

Velan Kutty

Vs

State of Kerala

(G. T. Nanavati, V. N. Khare JJ)

26.02.1998

JUDGMENT

NANAVTI J

1. The appellant was convicted under section 302 IPC, for causing death of Kandamuthan on 25.5.89 at about 9.30 p.m., by the court of Session Pallakad, in Session Case No.110 of 1989 His appeal (Cr1.A.No. 458/90) to the High Court of Kerala was dismissed.

2. Though the assault was seen by four witnesses, only PW 1 supported the prosecution. Believing his evidence, the trial court convicted the appellant. The High Court has also believed his evidence, the trial court convicted the appellant. The High Court has also believed his evidence. The High Court also held that the evidence of PW 1 received support from the circumstance that the appellant had surrendered before the police on the next day at Kollengoda Police Station with a blood stained chopper on which subsequently human blood was found and the hairs found on it were also reported by the Forensic Science Laboratory to be the same as those as of the deceased.

3. We have gone through the evidence of PW 1 Nagmani with whom the deceased was till one minute before his death. The deceased had come to the house of PW 1. Within a few seconds after he left that place PW 1 heard sound of falling of a cycle. He, therefore, looked into that direction and saw that the appellant was giving blows to his friend with a sword. He immediately rushed to that place which was about 30 feet away from the gate of his house. The appellant ran away from that place. PW 1 then lifted the deceased and brought him that it was the appellant who had deceived him indicating thereby that the appellant had caused injuries to him. Both the courts have believed the evidence of PW 1. We see no reason to differ from the findings recorded in this behalf by both the courts below.

4. It was contended by the learned counsel for the appellant that there was no light where the incident had taken place and therefore PW 1 could not have seen the incident or in any case he could not have recognised the assailant. This submission cannot be accepted because PW 1 has clearly stated that street lights were on at that time and he could see the incident in that light. Merely because the witnesses have stated that after he had brought the deceased near the gate of his house and brought a lamp he was able to see all the wounds of the deceased, that cannot lead to an inference that he had seen the incident or that he had not identified the assailant. The circumstance that the appellant had presented himself with MOI chopper stained with blood which was found to be human blood corroborates the evidence of PW 1.

5. We are therefore of the view that the High Court was right in accepting the evidence of PW 1 and

convicting the appellant for the murder of Kandamuthan. As a finding of no substance in this appeal, it is dismissed.