
(2009) 11 KL CK 0073
In the High Court Of Kerala
Case No : Criminal A. No. 208 of 2006

Muzhayan Ravi @ Raveendran Asari

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 449

Citation : (2009) 11 KL CK 0073

Hon'ble Judges : P. Bhavadasan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Sajeev T.P., State Brief, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishnan Nair, J.—The appellant is the accused in Sessions Case No. 1497 of 2004 on the files of the Additional Sessions Judge, Fast Track III, Thiruvananthapuram. The prosecution case, in brief, is as follows:

The deceased Vasantha was the daughter of PW.1 and the mother of PW.2. After the death of her husband, Vasantha fell in love with the appellant and was staying with him. Because of the alleged incessant man-handling by him, she found it difficult to continue to stay with him and therefore, she returned to her parental house. It was about three days before 7.1.2004, the date on which she was murdered. Infuriated by her conduct, the appellant came to the house of PW.1 and tried to persuade her to go with him and when she did not oblige, he went away and thereafter came back about 9.45 p.m. The house of PW.1 was, in fact, a hut made of cudjan leaves. The accused broke open into the house and tried to catch hold of Vasantha, who was sleeping in the kitchen. On seeing him, she rushed to the room where PWs.1 and 2 were sleeping. He followed her, inflicted the stab injuries on her, using MO.1 knife in the presence of PWs.1 and 2. While going away, raising the knife he stabbed on the ground and threatened

to kill PW.1 and others also. The said witnesses along with the neighbours who came running to the scene on hearing the cries of them, took the injured in an autorickshaw to Taluk Hospital, Nedumangad and from there she was referred to the Medical College Hospital, Thiruvananthapuram. But, she breathed her last at 6.45 a.m. on 8.1.2004, while undergoing treatment in the Medical College. PW.1 went to the local police station and gave Ext.P1 F.I. Statement. Based on that, PW.9 registered Ext.P1(a) F.I.R., for the offences under Sections 449 and 302 of the Indian Penal Code. The Circle Inspector of Police, PW.14, took over the investigation. He prepared Ext.P2 inquest report and P3 scene mahazar. He also made arrangements for autopsy on the body of the deceased. The accused was arrested on 12.01.2004 and based on Ext.P4(a) disclosure statement, MO.1 knife was recovered under Ext.P4 mahazar. PW.11 conducted autopsy on the body of the deceased and issued Ext.P6 post mortem certificate. The doctor noticed four injuries on the body of the deceased. According to the doctor, the death was caused due to injury No. 1, which reads as follows:

Sutured incised penetrating wound 3.8 cm long oblique on the right side of front of chest, its upper outer blunt end was 4 cm below the front fold of armpit. Its lower inner end was sharply cut. The muscle underneath were found sutured. The chest cavity was seen penetrated through the third intercostal space and punctured the upper lobe of right lung (1.9 x 0.5 x 1.8 cm). The wound was directed backwards and to the left for a total minimum depth 3.9 cm. Chest cavity contained 120 ml. of fluid blood.

The doctor also opined that injury No. 1 could be caused by MO.1 knife. The C.I. of Police, PW.14, completed the investigation and laid the charge before the Judicial First Class Magistrate-II, Nedumangad.

2. After completing the formalities, the learned Magistrate committed the case for trial by the Sessions Court, as the offences disclosed were exclusively triable by a Court of Sessions. The learned Sessions Judge made over the case to the Additional Sessions Judge, Fast Track III, Thiruvananthapuram. The accused pleaded not guilty to the charges framed against him. The prosecution to prove its case examined PWs.1 to 14, marked Exts.P1 to P13, and produced MOs.1 to 9. The learned Sessions Judge, after hearing both sides, found the appellant guilty of the offences punishable under Sections 302 and 449 of the Indian Penal Code. For both the offences, he was convicted and sentenced to undergo life imprisonment. For the offence u/s 302, a fine of Rs. 25,000/- was also imposed and in default, the accused was sentenced to undergo rigorous imprisonment for four years. The learned Sessions Judge has also provided that the sentences shall run consecutively. Aggrieved, the appellant has preferred this appeal, raising various grounds.

3. We heard the learned Counsel on both sides. We were taken through the evidence of the material witnesses. The learned Counsel for the appellant submitted that the conviction and sentence imposed on the appellant was unjustified. At any rate, the direction that the punishment of two life

imprisonments will have to be suffered distinctly is unsupportable in law.

4. Going by the evidence of PW.11, the doctor who conducted post mortem examination and issued Ext.P6 post mortem certificate, it is clear that the death of Vasantha was homicidal. It is also proved that injury No. 1, which caused the death, could be caused by MO.1 knife.

5. The next point to be considered is, who committed the crime. The prosecution seeks to prove the said point mainly relying on the depositions of PWs.1 and 2. PW.1 is the mother of the deceased and PW.2 is her son. Both of them were present while the appellant trespassed into the house and inflicted the deadly stab injuries on Vasantha. PW.1 has stated in her deposition that, her daughter Vasantha was married to Ravi and there were three children in that marriage. Her husband died. The appellant was the son of PW.1's husband's sister. Vasantha and the appellant fell in love and they were residing in a hut erected in a plot of land having an extent of 3 cents belonging to Vasantha. Three days before the incident, Vasantha came home complaining that she cannot bear the beating and kicking of the accused any more. On 7.1.2004, the accused came at 8 p.m. after drinking arrack. Under the influence of liquor, he asked the deceased to accompany him. But, she refused to go with the accused. PW.1 and her husband told the appellant that, now, he may return and Vasantha shall be sent to him in the morning. But, later after 9 p.m., the accused trespassed into the house. Vasantha was sleeping in the kitchen. PW.1 and others were sleeping in the central room. When the accused entered the kitchen, Vasantha came to PWs.1 and 2 stating that she will be killed. She told her mother, PW.1, that Ravi - the appellant, will kill her. Suddenly, they woke up. They saw the appellant inflicting stab injury using MO.1 knife on the right chest of Vasantha. She lighted a kerosene lamp and in its light, she saw the incident. After stabbing Vasantha, the appellant went out. While going away, he shouted that he has to kill three more persons. The witness states that she soon found her daughter lying outside the house bleeding profusely. They called an autorickshaw and took her to the hospital at Nedumangad and from there she was referred to Medical College Hospital, Thiruvananthapuram. Though she was treated at the Medical College, the injured breathed her last next morning. Though PW.1 was subjected to extensive cross examination, nothing has been brought out to discredit her version. Her version is supported by the evidence of PW.2, the son of the deceased, who was present there. The case of the prosecution spoken to by the above witnesses is supported by medical evidence and also by the recovery of MO.1 knife u/s 27 of the Indian Evidence Act, based on Ext.P4(a) disclosure statement of the appellant.

6. Having regard to the facts of the case, we feel that it is not necessary to refer to the evidence of other witnesses. We find that there is no reason for PWs.1 and 2 to falsely implicate the appellant and spare the real culprit. We are inclined to believe the version given by PWs.1 and 2 that it was the appellant who inflicted the fatal injury. So, we sustain the conviction of the appellant for the offences

under Sections 449 and 302 of the Indian Penal Code.

7. The learned Sessions Judge has ordered that the substantive sentences will run consecutively. When life imprisonment is ordered, unless commutation is given, the convict has to remain in jail for the rest of his life. So, there cannot be two life imprisonments, which should run consecutively. Therefore, we order that the punishment of life imprisonment imposed on the appellant for the offence under Sections 302 and 449 I.P.C., shall run concurrently.

Subject to the above modification in the sentence, in all other respects, the judgment of the trial court is confirmed and the appeal is dismissed.