
(2004) 05 KL CK 0038
In the High Court Of Kerala
Case No : Criminal A. No. 243 of 1996 (A)

M.V. Musaffir Ahammed

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 100, 300, 302, 304, 320

Citation : (2004) 1 KLJ 186

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, for the Appellant; Sujith Mathew Jose (PP), for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor

1. According to the prosecution, the appellant/accused stabbed on the abdomen of the deceased Mustafa. This injury resulted in his death as is deposed by PW-11 doctor who conducted autopsy and issued Ext. P20 post mortem certificate. The injury sustained by the deceased was fatal. The appellant was tried for the offence punishable u/s 302 I.P.C. Appreciating the evidence on record including that of PW-12 who had accompanied the deceased Mustafa to the scene of occurrence, the court below found that it was deceased who started the trouble first and that the deceased had slapped on the face of the accused who was sitting and cleaning fish with a knife in his hand. It was at that time the accused/appellant while raising, stabbed on the abdomen of the deceased which resulted in death. The court below found that such bodily injury was inflicted in the sudden fight in the heat of passion aroused by the deceased because of the quarrel started by him and that accused knew that it was likely to cause death. Accordingly, the court below found that the case against the accused appellant squarely fell under Exception 4 to Section 300 and the offence committed was

culpable homicide not amounting to murder punishable u/s 304 Part I I.P.C. He was accordingly convicted and sentenced to undergo rigorous imprisonment for seven years. This conviction is assailed in this appeal contending that this was a case of exercise of right of private defence by the appellant to come within the coverage of Section 100 I.P.C. It is submitted, referring to the evidence of PW-12 that the deceased had several times slapped on the face of the accused. Naturally, it will result in apprehension of causing grievous hurt to the accused. Such an apprehension will justify the accused to cause grievous hurt even to the extent of causing death of the initial offender to come within Secondly of Section 100 I.P.C.

2. It is submitted by the learned Public Prosecutor that the nature of the injury spoken to by PW-11 and mentioned in Ext. P20 shows that it was a deep injury inflicted on the abdomen of the deceased. It had cut the aorta and caused instantaneous death. Even if he had the right of private defence, he had exceeded it, especially when the deceased or his companion, PW-12, were not armed. This is a case of culpable homicide not amounting to murder. Therefore, the finding of the court below does not warrant interference.

3. PW-12 is the only occurrence witness. The injury sustained by the deceased was fatal as proved by PW-11 and by Ext. P20. This was a clear case of homicide. M.O.-3 knife was being used by the appellant for cleaning fish. The injury certified in Ext. P20 noted by PW-11 could have been caused with that knife, the doctor deposed. Therefore the question is whether the homicide was justified. If it is culpable homicide, the conviction cannot be disturbed. Otherwise, the conviction has to be set aside.

4. PW-12 was the companion of the deceased. When PW-12 was in his house, Mustafa, the deceased, came to his house and asked him to accompany him to the Casino Hotel in Court Road, Kozhikode. Both of them went to the hotel. It was to be seen an Arab National who was residing in Room No. 3. When both of them reached the counter of the hotel and enquired the Arab National, PW-1 the manager of the hotel told that he was not in the room and that nobody was allowed to go to the room. At that time they saw the accused going upstairs with a packet in his hands. After finishing the talk with the manager, both Mustafa and PW-12 went upstairs to Room No. 3. The accused who was seen by them climbing the staircase with a packet in his hand, was sitting on the floor and cleaning a fish with a knife. Even according to PW-12, the deceased who he accompanied asked the accused whether he had told that nobody should be allowed to come to the room of the Arab national especially when he had more acquaintance to the Arab than the accused. There was an altercation between them. In chief examination it is disclosed by PW-12 that Mustafa had attempted to slap the accused and the accused resisted and in that fury the accused stabbed the said Mustafa. In cross examination and also in the statement that he had given to the Magistrate u/s 164 Cr. P.C. he had stated that Mustafa had slapped on the face of the accused. In the court below he deposed as follows:

Did he slapped 4 or 5 times (Q)

I saw slapping. Then the accused told not to slap further (A).

Did Mustafa again beat the accused (Q)

Yes (A).

Was it at that time he stabbed (Q)

Yes. It was at that time (A)

Mustaffa went near the accused sitting on the floor and asked who was he to tell him not to come there in, the absence of the Arab national and slapped on the face of the accused four or five times; is it not correct? (Q)

Slapped four or five times. (A).

5. From the evidence of PW-12, it can be seen that the deceased had come to the room occupied by Arab National. It had been under the control of the accused who was the servant of the Arab National. As spoken to by PW-12, accused had given strict instruction to the manager of the hotel not to allow anyone to come to the room of the Arab National. It was in spite of that, Mustafa and PW-12 went to the room of Arab National which was at that time under the control of the accused in spite of strict instruction that nobody should enter the room. So in every respect, the deceased was a trespasser into the room where the incident had occurred.

6. Moreover, the deceased was in infuriated mood as he was obsessed with the instruction of the accused not to allow anyone to come to the room. As spoken to by PW-12, the deceased asked the accused why he had so instructed when the deceased had more acquaintance with the Arab National.

Moreover the deceased has slapped on the face of the accused who was sitting on the floor and cleaning fish, more than one occasion. Slapping on the face of anybody successively may result in dislocation of the teeth which is a grievous hurt as specified in Section 320 IPC. Going by Secondly of Section 100 IPC, "such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault" can be a reason to react even to the extent of causing death of the assailant. Necessarily, this case comes under Secondly of Section 100 I.P.C.

7. Moreover, there was only one injury. Of course, it was a deep one cutting the liver of the deceased. The deceased attempted to slap the accused more than once on the cheek. It was at that time the accused attempted to raise and stabbed. Necessarily the stabbing will be with a force to cause deep injury, the only one injury. He has not therefore exceeded the right of private defence. Consequently, conviction u/s 304 Part I of the I.P.C. is set aside and the accused / appellant is acquitted. I do so. Bail bond executed by the appellant shall be cancelled. The appeal is allowed as above.