PETITIONER:
KALLIKATT KUNHU

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 24/02/2000

BENCH:
S.S.M.Quadri, S.Rajendra Babu

JUDGMENT:

RAJENDRA BABU, J. :

The appellant before us having been convicted under Section 302 IPC and sentenced to undergo imprisonment for life, unsuccessfully appealed to the High Court. Hence this appeal.

The prosecution alleged that on 25.9.83 at about 2.30 p.m. the appellant went to the house of Abdulla and called him out when the said Abdulla was stated to be sleeping inside the house. At that time, Hameed, PW1, son, Manha, PW2, first wife of Abdulla and Beevi, daughter of Abdulla were sitting inside the kitchen. Abdulla came out of the house and both, the appellant and Abdulla went to the shed situate in the courtyard of the house. Abdulla sat on a bench and the appellant stood near him. In the course of their conversation, Abdulla appears to have demanded repayment of the money owed by the appellant. Annoyed by that demand, the appellant is stated to have taken out a dagger proclaiming that it had been given to him by Pariyaram Abbas to kill him, stabbed Abdulla inflicting injury on his chest. Abdulla was toppled down along with the bench. Hameed, PW1, Manha, PW2 and Beevi rushed to the scene. Achibi, PW3, the second wife of Abdulla, who had come to draw water from the well near the house, also rushed to the scene. Again the appellant is stated to have stabbed Abdulla and inflicted another injury on his left shoulder. The appellant then turned against PW1 and others who had reached near him. PW1 caught hold of the appellant from behind and PW2 took out a wooden stick and beat the appellant. PW3 took out a chopper and inflicted some injuries on the appellant. On account of the commotion, some of the neighbours are said to have reached the scene of occurrence. Wife of the appellant also came to the scene and took him away from the scene of occurrence. PW4 and Kariappu were also there in the courtyard at the time of the incident. PW1 went to the police station and lodged a FIR. On registering a case, PW17, the Circle Inspector of Police investigated and laid a charge-sheet before the Jurisdictional Magistrate, who committed the matter to the Sessions Court at Tellicherry. The learned Sessions Judge framed charges against the appellant under Section 302 IPC and the appellant pleaded not guilty and claimed to be tried. Thereafter the matter stood transferred to Kasaragod

Sessions Division on formation of a court there. PWs 1 to 7 were examined and several Exhibits and material objects were marked. Statement of the appellant was recorded under Section 313 Cr.PC. The appellant did not adduce any evidence in his defence.

On behalf of the appellant, the defence set up is that the incident did not take place as alleged by the prosecution. On the other hand, when the appellant was returning home from Church along the pathway in front of Abdullas house in the afternoon of 25.9.83, Abdulla, Hameed, PW1, Manha, PW2 and Kariappu attacked him and inflicted injuries upon him and the appellant secured possession of a knife which Kariappu was having and when he fell unconscious he was taken to the house by his wife and from there he was taken to the hospital. Abdulla asked him and his wife to give evidence in a case against one Somappa Gowda and they did not agree for the same and as a result of the enmity Abdulla and others attacked him. By an order made on 27.10.88, the Sessions Court acquitted the appellant. However, the High Court in suo moto revision set aside the order of acquittal and remanded the case for proceeding afresh in accordance with law.

After remand the trial court proceeded to formulate the following two questions:

1. Whether the appellant committed murder of Abdulla and is he guilty of the offence punishable under Section 302 IPC? 2. And if so, what should be the sentence?

The trial court is of the view that PWs 1 to 4 are the eye witnesses to the incident who have given sufficient details as to how the incident took place and the appellant inflicted fatal injuries on Abdulla and caused his death. In the evidence tendered by them it emerged that the OBpellant owed some amount to the deceased and the matter was settled at the intervention of PW10, V.K.Gopal, which amount was to be paid by 28.9.83. PW 1, son of the deceased, PW2, first wife of the deceased, PW3, second wife of the deceased, and PW4, labourer working with the deceased, were characterised as interested witnesses. Even after careful scrutiny, the version of the incident as stated by PWs 1 to 4 could be accepted as there is no basic infirmity in the same and they are natural witnesses. The defence pointed out that there were certain injuries on the appellant also which were not properly explained. The trial court noticed that the evidence of PWs 1 to 3 who have stated that a wooden stick and a knife were used by them to contain the attack on the deceased by the appellant. Though they did not say in so many words that they caused injuries to the appellant, the trial court held that it was clear from their testimony that the injuries were caused to the appellant by them. M.O.8 is the weapon, which is stated to have been used by PW-3 for inflicting injuries on the appellant. At the time of inquest, M.O.8 was not seized and it was produced before the Circle Inspector of Police by PW3 on 27.8.83, which was the third day after the incident as per the version of PW3. There were no bloodstains on the said weapon.

The defence claimed that M.O.1 was the weapon used for stabbing the deceased by the appellant and the said weapon was found sheathed and as such the said dagger could not

have been used to inflict injuries on the deceased and so the evidence tendered by the eye witnesses is artificial. This aspect of the case is dealt with by the learned Sessions Judge in the following terms:

It is possible that there may have been other knives lying around the scene of occurrence. It is a matter of common knowledge that in the area in question persons belonging to the community of the deceased usually carry knives in sheaths on their waist belts. It is possible that the knife found sheathed belonged to the deceased. It is also equally possible as is sometimes the case that some persons may carry more than a knife with them. So just because that the M.O.1 was found unsheathed, that by itself is no ground to discredit the entire prosecution case.

Hence the learned Sessions Judge accepted the prosecution evidence and rejected the case of the appellant.

The appellant had also pleaded self-defence. The trial court rejected this aspect of this case by stating that it is not reasonable to assume that a 65 year old man would have attacked the appellant and caused injuries to him. The occurrence of incident is stated to have taken place in the residence of the deceased. The appellant was apparently in a drunken state and PW12 is a doctor who examined the appellant found him under the influence of alcohol and his wife appears to have taken him to their house having found him when he had fallen on the ground as a result of drunkenness.

The trial court also noticed that there were also several discrepancies in the matter and discarded them as being only of minor nature.

On appeal by the appellant, the High Court affirmed the view taken by the trial court on all aspects. On the question of the injuries having been caused by M.O.1, a sheathed dagger, the High Court observed as follows :

PWs 1 to 4 during examination in court uniformly identified M.O.1 as the weapon used by the appellant for stabbing the deceased. That being so, the fact that M.O.1 was found enclosed in a sheath would not be sufficient to arrive at a conclusion that it was not the weapon used by the appellant for causing the death of the deceased.

The High Court took into consideration the inquest report had disclosed that the bloodstained plastic shoes worn by the deceased were found near the dead body; that the bench where the deceased sat had toppled down on the ground of chappa (shed) ; that a dagger (MO1) was found in a sheath near the basement of the chappa and that bloodstained soil (MO 11) was found in the chappa.. However, MO4 mundu (dhoti), MO5 bottle containing arrack were found on the southern side of the pathway starting eastwards from the house of the deceased which was approximately two and a half metres away from the chappa. MO4 and MO5 are stated to belong to the appellant. The High Court opined that the appellant was under the influence of alcohol and while rushing towards his house could have lost his mundu and the bottle on the way and the incident could have taken place only at the residence of the deceased. The

High Court agreeing with the trial courts view dismissed the appeal.

The learned counsel for the appellant did not dispute the fact of deceased having met with homicidal death considering the nature of injuries on him as disclosed in the post-mortem report. He, however, put forth two aspects of the case in the forefront: (i) inquest report clearly indicated that the dagger (MO1) was found in a sheath and (ii) it is also in evidence that MO4 {dhoti} and MO5 {bottle} were found on the southern side of the pathway starting eastwards of the house of the deceased, and submitted that these two circumstances are enough to demolish the prosecution case. The learned counsel for the State relied on the reasoning of the trial court and the High Court as set out in their judgments.

If, as stated by the eye witnesses, PWs 1 to 4, that MO1 (dagger) was used to inflict injuries upon the deceased the same could not have been found enclosed in a sheath near the basement of the chappa. It should have been found unsheathed and ought to have had some bloodstains. This factor strongly probablises the version put forth by the appellant that the incident has not taken place in the manner narrated by the prosecution witnesses. If MO1 (dagger) is not used to inflict the injuries upon the deceased there is no other weapon of offence produced before the trial court. It is also in evidence that the said MO1 did not belong to the appellant but on the other hand belonged to Pariyaram Abbas who had also been examined. Further it is not probable that when the appellant was trying to run away towards his house he dropped his mundu and liquor bottle which are found on the southern side of the pathway starting eastwards of the house of the deceased. If the appellant was in a state of drunkenness and found to have been picked up by his wife leaving the dhoti and bottle on the pathway where it was found, it is more probable that the incident could not have taken place, as alleged, in the shed. If as alleged the incident had taken place in the shed it is not probable that these two MOs could have been found in the pathway. Thus these two important factors have been lost sight of by both the courts below. The version given by the eye witnesses get tilted by the weapon of offence not having been found but what was produced being sheathed could not have been used for inflicting injuries. Viewed from that angle, we have no hesitation to accept the version put forth by the defence and set aside the order made by the High Court affirming the judgment of the trial court sentencing the appellant to imprisonment for life.

In the result, we are satisfied that there is no case made out against the appellant. We set aside the conviction and sentence of the appellant and set him at liberty forthwith unless he is required in any other case. The appeal is allowed accordingly.