

(2012) 01 KL CK 0080
In the High Court Of Kerala
Case No : CRA. No. 2057 of 2007

Mathachan @ Mathai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 293, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 300, 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2012) 01 KL CK 0080

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

Bench : Division Bench

Advocate : Grashious Kuriakose, for the Appellant; Roy Thomas, Public
Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.

- i) Has the prosecution succeeded in proving satisfactorily all circumstances relied on by it against the appellant?
- ii) Do the circumstances convincingly point to the culpability of the appellant?
- iii) Is the appellant entitled to the benefit of any reasonable doubt?

1. These questions are raised before us by Sri.Grashious Kuriakose, the learned senior counsel for the appellant, in this appeal.

2. The appellant Mathachan @ Mathai, a person aged 52 years on the date of commission of offence, has been found guilty, convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- and in default to undergo rigorous imprisonment for a further period of two years u/s 302 IPC. He was found not guilty and acquitted of the charge raised against him u/s 3(2)(v) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The prosecution alleged that the appellant on account of animosity towards deceased Kariyan, a person aged about 50 years on the date of occurrence (a neighbour of the appellant), on the court yard of the house of the deceased committed his murder by stabbing him with MO1 (hatchet a rough translation). The alleged incident occurred on the night of 12-13/4/2004. Investigation commenced with Ext.P2 FIS lodged by PW2, the wife of the deceased. The investigation was completed and final report was filed by PW13, the Investigating Officer. Learned Magistrate before whom the final report was filed, after complying with all legal formalities, committed the case to the Court of Session. The learned Sessions Judge took cognizance of the offence alleged against the appellant. Appellant denied the charges levelled against him. Thereupon, prosecution examined PWs.1 to 13 and proved Exts.P1 to P13. MOs.1 to 8 were marked.

4. The appellant in the course of cross-examination of prosecution witnesses and when examined u/s 313 Cr.P.C. took up a defence of total denial. No defence evidence was adduced by the appellant.

5. The learned Sessions Judge on an anxious consideration of all the relevant circumstances, came to the conclusion that the prosecution has succeeded in establishing the circumstances relied on by the prosecution. It was further found by the learned Sessions Judge that the circumstances convincingly point to the guilt of the appellant. Accordingly, the learned Sessions Judge proceeded to pass the impugned judgment.

6. Before us the learned counsel for the appellant and the learned Public Prosecutor have advanced their arguments. The learned counsel for the appellant contends that the circumstances have not been established satisfactorily and the proved circumstances are not sufficient to safely point to the guilt of the appellant. At any rate, other possibilities galore and the appellant ought to have been conceded the benefit of doubt. In these circumstances, the appeal may be allowed and the appellant may be acquitted, contends the learned senior counsel.

7. The learned Prosecutor, on the other hand, contends that the prosecution has successfully established all circumstances relied on by it. The cumulative effect of all circumstances convincingly point to the guilt of the appellant beyond any doubt. In these circumstances, the impugned verdict of guilty, conviction and sentence against the appellant do not call for interference, contends the learned Prosecutor.

8. We have concerned all relevant inputs. An appellate judgment is and ought to 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 court below in this appellate judgment. Suffice it to say that the learned counsel has read to us in detail the oral evidence of PWs.1 to 13 and contents of Exts.P1 to P13. Our attention is also brought to the charges framed

against the appellant by the learned Sessions Judge and the answers given by the appellant when he was examined u/s 313 Cr.P.C.

9. It may be apposite to remind ourselves of the law relating to the burden on the prosecution in a case resting entirely on circumstantial evidence. It is trite that the prosecution has to discharge its heavy burden to prove the guilt against the indictee. The circumstances relied on by the prosecution must be firmly and satisfactorily established beyond doubt. The circumstances must constitute strong links and the strong links together must constitute a strong chain. The chain of circumstances must point clinchingly and unerringly to the guilt of the indictee - to the exclusion of every reasonable hypothesis of innocence of the indictee.

10. We do not think it necessary to refer to precedents in support of the above proposition. The law is well settled to require or warrant reference to any precedent. We have only reminded us of the law before we proceed to consider the facts scenario in this case.

11. We shall initially attempt to narrate all the circumstances relied on by the prosecution. We shall thereupon consider whether the circumstances have been satisfactorily established by the prosecution. Subsequently we shall consider whether the above circumstances do point safely and unerringly to the guilt of the appellant to the exclusion of every reasonable hypothesis of innocence of the appellant.

12. The prosecution relies on the following circumstances:

1) Deceased died of homicidal injuries at the courtyard of his house on the night of 12- 13/4/2004 inflicted with a weapon like MO1.

2) That there was strain in the relationship between the appellant and the deceased consequent to demand for wages by the appellant and that the appellant had threatened the deceased that he shall do away with the deceased after he returns from the marriage of his niece.

3) MO1 (), which is the work weapon of the appellant, was found available near the dead body on the courtyard of the house of the deceased.

4) On the morning of 13-4-2004 the appellant had gone to the house of PW5. He had left MOs.5 and 7, his wearing apparel, there. He had borrowed dress from PW5 and had gone away from the house of PW5.

5) MO5 was found to be bloodstained. The blood on MO5 was found to be the same blood group as that of the deceased.

6) The appellant was available at his house or in the neighbourhood on 13-4-2004 when the deceased was found dead on his courtyard.

13. We shall now proceed to consider whether these circumstances have been proved satisfactorily.

14. Circumstance No. 1: We have the evidence of PW9 doctor and Ext.P6 postmortem certificate issued by him to throw light on the cause of death of the deceased. A careful perusal of Ext.P6 and the oral evidence of PW9 leaves no trace of doubt in the mind of the court that the deceased had succumbed to homicidal injuries found on his person when he was lying dead on his courtyard. The evidence of PW9 further confirms that the incised injuries found on the person of the deceased could all have been suffered with a weapon like MO1. He succumbed to such fatal injuries suffered with the weapon like MO1, it is evident. We are in these circumstances satisfied that the prosecution has eminently succeeded in establishing beyond doubt that the deceased succumbed to homicidal injuries suffered by him with a weapon like MO1 on the courtyard of his house.

15. Circumstance No. 2: The prosecution relies on the circumstance that there was strained relationship between the appellant and the deceased. In support of this the prosecution relies on the evidence of PWs.2 to 4. PWs 2 to 4, we note at the outset, are the wife, niece and son respectively of the deceased. Their evidence, read heavily, naturally and harmoniously suggest unmistakably that there was strain in the relationship between the appellant and the deceased. In support of this strain in the relationship the prosecution heavily relies on Ext.P2 F.I.S lodged by PW2, the wife of the deceased, at 9.30 a.m. on 13-4-2004. The deceased was found lying dead on his courtyard on the morning of 13-4-2004. Promptly the F.I.S. is seen lodged by PW2 at 9.30 a.m. The contents of Ext.P2 go a long way to assure the court that PW2's statement on oath now that there was a strain in the relationship between the appellant and the deceased can safely be accepted. To afford assurance for the court about the genuineness and spontaneity of Ext.P2 FIS and Ext.P2(a) FIR we have convincing data that Ext.P2 and Ext.P2 (a) had reached the local Magistrate at 2.40 p.m. on 13-4-2004. A reading of Ext.P2 goes miles to assure the court that oral evidence of PWs.2 to 4 about the strain in the relationship between the appellant and the deceased can safely be accepted. The question is not whether the alleged strain/motive was sufficient to prompt the appellant to commit the murder of the deceased. We rely on the evidence of PWs.2 to 4, duly supported by Ext.P1, only come to the conclusion that there was strain in the relationship between the appellant and the deceased. PW2 in Ext.P1 had clearly stated that there was a quarrel two days earlier in respect of demand of wages by the deceased to the appellant and that it was she and her children who saved the deceased in such quarrel. PW4 is the son of the deceased and PW3 is the niece of the deceased. Both of them along with PW2 had tendered evidence about such strain in the relation.

16. The learned counsel for the appellant submits that it is not a case where the prosecution should have rested content with the evidence of interested PWs.2 to 4. The learned counsel alertly points out that PW4 admitted that an independent witness Shijo was also witness to that occurrence which took place two days earlier. Of course, the prosecution should have examined the said Shijo. That Shijo, we are informed, has been examined as PW7. Neither the prosecution nor

the defence thought it necessary to elicit any information from the said Shijo about the alleged incident which had taken place two days earlier - i.e., the dispute regarding wages payable to the deceased by the appellant. We are not satisfied at all that the evidence of PWs.2 to 4 on this aspect of strain in the relationship between the appellant and the deceased deserves to be thrown overboard as squandered for the reason that the prosecution should have adduced independent evidence also in support of the theory of such strain in the relationship between the appellant and the deceased.

17. The learned counsel for the appellant further points out that even going by the evidence of PWs.2 to 4 the deceased was a quarrelsome person. The evidence of PW2 suggests that on the night in question she did not remain in the house along with the deceased as there were differences and quarrels between the deceased and her. Reliance was also placed on the circumstance that the deceased used to consume alcohol and pick up quarrels. Suffice it to say that it was not at all been suggested that there is any motive for any other against the deceased. We are in these circumstances satisfied that the worth and value of the evidence of PWs.2 to 4 about the strain in the relationship between the deceased and the appellant is not lost by the non-examination of the independent witnesses or by the vague and non specific theory that others may also have had animus against the deceased.

18. The learned counsel for the appellant further submits that the possibility of PWs.2 to 4 themselves having entertained animus against the deceased cannot be ruled out. In this context, we revisit the cross-examination of PwW.2 to 4. There is not the semblance of even a remote suggestion that PWs.2 to 4 could in any way have been responsible for the death of the deceased. Criminal trial it has often been repeated cannot remain merely in the domain of plight of fantasy. In the total absence of any attempt during the cross-examination of PWs.2 to 4, we find no merit in the contention that PWs.2 to 4 themselves may have had motive against the deceased and they may be tendering evidence to cover up their guilt/culpability for the death of the deceased. That contention, according to us, deserves only to be rejected summarily. We take the view that the second circumstance has also been established satisfactorily by the prosecution.

19. Circumstance No. 3: The prosecution relies on the circumstance that the MO1 weapon (work tool) was found available near the dead body of the deceased on the courtyard of the deceased. MO1 was blood-stained. There can be no semblance of doubt after the evidence of PW9 and Ext.P6 that MO1 was the weapon used for the commission of the offence. That MO1 belonging to the appellant was available near the dead body is certainly a crucially relevant circumstance the court must consider, if established. The learned counsel for the appellant contends that there is no evidence to suggest that MO1 belonged to the appellant. Here again the evidence of PWs.2 to 4 assume significance. The deceased is a butcher by profession. There is no dispute on that aspect, though it is also suggested that he need to engage himself in the culpable and

contumacious activity of distillation of illicit liquor. PWs.2 to 4 had stated clearly that MO1 is the work tool/weapon of the deceased. According to them, they have seen the accused carrying MO1 when he goes to work and returns. PWs.2 to 4 without any dispute are neighbours of the accused. Their identification of MO1 is not found to be tainted by any improbability or incongruity/contradiction. PWs.2 to 4 in one voice asserted that MO1 was the weapon carried usually by the appellant. Of course, when subjected to cross-examination all of them had to say that they have not perceived any particular mark or identification on MO1 to assert that MO1 was the weapon of the appellant. That cannot be of any crucial significance. The evidence of PWs.2 to 4 on this aspect is found to be eminently inspiring. They have stated how they have been able to perceive that MO1 was the weapon of the appellant. He is a butcher. That the weapon is one used by butchers. He was found carrying the weapon usually. PW2, 50 years old wife of the deceased, is a woman belonging to the Paniya Community. Her inability to give a cogent reasons as to how and why she is identifying MO1 to be that of the appellant cannot be blown out of proportion. Evidence of PWs.2 to 4 who were subjected to severe cross-examination had stated clearly that MO1 was the weapon which the appellant was always using for his work. We are satisfied in these circumstances that this circumstance - that MO1 was the work tool/hatchet of the appellant has been successfully proved. It has also been proved that MO1 was found available at the scene of the crime. It deserves to be mentioned that PW2 in Ext.P2 FIS has categorically asserted that MO1 weapon, used by the appellant, was available near the dead body. Not a trace of doubt is left in our mind about the acceptability of the third circumstance relied on by the prosecution.

20. Circumstance No. 4: The prosecution relied on the circumstance that on 13-4-2004 (the date prior to Vishu 2004) the appellant gone to the house of PW5 who is related to the appellant. There he allegedly left his wearing apparel (MOs.5 to 7). He borrowed clothes from PW5. He left MOs.5 to 7 there with instruction to wash them. He then went out of house of PW5. This is the evidence tendered by PW5. PW5 of course turned hostile. But the hostility of PW5 is quite understandable. Confronted with the statement before the Investigating Officer he readily agreed that such statements have been made by him and the statements were true. We do not in these circumstances find any reason to doubt or suspect the evidence of PW5 which incriminates his relative, the appellant herein. The manner in which the information was elicited out of PW5 in the course of his cross-examination eloquently assures that it is safe to rely on such evidence of PW5 against the appellant. A careful reading of the evidence of PW5 tendered before the court convinces the court that no amount of doubt can be aroused on the basis of such evidence of PW5 who was extremely reluctant to part with any information inconvenient to the appellant. The evidence of PW5 that MOs.5 and 7 clothes belonging to the appellant were left by the appellant at his residence on 13-4-2004 can safely be accepted. The prosecution has succeeded in proving this fourth circumstance also.

21. Circumstance No. 5: The prosecution relies on the fact that the appellant was arrested on the evening of 13-4-2004 i.e., at 23.55 on 13-4-2004 at Mananthavady Private Bus Stand. We have the evidence of PW12 on this aspect. That evidence is supported by Ext.P9 arrest memo also. According to the prosecution, after arrest, when interrogated, the appellant had furnished information about the concealment of MOs.5 and 7, clothes worn by him, in the house of PW5. The appellant allegedly led the police to the house of PW5. There, in the presence of PW5 and his brother (PW6) MOs.5 and 7 were recovered under Ext.P3 seizure mahazar by PW12. MO5 was found to be bloodstained. It was sent for chemical examination and it was reported that the bloodstains found on MO5 was of blood group A, which was the blood group of the deceased as ascertained from the examination of blood on his clothes MOs.2 to 4. Such blood was also available on MO1.

22. It is unnecessary to embark on a detailed discussion as to whether the recovery of MOs. 5 and 7 can be held to be recovered u/s 27 of the Evidence Act. What is of relevance is that after the arrest of the appellant PW12 went to the house of PW5 and recovered MOs.5 and 7 under Ext.P3. PW5, when questioned, revealed to PW12 that MOs.5 and 7 were left by the appellant on the morning of 13-4-2004 when he came there. He changed his dress and went away. PW12 found MO5 to be bloodstained. He sent the same under Exts.P11 and P12 to the Chemical Examiner. Ext.P13 report of the Chemical Examiner confirms that MO1 weapon, MOs.2 to 4 clothes of the deceased and MO5 shirt of the appellant had bloodstains, which belong to the blood group A.

23. The learned counsel for the appellant strenuously contends first of all that the evidence of PWs.5 and 6 cannot be accepted. We have gone through the evidence of PWs.5 and 6 carefully. They had turned hostile to the prosecution. They had made every effort to ensure that they do not reveal any information, if possible, against the appellant. Both of them have categorically admitted their signatures in Ext.P3. The perception or sanctity for oath among the polity in our system is far from satisfactory. Criminal courts in India do frequently come across the sad spectacle of alleged independent witnesses turning hostile to the prosecution with impunity. Their hostility cannot place any real fetter on the mission of the court to ascertain truth. It is in this context that we look at the evidence of PW12 Investigating Officer. He is an independent witness. He is an officer of the State. His evidence is eminently corroborated by the contents of the contemporaneous seizure mahazar Ext.P3 signatures in which is unambiguously admitted by PWs.5 and 6. Not a semblance of doubt is aroused in our mind about the fact of recovery of MOs.5 and 7 under Ext.P3 from the house of PW5 in the presence of Pws.5 and 6 by PW12.

24. The learned counsel for the appellant then contends that it is extremely artificial, unnatural and improbable that MO5 shirt would have contained blood marks, when MO7 dothi worn by the appellant did not have any blood marks. The counsel builds up an argument of improbability from the circumstance that

MO5 alone and not MO7 was sent to the Expert by the Investigating Officer. We find no merit in this contention. When PW12 prepared Ext.P3 mahazar and seized MOs.5 and 7 he did find blood marks prominently on MO5 and did not see in MO7. He, therefore, chose to send only MO5 to the Expert for examination. The fact that MO7 was not sent for examination may be unsatisfactory but certainly that cannot destroy the evidence regarding bloodstained nature of MO5. A more alert Investigating Officer could certainly have sent both MOs.5 and 7 to the Expert notwithstanding the fact that in his naked eye perception he did not find any blood marks on MO7. The argument that MO5 could not have been bloodstained as MO7 is not found to be bloodstained is certainly not an argument that can safely be accepted. That argument cannot certainly militate against the efficacy and usefulness of the evidence that MO5 would found to be bloodstained.

25. The learned counsel for the appellant then contends that the data available that MO5 contained bloodstain of A group cannot be accepted. He further argues that the data that MOs.1 to 4 also contained bloodstains of group A cannot be accepted. The prosecution has chosen to prove this facts by production of Ext.P13. It is trite that Ext.P13 report of the Chemical Examiner is admissible u/s 293 Cr.P.C. It was marked through the Investigating Officer. It shows in detail the tests that have been conducted by the Expert. Information was given in respect of five items about the extent of bloodstains, colour and depth of blood stain, results of Takayama test, results of guaiacum test and result of precipitin test. Opinion was given that in items 1 to 5 (i.e., Mos.1 to 5) human blood of A group was detected. When the Investigating Officer (PW13) proved and marked Ext.P13, we find no challenge whatsoever raised against the marking of Ext.P13. The Chemical Examiner was not called to the witness stand by the appellant. In these circumstances, we are of the opinion that the opinion given in Ext.P13 can safely be accepted. The identification of human bloodstains present in MOs.1 to 5 as belonging to A group in Et.P13 can also be accepted safely. The specific opinion that the bloodstains present in MO5 is of the same group as the bloodstains found in MOs.1 to 4 can also be safely accepted.

26. The learned counsel for the appellant relying on opinion expressed in texts contents to able to build up an argument that the conclusion of the presence of human blood and the group to which the human blood belongs, cannot be safely be accepted. We find no merit in this contention at all. The document Ext.P13 has been properly admitted. Data and the conclusion are given in detail. If the appellant wanted to challenge Ext.P13 (data or collection), it was certainly for the appellant to have taken steps to challenge the same. We have no indications of any challenge raised in the course of trial against Ext.P13. The attempt now made cannot certainly be accepted. We are in these circumstances of the opinion that the fifth circumstance has also been established beyond doubt by the prosecution.

27. Circumstance No. 6: We now come to the last instance that the appellant was not available at his house or in the neighbourhood when word went around that

the deceased had been killed and his dead body was lying in the courtyard. We have the evidence of PW12 that the house of the appellant was found closed and the police suspected that the appellant was hiding inside the house. They conducted search of the house, but the appellant was not available. The learned counsel for the appellant argues that even going by the evidence of PWs.2 to 4, the appellant had gone to attend the marriage of his niece a couple of days prior to 13-4-2004 and the absence of the appellant on that morning at the scene of the crime is not a circumstance against the appellant or in favour of the prosecution. It is in fact a circumstance in favour of the appellant which suggests that the appellant was not available at the scene of the crime at the time when the murder of the deceased could have taken place. The argument appears to be impressive at the first blush but we have got to take note of the evidence of PW5 that the appellant was available there. Though the house of PW5 is in a different village going by description, nothing is there to show that the house of PW5 is far away from the house of the deceased and that on 13-4-2004 the appellant would not have been available near the scene of the crime. We must also note that MO1 weapon of the appellant was available at the scene. Of course, we do accept that circumstance No. 6 may not by itself be conclusive but the fact remains that this circumstance has been proved - nay admitted, that the appellant was not available in the locality when word came to know that the deceased was lying dead on his courtyard. We hasten to observe that the appellant is none other than the next door neighbour of the deceased and this is clear from Ext.P4 inquest report and Ext.P7 scene plan prepared by the Village Assistant (PW10). That the appellant had not visited PWs.2 to 4 or gone to see the dead body of the deceased is certainly a circumstance, which is relevant, though it may not be conclusive in itself. Circumstance No. 6 has also thus been established.

28. The next question to be considered is about the safe conclusions that are deducible from the circumstances proved. In this context, we must note that each circumstance may be capable of manifold explanations. It is not the law that each circumstance must invariably point to the guilt of the appellant and the guilt of the appellant alone. Each circumstance may throw up various possibilities and probabilities but the court is to consider cumulative effect of all circumstances and then to a conclusion whether any reasonable hypothesis consistent with the innocence of the appellant is thrown up. It is in this context, we have to consider all the circumstances established.

29. That the deceased died on account of homicidal injuries suffered by him with a weapon like MO1 in his courtyard of the night of 12-13/4/2004 is established. The strain in the relationship of the appellant and the deceased and the threats that were hurled at the deceased by the appellant two days earlier is also established. That MO1 which the appellant normally used to carry with him as his work tool was available at the scene of the crime near the dead body is also established. That the appellant went to the house of PW5, left MOs.5 and 7 there, obtained borrowed clothes and went away from the house of PW5 in the morning of 13-4-2004 is also clearly established. That MO5 was found to be

bloodstained and the bloodstains were the same as those found on MOs.1 to 4 is established convincingly. That the appellant did not visit his neighbour who was no more is also established convincingly by the prosecution. The appellant does not offer any explanation for any of these contentions.

30. These circumstances constitute sufficient material to safely infer the guilt of the appellant, do they throw up any other possibilities consistent with the innocence of the appellant? This question remains to be considered.

31. The deceased had injuries other than the injuries which were inflicted with MO1 on his person and that is clear from the oral evidence of PW9 and Ext.P6. The learned counsel for the appellant argues that the deceased may have suffered injuries at the hands of not one person but by plurality of persons. This argument is built on the plurality of the injuries suffered by the deceased and the fact that some of the injuries were not suffered with a weapon like MO1. According to us, that circumstance does not open any other possibilities. The deceased may not have remained like deadwood and received the injuries. He must certainly have resisted the attempt of assault on him and the other injuries found on his person could certainly have been suffered in the course of such an incident when the body came into contact with hard and rough substances. The pluralities of injuries on the deceased does not at all generate any doubt against the case of the prosecution.

32. The presence of two lamps (MO6 series) and MO8 iron road () is also relied on. According to us, those cannot in any way throw any doubt or suspicion against the case of the prosecution. MO8 may have been present there even earlier and there is nothing to even remotely suggest that the said weapon was used as a weapon for offence by the victim or the assailants. The presence of MO6 lamps does not also succeed in generating any reasonable doubt.

33. We have already taken note of the improbability of the theory that the deceased may have suffered injuries at the hands of his relatives. We have also adverted to the improbability of the deceased being the victim of the ire of any other person. Absolute certainty is not to be expected in the realm of human affairs. The evidence, according to us, with reasonable certainty and beyond reasonable doubt establishes the guilt of the appellant. We are unable to agree that the appellant is entitled to the benefit of any doubt.

34. There is no contention for the appellant that the incident took place in any other manner or that he is entitled to any right of private defence. There is no contention also that his case ought to be brought within the sweep of any of the exceptions u/s 300 IPC. Any person who had inflicted the fatal injuries on the deceased as can be sustained from Ext.P6 must certainly have intended to cause the death of the deceased. At any rate, the intentional injuries inflicted are seen to be sufficient in the ordinary course of nature to cause death. Under clause thirdly of section 300 IPC (if not under clause firstly of section 300 IPC) the offence of murder defined u/s 300 IPC punishable u/s 302 IPC has been clearly

established against the appellant.

35. No other contentions are raised. We are satisfied in these circumstances that this appeal cannot succeed.

36. In the result, this appeal is dismissed and the impugned judgment is upheld.