

M.A. Abdulla Kunhi and others

Vs

The State of Kerala

Criminal Appeal No. 204 of 1979

(S. R. Pandian, K. Jayachandra Reddy JJ)

15.01.1991

Judgement

K. JAYACHANDRA REDDY, J.:-

1. Four appellants along with another person B.A. Abbas (accused No. 5) were tried for offences punishable under S. 120-B and S. 302 read with S. 34, I.P.C. Accused No. 1 was tried for offences punishable under S. 341, I.P.C. and accused No. 5 under S. 109, I.P.C. The trial Court acquitted all of them. On an appeal by the State the High Court reversed the acquittal in respect of the four appellants before us and convicted all of them under S. 302 read with S. 34, I.P.C. and sentenced each of them to undergo imprisonment for life. The State appeal in other respects was, however, dismissed. The four convicted appellants have preferred this appeal under S. 2A of the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act, 1970 read with S. 379, Cr. P.C. It is alleged that accused No. 5 on 4-4-77 at 8 p.m. instigated accused Nos. 2 to 4 to commit the murder of the deceased Abdulkhader and all of them conspired along with the first accused on 5-4-77 at 6.30 p.m. at the Volleyball ground in the paddy field of one Mohammed of Pudukkottai, Eruthukadavu and in prosecution of the criminal conspiracy committed the offence. Accused No. 1 wrongfully restrained the deceased preventing him from moving further by catching hold of him through his shoulder, from his back side and accused Nos. 2 to 4 at the same time and place mentioned above committed the murder of the deceased by cutting him on various parts of the body with choppers. In support of the charge of murder against the appellants, the prosecution relied on the direct testimony of P.Ws. 1 to 3. A conspiracy was said to be proved by the evidence of P.Ws. 5 to 8 with which we are not concerned for the purpose of this appeal.

2. The learned trial Judge rejected the evidence of these eye-witnesses that P.W. 1 has not given all the details in Ex. P. 1 the earliest report and that he was enmical to accused No. 5. P.W. 2 was discredited on the ground that he did not assist the deceased who is no other than his brother after the accused left the place and also on the ground that the clothes of P.W. 2 as well as that of P.W. 1 were not stained with blood. P. W. 3 who is the brother-in-law of P.W. 1 did not take part in the game. His evidence was rejected by the trial Court that he was enmical towards accused No. 5 and the evidence of P.W. 4 was rejected because of a discrepancy in respect of part played by accused No. 4. The appellate Court in an elaborate judgment has dealt with all these reasons given by the

trial Judge and held that the appreciation of evidence of P.Ws. 1 to 4 by the trial Judge is "palpably wrong and perverse" and that he has misread the material evidence and that he has also used the first information report as substantive evidence. The appellate Court also held that the occurrence took place in broad-day light and within short-time the first information report was lodged at the police station. The appellate Court, however, agreed with the trial Court that the charge of conspiracy and the instigation attributed to accused No. 5 was not established and in that view of the matter confirmed the acquittal of accused No. 5.

3. The learned counsel for the appellants submitted that the trial Judge who had the advantage of seeing the demeanour of the witnesses has given sufficient reasons for not going upon their evidence and that in any event the view taken by him on a consideration of the probabilities and the facts and circumstances of the case cannot be said to be unreasonable. He further submitted that at the most it may be said that there were two views possible. In such a situation, the High Court ought not to have interfered in an appeal against acquittal on the ground that a different view was possible.

4. Before we proceed to consider this submission, we may state few relevant facts of the case. Accused No. 1 has got a brother named A. K. Haji. They were at loggerheads. Accused No. 5 was injured by the said A. K. Haji, and his son namely the deceased and another on 12-11-1976. A criminal case was filed and it was posted to 2-4-77. On 4-4-77 accused Nos. 2 to 4 met in the house of accused No. 5 and conspired and accused No. 5 instigated to kill the deceased and the support of accused No. 1 was also enlisted. The volley ball ground in which the occurrence took place lie north to south. In the northern Court, Accused No. 1, the deceased and two others played as one team and in the southern Court P.W. 1 and three others played as the opposing team. There were number of people watching the game including accused Nos. 2 and 3 as well as P.Ws. 2 to 4. The first accused who was behind the deceased caught hold of him and held him firmly. Accused Nos. 2 and 3 who were on the eastern side rushed and cut the deceased with sharp-edged weapons on all parts of the body. The 4th accused who was sitting also advanced towards the deceased with a chopper and attempted to cut him when P. W. 1 caught hold of him. The deceased after receipt of the injuries died on the spot and accused left the scene. P.W. 1 went to the Kasaragod Police Station and gave a report. The Investigating Officer P.W. 19 came to the scene of occurrence, held the inquest and arrested the accused. The dead body was sent for postmortem. P.W. 10 the Doctor who conducted the postmortem found as many as 7 incised wounds all over the body and he opined that the death was due to shock and haemorrhage due to all these injuries which were necessarily fatal.

5. P.Ws. 1 to 4 have given a cogent and consistent version. One of the grounds urged was that the injuries Nos. 14 and 15 which were found on the back of the deceased could not have been inflicted if really accused No. 1 was catching hold of the deceased from behind in the manner alleged by the prosecution. It is true that these two injuries are on the back side but the particulars would show that they are on the lateral side of the left upper arm and on the left side respectively. It must be borne in mind that the deceased would not have been stationary without any movement when being attacked though held by accused No 1 from behind. This is not a ground to doubt the prosecution version. The trial Judge also commented that there were number of people who were witnessing the occurrence and at least some of them could have been examined. It is rightly pointed out by the High Court that it is not necessary that all the persons present should be examined.

6. The enmity attributed to P.W. 1 is also rather remote and there is no evidence to prove the so-called quarrel between P.W.1 and, accused No. 5. The learned trial Judge commented that usually the volley-ball game is played by six players on each side and that the prosecution case that only four players on each side played appeared to be artificial. It is only a surmise. It must be noted that

they were not playing a tournament. The comment of the trial Judge that P.W. 2 did not attempt to give assistance to his brother namely the deceased shows his unnatural conduct cannot be a ground to doubt his evidence. P.W. 2 is only 17 years old and It is in his evidence that he was crying and shouting all the way. The discrepancies pointed out in the evidence of P.W. 3 similarly are trivial. One discrepancy pointed out by the trial Judge was between his evidence before the Court and his statement under S. 161, Cr. P.C. about the exact time when the game started. This does not in any manner affect his evidence as a whole. The evidence of P.W. 4 was rejected mainly on the basis of a discrepancy regarding the part played by accused No. 4 which is a very trivial one. We have carefully examined the reasons given by the trial Court and in our view the appellate Court has rightly held that they were palpably wrong and perverse.

7. Shri Padmanabhan, learned counsel for the appellants however made a special plea on behalf of accused No. 4 relying on Ex. D3, a contradiction marked in the evidence of P.W. 4 in respect of his statement under S. 161, Cr. P.C. In the said statement he appears to have stated that accused No. 4 who was sitting on the western side, stood up and came into the volley ball Court drawing a sword knife from his back and that the accused No. 4 inflicted a cut on the right side of the deceased. Reliance is also placed that even according to the present version, accused No. 4 did not inflict an injury on the deceased because P.W. 1 prevented him, and therefore he did not play an active role. It is submitted that there is a conflict in the prosecution version regarding the role played by accused No. 4 and therefore he is entitled to benefit of doubt. We are unable to agree. The evidence of P.Ws. 1 to 4, the direct witnesses, is consistent and they have deposed that accused No. 4 also rushed with a sword to attack the deceased and but for the obstruction by P.W. 1 he would have inflicted injuries on the deceased. The fact that he rushed towards the deceased with the sword drawn itself shows that he also shared the common intention. For all the aforesaid reasons, there is absolutely no merit in this appeal. It is accordingly dismissed.

Appeal dismissed.

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