

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN  
&  
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

CRL.A.No. 1877 of 2011  
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SC 167/2010 of THE ADDITIONAL DISTRICT & SESSIONS COURT (ADHOC) -  
I, THRISSUR  
CP 6/2010 of J.M.F.C., WADAKKANCHERRY

APPELLANT(S):  
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CHANDRAN, S/O.KARAPPAN, C.NO.8941,  
CENTRAL PRISON, KANNUR.

BY ADV. PINKU H. THALIYATH[STATE BRIEF]

RESPONDENT(S):  
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THE STATE OF KERALA, REP. BY  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-  
11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T. SANKARAN & RAJA VIJAYARAGHAVAN.V. JJ**

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Crl.A.1877 of 2011  
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Dated 21<sup>st</sup> November, 2015  
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**JUDGMENT**

**Raja Vijayaraghavan.V.**

1. In this appeal filed u/s 374 of the Code of Criminal Procedure (hereinafter referred to as “the Code”), the sole accused in S.C.No.167 of 2010 on the file of the Additional Sessions Judge (Fast Track-I), Thrissur, challenges the judgment dated 30.10.2010 as per which, the appellant herein was found guilty and he was convicted u/s 302 and 307 of the IPC and was sentenced *inter alia* to undergo imprisonment for life.

2. A conspectus of the prosecution case is as follows:-

(a). Santha, who was examined as PW1

and Karthyayani - PW7 are sisters. Karthyayani is the wife of the appellant. She along with the appellant and her children were residing in her tharavadu house within the limits of Thekkumkara Panchayat. Santha's husband had expired earlier and she had two children in the said marriage. After expiry of her husband, Santha was living with the deceased Mohanan without entering into any form of marriage. They were residing in a rented house attached to a tea shop near to the Tharavadu house. Santha's daughter got pregnant and this instilled in her a desire to shift to the Tharavadu house.

(b). On the day prior to the day of occurrence, Santha along with her husband after obtaining the concurrence of Karthyayani and the appellant started residing in the tharavadu house. Since this new development was not to the liking of the appellant he took his three children and went off

to his family house at Puranattukara. On 31.12.1996 at about 4.00 pm, the appellant under the influence of alcohol came to the tharavadu house and picked up a quarrel with PW1 and her deceased husband. At that time, Karthyayani was not at home. Later, in the evening at about 8.00 - 8.30 p.m, the appellant returned back home in order to take some items from the house and among other things he also took away the ration card. When the appellant left the house with his personal belongings, PW1 and the deceased followed the appellant and demanded that the ration card be returned. Without heeding to the request of PW1 and the deceased, the appellant went towards the north along the road, lying on the eastern side of the tharavadu house. PW1 was carrying a kerosene lamp with her. When the accused reached near the house of PW2 - Xaviour, he voluntarily gave the ration card to PW1. PW1 and the deceased returned

back home and the case of the prosecution is that the appellant followed them with intent to kill the deceased Mohanan and also PW1, and inflicted stab injuries on the left side of the chest and beneath the nipple of the deceased Mohanan using scissors used by PW7 for her beedi making avocation. When PW1 – Santha intervened, she was also inflicted serious injuries with the same weapon. After inflicting the injuries, the appellant is alleged to have fled from the scene.

(c). On hearing the cries of Santha, PW2 - Xaviour arrived at the scene. PW7 – Karthyayani also had followed PW1 – Santha and the deceased. The deceased was immediately shifted to the District Hospital, Thrissur from where they were taken to the Medical College hospital, Thrissur, where PW1 as well as the deceased were examined by the doctor. Deceased Mohanan succumbed to the injuries at

12.10 am on 1.1.1997. On the basis of Ext.P1 statement given by PW1 - Santha before the Sub Inspector of Police, Wadakkancherry, Ext.P9 FIR was registered at 7.15 am on 1.1.1997. The Circle Inspector of Police took over investigation and he conducted the inquest over the dead body of Mohanan. He prepared the scene mahazar in respect of the scene of occurrence and the items found at the scene were seized. Later, investigation was taken over by PW12 who completed the investigation and laid the final report before the Court.

3. The prosecution examined as many as 12 witnesses to prove its case and Exts.P1 to P14 were marked. After the close of the prosecution evidence, incriminating materials arising out of the prosecution case were put to the accused u/s 313 of the Code. The accused denied the incriminating circumstances

and stated that he was actually assaulted by Mohanan with an iron rod. According to him, after the incident he had left the place. No defence evidence was adduced. The learned Sessions Judge after analysing the evidence, came to the conclusion that the prosecution had succeeded in bringing home the finding of guilt as against the appellant and accordingly, the appellant was convicted.

4. We have heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

5. Smt.Pinku H.Thaliyath, the learned counsel appearing for the appellant submitted that the learned Sessions Judge has palpably erred in placing reliance on the evidence of PW1, the wife of the deceased who falls into the category of a related,

interested and inimical witness. According to the learned counsel, a perusal of Exts.P6 and P7 wound certificates prepared by Dr.K.Radhakrishnan at the Medical College Hospital, Thrissur, would reveal that the incident had happened in a different manner than as alleged by the prosecution. Ext.P2 scene mahazar was referred to by the learned counsel to advance the argument that the incident had occurred within the precincts of the tharavadu house and not at the scene of crime as now alleged by the prosecution. The non recovery of weapon of offence was also advanced as a contention to throw serious shadow of doubt on the case of the prosecution. The learned counsel further submitted that it was inconceivable to believe that the deceased, who was conscious and well oriented when he was examined by the doctor, would omit the name of the assailant to PW2 - Xaviour or other persons of the locality, who had

arrived at the scene of crime immediately after the occurrence. It was also submitted that as per the earliest records, the weapon of offence was a knife and not scissors, as now claimed by the prosecution. Finally it was contended by the learned counsel that the conduct of PW1 was unbelievable and no reliance could be placed on her evidence. The learned counsel placed reliance on **Prakash and Another v. State of M.P (AIR 1993 SC 65)**, **Lallu Manjhi v. State of Jharkhand (2003 (2) SCC 401)** and **Shivasharanappa v. State of Karnataka (2013 (5) SCC 705)** to advance her contentions.

6. Per contra, Sri.Rajesh Vijayan, the learned Public Prosecutor, submitted that PW1 was an injured eye witness who had no reason to implicate the appellant in a crime, more so, because of their relationship. According to the learned counsel, it was

inconceivable to believe that PW1 would spare the actual assailant. It was submitted that the evidence of PW1 was corroborated in all material particulars by that of PW7 - Karthyayani and to a certain extent by PW2 - Xaviour. It was pointed out that the crime was registered within hours after the incident and the same has reached the Court without any delay. According to the learned Public Prosecutor, certain discrepancies in the wound certificates is only to be ignored as minor and superficial and the incident has been properly proved by the evidence let in. The learned Public Prosecutor also submitted that the chemical analysis certificate which reveals the presence of blood in the clothes worn by the accused at the time of commission of crime also advanced the prosecution case. It was finally submitted that the learned Sessions Judge has appreciated the evidence of the witnesses and also the other facts and

circumstances and there was no reason to interfere with the findings of the learned Sessions Judge.

7. In the case on hand, the prosecution relies mainly on the evidence of PW1, the wife of Mohanan to prove the incident. PW1 testified before Court that on 31.12.1996 she was residing with her deceased husband Mohanan at the tharavadu house at Veerolipadam, Wadakkancherry. She admitted that the deceased Mohanan was not her legally wedded husband. Her husband had expired earlier and she had a child in her first marriage. She along with Mohanan, were residing in a rented house, slightly at a distance from the tharavadu house. Her daughter became pregnant and she wanted to shift her residence to the tharavadu house for taking care of her daughter. Prior to shifting her residence to the tharavadu house, PW1 obtained the consent of her

sister Karthyayani and her husband/accused. She testified that the appellant used to constantly pick up fights with PW7 and her life was made miserable. When PW1 started residing in the tharavadu house with Mohanan, the ire of the appellant fell on them. To show his dissent, his three children were shifted to his house at Puranattukara. On the date of incident at about 4.00 p.m, the appellant came to tharavadu house and threatened PW1 and her husband with dire consequences. PW7 was not there at that time. The appellant returned at about 8.00 - 8.30 p.m to take the rest of his belongings from the house. Along with the other items, taken earlier, the appellant had also taken the ration card in respect of the tharavadu house in which the name of PW1 was also included. When the appellant came home late in the evening, demand was made by PW1 and her husband to return the ration card which was not acceded to by

the appellant. In view of the above, the appellant and her husband followed the accused and repeatedly demanded that the ration card be returned. When they reached near the house of PW2, the accused voluntarily returned the card. PW1 was carrying a chimney light with her. While they were on their way, the appellant followed them and stabbed Mohanan on his back using scissors. On hearing the cry of Mohanan, PW2 and Karthyayani came to the scene. When PW1 tried to intervene, the appellant stabbed her on various parts of her body. She fell unconscious and according to her, she was shifted to the Thrissur District Hospital from where she was transferred to the Medical College Hospital, Thrissur. When PW1 was cross-examined, certain minor discrepancies were brought out which has no effect of discrediting her version. It has to be observed here that the main challenge is that the evidence of PW1

cannot be placed reliance of because of the fact of their close relationship. We shall advert to this aspect later.

8. The next witness examined by the prosecution was PW2 – Xaviour who was residing near to the scene of crime. According to the said witness, he heard a cry, while he was sitting inside his house and when he came out, he found the deceased as well as PW1 lying on the road. PW7 - Karthyayani was also seen standing there. According to the said witness, he had shifted the injured to the hospital. After he heard the news of Mohanan's death, he returned back home. The said witness did not state that he had seen the appellant in or around the scene of crime. However, he has corroborated the version of PW1 with regard to the latter part of the incident.

9. The prosecution also examined PW7, the wife of the accused, to corroborate the version of PW1. PW7 testified that the accused was her husband and that she had occasion to see the incident. She further stated that on 31.12.1996 at 8.30 pm, the accused came to her house where she was residing with the deceased as well as PW1. There was some altercation between the deceased as well as the appellant. PW7 also deposed that PW1 as well as her husband demanded the return of ration card from the appellant. They went after him requesting that the ration card be returned. PW7 also followed them. After sometime, she heard a hue and cry and when she reached the scene, she found PW1 as well as the deceased lying on the road. Several people assembled and according to the said witness, she did not see as to who had inflicted the injuries on the deceased as well as PW1. In her evidence, PW7

stated about the exchange of words between the appellant as well as the injured and the deceased. She narrated the hardship that she was subjected to by the appellant and asserted that the appellant behaved in a cruel manner towards her. The said witness in her evidence has also stated that the appellant was not very happy for the reason that the deceased as well as PW1 had shifted residence to the tharavadu house. In her cross examination she spoke about the bag of the appellant found lying in the scene of crime and stated that the appellant had left the scene after leaving his belongings. It is obvious that PW7 refused to speak about the presence of the appellant at the scene of crime. A close analysis of the evidence of PW7 would reveal that it was no one else but the appellant who was instrumental in inflicting the injuries on the body of the deceased as well as PW1.

10. In order to prove the injuries on the body of PW1 and the deceased, the prosecution examined PW8 – Dr.Jayaraj. Though the injured and the deceased were examined by Dr.K.Radhakrishnan, his presence could not be secured. PW8 deposed before Court that the injured was examined at 11.00 p.m on 31.12.1996 by Dr.K.Radhakrishnan and he had issued Ext.P6 wound certificate which reveals the following injuries:-

- (i). Incised wound 4 x 0.5 cm vertically placed 6 cm (L) of midline omentum protruding*
- (ii). Incised wound 4 x 0.5 cm obliquely placed 1 cm lateral to wound (i).*

11. In the same manner, PW1 – Santha was also examined. Ext.P7 wound certificate was issued at 11.05 pm, in which the following injuries are noted:-

- (i). Incised wound below (L) axilla 3 x 0.5 cm.*
- (ii). Incised wound 3 x 0.5 cm, 1 cm below wound (i).*
- (iii). Incised wound 3 x 0.25 cm medial aspect of (L) thigh*
- (iv). Incised wound 4 x 0.25 cm perineal region (L) side*

12. PW9 is the Associate Professor in Forensic Medicine of the Medical College Hospital who conducted the postmortem over the dead body of Mohanan. He has noted the following injuries:-

*Injuries (Ante mortem):*

- (i). Incised horizontal stab wound 3 x 1 cm on the front of left side of abdomen 14.5 cm below the nipple and 12 cm to the left of midline. The inner end was sharp and the outer end blunt. The wound was directed downwards, backwards and slightly outwards and entered the peritoneal cavity by cutting*

*the 9<sup>th</sup> rib 8cm outer from the costochondral junction. On its course it had cut the omentum and the anterial wall of the stomach near the greater curvature (1.5 x 1 cm). The depth of the wound which could be traced was 6 cm. The stomach contents were spilled to the peritoneal cavity with blood and clots. Approximately 800 ml of blood and clots could be recovered from the peritoneal cavity. The stomach also contained blood with clots.*

*(ii). Incised oblique stab wound 2.5 x 1 cm on the front of left side of abdomen 12.5 cm below the nipple and 9cm to the left of midline. The distance between injury no.(1) and (2) was 2.5 cm. The lower outer end was sharp and the outer end blunt. The wound was directed downwards, backwards and inwards and entered the peritoneal cavity and pierced the anterior stomach wall 1.5 x 1cm. The distance between the injury No.(1) and (2) on the stomach wall was 3 cm. The minimum possible depth was 5.3 cm. The stomach contents (spicy*

*nice ) were found spilled in the abdominal cavity.*

*(iii). Abrasion linear 2.3 x 1 cm on the left side of front of abdomen 1.5 cm to the left of umbilicus*

13. PW9 deposed that Mohanan had died due to injury sustained to the abdomen and also opined that the injury could be caused by scissors. He denied the defence suggestion that the injury sustained by the deceased could be caused by a fall on a sharp edged weapon.

14. The evidence let in by the prosecution by examining PW8 and PW9 would unquestionably corroborate the evidence of PW1, 2 and 7. It is evident that the injuries sustained by the deceased Mohanan were inflicted intentionally and also that they were of such a nature as to cause death in the ordinary course of nature. Though the injuries

sustained by PW1 are not major injuries, it probabilises her presence at the scene of crime and therefore, her evidence as an injured eye witness will have to be placed on a higher pedestal. No cogent reason or circumstance could be brought out by the defence to doubt the version of PW1.

15. It was PW10, the Sub Inspector of Wadakkancherry police station, who registered Ext.P9 crime on the basis of Ext.P1 statement given by PW1. PW11, the Circle Inspector of Wadakkacherry police station, took over investigation on 1.1.1997 and as stated earlier. He prepared the scene mahazar, conducted inquest over the dead body and seized the material objects which were found at the scene. It was PW12 who completed the investigation and laid the final report before the Court.

16. The question is whether the evidence let in by the prosecution through PW1, 2 and 7 coupled with the evidence of other witnesses could be relied on to support the finding of conviction passed by the learned Sessions Judge. We have very carefully evaluated the evidence of PW1. We find that the version of PW1 with regard to commencement, continuation and culmination of the incident is truthful and is supported by the evidence of PW7 to a great extent. It has come out in evidence that the appellant was not very happy because of the fact that PW1 and her husband had shifted to the tharavad house where the appellant was residing with PW7 – Karthyayani. The evidence of PW1 is corroborated in material particulars by PW7 as well. PW1 has also deposed in tune with Ext.P1 FI statement given by her within hours of the incident

and no material discrepancies, omissions or contradictions have been brought out by the defence to suspect her version before Court. Her evidence is supported by the medical evidence as well. Certain minor discrepancies like whether immediately prior to the incident she was walking hand-in-hand with the deceased, and with regard to the ration cards are projected by the learned counsel appearing for the appellant to contend that her evidence is not believable. It is also pointed out that being related, her evidence has to be eschewed from consideration. After having anxiously considered the evidence of PW1, we are of the considered view that her evidence find suitable corroboration from PW7 and also from PW2. The mere fact that she is related to the deceased is no reason to ignore her evidence.

17. It is by now well settled that the conviction

can be based on the testimony of a solitary witness even if such witness is related. In the instant case, in addition to being an eye witness, PW1 has also sustained serious injuries. This is corroborated by the wound certificate which was produced and marked as Ext.P7. PW1 was the person present at the scene of occurrence throughout and the contentions raised by the defence are not sufficient to dislodge the credibility of the version by the said witness. On an over all appreciation of the evidence of PW1, we are convinced that the trial Court has committed no error in placing absolute reliance on her evidence to convict the appellant. We also note that the evidence of PW1 is fully corroborated by the medical evidence as well. There is no reason why PW1 would leave out the actual culprit and implicate an innocent person when the person who was murdered is none other than her husband. The fact that PW1 had

sustained serious injuries at the place of occurrence lends support to her version.

18. It has been held by the Apex Court that the testimony of an injured witness finds a special status in law. Evidence given by an injured witness should be relied upon unless there are grounds for rejection on the basis of major contradiction and discrepancies therein. (See **Jarnail Singh v. State of Punjab (2009 (9) SCC 719)**, **Balraje v. State of Maharashtra (2010 (6) SCC 673)** and **Abdul Sayeed v. State of M.P (2010 (10) SCC 259)**).

19. The next contention raised by the learned counsel appearing for the appellant is that the absence of mention of the name of the appellant in the wound certificates of the deceased as well as PW1 which were produced and marked as Exts.P6 and

P7,would lend credence to her argument that the appellant was falsely implicated. It was also submitted that in Exts.P6 and P7 wound certificates, the weapon of offence is mentioned as knife instead of scissors as is now projected by the prosecution. It has to be borne in mind that the incident had occurred in the late hours of 31.12.1996 and fatal injuries were sustained by the deceased as well as PW1. From the nature of injury sustained by the deceased as well as PW1 it is apparent that the alleged cause of injury could only have been stated to the doctor by the persons who had taken them to the hospital. The mere fact that there occurred some discrepancies in the wound certificate with regard to the weapons used is no reason to doubt the whole prosecution case. We do not think that minor discrepancies in Exts.P6 and P7 wound certificates will have any relevance in the case on hand as we are

of the view that the sterling evidence of PW1 corroborated by the evidence of PW7 and the other facts and circumstances will go a long way in fixing the authorship of the crime on the appellant.

20. It was next contended by the learned counsel appearing for the appellant that the failure of the prosecution to trace out and produce the scissors, which was allegedly used by the appellant in inflicting the injuries on the deceased as well as PW1, will prove fatal. We cannot agree. In the case on hand, the incident had occurred at 9.10 p.m on 31.12.1996 and the charge was laid before Court on 7.1.1999. The appellant had absconded and could be arrested only on 7.1.2010 almost 13 years after the commission of the crime. That being the peculiar facts of the case, the appellant cannot now contend that the non recovery of scissors will prove fatal;

even otherwise, a Division Bench of this Court in **Jaison v. State of Kerala (2013 (4) KLJ 451)** has held as follows:-

*“Even if the weapon of offence could not be traced out or produced in a particular case that by itself is not a ground to acquit the accused, provided the complicity of the accused and the guilt of the accused are proved by other cogent evidence. When direct evidence in respect of the incident is available in the form of acceptable ocular evidence, failure to produce the weapon of offence or failure to produce evidence regarding recovery of the same by itself would not be sufficient to hold that the guilt of the accused is not proved. There may be instances where it is impossible to trace out the weapon of offence for various reasons. Sometimes, though the weapon of offence is produced, the evidence regarding seizure of the same may be shaky. The failure of the prosecution to adduce evidence regarding recovery of*

*the weapon may not as such be relevant when direct evidence is available as to the complicity of the accused, place of occurrence and the nature of injury sustained by the deceased.”*

Therefore, the contention of the appellant that the non recovery of the weapon can be regarded as a circumstance in favour of the defence cannot be sustained.

21. After having undertaken a complete and comprehensive appreciation of the vital features of the case and the entire evidence on record, with reference to the broad and reasonable probabilities of the case, we are of the view that the trial Court has rightly recorded the order of conviction and sentence. In the light of oral as well as the documentary evidence, it is established by the prosecution that the appellant had inflicted fatal

injuries on the body of the deceased Mohanan as well as PW1 as a result of which Mohanan had succumbed to the injuries. There is no reason for PW1 to falsely implicate the appellant in the crime. We do not feel that the conviction and sentence awarded by the learned Sessions Judge call for any interference by this Court in exercise of appellate powers. We find ourselves in complete agreement with the findings and the ultimate conclusion and resultant order of conviction passed by the learned Sessions Judge and we are of the view that no other view, except the one as arrived at by the trial Court, is possible in the instant case. There is absolutely no reason or justifiable ground to interfere in the judgment, conviction and sentence.

22. Accordingly, the Appeal is dismissed. The conviction and sentence are confirmed. The appellant

shall be entitled to set off as provided u/s 428 of the Code of Criminal Procedure for the period he has been in custody in this case, subject to the orders passed by the authority u/s 432/ 433 of the Code of Criminal Procedure.

**Sd/-**

**K.T. SANKARAN**  
**Judge**

**Sd/-**

**RAJA VIJAYARAGHAVAN.V.**  
**Judge**

MrCs/21/11/2015

//True copy//

P.S.To Judge