

Ousu Varghese

Vs

State of Kerala

Criminal Appeal No. 132 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

17.12.1973

JUDGMENT

BEG, J. -

1. The appellant was charged with offences punishable under Sections 302, 307 and 324 Indian Penal Code in the Court of Additional Sessions Judge of Parur in Kerala. It was alleged that his younger brother Ouso John had instituted a suit against the appellant for a share in some property managed by the appellant. His father, the murdered man, was trying to bring about a compromise. The appellant felt that his father and brothers were taking the side of Ouso John. Hence, he had a grudge against them. It appears that the appellant was living with his parents and his brothers Antony, P.W. 1, and Alphonso, P.W. 2, in the same house at Kunnappilli Veedu in Cheranallor Village. Adjoining this house was the tea shop of Antony and Alphonso. The appellant had a tea shop elsewhere. On February 26, 1969, at about 9 p.m., the appellant started abusing his father and brothers as was his habit. The mother tried unsuccessfully to pacify him. It appears that Antony, P.W. 1, took her away so as to give the two brothers their food. After that, Antony and Alphonso went to their tea shop and were taking accounts for the day. The father also came there. They heard a knock at the door of the shop. The father went out in response. Soon an alarm raised by the father was heard by Antony and Alphonso. They too came out of the shop and saw their father being chased by the appellant, until the house of Raphael, P.W. 19, where the appellant caught his father, compelled him to turn round and face him, and then stabbed him in the chest. In the meantime, Antony and Alphonso also reached there and started grappling with the appellant and tried to snatch the knife. Both Antony and Alphonso were injured. Finally, the appellant extricated himself, threw the knife, and ran away. The murder was also seen by Raphael, P.W. 19, in whose house the murder took place, and by Devassy, P.W. 3. The account given by the two injured brothers was fully corroborated by the two other eye-witnesses and medical evidence.

2. The trial Court had observed that, although it could not find any specific point on which the cross-examination of Antony could be said to have shaken his testimony, yet, it thought that the accounts given by all witnesses, put together, were not natural. The trial Court had unduly magnified minor variations in the accounts of the witnesses which are often the hall-mark of the truth of their testimony. It, however, observed that they were quite consistent in deposing about the stabbing of his father by the appellant. The High Court had rightly discarded the rather confused reasoning of the trial Court and held that the case against the appellant, after carefully examining the evidence, to be established beyond reasonable doubt. It had, however, refrained from passing a death sentence against the appellant simply because the trial Court had acquitted him. We need not consider the sufficiency of this reason for awarding the lesser sentence as there is no appeal against it before us. As we are unable to find any infirmity in the findings of fact recorded by the High

Court we affirm the convictions of the appellant as well as the concurrent sentences awarded sentences awarded under Sections 302, 307 and 324 Indian Penal Code, and dismiss this appeal.

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