

**SUPREME COURT OF INDIA**

Kamal @ Poorikamal & Anr.

Vs.

State of Tamil Nadu

Crl.A.No.786 of 2008

(Fakkir Mohamed Kalifulla and Uday Umesh Lalit, JJ.,)

16.10.2015

**JUDGMENT**

**Uday Umesh Lalit, J.,**

1. This appeal by Special Leave challenges the judgment and order dated 28.06.2006 passed by the High Court of Judicature at Madras dismissing Criminal Appeal No.572 of 2003 preferred by the appellants herein and thereby affirming the conviction and sentence recorded against them by the Principal Sessions Judge, Coimbatore in Sessions Case No.344 of 2002.

2. One Sultan Meeran hereinafter referred to as Sultan, resident of Coimbatore fell in love with a Hindu girl, converted her to Islam and married her. Thereafter he converted another Hindu girl to Islam and married her as well. This conduct on the part of Sultan, according to the prosecution, enraged the first appellant who one month prior to the incident in question had gone to the house of the deceased. He called Sultan and stated that he was converting Hindu girls to Islam and marrying them and that there was danger to Hindu Religion because of him and that if he were to continue such conversions the things would become different and that he must save his life, if possible. At that time the father of Sultan, i.e. PW 8 Abdul Ajeezkhan was present in the house.

3. On 26.03.2002 the car belonging to Sultan had gone to the workshop of PW-11 Venu Gopal for repairs. After the car was ready to be picked up, Sultan along with his younger brother PW-1 Abdul Kadhar went to the workshop on the motor-cycle of said PW-1. Sultan had told his elder brother PW 9 Abudhaheer that he and PW-1 would return after having dinner at Galaxy Restaurant. After picking up the vehicle, Sultan and PW-1 had their dinner in the Restaurant and when they came out around 10:35 p.m., Sultan suggested that they would go to the adjoining club named Snooker World.

4. As they entered, they found the appellants sitting there. The first appellant called Sultan and spoke to him. Thereafter Sultan told PW-1 that they should go home and they came out of the club by about 10:45 p.m. PW-1 then started his motorcycle while Sultan was getting

into his car. At that time the appellants came out and asked him to stop the car. The second appellant opened the door and sat in the back seat of the car of Sultan. He held both the hands of the deceased backwards and the first appellant who was standing outside, took out a knife from his trouser and repeatedly stabbed Sultan on the head and neck, stating that he had converted two Hindu girls to Islam and there was danger to Hindu Religion from him. The first appellant no.1 held the neck of Sultan and pulled him, at which point the second appellant came out, took another knife from his pocket and also stabbed him. According to the prosecution, at that stage PW-2 Ismail and PW-3 Sarvan Kumar had also reached the place of occurrence and witnessed the incident. When PWs 1, 2 and 3 tried to apprehend the appellants they were threatened that they would meet the same fate as that of Sultan and the appellants fled away.

5. Sultan in that injured condition drove the car and while he was near Raj Laxami Clinic he lost control over the vehicle and the car went into a ditch and stopped. PW-1 who was following him on his motor-cycle saw Sultan being unconscious. At that point, PW-9 Abudhaheer also came there. They managed to procure an ambulance and PW-9 took Sultan in the ambulance, followed by PW-1 on his motor- cycle. They reached Government Hospital at about 11:40 p.m. The duty doctor after examining Sultan declared him to be dead. After putting the dead body in the mortuary, PW-1 went home, wrote down complaint, Ext. P-1 and thereafter reached B-2 Police Station, R.S. Puram and lodged the complaint at about 00:30 hours on 27.03.2002. Crime No.389 of 2002 was accordingly registered for offences punishable under Sections 341, 302, 506 (ii) of the I.P.C. The FIR reached the Magistrate at 11:30 a.m. on 27.03.2002.

6. On 27.03.2002 the post mortem on the dead body of Sultan was conducted at 11:45 a.m. by PW 16 Dr. Sunder Rajan. He found following ante mortem injuries:

“1. Transversely oblique stab wound on the lateral aspect of neck measuring 5 cms x 2 cms x 6 cms deep. The lower medial end of the wound is 2 cms below right angle of mandible. Both ends of the wound are pointed and margins is regular. This wound passes downwards, backwards and medially and end as a point. On dissection, the wound found cutting the common carotid artery and internal jugular vein on the right side. Surrounding area contained extravasted blood clots.

2. Transversely oblique stab wound on the right lateral aspect of neck measuring 2 cms x 1 cm x 3 cms deep in the muscle plane. The upper lateral end of the wound is 5 cms below right mastoid. Both ends pointed. Margins regular. The wound passes downwards, backwards and medially.

3. Transversely oblique stab wound on the right lateral aspect of neck measuring 1 cm x 0.5 cm x 1.5 cms deep in the muscle plane. Both end pointed. Margins regular. The lower inner end of the wound is 8 cms below right angle of mandible. The wound passes downwards, backwards and medially.

4. A stab wound on the right supraclavicular region measuring 10 cm x .5 cm x 1.5 cm in the muscle plane above and lateral to the inner end of clavicle. Both ends pointed. Margin regular. The wound passes backwards and medially.
5. Oblique out injury on the right side of fore head 4 cms above the inner end of the right eye-brow measuring 2 cms x 1.5 cms x bone deep.
6. Vertically oblique incised wound involving the right temporal region of the scalp and right side upper part of the face just in front of right pinna measuring 12 cms x 1.5 cms x muscle deep with tailing in the lower end. The lower end of the wound is 2 cms about right angle mandible.
7. Vertically oblique incised wound in the right temporal part to occipital region measuring 10 cms x 1 cm muscle deep with tailing in the lower end. The middle of the wound is 3 cms posterior to right mastoid.
8. Oblique stab wound on the right side of chin involving right side of lower lip also measuring 5 cms x 2 cms in the chin and exiting out through buccal surface of the right side of the lower lip measuring 4 cms x 1 cm. both ends of the wound are pointed and the margins are regular.
9. Transversely oblique stab wound on the right lateral aspect of chest measuring 3 cms x 2 cms x 3.5 cms deep in the muscle plane. Both ends pointed. Margins regular. The posterior upper end of the wound is 14 cm right to the middle of T 10 vertebra. The wound passes downwards, backwards and medially.
10. Oblique, cut injury on the back of lower third or left fore arm measuring 4 cms x 2 cms x 3.5 cm deep. The lower radial end of the wound is 3 cms about left wrist.
11. Transversely oblique cut injury over the flexor aspect of left forearm measuring 5 cms x 2 cms tendon deep. The medial distal end of the wound is 9 cms above left wrist.
12. Oblique cut injury front of left forearm 7 cms. Above left wrist measuring 2 cms x 1 cm tendon deep.
13. An oblique incised wound 1 cm lateral to the previous wound number 12 measuring 1 cm x 0.5 cm skin deep.
14. Oblique cut injury in the ulnar aspect of left palm measuring 6 cms x 2 cm x bone deep. The wound is 4 cms below left wrist.
15. Oblique cut injury on the back of ulnar side of left hand wrist measuring 2.5 cms x 2 cms x tendon deep.

16. Four oblique skin deep incised wounds measuring 3 cms x .5 cms, 2 cms x .5 cm, 3 cms x .5 cm and 2 cms x .5 cm on the back of left wrist.” He also found following injuries:-

1. 2 cms x .5 cm over left side of fore head.
2. 1 cm x.5 cm in the right side of front of lower neck.
3. 5 cms x 3 cms back of right shoulder.
4. 3 cms x 2 cms over right deltoid region.
- 5 5 cms x 2 cms, 3 cms x 1 cm, 1 cm x .5 cm , .5 cm x .5 cm over lateral aspect of middle third of left arm.” PW-16 doctor Sunder Rajan issued Ext. P-14 post mortem certificate and letter Ext. P-16 being the final certificate specifying the reasons for death. According to him Sultan Meeran had died of hemorrhage due to injury no.1 “stabbed injury and corresponding internal injury to neck vessels.”

7. The first appellant surrendered on 28.03.2002 while the second appellant was arrested on 31.03.2002. Pursuant to the disclosure statement made by the second appellant, M.O. No.1 namely a blood stained knife with rubber handle was recovered on 31.03.2002. On 02.04.2002 M.O. No.2 being a blood stained knife with wooden handle was recovered pursuant to the disclosure statement of the first appellant. After completion of investigation, charge-sheet was filed against the appellants and they were tried for the offences punishable under Sections 341,302, 506 (ii) of the I.P.C. in Sessions Case No.344 of 2002.

8. The prosecution examined 19 witnesses in support of its case. Eye-witness account was unfolded through the testimony of PWs 1,2 and 3. PW1 deposed to the incident reiterating the narration as stated in complaint Ext.P1. PWs 2 and 3 supported the version of PW1. PW8, father of Sultan deposed to the incident when the first appellant had come to the house of Sultan. PW9 stated about the shifting of Sultan in ambulance to Government Hospital. Medical evidence on record was in the form of depositions of PW15 Dr. Natrajan who had declared Sultan dead when he was brought to the hospital and of PW16 Dr. Sunder Rajan who had conducted the post-mortem. Though PW16 did not specifically state that injury No.1 was sufficient in the ordinary course of nature to cause the death, in response to queries in the cross-examination he stated as under:

“Carotid artery carries the blood to brain with the oxygen. If the pure blood is not carried to the brain, then the brain would not function for more than 3 minutes. A lot of blood should have been oozed when there were 17 stab wounds. .... If the blood is not carried to brain, consciousness may not be there beyond 2 or 3 minutes. Thereafter, a person would loose his consciousness.”

9. The first appellant took the defence of right of private defence and examined one Suresh Babu as DW1. It was the case of the first appellant that as he came out of the club Sultan and one more person tried to drag him into the car of Sultan, that there was a dagger kept in the car which was used by the first appellant in self defence, thus suggesting that the injury on the person of Sultan could have been the result of the scuffle between them. But there was not a single injury on the person of the first appellant whereas Sultan had suffered 16 injuries. The second appellant took the defence of false implication.

10. The trial court after considering the material on record and rival submissions found the case of the prosecution completely proved and by its judgment and order dated 20.02.2003 convicted the appellants under Section 302 IPC and sentenced them to undergo life imprisonment and to pay fine of Rs.10,000/-, in default whereof to undergo rigorous imprisonment for one year. It also found them guilty under Section 506 (ii) I.P.C. and sentenced them to undergo rigorous imprisonment for 6 months. It however acquitted them of the offence under Section 341 I.P.C. The sentences were directed to run concurrently.

11. The appellants being aggrieved, filed Criminal Appeal No.572 of 2003 in the High Court which was dismissed by the High Court by its judgment under appeal, thereby affirming the judgment of conviction and order of sentence as recorded by the trial court. This appeal by special leave challenges the said judgment of the High Court.

12. Mr. R. Basant, learned Senior Advocate appearing for the appellants made following submissions:

“1. Complaint Ext. P-1 was received in the police station at 00:30 hours but reached the Magistrate only at 11:30 a.m. on 27.03.2002. The time so taken shows that the period was utilized to prepare the complaint after due deliberation and as such the complaint Ext. P-1 does not inspire evidence.

2. PWs 2 and 3 alleged eye witnesses were not present at the scene of occurrence and their version is completely unreliable.

3. Though PW-1 was with the deceased, his version now before the Court was completely exaggerated and as such not trustworthy at all.

4. The plea of private defence as taken by the first appellant raises doubts about the prosecution case which doubts were not discharged at all.

5. The medical opinion on record nowhere states that injury no.1 was sufficient in the ordinary course of nature to have caused the death and as such the offence, if at all, could be that of culpable homicide not amounting to murder.”

13. Mr. Yogesh Kanna, learned Advocate appearing for the State submitted that the material on record clearly indicated that the plea of self-defence was totally false. In his submission the case stood completely proved against both the appellants. He further submitted that there was sufficient material on record to conclusively establish that carotid artery and jugular vein were cut. Such an injury in the ordinary course of nature would certainly have caused the death and in any case the matter would come under the first clause of Section 300 IPC and not under the third clause of 300 IPC as suggested.

14. We have gone through the record and considered rival submissions. The evidence of PW1 is fully consistent with the medical evidence on record and is quite cogent and

trustworthy. The presence of PW1 along with the deceased is established through the testimony of PW11 Venu Gopal and such presence was not seriously challenged by Mr. Basant at all. What was submitted was that there were elements of exaggeration which would create doubts about the case of the prosecution. In our view, there was no exaggeration at all. Further, merely because PW1 a young boy of 17 years had first gone to his house, prepared the complaint and thereafter reached the police station would not be sufficient to discard his testimony. The complaint in question was received at 0030 hrs., the police had immediately swung into action, prepared inquest panchnama and sent the body of Sultan for post-mortem. Though the FIR reached the Magistrate at about 11:30 am, the post-mortem itself was conducted at 11.45 am and it would not be correct to assume that the FIR was so tailor-made to suit any finding in the post-mortem. To us, there was no delay in the FIR reaching the Magistrate. Moreover, the defence of the first appellant itself accepts his presence at the time and place as alleged by the prosecution. We therefore find the evidence of PW1 reliable and trustworthy, which is supported by the testimony of PWs 2 and 3 as well. According to the medical evidence on record two sharp cutting weapons were used for inflicting the injuries found on the person of Sultan and that the injuries were possible by MO. Nos.1 and 2 recovered from the appellants. The involvement of both the appellant thus stands proved.

15. PW 16 Dr. Sunder Rajan found 16 cut injuries on the person of Sultan and stated that lot of blood must have been lost as a result of such injuries. Injury No.1 states that carotid artery and jugular vein were cut. Though he did not specifically say that injury No.1 singularly or all the injuries collectively were sufficient in the ordinary course of nature to have caused the death, the material on record is fully indicative of this facet. In his cross-examination he stated that a cut to the carotid artery would affect supply of oxygen to the brain and a person may lose consciousness within three minutes. In *Tanviben Pankajkumar Divetia Vs. State of Gujarat* 'a cut of the size of 2" x 1" x 2 ¼"' on carotid artery of the victim was considered by this Court to be indicative that the victim had profusely bled and could not have remained alive for more than 10-15 minutes. In the instant case both the carotid artery and jugular vein were found cut and Sultan had soon thereafter lost consciousness. These features are clearly indicative that injury No.1 was sufficient in the ordinary course of nature to have caused the death. Additionally Dr. Sunder Rajan had also stated that lot of blood should have been lost as a result of 16 stab wounds. In our considered view, this is not a case of culpable homicide not amounting to murder. The assault was deliberate and designed to achieve the result namely the death of Sultan. The courts below were therefore right and justified in convicting and sentencing the appellants for the offences punishable under Sections 341, 302, 506 (ii) IPC.

16. This appeal must therefore fail and is dismissed.

<sup>1</sup>(1997) 7 SCC 0156