

**(1960) 02 KL CK 0055**

**High Court Of Kerala**

**Case No:** Criminal Appeal No. 109 of 1959

Avanasiyappa Goundan

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision:** Feb. 11, 1960

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 326

**Citation:** (1960) KLJ 377

**Hon'ble Judges:** P. Govinda Menon, J; Anna Chandy, J

**Bench:** Division Bench

**Advocate:** T.N. Subramonia Iyer, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

P. Govinda Menon, J.

The appellant has been found guilty of an offence u/s 302 I.P.C. for having caused the death of one Subbayya Goundan in Mudalamada amsom, Chittur taluk and sentenced to rigorous imprisonment for life. The incident is said to have taken place on 31--5--59 at about 8-45 p.m. in front of the house of P.W. 9 Veluchami. The accused and the deceased were living near each other on the south of the Kollengode-Pollachi road. The accused was living with his concubine, one Palani Ammal. Palani Ammal had a sister by name Kali Ammal. The accused wanted to keep Kali Ammal also as his mistress. Her parents and Palani Ammal did not like this. 6 months prior to the date of occurrence, P.W. 1's father got her married to one Kaliyappan, a servant of P.W. 1's father. The expenses were met by the deceased and his wife. The relationship between the accused and the deceased thereafter got strained. 2 months prior to the occurrence, P.W. 1 purchased 4 bags of groundnuts from Palani Ammal. The accused quarrelled with his concubine for this sale of groundnuts to P.W. 1. P.W. 9 is one of the persons who had heard this quarrel. On the evening of the date of occurrence, there was again a quarrel between the accused and Palani Ammal and it is stated that she was beaten by the accused. She

went to her parents' house and reported the matter to them. Her mother went to the tea shop of P.W. 4 at about 7 P. M., and sought his help for questioning the accused for reporting the matter to the police.

2. At about 8-30 p.m., the accused started abusing P.W. 1, the wife of the accused in filthy language about the purchase of groundnuts. P.W. 1 resented this and told the accused that she had purchased groundnuts belonging to Palani Ammal and that she had paid the price for the same and that he should not abuse her like that. The accused persisted in hurling abuses at her. The deceased then interfered and asked the accused to stop abusing his wife. The accused then challenged the deceased by saying: what are you blabbering, come outside. Hearing this, the deceased retorted by saying, what if I get out and went out of his house to the road. P.W. 1 and her sons P.Ws. 2 and 3 followed the deceased. The accused also got out of his house with a rice-pounder (olakka) and came to the road. As they reached in front of the house of P.W. 9, P.W. 1 seeing the accused armed with the rice-pounder, asked the deceased to return. Just when the deceased turned for the purpose of going back to his house, the accused suddenly struck him with the olakka on his head. The deceased fell down. The accused, it is stated, aimed to strike him again, when P.W. 1 caught hold of the olakka. Then the accused kicked her down. She got up and cried out "come running" P. Ws. 2 and 3 who were also witnessing the incident similarly cried out. The accused then went westwards towards his house with the olakka. Hearing the cry, 2 police men P.Ws. 15 and 16 who were on duty nearby at the bazaar followed by P.Ws. 4 and 5 came running to the scene. P.W. 10 who was also present at the house of the deceased reached there. P.W. 1 told them that the accused beat the deceased with the olakka and was just going away. She pointed out the accused to them. They ran after the accused and the police men caught hold of the accused with the blood-stained olakka. M.O. 1 is the olakka which was taken into custody under mahzar Ext. P.2. The accused was kept on the verandah of his house. Both the accused and the injured were then taken by P.W. 15 and others in a bus to Kollengode. The injured was taken to the Kollengode Government dispensary at about 10 p.m. After that P.W. 15 went to the police station and laid the first information before P.W. 17 the Sub-Inspector of police at 10-15 p.m. Ext. P. 14 is the report. He has given an account of what happened and the accused being arrested with the blood-stained olakka. The Sub-Inspector then prepared the F.I.R. Ext. P. 15, u/s 326 I.P.C. P.W. 11 the Medical Officer examined the deceased and issued Ext. P. 6 wound certificate. At 11-30 p.m., the Sub-Inspector went to the hospital and recorded the dying declaration from the deceased in the presence of the doctor. Ext. P. 7 is that statement, wherein the deceased had given a clear account of the incident as is now spoken to by the witness. Next day he was removed to the Palghat District Hospital and on 2--6--59 at about 4-15 a.m., he succumbed to his injuries. P.W. 17 then altered the section into 302 I.P.C. He went to the hospital and held the inquest. P.W. 12 the Civil Assistant Surgeon attached to the Government headquarters hospital conducted the autopsy and Ext. P. 9 is the postmortem

certificate.

3. When questioned in the committing Magistrate's court, the accused only stated that he had nothing to say in that Court. When questioned u/s 342, Criminal Procedure Code, in the Sessions Court he stated that at about 7-30 p.m., he quarrelled with his mistress about the sale of groundnuts without his permission, that his mistress left the house in anger, that he accompanied her to the road and tried to pacify her and persuaded her to return, that she did not accede to his request and that he turned to go back to his house. He says that he then saw the deceased and P.Ws. 1 to 3 on the road in front of P.W. 9's house. His case is that when he reached his house, he was apprehended by 2 policemen, apparently P.Ws. 15 and 16. Then he says, he was taken to Kollengode in a bus. When pointed attention was drawn to the evidence that he had hit the deceased with the olakka his reply was I do not know So also about the evidence regarding the attempt to beat again and P.W. 1's evidence that she was kicked, he gave the same reply that he did not know. He denied the ownership of the olakka and that he was arrested by the police with the blood-stained olakka.

4. It was rightly pointed out by the learned Public Prosecutor that although the accused denied participation in the incident, from the trend of the cross-examination of the eye-witnesses it would be seen that the case then set up was that a tussle took place between the accused and the deceased, that they exchanged blows and while they were so beating each other, P.W. 1 came with the rice-pounder and while aiming a blow with the same on the accused's head, the blow accidentally fell on the head of the deceased and the deceased sustained injuries. But whatever be the statement of the accused, whether it is true or not, the real question for consideration is whether the deceased died as a result of the injuries he sustained and whether the prosecution has conclusively proved that it was the accused who had inflicted those injuries.

5. That the deceased sustained injuries on 31--5--1959 in front of the house of P.W. 9 at about 8.45 p.m., and that he died as a result of those injuries cannot be disputed. The postmortem certificate Ext. P. 9 shows that there was an ante mortem sutured wound in length across the crown of the head to the right of the middle line and 2" above the forehead starting from the mid-line. There was extensive extravasation of blood under the scalp. There was a fissured fracture across the top of the skull starting from the area underneath the sutured wound of the scalp. There was another fissured fracture in length parallel to the first fracture. The outer plate of the skull in between these two fractures was separated. There was effusion of blood over the surface of the brain. The doctor is of opinion that the deceased died of shock and intracranial haemorrhage as a result of the injury sustained. It is therefore clear that the deceased died as a result of the head-injury sustained by him. Whoever has caused the injury which resulted in his death must have done it with the intention of causing such bodily injuries as he knows it to be likely to cause

death or with the intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death and therefore would be clearly guilty of murder.

6. The question now for decision is whether on the prosecution evidence it could safely be said that it was the accused and accused alone who had inflicted the injuries. We have first the evidence of P.Ws. 1 to 3 who were actually present at the time of the occurrence and witnessed the entire incident. P.W. 1 is the wife of the deceased. She speaks about the accused quarrelling with his concubine, Palani Ammal regarding the sale of groundnuts and the prior enmity of the accused against them regarding the marriage of Kali Ammal. She also speaks about the accused abusing her in vulgar and filthy language on that day and the deceased intervening and the accused challenging the deceased to come out. She deposes that the deceased on hearing that accepted the challenge and went out of his house to the road. She then says that herself and her 2 sons P.Ws. 2 and 3 followed the deceased to the road and that the accused also came to the road armed with the rice-pounder. She deposes that on seeing the accused armed with the rice-pounder, she asked the deceased to return to their house and that just when the deceased turned eastwards for the purpose of going back to his house, the accused beat him with the rice-pounder on the side of his head and that the deceased fell on the road. She also says that the accused aimed another blow on the deceased, when she caught hold of the olaakka and then the accused kicked her down. She says that herself and her children then cried and hearing the cries, P.Ws. 15 and 16, the two police witnesses and P.Ws. 4, 5 and 10 came to the place. She told them that the accused had beaten the deceased with the rice pounder and pointed out to them the accused who was then turning to the Jane leading to his house from the road. P.Ws. 15 and 16 along with P.Ws. 4 and 5 then ran after the accused and the policemen caught hold of the accused with the olakka and kept him on the verandah of his house. She then says that the deceased who was unconscious was removed in a bus to Kollengode at about 9-30 p.m., that night. P.W. 1's testimony stands fully corroborated by the evidence of P.Ws. 2 and 3, her 2 sons. These 3 witnesses were subjected to severe cross-examination and on a perusal of the evidence of these witnesses, we find that nothing material has been brought out to discredit their testimony.

7. It is stated that they are near relations of the deceased and as such their evidence cannot safely be accepted. It is true that they are close relations of the deceased, but that, it has been repeatedly held, is no ground for not acting on their testimony if it is otherwise reliable. As observed in [Dalip Singh and Others Vs. State of Punjab](#) :

Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. it is true when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is

often a sure guarantee of truth.

Absolutely no reason is shown as to why P.W. 1 and her children should implicate the accused in a false case.

8. It was suggested that it was a dark night and that it was very doubtful whether there was a lantern in the house G shown in the plan Ext. P. 13 as stated by the prosecution that there is no mention of the existence of a lantern anywhere in the earlier records and that it is likely that P.Ws. 1 to 3 would have made a mistake about the assailant. Mistaken identity has never been suggested in the course of the trial. The accused is the person who is practically the next door neighbour of the witnesses and they have known him by name for a long time. The incident took place, according to them, at a place which is only a few feet from where they were standing and there cannot be the slightest doubt that the identification made by them that it was the accused who inflicted the injury is true and acceptable. It is here that we have to remember the trend of the cross-examination in the lower court. There the case was that there was really an encounter between the accused and the deceased and the only case was that he did not hit the deceased with the olakka, but it was P.W. 1 who used the olakka and that instead of hitting him, she accidentally happened to strike at the deceased.

9. When P.W. 2 was cross-examined, a suggestion was made whether the deceased was not armed with the rice-pounder at the time of the occurrence. He denied the suggestion and then he was confronted with his deposition in the committing Magistrate's Court. Ext. D4 is the certified copy of his deposition in the committing Magistrate's Court, Ext. P. 1 being the original deposition. In Ext. D 4, it is seen that P.W. 2 has stated that his father had an olakka with him. In Ext. P. 1 the original deposition of P.W. 2, it is seen that the word father is scored out and in its place it is written the accused. This scoring and the correction therefore appears to have been made after granting Ext. D 4 the certified copy to the accused. The Magistrate who made the correction after the witness had signed the deposition and after granting the copy to the accused has certainly done something which he ought not to have done. But a perusal of that portion of the deposition would clearly show that the word father was a pure mistake and nothing turns on this.

10. It was then stated that P.Ws. 2 and 3 are child witnesses and that their evidence ought not be accepted. It cannot be said that each and every child witness must without distinction be described as untrustworthy. The real test for either accepting or rejecting the testimony of a child is to see how consistent the story spoken to by it is, how the evidence stands the test of cross-examination and how far it fits in with the rest of the evidence and the circumstances of the case. Judged by these standards, the evidence of P.Ws. 2 and 3 can be accepted as true. This is also not a case depending on the evidence of child witnesses alone. Their evidence is fully corroborated by the other evidence in the case.

11. P.W. 15 the head constable attached to the Kallengode police station along with P.W. 16 another constable were engaged on that day with the checking of motor vehicles on the Kollengode-Pollachi road. At about 7-30 p.m., they were in front of the cloth shop of one Bacha Sahib shown as D in the plan, 48 yards to the east of the place of occurrence. At about 8.45 p.m., they say they heard the cry and they ran up to the place. P.W. 4 Vellan Chettiar is a tea-shop keeper whose shop is situated 10 yards to the east of Bacha Sahib's shop. P.W. 5 Kesavan Nair, a school master was then in P.W. 4's shop. They also heard the cry and they also ran up to the scene. They saw the deceased lying on the road in front of P.W. 9's house with the bleeding injury on his head. P.Ws. 1 to 3 were there. When questioned by P.W. 15, P.Ws. 1 and 2 told them that the accused beat the injured with a rice-pounder and has run away. They pointed out the accused who was then turning towards the lane leading to his house, from the road at point P in the plan. The policemen ran after the accused and caught him with the blood-stained olakka M.O. 1 in his hand at the place marked Q in the plan. P.W. 15 seized the olakka under a mahazar Ext. P. 2. Both P.Ws, 4 and 5 have attested this list. Subsequently both the deceased and the accused were taken to Kollengode at 9-30 p.m. The deceased was taken to the Kollengode dispensary and the accused was produced by P.W. 15 before P.W. 17 the Sub-Inspector with a report Ext. P. 14 at 10-15 p.m., and the blood-stained olakka was also produced. Ext. P. 14 the report given within a very short time after the incident is exactly in line with what P.W. 15 has deposed in court and fits in with the entire prosecution case. The accused denies that he was caught with the blood-stained olakka while he was going away after the incident. P.Ws. 4, 5, 15 and 16 are thoroughly disinterested witnesses who have no axe to grind against the accused. On the strength of the evidence of P.W. 4 that when the accused was apprehended he had not with him an olakka, it is argued that the evidence of P.Ws. 5, 15 and 16 cannot be true. But P.W. 4 would say that the blood-stained olakka was taken into custody by the police under mahazar Ext. P.2. So the mere fact that he did not admit in court that the accused had with him the blood-stained olakka, probably to help the accused does not falsify the clear evidence of P.Ws. 5, 15 and 16. P.W. 5 is a teacher in a school in Moovala-kampudur situated within one furlong of the place of occurrence. Not even a suggestion is made in the cross-examination that he is in any way hostile to the accused. We have also the evidence of P.W. 8 who says that he reached the place soon after the incident and that P.W. 1 told him that the accused beat the deceased with the olakka. In the face of all these testimony, it is idle to contend that it was not the accused who inflicted the injury on the deceased. The lower court has after a careful examination of the evidence of all these witnesses and also of the eye-witnesses found them worthy of credence and we are unable to find any reason to differ from that view.

12. P.W. 10, Ramalingam Chettiar is another witness. He was in the house of the deceased talking with the deceased just before the occurrence took place. He has deposed that while he was talking with the deceased, the accused abused P.W. 1 in

filthy language, that she retorted and when the deceased intervened the accused said they would see about it next day, and then the deceased said why postpone it for tomorrow and asked the accused to come out of his house. He then says that the deceased left his house followed by P.Ws. 1 to 3 and soon afterwards, he says, he heard the cry He has stated that when he went to the place he saw the deceased lying injured on the road. He however says that he did not know how the deceased was injured and says that he did not see the accused. Permission was granted to treat the witness as hostile and he was confronted with the statement before the police. Either before the police or in court he has lied and the learned Judge has rightly rejected his evidence as untrustworthy.

13. Finally we have the evidence of P.W. 17 the Sub-Inspector of police that on getting information that the deceased was brought to the Kollengode Government Dispensary, he went there at about 11-30 p.m., on the same night and recorded the dying declaration from the deceased. P.W. 11 the medical officer was also present at the time. P.W. 17 says that the statement Ext. P. 7 was correctly recorded and the doctor has certified that the patient was in a fit state of consciousness to give a statement. In Ext. P. 7, the deceased has spoken about the accused abusing his wife for the purchase of groundnuts, that" himself and his wife abusing the deceased in return, that the accused then challenging him and asking him to come out of the house, that he accepted the challenge and went out of his house followed by P.Ws. 1 to 3, that when he came in front of P.W. 9's house, the accused came out of his house with an olakka, that on seeing this he turned to the east for the purpose of going back to his house, that all on a sudden the accused beat him on his head with the olakka, that he fell down and he became unconscious and that he was able to speak only after coming to the hospital. The incident happened at 8-45 p.m., and within about 2 hours the deceased has given this statement which is in conformity with the evidence adduced by the prosecution. P.W. 17 the Sub-Inspector says that he could not requisition the services of the Magistrate for recording the dying declaration as he was told by the doctor that the deceased would at any time lose consciousness. No doubt a dying declaration has to be subjected to a very close scrutiny bearing in mind that the statement has been made in the absence of the accused who had no opportunity of testing the truth of the version. It has also to be seen whether the statement was the result of tutoring by interested persons. But when the court after considering the evidence in the case comes to the conclusion that the dying declaration is the truthful version as to the circumstances of the death and the identity of the assailant the dying declaration has to be accepted. It is seen that the dying declaration is amply corroborated not only by the evidence of eye-witnesses, but also by the evidence of the other witnesses in the case. It appears to us extremely unlikely that the deceased after having been savagely attacked by somebody would have ignored his real assailant and decided, when he must have known that his end was near, to implicate the accused falsely in a case.

14. It was pointed out by the learned counsel for the appellant that in Ext. D5 which is a copy of Ext. P. 7, the endorsement of the doctor that the deceased was in a fit condition to give a statement is not written and therefore this endorsement which is now seen to Ext. P. 7 is likely to have been written up subsequently. The suggestion has not been put to the doctor and there is absolutely no reason why the medical officer and the Sub-Inspector should go out of their way in getting up this false endorsement in Ext. P. 7. It is seen from Ext. P. 7 the original dying declaration that it had reached the Chittur Magistrate court on 4--6--59, The copy has been prepared only on 14--6--59 to be supplied to the accused u/s 173 Criminal Procedure Code. We find there written "signed Dr. Padmanabhan, Medical Officer, Government Hospital dated 31--5--59". It is therefore clear that the explanation given by the Sub-Inspector that the endorsement was omitted to be copied in Ext. D5 is true. We have therefore no hesitation in accepting the dying declaration to be the truthful version of what actually happened. The cumulative effect of all the evidence narrated above is to bring home the guilt to the accused beyond any reasonable doubt. Having given the matter our careful consideration, we have come to the conclusion that the prosecution story as put forward is true and acceptable and we therefore confirm the conviction and sentence recorded by the Sessions Judge. The appeal is dismissed.