2024 INSC 473

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 32 OF 2013

JOY DEVARAJ ... **APPELLANT**

VERSUS

STATE OF KERALA ...**RESPONDENT**

J U D G M E N T

DIPANKAR DATTA J.

1. This criminal appeal, by special leave, calls in question the judgment and order dated 28th September, 2011 of the Kerala High Court[1] dismissing the appellant's appeal[2] under section 374(2) of the Code of Criminal Procedure. The impugned judgment upheld the conviction of the appellant by the Sessions Court, Thalassery[3] under sections 143, 147, 148, and 302 of the Indian Penal Code, 1860 ("IPC", hereafter) and, *inter alia*, the sentence of imprisonment for life together with fine.

2. Bare reading of the impugned judgment reveals that the appellant, who was part of an unlawful assembly, murdered Bobby[4] in the evening of 26th December, 1999 due to a dispute which arose on 24th December, 1999

[1] High Court, hereafter
[2] Criminal Appeal No. 12 of 2007
[3] Sessions Court, hereafter
[4] "victim", hereafter

between Sufras @ Rinku[5] and Bennet Ignatius[6]. Since we are considering this appeal which is at the instance of the appellant, being accused no.1, the discussion in this judgment is proposed to be confined to the role of the appellant only; however, the role of the other accused may be discussed tangentially, if required.

3. The sequence of events preceding the death of the victim, according to the prosecution case, reveals that the victim and PW5 were members of an 'Anti-Liquor Movement'. They attempted to persuade the public to give up drinking alcohol. On 24th December, 1999, PW5 got into an altercation with A4 who allegedly was an illicit liquor vendor. The victim had supported PW5 in that altercation and, thus, had a run-in with A4. During the course of the argument, A4 had threatened the victim with danger to his life and this, according to the prosecution, formed the genesis for the attack on the victim in the evening of 26th December 1999. On that day, Dikson Jerry[7] was standing near the victim's house with K.T. Varghese[8] and Byju[9]. At this time, the victim was standing on the street, at a distance of about 5 metres from PW1, talking to K.R. Rainold Suresh[10] and Jerry Mariyadas[11], when Renjith T.M.[12] arrived on his scooter and joined the group of the victim. Around 7:40 PM, all the accused persons including the appellant armed with deadly weapons were seen approaching the victim. Sensing danger, the victim tried to flee on PW4's scooter but the scooter was cut off

[5] "A4", hereafter
[6] "PW5", hereafter
[7] "PW1", hereafter
[8] "PW2", hereafter
[9] "CW2", hereafter
[10] PW3
[11] PW6
[12] "PW4", hereafter

immediately. The appellant, armed with a dagger, grabbed the victim, and pulled him to the ground and proceeded to stab him with the dagger on the left side of his lower chest. The other accused persons hit the victim with hockey sticks. Further, after the conclusion of the attack on the victim, the accused while retreating hurled a bomb at the door of PW1's house. PW1, PW2 and CW2 rushed the victim to the hospital, where he was pronounced dead.

4. An F.I.R.[13] under sections 143, 147, 148, 324, 302 r/w 149 of IPC was registered at the behest of PW1 at around 22:45 PM at Kannur City Police Station. Investigation of the F.I.R. culminated in filing of charge-sheet against 15 (fifteen) accused persons and committal of the case to the Sessions Court where it was registered as Sessions Case No.201/2002. The accused persons stood trial whereupon the Sessions Court vide its judgment and order[14] found, *inter alia*, the appellant guilty of murder and sentenced him to life in prison under section 302, IPC. The co-accused were found guilty of lesser crimes and suitably sentenced.

5. The appellant has disputed the prosecution case and questioned the credibility of the prosecution witnesses. Learned counsel appearing on his behalf has presented the following arguments:

I. The testimonies of the eye witnesses are wholly unreliable as they are full of material contradictions and gaps. The testimonies taken as a whole cannot lead one to conclude that the burden to prove murder was satisfied. The role of the appellant has been muddled in all three

[13] No. 131 of 1999
[14] dated 13th December 2006 in Sessions Case No. 201/2002

eye-witness accounts and, thus, the benefit of doubt should be given to the appellant.

II. PW1, who is also the first informant, has been inconsistent in his version about both the weapon as well as the overt act committed by the appellant. In the written complaint which was later converted into the FIR, PW1 stated that he saw the appellant along with other co-accused approach the victim with a dagger. He has further expressed that other accused persons were armed with knives and hockey sticks. The victim upon noticing the group approaching him, tried to flee on the scooter of PW4 when the appellant together with Sanju[15] pulled him to the ground from the scooter and stabbed him on the left side of the stomach with the dagger. This version narrated in the FIR has changed when PW1 testified in court. The dagger became an axe, and there is no mention of A2 helping the appellant in pulling the victim from the scooter. Similarly, PW2 has stated that the appellant used a knife instead of a dagger or an axe as stated by PW1.

III. PW4, one of the eyewitnesses, had turned hostile during the trial and did not support the case of the prosecution. His testimony is of significance as, by the prosecution's own admission, he was present at the scene of the incident. The evidence of a witness cannot be discarded merely because he has turned hostile, and thus the testimony of PW4 raises serious questions about the chain of events which led to the death of the victim. This is a chink in the prosecution's armour which clearly demonstrates that the prosecution

[15] "A2", hereafter

has not been able to prove the case against the appellant beyond reasonable doubt.

IV. *Arguendo*, assuming that the prosecution established through evidence that the appellant did attack the victim with a knife, it was not able to prove that the appellant attacked the victim with an intention to cause death. The act cannot be placed within the confines of section 300, IPC as the injury caused to the victim was not sufficient in the ordinary course of nature to cause death. It has been submitted that a singular stab wound on the lower chest is not a life-threatening injury and the appellant cannot be said to have possessed the intention or the knowledge that the harm inflicted would cause the death of the victim. Thus, the conviction under section 302 of IPC is altogether unsustainable.

6. Accordingly, learned counsel urged us to reverse the impugned judgment and to set the appellant free.

7. *Per contra*, learned counsel for the respondent while defending the impugned judgment and referring to the evidence on record submitted that the concurrent findings and conviction recorded by both the Sessions Court and the High Court do not warrant interference.

8. Having heard learned counsel for the parties and upon scrutiny of the materials on record, we are now tasked to determine whether the conviction of the appellant under section 302, IPC warrants interference by this Court.

9. The present case is one of a premeditated attack carried out by a group of 15 (fifteen) people resulting in the victim’s death. To decide the

sustainability of the conviction, we have to consider two issues: first, how far the evidence of the witnesses is credible and secondly, whether the nature of offensive act comes within the purview of section 300, IPC.

10. The appellant has highlighted inconsistencies in the statements of the prosecution witnesses regarding the weapon used in the crime and the overt act that he was alleged to have committed. PW1 and PW2 both have deposed in Court that they witnessed the appellant pulling the victim down from the scooter and striking him with a sharp weapon. The discrepancy arises because PW1 stated that the appellant inflicted blow on the victim with an axe, whereas PW2 stated that the appellant stabbed the victim with a dagger. None has mentioned about any knife being used as the weapon of offence.

11. At this stage, we find it crucial to look at a couple of decisions of this Court on credibility of a witness and what the requirements are to discredit or contradict a witness.

12. This Court in ***Rammi v. State of M.P.***[16] held:

> "24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. <u>But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny</u>."
>
> (emphasis ours)

[16] (1999) 8 SCC 649

13. The appellant has also pointed out that PW1's statement recorded in the FIR has substantial variations with his testimony in court, and this would give rise to doubts as to the veracity of his testimony. Here, we find it expedient to excerpt a passage from ***Tahsildar Singh v. State of U.P.***[17] which lays down the standard for "contradicting" a witness in the following words:

> "19. 'Contradict' according to the Oxford Dictionary means to affirm to the contrary. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. If the statement before the police officer — in the sense we have indicated — and the statement in the evidence before the court are so inconsistent or irreconcilable with each other that both of them cannot coexist, it may be said that one contradicts the other."
>
> (emphasis ours)

14. The excerpted passage crystalises the burden which is placed on a party seeking to discredit the testimony of a witness.

15. During commission of the attack leading to the crime, there were 15 (fifteen) people forming part of the unlawful assembly. We presume, it must have been a very chaotic situation leading to certain discrepancies having arisen in the statements of the witnesses. We cannot expect all the witnesses, when under attack by the accused persons seeking to terrorize those protesting against liquor trade, to possess stellar memories with an accurate recollection of the events. The appellant was required to demonstrate that the incongruities in the statements of the several eye witnesses shook the roots of their credibility. The threshold for disbelieving

[17] 1959 Supp (2) SCR 875

a witness is not mere discrepancy or inconsistency but material discrepancy and inconsistency, which renders the account narrated by the witnesses so highly improbable that the same may safely be discarded altogether from consideration.

16. In the present case, there is evidence to the effect that the appellant was part of an unlawful assembly which gathered at the place of occurrence. The victim had in mind bringing a thriving trade in liquor to be brought to a grinding halt. There was, thus, definite motive for the accused persons including the appellant to throttle the voice of the victim. In such a scenario, the appellant was required to point out serious loopholes in the prosecution story for discrediting the witnesses. Unfortunately, our faith in the credibility and reliability of the witnesses is unshaken. Although, there are a few inconsistencies in the testimonies of the witnesses but the same are minor and not substantial, as argued, so as to erode the credibility of such witnesses. it is clear that PW1 and PW2 have spoken in one common voice that the appellant was the one who stabbed the victim and that he succumbed to the injury caused by such stab. The medical evidence of Dr. Dinesh P.[18] does support the version of PW1 and PW2 that the victim died of haemorrhage caused by an incised wound. None of the discrepancies in the statements of PW1 and PW2, pointed out by learned counsel for the appellant, have the effect of shaking the root of their testimonies and make their version unreliable or implausible. The incident took place at around 7:40 PM. Considering that it was evening time, it is possible that one of the two eyewitnesses standing 5-7 metres from the scene of the incident

[18] "PW8", hereafter

misidentified the weapon. Both eyewitnesses have, however, correctly described the appellant having stabbed the victim in the lower chest/stomach area on the left side. The medical report corroborates this ocular testimony by noting that the incised wound was found 6 cm below the nipple and 13 cm lateral to the midline of the chest.

17. Even otherwise, section 134 of the Indian Evidence Act, 1872 ordains that no particular number of witnesses is required, in any case, to prove a fact. Therefore, it is not the law that a conviction cannot be recorded unless there is oral testimony of at least two witnesses matching with each other. It is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the court to be wholly reliable, the same can form the foundation for recording a conviction. Viewed thus, the conviction of the appellant does not call for interference based on the sole testimony of PW2, which we have found to be entirely trustworthy. Version of PW2 being sufficiently corroborated by PW1 (except the weapon) is an additional ground not to accept the argument advanced by learned counsel for the appellant to reverse the conviction.

18. PW4 who had turned hostile during the trial has deposed that he was not present at the place of occurrence. While it is settled law that a witness cannot be disbelieved on the sole ground of him turning hostile, the hostility of PW4 does not particularly dent the prosecution’s case. He has, in his testimony, not stated an alternative case which would lead us to question the credibility of the other eyewitnesses. We do not find any merit in the argument that merely because PW4 resiled from his statement given to the police, the entire case presented by the prosecution is unreliable.

19. It is also quite understandable why PW4 turned hostile. It is anybody's guess that those who trade in illicit liquor people of might, who can go to any extent to keep the trade thriving. Having witnessed the fate of the victim, PW4 must have felt insecure and, thus, decided against standing by the prosecution case to save his own life.

20. We hold, without equivocation, that the prosecution has been able to establish beyond reasonable doubt that the appellant was the person who stabbed the victim during the course of the attack by the accused persons leading to his death.

21. The criminal act of the appellant as the one responsible for homicidal death of the victim being established, we need to probe now whether such act would come within the ambit of section 300, IPC. Sections 299 and 300 thereof have to be read together, as culpable homicide and murder are closely related concepts. It is often said that culpable homicide is the genus and murder is one of species in that genus. All murders are culpable homicide but not all culpable homicides are murder.

22. Though closely related, culpable homicide and murder cover very different acts. To decide the issue, we can profitably take the aid of the decision of this Court in ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh***[19] wherein certain factors have been listed to glean if the aggressor had an intention to cause death:

> "29… It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally

[19] (2006) 11 SCC 444

from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

23. Applying the rubric provided in ***Pulicherla Nagaraju*** (supra) to the present case, we find that the weapon used for the premeditated attack was a dagger, which is considered a deadly weapon. The weapon was carried by the appellant to the scene of the incident and not picked up from the spot. The victim was stabbed in his chest, which houses multiple vital organs of the body. There was no provocation from the side of the victim. The appellant and other co-accused had reached the place of occurrence with the premeditated intention to cause hurt to the victim, which can be seen from the fact that they formed an unlawful assembly armed with deadly weapons with the common intention to attack the victim and thereby put an end to the movement triggered by him to stop trade in illicit liquor.

24. The post mortem examination of the victim revealed the cause of death of the appellant to be haemorrhage due to an incised wound on the apex

of the heart. The apex of the heart is the lowest tip of the heart located on the lower left side of the chest. In his cross examination, PW8 (who conducted the post-mortem examination) noted that such an injury can cause death within 5 (five) minutes of infliction. Needless to observe, the heart is one of several vital organs of the body, and the appellant caused such bodily injury, which in the ordinary course of nature was sufficient to cause death.

25. The appellant's submission that only one of the eight injuries sustained by the victim is grievous and the rest are simple and hence there is no intention to cause death, cannot be accepted after examining the facts of the case. In ***Stalin v. State***[20], this Court held that death caused by a single stab wound can also be considered murder if the requirements of section 300, IPC are fulfilled.

26. To summarise, the appellant participated in a premeditated attack on the victim, armed with a deadly weapon and stabbed the unarmed victim on a vital organ causing his death. The conduct of the appellant is covered by both clauses (1) and (3) of section 300, IPC. The intention to cause death can easily be discerned from the conduct of the appellant and the nature of fatal injury inflicted, which in the ordinary course of nature was sufficient to cause death. Fulfilment of any one condition of section 300, IPC is enough to convict the appellant under section 302 thereof, but in the present case not one but two conditions have clearly been shown to exist to nail the appellant for murder.

[20] (2020) 9 SCC 524

27. In conclusion, we agree with the High Court's affirmance of the conviction and find that the impugned judgment warrants no interference. The criminal appeal, accordingly, stands dismissed.

28. The order dated 13th February, 2015 granting bail to the appellant stands vacated. We direct the appellant to surrender before the concerned court immediately but not later than 3 (three) weeks from date to serve out the rest of his sentence.

.....J
(DIPANKAR DATTA)

.....J
(PANKAJ MITHAL)

New Delhi;
08th July, 2024