Verghese Thomas

Vs

State of Kerala

Civil Appeal No. 179 of 1971

(P.N. Bhagwati, R.S. Sarkaria JJ)

26.09.1975

JUDGMENT

BHAGWATI, J.-

1. The appellant who was accused 1, was tried along with accused 2 by the sessions court Kottayam for offences under Section 302 and 326 read with Section 34 Indian Penal Code on the allegation that in pursuance of the common intention of both the appellant caused the death of one Thomas by inflicting on him three injuries with a malappuram knife, MO 1 and the second accused caused grievous hurt to one Mathew, PW 2 by inflicting two injuries on him with a similar knife, MO 2, on the midnight between March 8/9, 1970. The sessions court acquitted the appellant and the second accused but on appeal by the State the High Court found that the prosecution case was established beyond reasonable doubt and it accordingly convicted the appellant of the offence under Section 302 of the Indian Penal Code for intentionally causing the death of Thomas and accused 2 of the offence under Section 326 I. P. C. for causing grievous hurt to Mathew PW 2. The appellant being aggrieved by the reversal of his acquittal preferred the present appeal by virtue of the right conferred upon him under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

2. The prosecution case against the appellant was that on March 8, 1970, in the evening, a drama was staged in the north-western courtyard of the church in village Chakkupallam, where about 300 persons had gathered for the purpose of witnessing the drama. The drama commenced at 9 p.m. and after it was halfway there was an interval of about 10 minutes at 11.30 p.m. During the interval there was some altercation between Kuriakose alias Machi, PW 8, on the one hand and the appellant and second accused on the other. Some two other persons also joined in the altercation but after a while. Devasia PW 9, intervened and pacified them. The appellant and accused 2 then left and while going along the pathway on the northern side of the church, at a short distance from the stage, they found the deceased Thomas standing in the lane. So soon as the appellant and accused 2 saw the deceased Thomas, the appellant accosted him and said : "Your Machi, that is PW 8 has overgrown; we shall take revenge on him." The deceased Thomas replied stating : "You have not grown enough to do that" and raised his hand as if to beat the appellant. The appellant thereupon gave three stab injuries to the deceased Thomas in quick succession with the knife MO 1 which was with him and one of these injuries was on the chest below the left nipple. On seeing this incident, Mathai, PW 1, and his son Mathew, PW 2, ran to that place. Mathai, PW 1, caught hold of the knife, MO 1 and wrested it from the appellant after a short struggle. In this process, Mathai, PW 1, received two minor injuries, one on his finger and the other on his thumb. While this struggle for wresting the knife was going on between Mathai, PW 1 and the appellant the second accused inflicted knife injuries on Mathew, PW 2 with a knife, MO 2, which was in his possession. Immediately after this

incident the appellant and accused 2 ran away in the northern direction. The deceased Thomas fell at the spot where he was stabbed while Mathew, PW 2 went a few steps in the northern direction but collapsed near the wooden cross. This incident was witness amongst others, by one Sivaraman, PW 6. Mathai, PW 1 and Mathew, PW 2 were soon thereafter examined by Dr. Varghese, PW 5, and their injuries were noted by him. The first information report, P1 was lodged by Mathai, PW 1 and on completion of the investigation a chargesheet was filed against the appellant and the second accused resulting first in their acquittal by the sessions court but subsequently in their conviction by the High Court on appeal.

3. It is now well-settled that the appellate Court has full power to review an order of acquittal and to come to its own conclusion in appeal against the acquittal. The only requirement which the appellate Court must observe is that while dealing with an order of acquittal the appellate Court should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the trial Court in support of its order of acquittal, but it should also express its reasons in its judgment which lead it to hold that the order of acquittal is not justified. The appellate Court is also required to bear in mind that the trial Court has had the opportunity of witnessing the demeanour of witnesses while in the witness box and moreover the presumption of innocence is in any event not weakened by the order of acquittal and therefore if two reasonable conclusions can be reached on the basis of evidence on record, the appellate Court should not disturb the finding of the trial Court. Hear in the present case, we find that this requirement is fully borne in mind by the High Court while disturbing the order of acquittal passed by the sessions court. The High Court has considered the entire evidence on record and applied its mind to the reasons given by the trial Court in support of the order of acquittal and dealt with those reasons and pointed out in its judgment why those reasons are not sound and the finding of the sessions court requires to be displaced. We have been taken through the evidence by the learned Counsel appearing for the appellant and we do not think that the High Court has committed any error in its appreciation of the evidence in reversing the acquittal of the appellant.

4. The main argument which found favour with the sessions court and which has been repeated before us on behalf of the appellant is that all the witnesses examined on behalf of the prosecution were relatives of the deceased Thomas and no independent witnesses were examined though many were available. This complaint we are afraid is not justified and has been rightly repelled by the High Court. In the first place, it may be noted that this is not a case where there was any previous enmity between the deceased Thomas or his relatives on the one side and the appellant and accused 2 on the other so that the evidence given by the relatives of the deceased Thomas could be regarded as suspect needing corroboration from independent witness. Mathai, PW 1 and Mathew PW 2, were both injured in the incident and their presence at the time of the incident could not be doubted. Moreover Sivaraman, PW6, was an independent witness and his evidence could not be discarded by merely branding it as that of a coached or tutored witness. We have gone through the entire evidence of Sivaraman, PW 6, and we must say it sounds quite natural and does not appear to have been given by a witness who has been tutored and who has memorized his supposed role in the incident. It is true that Sivaraman, PW 6, was once convicted in a criminal case, but there is nothing brought out in cross-examination to show when he was convicted or for what offence and in the absence of any such details we cannot reject his evidence merely on the ground that he has once convicted in the past. Even a man who has once erred may speak the truth.

5. The learned Counsel appearing on behalf of the appellant relied on State of U. P. v. Jaggo ((1971) 2 SCC 42 : 1971 SCC (Cri) 401) where it has been laid down that the witnesses whose evidence is essential to the unfolding of the narrative should be called whether the effect of their testimony is

for or against the case for the prosecution. But we fail to see how this decision can have any application in the present case. Mathai, PW 1, Mathew, PW 2 and Sivaraman, PW 6 were necessary witnesses for unfolding the narrative on behalf of the prosecution and they were all examined. This decision does not say that all the witnesses who have seen the incident should be called to give evidence. We do not therefore, see any reason to take a different view from the one taken by the High Court.

6. We accordingly dismiss the appeal.

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