

Noushad Vs. State of Kerala

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Court : Kerala

Decided On : Dec-13-2005

Reported in : 2006CriLJ1089; 2006(1)KLT717

Judge : J.B. Koshy and; M.N. Krishnan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 151, 162, 174 and 313

Appeal No. : Crl. A. No. 711 of 2003

Appellant : Noushad

Respondent : State of Kerala

Advocate for Def. : Noorjee Noushad, Public Prosecutor

Advocate for Pet/Ap. : C.S. Manu and; T.D. Rajalakshmy, Advs.

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. Appellant was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.20,000/- for the offences punishable under Section 302 of the Indian Penal Code by the Sessions Court, Thalassery in Sessions Case No. 138

of 2001. The allegation was that due to personal enmity, on 1 -5-1999 at about 6-00 p.m., he voluntarily caused stab injuries to one Narayanan with a deadly weapon like knife on his stomach and back at the public road situated on the back side of Badariya flour mill at Puzhathi amsom, Kunhipalli and the said Narayanan succumbed to injuries while undergoing treatment at the Medical College Hospital, Pariyaram on 4-5-1999.

2. Son of the injured, PW1, gave Ext.P9 FI, statement before PW15, Sub Inspector of Police, Kannur and he registered Ext.P9 FIR. PW16 Circle Inspector of Police conducted investigation. According to the prosecution, the accused surrendered before the police at 9-00 p.m. on the same day with a bleeding injury on the right little finger. The deceased was aged 60 years at the time of the incident. PW1, hearing about the incident, took the injured to the hospital. Ext.PI is the wound certificate. Two serious injuries were noted in the wound certificate which are as follows:

1. Stab injury 7 c.m. x 3 c.m. on the subumbilical region, left side through which part of large intestine and part of omentum is seen lying outside. Depth of the wound could not be measured by probing as there is fresh bleeding from the wound.

2. Stabinjury 3.5 c.m. x 1 c.m. on the back in the middle over the lower thoracic spine. Depth of the wound could not be measured probing as there is fresh bleeding from the wound.

He was examined by PW2 at 6-40 p.m. on 1-5-1999. Immediately after the incident, he was admitted in the Government Hospital, Kannur and thereafter at the Medical College Hospital, Pariyaram and PW3 doctor of the Medical College Hospital, Pariyaram deposed that on 1-5-1999 itself he had done laparotomy resection of jejunal and anastomosis and the details are mentioned in Ext.P2. PW3 doctor also deposed that the injuries noticed were sufficient in the ordinary course to cause death. PW4 doctor gave death intimation to the police on 4-5-1999 and the death intimation is marked as Ext.P3. PW11 conducted postmortem examination. Following are the injuries noticed by him in Ext.P8 certificate. PW11 doctor also deposed that injury No.1 as well as injury No.3 are sufficient in the

ordinary course to cause death. He also deposed that the death is due to 'peritonitis' following stab injury sustained to the small intestine. Inquest report is Ext.P4 which is proved through PW16 investigating officer.

Occurrence witnesses are PWs 12, 13 and 14. PW12 is the son of the deceased. He deposed before the Court that his father Narayanan while going from the paddy field to the house with cow at about 6-00 p.m. on 1-5-1999 in public road, accused Noushad inflicted a stab injury on the back and when his father turned, the accused again stabbed on the abdomen. He was coming from the paddy field after playing. He deposed that he saw the accused going with the knife. Therefore, he ran behind him, but, by the time, he reached the place, the incident was over. Accused abandoned the knife at the place and ran away. The knife recovered from the place of occurrence was identified as MO1. He also deposed that immediately after the incident one Asokan, Vijith and Jayarajan reached the place and father was taken to the General Hospital, Kannur and thereafter to the Medical College Hospital, Pariyaram. He gave the F1 statement at the hospital itself at 7-00 p.m. Therefore, the FI statement was given immediately.

3. PW13, an independent witness and a resident of that place, was living 50 metres away from the place of incident. He deposed that while he was going home at about 6-00 p.m. on 1-5-1999, he found the accused running behind Narayanan with a knife in his hand and stabbed on his back and Narayanan was again stabbed on his stomach with the knife. After the incident, the accused abandoned the knife at the place itself and Narayanan was taken to the hospital. In cross-examination also, he repeated the same version and he withstood the cross-examination and there was no material contradiction in the evidence of PW13. PW14 is another witness. He is the father of PW13. While he was chit-chating with another person on the road at Pulimukku, the accused was found with knife in his hand. After sometime, he heard the cry and when he reached the place, the deceased received stab injuries and the accused was found running after abandoning the knife at the place. He has not seen the actual infliction of injury. He also deposed that PWs 1, 2 and Asokan were there and the injured person was immediately taken to the hospital. Ext.P5 is the scene mahazar. MO1 was recovered from the place of incident.

4. In the statement under Section 313 Cr.P.C. the case of the accused was that while he was going to the bazar at Pulimukku, he saw the deceased was coming. Immediately on seeing him, the deceased Narayanan stated that he was looking for him and he tried to inflict an injury on the accused. Immediately, he tried to ward off the strike and the knife touched his right little finger and there was a bleeding injury. Again, he tried to stab him. Then, he caught hold of Narayanan with the knife and they were struggling and both fell down and rolled by 20 metres as the place was sloppy. He relieved himself from Narayanan and ran away. He also deposed that when Narayanan tried to inflict injury on him the glass and strap of his watch were broken. He is not aware when the injury was caused to the deceased. He reported the matter to the police at 7 o'clock, but, police took him to the hospital only at 9-00 p.m. Even though doctor referred him to the Medical College Hospital, that was not done till Judicial First Class Magistrate directed so. Exts.D1 and D2 were marked by examining DW1. Ext.P2 is the wound certificate issued in respect of Noushad and Ext.D1 is the case sheet of Noushad. According to the case records, he was discharged from the hospital only on 25-5-1999. Ext,D2 wound certificate would show the following injuries:

Incised wound 3 x 0.5 x 0.5 c.ms. on the base of slexer aspect at (R) little finger. Flexion not possible.Tender injury CVS }RS }NIL.Gil }

DW1 deposed that the injury is possible only if little finger comes with contact with a cutting weapon and tendon cut is a grievous injury. To sustain such an injury, force should be applied on the weapon. He further deposed in cross-examination as follows:

If the injured has attempted to ward off a stab with MO1 certainly there would be corresponding injury on other fingers.

5. As regards motive is concerned, PW1 has deposed that there was a dispute between the accused on the one side and PW12 and deceased on the other side. PW12 was asked specifically in cross-examination that there was a case against PW12 regarding the allegation of affecting modesty of a mentally ill sister of the accused. There is another case of assaulting the brother-in-law of the accused. In re-examination, it was also brought out that there was an earlier case regarding

infliction of injury by the accused on PW12. Therefore, there was enmity between the parties and motive is proved. With regard to the occurrence, there was no dispute. Evidence of PW12 is unchallenged in the sense that nothing was brought out in cross-examination. It is true that it is mentioned in Ext.P11 that one Asokan has taken the injured to the hospital, but, Asokan was not examined. When the investigating officer was examined, no question was asked why Asokan was not examined. It is also contended by the learned Counsel for the defence that names of PWs 12, 13 and 14 were not mentioned in the F1 statement. In *Raj Kishore Jha v. State of Bihar and Ors.* : 2003 CriLJ5040 , the Apex Court held that names of all the witnesses need not be mentioned in the FIR and that by itself cannot be a ground to doubt the prosecution evidence. In *Kamma Otukunta Ram Naidu v. Chereddy Pedda Subba Reddy and Ors.* : 2003 CriLJ4967 , it was held by the Apex Court that merely because all minutest details or the names were not mentioned in the FIR, the FIR cannot be rejected. Here, in this case, FI statement was given by the son of the injured immediately after he was taken to the hospital. The incident occurred at 6-00 p.m. After going to the hospital, he gave FI statement at 7-00 p.m. The intestine of his father was protruded out because of the peritonitis injury and he was in a perplexed mind. Even then, names of the accused were stated by him. Further, merely because the names of PWs 13 and 14 were not mentioned, their evidence will not become meritless. Further, they are natural witnesses. They are residing near the locality and through the road where the incident took place they have to reach their house. PW13 has seen the incident. PW14 has truly deposed that he did not see the incident, but, he saw the accused going to the place of incident with the knife and by the time he reached the place hearing the cry, the injury was already inflicted and he saw the accused running away leaving the knife at the spot itself.

6. Another serious argument made by the defence is that the knife recovered was sent for chemical examination, but, result was not produced. As held by the Supreme Court in *Bikau Pandey and Ors. v. State of Bihar* 2004(3) KLT (SC)(SN) 51 : AIR 2004 SC 997 and *State of Rajasthan v. Kishore* : 1996 CriLJ2003 , irregularities or illegalities in investigation is of no consequence when there is clear evidence otherwise. In *State of Karnataka v. Yarappa Reddy* 1999 (3) KLT 456 - SC, the Supreme Court held that criminal justice should not be made casualty for

the irregularities committed by the investigating officer. If the court is convinced that the testimony - of the occurrence witnesses is creditworthy, investigation defects cannot be of help to the accused. Further, considering the nature of the evidence and the defence taken by the accused, his presence is not disputed at all. A rational approach has to be adopted by the court.

7. Major argument raised by the appellant is that there is a right of private defence and prosecution did not explained the injuries on the accused. In *Shriram v. State of U.P.* : 2004 CriLJ610 , it was held as follows:

We shall next deal with the aspect relating to injuries on the accused and the question of right of private defence. The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries found were suffered in the same occurrence and that such injuries on the accused probabalise the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence nor in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. (See: *Lakshmi Singh v. State of Bihar* : 1976 CriLJ1736 . A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting....

In Amar Malla and Ors. v. State of Tripura : 2002 CriLJ4117 , the Supreme Court held as follows:

9. It is well settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eye witnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the investigating officer,

It is true that while pleading the right of private defence, burden is on the accused to prove. The prosecution has to prove the case beyond reasonable doubt whereas the accused has only to prove his case as probable or considering the preponderance of probabilities his defence story is a possible story. According to him, he reported the matter to the police at 7-00 p.m., but, police sent him to the hospital only at 9-00 p.m. Investigating officer as well as the Sub Inspector of Police, PWs 15 and 10, deposed that he reported to the police only at 9 o'clock and seeing the injuries he was immediately sent to the hospital. Further, it is very pertinent to note that if his 313 statement is accepted in toto, he must have got many abrasions. According to him, he was stabbed twice and one stab was warded off causing injuries on the little finger and another stab was on the wrist watch and both of them struggled and rolled down by 20 metres. If that be so, there would be several abrasions and injuries. He also deposed that he caught hold of Narayanan with knife. Apart from the injury shown in the wound certificate, Ext.P2, there is no other injury on the accused. It is also not proved that accused sustained the injuries in Ext.P2 at the time of incident. The prosecution also did not suppress it. DW1, accused's own witness an expert doctor, has deposed that if the stab was warded off it should have caused injuries on other fingers also. PW11 doctor was also asked this question and such a possibility of causing injuries of right finger as contended by the defence was ruled out by the doctor. It is true that if serious injuries are inflicted in the course of incident, the prosecution has got a duty to explain the injuries on the accused. Here, there is no evidence that the injury mentioned in Ext.D2 was occurred during the course of incident. The blows were inflicted on the deceased one from the back and another from the front and

medical evidence fully support the evidence of PWs. 12, 13 and 14 and non-explanation of the injuries on the accused is of no help to the defence when there is clear, cogent and creditworthy ocular evidence corroborated by medical evidence.

8. There is also a contention that in the inquest report also, the names of PWs 13 and 14 are not mentioned. The statutory purpose of the inquest proceedings is merely to ascertain whether a person has died under unnatural circumstances and if so, what is the cause of death. A question regarding details as to how deceased was assaulted, who assaulted him, under what circumstances he was assaulted etc. is foreign to the ambit of the scope of the proceedings under Section 174 of Cr.P.C. Names of the assailants and the manner of the assault are not required to be mentioned in the inquest report as held by the Supreme Court in *Mahendra Ray v. Mithilesh Ray and Ors.* : (1997)10SCC605 . The Apex Court in *Khujji @ Surendra Tiwari v. State of M.P.* : 1991 CriLJ2653 held that mere absence of names of witnesses in the inquest report will not render the evidence of witnesses doubtful. In *Babu Singh v. State of Punjab* : 1996 CriLJ2503 it was held that the evidence of a witness cannot be rejected merely because his name is not mentioned in the inquest report. The statement of witnesses recorded by the investigators during inquest would be within the inhibition of Section 162 and it can only be used for contradiction. When inquest witnesses were examined before the court defence did not ask any question regarding the presence of PW12 or PW13 at the time of incident and no contradictions were marked. When prosecution witnesses were examined, contradictions from 161 statements were not pointed out to them and marked. Any contradictions and statements recorded in the inquest report and in the statement under Section 151 Cr.P.C., unless marked as contradictions as provided under Section 162 Cr.P.C., those statements are not admissible in evidence. Nature of injuries, noted during the inquest also support the evidence of prosecution witnesses. In this case, creditworthy and cogent evidence was adduced to prove the charges against the accused.

9. The learned Sessions Judge who has seen the demeanor of the witnesses has considered the entire evidence in a proper manner and found that accused is guilty. We agree with the above findings. Therefore, conviction and sentence are

affirmed and appeal is dismissed.

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