

Gopalakrishnan Nair @ Maniyan Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 27, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 161, 232

Indian Penal Code, 1860 " Section 34, 294(b), 300, 302, 307, 341 Evidence Act, 1872 " Section 6

Hon'ble Judges: P.B.Suresh Kumar, J; Jobin Sebastian, J

Bench: Division Bench

Advocate: C.P.Udayabhanu, Navaneeth.N.Nath, Rassal Janardhanan A., Abhishek M. Kunnathu, P.U.Pratheesh Kumar, P.R.Ajay, Alex M.Thombra

Final Decision: Allowed/Dismissed

Judgement

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P.B.Suresh Kumar, J." ,,,,,,,,,,,,,,,,,,,,,,

1. These appeals arise from S.C.No.134 of 2010 on the files of the Court of the Additional Sessions Judge " V, Thiruvananthapuram. There are two" ,,,,,,,,,,,,,,,,,,,,,,

accused in the case and they stand convicted and sentenced for the offences punishable under Sections 294(b), 341, 307 and 302 read with Section 34" ,,,,,,,,,,,,,,,,,,,,,,

of the Indian Penal Code (IPC). Among the appeals, Crl.Appeal No.976 of 2019 is preferred by the first accused and Crl.Appeal No.199 of 2019 is" ,,,,,,,,,,,,,,,,,,,,,,

preferred by the second accused.,,,,,,,,,,,,,,,,,,,,,,

2. The accused were persons residing in the neighbourhood of the house of the victims namely, Shaji who died in the occurrence which is the subject" ,,,,,,,,,,,,,,,,,,,,,,

matter of the case and the wife of Shaji namely, Jayasree who suffered serious injuries in the occurrence. The genesis of the occurrence is that Shaji" ,,,,,,,,,,,,,,,,,,,,,,

directed a few youngsters who were sitting in a car which was parked in front of his house to remove the same owing to their conduct in passing,,,,,,,,,,,,,,,,,,,,,

comments at people walking by in front of his house. At about 10.30 p.m. on 27.03.2009, there occurred an altercation in front of the house of Shaji" ,,,,,,,,,,,,,,,,,,,,,,

over the objection raised by Shaji as mentioned above and it is in that altercation, Shaji and his wife suffered serious injuries. Although Shaji and his" ,,,,,,,,,,,,,,,,,,,,,,

wife were taken immediately by the neighbours to Sree Gokulam Medical College Hospital, Thiruvananthapuram, by the time they reached the said" ,,,,,,,,,,,,,,,,,,,,,,

hospital, Shaji passed away." ,,,,,,,,,,,,,,,,,,,,,,

3. A case was registered against the accused at 6 a.m. on the following day by Kilimanoor Police in connection with the occurrence under Sections,,,,,,,,,,,,,,,,,,,,,

294(b), 341, 307 and 302 read with Section 34 IPC based on information furnished by Jayasree at the hospital where she was undergoing treatment at" ,,,,,,,,,,,,,,,,,,,,,,

4.30 a.m. on that day. In the investigation conducted in the said case, it was revealed that at about 10.30 p.m. on 27.03.2009, the first accused came in" ,,,,,,,,,,,,,,,,,,,,,,

front of the house of the victims and started abusing them using filthy language and when Shaji came out of the house hearing the said abuse and,,,,,,,,,,,,,,,,,,,,,

enquired with the first accused the reason for the same, the first accused stabbed him as also his wife multiple times with a foldable knife, with the" ,,,,,,,,,,,,,,,,,,,,,,

support and protection of the second accused..,,,,,,,,,,,,,,,,,,,,,

4. On the accused being committed to trial after their arrest pursuant to the final report filed in the case, the Court of Session framed charges against" ,,,,,,,,,,,,,,,,,,,,,,

them under Sections 294(b), 341, 307 and 302 read with Section 34 IPC. The accused pleaded not guilty. The evidence let in by the prosecution" ,,,,,,,,,,,,,,,,,,,,,,

thereupon consists of the oral evidence of 19 witnesses and 35 documents proved through them. MOs 1 to 17 are the material objects in the case. In,,,,,,,,,,,,,,,,,,,,,

the course of the evidence let in by the prosecution, Exts.D1 to D5 contradictions were proved by the defence. Inasmuch as the Court of Session did" ,,,,,,,,,,,,,,,,,,,,,,

not find the case to be one fit for acquittal under Section 232 of the Code, the accused were called upon to enter on their defence. At that stage, the" ,,,,,,,,,,,,,,,,,,,,,,

second accused examined one Saifudeen as a witness on his side. On an appreciation of the evidence on record, the Court of Session found the" ,,,,,,,,,,,,,,,,,,,,,,

accused guilty of the charges, convicted and sentenced them, among others, to imprisonment for life. The accused are deeply aggrieved by their" ,,,,,,,,,,,,,,,,,,,,,,

conviction and sentence in the case, hence these appeals." ,,,,,,,,,,,,,,,,,,,,,,

5. As per order dated 08.04.2019 in Cri.M.Appl.No.1 of 2019 in Cri.Appeal No.199 of 2019, this Court suspended the execution of the sentence" ,,,,,,,,,,,,,,,,,,,,,,

passed against the second accused and enlarged him on bail.,,,,,,,,,,,,,,,,,,,,,,

6. Heard Adv.C.P.Udayabhanu for the first accused Adv.A.Rajasimhan for the second accused. Sri.Alex M.Thombra addressed arguments on behalf ,,,,,,,,,,,,,,,,,,,,,,

of the State.,,,,,,,,,,,,,,,,,,,,,,

7. The point that falls for consideration is whether the conviction and sentence of the accused are sustainable in law.,,,,,,,,,,,,,,,,,,,,,,

8. The prosecution relies mainly on the oral evidence of the wife, mother and daughter of Shaji who were examined as PWs 1, 2 and 3 respectively to" ,,,,,,,,,,,,,,,,,,,,,,

prove the occurrence. The prosecution also relies on the evidence tendered by PW6, namely the neighbour of the victims to corroborate the evidence" ,,,,,,,,,,,,,,,,,,,,,,

tendered by PWs 1 to 3. In order to corroborate the oral evidence, the prosecution also relies on the evidence tendered by the doctor who examined" ,,,,,,,,,,,,,,,,,,,,,,

Jayasree, the doctor who conducted postmortem examination on the body of the deceased as also the evidence tendered by the investigating officer as" ,,,,,,,,,,,,,,,,,,,,,,

regards the recovery of the material objects namely, MOs 1 to 3. The essence of the elaborate submissions made by the learned counsel for the first" ,,,,,,,,,,,,,,,,,,,,,,

accused is that the oral evidence tendered by PWs 1 to 3 and 6 is not reliable and trustworthy. More specifically, the evidence tendered by PW1 and" ,,,,,,,,,,,,,,,,,,,,,,

PW2 were attacked by the learned counsel for the first accused mainly on the ground that no one could see the occurrence as there was no light at,,,,,,,,,,,,,,,,,,,,,

the scene of occurrence. According to the learned counsel, there cannot, therefore, be a conviction based on the said evidence. It was argued by the" ,,,,,,,,,,,,,,,,,,,,,,

learned counsel for the first accused that at any rate, the proved facts do not establish a case of murder and that the first accused can, therefore, be" ,,,,,,,,,,,,,,,,,,,,,,

convicted only for the offence punishable under Section 304 IPC. The argument advanced by the learned counsel for the second accused, however, is" ,,,,,,,,,,,,,,,,,,,,,,

that it is a case where the second accused was implicated falsely on account of previous enmity between him and PW1. It was also argued by the,,,,,,,,,,,,,,,,,,,,,

learned counsel alternatively, that even if the entire evidence relied on by the prosecution is accepted, the second accused cannot be convicted, as the" ,,,,,,,,,,,,,,,,,,,,,,

evidence in the absence of any overt act on the part of the second accused does not disclose that the second accused shared the common intention,,,,,,,,,,,,,,,,,,,,,

with the first accused to cause the death of Shaji and to cause injuries to Jayasree.,,,,,,,,,,,,,,,,,,,,,,

9. Jayasree is the main witness on the side of the prosecution. As noted, she was examined in the case as PW1. The version of PW1 as regards the" ,,,,,,,,,,,,,,,,,,,,,,

occurrence is that at about 10.30 p.m. on the relevant day, while she was watching television with her mother-in-law, the accused came in front of" ,,,,,,,,,,,,,,,,,,,,,,

their house and started abusing them by using filthy language; that Shaji who by then had already slept, woke up hearing the abuse, came out of the" ,,,,,,,,,,,,,,,,,,,,,,

house and asked the first accused as to the reason for his outburst of anger and the first accused then rushed towards him and dragged him to the,,,,,,,,,,,,,,,,,,,,,

street. It was deposed by PW1 that she and her mother-in-law then came out of the house and followed Shaji and they were followed by her elder,,,,,,,,,,,,,,,,,,,,,

daughter. According to PW1, as Shaji was moving unsteadily on account of the conduct of the first accused, she attempted to hold him and at that" ,,,,,,,,,,,,,,,,,,,,,,

point of time, the second accused rushed to that place and held from behind the hands of Shaji. It was deposed by PW1 that the first accused then" ,,,,,,,,,,,,,,,,,,,,,,

took out a foldable knife from his waist and stabbed Shaji on the left portion of his chest. It was the version of PW1 that when she attempted to ward,,,,,,,,,,,,,,,,,,,,,

off the attack on Shaji, the subsequent stab made by the first accused fell on her right hand below the elbow and she lost the ability to move two of her" ,,,,,,,,,,,,,,,,,,,,,,

fingers on account of that stab injury. It was deposed by PW1 that the first accused thereupon stabbed on the right portion of the chest of Shaji as,,,,,,,,,,,,,,,,,,,,,

well and the stab that subsequently followed the same fell on her right cheek and the same resulted in 16 stitches. It was deposed by PW1 that the,,,,,,,,,,,,,,,,,,,,,

first accused stabbed again thereafter on the thigh of the deceased and also on her chest. According to PW1, they were thereupon taken to the" ,,,,,,,,,,,,,,,,,,,,,,

hospital by the neighbours. PW1 identified the accused in the dock as the assailants and affirmed that it was she who gave Ext.P1 First Information,,,,,,,,,,,,,,,,,,,,,

Statement. PW1 also identified MO1 as the weapon used by the first accused to stab her and Shaji, MO2 as the shirt and MO3 as the lungi worn by" ,,,,,,,,,,,,,,,,,,,,,,

the first accused at the time of occurrence.,,,,,,,,,,,,,,,,,,,,,,

10. In the cross-examination of PW1 by the counsel for the first accused, it was clarified by PW1 that on the day previous to the date of occurrence, " ,,,,,,,,,,,,,,,,,,,,,,

when she and her husband returned home, they found a car in front of their house and noticed that the youngsters who were sitting then in the car" ,,,,,,,,,,,,,,,,,,,,,,

were passing comments and her husband then directed them to remove the car from there. It was stated by PW1 that the said youngsters then went,,,,,,,,,,,,,,,,,,,,,

to the house of the second accused and when they came back with the second accused, Shaji was sitting on the veranda of their house and one" ,,,,,,,,,,,,,,,,,,,,,,

among them who was sitting in the car then pointed his fingers at Shaji and told the second accused that it was Shaji who directed them to remove the,,,,,,,,,,,,,,,,,,,,,

car. It was stated by PW1 that thereafter, all of them together went to the house of the first accused. The suggestion made by the counsel for the first" ,,,,,,,,,,,,,,,,,,,,,,

accused to PW1 was that she and her husband sustained injuries in the quarrel that took place between them and those who were sitting in the car, " ,,,,,,,,,,,,,,,,,,,,,,

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7. Two abrasions, 0.5x0.5 cm each, 0.5 cm apart, one behind the other, on the inner aspect of right ankle, the back of one being 5 cm in front of heel.Ã¢â€â€â€" ,,,,,,,,,,,,,,,,,,,,,,

Ã¢â€â€â€,,,,,,,,,,,,,,,,,,,,,

It was opined by PW18 in his evidence that the death of Shaji was due to the penetrating injury namely, injury 1 sustained to the chest. It was also" ,,,,,,,,,,,,,,,,,,,,,,

opined by PW18 that injuries 1 to 3 could be caused with MO1 knife.,,,,,,,,,,,,,,,,,,,,,,

17. PW19 was the investigating officer who conducted the substantial part of the investigation in the case. It was deposed, among others, by PW19" ,,,,,,,,,,,,,,,,,,,,,,

that during the interrogation after the arrest, the first accused disclosed to him that a knife has been kept by him in the pump-house attached to the" ,,,,,,,,,,,,,,,,,,,,,,

rubber estate of one Damodaran near the house of the first accused and when he was taken to that place as guided by him, the first accused took out" ,,,,,,,,,,,,,,,,,,,,,,

MO1 knife from inside a PVC pipe kept in the pump-house and handed over the same to PW19 and the same was seized by PW19 as per Ext.P4.,,,,,,,,,,,,,,,,,,,,,,

mahazar. Ext.P4(a) is the information which led to the recovery of MO1 knife. It was also deposed by PW19 that during the interrogation, the first" ,,,,,,,,,,,,,,,,,,,,,,

accused disclosed to him further that he has dropped a few clothes in a deserted well near his house and when he was taken to that place as guided,,,,,,,,,,,,,,,,,,,,,

by him, he took out from a deserted well in the rubber estate of one Damodaran, MO2 and MO3 clothes and the same were seized by PW19 as per",,,,,,,,,,,,,,,,,,,,,

Ext.P10 mahazar. Ext.P10(a) is the disclosure which led to the recovery of the said MOs. In the cross-examination, PW19 affirmed that PW2 did not",,,,,,,,,,,,,,,,,,,,,

give a statement that the second accused held the hands of Shaji from behind and that what was stated by PW2 in her previous statement is only that,,,,,,,,,,,,,,,,,,,,,

the second accused who was present at the scene, did not prevent the first accused from attacking the victims. It was also affirmed by PW19 in",,,,,,,,,,,,,,,,,,,,,

cross-examination that what was revealed in the investigation as regards the role of the second accused was that he came along with the first accused,,,,,,,,,,,,,,,,,,,,,

to the house of the victims and that he had not made any attempt to prevent the attack of the first accused on the victims. Likewise, it was stated by",,,,,,,,,,,,,,,,,,,,,

PW19 that in the previous statement of PW6, he did not state as to the precise time when he heard the utterance. It was also deposed by PW19 in",,,,,,,,,,,,,,,,,,,,,

cross-examination that the house of PW6 is not one that could be seen from the scene of occurrence and that is why the house of PW6 is not shown,,,,,,,,,,,,,,,,,,,,,

in the scene plan. Nevertheless, it was asserted by PW19 that PW6 is a neighbour of the victims. When PW19 was asked as to the distance between",,,,,,,,,,,,,,,,,,,,,

the house of PW6 and the scene of occurrence, PW19 took the stand that he did not conduct any investigation regarding the same. In the cross-",,,,,,,,,,,,,,,,,,,,,

examination, PW19 also affirmed that the statement of PW3 was recorded only on 07.04.2009. PW14 was a person who witnessed the recovery of",,,,,,,,,,,,,,,,,,,,,

MO2 and MO3 clothes at the instance of the first accused as also a witness to Ext.P10 mahazar prepared by the police in this regard. PW14 deposed,,,,,,,,,,,,,,,,,,,,,

the said facts in his evidence.,,,,,,,,,,,,,,,,,,,,,,

18. Let us now examine the point formulated for decision. A few facts which are not challenged in the cross-examination of the above witnesses are,,,,,,,,,,,,,,,,,,,,,

that the occurrence took place at about 10.30 p.m. on 27.03.2009; that the deceased and injured were taken to Sree Gokulam Medical College,,,,,,,,,,,,,,,,,,,,,

Hospital, Thiruvananthapuram at about 11.30 p.m. on 27.03.2009; that the statement of PW1 was recorded thereupon at 4.30 a.m. on the following",,,,,,,,,,,,,,,,,,,,,

day in the said hospital while she was undergoing treatment; that the crime was registered at 6 a.m. on 28.03.2009 and that the First Information,,,,,,,,,,,,,,,,,,,,,

Report reached the Jurisdictional Magistrate at 10.30 a.m. on 28.03.2009. The prime witness in the case is the wife of the deceased who was,,,,,,,,,,,,,,,,,,,,,

examined as PW1. PW1 was a person who also suffered serious injuries in the occurrence. As noted, the evidence tendered by PW1 as regards the",,,,,,,,,,,,,,,,,,,,,

occurrence was consistent with her version in the First Information Statement given within a few hours after the occurrence. Even though what is,,,,,,,,,,,,,,,,,,,,,

recorded in Ext.P9 wound certificate issued by PW13, the doctor who examined PW1, as to the cause of injuries was only that the same were caused",,,,,,,,,,,,,,

by stab injuries inflicted by a known person, it has come out that the cause was not stated to the doctor by PW1, rather by the by-standers. Anyhow, it",,,,,,,,,,,,,,

was categorically stated by PW1 in Ext.P1 recorded within a few hours after the occurrence that the injuries were caused by the first accused. No,,,,,,,,,,,,,

contradictions or omissions affecting the veracity of the evidence of PW1 as regards the occurrence were established in the case. True, there is an",,,,,,,,,,,,,,

embellishment in the evidence of PW1 as regards the complicity of the second accused in the crime and we are dealing with the same elaborately in,,,,,,,,,,,,,

the latter part of the judgment. But, the same, according to us, is no reason to doubt the veracity of the evidence tendered by PW1 as regards the",,,,,,,,,,,,,,

complicity of the first accused, especially since PW1 suffered serious injuries in the occurrence, which fact has not been disputed by the first accused.",,,,,,,,,,,,,

In this context, it is apposite to refer to a passage from the decision of the Apex Court in Bhajan Singh v. State of Haryana, (2011) 7 SCC 421, which",,,,,,,,,,,,,,

reads thus:,,,,,,,,,,,,,

“The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally,,,,,,,,,,,,,

considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness,,,,,,,,,,,,,

has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the,,,,,,,,,,,,,

time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the",,,,,,,,,,,,,,

scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

“Convincing evidence is required to discredit an injured,,,,,,,,,,,,,

witness. Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major",,,,,,,,,,,,,,

contradictions and discrepancies therein.”,,,,,,,,,,,,,

In the light of the proposition of law laid down by the Apex Court as referred to above, there is absolutely no reason to disbelieve the evidence",,,,,,,,,,,,,,

tendered by PW1 as regards the occurrence and the complicity of the first accused in the crime.,,,,,,,,,,,,,,

19. Coming to the evidence tendered by PW2, the specific case of PW1 was that when the first accused dragged her husband to the road, PW1 along",,,,,,,,,,,,,,

with PW2 followed Shaji and the first accused. The said part of the evidence of PW1 is consistent with the First Information Statement given by her,,,,,,,,,,,,,

within hours after the occurrence. Therefore, the presence of PW2 at the scene at the time of occurrence, cannot be doubted. True, as regards the",,,,,,,,,,,,,,

sequence of events that took place at the scene of occurrence, there are trivial omissions in the evidence of PW2. PW2 was aged 74 years at the time" ,,,,,,,,,,,,,,,,,,,,,,

when the evidence was taken and the occurrence took place about nine years prior to that date. Minor discrepancies are bound to occur in situations.,,,,,,,,,,,,,,,,,,,,,,

of this nature and the evidence let in by the parties cannot be ignored on that ground. True, Exts.D1 to D4 contradictions were proved in the evidence" ,,,,,,,,,,,,,,,,,,,,,,

tendered by PW2 and those contradictions, according to us, are not significant inasmuch as the same does not relate to the material parts of the" ,,,,,,,,,,,,,,,,,,,,,,

evidence tendered by PW2. Needless to say, there is absolutely no reason to disbelieve the evidence tendered by PW2 also. As noted, the evidence" ,,,,,,,,,,,,,,,,,,,,,,

tendered by PW1 and PW2 were attacked mainly on the ground that no one could see the occurrence as there was no light in the locality at the time.,,,,,,,,,,,,,,,,,,,,,,

of occurrence. The evidence was let in by the prosecution in the case to prove that there was light at the scene of occurrence and that there were.,,,,,,,,,,,,,,,,,,,,,,

lights on both sides of the house of the victims also, through the evidence of PW1. It was also stated by PW1 that one of the street lights was on the" ,,,,,,,,,,,,,,,,,,,,,,

north-western boundary of their house close to the scene of occurrence. The learned counsel for the first accused took us through Ext.P8 scene plan.,,,,,,,,,,,,,,,,,,,,,,

to contend that even though the existence of electric posts were noted therein, the existence of bulbs in the said posts are conspicuously absent in the" ,,,,,,,,,,,,,,,,,,,,,,

scene plan. According to the learned counsel, the explanation offered by the Village Officer who prepared Ext.P8 scene plan that existence of bulbs" ,,,,,,,,,,,,,,,,,,,,,,

in the electric posts are normally not shown in such plans, is not acceptable. Similarly, after taking us through the scene mahazar, the learned counsel" ,,,,,,,,,,,,,,,,,,,,,,

for the first accused contended that there are no indications therein that there was sufficient light at the scene at the time of occurrence to enable.,,,,,,,,,,,,,,,,,,,,,,

anyone to see the occurrence. We are not impressed by these arguments. According to us, the accused in the case cannot be heard to contend that" ,,,,,,,,,,,,,,,,,,,,,,

there was no light at all at the scene at the time of occurrence for, the occurrence took place after the first accused dragged the deceased to the road" ,,,,,,,,,,,,,,,,,,,,,,

from the main door of the house where there was sufficient light. Be that as it may, the existence of electric posts close to the scene of occurrence is" ,,,,,,,,,,,,,,,,,,,,,,

sufficient for us to infer that there was light at the scene at the time of occurrence.,,,,,,,,,,,,,,,,,,,,,,

20. Coming to the evidence tendered by PW3, even though PW3 stated in cross-examination that she had not slept at the time when the quarrel took" ,,,,,,,,,,,,,,,,,,,,,,

place, but was only lying on her bed, her version in the chief-examination was that she woke up from sleep on hearing the scream of her mother and" ,,,,,,,,,,,,,,,,,,,,,,

grandmother. If what PW3 had stated in chief-examination is correct, it is not possible for her to have reached the scene of occurrence from her" ,,,,,,,,,,,,,,,,,,,,,,

house to witness the occurrence, since going by the version of PW1 as regards the occurrence, the same concluded within a few minutes. According" ,,,,,,,,,,,,,,,,,,,,,,

to us, in the circumstances, it is not safe to place reliance on the evidence tendered by PW3. As regards the evidence tendered by PW6, it is to be" ,,,,,,,,,,,,,,,,,,,,,,

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