

PETITIONER:
MAVILA THAMBAN NAMBIAR

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 09/01/1997

BENCH:
M.K. MUKHERJEE, S.P.KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR. J.

This criminal appeal is file by the appellant accused impinging the judgment and order of the High Court of Kerala dated January 19, 1993, whereby the appellant was convicted and sentenced to suffer imprisonment for life for committing the murder of Madhavan. The trial court at the conclusion of the trial found the appellant not guilty and acquitted him. The State of Kerala filed the appeal to the High Court and the said criminal appeal was allowed by the High Court vide its impugned judgment.

2. Briefly state the prosecution case is as under:-

The incident in question took place at about 8.00 p.m. on May 19, 1988 at Kattapunna. On this day, a "Thaiyyam" (a village ballet) was arranged by Madhavan in the evening and for that purpose, he needed a petromax which was available in the shop of the appellant. Madhavan had gone to the shop of the appellant and requested him to give a lighted petromax. The appellant refused to oblige. Earlier in the day, brother of Madhavan had also gone to the shop of the appellant and requested him to give him two benches to celebrate the said festival. When Madhavan had gone to the shop of the appellant with a request to give him a lighted petromax and on the latter's refusal, there were exchange of words which was followed by a scuffle. Chalil Krishnan (PW 1) who happened to be in the shop intervened and separated them A. Narayanan (PW 6) who runs a tea shop near the shop of the accused also reached the place of incident and held Madhavan with a view to take him away. The appellant who was then sitting on a stool picked up a pair of scissors (M.O.2) lying on the table in front of him and caused a stab injury on the right side of the chest of Madhavan. The appellant again tried to inflict one more blow which landed on right cheek of Madhavan who thereafter fell down on the ground.

3. A lorry was hired to carry Madhavan to the hospital but on the way it broke down. A car was then procured in which Madhavan while being carried to the hospital, succumbed to his injuries. Chalil Krishnan (PW 1) then proceeded to Kasaragod police station and made a report to the head constable on duty (PW 13). The case was then transferred to

Bakel police station in whose jurisdiction the incident had taken place. The First Information Report (Ex.P11) came to be recorded at 9.00 p.m. which was forwarded to the Magistrate at about 10.00 p.m. After holding the inquest on the dead body of Madhavan, it was forwarded to the civil hospital for post mortem examination. After completing the necessary investigation, a charge sheet was submitted against the appellant for an offence punishable under Section 302 of the Indian Penal Code.

4. The appellant denied the accusations levelled against him and pleaded that he is innocent. He further pleaded that Madhavan was the aggressor and infact in that scuffle, at the instance of Madhavan he sustained an injury on his head. He, therefore, pleaded that he had committed no offence and he be acquitted.

5. The prosecution in order to bring home the guilt of the accused examined as many as six witnesses of facts who were P.W.1 to P.W.6. In addition to this ocular evidence, the prosecution examined Dr. George Mathew (PW 10) to prove the post mortem examination report and the cause of death. Formal witnesses to prove various panchanmas were also examined by the prosecution.

6. Learned Sessions Judge after the conclusion of the trial by his judgment and order dated May 9, 1989, found the accused not guilty and consequently passed the order of acquittal. The State of Kerala preferred the criminal appeal to the High Court which was allowed and the appellant stood convicted under Section 302 of the Indian Penal Code. It is this judgment and order of the High Court which is sought to be challenged in this criminal appeal.

7. We have gone through the learned judgments of the courts below very carefully. We are also conscious of the fact that the trial court had acquitted the appellant but the High Court has reversed the order of acquittal and found the appellant guilty of committing the murder of Madhavan and convicted him under Section 302 of the Indian Penal Code. The High Court in its judgment, recorded several unimpeachable reasons and very succinctly demonstrated how the reasons for acquittal recorded by the Session Court were perverse. We are in complete agreement with the judgment of the High Court that the order of acquittal passed by the trial court was based on totally untenable grounds. Mr. Lalit, Learned Senior Counsel appearing in support of this appeal despite his strenuous efforts was unable to persuade us to uphold the order of acquittal passed by the trial court.

8. In the present case, there were as many as six eye witnesses (P.W.1 to P.W.6) who have consistently deposed how the assault on madhavan took place. Chalil Krishnan (PW 1) who was present in the shop of the appellant and witnessed the entire incident had given a credible version how the assault took place. He was the person who took Madhavan in a truck to the police station for lodging the report and his First Information Report (Ex.P11) was recorded within one hour from the time of incident. The First Information Report lends corroboration to the evidence of Chalil Krishnan (PW 1) in all material particulars. So is the evidence of other five eye witnesses. A.Narayanan (PW6) came to the shop in order to take away Madhavan. He then testified that when he was holding the hands of Madhavan, the appellant picked up a pair of scissors (M.O.2) and inflicted a stab injury on the right side of the chest of Madhavan. Second blow by the appellant with the pair of scissors fell on Madhavan's right cheek who thereafter fell down on the ground. The High Court in its impugned judgment has elaborately considered the

evidence of all these eye witnesses and Mr. Lalit was unable to point out any error in appreciation of their evidence. The medical evidence of Dr. George Mathew evidence. The medical evidence of Dr. George Mathew (PW 10) also lends corroboration to the evidence of the eye witnesses. Dr. George Mathew (PW 10) has proved the post mortem examination report (Ex.5) and also proved the cause of death. According to Dr. Mathew, injuries noted in the post mortem examination report (Ex.5) were ante mortem and were sufficient in the ordinary course of nature to cause death. We see no hesitation in accepting the finding of the High Court that the appellant caused the injuries on the vital part of the body of Madhavan with the pair of scissors which resulted into his death. We are also in agreement with the finding of the High Court that the evidence of the eye witnesses is credible and it proved the complicity of the appellant in the present crime.

9. Mr. Lalit then urged that it was Madhavan who initially picked up a quarrel in the shop of the appellant which was followed by a scuffle. The appellant had also sustained injury on his head and this injury was not explained by the prosecution. It would, therefore, be reasonable to infer that Madhavan had attacked the appellant by causing an injury on the head and therefore, he was the aggressor and the appellant had a right of private defence. We see no substance in this contention. Madhavan was totally unarmed and when he was held by A.Narayanan (PW 6) to take him away, appellant caused the injury on the vital part of the body of Madhavan with the pair of scissors. On these proved facts, it is not possible to accept the contention that the appellant had any right of private defence.

10. Mr. Lalit then, seriously challenged the conviction of the appellant under Section 302 of the Indian Penal Code. He urged that the appellant had neither intention nor knowledge that such an injury would result into the death of Madhavan. He, therefore, urged that the appellant at the most could be convicted for any other minor offence. Mr. George, appearing for the State of Kerala urged that the appellant was rightly convicted under Section 302 of the Indian Penal Code and no interference was called for. After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall under Section 304 part II of the Indian Penal Code. The appellant had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with the pair of scissors on the vital part would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from 302 IPC to one under Section 304 part II of the IPC.

11. For the foregoing conclusions, the appeal is partly allowed. The conviction of the appellant under Section 302 IPC is altered to one under Section 304 part II of the Indian Penal Code. Consequently, the sentence of life imprisonment awarded to the appellant is set aside and he is sentenced to suffer rigorous imprisonment for seven years for the altered conviction. The appellant, if on bail, shall surrender to his bailbonds to serve out the remaining part of his sentence.