Kesaven Velayudha Panicker

Vs.

State of Kerala

Criminal Appeal No. 33 of 1974

(H. R. Khanna, Y. V. Chandrachud, P. K. Gowami JJ)

30.08.1974

JUDGMENT

GOSWAMI, J. -

1. The appellant, Kesavan Velayudha Panicker, (aged 57) was convicted under Section 302, I.P.C., and the sentence of death passed upon him was confirmed by the High Court of Kerala.

2. The appellant and the deceased, Krishnan Nadar, were engaged in illicit manufacture of arrack. Prior to the occurrence there was a quarrel between them over the theft of a wash-pot used for manufacture of alcohol belonging to the deceased. They quarrelled on July 19, 1972 as well as on the next day in the afternoon. At about 7.00 p.m. the deceased was coming along the road from north to south at Kallar and the appellant with his son (since acquitted by the trial Court) were coming from the opposite direction. The appellant was carrying a chopper in his hand (M.O.I.). Both the appellant and the deceased were residents by the side of the Kallar market. When they accosted each other, the appellant asked the deceased whether he would continue to abuse him as before. The appellant then gave a cut blow to the deceased on the left side of his neck and other parts of the head in quick succession and the deceased fell down at the spot. The appellant after that proceeded towards the south along the road but immediately returned with the chopper in his hand and again cut the deceased on his legs and thighs five or six times although at that time the deceased was lying on the ground. The deceased died on the spot. The appellant, who was accompanied by his son, ran away from the spot with the blood-stained chopper. Meanwhile the wife of the deceased N. Salomi (PW 1), was informed by somebody about the occurrence and she came running to the spot when she saw the appellant standing by the side of her husband holding the blood-stained chopper in his hand and then the appellant and his son ran away from the spot, the former carrying the chopper in his hand. PW 1 found that her husband had already died. She remained by the side of the dead body throughout the night and next morning she informed the police at Vidura Police Station which is nine Kilometers away from the place of occurrence. The Police Inspector (PW 10) recorded the first information report at 9.30 a.m. on the following morning of the occurrence and a case was registered against the appellant and his son. After investigation both the appellant and his son were charge-sheeted and committed for trial before the Sessions Judge who acquitted the son and convicted the appellant as stated above.

3. There are four eyewitnesses to the occurrence, namely, R. Rajan (PW 2), P. Balakrishna Pillai (PW 3), Balkrishnan Pillai (PW 4) and Velayudhan Pillai (PW 6). Dr. V. Bhaskaran (PW 5) held the post mortem examination on July 22, 1972 and found 18 incised ante mortem injuries and an abrasion on the forehead. The fourth injury is an incised transverse gaping wound at the upper part of left side of the neck, 9 x 3 x 2 1/2 cm., and 5 cm. below the wound No. 3 which is another gaping

wound on the left ear lobe. The sixth injury is another incised transverse gaping wound, 11 x 4 x 4 cm., on the left side of the neck. The seventh injury is also a transversely gaping incised wound, 12 x 4 x 4 1/2 cm., on the lower part of the neck. The other incised wounds are on the different parts of the body. According to the doctor, injury Nos. 4, 6 and 7 are fatal and are sufficient to cause death in the ordinary course of nature. According to him after sustaining the injuries the injured must have died within ten or fifteen minutes.

4. The appellant surrendered at the Vidura Police Station on July 27, 1972 and PW 10 took him into custody. On questioning him the appellant told the Circle Inspector (PW 10) that the chopper and his cloth and shirt had been kept by him in the crevice of a marotti tree on the southern side of the bridge. The appellant who was taken there took out and produced before PW 10 the chopper and his cloth and shirt and mahzar (Ext. P-14) was prepared by the officer in the presence of witnesses. It is mentioned in Ext. P-14 that

the chopper is one having an iron hook at the end of its handle, having a wooden handle, having a length of 37 cm. including its handle and having the edge portion of the blade broken. The blade portion has a length of 15 cm. and the head portion of the blade has a width of 10 cm.

This has to be particularly noted because some point was made by the learned Counsel for the appellant appearing as amicus curiae that since the blade of the chopper was blunt these incised wounds could not have been caused with it. It is, however, clear that the blade might have been in the present state on account of its being thrust in the crevice of the Marotti tree or even otherwise. We are not prepared to give too much importance to this aspect in this case.

5. Coming to the evidence of the eye-witnesses, the shops of PWs 2 and 6 are on the eastern side of the road opposite to the place of occurrence while the residence of PW 3 is on the western side of the road. PW 4 lived close to the shop of PW 2. These witnesses saw the incident from about 10-30 feet from the place of occurrence at about 7.00 p.m. when darkness had not set in full. The evidence is that there was sufficient light in those shops and the residences of the eyewitnesses to enable them to see the incident. While PWs 3 and 4 saw the entire assault, PWs 2 and 6 saw only the subsequent cutting of the deceased by the appellant when the latter was lying on the ground. These witnesses are neighbouring witnesses and would be the most natural witnesses to be able to depose to the occurrence as to what they had actually seen. They had no animus against the deceased although it is brought out in the evidence that the deceased would pick up quarrels very easily with others and was perhaps a haughty person. There is no reason to suppose that they would combine to implicate the appellant falsely. We have been taken through the entire evidence and we have no reason whatsoever to differ from the conclusions of the High Court in the matter of appreciation of the same.

6. The defence of the appellant is a clear denial. After having heard the learned counsel for the appellant we are unable to agree that the conviction of the appellant under Section 302 is not proper.

7. We are now next to consider whether we should at all interfere with the sentence of death in this case. The injuries are too many and are very serious and we would have ordinarily been disinclined to interfere with the sentence in such a case. We, however, find that the deceased was a quarrelsome person and there had been a quarrel on the previous day of the occurrence as well as on the day of the occurrence between the deceased and the appellant. The actual origin of the quarrel at the time of the assault is not known. Some amount of provocation from the deceased may not be ruled out completely. We are, therefore, inclined to award the lesser penalty to the appellant in this case. His

conviction under Section 302, I.P.C., is maintained and he is sentenced to imprisonment for life. The appeal is dismissed with modification of the sentence.

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