

(2000) 12 SC CK 0066
In the Supreme Court Of India
Case No : Criminal Appeal No. 438 of 1999

K. Angara

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2001) 2 ACR 1091 : (2001) 3 JT 516 : (2001) 10 SCC 539 : (2001) 1 UC 630

Hon'ble Judges : R. P. Sethi, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In a case where a father is alleged to have killed his son, the sessions court convicted the father u/s 302 I.P.C. and sentenced him to imprisonment for life. A Division Bench of the High Court confirmed the conviction and sentence. The father has come up in appeal by special leave.

2. The case of the prosecution is that there was some differences of opinion between the father and son in regard to the family property. They were all living together in the same house, along with PW1, the wife of the deceased and PW2, the mother of the deceased. The appellant Angara and his son Sanjeeva (deceased) were masons by profession. On 20.12.93, the appellant returned home after his masonry work by about 5.00 p.m. The deceased was already at home. An altercation between the father and the son arose in the night during which appellant inflicted a cut injury on the abdomen of the deceased. He subsequently died of the injury.

3. Ext. P8 is the wound certificate prepared by PW-3 doctor who saw the deceased before his death. PW-4 is the doctor who conducted postmortem examination. He issued Ext. P9 report. The following are the injuries noted by PW 4 on the dead body of the deceased :

(1) There is an incised wound on the abdomen 4" above the umbilicus 6" x 3" with large and small intestine outside the wound. About 9" in length, small intestine is cut and separated. Laceration of the omentum with haematoid.

(2) An incised wound on the right hip joint 2" x 1-11/2" with muscle protruding outside the wound.

4. The trial court found difficulty when all the eyewitnesses cited by the prosecution turned hostile. Hence the trial Judge converted the case from one of direct evidence to one of circumstantial evidence. He enumerated the following circumstances as established by the prosecution, despite the turning of all material witnesses against the prosecution.

(1) That the deceased had sustained the injuries described in Exts. P8 and P9.

(2) That the deceased had sustained these injuries at about 6.30 p.m. inside his house.

(3) That in the house of the deceased at that point of time only the accused, the deceased, PW 1, PW 2 and the mother of PW 2 were present.

(4) That accused does not have a case that any other of the above persons had inflicted the injuries on the deceased.

(5) A little prior to the time when the deceased must have sustained the injuries, there was an exchange of words between the accused and the deceased about partition of the property.

(6) The injuries were inflicted with M01 weapon and the same was available before and after the incident in the house of the accused.

(7) The persons who rushed the deceased to the hospital stated to the doctor PW 3 (PW 3 recorded in Ext. P8) that the injuries on the deceased, were inflicted by the accused in his house.

(8) PW1 went to the police station on the same night and gave Ext. P1 FIR statement before PW 10.

(9) PW1 in court stated that he had made PW (a) and PW (b) statements to PW10 and that such statements are true and correct.

(10) PW1 in the course of investigation had made PW 1, PW 4 statements before PW12 and she admitted in court that the contents of Exts. P2 and P3 were true and correct.

(11) The accused did not accompany the deceased to the Kasaragod Hospital or later go to the Mangalore Hospital.

(12) The accused had not attended the cremation of the deceased after the body was brought home after postmortem examination.

5. Out of the above circumstances, circumstances Nos. 11 and 12 were not taken

by the trial court as links which could be used for the formation of a chain. Out of the remaining circumstances, circumstance No. 7 seems to be erroneously recorded as we noted from the evidence of PW 3 doctor that none of the inmates of the house had reported to him that the deceased was stabbed by the accused in this case.

6. Even assuming that all the aforesaid circumstances have been established, they would not form a chain to reach the conclusion that death of the deceased was at the hands of the accused. We may also observe that none among those circumstances has implicated the accused with the murder of his son.

7. Mr. K.M.K. Nair, learned Counsel for the State, realized the difficulty that the circumstances enumerated by the trial Judge cannot form the chain and hence he made a prowl into the evidence to find out whether there is any other circumstance with the help of which the conviction of the accused could be sustained. His endeavour did not yield any result as he could not find out a single circumstance which could inculcate the accused. All that he could find out was that prosecution was at a handicap as all the witnesses who were the kith and kin of the accused also have turned against prosecution. Such a handicap of the prosecution cannot be counted as a disadvantage for the accused.

8. In view of the paucity of evidence we are unable to confirm the conviction and sentence passed on the accused. Hence we allow this appeal and set aside the conviction and sentence passed on the appellant. We acquit him and direct him to be set at liberty forthwith unless he is required in any other case.