

(1959) 03 KL CK 0013
In the High Court Of Kerala
Case No : Criminal Appeal No. 292 of 1958

Narayanan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-03-1959

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (1959) KLJ 623

Hon'ble Judges : K. Sankaran, C.J; Anna Chandy, J

Bench : Division Bench

Advocate : M.A. Sarojini State Brief, for the Appellant;

Final Decision : Dismissed

Judgement

Anna Chandy, J.—The appellant is Kunjan Narayanan accused in the Sessions Case No. 39 of 1957 on the file of the Sessions Court, Kottayam. He has been convicted and sentenced to life imprisonment for causing the death of one Damodaran by stabbing him with a knife at about 5 P.M. on 22-1-1957. The prosecution case is as follows:-

The accused, deceased and P. Ws. 2 and 4 are sawyers engaged by P.W. 1. On 22-1-1957 at about 4 P.M., P.W. 1 asked the new-comers P.W. 2 and the deceased to live with the accused and P.W. 4 in the Pachilamkadavu house under his control. They were given money for purchasing rice and other things and were permitted to pluck tapioca from his compound for their evening meals. Accused and P.W. 4 were returning from a toddy shop when the new-comers joined them and all of them went to a toddy shop, the accused for a second bout. Damodaran, the deceased paid for the drinks of himself and P. Ws. 2 and 3, but refused to pay for the toddy drunk by the accused. This led to a wordy quarrel between the deceased and the accused and all the four went to meet P.W. 1 who was bathing in a nearby channel for a mediation. P.W. 1 pacified them and promised to settle their disputes the next day, if they would go and live amicably. The accused and others then returned to the Pachilamkadavu house. Damodaran

was seated on the eastern verandah of the house and preparing tapioca for boiling, when the accused stabbed him from behind with a knife. Damodaran jumped into the court-yard, but was followed by the accused who stabbed him again on the chest and hand. The matter was reported to P.W. 1 who reached the scene and found Damodaran lying dead, and the accused detained in a shop nearby. He went to Erattupettah and by Ext. P. 1, First Information Statement, informed the police about the occurrence. The police investigated the case, charge-sheeted the accused, who was eventually tried by the Sessions Judge of Kottayam and sentenced to life imprisonment as mentioned above.

2. The accused did not say anything about the occurrence in the Magistrate's Court. But in the Sessions Court he admitted that himself, Damodaran and P. Ws. 2 and 3 went to the toddy shop for drinking toddy and that owing to difference of opinion Damodaran paid for the toddy for himself and P. Ws. 2 and 3 and refused to pay for the accused though he owed him money. A wordy quarrel ensued between himself, Damodaran and P. Ws. 2 and 3 on the way back to the house. After reaching the house also there was some altercation and P.W. 4 took all of them to P.W. 1 who promised to settle the matter the next day. They again returned to Pachilamkadavu house. There, an exchange of words went on for some time during the course of which P.W. 2 threw a coconut found in the court-yard which hit the accused. Then Damodaran and P. Ws. 2 and 3 beat the accused and Damodaran saying that the accused must be killed, pressed his throat, and then the accused took his knife and brandished the same. The next morning he found himself lying with his legs tied in a shop-verandah and was later taken to Erattupettah Police Station.

3. There is no dispute about the factum of Damodaran's death or its cause. The fact that the accused caused the injury is also conceded. The dispute is only about the circumstances under which the stabbing took place. So, the most important question to be decided is which version, the prosecution's or the accused's, is true. As for the events that happened before their return from P.W. 1, there is no dispute and therefore it is not necessary to deal with the evidence about that part of the case. P.Ws. 2 and 3 gave clear and consistent evidence about the actual incident. They state that Damodaran, after reaching the house, sat on the eastern side of the southern verandah and began to cut tapioca with the lid of a cigarette tin. The accused then went and stood behind Damodaran and when Damodaran was about to rise up after finishing the work of cutting the tapioca, to their surprise, the accused stabbed Damodaran on his back with M.O. I knife. At once Damodaran jumped from there to the court yard, But the accused followed him and stabbed him twice. One stab was on the tower part of the left hand and the other was on the chest, and Damodaran fell down. The lower court has been favourably impressed with the evidence of these witnesses. These two witnesses differ only on one point. P.W. 2 says that there was no altercation, but P.W. 3 says otherwise. But both are positive that there was no tussle between the accused and Damodaran. The accused's version that P. Ws. 2 and 3 and Damodaran attacked him and he had to brandish the knife in self-

defence is not believed by the Additional Sessions Judge for convincing reasons. P.W. 3 was not asked anything at all about it and the only question put to P. W. 2 is whether Damodaran hit the accused with a cocoanut. This is against the case of the accused himself. What the accused stated when he was questioned by the court was that P.W. 2 threw a cocoanut at him. It may also be noted in this connection that the accused had no injury on his person. P.W. 6 caught hold of the accused immediately after the incident and detained him. If the accused was assaulted as alleged by him, there would have been some marks of injury on his person. There was not even a suggestion made to P.W. 6 that he noticed any injuries on the accused. We find that the case that P. Ws. 2 and 3 and Damodaran belaboured the accused is not true and that the accused stabbed Damodaran under the circumstances mentioned by P. Ws. 2 and 3.

4. Another argument urged by the defence counsel was that the accused intoxicated as he was, could not have the necessary intention contemplated by Section 300 of the Indian Penal Code. In AIR 1954 Madras 523 (In re Suruttayyan) it is stated that "it is only in cases where it is proved that the prisoner was in such a condition of drunkenness that his reason was "dethroned" and was incapable of forming any intention, that the defence of drunkenness would be available". This position is elaborately discussed and made clear in the decision of the Supreme Court reported in Basdev Vs. The State of Pepsu, . The degree of intoxication is the criterion. "Was the man besides his mind altogether for the time being ? If so it would not be possible to fix him with the requisite intention". In the present case, the accused though drunk has not gone so "deep in drinking" as not to know what he was about. When P.W. 1 pacified him by promising to settle the matter next day, he made no protest and betrayed no sign of excessive drunkenness. His conduct all along clearly shows that he could form correct decisions in matters that affected him. At best the intoxication has only touched his mind so that "he more readily gave way to some violent passion". It is not possible to reduce the offence from murder to one of culpable homicide not amounting to murder because of the accused's voluntary drunkenness. In the result, the conviction and sentence are confirmed and this appeal is dismissed.