

(2013) 01 KL CK 0120

In the High Court Of Kerala

Case No : Criminal A. No. 2038 of 2008 (D)

Muthu Nayakam, C. No. 3096, Central Prison, Trivandrum

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 01 KL CK 0120

Hon'ble Judges : M.L. Joseph Francis, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : M.R. Sarin Panicker and Sri K.J. Latheesh Kumar, for the Appellant;
Gikku Jacob, Public Prosecutor, for the Respondent

Judgement

K.T. Sankaran, J.—The appellant, the accused in Sessions Case No. 713 of 2005 on the file of the Additional Sessions Judge, Fast Track Court (Adhoc) No. IV, Thiruvananthapuram, was convicted u/s 302 of the Indian Penal Code and he was sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months. The appellant/accused was arrested on 18.12.2002 and he is in jail. He challenges the conviction and sentence. The appellant/accused was working as a rubber tapper in the rubber plantation belonging to Thulaseedas (CW1). Thulaseedas passed away subsequently and he was not examined as a witness in the case. Manikantan Nair, the deceased, was working as the watchman of the house in the rubber plantation belonging to Thulaseedas. The deceased used to go to that house during night and he used to return in the morning. On 15.12.2002, the deceased did not go to the house where he was working as watchman during night. He went to that house only in the early hours on 16.12.2002. By about 5.45 AM., he purchased milk. By about 9.45 AM, Thulaseedas came to the house. He found the deceased lying on the floor of the living room of the house. Thulaseedas went to the rubber plantation. By about 10.30 AM, the appellant/accused, who was working as a rubber tapper in the

rubber plantation, came to the place. Thulaseedas noticed that blood was oozing out from the room and he asked the accused to find out the reason. The accused found that Manikantan Nair was dead. He reported the matter to Thulaseedas. Information was given to the police. PW23, Sub Inspector of Police, Malayinkeezh Police Station, recorded Ext.P7(a) First Information Statement given by Thulaseedas and registered Ext.P7 First Information Report as Crime No. 480 of 2002 of Malayinkeezh Police Station. PW26, the Circle Inspector of Police, Kattakkada, conducted investigation. The investigation was completed by PW24, the then Circle Inspector of Police, Kattakkada and he laid the charge.

2. The prosecution examined PW1 to PW27, marked Exts.P1 to P14 and MOs. 1 to 9.

3. The case of the prosecution is that the accused had enmity towards the deceased Manikantan Nair as the accused thought that Manikantan Nair would report the theft of rubber sheets by the accused and the irregularities committed by him in the work to Thulaseedas and therefore, the accused murdered Manikantan Nair on 16.12.2002. It is alleged by the prosecution that the accused had beaten Manikantan Nair with MO6 wooden reaper near the courtyard of the house of Thulaseedas, dragged the body to the living room of the house and left it there. There is no eye witness to the incident. PW1 is the wife and PW2 is the son of the deceased. PW3 to PW13 are independent witnesses. PW1 to PW13 did not speak of any overt act on the part of the accused. They had no occasion to see any incident which caused the death of the deceased. However, it is claimed by the prosecution that various circumstances were brought out in the evidence of PW1 to PW13 which would lead to the inference that the accused committed the offence. The prosecution also relied on the recovery of MOs. 6, 7 and 8 consequent on the confession statement made by the accused to PW26 (Circle Inspector of Police, Kattakkada - the investigating officer) while the accused was in police custody.

4. PW1, the wife of the deceased stated in evidence that the accused used to quarrel with her husband. PW1 also stated that the accused used to stealthily remove the rubber latex from the rubber plantation and the deceased used to question it. It is also stated by her in evidence that the accused told the deceased that the latter need not continue to work as watchman and he would not manage the affairs for long. PW2, the son of the deceased, stated that his father used to say about the irregularities committed by the accused. PW3, who runs a barber shop, stated that two weeks before the incident he saw the accused and the deceased having difference of opinion on certain matters. PW4 did not state any fact relevant for the case. PW5 stated that he used to manure the rubber trees in the plantation of Thulaseedas and the accused had once scolded him stating that manuring was not properly done by PW5. PW6, a teacher, stated that the accused was working in his rubber plantation for quite some time and that he had no difference of opinion with the accused. PW7 is a worker engaged in the plantation of Thulaseedas and she had gone to the place

on the date of incident at 7.30 AM and left the place by 10.30 AM. She came to know of the death of Manikantan Nair only by about 12 noon. PW8 stated in evidence that he supplied milk to the deceased between 5.30 and 5.45 AM on 16.12.2002. PW9 who knows Thulaseedas, the deceased and the accused, saw the accused near the place of incident by about 5.45 PM on the date of the incident. PW10, who runs a shop, saw the accused near the temple pond at about 6 AM on the date of incident. He stated in evidence that the accused washed his lungy and shirt in the temple pond and went to the temple. PW11, a retired driver of KSRTC, stated that the accused informed him about the death of Manikantan Nair by about 11 AM on 16.12.2002. He also stated that the accused said that he was giving information as directed by Thulaseedas. PW12, who is a neighbour knows the accused but he does not know the deceased. PW12 only stated that about 2 to 3 years back the accused pelted stones at his children. PW13 to PW16 are witnesses to the inquest report. PW17, the brother of the deceased, stated that he received the dead body after postmortem.

5. The prosecution alleged that the accused, while in police custody, made a confession statement and the accused was taken to the place and he took out MO6 to MO8 from a place near the house of Thulaseedas. PW21, the Scientific Assistant in Biology Division of the Forensic Science Laboratory, stated in Ext.P6 report that the material objects MOs. 1 to 3, 6, 7 and 8 contained blood stains of "A" group. It is established in the case that the blood group of the deceased was "A" Rh positive. The presence of blood stains in MO6 to MO8 and the group of the same being "A" group is relied on by the prosecution to contend that the blood stains found on MO6 to MO8 is that of the deceased. The investigating agency has not ascertained the blood group of the accused. The accused is a rubber tapper by profession. Presence of blood stains in his dress is not an uncommon phenomenon. The FSL report by itself is not a ground to hold that the blood stains found on MO7 and MO8 is that of the blood of the deceased. It is also not established by the prosecution by any evidence that MO6 stick was used by the accused for commission of the offence. As held in *Sk. Yusuf Vs. State of West Bengal*, , no inference can be drawn against the accused only on the discovery of a weapon pursuant to the disclosure made by the accused to the police officer, if there is no evidence connecting the weapon with the crime alleged to have been committed by him. It is true that PW20 who conducted the postmortem examination stated in evidence that injury Nos. 8, 11, 14 and 15 could be caused by MO6. MO6 is a wooden stick having a length of 54 cm. and a breadth of 5 cm. A stick like MO6 can be found in the compound where the incident occurred and it is not an uncommon circumstance. It is also not established that the blood group of the accused is not "A" group. In these circumstances, we are of the view that it is not safe to rely on Ext.P3 recovery mahazar and the evidence of PW18 and PW26 to arrive at the conclusion that the offence was committed by the accused.

6. PW20, who conducted the postmortem examination, noticed twenty antemortem injuries on the body of the deceased. He stated that the deceased

died of the injuries sustained to head, neck and chest, i.e., injury Nos. 8, 11, 14 and 15 noted in the report. The nail clippings taken from the accused did not contain any trace of blood as deposed by PW21.

7. The circumstances brought out in the evidence of PW1 to PW13 are not relevant circumstances pointing to the guilt of the accused. The presence of the accused at the place of incident is quite natural. Several persons were also employed in the rubber plantation. In the statement u/s 313 of the Code of Criminal Procedure made by the accused, he stated that about twenty persons were employed in the rubber plantation. Many of the circumstances pointed out in the evidence of PW1 to PW13 relate to the presence of the accused in the rubber plantation and neighbourhood, which is quite natural since he is an employee in the plantation. As the accused is employed in the rubber plantation, his presence there, his interaction with the deceased and his presence in the various places stated by the witnesses are also quite natural and those circumstances do not lead to the hypothesis of guilt alone.

8. It is well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof. (See *Balwinder Singh Vs. State of Punjab*, .

9. In *Sk. Yusuf Vs. State of West Bengal*, , the Supreme Court held thus:

26. CIRCUMSTANTIAL EVIDENCE:

Undoubtedly, conviction can be based solely on circumstantial evidence. However, the court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. (Vide: *Sharad Birdhichand Sarda Vs. State of Maharashtra*, , *Krishnan Vs. State represented by Inspector of Police*, ; and

Wakkar and Another Vs. The State of U.P., .

The court below was not justified in holding that the accused is guilty of the offence u/s 302 of the Indian Penal Code. Accordingly, we allow the Criminal Appeal, set aside the conviction and sentence in Sessions Case No. 713 of 2005 on the file of the Additional Sessions Judge, Fast Track Court (Adhoc) No. IV, Thiruvananthapuram and acquit the appellant/accused. The appellant/accused is in jail. He shall be released forthwith unless his detention is required in any other case.

The Registry will communicate gist of the judgment to the Superintendent of the Central Prison, Thiruvananthapuram.