

CASE NO.:
Appeal (crl.) 866 of 1994
Appeal (crl.) 908-909 of 1994

PETITIONER:
Kunhimodeenkutty & Ors.

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 18/12/2002

BENCH:
Y.K. SABHARWAL & K.G. BALAKRISHNAN.

JUDGMENT:

J U D G M E N T

K.G. BALAKRISHNAN, J.

The Court of Sessions, Manjeri Division in Kerala tried 12 accused persons for the offences punishable under Section 143, 147, 148, 341, 324, 307, 302 read with Section 149 I.P.C. The Sessions Judge convicted the first accused for the offence under Section 307 I.P.C. and sentenced him to undergo rigorous imprisonment for a period of 7 years. A-5 and A-6 were found guilty of offences punishable under Section 324 I.P.C. and they were sentenced to undergo imprisonment for a period of one year each. These accused persons filed an appeal before the High Court and the State also went in appeal against the acquittal of other accused persons. The Division Bench of the Kerala High Court confirmed the conviction and sentence entered against A-1, A-5 and A-6 and the appeal preferred by the State against the acquittal was partly allowed and the Division Bench found A-7, A-8 and A-11 guilty of the offence under Section 302 read with Section 34. These three accused were sentenced to undergo imprisonment for life. The Division Bench also found A-2 guilty of the offence under Section 324 and sentenced him to undergo imprisonment for a period of one year. Criminal Appeal No. 866/1994 is an appeal preferred by A-7, A-8 and A-11 who have been convicted by the High Court for the offence under Section 302 read with Section 34. Criminal Appeal Nos. 908-909/1994 are the appeals preferred by A-1, A-2, A-5 & A-6.

The incident happened at about 8.30 p.m. on 18.12.1984 at a place called Athavanad in Tirur Taluk. During 1984 Lok Sabha elections, deceased Gopalakrishnan and witnesses PW1, PW2 and PW3 and others organised a meeting of a political party in the evening of 18.12.1984. After the meeting was over at about 8.00 p.m., deceased Gopalakrishnan and PW1, PW2 and PW3 went to the house of one K.V. Chandran and entrusted the mike set which was used for the meeting. From there, PW1, PW2 and PW3 and deceased Gopalakrishnan were coming back and when they reached the main road, the accused persons came from the northern side. Some of them were armed with dagger, iron rods and other weapons. Two accused persons were carrying gas lights. According to the prosecution, the group of accused persons mounted an attack on deceased Gopalakrishnan and PW1 to PW3. Deceased Gopalakrishnan got injuries by some of the accused. PW3 Narayanan was stabbed by the first accused. He ran southwards and reached a neighbouring house. From there, he was taken to Tirur Government hospital in a jeep. Deceased Gopalakrishnan was attacked by A-11 Thuluvadath Hussan by a dagger on his shoulder. A-8 Allavikutty attacked Gopalakrishnan with a dagger and caused injuries on his right shoulder and stomach. A-7 stabbed him on his belly. PW1 was attacked by A-6 with an iron rod. PW1 and PW2 escaped to a neighbouring house and as they were afraid, they remained in the house and in the early hours, they were taken to Government hospital, Tirur. Deceased Gopalakrishnan who sustained injuries in the incident ran from the place and his dead body was found about 500 meters away from the place of incident.

On receipt of intimation from the hospital, a head constable from Tirur Police Station recorded the FI statement of PW1. As the incident had taken place within the jurisdiction of Kattipparuthy Police Station, the FIR was transferred to that station and the Circle Inspector of Police started the investigation. Inquest was prepared and the dead body of deceased Gopalakrishnan was subjected to post-mortem examination. At the place of occurrence, a motor car was found. The accused were arrested and some of the weapons allegedly used in the commission of the crime were recovered.

The learned Sessions Judge found that there was some suspicion in the prosecution case and it was held that there was no satisfactory evidence to prove that these accused persons caused the death of Gopalakrishnan. According to the learned Sessions Judge, PW1 to PW3 could not give a satisfactory account as to how the deceased sustained injuries. The learned Judge even suspected that PW1 to PW3 must have sustained injuries in a different incident and the deceased Gopalakrishnan must have died due to an attack by some other unknown assailants. However, the Division Bench of the High Court held that the evidence adduced by the prosecution was sufficient to enter conviction for murder against A-7, A-8 and A-11.

The learned Senior Counsel, Shri Sushil Kumar pointed out the various inconsistencies and improbabilities in the prosecution case. According to appellants' counsel, the incident itself might not have taken place at 8.30 p.m. It was pointed out that at 7.30 p.m., some other incident happened and it is not known whether deceased Gopalakrishnan sustained injuries in that incident. This contention is raised on the basis that PW 21 Soopi Haji gave an information to the Police at 8.35 p.m. on 18.12.1994 that at about 7.30 p.m. on that day, some RSS workers had a quarrel and caused damage to his car and the police registered a case. But it is surprising to note that when the Motor Vehicle Inspector inspected the vehicle, there was no damage to the car. Moreover, the information was given at 8.35 p.m. and it is quite possible that there was a conscious attempt on the part of some people to mislead the police. The learned Sessions Judge also relied on the post-mortem certificate and held that there were partly digested food particles in the stomach of the deceased Gopalakrishnan and that would indicate that the deceased Gopalakrishnan might have died after two hours of taking food. The learned Sessions Judge assumed that the deceased might have taken meals at about 4.00 p.m. and therefore the time of death may not be correct. But, there is no evidence to show as to when the deceased Gopalakrishnan had taken his last meals. It is also pointed out by the appellants' counsel that there was delay in submitting the First Information Report to the Court. It was argued that though the FIR was registered at 6.30 a.m. on 19.12.1984, the same reached the Magistrate only at 3.30 p.m. on that day. It was argued that the delay in despatching the FIR to the Court was not properly explained and this had resulted in serious prejudice to the accused. We do not find much force in this contention as the registration of the case was at Tirur Police Station and the FIR was transferred to another Police Station and from there it was despatched to the Magistrate.

It was submitted by the appellants' counsel that nature of reaction of PW1 to PW3 immediately after the incident was highly suspicious. PW1 and 2 ran to a neighbouring house and remained there till somebody came to take them to the hospital. PW3 also ran from the place and went for the help of his brother to take him to the hospital. It was argued that these persons never made any inquiry as to what had happened to deceased Gopalakrishnan and this, according to the appellants' counsel, was due to the fact that these three witnesses might have suffered injuries in some other incident and the deceased Gopalakrishnan must have died due to attack by some other persons. We do not find any force in this contention. All the three witnesses had sustained injuries. PW3 had suffered serious injuries and he had to be in the hospital for a long period. PW1 and PW2 explained that they were afraid and they did not come out of the house where they hid themselves. They also deposed that there was a tense situation in the locality. Under such circumstances, we do not think that there is any inherent improbability in the evidence adduced by the prosecution.

It is true that PW1 to PW3 did not give a very consistent version of the nature of attack mounted by the group of people, but on a perusal of the evidence of these three witnesses, along with the evidence of PW-8, PW-14 & PW-17, it is clear that the accused who have been found guilty were instrumental in causing fatal injuries to deceased Gopalakrishnan.

PW 1 to PW3 sustained injuries and out of them, PW3 sustained serious injuries. So, in the melee, they could not give the detailed account as to how deceased Gopalakrishnan sustained various injuries. But, nevertheless, PW1 stated that A-8 stabbed the deceased with a sickle on his shoulder and stomach. PW 2 has spoken only about the stabbing of deceased by A-11. PW 3, on the other hand, admitted that he was only able to say as to who had caused injury to him, but he stated that when they reached the road, A-5, A-11, A-12 and A-10 came there and he also spoke about the presence of other accused persons and that they all attacked PW 1 to PW 3 and deceased Gopalakrishnan. He also deposed that all these accused persons were known to him previously. The evidence of these witnesses is further corroborated by the evidence of PW8, PW14 and PW17. The evidence of PW8 was rejected by the Sessions Court on the ground that he was a witness at the time of inquest and though the inquest report appears to have been prepared on 19.12.1984, it reached the Court only on 21.12.1984. So also, the evidence of PW14 whose name was mentioned in the FI Statement was rejected on the ground that he could not have witnessed the incident by hiding at a nearby place. These reasons do not appear to be just and reasonable. The High Court has rightly observed that the presence of these witnesses cannot be doubted. So also the name of PW 17 was mentioned in the FI Statement and his evidence was rejected on the ground that he waited for 15 minutes after the meeting was over and this fact was not very probable. But we do not think that these are all good and satisfactory reasons to reject the evidence of this witness especially when the FI Statement was given very promptly and his name finds a place in that statement. PW 8, PW14 and PW17 speak about the complicity of A-7, A-8 and A-11 in causing injury to deceased Gopalakrishnan. We do not find any reason to disagree with the views expressed by the High Court especially when the rejection of the evidence of PW8, PW14 and PW 17 by the Sessions Court was mostly on flimsy reasons.

As A-7, A-8 and A-11 were acquitted by the Sessions Court and the High Court convicted them for the offence under Section 302 read with Section 34 for the first time, we have carefully gone through the entire evidence of PW1 to PW3, PW8, PW14 and PW17 and are satisfied that their evidence is worthy of acceptance. PW 13, the Doctor who conducted the post-mortem examination on deceased Gopalakrishnan was of the opinion that deceased Gopalakrishnan died of penetrating injury caused to the chest. There were as many as 9 injuries on the body of deceased Gopalakrishnan. Injury No. 1 was an incised wound on the top of right shoulder and Injury No. 2 was an incised wound on the right arm pit. Injury No. 3 was an incised wound on the abdomen. There were incised wounds on the left side of the head and various other abrasions and contusions on his body. It is clear that a group of people attacked deceased Gopalakrishnan and caused him several injuries. Moreover, the incident happened all of a sudden when the accused persons saw deceased Gopalakrishnan and PW1 to PW 3. Having regard to the peculiar nature of the circumstances which led to the death of deceased Gopalakrishnan, we are of the view that the offence committed by A-7, A-8 and A-11 would only come within the ambit of the offence punishable under Section 304 Part I. In the result, we acquit A-7, A-8 and A-11 of the offence of murder punishable under Section 302 read with Section 34 I.P.C. and convict them for the offence under Section 304 Part I read with Section 34 I.P.C. and sentence them to undergo imprisonment for a period of 7 years. We find no reason to interfere with the conviction of the first accused for the offence under Section 307, which was confirmed by the High Court. So also we do not find any reason to interfere with the conviction and sentence passed against A-2, A-5 and A-6 for the offence under Section 324. Their involvement in the crime is amply proved by the evidence adduced by the prosecution.

The learned counsel for the appellants prayed that A-2, A-5 and A-6 are first offenders, so they be released under Probation of Offenders Act. We do not

think that this is a fit case to release them on probation.

In the result, Criminal Appeal no. 866/1994 is partly allowed and the conviction of the appellants under Section 302 read with Section 34 I.P.C. is set aside and they are found guilty of the offence punishable under Section 304 Part I read with Section 34 I.P.C. and each of them is sentenced to undergo imprisonment for a period of 7 years. Criminal Appeal Nos. 908-909/1994 are accordingly dismissed. All the accused are directed to surrender to their bail bonds to undergo the sentence.

JUDIS