

Carlose John and Another

Vs

State of Kerala

Criminal Appeals Nos. 143 and 144 of 1973

(P. Jagmohan Reddy, H. R. Khanna JJ)

02.05.1974

JUDGMENT

KHANNA, J. -

1. This judgment would dispose of two criminal appeals Nos. 143 and 144 of 1973 which have been filed by special leave by Carlose John (28) (hereinafter referred to as John) and Vasthian Carlose (58) (hereinafter referred to as Carlose) against the judgment of the Kerala High Court affirming on appeal and reference the conviction of the two appellants under Section 302, Indian Penal Code and the sentence of death.

2. The prosecution case is that the relations between the family of the accused on the one side and that of Chacko deceased, who was aged 42 years at the time of present occurrence, were strained. The two accused and the deceased were fishermen of village Killikollur in district Quilon. In 1969 Lily (PW 6), wife of Carlose accused, filed a criminal case under Sections 425, 323 and 427 read with 34 Indian Penal Code in the Court of District Magistrate, Quilon against Chacko deceased, his wife Regina (PW 7) and elder brother Elias (PW 1). The accused in that case were acquitted. Two days prior to the present occurrence, an incident took place between John accused and the children of Chacko. During the course of that incident, abuses were hurled and stones were pelted.

3. On the morning of October 8, 1970, it is stated, the two accused went as usual to Paravoor lake for fishing. After fishing the accused returned to a place called Eravipuram. Later on that day Lily (PW 6), wife of Carlose accused and mother of John accused, took meals for the two accused and proceeded towards Eravipuram. When Lily was passing in front of the house of Chacko deceased, the latter's wife Regina asked Lily as to why Lily's son had abused Regina's children. Lily gave an abusive reply, Regina and her son Nelson thereupon abused Lily. Lily then threw the food she was carrying and went to the two accused.

4. At about 1 p.m. on that day, i.e. October 8, 1970, Chacko deceased returned from Kottarakkara to his village Killikollur. The two accused were present on the road at that time. John accused had with him a crab pin. A crab pin is like a spear. Apart from having a pointed end, it has also a fish hook. The blade of the crab pin was 59 cm. long. As soon as the two accused saw Chacko, John accused asked him, "Have you grown so big that your wife can abuse my mother?" The accused also got up to attack Chacko. Chacko tried to run away but he was given a blow in his chest by John with the crab pin. Chacko caught hold of the crab pin whereupon Carlose accused took out a pen knife from his pocket and stabbed Chacko on his head. Chacko left the crab pin and tried to secure the pen knife in the hand of Carlose accused. During the scuffle, the pen knife caused injury to Carlose accused. In the meantime John accused gave four or five blows with the crab pin to Chacko

deceased. Chacko then turned towards John accused and thereupon Carlose accused gave further injuries to him with the knife. Crab pin was then thrust by John into the chest of Chacko. The crab pin got stuck there and John could not draw it out. Chacko then drew out the crab pin from the wound. As soon as Chacko did it, he fell down and died soon thereafter. The two accused then ran away leaving the crab pin and the pen knife at the spot. The occurrence, it is stated was witnessed by Joseph Alias (PW 2), Pathrose Luiz (PW 13) and Kunjan Krishnan (PW 15). At about 1.30 p.m. Elias (PW 1), elder brother of Chacko deceased, came to know of the present occurrence from Nelson, son of Chacko deceased. Elias went running to the place of occurrence and found the dead body of Chacko lying there. Elias thereafter went to police station Kundara at a distance of eight km. from the place of occurrence and lodged there report P1 at 2 p.m.

5. Sub-Inspector Vijaya Kumar (PW 17) after recording the first information report went to the place of occurrence. Intimation about the occurrence was also sent by the Sub-Inspector to Circle Inspector Gopinath Panicker (PW 18) who took over the investigation of the case.

6. Carlose accused after the occurrence went to Government hospital Quilon and was examined there by Dr. Gopinath (PW 10) at 5.30 p.m. Carlose had one incised wound on the left anterior axillary, another incised wound on his left index finger, a contusion on the left palm and multiple minute abrasions on the left knee.

7. Inquest report relating to the dead body of Chacko deceased was prepared by Inspector Panicker. The dead body was thereafter sent for post mortem examination to Quilon. Post mortem examination on the dead body was performed by Dr. George Kurien at 11.15 a.m. on October 9, 1970.

8. Carlose was discharged from the hospital on October 13, 1970 and was immediately thereafter put under arrest. John accused was also arrested on October 13, 1970.

9. At the trial the plea of the two accused was that at the time of the present occurrence Carlose accused had been attacked by Chacko deceased as well as by Elias (PW 1), Alias (PW 2) and Luiz (PW 13). Chacko also caused injuries with knife to Carlose. John accused then came there and with a view to save Carlose, John caused injuries with crab pin to Chacko.

10. Defence evidence was also produced by the accused but that evidence had nothing to do with the actual occurrence and related only to the relationship of the prosecution witnesses inter se.

11. The trial Court as well as the High Court rejected the version of the accused that injuries had been caused to Chacko deceased by John in exercise of the right of private defence. Both the Courts accepted the prosecution case and accordingly convicted and sentenced the accused as above.

12. Arguments have been addressed before us by Mr. Lakshminarasu amicus curiae on behalf of the accused-appellants and Mr. Chandi on behalf of the State. Mr. Lakshminarasu has challenged the conviction of the accused and has urged that the injuries were caused to Chacko deceased by John accused in exercise of the right of private defence. In any case, according to the learned counsel, the present is not a case for imposing the extreme penalty. Although we do not find any force in the first contention of Mr. Lakshminarasu, there is, in our opinion, sufficient and cogent reason for altering the sentence of death into that of imprisonment for life.

13. It cannot be disputed that a number of injuries were caused to Chacko deceased as a result of which he died. Dr. Kurien who performed post mortem examination on the body of Chacko found

as many as 18 injuries consisting of lacerated wounds and incised wounds on the body. Three of those injuries were fatal. One of the fatal injuries was an incised wound on the left side of the neck as it had resulted in cutting the anterior jugular vein. Another fatal injury was a lacerated wound on the right side of the chest. This injury extended to the right pleural cavity and had resulted in injuring the right lung. The third fatal injury was a lacerated wound on the posterior wall of the left axilla. Underneath this injury the intercostal muscles between the fourth and fifth ribs as well as the left pleural cavity were found to have been pierced. The case of the prosecution is that injuries to Chacko deceased were caused by the two accused in the circumstances given above. The prosecution in support of its case has examined Joseph Alias (PW 2), Pathrose Luiz (PW 13) and Kunjan Krishnan (PW 15) as eye witnesses of the occurrence and they have supported the prosecution case as given above. The evidence of these witnesses was accepted by the trial Court and the High Court and we see no cogent ground to take a different view. The presence at the scene of occurrence of two of these witnesses, namely, Joseph Alias (PW 2) and Pathrose Luiz (PW 13) is admitted even by the two accused.

14. The version of the accused that injuries were caused to Chacko deceased by John accused in exercise of the right of private defence and with a view to save Carlose accused cannot be accepted and both the trial Court and the High Court, in our opinion were fully justified in rejecting that version. Had Carlose accused been attacked by four persons, including one armed with a knife, it is difficult to believe that Carlose would have escaped with four simple injuries, out of which three were of a most insignificant nature. It is also in that event difficult to believe that John would have succeeded in causing as many as 18 injuries to Chacko deceased. The nature of injuries which were found on the body of Chacko show that two kinds of weapons were used and this fact also belies the defence version. The nature of the injuries which were found on the body deceased as well as of those on the person of Carlose accused is in consonance with the prosecution case.

15. It has also been argued by Mr. Lakshminarasu that the statement of Carlose accused which was recorded by Sub-Inspector Vijaya Kumar in Government hospital Quilon on October 9, 1970 was not admissible in evidence as it was a statement made to the police by an accused against whom a case under Section 302 Indian Penal Code had been registered. Although there appears to be force in the contention of Mr. Lakshminarasu regarding the admissibility of that statement at the trial, it is, in our opinion, not necessary to dilate upon this aspect of the matter because the conviction of the accused-appellants can be maintained without taking into account the said statement.

16. We would, therefore, maintain the conviction of the accused-appellants.

17. As regards the sentence, we find that there have been two successive trials of the accused-appellants for the offence of the murder of Chacko. At the conclusion of the first trial the two accused-appellants were convicted on July 16, 1971 under Section 302 Indian Penal Code and were sentenced to death. On appeal and reference the High Court as per judgment dated November 18, 1971 set aside the conviction and sentence of the accused-appellants and sent the case back for de novo trial. The accused-appellants were thereafter again tried and were convicted on February 28, 1972 under Section 302 Indian Penal Code and were sentenced to death. The High Court this time on appeal and reference as per judgment dated August 17, 1972 maintained the conviction and sentence of the accused-appellants. It would thus appear that the accused-appellants have had to undergo the ordeal of facing two successive trials for the same offence. Apart from that we find that the circumstances which led to the occurrence also justify the imposition of a lesser penalty. As would appear from the resume of the facts given above, the accused were told by Lily, mother of the first accused and wife of the second accused, that she had been abused by the wife and son of the

deceased a couple of hours before the present occurrence. The food which was taken by Lily for the accused was also thrown by her on the ground. It is apparent that the two accused were very much upset because of what they believed to be an insult of Lily. The remarks of John accused immediately before the present occurrence addressed to Chacko deceased also show that the two accused were smarting under the supposed wrong done to Lily. The above facts thus reveal that the accused were in the grip of an emotional stress when they committed the murder of the deceased. Keeping in view the entirety of the circumstances, we are of the opinion that the present is not a case in which the extreme penalty should be exacted from the accused. We accordingly commute the sentence of death awarded to each of the accused into one of imprisonment for life. The appeals of the accused-appellants are allowed to that extent.

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