

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. T. SANKARAN
&
THE HONOURABLE MR. JUSTICE B. SUDHEENDRA KUMAR
TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

CRL.A.No. 650 of 2010

AGAINST THE JUDGMENT IN SC.NO.1038/2006 OF THE FIRST ADDITIONAL
SESSIONS COURT, KOLLAM DATED 10-02-2006

APPELLANT/ACCUSED:

RAVEENDRAN, S/O. PAPPU,
RESHMA NIVAS, GANDHI GRAMAM WARD
CHAKKUVARAKKAL VILLAGE.

BY ADVS. SRI. R. SURAJ KUMAR
SRI. C. PRATHAPACHANDRAN PILLAI
SRI. N. AJITH

RESPONDENT: COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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Dated this the 16th day of June, 2015

JUDGMENT

Sudheendra Kumar, J.

The appellant is the accused in S.C.No.1038 of 2006 on the files of the First Additional Sessions Court, Kollam, who in this appeal challenges the judgment of conviction and sentence passed by the trial court under Section 302 IPC. The trial court sentenced the appellant to imprisonment for life and a fine of ₹5,000/- with a default clause for simple imprisonment for six months under Section 302 IPC.

2. The prosecution allegation is that on 24.8.2003 at about 12 noon, the appellant inflicted injuries on the head, neck and chest of deceased Sheela with MO3 chopper and as a consequence, the deceased succumbed to the injuries at or about the same time. The

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deceased was the wife of the appellant. The deceased was having ₹60,000/- in her account as sale proceeds of her property. The deceased was not prepared to give the said amount to the appellant. This is stated to be the motive for the incident.

3. On the basis of Ext.P1 first information statement given by PW1, Ext.P1(a) FIR was registered by PW20. The investigation was taken over by PW22 on 24.8.2003 itself. On that day, he arrested the appellant. On 25.8.2003, PW22 conducted the inquest on the body of the deceased and prepared Ext.P3 inquest report. On that day, PW22 also prepared Ext.P2 scene mahazar after visiting the place of occurrence. On the basis of the disclosure statement given by the appellant, MO3 chopper was recovered by PW22 on 25.8.2003. PW19, the then Circle Inspector of Police, verified the records and filed the final report before the Court.

4. The learned Magistrate, after complying with the legal formalities, committed the case to the Sessions Court, Kollam. The Sessions Court made over the case to the trial court for trial and disposal in accordance with law.

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5. Since the appellant did not plead guilty, the trial was conducted. In the trial, PW1 to PW22 were examined and Exts.P1 to P16 were marked for the prosecution, besides identifying MO1 to MO9. After the closing of 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. The appellant had taken the plea of alibi. Thereafter, since 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.

6. We have heard the learned counsel for the appellant Sri.C.Prathapachandran Pillai and the learned Public Prosecutor Sri.Rajesh Vijayan.

7. PW15 was the doctor who conducted autopsy on the body of the deceased and issued Ext.P10 postmortem certificate. PW15 opined that the death of the deceased was due to the injuries sustained to the head and neck. There is absolutely no material

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before the Court inconsistent with the finding of PW15 that the death of the deceased was due to the injuries sustained on the head and neck of the deceased. In the said circumstances, we are satisfied that the deceased Sheela died due to the injuries sustained on her head and neck.

8. PW1 is the brother of deceased Sheela. On getting information with regard to the death of the deceased, PW1 rushed to the place of occurrence. He found the deceased lying on the rear courtyard. PW1 did not witness the incident. According to PW1, the deceased sold her property and obtained an amount of ₹1.5 lakhs as sale proceeds. Out of the said amount, an amount of ₹60,000/- was deposited in the Service Co-operative Bank in the account of the deceased. The appellant wanted the said amount, for which the deceased was not prepared. This is stated to be the motive for the incident. PW1 further stated that the deceased was a disabled woman. Therefore, there was also quarrel by the appellant with regard to the quantum of dowry. However, there is no material before the Court to prove the same. It appears from the evidence of PW13 coupled with Ext.P8 mahazar that the amount was

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deposited by the deceased in the joint account of the deceased and the appellant. An amount of ₹72,000/- was deposited in the bank in the joint account. Out of the said amount, an amount of ₹60,000/- was withdrawn from the bank on 21.4.2003. An amount of ₹12,327/- alone was there in the account as on 3.9.2003. This shows that the evidence of PW1 with regard to the motive for the incident, cannot be correct.

9. PW3 and PW4 are daughters of the deceased. They were examined by the prosecution to prove that the appellant had committed the offence after sending PW3 and PW4 to the shop to purchase beedi. However, PW3 and PW4 did not support the prosecution case. They stated that the appellant was not having the habit of smoking beedi. They further stated that they were not in the house of the appellant and that they were in the house of the elder brother of the appellant on the date of incident.

10. PW2 was another witness examined by the prosecution to prove the incident. PW2 also did not support the prosecution case. PW5 was cited by the prosecution to prove the conduct of the

appellant after the incident. However, PW5 also turned inimical to the prosecution. PW6, the wife of PW5, was also examined to prove the conduct of the appellant subsequent to the incident. However, PW6 also did not support the prosecution case.

11. PW7 was the shop owner, from whom PW3 and PW4 had allegedly purchased beedi for the appellant. However, PW7 did not support the prosecution case. PW7 stated that PW3 and PW4 did not come to his shop to purchase beedi on the fateful day.

12. PW8 is running a tea shop near to the house of the deceased. PW8 is the husband of PW2. PW8 was examined by the prosecution to prove Ext.P4 inquest report and the conduct of the appellant immediately after the incident. He admitted his signature in Ext.P4 inquest report prepared by PW22. However, PW8 did not support the prosecution case regarding the conduct of the appellant.

13. PW9 is another witness to Ext.P4 inquest report. PW9 admitted to have witnessed the inquest and signed Ext.P4 inquest

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report. PW10 is an attester to Ext.P5 scene mahazar. He admitted his signature in Ext.P5 scene mahazar. PW11 is an attester to Ext.P6 mahazar prepared by PW22 in connection with the recovery of MO3 chopper. Even though PW11 admitted that he had put his signature in Ext.P6 mahazar, he stated that he did not see the appellant at the place at the time of signing Ext.P6 mahazar. He also did not admit that he had seen the recovery of any weapon. The further evidence of PW11 is that he signed Ext.P6 mahazar at the police station when he went to the police station in connection with some other matter. PW12 is an attester to Ext.P7 mahazar prepared by PW22 in connection with the recovery of MO4 lungie worn by the appellant at the relevant time. PW12 admitted to have signed Ext.P7 mahazar. However, PW12 did not support the prosecution case that MO4 lungie was recovered as per Ext.P7 mahazar.

14. PW13 was present when the police inspected the account of the deceased in the Service Co-operative Bank. He admitted to have signed Ext.P8 mahazar prepared by the police in this regard. He further stated that the said account was a joint account of the

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deceased and the appellant, in which an amount of ₹72,000/- was there as on 21.4.2003. However, on 21.4.2003, an amount of ₹60,000/- was withdrawn from the said account and the remaining amount as on 3.9.2003 was ₹12,327/-.

15. PW14 is the Scientific Expert, who examined the material objects and issued Ext.P9 analysis report. Ext.P9 would show that MO3 chopper was stained with human blood belonging to 'O' group. The evidence of PW14 coupled with Ext.P9 would further show that MO4 lungie worn by the appellant at the relevant time contained blood. However, the blood was insufficient to find out the origin and the group.

16. PW16 is a police constable who was deputed to guard the scene. PW17 is another police constable, who took the body of the deceased for postmortem examination. PW18 is another police constable, who was on guard duty at the place where MO3 chopper was found lying. PW21 was examined to prove that the appellant had kept MO3 chopper at the bottom of a coconut sapling near to the burial place of the mother of the appellant. However, PW21 did not

support the prosecution case. In the said circumstances, Ext.P11 contradiction in the CD statement of PW21 was marked for the prosecution.

17. PW22 was the Circle Inspector of Police, who took over the investigation on 24.8.2003. PW22 stated that he arrested the appellant on 24.8.2003 and when questioned, the appellant had given statement that he kept MO3 chopper at the bottom of the coconut sapling near to the burial place of his mother. PW22 went to that place on 24.8.2003 itself. The appellant was not taken along with PW22 at that time. PW22 found out MO3 chopper at the bottom of the coconut sapling. Thereafter, he deputed PW18 and another police constable to guard that place. Ext.P11 contradiction would show that the place from where MO3 was recovered was known to others. PW22 again went to that place on 25.8.2003 with the appellant and recovered MO3 chopper.

18. We have gone through the evidence of PW22 with regard to the recovery of MO3 chopper. We find that the court below has correctly stated its reasons to hold that the recovery of MO3 chopper

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will not come under the purview of Section 27 of the Evidence Act. That apart, the evidence with regard to the recovery of MO3 chopper is not supported by any other witness, even though PW11 had admitted to have signed in Ext.P6 mahazar. MO3 chopper is found to be stained with blood. However, the origin and group of the blood could not be determined as the quantity of blood was insufficient. Apart from the evidence of PW22 regarding the recovery of MO3 chopper, there is no other material to connect the appellant with the commission of the offence. Even the motive alleged by the prosecution is not proved by the prosecution.

19. The court below found the appellant guilty on the basis of hearsay information furnished by PW1. It is settled law that moral conviction is not good in law. We have meticulously gone through the evidence and we are fully satisfied that the court below convicted the appellant based on a fragile foundation of surmises and conjectures.

20. In the absence of any evidence to bring home the guilt of the appellant, we are of the view that the prosecution has failed to

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establish that the appellant committed the offence under Section 302 IPC and hence, the verdict of guilty, conviction and sentence passed by the trial court under Section 302 I.P.C. cannot be sustained and consequently, we set aside the same.

In the result, this appeal stands allowed, setting aside the conviction and sentence passed by the trial court under Section 302 IPC. The appellant is on bail. Therefore, the bail bond of the appellant stands cancelled and the appellant is set at liberty forthwith.

(K.T.SANKARAN)
Judge

(B.SUDHEENDRA KUMAR)
Judge

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