Bhaskaran

Vs

State of Kerala

(M. K. Mukherjee, K. T. Thomas JJ)

05.12.1997

JUDGMENT

M.K.MUKHERJEE, J.

1. Bhaskaran and Manoharan @ Babu, the appellants before us, were placed on trial before an Additional Sessions Judge of Quilon to answer a charge under Section 302/34 I.P.C. The allegation against them was that on July 18, 1987 at or about 9 P.M. they, in furtherance of their common intention, committed the murder of Gopal Krishna Pillai @ Baby Pillai of village valakam by stabbbing him with knives. The trial ended in their acquittal but in appeal preferred by the State of Kerala, the High Court upset their acquittal and convicted and sentenced them under Section 302/34 I.P.C. They have now filed these two separate appeals under Section 379 Cr. P.C. which have been heard together and this judgment will dispose of them.

2. According to the prosecution case on the fateful evening the appellant had a heated argument with the deceased in front of a tea shop but owing to the intervention of and advice given by one Bhasakaran Pillai (P.W.6) they left the place. Sometime later the two appellants followed the deceased and when he was proceeding along the ridge of a field they stabbed him with knives and fled away. A little the deceased succumbed to his injuries. The motive that was ascribed for the above murder was that a week earlier the deceased had grabbed a bottle of arrack from appellant Bhaskaran.

3. It is the further prosecution case that on the following morning Vasudevan Pillai (P.W.1), brother of the deceased, went to Pooyappaly Police Station and lodged a report about the incident. On that report S.I.J. Wilfred (P.W.10) registered a case and took up investigation. He went to the filed where the dead body of Gopal Krishna Pillai was lying and held inquest. He then sent the dead body for post mortem examination by Dr. N.Bahuleyan (P.W.8). In course of investigation P.W.10 arrested appellant Bhasakaran and pursuant to his statement recovered a knife, which on chemical examination was found to contain stains of human blood. The other appellant, namely Manoharan, surrendered before the Court later. On completion of investigation the police submitted charge sheet against the two appellants and in due course the case was committed to the Court of Session.

4. The appellants pleaded not guilty to the charge levelled against them and contended that they had been falsely implicated.5. That the deceased met with a homicial death owing to six stab injuries found on his person by P.W.8 was not disputed by the appellants. In that context the only question that fell for determination before the trial Court was whether the evidence of Vasudevan (P.W.1), the brother of the deceased and of Gangadaran Pillai (P.W.2), who figured as eye witnesses, could be believed. Both of them not only detailed the incident but also averred that deceased named the two

appellants as his assailants. The trial Court found their evidence unworthy of credit as, according to it, there was an inordinate delay in loding the First Information Report. The trial Court next observed that if really they had seen the incident it was expected of them to make an attempt to save the deceased from the attack, which they did not. Another ground which weighed with the trial Judge to disbelieve the eye witnesses was that their version that the appellants told the deceased that they would kill him, was rather improbable for no one who intends to kill would proclaim his intention. The trial Court also found fault with the Investigating Officer for not having seized the torch, by the light of which P.W.1 claimed to have recognised the appellants. The High Court, however, observed that each of the above grounds canvassed by the trial Court, was wholly unsustainable; and on perusal of the evidence of the two eye witnesses held that there was no reason to disbelieve them.6. This being a statutory appeal we have, with the assistance of the learned counsel for the parties, gone through the entire evidence on record, particularly, the evidence of P.Ws.1 and 2. Having done so we are in complete agreement with the High Court that the evidence of the above two eye witnesses can be safely relied upon and made the basis for conviction. The High Court lightly pointed out that considering the fact that the distance of the police station from the village in question was 15 kms. and the uncontroverted evidence of P.W.1 that no buses were available to reach the police station in the night, it could not be said that there was any delay in lodging the First Information Report at 9 A.M. on the following morning. On the contrary, it our opinion, the report was lodged at the earliest available opportunity. Equally justified was the High Court in observing that since different persons reacted differently in the same circumstance the other two reasons canvassed by the trial Court to disbelieve P.Ws.1 and 2 were patently wrong. As regards the failure of the Investigation Officer to seize the torch light, the trial Court failed to consider that the remiss on his part could not be made a ground to disbelieve P.W.s.1 and 2, if they were otherwise trustworthy.7. Coming now to the evidence of P.Ws.1 and 2, who gave a detailed version of the incident, we find that except a few minor contradictions there is nothing in their evidence to discredit them. That apart, we cannot lose sight of the fact that P.W.2 is an independent witness and has no axe to grind against the appellants.8. Resuantly, we do not find any merit in these appeals and the same are accordingly dismissed.