
(2003) 06 KL CK 0070

In the High Court Of Kerala

Case No : Criminal A. No's. 332 and 450 of 2002 (C)

Sivaraman alias Gopi and etc.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2003) CriLJ 4186

Hon'ble Judges : N. Krishna Nair, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : Daisy Thampi and Mary Beena Joseph, for the Appellant; K.G. Bhaskaran, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.

1. These appeals are directed against the judgment and order dated 12th April, 2002 of the Additional Sessions Judge II, Mavelikara, in S.C. No. 125/97. CrI. A. 450/02 has been filed by accused No. 1 and CrI. No. 332/02 has been filed by accused 2, 3, 5 and 6. The appellants were charged with the offences punishable under Sections 143, 147, 148, 149, 323, 307 and 302 of the Indian Penal Code. After trial the learned Additional Sessions Judge found the appellants guilty of the offences punishable under Sections 302, 324, 148 and 323 read with Section 149 of the Indian Penal Code. The appellant (1st accused) in CrI. A. No. 450/02 was sentenced to undergo rigorous imprisonment for life u/s 302 read with Section 149, I.P.C. rigorous imprisonment for three years u/s 324, I.P.C. rigorous imprisonment for two years u/s 148, I.P.C. and six months u/s 323 I.P.C. Accused No. 2 (1st appellant in CrI. A. 332/02) was sentenced to undergo rigorous imprisonment for three years u/s 324 read with Section 149, I.P.C. two years u/s 148 and six months u/s 323, I.P.C. The other accused viz. accused Nos. 3, 5 and 6 (appellants 2, 3 and 4 in CrI. A. No. 450/02) were sentenced to undergo rigorous imprisonment for two years each u/s 324 read with Section

149, I.P.C. two years each u/s 148, I.P.C. and six months each u/s 323, I.P.C. The sentences are allowed to run concurrently. Accused No. 4 was a minor at the time of the Incident and his case has not been tried. It is being tried separately.

2. According to the prosecution case, the incident occurred at about 9.15 p.m. on 23-8-1995, when accused No. 1 and P. W. 1 were in the public road, which goes from Althramukku to Mattom Mahadeva Temple. They were in the opposite directions. The accused was going towards west to his house while P.W. 1 was returning from his brother's house after taking his supper and going to his sister's house where he used to sleep at night. When both of them reached in front of Sathyalayam house, accused No. 1 attacked P.W. 1 giving him a blow in the rib portion of P.W. 1 and accused No. 1 attempted to stab P.W. 1 with a knife. P.W. 1 resisted and his right hand was injured. At that time he cried aloud. Then P.W. 2, his sister, and deceased, her husband, came to - the scene. It was at that point of time A1, in a loud voice, called his sons, accused Nos. 2 and 4. On hearing this A2, and A4 came there, A2 inflicted a cut injury on the deceased with a sword. A1 stabbed him. A4 and A3 fisted and blowed. A5 and A6 had beaten the deceased. P.Ws. 1 and 2 also sustained injuries in the altercations. P.Ws. 1 and 2 and the deceased were taken to the Government Hospital, Mavelikkara. P.Ws. 1 and 2 were admitted there. The Doctor certified that the deceased had breathed his last. It was based on this prosecution case that the accused stood trial before the Court below.

3. The evidence in this case consists of the oral testimony of P.Ws. 1 to 15 on the prosecution side and D.Ws. 1 to 4 on the defence side and the documentary evidence, Exts. P1 to 17 on the prosecution side and Exts. D1 to D3 on the defence side. M.Os. 1 to 3 were also identified.

4. P.Ws. 1 and 2 are injured eye-witnesses. Both of them had spoken to in tune with the prosecution case. P.W. 1 was the brother-in-law of the deceased whereas P.W. 2, was the wife of the deceased. Both of them had stated that A1 had stabbed the deceased and the other accused persons also inflicted serious injuries on the deceased. Believing the evidence of P.Ws. 1 and 2, the eye-witnesses, the trial Court found the prosecution story to be true and the accused were convicted and sentenced as aforesaid. The conviction and sentence are seriously assailed in these appeals by the accused-appellants.

5. It is contended that the prosecution story was improbable. The prosecution had not given the true version of the incident before the Court below. The serious injury sustained by accused No. 1 had never been explained. The accused persons, apart from accused No. 1, were ladies or children or aged persons. They were living bit away from the scene of occurrence and their residence and scene of occurrence were separated by a water channel. It is further submitted that there were only two persons at the time of altercation. According to the evidence of P.W. 1, on hearing the voice of P.W. 1, the deceased and P.W. 2, had reached the scene of occurrence. In such circumstances, it could not have been possible for accused No. 1 to inflict serious injuries on the deceased. The other

accused had come to the scene of occurrence, according to the evidence of P.W. 1, after P.W. 2, and the deceased had arrived at the place of occurrence. It is further submitted that accused No. 1 had also sustained very serious head injury as certified in Ext. D1 and spoken to by D.W. 1. This was never explained by the prosecution. P.W. 1, also pleads ignorance of injuries sustained by accused No. 1. It is again contended that the recovery of M.O. 1, the dagger alleged to be used for stabbing the deceased, is also improbable. As D.W. 4 had spoken to, while in Court, after inflicting the stab injury on the deceased. A1 had run towards west whereas M.O. 1 had been recovered from the northern side of the scene of occurrence on 11-9-1995. It is too probable. D.W. 2 has disclosed that 23-8-1995 at about 10.15 p.m. A1 was hospitalized in the Mavelikkara Hospital and was referred to Medical College Hospital, Alappuzha on the same day and had been admitted as an inpatient there till 31-8-1995, when he was arrested. Therefore, there is no reason to believe that he had concealed M.O. 1 in the place from where it has been recovered as per recovery mahazar, Ext. P5. Therefore, this is a total improbable story and the conviction cannot be sustained. It is further submitted that P.Ws. 1 and 2 are interested witnesses and being the close relatives of the deceased they cannot be believed.

6. On the other hand it is contended by the Public Prosecutor that though P.Ws. 1 and 2 are the injured eye witnesses, there is no reason to disbelieve them. The conviction of the accused by the Court below was based on the evidence given by the said eyewitnesses. Their evidence remains unshaken. In such circumstances there is no reason to interfere with the finding of the learned Additional Sessions Judge, the learned Public Prosecutor submits. Merely because P.Ws. 1 and 2 are the close relatives of the deceased, there is no reason to disbelieve them especially when they are injured witnesses.

7. But, that alone is not sufficient in this case to convict the accused. As is revealed in Ext. D1, the injured had been brought at 10.15 pm. on the date of occurrence to Mavelikkara Hospital. Ext. D1 certificate has been issued by D.W. 1. The Doctor, who examined him at the time when he was taken to the hospital, has stated that the injuries sustained by accused No. 1 were serious injuries and therefore he had referred him to the Medical College Hospital, Alappuzha. D.W. 3 is the Doctor, who had treated accused No. 1 in Medical College Hospital, Alappuzha. He has also stated that when accused No. 1 was admitted in the hospital, his injuries were found to be very serious. P.W. 1, was taken to the very same hospital at Mavelikkara as is seen from Ext. P7 at 10.25 almost at the similar time. According to him, P.W. 2, was taken just immediately after he was taken to the same hospital. After that the deceased was also taken to the very same hospital and the Doctor certified him to be dead. Thus all the four persons were brought to the hospital almost at the same time because all of them had been injured in the same incident. The injuries sustained by the accused No. 1 as is certified in Ext. D1 and spoken to by D.Ws. 1 and 3 were very serious injuries. Necessarily, in a case like this it was incumbent on the prosecution to explain those injuries, if they want to fasten the guilt on the accused. The wound

certificate issued to accused No. 1 was produced only by defence. There was no explanation by the prosecution for the injuries sustained by accused No. 1. In such circumstances even if P.Ws. 1, and 2 were the eye-witnesses to the occurrence and had got injured in the same incident, their evidence has to be viewed in the background failure of the prosecution to explain the injury sustained by accused No. 1.

8. In this respect the decision of the Supreme Court in Raghunath and Ram Kishan and Others Vs. State of Haryana and Others, is very relevant. The Supreme Court referring to the controversy on that point as held in Ram Sunder Yadav and Others Vs. The State of Bihar, Vijayee Singh and others Vs. State of U.P., , Mohar Rai and Bharath Rai Vs. The State of Bihar, and Lakshmi Singh and Others Vs. State of Bihar, , held as follows :

"In the present case, as noticed earlier, the prosecution evidence consists of interested or inimical witnesses. Therefore, non-explanation of the injuries sustained by Ram Kishan may assume greater importance. There is also the defence version which competes in probability with that of the prosecution. In our view therefore, non-explanation of the injuries sustained by the accused. Ram Kishan which are grievous in nature, renders the prosecution story not wholly true."

As pointed out by the Public Prosecutor it is true that the Supreme Court has held in the decision in Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others, that in every case non-explanation of the injury sustained by the accused cannot be staged to be fatal to the prosecution case. But even in that decision the Supreme Court had made it clear that:

"Before non explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two conditions : (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes grater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution."

In this case P.Ws. 1 and 2 are close relatives of the deceased. Of course they are eyewitnesses and they are injured as well. They were taken to the hospital. Accused No. 1 was also taken to the same hospital around the same time. Injuries sustained by accused No. 1 were very serious. In such circumstances, necessarily the dictum laid down by the Supreme Court in Raghunath's case looms importance and the prosecution story has to be viewed with suspicion. It cannot be said that the police was not aware of the injury sustained by accused No. 1. The police had charged a counter case. In such circumstances the police was bound to disclose that fact before the Sessions Court to have a fair trial on the accusation faced by the accused. In other words in view of the failure of the

prosecution in not disclosing the serious injuries sustained by accused No. 1 in the same incident, it has to be held that the prosecution has given only an one sided version of the occurrence. It leaves a doubt on the Court about the nature of the incident as stated by the prosecution. Necessarily that doubt shall go to the benefit of the accused persons. Therefore when that benefit is given to accused No. 1 the accused appellants are entitled to be acquitted.

Accordingly, we set aside the conviction and sentence passed against the accused and they are acquitted. Thus the appeals are allowed. The accused persons, if they are in jail, shall be released forthwith, if they are not wanted in any other case.