

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

CRL.A.No. 19 of 2006 (B)

AGAINST THE JUDGMENT IN SC 508/2000 of ADDL.SESIONS COURT
(ADHOC)-III, THALASSERY DATED 08-12-2005

APPELLANT/ACCUSED:

K.V.HASHELY, S/O.EDWARD BENCHAMIN,
BETHINI VILLA, NITTOOR, R.V.HOUSE
MUNDAYAD, ELAYAVOOR, KANNUR DISTRICT.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR: SMT HYMA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01.09.2015, THE
COURT ON 07.10.2015 DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.Appeal. No. 19 of 2006

Dated this the 7th day of October, 2015

JUDGMENT

The sole accused, who stands convicted for offence punishable under Section 323 I.P.C. to undergo simple imprisonment for six months in S.C. No.508/2000 of the Sessions Court, Thalassery, assails conviction and sentence.

2. The accused was the husband of PW1. The wife was residing along with her father in their house at Thalassery. Prosecution alleged that, on 23/9/2009 at about 11 a.m., the accused came to the house in an intoxicated condition and started quarreling with the father of PW1, Cicil by name, who was a heart patient and had earlier suffered heart attack. It was known to the accused that a minor stress, either physical or mental, would cause death of Cicil. It is alleged that in the course of his quarrel with wife the accused had beaten Cicil on his left ear, pushed him and threatened him with sickle, when he tried to intervene in the quarrel. He fell into a chair and collapsed. After giving first aid, he was rushed to the hospital, wherein he was declared dead. The wife did not reveal this to

any other person and had conducted the burial. Thereafter, she is claimed to have revealed it to her sister and brother and at their instance, a complaint was laid on 4/10/1999. FIS was recorded on 7/10/1999.

3. After the investigation, final report was laid before the court alleging offence punishable under Section 304 IPC. The accused faced trial before the Sessions Court. On the side of the prosecution, PW1 to PW9 were examined and Exts.P1 to P11 were marked. On the side of the accused, DW1 was examined and Ext.D1 was marked. The court below, on an evaluation of the available materials, held that there was nothing to show that the accused was aware of the fact that the father -in -law had suffered heart attack and that there was absolutely nothing to hold that any of his conduct had resulted in the death of the father-in-law and that he neither had an intention to cause the death of the father-in-law nor had the knowledge that his conduct would result in death of the father in law. However, the court found in guilty for a minor offence under Section 323 IPC and convicted. This is under challenge in this appeal.

3. Heard and examined the records.

4. The prosecution contended that though the deceased had

died of heart attack, the accused by his physical assault had either intended to cause his death or had sufficient knowledge that his conduct would result in the death of the father in law and hence was guilty of the offence punishable under Section 304 IPC. The postmortem report also revealed that the deceased had died due to Occlusive Coronary Artery Disease. The doctor, who was examined as PW5, relying on Ext.P4 postmortem certificate, had stated that a physical or emotional outburst can cause heart attack. According to trial court, though the prosecution was successful in proving this part and also as to the aspect that there was a quarrel on that day and that the accused had inflicted minor injuries on the father in law, the prosecution failed to show that the accused had knowledge that his act would lead to the death of the father -in- law. This finding has become final in the absence of any challenge by the state.

5. Now the only question that remains is whether the evidence let in by the prosecution was successful in proving that the accused had committed offence punishable under Section 323 IPC by voluntarily causing hurt. The prosecution relied on the oral testimony of PW1, who was the wife of the accused and claimed to be an eye witness to the incident, PW3,

who was the tenant of the deceased and residing in one part of the residential building and that of PW4, who had washed the body and claimed to have seen an injury on the head of the accused, beneath left ear, to prove the case.

6. It is pertinent to note that even though the incident happened on 23/9/1999 at about 11 p.m. and Cicil died on that night, the alleged cause for death was not revealed by either PW1 or PW3, who claims to have seen the quarreling on that day, to any person. Hence, the body was buried without registering any crime and without conducting postmortem on the body. Consequently, there occurred a delay in lodging the FIS, which was initiated by Ext.P3 complaint dated 4/10/1999. Ext.P1 FIS was recorded on 7/10/1999. The learned counsel for the accused vehemently challenged the prosecution case on the ground of this delay. Evidently, the delay is sought to be explained by PW1. According to her, she was threatened by the husband on that night itself that if she revealed it to any person, he would murder her and set the house on fire. Hence, according to her, this was not revealed. However, on the next day itself after the burial, she claims to have revealed it to her sister. They further discussed with their brother, who was

abroad, over the telephone, who also instructed to inform the police. She has a specific case that after discussing with her relatives and the family members, the complaint was lodged.

7. A perusal of Ext.P3, which is a signed complaint of PW1 and her sisters, brother and sister-in-law, shows that there are reference to the incident that happened on that night. There is a specific reference that the husband had threatened PW1 to cause her death and to set the house on fire. This was attributed to be cause for the delay. PW1 in her evidence has also disclosed this. The delay alleged by the prosecution has to be appreciated in the background that the accused had allegedly caused the death of his father - in-law. PW1 has a specific case that she was threatened by the husband. Of course, regarding this version, there are contradictory versions given by her. In the chief examination, she stated that while they were returning from the hospital, the accused threatened her not to reveal it to any person and if revealed, he would commit murder. On the other hand, in the cross examination, she deposed that this was disclosed by the accused while they were proceeding to the hospital. It is true that there is a minor contradiction on this aspect, though she herself has stated that since she was tense

and in the peculiar circumstances, she could not specifically re collect as to whether the threat was made while proceeding to the hospital or returning. Considering the fact that the husband himself had allegedly caused death of her father and the further fact that PW1 has consistently stated that this was the cause for the delay and the further fact that a written complaint was submitted by her sisters and brother, who were abroad and had returned, I find no reason to disbelieve this version. The court below has also correctly accepted this explanation.

8. Regarding the actual incident, PW1 in her evidence had given meticulous narration of the incident that took place. She had stated that the accused came drunk on that day, picked up a quarrel with her and tried to kick her. Thereafter, he went to Kitchen, took a sickle and threatened to kill her father. Accused directed her to give her Thali and when she cried, the father came and intervened. She deposed that at that moment the husband kicked her and had beaten the father. In the meanwhile, he tried to attack the father with sickle, which hit on the door. He had hit on the side of head, near left ear. He fell into a chair, thereafter collapsed and was rushed to the hospital, where he was declared dead. This version of her regarding the alleged

incident had withstood the test of the cross examination. There is nothing to doubt the version spoken by the wife, especially when it was implicating her husband.

9. Version spoken by PW1 tallies with the version of PW3, who also claimed to be an eye witness to a part of the incident. It is an admitted fact that PW3 was a tenant residing in one part of the house. Even the accused had admitted this. According to PW3, when the accused came drunk on that day, he was watching T.V with Cicil and on seeing the accused, both of them withdrew to their respective rooms. Thereafter, on hearing noise, he went to the drawing room and he was asked by Cicil to bring two of the neighbours. When he returned with them, it was found that the accused was rubbing the neck of Cicil. These facts deposed by PW3 tallies with the version of PW1.

10. PW 2 is the sister of PW1. She has no direct knowledge regarding the incident, except that she had submitted Ext.P3 complaint along with the remaining sisters. PW 3, being a neighbour, is the most competent person to be there and his presence in the building is not even denied by the accused.

11. The accused has taken up a defence that he was not present in the house on that day. According to him, on

23/9/1999, an incident, as alleged by PW1, had not taken place and Cicil was not taken to doctor on that day. According to him, Cicil did not like PW3 residing there and on 21/9/1999, the accused and Cicil had directed PW1 to evict PW3 from the house, which PW1 did not appreciate. Thereafter, he had not been to that house. He does not know how Cicil died. He has a further defence that he was suffering from heart ailment proved by Ext.D1 document and was unable to use any weapon or to physically challenge any other person.

12. The version spoken to by PW1 and PW3, regarding the alleged incident that happened on that day and referred to in Ext.P1 FIS, is sought to be corroborated through the evidence of PW4. He is a relative, who deposed that he along with others had cleaned the body of the deceased person prior to burial. According to him, while cleaning the body, he had noticed a swelling beneath the left ear. Since postmortem was not conducted immediately after the death, physical injury was not corroborated by medical evidence. PW5, the doctor in his evidence has also stated that exhumation of body was done after several days, that the body was in a putrified condition and hence, evidence of physical injury, if any, had also

disappeared.

13. In the above circumstance, the available materials have to be evaluated to find out whether the allegation against the accused stand proved or not. The version of PW1 remains undemolished in spite of lengthy cross examination. The only omission that could be brought out in the course of her evidence was that she has stated that accused had attempted to cut her throat. It is not seen mentioned in the FIS. Regarding the threat made also, there is a contradiction as to when exactly it was made. However, those do not in any manner affect the substratum of the case. There is no reason brought out as to why the husband should be implicated in a false case by the wife. It is true that PW1 in her evidence has deposed that she got divorce from her husband after the above incident. That does not cast any doubt on the version of PW1.

14. On an evaluation of the entire materials, it is evident that there are materials to hold that the accused had caused hurt on his father in law. The available materials prove this beyond any shadow of doubt. Even though the charge was under Section 304 IPC, the court below has held that there was sufficient evidence to show that the accused had committed a

lesser offence and has rightly found him guilty. I find no reason to take a different view.

15. Regarding the sentence, court below has imposed a sentence of six months simple imprisonment. Even though the prosecution alleged that Cicil died of the injury caused, which was negatived, that allegation of the prosecution should not in any manner overshadow the sentence to be imposed under Section 323 IPC. Considering the background of the parties, the relationship between the parties and the fact that the incident arose on the spur of moment, that too, when the accused was under the influence of alcohol, I feel that the sentence of three months simple Imprisonment would serve the interest of justice.

In the result, the appeal is allowed in part. While, sustaining the conviction, the sentence imposed by the court below is modified to one for three months simple imprisonment. His bail bond is cancelled. He shall forthwith surrender to undergo the remaining part of sentence.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge

