

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 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

CRL.A.No. 689 of 2010 ()

AGAINST THE JUDGMENT IN SC 519/2007 of DISTRICT & SESSIONS
COURT,KOLLAM DATED 26-03-2010
AGAINST THE ORDER IN CP 141/2004 of J.M.F.C.-I, KOLLAM

APPELLANT(S)/ACCUSED:

LOUIS @ PONNI
S/O.PETER, SETTLEMENT COLONY, HOUE NO.291
PRAKKULAM CHERRY, THRIKKARUVA VILLAGE.

BY ADV.SRI.M.T.SURESHKUMAR

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. K.K. RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

.....
Crl.Appeal No. 689 of 2010
.....

Dated this the 22nd day of July, 2015

JUDGMENT

Sudheendra Kumar, J.

The sole accused in S.C. 519 2007 on the files of the Sessions Court, Kollam has filed this appeal challenging the judgment of conviction and sentence passed by the trial court under Section 302 IPC.

2. The prosecution allegation is that on 20-10-2003 at about 6.45 a.m., the appellant inflicted a stab injury on the left chest of deceased Jayabhadran and thereafter, the appellant pushed the deceased to the barbed fence. The deceased succumbed to the injuries at or about the same time.

3. On the basis of Ext. P1 statement given by PW1, Ext. P1 (a) FIR was registered by PW9 under Sec. 302 IPC. The investigation was taken over by PW12, the Circle Inspector of Police, Kundara, on 20-10-2003 itself. He conducted the inquest on the body of the deceased on the same day at 10 a.m. and prepared Ext. P7 inquest report. He visited the place of occurrence and prepared Ext. P8 scene mahazar. The appellant was arrested by PW12 on 10-11-2003 at 9.45 p.m. MO1 knife and MO5 shirt were discovered by PW12 at the instance of the appellant in pursuance to the disclosure statement given by the appellant. Thereafter, the investigation was taken over by PW11. PW11 verified the records and filed final report before the Court.

4. The learned Magistrate, after complying with the legal formalities, committed the case to the Sessions Court. In the trial, the prosecution examined PW1 to PW12 and marked Exts. P1 to P10 (a), besides identifying MO1 to MO5. Exts. D1 and D2 contradictions in the case diary statement of PW12 were also marked during the cross-examination of PW12.

5. After closing the prosecution evidence, the appellant was examined under Sec. 313 Cr.P.C., wherein he denied the incriminating materials appearing in the evidence of prosecution witnesses.

6. Thereafter, since the court below found, after hearing both sides and perusing the evidence, that there was no scope for an order of acquittal under Sec. 232 Cr.P.C., the court below called upon the appellant to enter on his defence. However, no evidence was adduced on the side of the appellant. After evaluating the relevant inputs, the court below found the appellant guilty under Sec. 302 IPC, convicted him thereunder and sentenced him to imprisonment for life and a fine of ₹ 25,000/- with a default clause for simple imprisonment for one year.

7. We have heard the learned counsel for the appellant Sri. M.T. Suresh Kumar and the learned Public Prosecutor Sri. K.K.Rajeev.

8. PW7 was the doctor who conducted autopsy on the

body of the deceased and issued Ext. P4 postmortem certificate.

PW7 noticed the following ante-mortem injuries on the body of the deceased as per Ext. P4 post mortem certificate:-

- “i) Incised penetrating wound 2x0.5 cm obliquely placed on the left side of front of chest, the lower blunt end being 1 cm outer to midline and 14 cm below the upper end of sternum. The other end was sharply cut with a tailing for a length of 6 cm -upwards. The wound entered into the chest cavity after cutting the V costal cartilage, it transfix the pericardium and terminated into the lumen of aorta, 1.5 cm above the coronary ostrium. The chest (left) cavity contained 1600 ml. of fluid blood with clot. The wound was directed upwards, backwards and to the left for a total minimum depth of 8 cm.
- ii) Lenior abrasion 5.5 cm long obliquely placed on the back of right side of trunk 12 cm outer to

midline, 6cm below shoulder blade.

iii) Abrasion 0.5 x 0.5 cm on the back of right side of trunk 12 cm outer to midline and 3 cm below the injury No. 1

iv) Lenior abrasion 1.5 cm long on the back of right side of trunk, 10.5 cm outer to midline and 0.5 cm below the injury No. 3

v) Lenior abrasion 1 cm long on the back of right side of trunk 10 cm outer to midline and 2 cm below the injury No. 4

vi) Lenior abrasion 6 cm long 9 cm outer to midline and 0.5 cm below the injury No. 5.

vii) Lenior abrasion 7.5 cm oblique on the front and outer aspect of right leg cm below knee”.

9. PW7 opined that the death of the deceased was due to the injury sustained on the chest, which is injury No.1. It is in the evidence of PW7 that injury No. 1 referred to in Ext. P4 is sufficient in the ordinary course of nature, to cause death. PW7

stated that injury Nos. 2 to 7 in Ext. P4 postmortem certificate could be possible if that person was pushed down to a barbed wire fence. It is further in the evidence of PW7 that injury No.1 could be caused with MO1 knife.

10. In this case, there is evidence of ocular witnesses namely, PW1 to PW3 to prove the occurrence. PW1 witnessed the occurrence. PW1 had given Ext. P1 statement before the police with regard to the occurrence. According to PW1, on 20-10-2003 at about 6.30 p.m., the deceased came to the house of PW1 and told him that the appellant attempted to strangle him using a bath towel in the morning. PW1 advised the deceased to make a complaint before the police. After saying this, PW1 and the deceased went to the shop of PW3 for taking tea. PW1 went inside the shop and the deceased Jayabhadran stood outside the shop. At that time, the appellant was seen outside the shop of PW2 chewing pan. After a short while, the appellant came near to the shop of PW3. The deceased asked the appellant as to why the appellant attempted to strangle the deceased in the

morning with a bath towel. Then the appellant caught hold of the collar of the shirt of the deceased and uttered abusive words against the deceased. Thereafter, the appellant took out a knife from his lap and inflicted a stab injury on the left chest of the deceased. Thereafter, the deceased was pushed down to the barbed wire fence. On seeing the incident, PW1 caught the hands of the appellant. At that time, the appellant turned towards PW1. Thereafter, the appellant left the place with the knife. The deceased was taken to the hospital by PW1 and others. The doctor, after examining the deceased, declared him dead. The evidence of PW1 would show that the deceased did not utter any word after sustaining injury.

11. PW2 was conducting a pan shop near the place of occurrence. PW2 also witnessed the incident of inflicting stab injury on the chest of the deceased by the appellant. The evidence of PW2 regarding the occurrence is fully corroborated by the evidence of PW1.

12. PW3 was conducting a tea shop very near to the place of occurrence. PW3 also supported the evidence of PW1 with regard to the incident in all material aspects. PW1 to PW3 also identified MO1 knife used by the appellant to inflict stab injury on the deceased.

13. PW1 to PW3 are independent witnesses hailing from the locality. There is nothing on record to indicate that PW1 to PW3 has any enmity or ill-motive against the appellant to falsely implicate the appellant in a case like this. We have gone through the evidence of PW1 to PW3 and we are satisfied that there is nothing in their evidence to disbelieve them.

14. PW12 was the Circle Inspector of Police, Kundara who arrested the accused on 10-11-2003 at about 9.45 p.m. When arrested and questioned, the appellant had given Ext.P3 (a) disclosure statement and pursuant to Ext. P3 (a) disclosure statement and as led by the appellant, MO1 knife was discovered by PW12 as handed over by the appellant as per Ext. P3 mahazar. The evidence of PW12 regarding the discovery of

MO1 knife is corroborated by the evidence of PW6. PW6 identified MO1 knife. The evidence of PW12 regarding the discovery of MO1 knife at the instance of the appellant pursuant to Ext. P3 (a) disclosure statement given by the appellant, is no doubt, admissible under Sec. 27 of the Evidence Act. MO1 knife is found to be stained with human blood belonging to 'O' group as per Ext. P5 report of the Forensic Science Laboratory. Ext. P4 post mortem certificate would show that the blood group of the deceased is O+. The appellant has not given any explanation as to how MO1 knife happened to be stained with human blood belonging to the group of the deceased. The detection of human blood belonging to 'O' group on MO1 knife fastens the culpability of the appellant. Thus, the evidence of PW1 to PW3 with regard to the incident is corroborated by the discovery of blood stained MO1 knife.

15. The evidence of PW12 and PW6 would show that MO5 was the shirt worn by the appellant at the relevant time. MO5 shirt of the appellant contained human blood belonging to 'O'

group as per Ext. P5 report of the Forensic Science Laboratory. No explanation has been offered by the appellant as to how MO5 shirt belonging to the appellant happened to be stained with human blood belonging to the blood group of the deceased. Thus, the detection of blood stains belonging to the blood group of the deceased on MO5 shirt further fastens the culpability of the appellant.

16. The learned counsel for the appellant has argued that the prosecution has not come out with the true story of the incident and in the said circumstances, it has to be held that the prosecution has suppressed the genesis of the incident and consequently, the appellant is entitled to benefit of doubt. The learned Public Prosecutor, on the other hand, has submitted that the prosecution did not suppress any material from the Court and in the said circumstances, the argument advanced by the learned counsel for the appellant, cannot be accepted.

17. We have anxiously considered the above argument of

the learned counsel for the appellant. The prosecution examined PW1 to PW3 to prove the occurrence. PW1 to PW3 had given evidence convincingly proving the occurrence in this case. PW7 stated that injury Nos. 2 to 7 could be possible if the deceased was pushed down to barbed fence. Thus, the evidence of PW1 to PW3 is corroborated by the medical evidence of PW7 and Ext. P4 postmortem certificate. Injury No.1 could be caused with MO1 knife as per the evidence of PW7. PW5 was examined by the prosecution to prove that the appellant attempted to strangle the deceased at about 5.30 a.m. on the fateful day. However, PW5 did not support the prosecution case and in the said circumstances, Ext. P2 contradiction in the case diary statement of PW5 was marked for the prosecution during her cross-examination. PW4 is the wife of the deceased who stated that the appellant attempted to strangle the deceased using a bath towel at about 5.30 a.m. on the fateful day. PW4 further stated that the deceased had received Rs. 300/- from the appellant on the agreement that the deceased would accompany

the appellant for fishing. For going for fishing, they had to go by about 5 a.m. However, the deceased woke up only when the appellant came to his house and knocked the door. This was stated to be the reason why the appellant attempted to strangle the deceased. Ext.P1 First Information Statement in this case was given by PW1 at about 8 a.m. on the fateful day. The incident was at about 6.45 a.m. on that day. This would show that immediately after the incident, PW1 had given Ext. P1 statement before the police in connection with the incident in this case. In Ext. P1 statement, PW1 had narrated the incident in this case. Having gone through the relevant inputs, we are of the view that merely because PW5 did not support the prosecution case, it cannot be said that the prosecution did not come out with the true story of the incident.

18. It has been submitted by the learned counsel for the appellant that even though there was scuffle as indicated in Ext. P8 scene mahazar, the prosecution has suppressed the same. It is true that Ext. P8 scene mahazar contains the recital that there

was disorder of the grass and soil at the place of occurrence. However, it is clear from the evidence of PW1 to PW3 that the deceased was stabbed and thereafter, he was pushed down to the barbed fence by the appellant. The evidence would further show that so many people gathered at the place of occurrence immediately after the incident and they removed the deceased from the barbed fence to the hospital. In the said circumstances, it was only natural that it caused disorder of soil and grass at the place of occurrence. The evidence of PW1 to PW3 also does not mention anything to indicate that there was any scuffle as argued by the learned counsel for the appellant. For the above reasons, the argument in this regard advanced by the learned counsel for the appellant fails.

19. The learned counsel for the appellant has further argued that since only one stab injury was inflicted by the appellant on the deceased even as per the prosecution case, it has to be held that there was no motive on the part of the appellant to cause the death of the appellant and consequently, the case of the

appellant falls under Exception 4 to Section 300 IPC. There is absolutely no material before the court to indicate that there was any scuffle. The evidence of PW1 to PW3 would clearly show that there was no scuffle at all. It is true that only one injury was inflicted on the deceased by the appellant. The evidence of PW1 to PW3 would show that immediately when the deceased asked the appellant as to why the appellant attempted to strangle him in the morning, the appellant caught hold of the collar of the shirt of the deceased and uttered abusive words. Thereafter, the appellant inflicted a stab injury on the left chest of the deceased, taking a knife from the lap of the appellant. There is nothing to indicate that there was any fight, much less sudden fight, in the heat of passion to bring this case within the ambit Exception 4 to Sec. 300 IPC. There was also no sudden quarrel in this case. Therefore, the case of the appellant cannot fall under Exception 4 to Section 300 IPC. Having gone through the evidence on record, we are satisfied that the prosecution succeeded in establishing the case beyond reasonable doubt that

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the appellant committed the murder of the deceased Jayabhadran as alleged by the prosecution and consequently, we find no reason to interfere with the verdict of guilty , conviction and sentence passed by the trial Court under Sec. 302 IPC.

In the result, this appeal fails and is accordingly dismissed .

Sd/-K.T. SANKARAN,
JUDGE.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge