

N. G. Sreedharan and Another

Vs

State of Kerala

Criminal Appeal No. 263 of 1983

(M. K. Mukherjee, B. N. Kirpal JJ)

13.12.1995

JUDGMENT

M. K. MUKHERJEE, J.

1. N. G. Sreedharan and V. K. Sudhan, the two appellants herein, (hereinafter referred to as A-1 and A-2 respectively) along with four others placed on trial before the Sessions Judge, Trichur to answer charges under Sections 143, 147, 148, 341 and 302/149 (two counts) IPC. The trial ended in an acquittal of all of them; and aggrieved thereby the respondent-State preferred an appeal. In disposing of the appeal the High Court reversed the acquittal of A-1 and A-2 and convicted and sentenced them under Section 302/34 IPC, while upholding the acquittal of others. Hence this statutory appeal at their instance. Shorn of details, the case for the prosecution is an under :

2. The headload workers of Trichur taluk, which includes Village Adattu, owe allegiance to different trade unions. While Vincent and his brother Davis (the two deceased) belonged to one of those unions the accused belonged to a rival one. On 9-12-1979 a dispute between the members of those two unions over unloading of a lorry at Puranattukara centre in the above village took such a violent turn that it had to return without unloading the materials. To seek advice of his leaders in the matter Vincent, who was the treasurer of their union, went to their headquarters at Mundor on the following day, that is on 10-12-1979, accompanied by Ashokan (PW 1). In the evening they returned by bus and alighted at the Puranattukara centre at or about 7.30 p.m. A-1, who was present there, called Vincent aside under the pretext of discussing the issue. He was then surrounded by some members of A-1's union and wrongfully restrained. In course of the altercation that followed A-1 shouted that Vincent was the trouble-maker and he should be done away with. Then A-1 and another caught hold of Vincent. In an attempt to save himself Vincent brandished a knife which he had with him and managed to escape. The accused persons however chased him and ultimately succeeded in apprehending him at the gate of Pambungal Ramakrishnan. There A-1 stabbed him with a knife and A-2 beat him with an arecanut split on various parts of his body. Finding his younger brother a helpless victim of such attacks, Davis, who was nearby, rushed to his rescue but A-1 stabbed him also. Both the brothers died soon after.

3. On that very night Ashokan (PW 1) lodged an information about the incident with the police and on that information a case was registered for the above two murders. Shri Muthalali (PW 13), Circle Inspector of Crime took charge of investigation and after holding inquest upon the dead bodies of Vincent and Davis, sent them for post-mortem examination. He seized some bloodstained earth, a bloodstained knife and an arecanut split from the place of occurrence and sent them for chemical examination. After receipt of the reports of post-mortem and chemical examination and completion of investigation he submitted charge-sheet.

4. To prove its case the prosecution examined 12 witnesses and exhibited certain documents. Of the witnesses examined Ashokan (PW 1), Mohanan (PW 2), George (PW 3), Davis (PW 4) and Jose (PW 5) were produced as eyewitnesses but PW 3 turned hostile. Besides, the prosecution relied upon the evidence of the doctor who held post-mortem examination upon the two deceased and the reports of chemical examination which indicated presence of blood in the articles seized by the police from the place of occurrence.

5. In giving out his version of the incident A-1 stated, which being examined under Section 313 CrPC, that Vincent and Davis along with PWs 1, 2, 4 and others came to the place where he was talking with A-2. Reaching there Vincent shouted that he would not permit him (A-1) and his associates to do the loading and unloading work at Puranattukara and immediately thereafter Vincent stabbed him on his chest and then A-2, on both sides of his abdomen with a knife. When Vincent made further attempts to stab, A-2 took away the knife from him. At that time Davis choked the neck of A-2. He went on to say that both he and A-2 then cried out and hearing their cries the members of their union rushed to the spot. Thereafter there was a confrontation between the members of the two rival unions. A-1 specifically denied to have stabbed Vincent or Davis. A-2 also gave a similar statement; and further stated that after snatching away the knife from Vincent he stabbed him once or twice out of fear of instantaneous death. The appellants however did not adduce any evidence in support of their respective pleas.

6. On perusal of the judgment of the trial court we find that the principal grounds that weighed with it for recording the acquittal were, that the prosecution suppressed the fact that the accused persons also sustained injuries in the incident; that non-availability of a second knife at the scene of occurrence discredited the entire prosecution case; that the defence version that A-2 inflicted the stab wounds on both the deceased was more reasonable; and that the assertion of the eyewitnesses that A-1 stabbed Vincent and Davis was not acceptable as the prosecution case about A-1 having a knife stood almost falsified.

7. In reversing the order of acquittal passed in favour of the two appellants the High Court first held that the finding of the trial court that the eyewitnesses suppressed the fact that Vincent had a knife with him was factually incorrect for both PWs 2 and 4 categorically stated that Vincent had a knife with him and that he was brandishing it. The High Court next held that there was absolutely no basis for the trial court to conclude that the prosecution attempted to suppress the injuries sustained by A-1 and A-2. The High Court further observed that the trial court's finding about the non-availability of another knife was equally unsustainable for in an incident of the nature which resulted in the death of the two victims it might not be possible for the prosecution to account for all the weapons used by the accused or by the victims in retaliation. After having found that the findings of the trial court to acquit the accused were wholly unsustainable and perverse, the High Court dealt with and discussed the evidence of the eyewitnesses at length to conclude that both the appellants were guilty of the murder of the two brothers.

8. This being a statutory appeal we have carefully looked into the entire evidence on record to ascertain whether the High Court was justified in holding that the findings of the trial court as against the appellants were perverse and reversing the same on that score. Before we proceed to consider the evidence of the eyewitnesses in that perspective we may at the outset point out that both the appellants were found to have sustained injuries when examined by the Assistant Surgeon of District Hospital, Trichur in the night in question. While A-1 sustained one penetrating wound 1" x 1/2" on the right side of the chest A-2 sustained four, of which two were incised and the other two were penetrating wounds. The eyewitnesses examined on behalf of the prosecution however did not

offer any examination as to how the two appellants sustained those stab injuries. Nonetheless their evidence discloses that when the altercation started at Puranattukara centre between him and the appellants, Vincent was found brandishing a knife which he had with him. Judged in that light the appellants were entitled to raise the plea of the right of private defence of their persons apprehending threat of assault with the knife so brandished in view of Section 102 IPC, which provides that the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence ('assault' in the instant case) though the offence may not have been committed, and it continues so long as apprehension of danger to the body continues. The evidence further discloses that not the threat was imminent but the apprehension of the two appellants of being assaulted by Vincent was also a reasonable one - and indeed, it ultimately turned into a reality. Then again, considering the nature of injuries sustained by them, it cannot also be said, in view of Section 100 IPC, that they had exceeded their right of private defence in causing the death of Vincent. For the aforesaid reasons the conviction and sentence of the two appellants for the murder of Vincent cannot be supported. In arriving at the above conclusions we have drawn sentence from the following observations made by a three-Judge Bench of this Court in *Deo Narain v. State of U.P.* [(1973) 1 SCC 347 : 1973 SCC (Cri) 330] : (SCC p. 350, para 5)

"What the High Court really seems to have missed is the provision of law embodied in Section 102 IPC. According to that section the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and no remote or distant danger. This right rests on the general principle that where a crime is endeavoured to be committed by force, it is lawful to repel that force in self-defence. To say that the appellant could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in the above section. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him. It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. If after sustaining a serious injury there is no apprehension of further danger to the body then obviously the right of private defence would not be available. In our view, therefore, as soon as the appellant reasonably apprehended danger to his body even from a real threat on the part of the party of the complainant to assault him for the purpose of forcibly taking possession of the plots in dispute or of obstructing their cultivation, he got the right of private defence and to use adequate force against the wrongful aggressor in exercise of that right."

9. The same conclusions cannot however be drawn for the assault on, and consequent death of, Davis. It is the consistent case of the eyewitnesses that when Vincent fell down on being assaulted by A-1 and A-2 Davis, who was sitting in a nearby tea shop, rushed to his brother's rescue. A-1 then stabbed him with the knife as a result of which he fell down dead. There is not an iota of material on record to show that Davis had any weapon with him or that he was a party to the fracas that took place between the appellants and Vincent earlier. We do not, therefore, find any reason to disbelieve the prosecution case as to the manner in which Davis met with his death, more so, when the eyewitnesses' account in this respect stand corroborated by the medical evidence. A-1 also cannot

lay any claim that his apprehension of danger to his body continued even after Vincent had dropped his knife and himself fallen down, so as to entitle him to exercise his right to defence in assaulting Davis. It appears that when in the trial court the Public Prosecutor raised such a contention the trial court rejected the same with the following words :

"The submission of the learned Public Prosecutor is that even if the stabs on Vincent could be justified as an act of private defence there is no explanation as to why his brother Davis also could have been stabbed. The evidence of PWs 1, 2, 4 and 5 is to the effect the Davis came to the scene after the stabs were inflicted on Vincent and that the 1st accused himself stabbed Davis. From the foregoing discussions, I have come to the conclusion that the probabilities are in favour of the defence version that it was the second accused who stabbed. The eyewitnesses would in one word say that it was the 1st accused who stabbed Davis also."

10. The above conclusion of the trial court is patently perverse for there is no evidence on record to indicate that A-2 stabbed Davis. In fact, it was not the specific case of A-2 even that he had stabbed Davis. Besides, as had already been noticed, in discarding the prosecution case altogether, the trial court was much influenced by the fact that only one knife was found at the spot, and according to it, as that knife was dropped by Vincent the conclusion was inevitable that A-1 had no knife with him by which he could have assaulted any of the two brothers. This finding is patently incorrect for PW 4 in his cross-examination categorically stated that when the knife fell down from Vincent's hand, he saw A-6 (since acquitted) lifting it. The above evidence of PW 4 stands corroborated by that of PW 5 when he also stated in cross-examination that the knife which was brandished by Vincent fell down and A-6 took it away.

11. Now that we have found that, though A-1 and A-2 cannot be held liable for the murder of Vincent, A-1 is liable for having caused the death of Davis by stabbing him with a knife, we have to ascertain what offence A-1 committed thereby. The evidence of Dr. K. C. Prakasan (PW 9) who held post-mortem examination on the dead body of Davis, testified that he found one penetrating incised wound in the midline of chest 5 cm below the root of neck, 3 cm long horizontally and 5 cm deep. He opined that the injury was capable of causing instantaneous death and that it could be caused by stabbing with a knife, like MO 1, which according to the eyewitnesses A-1 threw away at the spot, and was later seized by the Investigation Officer. Considering the nature and situs of the injury, the attending circumstances and the fact that it was inflicted without any provocation whatsoever it must be said that the offence committed by A-1 is one of murder.

12. On the conclusions as above we allow this appeal in part by setting aside the order of conviction and sentence recorded against A-1 and A-2 under Sections 302/34 for the murders of Vincent and Davis and acquit A-2 in respect of those charges, but convict A-1 under Section 302 IPC simpliciter for the murder of Davis and sentence him to suffer imprisonment for life.

13. Since both the appellants are on bail A-2 will stand discharged from his bail bond and A-1 will surrender to his bail bond to serve out the remainder of the sentence.