

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

CRL.A.No. 162 of 2010 (A)

AGAINST THE JUDGMENT IN S.C.NO.536/2007 ON THE FILE OF THE
ADDITIONAL SESSIONS COURT, PALAKKAD, DATED 29.7.2009.

C.P.NO.68/2006 OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS,
MANNARKKAD.

CR.NO.45/2006 OF THE SHOLAYAR POLICE STATION.

APPELLANT/ACCUSED NO.1:

VELLINKIRI, S/O.RAMASWAMY,
CONVICT NO.7539, CENTRAL PRISON,
KANNUR.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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Dated this the 21st day of May, 2015

JUDGMENT

Sudheendra Kumar, J.

The appellant is the first accused in S.C.No.536 of 2007 on the files of the Sessions Court, Palakkad, who in this appeal challenges the judgment of conviction and sentence passed by the trial court under Section 302 I.P.C.

2. The prosecution allegation is that on 24.5.2006 at about 6 p.m., the appellant inflicted fatal injuries on the head, neck and other parts of the body of deceased Mallika with MO1 chopper at the courtyard of the house of the

deceased and as a consequence, she succumbed to the injuries at or about the same time. The above incident was witnessed by PW4, who informed the matter to PW3, who in turn went to the police station and gave Ext.P2 F. I. statement to PW9. After recording Ext.P2 statement, PW9 registered Ext.P2(a) F.I.R. The investigation was taken over by PW10 on 25.5.2006. He conducted inquest on the body of the deceased Mallika on the same day and prepared Ext.P3 inquest report. He did not prepare any separate scene mahazar as the place of occurrence was clearly described in Ext.P3. The appellant was taken into custody by the police constables, who were on surveillance duty at the place of occurrence, with the assistants of local people at 2 a.m. on 3.8.2006. On getting information regarding the same, PW1 proceeded to the spot. Then, PW10 could see the appellant with the police constables and the local people.

The appellant was carrying MO10 bag at that time. PW10 took the appellant to the police station. PW10 arrested the appellant at 3 p.m.on that day. MO10 bag was checked by PW10. MO1 chopper and other items were recovered from MO10 bag. PW10 conducted the investigation. After completing the investigation, PW10 laid the charge before the Magistrate court concerned. After completing the legal formalities, the case was committed to the Sessions Court, Palakkad. The Sessions Court made over the case to the trial court for trial and disposal in accordance with law.

3. Since the appellant and the other accused did not plead guilty, the trial was conducted. In the trial, PW1 to PW12 were examined and Exts.P1 to P13 were marked for the prosecution, besides identifying MO1 to MO17. Ext.D1 contradiction in the CD Statement of PW4 and Ext.D2

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contradiction in the CD Statement of PW8 were marked during their cross-examination.

4. 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 there was no scope for an 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 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo imprisonment for life and a fine of Rs.10,000/- with a default clause for rigorous imprisonment for one year under Section 302 IPC. The

second and the third accused were tried only for the offence under Section 201 read with Section 34 IPC and they were acquitted by the trial court for the said offence.

5. We have heard the learned counsel for the appellant Sri.S.Sachithananda Pai and the learned Public Prosecutor Sri.Rajesh Vijayan.

6. The prosecution mainly relies on the evidence of PW4 and the medical evidence of PW12 along with Ext.P13 postmortem certificate to connect the appellant with the commission of the offence. PW4 is the daughter of deceased Mallika, who witnessed the incident. The evidence of PW4 is that on the fateful day at about 5.30 p.m., she came back to her house after her work and thereafter, she went near to the well situated near to the house to take bath. While she

was about to take bath, she heard a cry from the house. Immediately, she rushed to the house. Then, she saw the appellant inflicting cut injuries on deceased Mallika with a chopper. Thereafter, the appellant turned towards PW4. However, she ran away from there. PW4 identified MO1 chopper with which the appellant inflicted cut injuries on deceased Mallika.

6. The learned counsel for the appellant has argued that the evidence of PW4 is having contradictions and hence her evidence cannot be acted upon, particularly when there is no other evidence to connect the appellant with the commission of the offence. It has been further argued by the learned counsel for the appellant that since PW4 is a close relative of the deceased, the evidence of PW4 alone cannot be taken to find the appellant guilty. We have

considered the above arguments of the learned counsel for the appellant carefully. We have gone through the evidence of PW4 meticulously and we do not find any material contradiction or omission in her evidence to render her evidence incredible. It is true that PW4 is the daughter of the deceased. However, it is not discernible as to why PW4 must give false evidence against the appellant so as to implicate the appellant in a case like this. No reason has been also advanced by the learned counsel for the appellant as to why PW4 should falsely accuse the appellant in this case. There is also no material before the court to indicate that PW4 had any grudge or enmity towards the appellant to falsely implicate him in this case. The incident in this case occurred at about 6 p.m. at the courtyard of the house of the deceased. Therefore, naturally, the daughter of the deceased alone could witness the incident. Ordinarily, a close

relative would be the last person to screen the real culprit and falsely implicate an innocent person. Having meticulously scrutinized the evidence of PW4, we are satisfied that her evidence is natural, creditworthy and hence acceptable. Immediately on seeing the incident, PW4 informed the matter to PW3, who in turn rushed to the police station and gave Ext.P2 First Information Statement. In view of the above discussion, the arguments advanced by the learned counsel in this regard does not hold good.

7. The evidence of PW4 is fully corroborated by the medical evidence of PW12 coupled with Ext.P13 postmortem certificate. PW12 was the Police Surgeon who conducted the postmortem examination on the body of deceased Mallika and issued Ext.P13 postmortem certificate.

In Ext.P13 postmortem certificate, PW12 noted the following ante-mortem injuries:

“B. Injuries (Ante-mortem):

- (1) Incised wound 14x1.5 cm. on right half of top and back of head, curved with convexity to left, vertically oblique, right front end 9 cm above eyebrow and 3 cm outer to midline. Back end was 14 cm behind top of right ear. The wound cut the right parietal bone underneath and cut dura for a length of 6 cm. Incised wound 4 x 0.5 x 1.2 cm. on right parietal lobe of brain. The edges of the wound were contused and ends were sharp cut. The wound was directed downwards, to right and to front.
- (2) Incised wound 5.5 x 1 x 0.4 cm. with bevelling downwards, transversely oblique on right side of head, upper front end 3 cm. behind top of right ear. The lower back end was 8 cm. behind lower end of pinna of ear. The wound just cut the right occipital bone underneath and was directed downwards, to

left and to front. The edges of the wound were contused and ends sharp cut.

- (3) Incised decapitation except for skin on front of neck in midline for a length of 7 cm., the wound placed at 5 cm. above root of neck in midline back of neck, 2.5 cm. below right ear lobule and 3 cm. below left ear lobule. The right lower front end was 3 cm. below right jaw margin and 4 cm. to the right of midline front of neck. The left lower front end was 2 cm. below left jaw margin and 3 cm. outer to midline. The wound cut the second cervical vertebra obliquely through its body and cut all soft tissues of neck including muscles, blood vessels, nerves, esophagus and thyroid cartilage including larynx. Ends of the wound were sharp cut and edges contused. The wound was directed downwards and to front.
- (4) Incised wound 12 x 1 x 0.6 cm. oblique, on back of right shoulder, lower back end 4 cm. below root of neck and 3 cm. outer to midline. Upper outer end was 2 cm. below top of right shoulder and 15 cm. outer to midline. The

ends of the wound were sharp cut and edges contused.

- (5) Incised wound 15 x 2 x 1 cm, on back of right shoulder and upper arm, lower back end 7 cm. below top of shoulder and 5.5 cm. outer to midline back. The upper outer end was 3 cm below top of shoulder on outer aspect of the upper arm. Edges of the wound were contused and ends sharp cut.
- (6) Incised wound 7 x 1.5 x 2.5 cm. on front and outer aspect of left shoulder, lower inner end 2 cm. outer to top of front armpit fold. The upper outer end was at outer end of top of left shoulder. Edges of the wound were contused and ends sharp cut.
- (7) Incised wound 16 x 4 x 2 cm. on front and inner aspect of left forearm, wrist and hand, upper inner end at 6 cm. above wrist on midline front of forearm. The lower end was at root of left ring finger. Left little finger was chopped off. The edges of the wound were contused and ends sharp cut.

- (8) Incised wound 7 x 1 x 1 cm. oblique on palm of left hand, upper inner end 1 cm. above wrist. Lower outer end was 1 cm. inner to root of thumb.
- (9) Incised wound 2 x 1 x 0.3 cm. on palmar aspect of left thumb, upper outer end at outer border of palm of thumb."

PW12 stated that injury No.3 in Ext.P13 is a fatal injury.

PW12 further stated that injury Nos.1 and 2 in Ext.P13 are sufficient in the ordinary course of nature to cause death.

The further evidence of PW12 is that injuries noted in Ext.P13 could be caused with MO1 chopper. Thus, the medical evidence of PW12 coupled with Ext.P13 postmortem certificate fully corroborates with the evidence of PW4 with regard to the occurrence.

8. The evidence of PW4 would show that the

appellant had maintained enmity with the deceased as the deceased was not prepared to part with her property in favour of the appellant. Exts.P11 and P12 would show that the appellant had on two earlier occasions made threat to the life and property of deceased Mallika. The evidence of PW6 and PW7 also corroborates with the evidence of PW4 with regard to the motive for the appellant in attacking the deceased.

9. The evidence of PW10 would show that the appellant was arrested with MO10 bag. MO10 bag contained MO1 chopper. The seizure of MO1 chopper from MO10 bag carried by the appellant is corroborated by the evidence of PW8, who is an attester to Ext.P4 mahazar. Ext.P9 chemical analysis report shows that MO1 chopper was stained with human blood, which would fasten the

culpability of the appellant. Thus, the evidence of PW4 and the medical evidence of PW12 and Ext.P13 postmortem certificate fully corroborate with the evidence of PW10 and PW8 regarding the seizure of blood stained MO1 chopper from the appellant. The motive for the incident has been also established by the prosecution through the evidence of PW4, PW6 and PW7 coupled with Exts. P11 and P12 as discussed above.

10. Having meticulously gone through the evidence on record as discussed above, we are satisfied that the prosecution has successfully established that the appellant inflicted fatal injuries on deceased Mallika with MO1 chopper at about 6 p.m. on 24.5.2006 and as a consequence, Mallika died at or about the same time. In the said circumstances, we find no reason to interfere with the

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verdict of guilty and conviction passed by the trial court under Section 302 I.P.C. . The sentence awarded by the court below also does not call for any interference by this Court.

In the result, this Appeal stands dismissed.

(K.T.SANKARAN)
Judge

(B.SUDHEENDRA KUMAR)
Judge

ahz/

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

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JUDGMENT

21st May, 2015
