

(2012) 01 KL CK 0048
In the High Court Of Kerala
Case No : CRA. No. 1891 of 2007

Joy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 105, 27
Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2012) 01 KL CK 0048

Hon'ble Judges : R. Basant, J; P.Q. Barkath Ali, J

Bench : Division Bench

Advocate : Sajeev T.P, for the Appellant; Roy Thomas, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.

i) Did the court below err in accepting and acting upon the oral evidence of the eye witness PW10 ?

ii). Is the accused entitled to the benefit of any reasonable doubt in the totality of circumstances available in this case?

iii). Does the impugned judgment warrant appellate interference on any ground ?

1. These questions are raised in this appeal by the learned counsel for the appellant Advocate Sri.T.P.Sajeev before us.

2. The appellant has been found guilty, convicted and sentenced for the offence of patricide punishable u/s 302 IPC. He faces the sentence of imprisonment for life. No sentence of fine is seen imposed on the appellant.

3. The prosecution alleged that on 23.03.2003 at about 4 P.M. in front of the shop of PW3 the appellant, a young man aged 31 years inflicted multiple injuries

on his father aged 54 years with MO4 knife. This was allegedly done by him on account of disputes regarding taking away of a television set by his father from his house to the house of his sister PW7. The deceased succumbed to the injuries when he was being removed to the hospital.

4. Investigation commenced with Ext.P1 F.I.Statement lodged by PW1, the brother-in-law of the appellant(and the son-in-law of the deceased) before the police. Ext.P1(a) F.I.R was registered on the basis of Ext.P1. Investigation was completed by PW18, who filed final report/charge sheet before the learned Magistrate having jurisdiction. The learned Magistrate after observing all legal formalities committed the case to the court of Session. The learned Sessions Judge took cognizance of the offence alleged against the appellant. The appellant denied the charge framed against him by the learned Sessions Judge u/s 302 IPC. Thereupon the prosecution was directed to adduce evidence in support of its case. The prosecution examined PWs 1 to 18 and proved Exts. P1 to P16. Mos. 1 to 17 were also marked.

5. In the course of cross-examination of prosecution witnesses and when examined u/s 313 Cr.P.C, the accused denied all circumstances, which appeared in evidence and which were put to him. He took up a defence of total denial. He did not examine any defence witnesses. In the course of cross-examination of PW10, Ext.D1, a case diary contradiction was marked.

6. The learned Sessions Judge on an anxious consideration of all the relevant inputs came to the conclusion that the prosecution has succeeded in proving the offence punishable u/s 302 IPC against the appellant. Accordingly, the learned Sessions Judge proceeded to pass the impugned judgment.

7. Before us, the learned counsel for appellant and the learned Public Prosecutor have advanced their arguments. The learned counsel for the appellant contends that the learned Sessions Judge was totally wrong in placing reliance on the oral evidence of PW10. The learned Sessions Judge ought to have found that the oral evidence of PW10 cannot inspire confidence and that the totality of other circumstances are insufficient to persuade the court to place reliance on the oral evidence of PW10. At any rate, the appellant/accused is entitled for the benefit of doubt and deserves to be acquitted, argues the learned counsel.

8. The learned Public Prosecutor on the other hand contends that the learned Sessions Judge was eminently justified in placing reliance on the oral evidence of PW10. Notwithstanding the hostility of other close relatives and neighbours of the appellant who had witnessed the occurrence but had turned hostile to the prosecution, the learned Sessions Judge was absolutely justified in placing reliance on the oral evidence of PW10. In these circumstances, the impugned judgment does not warrant any interference, argues the learned Public Prosecutor.

9. We have considered all the relevant inputs. An appellate judgment is; is intended to be read and must be read in continuation of the judgment of the trial

court. In that view of the matter, we deem it unnecessary to re-narrate the oral and documentary evidence placed before the lower court. Suffice it to say that the oral evidence of PWs 1 to 18 and the contents of Exts.P1 to P16 and D1 have been read over to us exhaustively and in detail by the learned counsel. We have also been taken through the charge framed by the learned Sessions Judge against the appellant and the answers given by the accused when he was examined u/s 313 Cr.P.C. We shall refer to relevant materials, if necessary, specifically in the course of discussions in this judgment.

10. The prosecution wanted to examine many eye witnesses to the occurrence. PW1 the son-in-law of the deceased and brother-in-law of the appellant was the first witness sought to be examined. He was the first informant. Ext.P1. F.I. Statement was lodged by PW1 before the police. The incident had taken place at 4.P.M. on 23.03.2003. The F.I. Statement Ext.P1 was lodged before the police at 6.30 P.M. on 23.03.2003. The F.I.R. Ext.P1(a) was registered on the basis of Ext.P1. Exts.P1 and P1 (a) had reached the learned Magistrate at 10.30 A.M. on 24.03.2003. In Ext.P1 we find a fairly detailed and exhaustive narration of what PW1 perceived at the scene of the crime. Quite predictably and as anticipated perhaps, PW1 turned hostile to the prosecution. He did not support the prosecution case. He chose to cut his words in Ext.P1 and did not at all reveal any circumstances inconvenient to the appellant, though he was obliged to admit his signature in Ext.P1 F.I.Statement.

11. The prosecution has examined PWs 2 and 4 also as eye witnesses to the occurrence. PWs 2 and 4 also turned hostile to the prosecution. A reading of the evidence of PWs 1, 2 and 4 must convince the court about the true motivations of PWs 1, 2 and 4. They were only attempting to stone wall and not reveal the truth to the court. That conclusion appears to be absolutely certain from a careful reading of the oral evidence of PWs 1, 2 and 4. However, PW2 stated before court that he had reached the scene of the occurrence and that he had scene the deceased with injuries and the accused, the son of the deceased running away from the scene of the occurrence where his father had suffered injuries. The prosecution in the course of cross-examination of PWs 1, 2 and 4 had proved contradictions in Ext.P1 and also Ext.P2 and Ext.P3 case diary contradictions. Suffice it to say that the oral evidence of PWs 1, 2 and 4 eminently suggest that they are arrogantly refusing to co-operate with the sublime truth discovery process that was going on before court. The evidence of PWs1, 2 and 4 cannot in these circumstances deliver any advantage to the appellant or succeed in generating any doubt, suspicion or distrust against the other evidence available in the case.

12. The prosecution wanted to rely on the following pieces of evidence/ circumstances:

i). Deceased had succumbed to injuries suffered on his person with a weapon like MO4.

ii). Ocular account given by PWs 1, 2, 4 and 10.

iii). The corroboration afforded for the ocular account of witnesses from circumstances including medical evidence about injuries and the presence of blood stained weapon MO4 at the scene of the crime.

iv). The presence of blood stains on MOs.5 and 6 clothes worn by the accused at the time of occurrence.

v). The presence of accidental injuries on the accused, which are not explained by him at all.

13. About the motive for the occurrence, the prosecution has a very specific case. According to the prosecution, the deceased had purchased a television set. The same was kept in the house occupied by himself, his wife and his son, the accused. Because of certain disputes between the appellant and the deceased, the appellant wanted the television set to be taken away from his house and kept in the house of PW7, the sister of the accused. The sister of the accused(PW7) did not want to complicate matters and she did not permit the television set to be left in her house. The deceased therefore, left the television in the house of PW6, from where he allegedly removed the same on the morning of the occurrence.

14. Though the prosecution wanted to establish this motive by the evidence of PWs 6 and 7. PW7 turned hostile to the prosecution completely. PW6 did of course tender evidence in support of the prosecution case. We have some indications about this motive operating between the deceased and his son, the appellant from the evidence of PW10. Suffice it to say, we are of the opinion that the oral evidence of PWs 6, 7 and 10 read harmoniously and holistically is sufficient to clearly drive home the case of the prosecution that there was some strain in the relationship between the appellant and the deceased and the bone of contention was the manner in which deceased dealt with the television set in his house. Whether the motive set up is sufficient to prompt the indictee to commit a serious offence like murder cannot of course be authentically resolved by a court. We need only observe that sufficient motive/strain in the relationship did exist between the appellant and the deceased. As stated earlier PWs 1, 2 and 4, the eye witnesses on whom the prosecution wanted to place reliance turned hostile to the prosecution. The prosecution was hence left with the evidence of PW10 alone. The evidence of PW10 show that PW10 had witnessed the occurrence. The contents of Ext.P1 F.I.Statement in particular support that We have already referred to the prompt Ext.P1 F.I.Statement and Ext.P1(a) FIR, which reached the court promptly. In such Ext.P1 F.I. Statement, we find categoric statement that PW10 was present along with PW1 and had witnessed the occurrence. It is the evidence of PW10 that he was present along with PW1 at the scene of the crime. We are satisfied in these circumstances that crucial assurance of the oral evidence of PW10 is available from Ext.P1 F.I.Statement lodged by PW1, the signature in D1 is admitted by PW1.

15. We now come to the evidence of PW10. On broad probabilities the evidence of PW10 does not arouse any doubt, suspicion or distrust. We have gone through the cross-examination of PW10. Except a vague suggestion that he was not residing near the scene of the crime, nothing has been brought out in his evidence to doubt or suspect the evidence of PW10. PW10 had clearly explained that though he was residing near the scene of the crime at the time of occurrence, he had shifted his residence later and was not residing in that precise locality when he received summons to give evidence in the case. What is crucial to us is that not even a semblance of suggestion was there while PW10 was in the witness box that PW10 has any axe to grind against the appellant.

16. In the course of 313 examination of the appellant a belated attempt is made to suggest that PW10 has a monetary dispute with the appellant. That theory has no legs to stand on. Such a suggestion is not put to PW10 when he was in the witness stand. Such a suggestion is not shown to be reasonable or probable. That suggestion only deserves to be summarily rejected.

17. According to PW10, he along with PWs 1, 2, 4 and 5 was available in the house of PW5 who had a television set in his house. World cup cricket final was going on and all the friends and neighbours were remaining in front of the television set of PW5. It is then that a commotion was heard and all these persons rushed to the scene of occurrence. According to PW10 when he reached the scene of the crime, he saw the appellant inflicting one stab injury on the deceased; throwing away MO4 weapon and running away from the scene of the crime. He has not seen the other stab injuries suffered by the deceased. According to him, he had seen only the last part of the incident. He saw the deceased with injuries and the appellant running away from the scene throwing MO4 weapon at the scene of the crime.

18. The admitted version of PW1 in Ext.P1 supports this version of PW10 though PW1 had turned hostile to the prosecution completely. But he had admitted the signature in Ext.P1 and we do only note that the contents of Ext.P1 broadly support the oral evidence of PW10.

19. PW2 had of course turned hostile. But the evidence of PW2 also affords support and inspiration for the oral evidence of PW10. In as much as PW2, in tandem with the evidence of PW10 states that he saw the appellant running away from the scene where his father was remaining with injuries suffered by him. The conduct of a son running away from the scene of the crime where his father had suffered injuries eloquently supports the oral evidence of PW10 about the responsibility of the appellant for the injuries found on the deceased.

20. We now turn to the evidence of PW3, the incident had taken place in front of her shop. She did not tender any oral evidence against the appellant - in respect of any overtact by him. But her evidence broadly supports the case of the prosecution that an incident had taken place in front of her shop in which the deceased suffered the fatal injuries. To that extent, evidence of PW3 also

supports the oral evidence of PW10.

21. The evidence of PW10 is further supported by the medical evidence available about the injuries found on the person of the deceased. The real evidence of PW8 doctor and Ext.P5 postmortem certificate issued by him reveal that there were as many as 11 injuries found on the person of the deceased and all that injuries were injuries, which could be inflicted with a weapon like MO4. To that extent the medical evidence supports the oral evidence of PW10, though it is true that the perception of PW10 does not account for all the injuries found on the person of the deceased. That however is not crucial as even according to PW10, he had actually seen only the last part of the incident that had taken place.

22. MO4 weapon was available at the scene of the crime. The prosecution appears to have attempted to bring the evidence of recovery of MO4 from the scene of the crime u/s 27 of the Evidence Act. That attempt can only be non-productive. Even the witnesses had seen the appellant throwing the knife away at the scene and running away. The knife MO4 cannot be said to have been recovered on the basis of exclusive information which the appellant had parted with the investigating officer. But relevance lies in the fact that the availability of MO4 weapon at the scene of the crime supports and corroborates the oral evidence of PW10 that the appellant threw the weapon at the scene and went away from the scene of the crime. The presence of MO4 at the scene supports the oral evidence of PW10.

23. The prosecution further relies on the circumstance that the deceased had blood stains on clothes MOs.5 and 6 worn by him. No explanation whatsoever is offered for the presence of blood stains on the clothes MOs.5 and 6 of the accused. Ext.P13 clearly shows that the blood group of the deceased was "B" and the blood found on MOs.5 and 6 were also of "B" group. That unexplained circumstance is certainly relevant and crucial while considering the oral evidence of PW10.

24. The prosecution has a case that the appellant who had inflicted multiple injuries on the deceased, suffered accidental injuries in the course of the same incident. The prosecution relied on MO7 slips received from the possession of the appellant to indicate that after the incident he had gone to a hospital to take treatment. The doctor, who attended on the appellant in such hospital is surprisingly not examined. But that inadequacy notwithstanding, we find that PW9 was examined by the prosecution to prove Ext.P7 wound certificate. The evidence of PW9 reveals that the accused had accidental injuries suffered by him on his right arm. That again is consistent with the evidence of PW10 that the deceased had suffered the injuries at the hands of the appellant. The counsel offers no satisfactory explanation for such injuries on the person.

25. The learned counsel for the appellant laboriously built up an argument that the oral evidence of PW10 cannot be believed. Why is it that his evidence cannot be believed? We queried.

26. The learned counsel for appellant first of all contends that there is dichotomy between the evidence of PW10 and 5. According to the learned counsel for the appellant, PW5 had stated that all the friends were inside the room when they were watching the telecast of the cricket match whereas, PW10 stated before court that he was watching the telecast through window of the room where the T.V. set was placed. In this context, the learned counsel for the appellant relies on Ext.D1 contradiction also. The court below adverted to this and held the contradiction to be immaterial. The learned counsel for the appellant assails this conclusion of the court below. We have considered this contention in detail. We are in agreement of the learned Sessions Judge that the precise location of PW10 when he was watching the telecast is not of any crucial significance. It is not as though PW10 had made an alteration to suit any inconvenient circumstances that he was forced to explain. Whether he was inside the room or outside, he could easily have witnessed the occurrence. It is in that view of the matter, that we reckon the precise position of PW10 when he was watching the telecast whether inside the room or outside the room through the window, to be irrelevant. Either way his oral evidence can perfectly stand.

27. The learned counsel for the appellant argues that PW10's evidence should be discarded for the reason that he claims to have seen much more than PWs 1, 2 and 4 had allegedly seen. PWs 1, 2 and 4 are hostile witnesses. Their hostility is writ large on their foreheads. Exts.P1, P2 and P3 are the earlier statements made before the investigating officer. In those statements they had claimed that they had actually witnessed the occurrence. It is too much to insist that the evidence of a loyal truthful supporting witness like PW10 must be in tandem with the altered version of the hostile witnesses before court. We find no merit whatsoever in this contention.

28. It is then contended that PW10's evidence must be discarded for the reason that he has not seen the entire incident. He had seen only infliction of the last stab injury as per her evidence. PW10, we must note was watching the telecast of the cricket match. The evidence of all the witnesses suggest that they came to know of the incident only later when the mother of PW5 conveyed that information to them. That is the specific evidence of PW5. It was certainly not essential that PW10, who reached the scene on hearing the commotion should have reached in time to witness the entire incident. The fact that PW10 did not witness the entire incident and did not explain all the injuries on PW10 is according to us of no consequence at all.

29. On an anxious re-appreciation and re-evaluation of all the relevant circumstances, we are of the opinion that the court below has not committed any error warranting appellate interference in coming to the conclusion that the oral evidence of PW10 can be safely accepted. That conclusion according to us is eminently justified by the totality of circumstances, to which we have already adverted. The hostility of the some of the witnesses cannot in the circumstances of the case deliver any advantage to the appellant.

30. The learned counsel for the appellant argues that the true genesis of the incident has not been placed before the court. We are in agreement with the learned counsel for appellant that we do not have evidence about the precise commencement of the incident. On account of the hostility of relatives and neighbours, precise evidence about the commencement of the incident has not been made available to the court. But that by itself cannot generate any reasonable doubt. That injuries on the deceased were suffered by him at the hands of the appellant is established convincingly. There is no explanation or even attempt to suggest that any of the injuries of the deceased could have been suffered by him at the hands of any other. It is true that as many as 11 injuries are found on the person of the deceased. The court below has come to the conclusion that there must have been a scuffle. The conclusion that there must have been a scuffle is not synonymous with the conclusion that there must have been a mutual fight. Admittedly, the appellant did not suffer any injuries in the incident. He has no case that the deceased had indulged in any objectionable or contumacious conduct against him. u/s 105 of the Evidence Act a court is bound to presume absence of circumstances, which would bring the case within any one of the general exceptions to criminality under the Penal Code. The accused has not pleaded the right of private defence. He has no case that the incident took place in any other manner. Even though the accused does not raised the plea of private defence, this court would anxiously consider such plea, if such plea emanates from the totality of circumstances. But in this case there is no such case at all and there is no remote possibility even, of the appellant being a victim of aggression and of his father the deceased being the aggressor.

31. The injury on the accused has not been explained, it is contended. The injury on the accused has been proved satisfactorily by the evidence of PW9 and Ext.P7 certificate issued by PW9. Of course, the doctor at the Mount Mission Hospital where according to MO7, he had undergone treatment, has not been examined. The nature of the injury described in Ext.P7 cannot be lost sight of. The evidence of PW9 that the injury could not be an intentional injury inflicted on the appellant and that the injury is an accidental injury has got to be taken note of. Add to this the specific answer given by the appellant in the course of 313 examination that the injury was not suffered by him in any incident between him and his father and that the said injury was suffered by him in the course of his employment. That version is evidently not correct. The appellant has taken such a stand obviously to wriggle out the inconvenient situation consequent to his sustaining accidental injuries in the incident in which his father suffered injuries at his hands. The burden on the prosecution to explain injuries is only when the injury is a prominent injury and an eye witness ought to have perceived such suffering of injury by the indictee. If he were speaking the whole truth. In the total absence of a case for the accused that he suffered injuries at the hands of the deceased and in view of his contention that he suffered injuries elsewhere under different circumstances the contention cannot lie in the mouth of the defence now that there has been no proper explanation for the injury on the appellant.

The explanation offered by the prosecution that the insignificant injury on the accused must have been suffered by him accidentally in the course of the infliction of injuries on his father by him is eminently acceptable, in the facts and circumstances of the case.

32. There is no contention before us that the offence of murder is not made out. Considering the nature of injuries, the weapon of offence used and the part of the anatomy where the injuries were inflicted the offence of murder is clearly made out under Clause Thirdly of Section 300, if not under Clause Firstly. There are no circumstances revealed to suggest that the exception to Section 300 IPC can apply. The verdict of guilty, conviction and sentence u/s 302 IPC does not in these circumstances call for interference.

33. No other contentions are raised. We are satisfied that the appellant cannot succeed in this appeal. The appeal only deserves to be dismissed.

34. In the result, this appeal is dismissed.