

Raghavan Achari and Njoonjappan

Vs

State of Kerala

Criminal Appeal No. 600 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

12.10.1992

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1. Special leave granted.

2. The appellant before us was tried for an offence under S. 302 of the Indian Penal Code on the allegation that he murdered one Krishna Pillai at about 2.30 p.m. on 12th February, 1990 at his premises at Kattampakku Kara within the jurisdiction of Kaduthuruthy Police Station. The trial Court, however, found, him guilty under S. 304, Part 1 and sentenced him to rigorous imprisonment for five years. The High Court, on appeal, confirmed the conviction but reduced the sentence to three years.

3. The accused is a goldsmith. He has a wife Bhavani. They have four children. Bhavani was having illicit relations with the deceased. The accused was also aware of the extra-marital relationship of his wife and there used to be quarrels between the appellant and his wife. There was even a scandal that Abhilash is the son of Krishna Pillai and Abhilash was sent to reside with the parents of the appellant's wife.

4. On 12th February, 1990 the accused left his house in the morning to attend a marriage. The children had gone to school. At about 2.30 p.m. the deceased came to his rubber plantation, which is near the house of the appellant and called his wife and expressed his desire to have sex with her. She refused but ultimately succumbed. While they were sitting on a cot and the deceased Krishna Pillai was totally naked, unexpectedly, the appellant entered his house and was shocked to see the unholy scene. Instead of the deceased running away, he sprang at the appellant and fisted on his forehead. There was a tussle between them. The deceased, it is alleged, hit the appellant with a lamp and the appellant sustained injuries which are mentioned in Ext. P 7. It shows that the appellant had sustained -- (1) a lacerated injury on the lower lip, (2) contusion above left eye, (3) contusion on the dorsum of left hand and (4) avulsion of lower lip of the lower gum margin with a lacerated injury. The appellant was treated by the Civil Surgeon from 12th February, 1990 to 27th February, 1990. The Discharge Certificate, Ext. P. 13, further shows that the appellant had multiple injuries on lower lip, left side of scalp and crack fracture on the 5th metatarsal. The trial court and the High Court ascribed the injury on the metatarsal a serious injury.

5. The appellant after having suffered the aforesaid grievous injuries made use of the chopper as a

result of which the deceased fell down and died instantaneously.

6. Both the courts have found that it is riot a case of culpable homicide yet the courts convicted the appellant under Section 304 Part 1 of the Indian Penal Code. It will be noticed that exception 1 to Section 300 of the Indian Penal Code provides:

"Cuplable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation,"

The exception is subject to three provisos and admittedly it is not covered by any of the said three provisos.

7. Again Section 100 of the Indian Penal Code provides the right of private defence of body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right, may cause a reasonable apprehension that death will otherwise be the consequence of such an assault or such assault may cause reasonable apprehension that grievous hurt will otherwise be the consequence of such assault.

8. We have already noticed the injuries received by the appellant vide Ext. P. 7 as well as those confirmed at the time of discharge, Ext. P. 13. There can be no doubt also that the compromising position in which appellant found the deceased with his wife it gave the appellant the grave and sudden provocation. This provocation was further aggravated when the appellant found the deceased taking further offence of causing grievous injury of the nature referred earlier to him and in the circumstances the right as envisaged under Section 100 became available to the appellant. No court expects the citizens not to defend themselves particularly when they have already suffered grievous injuries. It is clear that though the appellant has a chopper in his hand he did not initially use it against the deceased and it was only when the deceased succeeded in using the oil lamp, which is described as dangerous weapon by the High Court, which caused multiple injuries, including grievous injury, that the appellant's provocation got further aggravated and it cannot be said on the facts and circumstances of the case that the appellant has exceeded his right of private defence.

9. The result is that the appeal is allowed and the conviction and sentence of the appellant are set aside and he is acquitted. Appeal allowed.

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