly spoken to that it was the accused who came with a chopper first to attack the deceased and that the deceased could successfully avert that attack catching hold of the hand of the former and throw away the chopper. The accused did* not have a case before the Court below that the deceased or PW.1 possessed any weapon. The case of the accused/appellant that the deceased had caught hold of the chopper from his hands and therefore he did have apprehension that his life was in danger cannot be accepted in the light of deposition of PW. 1 that the chopper had been thrown away. Therefore the accused/appellant could not have apprehended any danger to his life by using a deadly weapon from the hands of the deceased or PW.1.

6. Even then as rightly pointed out by the Court below, the accused/appellant did have an apprehension of danger as he had seen the deceased and PW.1 in the property near the boundary in dispute, especially when there was a quarrel in the morning on the same day. The boundary dispute was subsisting since long. He might have apprehended some danger not only to his body but also to his property from the hands of deceased and P.W.I who visited the said property in that

evening.

7. PW. 11, the doctor who conducted the post-mortem has noted about 19 injuries on the body of the deceased and almost all the injuries were inflicted by using M.O.4 dagger. It has been certified in Ext. P9 post-mortem certificate that several incised penetrating injuries were inflicted on the deceased and that injury Nos. 2,3,4,5 and 9 were greivous and were sufficient in the ordinary course to cause death. The Court below examined each of the injuries as follows:

'Injury No. 2 is an incised penetrating wound on the right half of front of chest. The wound had entered the right chest cavity cutting the 4th inter costal space of right side. It had also cut the upper lobe of right lung. As a result of the above injury the right lung had partly collapsed. Injury No. 3 is another penetrating injury on the right half of front of abdomen. A loop of intestine 15 cms. long was protruding out. Injury No. 4 is an incised penetrating injury on the front of abdomen. A loop of intestine 18 cms. 1 and omentum had come out. Injury No. 5 is also an incised penetrating wound on the left front of abdomen. The intestine 15 cms. long had come out. The collar bones were broken. Injury No. 6 is also an incised penetrating wound on the front of abdomen. It had entered the abdominal cavity. Injury Nos. 7 and 8 are the two superficial incised wounds. Injury No. 9 is another incised penetrating wound on the left half of front of chest. Underneath the 3rd and 4th intercostal spaces and 4th rib was cut entering left chest cutting the pericardium. Injury No. 10 is an incised punctured wound on the front of left upper arm. Injury No. 11 is an incised wound on back outer aspect of left elbow. Injury No. 12 is also an incised wound on the back inner aspect of left elbow. Injury Nos. 14,15 and 16 are all incised wounds. A perusal of the post-mortem certificate would go to show that several incised penetrating injuries were inflicted by the 1st accused on the vital organs of the deceased.'

8. When 19 such injuries were inflicted on a person who did not have any weapon in his hand, it cannot be taken that the accused had not exceeded his right of private defence. Moreover as per Section 100 I.P.C. the right of private defence of the body will extend to voluntary causing death only under certain circumstances specifically mentioned from 1 to 6th in the said section. Moreover as spoken to, by

PW.1 it was the accused/appellant who had come with the weapon first and the deceased could throw away that weapon in the hands of the accused/appellant. Therefore there was no reason to apprehend grievous hurt from the hands of deceased. So there arises no question of private defence coming within C1.2 of Section 100. Equally, it will not come under the first clause, even, as the deceased was unarmed. It will not come under any other clauses on the facts of this case. There was therefore no reason for the accused to apprehend death from the hands of the deceased. Necessarily, he did not have the excuse of causing death during the exercise of his private defence.

9. When in a case where the right of private defence is available and it did not extend to causing of death, if death is caused as in this case, necessarily it will fall within Exception No. 2 of Section 300 I.P.C. and the offence will fall under Part I of Section 304 I.P.C. The conviction under the said provision and consequent sentence cannot be said to be unjustified to invite interference.

As the right of private defence available in this case has exceeded and as there is no reason to reverse the finding of acquittal of accused Nos. 2 and 3,1 see no reason why the Revision Petition be entertained.

Appeal and revision are dismissed.

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