

A

P.D. PUSHPARAJAN

v.

STATE OF KERALA

DECEMBER 2, 1992

B

[J.S. VERMA, YOGESHWAR DAYAL AND  
N. VENKATACHALA, JJ.]

C

*Indian Penal Code 1860: Sections 302, 324 r/w 34 and 97—Murder—  
Defence by accused—Stealing by deceased and heated exchange of words and  
use of Chopper by deceased—Not proved—Right of private defence rejected—  
Finding of guilt and award of sentence—Interference with.*

D

The two appellants along with two others were tried for the murder of one 'D' and were convicted by the Sessions Court for offences under Sections 302 and 324 IPC read with S.34 IPC and each of them was sentenced to undergo imprisonment for life.

On Appeal, the High Court declined to interfere with the finding of guilt recorded by the Sessions Court as also with the sentence awarded.

E

Being aggrieved by the High Court's judgment, two of the four convicts preferred the present appeals.

F

It was contended that in view of the eye witness account that A-3 gave beatings with stick to the deceased, his conviction should have been altered to one under S.324 IPC and sentence imposed for having committed that offence only; and that the appellants had to stab and beat the deceased to save their own lives in exercise of their right to private defence as the deceased was found stealing plantain bunches and ginger from the land of A-2 and when confronted he tried to cut A-2 with a chopper in his hand:

G

Dismissing the appeals, this Court

HELD: 1. On consideration of the material on record it is found that there is no good reason which would warrant interference with the finding of guilt of the accused recorded by both the courts below. Consequently, sentence awarded to each of them does not call for interference.

H

[315-H; 316-A]

1.2. A.3 beating deceased with a stick is said to have taken place after the deceased was stopped and stabbed by A-1 and A-2. By appreciating the said evidence relating to the role played by A-3 in the company of A-1, A-2 and A-4 in bringing an end to the life of the deceased as given by P.W.1 and the corroborating evidence as given by P.W.2 another eye-witness to the occurrence of the incident along with other evidence placed on record, both the courts below have rightly found A-1 to A-4 guilty of having committed the offences under section 302 and section 324 I.P.C. read with section 34 thereof, with which they were charged. [315-F, G]

1.3. The Sessions Court did not accept the statement that the deceased had cut two plantain bunches and kept them with him while he had uprooted some ginger in the land of A-2. It did not also believe about the thieving by any body of plantain bunches and ginger from the land of A-2 where the incident had occurred, and it stated that if plantain bunches had been in fact cut and kept with the deceased the Investigating Officer who prepared the scene mahazar, would not have missed the same. The theory of private defence set up by A-4, as the reason for inflicting stab injuries by A-1 and A-2 on the deceased was, therefore, discarded by it. The High Court also refused to accept the submission having regard to the scant material available on record. It was pointed out by the High Court that the evidence in the case showed that the ginger on the land being hardly of two months' crop was not ripe for harvest and there were no plantains in the land which had yielded bunches, and therefore there was no question of deceased going to the place of occurrence of incident to commit theft. On the other hand, it was found from evidence on record that the deceased was caught by the accused in the land of A-2, when he was crossing the place to reach his sister who was standing along with her husband and crying out for him. Thus, the right of private defence said to have been exercised by the accused is rejected. [316-F-H; 317-A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.57 of 1988.

From the Judgment and Order dated 6.4.1984 of the Kerala High Court in Crl. A. No.103 of 1982.

WITH

Criminal Appeal No.248 of 1986.

**A** P.D. Sharma, (Amicus Curiae), P.N. Puri and Ms. Laxmi Arvind (Amicus Curiae) (N.P.) for the Appellant.

M.T. George for the Respondent.

**B** The Judgment of the Court was delivered by

**C** **VENKATACHALA, J.** Pushparajan, the appellant in Criminal Appeal No.57 of 1988 and Murali, the appellant in Criminal Appeal No.248 of 1986 were respectively Accused-3 and Accused-4 in Sessions Case No.112 of 1981 in the Sessions Court of Quilon. They along with Accused-1 and  
**D** Accused-2, after trial, were convicted for offences under sections 302 and 324 I.P.C. read with section 34 thereof and each of them was sentenced to undergo imprisonment for life by Judgment dated February 12, 1982 of the Sessions Court. All the accused preferred a common appeal from that judgment before the High Court of Kerala, which by its judgment dated April 6, 1984 dismissed that appeal by affirming the judgment of the  
**D** Sessions Court. The present appeals are filed by Accused-3 and Accused-4, individually and separately, on special leave.

The case of the prosecution was this -

**E** That at about 11 P.M. on the moon-light night of July 18, 1981 Accused 1 to 4 along with three others, armed with deadly weapons, formed themselves into an unlawful assembly with the common object of murdering one Divakaran. They, by pelting stones on the house of Divakaran made him to come out of his house, attacked him, stabbed him with daggers and beat him with sticks. The injuries so inflicted on him by  
**F** A-1 to A-4 made him fall on the ground and succumb to those injuries in a short-time thereafter while his brother-in-law Sivaprasad, P.W.1 and his sister Ponnamma, P.W.2 and others who had gathered there were attempting to remove him to a nearby hospital for treatment by securing a motor car. P.W.1, P.W.2 and others, who had gathered there placed the body of the deceased Divakaran in a compound adjacent to the house of P.W.2 till  
**G** police, who were to be informed of the death, could reach the place.

**H** By 7.30 A.M. on July 19, 1981, the next day, the Sub-Inspector of Police at Adoor Police Station, who received the information of the incident from P.W.1, recorded the First Information statement and registered the crime. The investigation of the crime is, thereafter, done by P.W.14,

the Circle Inspector of Police of the same station. He, on completion of the investigation, laid the charge-sheet against Accused-1 to 7 for the crime, before the Judicial First Class Magistrate, Adoor, who committed the case to the Sessions Court, Quilon for trial. A

In the trial, while 14 witnesses were examined, 16 exhibits were marked and 7 M.Os. were produced in support of the prosecution case, 8 exhibits were marked in support on the defence of the accused. B

P.W. 1, who is the husband of Nalini, the sister of the deceased Divakaran, gave evidence as an eye-witness to the occurrence of the incident. He is examined as the main witness to support the case of the prosecution inasmuch as it is he who had given to the Police the first information relating to the occurrence of the incident. According to his evidence, at about 11 P.M. on the fateful night, he having had his dinner in the house of his second wife Nalini, when was in the vicinity of the house of the deceased Divakaran on his way to the house of his first wife Bhargavi, found A-2, A-3 and A-4 pelting stones on the house of Divakaran and heard cries of Divakaran's wife, Karthyayani and her children from that house. Ponnamma, P.W.2, the sister of Divakaran and her husband Krishnankutty residing in the house situated immediately to the east of Divakaran's house, who also heard the cries of Divakaran's wife and her children, came out into the courtyard of their house. By then, he saw A-1, A-5, A-6 and A-7 standing at the corner of A-2's property. When a stone out of the stones which A-2, A-3 and A-4 were pelting on the house of Divakaran struck Ponnamma, P.W.2, she is said to have given a loud cry. Hearing her cry, Divakaran is said to have rushed toward her. But he has come to be chased by A-2, A-3 and A-4. Nalini, the second wife of P.W.1, who was in her house in the neighbourhood, on hearing the cries, is said to have run upto her husband standing near the house of Divakaran, and cried out aloud. That cry having drawn the attention of her brother, Divakaran, he is said to have attempted to reach his sister Nalini by crossing along the western corner of the property of A-2. Divakaran, it is said, was not allowed to reach Nalini because of the obstruction offer by A-1, A-5, A-6 and A-7. Divakaran is said to have been stabbed then in his stomach and on the nap of his neck by A-1 with a dagger. He is also said to have been stabbed on the left side of his neck and on his left and right shoulders by A-2 with another dagger. He is said to have been further beaten by A-3 and A-4 with sticks while A-5 brandishing his chopper is H

A said to have prevented anyone going for the rescue of Divakaran. All the accused are said to have left the place of occurrence of the incident, immediately thereafter, saying "Divakaran's affair is over and we will go away". P.W.1, P.W.2, Balan, brother of Divakaran, Nalini, Divakaran's sister and others who had gathered at the place, it is said, tried in vain to save the life of Divakaran, as he succumbed to the severe injuries, which had been inflicted upon him by Accused-1 to Accused-4. This evidence given by P.W.1 is corroborated in all material particulars by another eye-witness to the occurrence of the incident, namely Ponnamma, P.W.2.

After completion of recording of the said evidence of P.W.1 and P.W.2 and other witnesses on various aspects of the case and of placing of all the material by the prosecution in support of its case and after marking of documents for the defence, all the accused are examined by the Sessions Court under section 313 Cr. P.C. and their statements are recorded. A-2 in his statement has admitted about the place of occurrence of the incident alleged by the prosecution and stabbing of the deceased Divakaran by A-1 and himself.

According to P.W.1, A-4 had been forced by the deceased Divakaran, to give the share of his sister Janamma in the property in his possession a few days earlier to the incident. Cheriyankunju, P.W.3 has revealed in the course of his cross-examination on behalf of the accused that there were certain criminal cases which had been going on between the deceased Divakaran's people on the one hand and A-3 Pushparajan's people on the other hand, before A-4 had been asked to give away from the property in his possession the share of his sister Janamma. The role played by Divakaran in making A-4 to give the share of Janamma, out of the property in his possession, it is said, was the immediate provocation for the ganging up of A-4 along with other accused to put an end to the life of Divakaran. It has come in the evidence of Ponnamma, P.W.2 that A-1 and A-3 were the children of A-5 and A-2, A-5 and A-6 were the brothers of Meenakshi, the mother of A-4. The suggestion made to P.W.2 in the course of her cross-examination that there was a complaint of agricultural produce having been stolen from the property where the incident occurred is denied by her.

The Sessions Court which examined the evidence of P.Ws.1, 2 and 3 and also the evidence of other witnesses including that of the evidence of

the Investigation Officer, P.W. 14 and the medical evidence of P.W.7, Dr. Drishnakumari Amma along with the documentary evidence in the case and the material objects produced before it, on a proper appreciation of the same, found A-1 to A-4 guilty of the offences under sections 302 and 324 I.P.C. read with section 34 thereof, convicted them for those offences and sentenced each of them to undergo imprisonment for life.

The High Court, which heard the common appeal of all the accused, who were convicted and sentenced by the Sessions Court, on a proper reappraisal of the entire evidence on record, declined to interfere not only with the finding of guilt of the accused recorded by the Sessions Court but also with the sentenced awarded to each of the accused on that account.

It was submitted by the learned counsel appearing for the appellant Pushparajan, A-3 that both the courts below should not have found him guilty of the offence under section 302 I.P.C. when the overtacts attributed to him by P.W.1 and P.W.2, the eye-witnesses to the occurrence of the incident, were the beatings given by him with a stick to Divakaran and hence his conviction has to be altered to an offence under section 324 I.P.C. and sentence imposed for having committed that offence only. The submission, in our view, cannot be accepted. A-3 is the brother of A-1, who even according to the statement of A-2 made under section 313 Cr. P.C. stabbed Divakaran with a dagger at the place of occurrence of the incident. P.W.1, eye-witness to the occurrence of the incident, has stated in his evidence that A-3 was one of the persons who was pelting stones on the house of Divakaran before he was made to come out of his house. It is also stated by him that A-3 is one of he accused who chased Divakaran, when he was rushing towards his sister Ponnamma, on hearing her cries and stopped him from proceeding further. His beating of Divakaran with a stick is said to have taken place after Divakaran was stopped and stabbed by A-1 and A-2. By appreciating the said evidence, relating to the role played by A-3 in the company of A-1, A-2 and A-4 in bringing an end to the life of Divakaran as given by P.W.1 and the corroborating evidence, as given by P.W.2 another eye-witness to the occurrence of the incident along with other evidence placed on record, both the courts below have found A-1 to A-4 guilty of having committed the offences under section 302 and section 324 I.P.C. read with section 34 thereof, with which they were charged. On consideration of the material on record we are not satisfied that there is any good reason nor were we shown any, which would warrant our inter-

A ference with the said finding of guilt of the accused recorded by both the courts below. Consequently sentence awarded to each of them does not call for our interference.

B It was then submitted by the learned counsel appearing for the appellant - Murali, A-4 that Divakaran had to be stabbed and beaten by the accused to save their own lives (lives of A-1 to A- 4) in exercise of their right of private defence. In support of this submission the learned counsel invited our attention to the admission of P.W.1 in his cross-examination that there was agricultural produce, like, plantains, ginger, rubber etc., in the land where the incident took place and to the statement made by A-2 on his examination by the Sessions Court under section 313 Cr. P.C. wherein he has stated that agricultural produce, as was being stolen from the property where the incident occurred, a watch had been kept for the thieves and on the date of the occurrence of the incident at about 10 P.M. he along with others when had gone to sleep, they heard some sound on the western side to their property and consequently he having got up and gone in that direction found Divakaran up-rooting ginger, having already kept with him two stolen plantain bunches. As this situation resulted in heated exchange of words between A-2 and Divakaran, the same is said to have been heard by A-1, who was a neighbour and made him come to the place, when he saw Divakaran trying to cut A-2 with a chopper in his hand. E A-2, it is said, felt that Divakaran will cut A-1 and A-2 with the chopper and kill both of them if not prevented. He is said to have, therefore, stabbed Divakaran once or twice, so as to make Divakaran drop the chopper at the place where the ginger had been cultivated and run northwards. A-2, it is said, later came to know that Divakaran had died. F This very submission had been advanced on behalf of A- 4, as well, before the Sessions Court and the High Court in appeal. The Sessions Court did not accept the statement that the deceased Divakaran had cut two plantain bunches and kept them with him while he had uprooted some ginger in the land of A-2. It did not also believe about the thieving by any body of plantain bunches and ginger from the land of A-2 where the incident had occurred. G It has been stated by the Sessions Court that if plantain bunches had been in fact cut and kept with Divakaran, as stated by A-2 in his statement, they would not have missed to be noticed by the Investigating Officer, who prepared the scene mahazar. The theory of private defence set-up by A-4, as the reason for inflicting stab injuries by A-1 and A-2 on the deceased Divakaran, was, therefore, discarded by it. When the same H

submission relating to exercise of private defence by accused as the reason for inflicting dagger injuries by A-1 and A-2 on the person of Divakaran, was made before the High Court, it has refused to accept the submission having regard to the scant material available on record. In examining the submission of Divakaran having gone to the place of occurrence of incident to thief ginger and having committed theft of plantain bunches, it is pointed out by the High Court that the evidence in the case shows that the ginger on the land being hardly of two months' crop was not ripe for harvest and there were no plantains in the land which had yielded bunches. The High Court has, therefore, said that there was no question of Divakaran going to the place of occurrence of incident to commit theft. It must have, on the other hand, it is pointed out by the High Court, that Divakaran was caught by the accused in the land of A-2, when he was crossing the place to reach his sister Nalini who was standing along with her husband, P.W.1 and crying out for him. Thus, the right of private defence said to have been exercised by the accused, A-1 to A-4, as stated by A-2, is rejected.

We are not shown any circumstance or evidence other than those considered and appreciated by courts below in negating the submission raised on behalf of the accused in respect of the exercise of their right of private defence in killing Divakaran, which could make us take a contrary view in the matter. The submission of the learned counsel is, therefore, untenable. There is, thus, no good ground nor are we shown any, which warrant our interference in the finding of guilt of A-3 and A-4 under section 302 I.P.C. read with section 34 thereof and the sentence awarded thereto by the Sessions Court and affirmed by the High Court.

In the result, we dismiss these appeals.

The bail granted by this Court to the appellant - Pushparajan, A-3 and Murali, A-4 is cancelled.

G.N.

Appeals dismissed.