

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

CRL.A.No. 822 of 2004 ()

AGAINST THE JUDGMENT IN SC 296/1998 of ADDITIONAL SESSIONS COURT
FAST TRACK (ADHOC)NO.II, THIRUVANANTHAPURAM DATED 28-04-2004

APPELLANT/ACCUSED:

VENUGOPALAN NAIR, S/O. MADHAVAN PILLAI,
PARAYIL VILAKATHU VEEDU, IRAYANCODE, KONNIYOOR MURI
ARUVIKKARA VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENT(S)/COMPLAINANT::

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

acd

'C.R.'

P.D. RAJAN, J.

Crl.Appeal No. 822 of 2004

Dated this the 10th day of August, 2015

JUDGMENT

The appellant, who is the accused in S.C.No.296/1998 of the Additional Sessions Court, Thiruvananthapuram, Fast Track (Adhoc)-II, challenges the conviction and sentence u/s.304 part II IPC. He was sentenced to undergo rigorous imprisonment for one year. Being aggrieved by that, he preferred this appeal.

2. The prosecution case is that the deceased Sukumaran Nair was a heart patient and on 7.6.1997 at about 9.30 p.m., the accused quarrelled with him knowing the heart disease and that if any hurt is inflicted towards him, death would be accelerated if hurt is caused to him. The accused

with this knowledge, fisted his brother Sukumaran Nair on the chest and back and pushed him down into the drainage, as a result, the deceased sustained injuries on various parts of his body and immediately, he was removed to hospital, at about 10.40 p.m. he succumbed to the injuries. In this incident, Nedumangadu Police registered Crime No.188/1997 and after investigation, Circle Inspector of Police, Nedumangadu laid charge before Judicial First Class Magistrate Court-II, Nedumangadu, from there the case was committed to Sessions Court.

3. In the trial Court, prosecution examined PW1 to PW9 and marked Exts.P1 to P7 as documentary evidence. The material objects Mos1 to 5 were marked in support of the prosecution evidence. The incriminating circumstances brought out in evidence were denied by the appellant, while questioning him u/s.313 Cr.P.C. He was also heard u/s.232 Cr.P.C. and called the appellant to enter on his defence. He

examined DW1 and DW2. The trial Court convicted the accused u/s.304 part II IPC.

4. The learned counsel appearing for the appellant contended that the prosecution failed to prove the case beyond reasonable doubt. The evidence of PW2 is not believable, because he gave a contradictory version with regard to the colour of shirt. PW3 did not see the pushing of the the deceased into the drainage. It was alleged that the appellant beat on the chest and hip, but corresponding injuries were not noticed in postmortem certificate. There is no direct evidence with regard to the heart disease and the alleged knowledge is not a ground to attract offence u/s.304 Part II IPC. Therefore, the appellant is entitled to get the benefit of doubt.

5. The learned Public Prosecutor contended that the direct oral evidence of PW2 is sufficient to prove the occurrence. There are some minor discrepancy in his

evidence. That itself is not a ground to discard his oral evidence. PW3 saw the initial part of the incident, which is supporting the evidence of PW2. The postmortem examination shows that the deceased was suffering from heart disease, which was supported by DW1. That knowledge itself is sufficient to attract the alleged offence and there is no illegality in the findings of the court below.

6. In order to attract offence u/s.304 (Part II) IPC, the prosecution has to prove that the accused committed culpable homicide. There must be death of a person, then death should have been caused by the act of another person, the act causing death should have been done 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 such act is likely to cause death. Here, the allegation is that the deceased

was suffering from acute Coronary Artery Heart disease, which was within the knowledge of the appellant. On 7.6.1997, at 9.30 p.m., the appellant assaulted him, as a result, the deceased sustained bodily injuries, which resulted in occlusive coronary artery disease, which precipitated his death.

7. The medical evidence is corroborating the prosecution case. PW6, Lecturer Forensic Medicine and Asst. Police Surgeon, Medical College Hospital, Thiruvananthapuram deposed that she conducted postmortem examination of the deceased on 8.6.1997 at 11.30 a.m. and issued Ext.P3 postmortem certificate. All together 13 ante-mortem injuries were noticed by PW6 while preparing Ext.P3 postmortem certificate. PW6 opined that the death was due to occlusive coronary artery heart disease. Ante-mortem injuries could have accelerated or precipitated the death. The deceased was

found having cardiac complaints. If he was subjected to force or fisting, it could aggravate his cardiac condition. Blood sample and viscera were collected and sent for chemical examination, which shows that the blood of the deceased contained 58 mg/100 ml of ethyl alcohol, his liver showed fatty changes. PW6 admitted that if the deceased fell into a ditch in a drunken state, the anti-mortem injuries noted in Ext.P3 except injury No.11 is possible to occur and that can be accelerated heart disease. A close scrutiny of the postmortem examination shows that the deceased was suffering from occlusive coronary artery disease.

8. Now the question is whether the appellant had any knowledge about the coronary artery disease and the acts of the appellant precipitated the death of Sukumaran Nair. PW1 is the son of the deceased, his evidence shows that on 7.6.1997 at 10.40 p.m. he knew

about the death of his father. On that day at 9.30 p.m., his relative informed him about the incident, when he reached at the place of occurrence, his father was found lying in the drainage on the side of the road. He removed him to the Government Hospital, Nedumangadu, where the doctor confirmed his father's death. Subsequently, the body was removed to Medical College Hospital for postmortem examination. He denied the fact that his father was suffering from any heart disease.

9. The evidence of PW2 shows that when deceased proceeded to his house, the appellant assaulted him on his chest and back, as a result, he fell down. He helped PW1 to remove the deceased to the hospital, but he failed to identify MO1. The denied portion of his evidence was marked as Ext.D1 in the trial Court. PW2 also has no knowledge about the heart disease.

10. The incident was narrated by PW3, who was

present at the time of occurrence. His evidence shows that the appellant assaulted the deceased on his chest and hip, two-three times, and his brother Soman Nair interfered in the quarrel. Again, the appellant caught hold on the dhoti of the deceased, PW3 went to the house to call PW1. This witness has also no knowledge about the ailment of the deceased. Analysing the evidence of PW1 to PW3, it is found that these witnesses have no direct knowledge with regard to ailment of coronary artery disease.

10. In this context, the defence evidence of DW1 and DW2 is relevant. DW2, who is the brother of the deceased, admitted that the deceased was taking treatment for heart ailment from General Hospital, Thiruvananthapuram and from Medical College Hospital, Thiruvananthapuram. On the date of incident, he saw the deceased and the appellant in a funeral function, after

that, they returned to their house. The defence evidence of DW2 is supporting the prosecution story of the alleged heart disease alleged by the prosecution. Postmortem evidence strongly suggested that the death was due to heart disease and ante-mortem injuries precipitated the death. If that be the position, the appellant might have knowledge about such ailment, since both of them are brothers. But, he has no intention to murder him.

11. Apex Court in Kishore Singh and another v. The State of Madhya Pradesh [AIR 1977 SC 2267] held as follows:

14. With regard to the second part of "3rdly", namely, whether the bodily injury is sufficient in the ordinary course of nature to cause death, the courts' enquiry is not confined to the intention of the accused at that stage of judicial evaluation, once the intention of the accused to cause the injuries has already been established. The court will have to judge objectively from the nature of the injuries and other evidence, including the medical opinion, as to whether the injuries intentionally inflicted by the appellants on the

deceased were sufficient in the ordinary course of nature of cause death. In judging whether the injuries inflicted are sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant.

12. The oral evidence of PW2 and PW3 shows that they were present near the place of occurrence and saw the incident, after that, PW3 went to call PW1. There was exchange of hot words between the appellant and the deceased, while cross examination of these witnesses, there are some minor discrepancies in their oral testimony, but those minor discrepancies itself are not sufficient to discard their oral testimony. The minor discrepancy in evidence and its effect was discussed by the Apex Court in State (Delhi Administration) v. Laxman Kumar and others [AIR 1986 SC 250]. It is common human experience that different persons admittedly seeing an event give varying

accounts of the same. That is because the perceptiveness varies and a recount of the same incident is usually at variance to a considerable extent. Ordinarily, if several persons given the same account of an event, even with reference to minor details, the evidence is branded as parrot-like and is considered to be the outcome of tutoring. The evidence of the witnesses in the present case appears to have variations within reasonable limits and the variations instead of providing the ground for rejection, add to the quality of being near to truth. Therefore, if the evidence has the touch of intrinsic truth and the discrepancies are minor within the reasonable limits, the testimony of that witnesses would be reliable being more natural and truthful. Therefore, the defence contention put forwarded by the appellant is only to be discarded and the evidence of PW2 and PW3 is admissible, which shows that the appellant assaulted the deceased and

he sustained ante-mortem injuries noted in Ext.P3 postmortem report.

13. There is no delay in registering the case and conducting the investigation. PW5, Sub Inspector of Police, Nedumangad recorded Ext.P1 statement of PW1. Ext.P1(a) is the FIR. PW7 was present at the time of preparing the inquest report. PW8 Village Officer arrived at the place of occurrence and prepared Ext.P6 site plan. The Circle Inspector of Police Nedumangad, conducted the investigation and laid charge before court.

14. A close scrutiny of the evidence of the prosecution witnesses shows that appellant committed culpable homicide not amounting to murder. The death was caused by doing an act with knowledge that he is likely, by such act cause death. Therefore, the appellant committed the offence of culpable homicide. The knowledge means, consciousness of the impact. It also means that conscious

awareness of the facts and consequence of his conduct. It is true that there was no intention from the side of the appellant to commit murder. In the circumstances, the trial Court convicted the appellant under Section 304 part II of the Indian Penal Code and sentenced thereunder.

15. Appellant contended that the sentence imposed by the trial Court is disproportionate to the offence. It is true that sentencing policy is within the discretion of the trial court. The nature of the offence and the circumstance under which it was committed are relevant while fixing the sentence. The sentence should neither be too lenient nor disproportionate. The learned counsel submitted that the appellant is now aged 60 years and undergoing various ailments and the deceased is his brother and he prayed for some leniency in sentence. I heard the Public Prosecutor also. Considering the nature of the offence and the circumstance in which it was

committed, I modify the sentence as follows;

a) The appellant/accused is sentenced to imprisonment for 6 months under Section 304 part II Indian Penal Code.

b) He is also directed to pay a compensation of ₹25,000/- (Rupees Twenty five thousand only) under Section 357 (3) Cr.P.C., in default of payment of compensation, imprisonment for 6 months.

c) If the compensation is realized, it shall be disbursed to the wife of the deceased if she is alive or to PW1, who is the son of the deceased Sukumaran Nair.

d) The period of detention if any undergone by him shall be set-off against the term of imprisonment.

This appeal is disposed as above.

P.D. RAJAN, JUDGE.

acd/stk

Having regard to the evidence of PW6 and DW2, and the circumstances of the case, it is found that the injuries could have accelerated the death and that point is concluded.

