

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P. JOSEPH

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

CRL.A.No. 1005 of 2011 (A)

AGAINST THE ORDER/JUDGMENT IN SC 379/2002 OF THE FILE OF THE COURT
OF THE ADDL. SESSIONS JUDGE FAST TRACT COURT NO.II, PALAKKAD DATED
29.11.2008.

APPELLANT: ACCUSED:

KRISHNANKUTTY, C.NO.6784,
CENTRAL PRISON, KANNUR

BY STATE BRIEF SRI.SAJEEV.T. PRABHAKARAN
SMT.K.RAJANI
SRI.R.V.SUJIT KUMAR

RESPONDENT:

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

PUBLIC PROSECUTOR SRI.ROY THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T.SANKARAN &
BABU MATHEW P. JOSEPH, JJ.**

Crl.A. NO.1005 OF 2011

Dated this the 14th day of January, 2015

JUDGMENT

K.T.Sankaran, J.

The appellant was found guilty for the offence under Section 302 of the Indian Penal Code in S.C.No.379 of 2002 on the file of the Court of the Additional Sessions Judge, Fast Track Court No.II, Palakkad and he was sentenced to undergo imprisonment for life and to pay a fine of ₹10,000/- and in default, to undergo rigorous imprisonment for six months. The appellant challenges the conviction and sentence.

2. The prosecution case is that on 25.5.1997 at 6.30 p.m., the appellant committed murder of one Ayyappan by stabbing him with MO1 dagger at a place called Kolpadam junction at Thenkara in Palakkad District. PW1 reported the matter to the police and gave the First Information Statement.

3. Immediately after the incident, the victim was taken to the Government Hospital, Mannarkkad, where PW13 Assistant Surgeon examined him, gave first aid and directed the victim to be taken to the Medical College Hospital for treatment. The victim was taken to Maulana Hospital, Perinthalmanna and on the way, he breathed his last. The dead body of the victim was brought back to Mannarkkad. The matter was reported by PW1 at Mannarkkad Police Station and gave Ext.P1 First Information Statement, on the basis of which PW12 registered Ext.P1(a) First Information Report. The postmortem of the body of the deceased was conducted by the Deputy Police Surgeon (PW21) and he issued Ext.P11 postmortem certificate. PW23, the Circle Inspector of Police, Mannarkkad, conducted the investigation. He conducted the inquest and prepared Ext.P7 inquest report and Ext.P8 scene mahazar. The investigating officer seized MO3, MO8 and MO9 as per Exts.P5, P4 and P10 seizure mahazars. The accused surrendered before the Magistrate on 27.5.1997. The custody of the accused was given to the police from 30.5.1997 to 3.6.1997. It is stated that the accused gave a confession statement to the investigating officer, on the basis

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of which and as led by the accused, MO1 knife was recovered from a bushy area near the house of the accused, as per Ext.P3 mahazar dated 1.6.1997. The investigation was completed by PW24 and he laid the charge on 23.5.2000.

4. Before the Court below, PW1 to PW24 were examined, Exts.P1 to P17 were marked and MO1 to MO9 were identified on behalf of the prosecution and DW1 was examined on the side of the defence.

5. PW1, PW2, PW19 and PW20 are the eye witnesses to the incident. PW1 stated in evidence that at about 6.30 p.m. on 25.5.1997, there arose a dispute between the accused and the deceased with respect to certain amounts allegedly due to the deceased on account of coolie. According to the accused, no amount was due. When the altercation between the accused and the deceased continued, PW20 tried to pacify and he separated them. PW1 and Vijayakumar were there at the scene of occurrence at that time. Thereafter, PW1 went to the toddy shop. Later he was informed that the deceased was being stabbed by the accused.

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PW1 came out of the toddy shop. He saw the incident. PW1 stated that the accused stabbed the deceased several times. PW1 called others. PW1 along with PW2 Ponnu, PW19 Radhakrishnan and one Rajan went to the spot. The accused left the place shouting that he had done away with the person who had cheated him. PW1, PW2, PW19 and Rajan bandaged the injury on the deceased using the bath towel of the accused, hired a jeep and took the victim to the Taluk Hospital, Mannarkkad. The Medical Officer at the hospital at Mannarkkad gave first aid to the victim and advised them to take the victim to the Medical College Hospital. They took the victim to Maulana Hospital, Perinthalmanna. Before they reached that place, the victim died. The doctor at Maulana Hospital declared that the victim was dead. Thereafter, PW1 and others brought the dead body of the victim to the Government Hospital, Mannarkkad and PW1 gave the First Information Statement before the police. PW1 identified MO1 dagger, MO2 bath towel and MO3 bath towel with which the doctor at Mannarkkad hospital bandaged the wound of the victim. PW1 also identified MO4 dhoti, MO5 shirt, MO6 trouser and MO7 belt of the deceased. He found that the tears on MO4 to MO6 were due to the stab made by the accused.

6. PW2 Ponnu did not actually witness the act of the accused stabbing the deceased. PW2 stated that he saw the accused getting up at the spot and at that time a dagger was in his hands. PW2 was in the tea shop. He was taking tea along with Rajan and PW19 Radhakrishnan. On hearing the hue and cry, they rushed to the spot. The accused left the place through Kolpadam road. The accused stated that he has given what was due to Ayyappan (the deceased). The deceased was lying down on the spot. PW2, PW1, PW19 and Rajan attended the victim and made a bandage with a bath towel. The victim was taken in a jeep to the Government Hospital, Mannarkkad and thereafter to Maulana Hospital. The other facts narrated by PW1 were also narrated by PW2. He also identified MO1 dagger.

7. PW19 Radhakrishnan also narrated the incident almost in the manner narrated by PW2.

8. PW20 Vijayakumar stated in evidence that at about 5 p.m. on 25.5.1997, he came down to Kolpadam junction from Mannarkkad. He met Ayyappan at Kolpadam junction and they

talked about various aspects. One Thankachan came to that place and he pledged two golden ear drops (MO9) with Ayyappan (the deceased) and borrowed ₹300/- from him. While PW20 and Ayyappan were talking, the accused came to the spot. Ayyappan (the deceased) demanded from the accused coolie for nine days and ₹500/- taken as loan by the accused. A quarrel ensued. On two or three occasions, PW20 separated the accused and the deceased while they were quarrelling. While so, the elder brother of PW20 came to that place and advised PW20 not to involve himself in that dispute. Thereafter, he heard a cry of Ayyappan. PW20 saw the accused stabbing the deceased several times. PW20 along with PW19 Radhakrishnan, PW2 Ponnu and Rajan went to the spot. The accused left the place through Kolpadam road. PW20 stated that while PW1, PW2, PW19 and Rajan took the injured to the hospital, he left the place to inform about the incident to the sister and brother-in-law of Ayyappan. PW20 also identified MO1 dagger.

9. The evidence of the aforesaid eye witness is also corroborated by other piece of evidence. PW8, the widow of the deceased stated in evidence that her husband left the house stating

that he had to get wages for nine days and ₹500/- from the accused. PW8 identified MO4 to MO7. PW3 Sarada, the sister-in-law of the deceased, stated that she used to go for work with the accused. She stated that she told the accused about the money due to the deceased. At that time, the accused stated that “ഇന്നു പോയിട്ട് തികച്ചു കൊടുക്കുന്നുണ്ട്.”

10. PW13, the Assistant Surgeon of Taluk Head Quarters Hospital, Mannarkkad, deposed that he examined Ayyappan on 25.5.1997. The general condition of the patient was very bad. Pulse was very feeble. He was conscious. He had hurried breathing. PW13 stated that he noticed multiple stab injuries on the body of Ayyappan. Intestinal loops were seen outside and he referred the patient to the Medical College Hospital for expert management. PW13 proved Ext.P6 medical certificate.

11. PW21, the Deputy Police Surgeon, conducted the postmortem examination and issued Ext.P11 postmortem certificate. The ante-mortem injuries, other findings and opinion as noted in Ext.P11 are as follows:

“Injuries (Ante-mortem):

1. Linear abrasion 10 cm on the front and outer aspect of left upper arm horizontally placed and 14 cm. Below the top of shoulder.
2. Muscle deep oblique wound 2.5 x 1.3 cm on the inner aspect of left upper arm 9 cm below the armpit.
3. Muscle deep oblique wound 5x2x3cm on the outer aspect of left upper arm 7 cm above the elbow.
4. Muscle deep vertical wound 1.5x5 cm on the front of left elbow (fossa).
5. Muscle deep horizontal wound 2.5x1 cm on the back and outer aspect of left forearm 5 cm below the elbow.
6. two parallel oblique abrasion .7 cm apart and each measuring 2x.2cm on the front of left forearm 7 cm below elbow.
7. Bone deep cut wound 5x1cm on the back of left index finger. The bone underneath was cleanly cut.
8. Linear oblique abrasion 4 x .2 cm on the outer aspect of left forearm 7 cm above wrist.
9. Muscle deep incised wound 4.5x.3 cm on the palmar aspect of left index finger.
10. Muscle deep oblique wound 3x.7 cm on the front of right upper arm 10 cm below the shoulder.

11. Bone deep incised wound 1.5x1 cm on the distal half of the right little finger (palmar aspect).
12. Vertical stab wound 2.2x.5 cm on the right flank of chest 5 cm below the base of axilla and 7.5 cm to the right of nipple at 10 o'clock position. The lower end was sharp and the other end blunt. The wound was directed backwards and inwards and entered the chest cavity cutting the 4th rib and terminated by cutting the front aspect of the upper lobe of right lung 1.4x 1cm. The right chest cavity contained 250 ml of blood. The minimum possible depth was 6 cm. maxilla
13. Vertical stab wound 2.5x1 cm on the front of left side of chest 8.5 cm inner to the left nipple at 9 o'clock position and 8 cm below the burns space. The lower end was sharp and the other end blunt. The wound was directed backwards and had cut the breast bone and terminated by cutting the media sternal structures underneath. The minimum possible depth was 4.2 cm.
14. Oblique penetrating stab wound 4.5x1.5 cm on the front of right side of chest. The upper inner end was sharply cut and situated 2.7 cm outer to the nipple and 10 cm outer to the midline. The lower outer end was blunt. The wound was directed backwards and inwards and penetrated into the right chest cavity and injured the outer aspect of upper lobe of right lung (3x.8x2cm). The minimum possible depth was 5 cm.
15. Oblique stab wound 2.1x1.3 cm on the front of right side of chest 2.5 cm behind injury No.14. The upper inner end was sharply cut and the other end blunt. The wound was confined to the muscle plane and not entered the chest cavity.

16. Vertical stab wound 3x1.2 cm of the right side of chest 4.3 cm behind injury No.15. The lower end was sharply cut and the other end blunt. The wound was confined to the muscle plane and not entered the chest cavity.
17. Incised oblique stab wound 6x2 cm on the back of left side of trunk 9.5 cm to the left of midline and 65 cm above the hip bone. The inner upper end was sharp and the other end blunt. The wound was directed upwards and inwards and entered the peritoneal cavity and terminated by cutting the lower border of spleen (3x1.2x1cm). The peritoneal cavity contained 500 ml of fluid blood. The minimum possible depth was 4.2 cm.
18. Muscle deep horizontal cut wound 1.9x.5 cm on the back of the left thigh 3.5 cm below the gluteal fold.
19. Abrasion .7x.2 cm on the inner aspect of right ankle.
20. Abrasion .5x.2 cm on the inner aspect of left ankle.
21. Skin deep incised wound 4x.5 cm on the inner aspect of left upper arm 3cm below the axilla.
22. Skin deep incised wound 2x.3 cm on the inner aspect of left upper arm .5 cm below the injury No.21.
23. Incised oblique penetrating wound 4.5x2cm on the front of left side of abdomen 4cm to the left of midline and 13cm below the nipple. The lower outer end was sharply cut and the upper inner end blunt. A small loop of intestine was found

protruding through the wound. The wound was directed downwards and inwards and injured the stomach by a through and through cut (4x1.3cm). The minimum possible depth was 6 cm.

24. Vertical stab wound 4.2x1.7cm on the front of left side of chest 5cm to the left of midline and 7 cm below the nipple. The upper end was sharply cut and the outer end blunt. The wound was directed downwards and inwards and pierced the left dome of diaphragm 2.3x1.8cm and terminated by cutting the lesser curvature of stomach (2.2x1.3cm). The minimum possible depth was 5.8 cm.

Other Findings:- Both lungs were pale and the right lung partly collapsed. Stomach contained 150 gm of partly digested food with a sweet smell. All the internal organs were pale. Urinary bladder contained 30 ml of clear urine.

OPINION AS TO CAUSE OF DEATH:- The deceased died of multiple injuries sustained to chest and abdomen.”

PW21 stated in evidence that injury Nos.12, 13, 14, 17, 23 and 24 were fatal injuries which could cause death independently and collectively. Injury Nos.7, 9 and 11 may be defensive wounds. He also stated that the fatal injuries could be caused by using a weapon like MO1 dagger. PW21 stated as an answer to the Court question that injury Nos.12, 13, 14, 17, 23 and 24 are in the ordinary course of nature sufficient enough to cause death.

12. PW10 Janardhanan stated in evidence that he produced MO9 golden ear drops before the police. He got the same from the road side near the place of incident. According to him, he saw the same while he was talking with one Radhakrishnan at the place of incident at which the deceased sustained stab injuries. The witness stated that he saw something glittering and on closer examination, it was realised that it was gold.

13. PW17, the elder brother of PW20 Vijayakumar deposed before Court that he saw the accused and the deceased quarrelling with each other and his brother separating them. The witness also stated that he advised Vijayakumar to leave the place and go home.

14. DW1, the wife of the accused was examined in an attempt to prove that the accused was not at all available at the place of occurrence at the relevant time. DW1 stated that she came to know of the death of Ayyappan only on 26.5.1997 at 9 a.m. The witness stated that ₹2,000/- was borrowed by them from the deceased for the purpose of thatching the house. They assured that

the money will be repaid after Vishu. Later, the deceased and his brother Muthu came to the house of the witness, demanded the amount and created a scene there. She stated that they could not repay the amount and that the brother of the deceased still maintains ill-feeling towards her and her husband. DW1 also stated that on 25.5.1997, the date of the incident, her husband was bedridden at his house due to fever for the last three days. He was cured of the ailments only on 27.5.1997. In cross examination, DW1 stated that no medical aid was sought from any doctor or vydyan even though her husband was suffering from fever for several days.

15. The evidence of the investigating officer and that of PW6 shows that the accused led the police to a bushy area near his house and took out MO1 dagger from a place where it was concealed. Ext.P3 mahazar was prepared for recovery of MO1 dagger on the basis of Ext.P13 admissible part of the confession statement. The witness to Ext.P3 mahazar is PW6.

16. The court below believed the evidence of the eye witnesses, namely, PW1, PW2, PW19 and PW20. The court below

also relied on the recovery of MO1 dagger under Section 27 of the Evidence Act. The other corroborating evidence was also relied on by the court below to find the accused guilty of the offence. The case of alibi attempted to be put forward by examining DW1 was not accepted by the court below on the ground that it cannot be treated as a plea of alibi at all since the distance from the place of incident to the place where the house of the accused is located is hardly two kilometres and it could not be shown that the accused could not have been present at the spot on the date of incident, even if the evidence of DW1 is accepted.

17. The learned counsel for the appellant submitted that the versions given by PW1, PW2, PW19 and PW20 are contrary to each other on material aspects. He submitted that in the chief examination, PW1 stated that he came to know of the attack made by the accused on the deceased at the time when some people told him but in his evidence at a later point of time, he stated that he came to know of the incident when an old lady told him while he was in the toddy shop. The learned counsel also submitted that PW2, PW19 and PW20 stated that they heard about the incident when

they were taking tea in the tea shop. We have carefully considered the evidence of PW1, PW2, PW19 and PW20. The specific case of PW1 is that after PW20 Vijayakumar separated the accused and the deceased while they were quarrelling, PW1 went to the toddy shop. The evidence of PW2 and PW19 is specific to the effect that they were in the tea shop. By no stretch of imagination, it can be said that there is contradiction between the evidence of PW1 on the one side and PW2, PW19 and PW20 on the other. They never had any case that they were together at a place when the incident occurred. The learned counsel also submitted that different versions have been given by the eye witnesses with respect to the utterance made by the accused after the incident of stabbing. It is true that the exact words spoken to by these witnesses as to what the accused uttered are slightly different. But meaning of these statements is to the effect that the accused had done away with the deceased. It is to be noted that the eye witnesses were examined before Court after eleven years of the date of incident. Slight variation with respect to the exact words spoken by the accused at the time of incident, in the version given by the eye witnesses, is quite natural in the facts and circumstances of the case. It cannot be held that on account of the

same their evidence cannot be believed. The learned counsel also submitted that there was inordinate delay on the part of the investigating officer for producing MO1 dagger before Court. It is submitted that, according to the investigating officer, MO1 dagger was recovered on 1.6.1997, but it was produced before Court after three months. The learned Public Prosecutor submitted that Ext.P3 mahazar evidencing the recovery of MO1 dagger was produced before Court on 3.6.1997 and all the necessary details with respect to MO1 are available in Ext.P3 mahazar itself. The learned Public Prosecutor pointed out that there is no case for the accused that the description of the knife as shown in Ext.P3 mahazar in any way differs with the measurements and description of MO1 knife.

18. We have gone through the oral and documentary evidence in minute detail. On a careful consideration of the oral evidence in the case, we do not find anything to disbelieve the testimony of the eye witnesses, namely, PW1, PW2, PW19 and PW20. We also do not find any ground to disbelieve the other evidence corroborating the evidence of the eye witnesses as well as the recovery of MO1 as per Ext.P3 seizure mahazar. The medical

evidence also supported the prosecution case. There is no ground to disbelieve the prosecution case. The First Information Statement itself mentions about the names of the eye witnesses and their presence at the scene of occurrence. All the details as stated in the First Information Statement have been stated by the eye witnesses while they were examined before Court.

For the aforesaid reasons, we do not find any ground to interfere with the well considered judgment and the conviction and sentence of the accused. The Criminal Appeal is, accordingly, dismissed.

(K.T.SANKARAN)
Judge

(BABU MATHEW P. JOSEPH)
Judge

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