

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1308 OF 2008
[Arising out of S.L.P. (Crl.) No.1304 of 2008]

Raman

.....

Appellant

Versus

State of Kerala

..... *Respondent*

J U D G M E N T

Lokeshwar Singh Panta, J.

1. Leave granted.
2. Appellant has filed this appeal against the judgment and order dated 21.11.2005 passed by a Division Bench of the High Court of Kerala at Ernakulam in Criminal Appeal No.60/2004 [C] confirming the conviction and sentence of imprisonment for life in respect of an offence punishable under Section 302 of the Indian Penal Code [for short 'IPC'] and a fine of Rs.15,000/- with a default stipulation of simple

imprisonment for one year awarded by the Fast Track Court No.-II, Manjeri on 12.12.2003 in Sessions Case No.439/2001.

3. Brief facts, which led to the trial of the accused, are as follows:

Raman-appellant herein, Narayanan (PW-1), Nadi (PW-6) and Unnikrishnan @ Bapputty-deceased were living at Edayattur, District Mambarakunnu. On 21.04.2000 at about 8:00 p.m., PW-1 and PW-6 were chatting by the side of the road when they heard the appellant and the deceased indulging in wordy quarrel. PW-6 intervened and separated them. Unnikrishnan then proceeded to his house and the appellant went towards the house of PW-6. PW-6 returned to the courtyard of the house of PW-1 along with Unnikrishnan. The appellant alleged to have uttered abusive language against Unnikrishnan who in retaliation pulled the appellant's shirt collar. The appellant is alleged to have stabbed Unnikrishnan in his abdomen with knife (MO.1). Unnikrishnan collapsed on the spot and uttered that he was finished. PW-6 bandaged the wound of Unnikrishnan. PW-1

informed Velayudhan (PW-2), the younger brother of Unnikrishnan about the incident who arrived at the spot where Unnikrishnan was lying on the embankment by the side of the road. PW-2 and others took Unnikrishnan to the District Hospital, Manjeri, where the Casualty Medical Officer examined him but he was declared dead.

4. PW-6 went to Melattur Police Station and made statement on the basis of which First Information Report (Ext. P4) came to be registered by Abdulla (PW-9), Sub-Inspector. After registering the case, K. Manoharakumar, Circle Inspector (PW-10) went to the Hospital and conducted Inquest Report (Ext. P1) on the body of Unnikrishnan-deceased. The Investigating Officer seized clothes (MO2) of the deceased. He sent the body of the deceased to the Medical College Hospital, where Dr. Cyriyac Jose (PW-13) conducted *post mortem* examination. PW-10 visited the place of occurrence and prepared scene-cum-seizure *mahazar* (Ext.P2), recovered blood-stained soil and stones (MO 3). He arrested the appellant and the clothes (MO 4) worn by him were taken into possession under Seizure *Mahazar* (Ext. P3). At the instance

of the appellant, knife (MO 1) was recovered. Further investigation was conducted by D. Rajan (PW-11) and Majeed (PW-12), both Circle Inspectors. PW-11 and PW-12 recorded the statements of the witnesses. On receipt of *post mortem* report (Ext. P8) and report of chemical analysis (Ext. P7), PW-12 filed a charge sheet against the appellant for an offence punishable under Section 302, IPC.

5. The trial court found a *prima facie* case against the appellant and, accordingly, charged him for the murder of Unnikrishnan. During trial of the case, the prosecution examined as many as 13 witnesses. The appellant in his statement recorded under Section 313 of the Code of Criminal Procedure denied his involvement in the commission of the crime. He pleaded that on the day of occurrence when he was going to his house, the deceased took quarrel with him and it was PW-6 who intervened and separated them. He stated that Unnikrishnan came back from his house to the place of occurrence and he was holding a knife in his hand and suddenly held his neck. A scuffle ensued between them, in which the knife accidentally struck into the abdomen of the

deceased. He pleaded that due to fear he ran away from the scene of occurrence.

6. The learned trial Judge, on analysis of the entire oral and documentary evidence on record, found the appellant guilty of the offence punishable under Section 302 IPC and accordingly sentenced him as aforesaid.

7. Being aggrieved, the appellant filed an appeal before the High Court, which came to be dismissed by a Division Bench. Hence, the appellant has filed this appeal by special leave questioning the correctness and legality of the judgment of the High Court.

8. We have heard Mr. Radha Shyam Jena, Advocate for the appellant, and Mr. R. Sathish, Advocate for the respondent-State and with their assistance examined the material on record.

9. It is not in dispute that Unnikrishnan @ Bapputty died because of knife injuries caused to him. PW 13, Dr. Cyriyac Jose in the *post mortem* Report has given the details of the injuries noticed in the abdomen of the deceased. In the opinion of the doctor, the injuries found on the body of the

deceased could be caused by knife (MO 1). PW-6 is the eye-witness of the occurrence who has given the entire description of the incident in the First Information Report (Ext. P4), which has been corroborated by him in his deposition before the Court. It is his evidence that on the day of occurrence at about 8.00 p.m. when he was chatting with PW-1 by the side of the road, the appellant came there and in front of the house of Unnikrishnan, the appellant and Unnikrishnan indulged in a wordy quarrel. He and PW-1 intervened and separated them who were locked in a push and pull war. PW-6 advised both of them to go to their respective houses. He stated that he went with PW-1 and when they reached in front of the house of PW-1, the appellant and Unnikrishnan again started hurling abuses against each other and in the process Unnikrishnan pulled the collar of the shirt of the appellant who in retaliation stabbed Unnikrishnan in his abdomen with a knife and as a result thereof Unnikrishnan uttered that he was finished. He also stated that the appellant ran away from the scene of occurrence with the knife. He carried the injured Unnikrishnan with the help of PW-1 and laid him on the

raised portion in front of the house of PW-1. Intestine of injured Unnikrishnan had been protruded through the wound and he bandaged the said wound. PW-2, the brother of injured Unnikrishnan, was also called at the spot. They took the injured to the hospital where he was declared dead by the doctor.

10. PW-1 deposed that on the day of occurrence he was in the kitchen of his house, he heard a commotion outside and when came out on the road side, he noticed the appellant and Unnikrishnan quarrelling with each other. PW-6 intervened and separated them and at that time he saw Unnikrishnan collapsing on the road and uttered that he was stabbed by Raman. He along with PW-6 carried injured Unnikrishnan and laid him on the raised portion near his house and thereafter he informed PW-2, the brother of the deceased, about the incident. The evidence of this witness corroborates the presence of PW-6 on the spot, whose evidence has been found sufficient, cogent and convincing by the courts below. The prosecution has proved the recovery of knife from the possession of the appellant at his instance. The evidence of

PW-6 has not been shattered or impeached by the appellant. PW-6 has given truthful narration of the events leading to the unfortunate death of the deceased at the hands of the appellant. The testimony of PW-6 is consistent and convincing which finds corroboration from the evidence of PW-1 and the medical evidence of the doctor. The appellant has not disputed the presence of PWs-1 and 6 on the scene of the occurrence. He has also not disputed the recovery of knife (MO 1). The trial court and the High Court both have disbelieved the defence version of the appellant that in the process of scuffle the knife had accidentally struck the body of the deceased and, in our view, the finding and reasoning recorded by the courts below to that extent cannot be found faulty.

11. This Court on 15.02.2008 issued notice to the respondent limited to the question of sentence. On independent scrutiny of the oral evidence of PWs-1 and 6, as noticed above, we find that it was the deceased who first pulled the collar of appellant's shirt and tried to press his neck, but in the process, the appellant inflicted knife blow in

the abdomen with a view to escape from the clutches of the deceased, but the appellant clearly exceeded the right of private defence. In these circumstances, his case fell under Section 304 Part I IPC. We, accordingly, convict the appellant under Section 304 Part-I IPC for causing the death of Unnikrishnan @ Bapputty and sentence him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.2,000/-. In default of payment of fine, the appellant shall undergo simple imprisonment for one month.

12. In the result, for the afore-said reasons, this appeal is partly allowed to the extent of holding the appellant guilty of the offence punishable under Section 304 Part-I, IPC, and imposing the aforesaid sentence upon him. The judgment and order of the High Court confirming the conviction of the appellant under Section 302, IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.15,000/- shall stand modified to the extent indicated hereinabove.

.....J.
(R. V. Raveendran)

.....**J.**
(Lokeshwar Singh Panta)

New Delhi,
August 20, 2008.