

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE B. SUDHEENDRA KUMAR

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

CRL.A.No. 516 of 2009 (D)

AGAINST THE JUDGMENT IN S.C.NO.2475/2004 OF FILE OF THE COURT OF THE
ADDITIONAL SESSIONS JUDGE, THIRUVANANTHAPURAM DATED 5.8.2008

AGAINST THE JUDGMENT IN C.P.NO.119/2002 ON THE FILE OF THE COURT OF
THE JUDICIAL FIRST CLASS MAGISTRATE - II, NEYYATTINKARA

APPELLANT: ACCUSED:

MOHANAN, C.NO.3141, CENTRAL PRISON
CENTRAL PRISON, TRIVANDRUM.

BY ADV. SMT. PINKU H. THALIYATH [STATE BRIEF]

RESPONDENT : COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR

BY PUBLIC PROSECUTOR SRI.K.K.RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T.SANKARAN &
B.SUDHEENDRA KUMAR, JJ.**

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Dated this the 24th day of June, 2015

JUDGMENT

Sudheendra Kumar, J.

The appellant is the accused in S.C.No.2475 of 2004 on the files of the Additional Sessions Court, Thiruvananthapuram, who in this appeal challenges the judgment of conviction and sentence passed by the trial court under Section 302 IPC.

2. The deceased Maniyan was the cousin of PW2 Syamala. The appellant was the second husband of PW2 Syamala. The appellant and PW2 Syamala were living separately for nearly five years prior to the incident. On 31.8.2001 at about 2.30 p.m., the appellant Mohanan came in front of the house of PW2 Syamala and uttered abusive words. He also pulled the hairs of PW2 through the window. On hearing the cry of PW2, the deceased Maniyan, who was residing near to the house of PW2, rushed to the place. The deceased asked the appellant as to why he was uttering abusive

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words and causing nuisance to PW2 and others. The appellant did not like it. Therefore, the appellant stabbed on the chest of Maniyan with a knife. Thereafter, the appellant beat on the head of Maniyan with an wooden piece. The deceased was taken to the hospital immediately. However, the deceased died at 3.10 p.m. on the same day before reaching the hospital.

3. PW1 is the son of PW2 in her marital relationship with the first husband, namely, Vijayan. On seeing the incident, PW1, PW2 and others took the deceased to the hospital. Thereafter, PW1 rushed to the police station and lodged Ext.P1 First Information Statement. On the basis of Ext.P1 First Information Statement given by PW1, Ext.P1(a) FIR was registered by PW9 under Section 302 IPC. The investigation was taken over by PW11 on 1.9.2001. He conducted the inquest on the body of the deceased on that day and prepared Ext.P2 inquest report at the Taluk Head Quarters Hospital, Neyyattinkara. PW11 arrested the appellant on 6.9.2001 at 10 a.m. In pursuance to the information furnished by the appellant, MO2 knife was recovered by PW11 as per Ext.P4 recovery mahazar. After completing the investigation, PW10, who was the then Circle

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Inspector of Police, Parassala, filed the final report before the Court concerned.

4. The learned Magistrate, after complying with the legal formalities, committed the case to the Sessions Court, Thiruvananthapuram. The Sessions Court made over the case to the trial court for trial and disposal in accordance with law. In the trial, PW1 to PW11 were examined and Exts.P1 to P9 were marked for the prosecution, besides identifying MO1 to MO7. After closing the prosecution evidence, the appellant was examined under Section 313 Cr.P.C., wherein he denied the incriminating materials appearing in the evidence of the prosecution witnesses. Thereafter, since the court below was satisfied, after hearing both sides and perusing the evidence, that there was no scope for an order of acquittal under Section 232 Cr.P.C., the court below called upon the appellant to enter on his defence. However, the appellant did not adduce any defence evidence. After evaluating the evidence, the court below found the appellant guilty under Section 302 IPC, convicted him thereunder and sentenced him to imprisonment for life under Section 302 IPC.

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5. We have heard the learned State Brief Smt.Pinku H. Thaliyath and the learned Public Prosecutor Sri.K.K.Rajeev.

6. PW1 and PW2 were examined by the prosecution to prove the occurrence. However, PW1 and PW2 did not support the prosecution case. PW1 admitted that he had given Ext.P1 Statement before the police in connection with the incident in this case. However, PW1 stated that Ext.P1 Statement was given by him on the basis of hearsay information received by him. The deceased Maniyan was the son of the elder sister of the mother of PW2.

7. PW3 is a neighbour of PW2 and the deceased. PW6 is the brother-in-law of the deceased. PW3 and PW6 witnessed the incident. According to PW6, on the fateful day at about 2.30 p.m., while he was talking to PW3 near to the house of PW3, he heard the appellant uttering abusive words. PW6 also saw the appellant putting his hands through the window of the house of PW2 and doing something. At that time, PW2 cried aloud. On hearing the sound, deceased Maniyan rushed to the place and requested the

appellant not to utter abusive words. The deceased also requested the appellant to go away from there. Then the appellant questioned the propriety of the deceased to question him and thereafter, the appellant took out a knife and stabbed on the chest of the deceased. Thereafter, the appellant beat on the head of the deceased with a piece of wood. The deceased collapsed. The deceased was immediately taken to the hospital. PW3 has also given evidence in tune with the evidence given by PW6.

8. The learned State Brief has argued that the evidence of PW3 and PW6 cannot be relied on to convict the appellant as PW6 was the brother-in-law of the deceased and PW3 was a close friend of PW2 and the deceased. It is true that PW3 is a neighbour of the deceased. However, there is no allegation to the effect that PW3 had any enmity against the appellant to falsely implicate the appellant in a case like this. PW6 is the brother-in-law of the deceased. PW6 is also not having any enmity against the appellant to implicate the appellant in a case like this. It is natural that a near relative would not ordinarily give evidence to falsely implicate an innocent person to screen the real culprit. There is also no material inconsistency or discrepancy in the evidence of PW3 and PW6 to

render their evidence incredible. Having carefully gone through the evidence of PW3 and PW6, we are satisfied that their evidence is natural, reliable and hence, acceptable. There is also no material before the Court to indicate that PW3 or PW6 had any ill-motive to implicate the appellant in a case like this. We are satisfied from the evidence of PW3 and PW6 that their evidence can be safely accepted.

9. PW8 is the doctor who conducted the autopsy on the body of the deceased and issued Ext.P6 postmortem certificate. PW8 opined that the deceased died due to the injury sustained to the heart and haemothorax and associated shock. PW8 noted the following injuries on the body of the deceased:

- “(1) Penetrating wound (L) side of the chest towards the medial aspect. Middle 3rd of the chest going deep into Thoracic Cavity.
- (2) Lacerated wound bone deep (L) parietal region of scalp (mid parietal, bone deep).
- (3) Chest stab wound on the (L) side chest pierced the chest wall into thoracic cavity, thoracic cavity showed large clots of blood in the centre part Haemothorax present.
- (4) Heart showed penetrating injury (L) ventricle.

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Opening the heart showed through and through injury of ventricular wall.

(5) Lungs showed multiple hemorrhagic spots on the (L) side.

(6) Brain Skull fracture of (L) parietal bone (mid).
Brain matter normal. No clot formation.”

It has been opined by PW8 that injury No.1, which is a penetrating wound on the left side of the chest going deep into thoracic cavity, could be caused with MO2 knife.

10. The learned State Brief has argued that PW8 did not mention about the size of the wound in Ext.P6 postmortem certificate and hence the medical evidence of PW8 cannot be acted upon to bring home the guilt of the appellant. It has been further argued by the learned State Brief that the ante-mortem injuries are not specifically mentioned in Ext.P6 postmortem certificate and in the said circumstances also, the medical evidence of PW8 cannot be accepted to convict the appellant. It is true that PW8 did not mention about the dimension of the injuries in Ext.P6 postmortem certificate. PW8 stated during cross-examination that it was not the common practice in the Taluk Hospitals to measure the wounds when preparing the postmortem certificate. However, we are of the view

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that it is the bounden duty of the doctor who conducts the postmortem examination to mention about the type and size of the injury in the postmortem certificate, to enable the Court to form a definite opinion with regard to the injuries sustained by the deceased. It is also the duty of the doctor conducting the postmortem examination to give details regarding the ante-mortem injuries in the postmortem certificate. In this connection, the learned State Brief has brought to our attention regarding G.O.(MS) 122/84/Home (H) Dept., Trivandrum, dated 4.9.1984, wherein it is clearly stated that if there are ante-mortem injuries on the body, they should be described in detail in the post-mortem certificate. It is also stated therein that the type of injury, size, placement (vertical, transverse, oblique etc.), site of injury and distance from anatomical landmarks must be mentioned in the case of ante-mortem injuries. G.O.(MS)122/84/Home (H) Dept. mentioned above has been appended as page Nos.153 to 171 to the Kerala Medico-legal Code, published by Home (K) Department as per G.O.(MS) No.232/11/Home dated 22.10.2011. Clause (6) under the heading "General Guidelines", in page No.156 is relevant in this context, which is extracted thus:-

“(6) If there are ante-mortem injuries on the body, they should be described in detail in the post-mortem certificate, under subheading Injuries (Ante-mortem), as per the guidelines enlisted hereafter under subheading **B. Injuries (Ante-mortem).**”

The subheading “B. Injuries (Ante-mortem)” in page 160 of the above medico-legal Code is extracted hereunder thus:-

“B. INJURIES (ANTE-MORTEM)

1. All injuries (ante-mortem and post-mortem) are examined in detail, using magnifying glass whenever necessary.
2. All injuries should be serially numbered. External and internal injuries should be recorded under separate subheading and numbered separately.
3. The prescribed pattern of recording of injuries in the sequence of type of injury, size, placement (vertical, transverse, oblique etc.), site of injury and distance from anatomical landmarks, whenever necessary, other details of injuries like direction, edges, ends, surrounding area, foreign bodies etc. are described.
4. All injuries should be marked in the diagram, provided in the detailed notes.

5. If injuries are not fresh, color and appearance of scab, stage of scarring etc., should be noted. If infected colour, smell etc. of slough should be noted.
6. Internally, if there is collection of blood in any of the body cavity, caused by the injury, the quantity of blood should be measured. If there are clots, the weight of such clots should be measured.
7. If the injuries are fresh, it should be noted in the post-mortem certificate, at the end of detailed description of injuries. If the injuries do not appear fresh, their approximate age by appearance should be noted.”

11. We express our anguish regarding the fact that even though guidelines had been already issued by the Government on 4.9.1984, many of the doctors, who are vested with the task to aid the Court, are not following the guidelines in its true spirit. Even though direction had been already issued in the Medico-legal Code (page 61, para 19) that the medical officers should strictly follow the guidelines in G.O.(M.S)-122/84, it is seldom followed. In the said circumstances, we think it expedient to bring it to the notice of the Government that in the postmortem certificates necessary details

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must be furnished by the doctors, irrespective of whether the postmortem examination was conducted in the Medical College Hospital, Taluk Headquarters Hospital, District Hospital or General Hospital. A copy of this judgment shall be forwarded to the Secretary to the Government, Home Department as well as to the Secretary to the Government (Health and Family Welfare), Department of Health, Government of Kerala to issue appropriate directions/circulars in this regard.

12. In this case, the evidence of PW8 coupled with Ext.P6 postmortem certificate would show that injury No.1 is a penetrating wound on the left side of the chest going deep into the thoracic cavity. It was stated by PW8 that thoracic cavity is situated 3 cm. inside the chest. Considering the nature of injuries as revealed from the evidence of PW8 coupled with Ext.P6 postmortem certificate, we are satisfied that the deceased in this case died due to the penetrating injury sustained to the chest, even though the size of the wound is not seen mentioned in Ext.P6 postmortem certificate. For the said reasons, the argument in this regard advanced by the learned State Brief fails. Thus the evidence of PW3 and PW6 with

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regard to the occurrence is corroborated by the medical evidence of PW8 and Ext.P6 postmortem certificate.

13. There is yet another piece of evidence, which is the evidence regarding the discovery of MO2 knife by PW11 at the instance of the appellant, to bring home the guilt of the appellant. PW11 stated that he arrested the appellant on 6.9.2001 and when questioned, the appellant had given Ext.P4(a) disclosure statement and pursuant to Ext.P4(a) disclosure statement and as led by the appellant, MO2 knife was discovered by PW11 as per Ext.P4 recovery mahazar at the instance of the appellant on 6.9.2001 at 11 a.m. The evidence of PW11 with regard to the discovery of MO2 knife at the instance of the appellant is corroborated by the evidence of PW5. PW5 stated that he witnessed the incident of recovery of MO2 knife by PW11 at the instance of the appellant. He also admitted to have put his signature in Ext.P4 recovery mahazar prepared by PW11 in connection with the recovery of MO2 knife. Thus the evidence regarding the discovery of MO2 knife at the instance of the appellant is corroborated by the ocular evidence of PW3 and PW6 and the medical evidence of PW8 and Ext.P6

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postmortem certificate. MO2 knife was found to be stained with human blood, as per Ext.P7 report of Forensic Science Laboratory, which would fasten the culpability of the appellant.

14. Having meticulously gone through the evidence on record as discussed above, we are satisfied that the prosecution succeeded in establishing that the appellant committed the offence under Section 302 IPC. In the said circumstances, we find no reason to interfere with the verdict of guilty, conviction and sentence passed by the trial court under Section 302 I.P.C.

In the result, this Appeal stands dismissed.

Before parting with, we place on record our appreciation for the valuable assistance rendered by Advocate Smt.Pinku H. Thaliyath, the State Brief, in disposing of this appeal.

(K.T.SANKARAN)
Judge

(B.SUDHEENDRA KUMAR)
Judge

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**K.T.SANKARAN &
B.SUDHEENDRA KUMAR, JJ.**

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JUDGMENT

24th June, 2015
