
(2012) 01 KL CK 0112
In the High Court Of Kerala
Case No : CRA. No. 1129 of 2007 (A)

Paradesv, C. No. 1487, Central Prison, Trivandrum	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 299, 300, 302

Citation : (2012) 01 KL CK 0112

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

Bench : Division Bench

Advocate : Asha Cherian, State Brief, for the Appellant; Roy Thomas, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.

i). Was the court below justified in placing reliance on the oral evidence of PWs 7 and 8 - alleged eye witnesses?

ii). Is the accused entitled to the benefit of any reasonable doubt?

iii). Does the impugned judgment of the trial court warrant any interference?

1. These are the questions raised by Advocate Asha Cherian, who has been appointed to render legal aid and assistance to the appellant.

2. The appellant has been found guilty, convicted and sentenced u/s 302 IPC to undergo imprisonment for life. No sentence of fine is seen imposed. The prosecution alleged that the appellant, who was running an illegal arrack sale outlet in a shed in his property had caused the death of deceased Krishnan Kutty, a person aged about 35 years, consequent to a quarrel between them by inflicting multiple injuries on the deceased with MO1 wooden stick. The deceased succumbed to his injuries while he was being removed to the hospital.

3. Investigation commenced on the basis of Ext.P8 F.I.R registered on the strength of Ext.P5 F.I.Statement lodged by PW7. PW18 completed investigation and filed final report/charge sheet before the learned Magistrate. The learned Magistrate after observing all legal formalities, committed the case to the court of Session. The learned Sessions Judge framed charge against the appellant. He denied the same. Thereupon, the prosecution examined PWs 1 to 19 and proved Exts.P1 to P12. MOs 1 to 8 were also marked.

4. PWs 7 and 8 are alleged eye witnesses to the occurrence. In the course of cross-examination of prosecution witnesses and when examined u/s 313 Cr.P.C, the accused took up a defence of total denial. He denied all circumstances which appeared in evidence and which were put to him. No defence evidence- oral or documentary, was adduced by the appellant. The learned Sessions Judge on an anxious consideration of all the relevant inputs came to the conclusion that it was safe to place reliance on the oral evidence of PWs 7 and 8. The oral evidence of PWs 7 and 8 was supported and corroborated broadly by the various other circumstances available in the case, held the learned Sessions Judge. Accordingly, the learned Sessions Judge proceeded to pass the impugned judgment.

5. Before us, the learned counsel for the appellant and the learned Prosecutor have advanced their detailed arguments. While the learned counsel for the appellant contends that the oral evidence of PWs 7 and 8 should have been rejected by the learned Sessions Judge and the other circumstances proved in the case are insufficient to afford inspiration and corroboration for the version of PWs 7 and 8, the learned Public Prosecutor contends that the learned Sessions Judge was eminently justified in placing reliance on the oral evidence of PWs 7 and 8.

6. We have considered all the relevant inputs. An appellate judgment is and must be read in continuation of the judgment of the trial court. In that view of the matter, we do not deem it necessary to re-narrate the oral and documentary evidence placed before the learned Sessions Judge. We may hasten to observe that the oral evidence of PWs 1 to 19 and the contents of Exts.P1 to P12 have been read over to us in detail by the learned counsel. We have also been taken through the charge framed against the appellant by the learned Sessions Judge and the answers given by the appellant in the course of his cross-examination u/s 313 Cr.P.C. We shall refer to the relevant materials specifically wherever necessary in the course of the discussion.

7. The prosecution relies on the following pieces of evidence/circumstances to drive home the charge against the appellant.

i). Deceased met with homicidal injuries, which could have been inflicted by a weapon like MO1.

ii). He was found dead in a shed where the appellant carries on the activity of sale of illicit liquor.

iii). PW13, wife of the appellant had perceived the quarrel between the deceased and someone at the shed where the body was found.

iv). PW7 had seen the accused being beaten by the deceased with MO1.

v). PW8 had also seen the appellant standing with MO1 stick near the deceased, who was lying with the injuries.

vi). Blood stained MO1 was recovered from the scene of the crime.

vii). MOs 4 and 5 clothes worn by the appellant, which were recovered by the investigating officer under Ext.P3 seizure mahazar were found to be stained with human blood.

8. We shall now consider the evidence in detail. That the deceased met with homicidal death is not disputed. The evidence of PW15 doctor and Ext.P6 postmortem certificate show clearly that the deceased had suffered fatal injuries on his skull. The evidence reveals that those injuries could have been suffered with a weapon like MO1. MO1 was available at the scene of the crime. It was found to be blood stained as per Ext.P9 report of the public analyst. These circumstances, lead us to the safe and sure conclusion that the deceased had suffered injuries at the scene of the crime with MO1 weapon and had succumbed to those injuries.

9. The prosecution heavily relies on the circumstance that the deceased was found with injuries in the shed of the appellant where he allegedly runs an illicit business in liquor. We have the oral evidence of PW6 Village Officer, who prepared Ext.P4 site plan as also PW16 Village Officer, who issued Ext.P7 possession certificate. We have the oral evidence of witnesses also on this aspect. We further find that there is no attempt on the part of the appellant to challenge these pieces of evidence, which show that the shed in which the deceased was found lying with injuries is a shed in the property in the possession of the appellant. This fact is also thus established satisfactorily. The contents of Ext.P2 scene mahazar, does also reveal that the activity of sale of illicit liquor/ arrack was going on in that premises. It is thus convincingly established that the shed where the deceased was found lying with fatal injuries was in the possession of the appellant within his property.

10. The prosecution thirdly relied on the oral evidence of PW13 to show that there was a quarrel in the said shed when the deceased was present there. It would be unreasonable to expect PW13 to speak against her husband directly. She did not evidently name her husband, the appellant as the person with whom the deceased had quarreled. But her evidence clearly shows that the deceased was present in the said shed and there was demand for liquor by the deceased. The third circumstance is also thus established satisfactorily.

11. The prosecution then relies on the oral evidence of PWs 7 and 8. PW7 is the brother-in-law of the deceased. PW8 is related to PW7. The evidence of PWs 7 and 8 reveal that there was a quarrel and an untoward incident in the shed of the

appellant. PW8, who stays in the nearby house had heard the said commotion. PW7 who was coming home on his bicycle had left his bicycle and had run to the shed on hearing about the commotion/quarrel. There, PW7 found the appellant inflicting injuries on the deceased with MO1 stick. PW7 cried aloud and hearing that PW8 also rushed to the shed. PW8 saw the appellant standing with MO1 wooden stick and the deceased lying with injuries. Thereafter, the appellant, according to both PWs 7 and 8, left the shed on that night.

12. Learned counsel for appellant argues that no reliance should have been placed on the oral evidence of PW7. We have been taken through evidence of PW7. There is nothing to show that PW7 had entertained any animus against the appellant. Of course, being the brother-in-law of the deceased, it is possible to contend that PW7 is interested. But such interestedness, it is trite will prompt such a witness only to point the accusing finger at the real culprit and not at someone who was in no way responsible for the crime. If PW7 had any animus against the appellant and PW7 did not know the real culprit, then it is possible that PW7 may attempt to falsely implicate the appellant. But there is nothing to indicate that PW7 had any animus against the appellant. There is also nothing to suggest the probability that PW7 may not have known the real culprit also. The evidence of PW7 is supported eminently by the contents of Ext.P5 F.I.Statement lodged by him before the appellant. It will be apposite to mention that F.I.Statement was lodged at 10 P.M. on 31.10.2002, the incident having taken place at about 8.45 P.M. earlier on the same night. Ext.P8 F.I.R registered by the police had reached the learned Magistrate at 11.30 A.M. on 01.11.2002. The present version of PW7 is eminently supported by the contents of the contemporaneous Ext.P5 F.I. Statement. The evidence of PW7 is thus corroborated satisfactorily by the contents of prompt Ext.P5 F.I.Statement.

13. The injuries found on the person of the deceased narrated by PW15 in Ext.P6 clearly support the ocular version of PW7. The prosecution further attempts to support the oral evidence of PW7 by the recovery of MO1 from the scene of the crime by PW19 on the next day while preparing Ext.P3 scene Mahazar. The presence of blood stained MO1 at the scene of the crime recovered under Ext.P2 scene mahazar does also support and offer corroboration for the oral evidence of PW7.

14. The prosecution has a further case that MOs.4 and 5 were the clothes worn by the accused at the time of occurrence. They were seized by the investigating officer under Ext.P3 seizure mahazar. PWs 4 and 5 are attestors to Ext.P3 seizure mahazar. According to PW19, Mos.4 and 5 clothes of the accused were handed over by the appellant to the police officer after leading the police officer to the house of the appellant where Mos.4 and 5 were left. Mos.4 and 5 are shown to be blood stained under Ext.P9 report of the public analyst. The accused offers no explanation for the presence of human blood on his clothes Mos.4 and 5. This circumstance, does also eminently support and corroborate the oral evidence of PW7.

15. In this context, we again visit the evidence of PW7. We do note that there is absolutely no theory suggested as to why PW7 must speak falsehood against the appellant. We are in these circumstances satisfied that the court below was eminently justified in placing reliance on the oral evidence of PW7. The evidence of PW7 gets further support from the oral evidence of PWs 9 to 12 about the presence of the deceased with the injuries in the shed of the appellant and the removal of the deceased with injuries to the hospital that night in the autorickshaw of PW11. We do in these circumstances concur with the conclusion of the learned Sessions Judge that the oral evidence of PW7 can safely be believed.

16. The prosecution wanted to examine PW8 to afford ocular corroboration for the version of PW7. PW8 is related to PW7. PW8 claims to reside in a house adjacent to the shed where the crime was committed. That shed is marked as H2 in Ext.P4 site plan. By all indications PW8 resides in house "H2" marked in Ext.P4. The name of the father of PW8 is Kunhambu and H1 is shown to be the house of the said Kunhambu. The evidence of PW8 that he resides adjacent to the shed where the occurrence took place is not seen seriously challenged at all in cross-examination. PW8 is not shown to have any motive against the appellant, though he shown to be related to PW7 and the deceased.

17. The learned counsel for appellant brings to our notice, the contents of Ext.P5 to advance a contention laboriously that PW7 had not revealed the presence of PW8 at the scene. We find this criticism to be factually correct. But we are of the opinion that the courts/prudent minds will not be justified in throwing over board the evidence of PW8 who has his house adjacent to the scene of the crime on the mere circumstances that his name is not mentioned by PW7 in Ext.P5. We appreciate that the circumstance has been alertly pointed out but we are unable to reckon that circumstance as sufficient to generate any reasonable doubt against the oral evidence tendered by PW8. We revisit the evidence of PW8, PW8 does not claim to have witnessed the incident proper. His evidence only shows that when he reached the scene he found the appellant with MO1 available at the scene and the deceased lying with injuries. PW7 was also there, as per the evidence of PW8. We are unable to perceive any malafide motive for PW8 in tendering testimony on oath before court. His version inherently inspires our confidence. It is absolutely safe to accept his evidence, which further supports the evidence of PW7.

18. The above discussions persuade us convincingly to concur with the conclusion of the learned Sessions Judge that the injuries found on the person of the deceased described by PW15 in Ext.P6 must have been suffered by the deceased at the hands of the appellant with a weapon like MO1. We concur with that conclusion and find no reason to entertain the semblance of any doubt against the correctness of the said conclusion.

19. Even though it is alleged that the appellant entertained motive against the deceased, no specific prior animosity has been established by the prosecution. All

that we know from the evidence is that there was some quarrel at the scene of the crime and the deceased had resorted to the highhanded and culpable conduct of inflicting injuries on the deceased with MO1. Prior animosity is not proved. The theory of the prosecution that there was some quarrel between the appellant and the deceased about the claim of the deceased for liquor on credit is not contra indicated by any materials nor is the same proved convincingly by the materials on record. The evidence of PW13, the wife of the appellant throws some light on this aspect. But certainly motive has not been established satisfactorily. As rightly pointed out by the court below, proof of motive is of an ingredient of the offence alleged against the appellant. In this view of the matter, the absence of satisfactory evidence of motive does not in any way deter us from confirming the conclusions of fact of the court below.

20. An intention on the part of the appellant to cause the death of the deceased does not appear to have been established convincingly. Clause Firstly of Section 300 IPC may not hence directly apply. But we take note of the injuries inflicted with MO1. We get the description of the five injuries suffered in Ext.P6. We are surprised to note that the learned Sessions Court did not choose to extract the injuries while recording the oral evidence of PW15. That should certainly have been done. Be that as it may, out of the five injuries described, four are lacerated injuries all suffered above the neck. Two of the injuries had exposed skull bone. There was fracture of the skull bone. Multiple fractures of the occipital bone extending to the temporal and parietal bones was suffered. Meninges was bulging with large hematoma on both sides of the cerebral hemispheres. The death was due to these head injuries. Intentional infliction of the injuries is thus proved. The injuries described in Ext.P6, there can be no semblance of doubt, are sufficient in the ordinary course of nature to cause death. Deceased succumbed to those injuries also. We are satisfied in these circumstances that the offence of murder defined under Clause Thirdly of Section 300 IPC is clearly established. There is no contention or materials to suggest that the appellant is entitled to the benefit of any of the exceptions u/s 300 to suggest that the offence must slide back to the offence defined u/s 299 IPC. The verdict of guilty, conviction and sentence u/s 302 IPC do not in these circumstances call for any interference. The challenge in this appeal fails.

21. In the result, this appeal is dismissed.