
(2012) 01 KL CK 0067
In the High Court Of Kerala
Case No : CRA. No. 1053 of 2007

Ramachandran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 207, 311, 313
Penal Code, 1860 (IPC) — Section 300, 302, 449

Citation : (2012) 01 KL CK 0067

Hon'ble Judges : R. Basant, J; K. Vinod Chandran, J

Bench : Division Bench

Advocate : V. Philip Mathew, for the Appellant; Roy Thomas, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.

i). Have the laudable principles which impose the duty on the court to ensure that a fair trial is conducted against the accused been offended in the trial against the appellant ?

ii). Did the court below err in accepting and acting upon the oral evidence of PWs 2, 4, 13 and 14 ?

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

iv). Does the impugned judgment warrant interference on any count ?

1. These are the questions raised before us by the learned counsel for the appellant Sri. Philip Mathew in this appeal.

2. The appellant has been found guilty, convicted and sentenced under Sections 449 and 302 IPC. He faces the sentence of imprisonment for life u/s 302 IPC - no sentence of fine having been imposed. He further faces the sentence of rigorous

imprisonment for a period of three years u/s 449 IPC.

3. The crux or the gravamen of the charge against the appellant is that he, on account of certain events that took place on the previous day, had caused the death of his brother-in-law Rajesh, a young man aged about 24 years at the house of the said Rajesh at 6.30 A.M. on the next morning ie, 24.04.2000 by hitting him with MO1- Koonthali(said to be an agricultural implement).

4. Investigation commenced with Ext.P1 F.I. Statement lodged by PW1 a relative/ neighbour of the deceased. Ext.P1(a) F.I.R was registered on the basis of the said F.I.Statement. Investigation was completed and final report/charge sheet was filed before the learned Magistrate by PW10. The learned Magistrate after observing all legal formalities committed the case to the court of Session. The court of Session took cognizance of the offences alleged against the appellant. The appellant denied the charges framed against him by the learned Sessions Judge. Thereupon, the prosecution examined PWs 1 to 14 and proved Exts.P1 to P8. MOs 1 to 3 were also marked.

5. The appellant/accused in the course of cross-examination of prosecution witnesses and when examined u/s 313 Cr.P.C took up a defence of total denial. He admitted his presence in the house of the deceased on the previous day. According to him, there was some untoward incident in the house of the deceased on the previous evening and the deceased could have suffered the injuries in such incident on the previous day. The gravity of the injuries suffered was not perceived correctly and on the next morning when the grave consequence of the injury was realised, false allegations were raised against the appellant. This in short is the specific defence raised by the appellant. No defence evidence was adduced other than Exts.D1 series to D3 series. They are case diary contradictions marked by the defence when the prosecution witnesses were examined.

6. The learned Sessions Judge came to the conclusion that it is absolutely safe to place reliance on the oral evidence of PWs 2, 4, 13 and 14. Accordingly, the learned Sessions Judge proceeded to pass the impugned judgment.

7. Before us, the learned counsel for the appellant/accused and the learned Public Prosecutor have advanced their arguments. The learned counsel for the appellant first of all contends that a fair trial has been denied to the appellant in this case. His valuable right under Article 21 of the Constitution has been offended. Consequently, he deserves to be acquitted, it is contended.

8. The learned counsel for the appellant further contends that the oral evidence of PWs 2, 4, 13 and 14 should not have been accepted and acted upon. They are unworthy of credence. The learned counsel for the appellant further points out several inadequacies and imperfections in the conduct of the investigation and trial and contends that the totality of these circumstances must persuade this Court to concede the benefit of doubt to the appellant. At any rate, the capital offence of murder punishable u/s 302 IPC has not been proved, it is further

contended.

9. We have considered all the relevant inputs. An appellate judgment is and is intended to be read in continuation of the judgment of the trial court. In that view of the matter, we deem it unnecessary to re-count and 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 14 and the contents of Exts.P1 to P8 have been read to us in detail. We have also been taken in detail through the charges framed against the appellant by the learned Sessions Judge and the answers given by the appellant in the course of his examination u/s 313 Cr.P.C.

10. We shall initially consider the challenge raised on the ground that fair trial has been denied to the appellant. It is not necessary to advert to any precedent to accept the contention of the learned counsel for the appellant that an indictee is entitled to fair trial before the criminal court. How has the principles of fair trial been offended? The learned counsel for the appellant was requested to explain.

11. The learned counsel for the appellant contends that investigating officer had admitted that the entire case diary was not available with him when he tendered evidence. This it is contended works out prejudice and denial of a fair trial to the appellant. We are unable to agree. The mere fact that the entire case diary file was not available with the investigating officer when he tendered evidence is no reason for the court to assume that there has been a denial of a fair trial to the appellant. It has not been brought to our notice that the appellant wanted any particular document to be referred for the purpose of cross-examination in the case diary and that was not available. In these circumstances the absence of all volumes of the case diary and all papers of the case diary with the investigating officer when he was tendering evidence cannot be held to result in any prejudice to the accused or denial of the principle of fair trial.

12. It is then contended with the help of various precedents, which be do not propose to specifically refer, that the case diary statement of PW5 doctor has not been produced before court or furnished to the accused. Who is PW5? PW5 is the doctor who examined the deceased on that morning when he was allegedly rushed immediately after the incident for medical attention. He did not give the deceased any treatment. He immediately referred the deceased to the medical college hospital - a higher centre for treatment. Ext.P3 wound certificate was prepared by PW5. That was proved by PW5. It is true that the case diary statement of PW5 is not produced before court. Copy thereof has not been furnished to the accused also. Though the investigating officer vaguely stated that the statement was recorded, there is nothing in evidence to show that such statement was actually recorded. It is common knowledge that with a wound certificate like Ext.P3 proved by PW5 available with the investigating officer, it is not necessary and it is not usual that separate case diary statement of a witness like PW5 is recorded by the investigating officer. We will assume that such a statement has not been recorded. In the light of Ext.P3 such non- recording of

the statement or the non-furnishing of the case diary statement to the accused or the non-production of the case diary statement before court cannot in any view of the matter, be held to amount to denial of the principle of fair trial against the appellant. The fact that Section 207 mandates that copies of all statements must be furnished to the indictee is in the present context irrelevant, considering the nature of the evidence tendered by PW5. It is of crucial relevance to note that the appellant did not insist on furnishing of the case diary statement to PW5 if any either, before framing of charge, or after the trial commenced or even when PW5 mounted the witness stand. Of course, the obligation to furnish copies u/s 207 does not depend on the demand to be made by the accused. But when grievance is raised about non-furnishing of copies, the conduct of the accused is certainly relevant. Any and every inadequacy in the conduct of investigation/trial cannot give rise to a legitimate grievance of denial of fair trial. These circumstances, does not also help us to agree with the learned counsel for the appellant that there has been denial of fair trial.

13. The prosecution evidence was initially closed after examination of PWs 1 to 12. Examination u/s 313 Cr.P.C. of the accused followed. The accused was directed to enter upon defence. Thereupon PWs 13 and 14 were called. It is contended that the course adopted by the prosecutor of calling PW13 and 14 to the witness stand after arguments were heard in part amounts to denial of fair trial. We are unable to agree. Evidently, the prosecutor had not wanted PWs 13 and 14 to be examined in the light of the evidence of other eye witnesses- PWs 2 and 4. However, probably because of the nature of arguments and the queries of the court, the prosecutor felt persuaded to file an application u/s 311 Cr.P.C. for permission to examine PWs 13 and 14. PWs 13 and 14, it is not disputed were witnesses cited in the final report/charge sheet. Their case diary statements, it is not disputed were there in court and were furnished to court even before the trial commenced. In these circumstances, the course followed by the prosecutor of requesting the court for permission to examine PWs 13 and 14 after arguments were initially heard and the grant of such permission by the court cannot also give rise to any legitimate grievance of denial of fair trial to the appellant. We are in these circumstances satisfied that the plea of denial of fair trial only deserves to be dismissed. We do so.

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

- i). Motive for the incident spoken to by PWs 2, 4 and 13.
- ii). The evidence about the events which transpired immediately prior to the incident, the incident proper and the events which transpired later by PWs 2, 4, 13 and 14.
- iii) Medical evidence tendered by PWs 5 and 6 and Exts.P3 and P4 wound/postmortem certificates issued by them.
- iv) Corroboration afforded by the contents of Exts.P1 F.I.Statement lodged by

PW1.

15. We shall now try to consider the challenge against these pieces of evidence. That there was an unsavoury incident on the previous day is spoken to by PWs 2, 4, 13. PW4 is the wife of the appellant. Two children were born in the wedlock. The younger child was aged about six months. The "Choroon" ceremony (first rice feeding) was to take place on 23.04.2000. The appellant/father was expected to be there for the ceremony. He did not go there in time. Other relatives had come. This caused interruption of the ceremony. When he came long later PW4, his wife had questioned him about the impropriety. There was a quarrel. The appellant had allegedly got infuriated and had attempted to assault PW4. PW4's relatives had all come for that function. When PW4 was abused and attempted to be assaulted in the presence of others her brother/deceased intervened and questioned the conduct of the appellant. He had told the appellant that he should not create such untoward incidents in his house. It is the case of the prosecution that the deceased told the appellant that the accused should not assault his wife and if necessary deceased shall look after his sister and children. The appellant allegedly was perturbed over the intervention of the deceased and the words spoken against him. He allegedly went away in a huff threatening the deceased of consequences. On the next morning just as day broke, the appellant is alleged to have gone to the house of the deceased and indulged in the alleged contumacious conduct. This evidence tendered by PWs 2, 4 and 13 is corroborated convincingly by the evidence of PW1 and his F.I. Statement Ext.P1. He was not of course a witness to the incident. He had collected the information and passed on that information to the police in Ext.P1. Ext.P1 supports this case of motive.

16. The appellant admits that he was there on the previous day. He admits that there was an unsavory incident on that day. Though the details are not admitted, the fact that the incident which according to PWs 2, 4 and 13 operated as a motive, is admitted though not in great detail. We find convincingly persuaded to concur with the conclusion of the court below that the oral evidence of PWs 2, 4 and 13 read along with the stand of the accused convincingly establishes the events which took place on 23.04.2000 and the strained relationship between the appellant and the deceased consequent to that incident on the previous day.

17. The prosecution places reliance on the oral evidence of PWs 2, 4, 13 and 14. First of all according to the prosecution an incident had taken place at about 6.30 A.M. on that morning in the house of the deceased. PW2, the mother of the deceased, PW4, the wife of the deceased, PW13, a grandchild of PW2 were all available in the house. The evidence suggests the deceased suffered injuries there. The evidence of PWs 5 and 6 doctors and Exts.P3 and P4 certificates issued by them reveal that the deceased had suffered the injuries described in Ext.P4 and had succumbed to such injury. The deceased was rushed to PW5 after he sustained injury and there Ext.P3 wound certificate was issued. Of course, Ext.P3 we note reveals that PW5 had not subjected the victim to detailed

examination. Headache is the only symptom noted. That the deceased was said to be beaten on that morning at 6 A.M. is also mentioned clearly as the alleged cause in Ext.P3. In Ext.P3 it is clearly stated that the incident of beating had taken place on 6. A.M. We note that the very case of the appellant is that the injury must have been suffered by the deceased in the incident that took place on 23.04.2000. The alleged cause narrated to PW5 promptly in Ext.P3 on that morning at 7.30 A.M. convincingly reveals that the injury was suffered by the deceased not on the previous day but on that morning alone. Cross examination of PW6 further convinces that the deceased must have suffered the injury on that morning. When PW5 and PW6 were in the witness stand there was not one question put to them suggesting the probability that the injury could have been suffered on the previous evening and not on that morning as alleged. In these circumstances, not a trace of doubt is left in our mind on the question that the deceased succumbed to the injury described in Ext.P4 and such injury was suffered by him on that morning in the house occupied by him and PWs 2, 4 and 13. No semblance of doubt survives on that accept.

18. That there were no blood marks at the scene of the crime or in the clothes of the deceased is made much of by the learned counsel for the appellant to contend that no incident could have taken place there. The injury described in Exts.P3 and P4 becomes important. In Ext.P3 no external injury is noted. In Ext.P4 a contusion is noted. No one has a case that it was a bleeding injury. The absence of blood marks at the scene of the crime or on the clothes of the deceased is not in the circumstance, of any relevance or significance while appreciating the evidence of PWs 2, 4, 13 and 14. That circumstance-absence of blood marks at the scene or in the clothes of the deceased, does not in any way deliver any advantage to the appellant. The evidence of PW2 (mother), PW4(wife of deceased) clearly show that the bleeding which they complained of was not from the injury suffered but through the nostrils and ears. The same started only some time after the incident - evidently on account of internal injury suffered.

19. If the incident had taken place as alleged by the prosecution inside the house of the deceased, PWs 2, 4, 13 and 14 are the most natural witnesses who could have been present at/ near the scene of the crime. PWs 4 and 13 claim to have witnessed the infliction of the injury proper. PW2, the mother-in-law of the appellant had seen the appellant entering the house. She heard the commotion later inside the house and she saw the appellant going away with MO1 and throwing it in the rubber plantation nearby. Her evidence does not reveal that she had seen the infliction proper. But the circumstances are eloquently revealed from the oral evidence of PW2.

20. PW4 is the wife of the appellant. The appellant is the father of two children born in such wedlock. Though a theory is advanced that PW4 was in love with one Venu prior to her marriage with the appellant, there is absolutely nothing to indicate that such relationship had continued after the marriage with the appellant and birth of two children. PW4 and PW2 frankly admitted that PW4 had

an earlier love affair prior to her marriage. That is no reason whatsoever according to us to persuade us to suspect that PW4 is speaking falsehood against her husband, the father of two children born in the wedlock. In fact the evidence suggests that the appellant used to go regularly to the house of PW4 and was having love and affection to his wife and children. The alleged motive of PW4 to perjure against the appellant pressed into service with the help of pre-marital love affair of PW4 cannot generate even a modicum of doubt in our mind against the acceptability of the version of PW4. In fact the statement of the accused in the course of 313 examination and later when examined after pronouncement of the judgment of conviction(hearing on sentence) reveals that one of the children is suffering from serious ailment and his wife and children are completely dependent on him. As part of the broad circumstances, this also suggest to us the improbability of PW4 inventing false stories of his contumacious role in the incident and deposing in court falsely against the appellant, her husband.

21. PW13 is the grandson of PW2 ie, the nephew of PW4-her sister's son. He was residing along with his grandmother PW2. He was available at the scene. He had also allegedly witnessed the occurrence. PW14 is a neighbour. He did not see the infliction proper. He had heard the commotion. He had seen the appellant running out of the house throwing away MO1 and running away from the scene. The house of PW4 is seen referred to in the scene mahazar Ext.P6. It is also located in Ext.P5 scene plan. There is no semblance of reason even remotely suggested to doubt or suspect the version of PW14.

22. The argument is advanced that Radhamani, the sister of PW4 and her husband Sarasan who admittedly was present on the previous evening are not cited as witnesses and examined. The evidence clearly shows that they had left on that morning from the house of PW2. They had come to the house of PW2 to take part in the "Choroon" Ceremony which was scheduled to take place on 23.04.2000. Non-examination of those witnesses who as per the case of the prosecution were not available at the scene cannot also deliver any advantage to the appellant. There is not a semblance of suggestion that they had any motive against the deceased or the deceased could have suffered injuries at their hands. Non-examination of the said Radhamani and her husband Sarasan is found to be absolutely irrelevant and insignificant.

23. PWs 4 and 13 could not have witnessed the occurrence even if they may have been present in the house, it is contended. A reading of the description of the house in Ext.P6 scene mahazar must eloquently convey that it was not a palace where a person could not have witnessed the incident that took place in the other room. It was a very small house with only three rooms in all including kitchen - all interconnected and it is idle to expect that any occupant of the house could not be a witness to the incident which had taken place in the other room. This contention does not also appeal to us at all. We are satisfied that the oral evidence of PWs 2, 4, 13 and 14 can safely be accepted.

24. We have been taken through the contradictions Exts.D1 to D3 series. They

are insignificant contradictions which do not in any way generate any reasonable doubt in the mind of the court about the acceptability of the oral evidence of PWs 2, 4, 13 and 14. A contradiction becomes a contradiction and becomes significant only when a witness resorts to variation of his version to accommodate some inconvenient circumstances which cannot be explained by his earlier version. Every difference in the narration of events by the same person on two different occasions or by two different persons on the same occasion about an incident cannot justifiably be described as a contradiction as to generate any doubt about the version of the witnesses. We hold that Exts.D1 to D3 series do not generate any reasonable doubt against the version of the witnesses.

25. The argument is laboriously advanced that the evidence that injury was inflicted with MO1 cannot be accepted. PWs 2, 4 and 13 evidently did not identify MO1 as the weapon of offence convincingly. It appears that they were not sure to assert that MO1 was the weapon used by the accused. It is the common case that the accused did not carry any weapon when he came to the house. Outside the house or after entering the house he appears to have come into possession of MO1. The evidence of PWs 1, 4 and 13 suggest that those witnesses entertained some reservation as to whether MO1 was really the weapon used. All of them though they initially expressed reservation, subsequently asserted that MO1 was the weapon though they saw some difference. Attempt is made to confound this confusion with the help of incongruity between the actual measurements of MO1 and the description of MO1 in Ext.P6 scene Mahazar, which description is repeated in Ext.P8 property list. PW12 investigating officer had also accepted that there is some difference in the description of dimensions of the weapon in the documents concerned and on actual verification in court. We do not find this to be of any crucial significance or relevance. The approximate description which must have been resorted to in Ext.P6 which is found not to tally exactly when the attempt was made to identify the dimensions of the weapon in court during examination cannot be held to be so crucial or vital in the circumstances as to generate any reasonable doubt. A similar weapon was used, it is established beyond the trace of any doubt. The evidence of PW6 clearly suggests that the injury found on the person of the deceased described in Ext.P4 could have been suffered with a weapon like MO1. In these circumstances, the laborious attempt to build up argument on the basis of the appropriate description of dimensions of MO1 in the documents cannot also deliver any advantage to the appellant.

26. The prosecution sought to support the evidence of PWs. 2, 4, 13 and 14 with the contents of Ext.P1 F.I.Statement. The maker of the F.I.Statement(PW1) had not witnessed the incident. However, PW1 claimed to have collected the information from the eye witnesses and he revealed them to the police in Ext.P1. The contents of Ext.P1 support and corroborate the version of PWs 2, 4, 13 and 14. The learned counsel argues that Ext.P1 could not have been the real F.I.R. This argument is built on the premise that Ext.P1(a)F.I.R registered on the basis of Ext.P1 at 7.15 P.M. on 24.04.2000. had reached the learned Magistrate only

on 27.04.2000 as per the seal/endorsement on Ext.P1(a). It is true that there is some time lag. It is crucial to note that the explanation of the investigating officer or the one who registered the F.I.R(PW12 and PW9) were not even solicited when they were in the witness box for this incongruity. Of course the prosecution could have volunteered and would have been well advised to volunteer their explanation for such gap of time in the F.I.R reaching the court. But we are of opinion that, that by itself in the absence of challenge against the officers who registered Ext.P1(a) cannot be held to be of any crucial significance. The learned counsel for the appellant further submitted that PW1 had stated that he had given his version to the police at 4 P.M. whereas the F.I.Statement is seen recorded only on 7.50 P.M. From this sole circumstance, it is argued that the real F.I.R must have been suppressed. This contention does not impress us. PW1 in his then state of mind would not have been speaking by the hour hand and minute hand of the clock. Some incongruity in the oral narration of PW1 years later when he was examined in the box about the precise time when he lodged Ext.P1 F.I.Statement is according to us of no consequence when PW1 admits that Ext.P1 was the F.I.Statement and that (Ext.D1) clearly shows that the same was recorded at 7.15 P.M. On this the appellant cannot claim the arousal of any reasonable doubt in our mind.

27. The learned counsel for the appellant submits that according to PW5 and as per the entry in Ext.P3 police was informed about the incident. But according to the police they had not received any intimation and the statement of the deceased or any one was not recorded prior to Ext.P1. We must in the context certainly note that Ext.P3 contains an entry that the police was informed. According to the police they had not received information. We must also note that PW5 had not given any treatment to the deceased. The only complaint noted is headache and drowsiness. In these circumstances, if the intimation which PW5 allegedly wanted to send to the police did not reach the police before 7.15 P.M. on 24.04.2000 at which time Ext.P1 was recorded from PW1, we are unable to agree that, that can constitute any circumstance of crucial significance in favour of the appellant.

28. We are in these circumstances satisfied that it is absolutely safe to concur with the conclusions of the learned Sessions Judge that the injury described in Ext.P4 was suffered by the deceased at the hands of the appellant and that he had succumbed to those injuries. No appellate interference is warranted.

29. What is the offence that is revealed? Evidently because of the incident that happened on the previous day the appellant had come to the house of the deceased on the next morning. The evidence suggests that he was not carrying any weapon and the weapon used by him is admittedly a weapon that was available in the house of the deceased. This is no safe assurance for the conclusion that the deceased did not intend to indulge himself in any culpable or contumacious conduct. No safe inference about intention can also be drawn from that mere circumstance. The conviction of the appellant that an appropriate

weapon would be available at the scene may have prompted him not to carry any weapon with him. But at any rate on the question whether the appellant intended to cause death of the deceased we may accept the argument of the learned counsel for the appellant that there is no convincing evidence. But intentional infliction of injury on a person who was lying on his bed is indicated convincingly by the evidence of PW6 and Ext.P4 certificate issued by him. The argument that the injuries cannot be described to be intentional injuries cannot obviously be accepted. The further argument that the injury on the head could not have been intended, as the evidence suggests that the deceased had covered his head with some clothes when he was sleeping, cannot also be accepted. Intentional infliction of injury is evidently revealed and there is no reason to assume that the injury that actually inflicted was not the injury intended by the appellant. The injury inflicted is sufficient in the ordinary course of nature to cause death and it had actually caused death. These are also eminently established. In these circumstances, under Clause Thirdly of Section 300 IPC (if not under Clause Firstly of section 300 IPC), the offence proved against the accused is that of murder defined u/s 300 IPC and punishable u/s 302 IPC.

30. Undaunted, the learned counsel for appellant argues that the appellant must be held to be entitled for exception (1) and/or (4) of section 300 IPC. There is nothing to suggest that any conduct emanated from the deceased or any other which could have operated as a provocation under exception (1) to Section 300 IPC. The earlier incident was on the previous day. The cross-examination of witnesses does not even remotely suggest that the appellant wanted to take up such a defence of provocation under exception (1). Similarly in the facts and circumstances of the case it is evident that there was no quarrel between the deceased and the appellant on that morning. There was no sudden fight consequent to any such sudden quarrel. There is nothing to show that passion must have been running high and there was no time for such passion to die down. In the facts and circumstances of this case where the deceased is seen to have been assaulted when he was sleeping it is not possible to accept the contention of the learned counsel for the appellant that the appellant is entitled to the protection of either exception (1) or exception (4). That plea has to be summarily rejected.

31. It follows on the above discussion that this appeal cannot succeed. The challenge fails.

32. In the result, this appeal is dismissed.