Krishna Pillai Sree Kumar and Another

Vs

State of Kerala

Criminal Appeal No. 487 of 1977

(A.D. Koshal, Baharul Islam JJ)

12.03.1981

JUDGMENT

KOSHAL, J. –

1. This is an appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgment dated October 10, 1977 of the High Court of Kerala, setting aside the acquittal of the two appellants of offences under Sections 341 and 302 read with Section 34 of the Indian Penal Code recorded by the First Additional Sessions Judge, Trivandrum and convicting them of an offence under Section 302 aforesaid, with a finding that it was committed in furtherance of the common intention of them both.

2. The prosecution case may be stated thus. The two appellants harboured feelings of animosity against the deceased Janardhana Kurup, who was irrigating his field at 8.30 p.m. on December 8, 1975 : The deceased was irrigating his field when the two appellants who are father and son to each other arrived there. The father remonstrated with the deceased accusing the latter of diverting irrigation water from the field of the appellants and caught hold of the deceased by his hands while the son whipped out a knife and gave three blows therewith to the unfortunate victim before the two assailants made good their escape.

3. The occurrence was witnessed by Kuttan Pillai (PW 1) and Vijayan (PW 2) who is a son of the deceased. After Janardhana Kurup was taken home, he was removed to the hospital attached to the Medical College at Trivandrum where he told Dr. Sivaprasad (PW 10) that "Sree Kumar stabbed while at the door of the house with some weapon". The doctor found Janardhana Kurup to have suffered an incised wound measuring 4 cms x 2 cms on the left side of the chest near the axilla, another small incised wound in line therewith and a stab wound having the dimension 3 cms x 2 cms in the abdomen. The intestines were protruding out of the wound last mentioned which was sufficient in the ordinary course of nature to cause death. Janardhana Kurup expired at 9.45 on December 9, 1975.

4. The two appellants absconded after the occurrence and were not traceable for a month.

5. The evidence relied on by the prosecution mainly consisted of the ocular version of the occurrence given by Kuttan Pillai (PW 1) and Vijayan (PW 2), the corroboration of the testimony of the former by the contents of first information report Ex. P-1, the dying declaration made by the deceased to Dr. Sivaprasad (PW 10), the medical evidence and the circumstance that the accused were not available to the police for more than a month after the occurrence.

6. The chief reasons recorded by the learned Sessions Judge for acquitting the two appellants may be summarised thus :

> (i) In the first information report (Ex. P-1) a quarrel between the accused and the deceased was mentioned as having taken place prior to the stabbing. That quarrel is a concoction as Kuttan Pillai (Pw 1) has gone back on it in the witness-box.
>
> (ii) In the first information report (Ex. P-1) Balakrishna Pillai (PW 3) and Ramesan (PW 4) are labelled as eyewitnesses - a stand which has been falsified at the evidence stage.
>
> (iii) In Ex. P-1, Kuttan Pillai (PW 1) took the position that appellant 2 (the father) had "completely embraced" the deceased but at the trial all that the witnesses said was that the father had held the deceased by his hands.
>
> (iv) Three blows with the knife were ascribed to appellant 1 (the son) at the investigation stage. The medical evidence reveals only two injuries.
>
> (v) Kuttan Pillai (PW 1) claims to have seen the incident from a distance of 78 metres. If that be so, he could have been able to make out nothing even if sufficient moonlight was available. In any case, he could not have possibly identified the assailants of Janardhana Kurup with any certainty.
>
> (vi) No weapon of offence was mentioned by the deceased to Dr.Sivaprasad (PW 10). This could not have been so if the deceased had identified the assailants. The deceased could thus have laboured under a misapprehension or mistaken impression about such identity.
>
> (vii) The motive for the attack is not only vague but weak.

7. The High Court went into all the reasons recorded by the learned Sessions Judge in support the acquittal of the two appellants and after discussing the evidence in detail came to the conclusion that those reasons were either flimsy or ill-founded and were not at all sufficient to discard the testimony of the eyewitnesses or the dying declaration, both of which pieces of evidence were found to be otherwise reliable, supported as they were by the medical evidence.

8. After hearing learned counsel for the parties, we are of the opinion that the judgment of the High Court is unexceptionable and that the grounds on which the trial Court ordered the acquittal of the appellants are either non-existent or to trivial to merit attention. We would, under the circumstances, not go into a detaled discussion of the evidence or the arguments raised by the learned counsel for the appellants but would only briefly deal with the same.

9. It is undisputed that some bad blood existed between the deceased on the one hand and the appellants on the other prior to the occurrence. The animosity may not have been very bitter but then it is too much to say that it could not possibly form a motive for the occurrence. The variation in human nature being so vast, murders are known to have been actuated by much lesser motives. In any case, it is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it.

10. There is no doubt about the place where Janardhana Kurup was stabbed and the same is situated at a short distance from his house as well as that of Kuttan Pillai (PW 1). For this reason, Kuttan Pillai (PW 1) and Vijayan (PW 2) could well be expected to reach the place of occurrence a short while after its inception. They can thus be regarded as natural witnesses of the occurrence. The fact that help was available to the deceased as soon as he was injured would make it probable that some of his near and dear ones were at hand and this factor lends assurance to the presence of the two eyewitnesses at the time of the occurrence.

11. The first information report, in our opinion, is not a document attended with any unavoidable delay. The deceased was rushed to the hospital at Trivandrum with all possible speed and had been examined by the doctor within two hours of the occurrence. His statement naming his assailant made at the time of his examination by Dr. Sivaprasad (PW 10) thus furnishes a very important piece of evidence which we see no reason to discard or doubt. He was seriously injured and by then his son and others who brought him to the hospital were chiefly concerned about saving his life so that there was no real opportunity for them to tutor him before he talked to the doctor. The case against appellant 1 is thus watertight. The first information report was made next morning to the police when it arrived at the hospital while the deceased was still alive but fighting a losing battle. The criticism that the report was delayed by 12 hours does not detract from the corroborated value of the first information report in the circumstances then prevailing. Vijayan (PW 2) and his friends must have been under shock for quite some time after the occurrence and then, as already stated, their chief concern must have been to save the life of the victim. It would not be surprising, therefore, that none of them cared to go to the police station and report the matter for legal action against the culprits. The first information report, in this view of the matter, was made as promptly as it could be expected and furnishes on that account good corroboration of the testimony of its author Kuttan Pillai (PW 1).

12. The medical evidence fully supports the case for the prosecution and the learned Sessions Judge was entirely wrong in saying that the injury statement prepared by Dr. Sivaprasad (PW 10) revealed the presence on the deceased of only two injuries and not three; nor do we find anywhere in the evidence recorded at the trial even a suggestion to the effect that the injuries were two and not three in number.

13. It is no doubt true that the prosecution evidence does suffer from inconsistencies here and discrepancies there but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. That is a salutatory method of appreciation of evidence in criminal case which does not appear to have been followed by the learned Sessions Judge; and that is the reason why he landed himself into wrong conclusions, as has been pointed out by the High Court.

14. We need discuss the matter no further. Suffice it to say that we find ourselves at one with every reason given by the High Court for reversing the judgment of acquittal and recording the conviction of the two appellants. The appeal before us accordingly fails and is dismissed.

</html