Supreme Court of India
Narayanan Nair Raghavan Nair vs The State Of Travancore-Cochin on 26 September, 1955
Equivalent citations: AIR 1956 SC 99, 1956 CriLJ 278, 1956 (0) KLT 92 SC
Author: Bose
Bench: Bose, Jagannadhadas, Sinha
JUDGMENT Bose, J.

1. The appellant Raghavan has been convicted under Section 302, Indian Penal Code, for murdering one Ayyappan and has been sentenced to death. His younger brother Bhaskaran was also charged but was convicted under Section 324, Indian Penal Code, and sentenced to two years. We are not concerned with him here.

2. There are six eye-witnesses to the murder, all of whom have been believed by both the Courts. We decline to go behind this evidence and so will proceed at once to assess the case on the basis of the facts found. They are as follows.

3. Litigation was in progress between the appellant and his grandmother Parvathi Amma. The latter sued the appellant and his brother for partition and separate possession of her share in her son's estate, the son being the father of the appellant and his two brothers (one of whom does not figure in this case).

4. During the course of the proceedings the grandmother Parvathi Amma assigned her interest to her daughter Parvarthy Lakshmi Amma (P.W. 10). This Parvathy (P.W. 10) is the widow of the deceased Ayyappan.

5. After notice to the parties, Balakrishna Pillai (P.W. 5) and Thomas Kuriyan (P.W. 6), the Commissioners appointed to effect the partition, proceeded to the spot, carried out a survey and made certain measurements. While this was in progress, the two accused came on the scene and started pelting Velayudhan Nair (P.W. 1) with stones and abusing him.

This Velayudhan Nair is the son-in-law of the deceased Ayyappan. Some of the stones hit the witness and there are injuries on his person to bear this out. Both Courts have accepted this evidence. The only thing they have not been able to determine is which of the several stones that were thrown actually hit the witness. But the fact that the appellant and his brother started the assault by pelting Velayudhan (P.W. 1) with stones and abusing him is accepted.

6. Velayudhan (P.W. 1) retaliated by slapping the appellant across the cheek. This resulted in a minor scuffle between the two. Krishnan Nair (P.W. 14) and the deceased came up to them, and the former (Krishnan Nair) tried to separate them while the deceased, who was Velayudhan's (P.W. 1's) father-in-law, said to his son-in-law --

"Velayudhan! you should not quarrel. I shall find a solution for this".

The appellant thereupon took a penknife from his waist and hit out at the deceased. The deceased tried to ward off the blow and was hit on the back of his left forearm. The appellant struck again and this time the blow landed on the chest and caused the injury which eventually killed the man. In the meanwhile the second accused came up and inflicted a stab wound on the deceased's back with another knife.

This could not have caused death though the doctor says it probably aggravated the shock from the fatal wound. Each accused has been held individually liable for the separate injuries caused by him. Section 34 of the Indian Penal Code was not called into play.

7. The first question that we have to determine is whether this is a case of murder or one under Section 304. We are only concerned with the injury on the chest. But before proceeding to that it is necessary to say that Ayyappan did not die at once. He was carried about a mile on a cot to a waiting jeep and then driven to the hospital.

His dying declaration was recorded and then he was handed over to the doctor, P.W. 9, who examined him medically. The doctor thought it necessary to operate because he found that a portion of the omentum had protruded through the wound and because there was difficulty in breathing: ("the power of controlling respiration is lost").

The doctor explains that it was necessary to perform a minor operation to push the omentum back into place as that could not be done from the outside. The operation consisted of extending the wound at its outer portion so as to enable the surgeon to deal with the omentum properly. The patient died some twelve hours later.

8. It was strenuously argued before us that the wound was not fatal in itself and that if the doctor had not stupidly interfered with the ordinary course of nature all would have been well. Counsel contended that death was due to the negligence of the doctor and not to the wound inflicted by his client.

He relied on the following passage in Modi's Medical Jurisprudence, 12th Edn. p. 270, and contended that Modi says that the diaphragm is not a vital organ and that injuries to it are not likely to be fatal unless some vital organ in contact with it is also injured. The passage runs--

"Wounds of the diaphragm are liable to be produced by penetrating wounds of the chest or of the abdomen. They are not rapidly fatal unless the important organs in contact with it are also wounded".

We do not read the passage to mean that. It indicates that such injuries are likely to be fatal though not 'rapidly' so. A later passage supports this:

"It" (rupture) "gives rise to much pain on coughing or deep breathing, and may cause death from severe shock".

9. This is fundamentally a question of fact. Modi's book does not establish that injuries to the diaphragm cannot be fatal: some are and some are not. The question is, therefore, reduced to one of fact in each case. Was the particular injury in question of the fatal or non-fatal type? Both Courts have relied on the doctor who says emphatically that the injury was fatal. We see no reason to differ from that and can find nothing to indicate negligence.

10. The dying declaration (Ex. K) states--

"Regular and proper breathing is not possible for me"

and the doctor explains that the power of controlling respiration is lost when the diaphragm is injured and there is a chance of collision between the organs of the chest and the abdomen. The 'post-mortem' reveals that that is just what happened, the stomach and the omentum had herniated together and the omentum protruded through the hole which the injury had made. The pleura and the diaphragm were both cut and the injury had extended right up to the abdominal cavity. We accept the finding that the injury was sufficient to cause death in the ordinary course of nature.

11. It was then argued that this was a case of a sudden fight and so the case falls within the fourth Exception to Section 300; I.P.C. It is enough to say that the Exception requires that no undue advantage be taken of the other side. It is impossible to say that there is no undue advantage when a man stabs an unarmed person who makes no threatening gestures and merely asks the accused's opponent to stop fighting. Then also, the fight must be with the person who is killed.

Here the fight was between Velayudhan (P.W. 1) and the appellant. The deceased had no hand in it. He did not even try to separate the assailants. All he did was to ask his son-in-law Velayudhan (P.W. 1) to stop fighting and said that he would settle their dispute.

12. It was argued that this indicated a threat -- at any rate, the appellant who was already angered by the slap, was justified in taking the remark in that light and consequently believing that he was going to be attacked by the deceased. But the evidence does not bear that out and the account given by the appellant has not been believed.

He says that the deceased beat him and grappled with him and that they fell down several times and that eventually the deceased seized him by the neck. All this is a question of fact on which there arc concurrent findings. In our opinion, the Exception does not apply and the appellant was rightly convicted under Section 302, Indian Penal. Code.

13. On the question of sentence we feel the lesser sentence is called for because the slap on the face evidently made the appellant, who appears to be a hot blooded man, lose control of himself. That would not afford justification for killing an innocent by-stander who intervenes with a mild admonition to the appellant's adversary to stop fighting.

But we feel that on the question of sentence this is not the type of case in which the death sentence is called for. There was no premeditation and the knife was not ready in the hand but was drawn from

the waist after the appellant had been slapped and the quarrel between Velayudhan (P.W. 1) and him had started. We, therefore, reduce the sentence to one of transportation for life.

14. The appeal succeeds on the questions of sentence only.