
(2003) 01 KL CK 0081
In the High Court Of Kerala
Case No : CRA No. 526 of 2000

Prasad Aliyas Thulasi and Aji

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Evidence Act, 1872 — Section 27, 34

Citation : (2003) 01 KL CK 0081

Hon'ble Judges : P.R. Raman, J;J.B. Koshy, J

Bench : Division Bench

Advocate : T.M. Abdul Latheef, for the Appellant; K. Ravikumar, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Koshy, J.—Appellants in this case are the accused in S.C.No. 28 of 1996 on the file of the Additional Sessions Court, Kollam, The accused are brothers. The allegation of the prosecution as summarised by the Session's Judge is as follows:

"The deceased Sahadevan is residing at Shibu Mandiram, Karimamkodu, at Dharmapuri Ward in Vilakkudi Village. On 23.3.1995 at about 7 A.M., the deceased Sahadevan was walking along the ridge of the paddy field at Meenamkodu. When he reached near the property of Sri. Narayana Pillai, both accused in furtherance of the common intention of causing death of Sahadevan, A2 struck him thrice on his forehead with an axe handle. As a result, the deceased Sahadevan fell down. At that time A1 inflicted several stab injuries on left shoulder, on back bone and on left nipple. Again A2 inflicted two stab injuries on left shoulder with a knife. Immediately he was removed to the Taluk head Quarters" Hospital, Punalur, but on the way to the hospital, he succumbed to the injuries at about 7.30 A.M. on the same day. The accused were in enmity towards the deceased. On 10.12.1994, Sahadevan assaulted mother of the accused and she sustained a fracture in left hand. In revenge of that they killed Sahadevan..."

2. PW1 gave Ext.P1 First Information Statement. PW1 is a neighbour. The incident happened between 7 and 7.30 P.M. PW1 depose that hearing the cry he went to the place of incident. There he saw the deceased Sahadevan lying in blood and people were coming there. The son of the deceased (PW4) took him and asked him what happened. Then he stated that the accused stabbed him. He showed action that he wants water and PW5 gave him water. He was taken to the hospital in an autorickshaw. Thereafter he went to give Ext.P1 FI Statement which was recorded by PW12. PWs.2 and 3 who are neighbours have seen the incident. They narrated the incident as narrated by the prosecution. They identified the weapons MO1, MO2 and MO3. MO1 blood stained sword was recovered from the place of incident as per Ext.P1 inquest report and Ext.P4 scene mahazar.

3. PW2 who is an agriculturist deposed that he went to the field at about 6 A.M. and he saw both the accused were sitting at the place of incident. PW2 started working in the field. At about 7 A.M. he saw the deceased walking along the ridge of the paddy field from south to north. Both accused then stood up and A2 asked the deceased did he beat and break his mother's hand and he struck trice on the forehead of the deceased with MO2 axe handle. Deceased fell down and cried loudly. At that time, A1 inflicted stab injuries on the chest and back of the deceased with MO1 sword. A2 put the axe handle and inflicted two stab injuries on the left shoulder with MO3 knife. A1 fixed the sword on the side of the ridge near Sahadevan. Seeing people of the locality gathering they ran away with MO2 and MO3. PW3 also gave almost similar version. He was walking behind the deceased Sahadevan.

4. PW4, son of the deceased, who came after the incident also helped PW1 in carrying the deceased to the hospital. But, on the way he died. PW5 who gave water was also examined. From the statements give by the second accused, the weapons MO2 and MO3 alleged to have been used by him in the incident were recovered. Recovery of MO2 by Ext.P2 mahazar was proved by mahazar witness PW6 apart from the investigating officer. Recovery of MO3 are per Ext.P3 mahazar was also proved by PW7.

5. Ext.P5 is the postmortem certificate prepared by PW9 doctor who conducted the postmortem examination. The antemortem injuries noted in the postmortem certificate are as follows:

"1. Incised penetrating wound (both ends sharp) 2.5 x 2.5 cm (length & width). Horizontal 2 cms. below and lateral to left nipple.

2. Incised wound 6 x 1 x 1 cm. horizontally placed, 8 cm. below and lateral to left nipple.

3. Incised wound 4 x 2.5 cm x 1 cm. on the left shoulder.

4. Incised wound 7 x 2.5 cm x 1 cm on the back of left shoulder.

5. Incised penetrating wound 18 cm below the left shoulder, on the backside 6

cm length and 4 cm wide, wound penetrates into the thoracic cavity and comes out through the 1st wound.

6. Incised penetrating wound 6 x 4 x 8 cm just below the 5th wound.

7. Incised penetrating wound on the back of chest left 6 x 3 x 14 cm. 5 cm below the 6th wound and 6 cm lateral to vertebral column.

8. Incised wound 4 x 3 x 5 cm on the left axilla.

9. Lacerated wound 5 x 5 cm x bone deep in front of scalp left.

10. Lacerated wound 4 x 3 cm x bone deep front of scalp left, just medical to the 10th wound.

11. Lacerated wound 6 x 3 cm x bone deep on the middle of scalp left side."

The doctor also noticed that there is penetrating wound 5 x 3 cm on the lower lobe of the left lung and there is fracture of 5th and 6th rib on the left side on the back. According to PW9, the cause of injury was "Haemorrhage and shock due to injury to the heart and lung". He also deposed that all those injuries can be caused by stabbing with MO2 and stabbing with weapon like MO1 and MO3. Those ocular evidence are corroborated by medical evidence also.

6. The motive in this case is clearly proved. There is an allegation that about five months" back the mother of the accused was attacked by the deceased and as a result, there is a fracture in her hand. A case was registered as Crime No. 222 of 1994 as can be seen from Exts. P12 and P13, and this attack on the deceased was the result of a premeditated plan to take revenge on the attack on the mother. There is no dispute regarding the place of occurrence or identity of the deceased or accused.

7. With regard to the evidence of PWs. 2 and 3, they are independent and disinterested witnesses. As they are neighbours they are natural witnesses. There is not even a suggestion in the cross examination that they are in any way interested to the deceased or are inimical to the accused. They are eye witnesses. Even though there are minor discrepancies, their evidence would show that they have seen the incident and accused 1 and 2 together attacked the deceased with weapons as alleged by the prosecution. Their evidence are supported by the evidence of PWs. 1, 4 and 5. There is clear and cogent evidence. Evidence of the ocular witnesses are corroborated by the discovery of facts, which is admissible in evidence u/s 27 of the Evidence Act. Weapons used by A1 and A2 were recovered as per the disclosure statement of A2. The minor discrepancies pointed out in the deposition are not serious so as to discard their version.

8. There is no case that the accused was inflicted with injuries or accused sustained any injury in the incident. In view of the previous attack on the mother of the accused, accused pre-planned the attack. The common intention can be inferred by the manner in which accused were there in the scene waiting for the

deceased and the nature of injuries and weapons used by them. Common intention can develop at the spot also. Once the common intention is proved, who inflicted the fatal blow is immaterial. Section 34 was rightly inferred by the Sessions Court from the facts and circumstances of the case. Considering the totality of the evidence, we see no ground to differ from the findings of the Sessions Court.

The appeal is, therefore, dismissed.