(2010) 03 KL CK 0115

High Court Of Kerala

Case No: Criminal A. No. 1363 of 2006 (C)

Sahadevan	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision: March 16, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 299, 300, 302, 85, 86

Hon'ble Judges: R. Basant, J; M.C. Hari Rani, J

Bench: Division Bench

Advocate: P. Lean Jose, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

R. Basant, J.
Did the court below err in accepting and acting upon the oral evidence of ocular witnesses PWs 1, 3 and 4?

ii) Did the court below err in holding that the appellant is not entitled to absolution or mitigation under Sections 85 and 86 of the Indian Penal Code?

2. These are the questions that are raised for consideration in this appeal by the learned Counsel for the appellant Sri. Lean Jose. The appellant faces a sentence of imprisonment for life u/s 302 I.P.C. He is sentenced further to pay a fine of Rs. 1,000/- and in default to undergo S.I for a period of one month.

3. The prosecution alleged that at about 2 p.m. on 02.09.2005, when the deceased had come to the road near the shops of PWs 1 to 3, the appellant stopped the deceased on the road and did not allow his goods carriage autorickshaw loaded with tiles to move forward. He arrogantly told the deceased that he can proceed from there only after the road is repaired. The deceased got out from his autorickshaw. PW4 informed him that he should better inform the police. The deceased took out his mobile phone and tried to speak to PW12 for whom he had

brought the consignment. This allegedly infuriated the appellant. He inflicted two injuries on the deceased with M.O1 Kodali. The deceased succumbed to his injuries on the spot. The prosecution alleged that the appellant had thereby committed the offence punishable u/s 302 I.P.C.

4. Investigation commenced with Ext.P1 F.I statement lodged by PW2 before the local Sub Inspector of Police (PW18), who registered Ext.P1(a) F.I.R on the basis of Ext.P1. Investigation was completed and final report was filed by PW19.

5. The learned Magistrate committed the case to the Court of Session. Before the Court of Session, the appellant denied the offence alleged against him. Thereupon the prosecution examined PWs 1 to 19 and proved Exts.P1 to P16. M.Os 1 to 14 were also marked.

6. The accused did not examine any defence witness. Ext.D1 case diary contradiction was marked when PW12 was examined.

7. The learned Sessions Judge on an anxious consideration of all the relevant inputs, came to the conclusion that the prosecution has succeeded in establishing the offence u/s 302 I.P.C alleged against the appellant. Accordingly the court below proceeded to pass the impugned verdict of guilty, conviction and sentence.

8. Arguments have been advanced before us by Sri. Lean Jose whose services have been assigned to the appellant as a State Brief Counsel in the wake of the inability of the appellant to engage a Counsel of his own. We have heard the arguments of the learned Counsel for the appellant as also Sri.Noble Mathew, the learned Public Prosecutor.

9. An appellate judgment is and must be read as a continuation of the judgment of the trial court. We find that the court below has referred to all the relevant inputs - oral and documentary evidence as also the materials and matters available before court, in the impugned judgment. It is unnecessary for us, in these circumstances, to attempt to re- narrate all the relevant pieces of oral and documentary evidence, materials and matters. Suffice it to say that the learned Counsel for the appellant has taken us in detail through the oral evidence of PWs 1 to 19 and Exts.P1 to P16 and Ext.D1. We shall not hence narrate the relevant pieces of evidence. We have gone through all the relevant pieces of evidence. We have considered the same in detail. Reference shall be made to the relevant materials wherever necessary in the course of discussions by us in this judgment.

10. The prosecution primarily relied on the oral evidence of PWs 1, 3 and 4. All the 3 are eye witnesses. PWs 1 and 3 are two women - mother and daughter, who run a petty shop near the scene of the crime. According to them, they had witnessed the occurrence completely. PW4 is an autorickshaw driver who was allegedly walking along the road at the time of the incident. He had allegedly seen the entire occurrence. PW2 runs a toddy shop near the scene of the crime. According to him,

he had not witnessed the incident proper, but hearing the cries of PWs 1 and 3 and others, he had come to the scene of the crime immediately after the occurrence and he had seen the appellant going away towards south with M.O1 weapon in his possession. The deceased with injuries was lying at the scene.

11. Inherently and on broad probabilities we find no reason whatsoever to approach the evidence of PWs 1 to 4 with any amount of doubt, suspicion, reservation or distrust. Their evidence does appeal to us as inspiring on broad probabilities and convincing on the basis of its intrinsic worth. The evidence of PWs 1 to 4 is further supported broadly by the evidence of PW6, the manager of the tiles shop from which the deceased was carrying the load of tiles for the work of construction of a church nearby which PW12 as supervisor and PW13 as his employer was undertaking. The personal belongings including M.Os 9 and 10 recovered from the person of the deceased after his death convincingly explain the circumstances under which the deceased had reached the scene of the crime.

12. The incident took place on 02.09.2005. The appellant was arrested later on the same day at 7.30 p.m. He was interrogated. His interrogation led to his making a disclosure statement. On the basis of his statement and as led by him, M.O1 weapon was recovered under Ext.P5. PW11 is an attestor to Ext.P5.

13. The evidence tendered by PWs 14 and 15 clearly show that the deceased using his mobile phone had tried to contact PW12 to apprise him of the obstruction to his movement. That was the last call from the mobile telephone M.O2, which the deceased had in his possession at the time of his death. The evidence of PW17, who conducted the postmortem examination and issued Ext.P10 postmortem certificate, offers medical corroboration for the oral evidence of the eye witnesses about the manner in which the deceased suffered injuries.

14. The evidence of PWs 1 to 4, as indicated earlier, is convincingly corroborated by the contents of the contemporaneous and prompt Ext.P1 F.I statement lodged by PW2 before PW18. That F.I statement, which was lodged at 2.15 p.m. on 02.09.05, we note, had reached the learned Magistrate at 10.30 a.m. on 03.09.05.

15. The learned Public Prosecutor argues that the oral evidence of PWs 1 to 4 is absolutely convincing. Their evidence is convincingly corroborated by the other pieces of evidence available in this case. The same is also corroborated by medical evidence tendered by the doctor. It also gets convincing assurance from the recovery of M.O1 under Ext.P5 as pointed out by the appellant. In these circumstances, the learned Public Prosecutor argues that there is no scope for any semblance of doubt on the crucial question that the deceased had suffered the injuries at the hands of the appellant with M.O1.

16. We find merit in the contention of the learned Public Prosecutor. The evidence of PWs 1 to 4 has a ring of truth around them and their evidence is convincingly supported by Ext.P1 F.I statement. In any view of the matter, we find no reason to

approach the testimony of PWs 1 to 4 with any reservation. The learned Counsel for the appellant attempts to pick holes in the oral evidence of PWs 1 to 4 and contends that their testimony cannot be accepted. We find absolutely no reason to doubt or discard the evidence of PWs 1 to 4. There is no serious contradiction or incongruity between their testimony before court inter se or between their earlier versions before police and their version on oath before court. When two persons narrate the same incident which they had perceived, it is only natural that some inaccuracy and incongruity may result. But in its core, the evidence of PWs 1 to 4 do not generate any semblance of doubt or dissatisfaction in our mind. We are satisfied that their evidence can be safely accepted and when accepted, their evidence clearly shows that the injuries found on the person of the deceased were inflicted by the appellant with M.O1. The injury suffered on the neck, described as injury No. 1, is the fatal injury that led to the death of the deceased, which is evident from the oral evidence of PW17 and Ext.P10.

17. We do, in these circumstances, concur with the conclusion of the court below that the deceased had suffered the fatal injury at the hands of the appellant with M.O1 and we entertain absolutely no reasonable doubt on that aspect.

18. The learned Counsel for the appellant submits that the appellant is entitled to the advantage of Sections 85 and 86 of the Indian Penal Code. Section 85 I.P.C can have no application. It reads as follows:

Section 85: Act of a person incapable of judgment by reason of intoxication caused against his will - Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

(emphasis supplied)

19. Admittedly the appellant has no case that the thing which intoxicated him was administered to him without his knowledge or against his will. Section 85 I.P.C cannot, in these circumstances, be of any help to the appellant. The very case of the appellant, it appears, is only that he had voluntarily consumed alcohol and had lost his consciousness at the time when he is alleged to have indulged in the overt acts against the deceased.

20. In fact the learned Counsel for the appellant did not strain to contend that the general exception to criminality u/s 85 I.P.C can save the appellant. He attempted to advance a contention that the requisite contumacious intention which must be proved to attract a verdict of guilty, conviction and sentence u/s 302 I.P.C has not been established.

21. The Counsel argues that u/s 86 I.P.C., only knowledge can be presumed and there can be no presumption of intention. We are in complete agreement with the learned Counsel for the appellant. We extract Section 86 IPC below:

Section 86: Offence requiring a particular intent or knowledge committed by one who is intoxicated - In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

22. Our attention has been drawn to the decision of the Supreme Court in Basdev Vs. The State of Pepsu, and the decision of the Andhra Pradesh High Court in Mirza Ghani Baig v. State of Andhra Pradesh 1997 (2) Crimes 19. There is nothing to show that the appellant was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. There is no evidence of any unsoundness of mind rendering him incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. It is true that as explained in Basdev v. State of Pepsu (supra), Section 86 I.P.C enables the presumption of existence of knowledge and does not suggest the drawal of a presumption of contumacious intent.

23. The evidence clearly shows that the deceased died on account of the fatal injury on the neck suffered by him at the hands of the appellant. That injury on the neck, it is shown beyond controversy, is sufficient in the ordinary course of nature to cause death. Offence u/s 299 I.P.C is thus clearly established. The question is whether the offence can get exalted to the offence of murder punishable u/s 300 I.P.C. The injury on the neck reckoned objectively is sufficient in the ordinary course of nature to cause death. The only question that survives is whether the injury that resulted was intentionally inflicted by the appellant using M.O1. Every person must be presumed to intend the consequences of his acts which he has knowledge of. Section 86 I.P.C. enables the drawal of a presumption that the accused had knowledge of the consequences of his acts. The only question is whether he had intended to inflict such an injury. In this context we take note of the nature of the weapon used and the nature of the conduct and words of the accused which preceded and followed the infliction of the injury. He had arrogantly and without any reason stopped the deceased. He had used foul language at the deceased. He had taken objection to the conduct of the deceased following the instructions of PW4 attempting to contact the police over the mobile phone. The deceased was actually not contacting the police but was contacting PW12. This infuriated the accused and persuaded him to indulge in the contumacious conduct. After infliction of the injuries he walked away stating that this is what would happen if people play with him. We do not, in these circumstances, find any reason to doubt or suspect the version of the prosecution that the injuries were intentionally inflicted by the appellant on the deceased with

M.O1.

24. It is contended that there is only a very meagre evidence about the intention. The version of the appellant that he was drunk is probabilised by the evidence of the prosecution. We have already noted that under Sections 85 and 86 I.P.C., voluntary self intoxication cannot operate as a circumstance to claim absolution or mitigation of liability. The sequence of events, we repeat, including the words that preceded, the acts that were committed, the nature of the weapon used as also the subsequent conduct of the appellant, do reveal convincingly that the presumption of prudence that he had intended the natural consequence of his act must be drawn against the appellant. There is no evidence whatsoever to show that he was incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law on account of any mental unsoundness or on account of consumption of liquor/drug administered without his knowledge or against his will. In fact except the statement of the appellant, there is no evidence to show that he had consumed alcohol. That he had no valid or sufficient motive to justify the culpable act; that he has been stated to indulge unreasonably and unjustifiably in the brazen conduct of showering filthy abuses against others on earlier occasions are not certainly sufficient circumstances to doubt his ability to entertain contumacious intentions. In these circumstances, the conclusion appears to be inevitable that the accused had intended the consequences of his act which he knew and must be presumed to have known in the light of Section 86 I.P.C. Under Clause ''thirdly'' of Section 300 I.P.C., the culpable conduct falls within the sweep of Section 300 I.P.C.

25. There are no circumstances alleged or shown to exist which can bring the case of the appellant from the sweep of Section 300 I.P.C back to Section 299 I.P.C. None of the exceptions enumerated in Section 300 I.P.C can have any application. The argument that at worst the appellant can only be assumed or inferred to have contumacious knowledge of the consequence of his act and cannot be lightly assumed to have intended to cause the death or intended to cause any bodily injury to the deceased cannot be accepted. In these circumstances, the offence alleged against the appellant falls squarely within the sweep of the offence of murder defined u/s 300 I.P.C and punishable u/s 302 I.P.C.

26. No other contentions are raised. We are, in these circumstances, satisfied that the challenge against the verdict of guilty and conviction only deserves to be rejected.

27. The sentence imposed is also absolutely fair, reasonable, modest and just. The same does not warrant any interference.

28. In the result:

a) This appeal is dismissed;

b) The impugned verdict of guilty, conviction and sentence imposed on the appellant u/s 302 I.P.C are upheld;

c) The Registry shall forthwith communicate the order to the appellant/prisoner, who is in custody.