

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 4TH DAY OF JUNE 2015/14TH JYASHTA, 1937

CRL.A.No. 1600 of 2010 (D)

SC 183/2008 of ADDL.SESIONS COURT (ADHOC-II), KASARAGOD

APPELLANT:

RAGHAVAN,S/O.KAMMATATHI,C.NO.7879,
KAMMATATHI, C.NO.7879, CENTRAL PRISON
KANNUR

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT:

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

BY SHRI.RAJESH VIJAYAN, PUBLIC PLEADER

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

Crl.Appeal No.1600 of 2010

Dated this the 4th day of June 2015

JUDGMENT

K.T.Sankaran J.

The appellant challenges the conviction and sentence under Sections 302, 307 and 452 of the Indian Penal Code (for short 'the I.P.C.') in S.C. No.183 of 2008 on the file of court of the Additional Sessions Judge (Adhoc-II), Kasaragod. The trial court sentenced the appellant to undergo imprisonment for life and to pay a fine of

₹20,000/- and in default of payment of fine, for imprisonment for three years for the offence under Section 302 of the I.P.C. For the offence under Section 307 of the I.P.C., the appellant was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹10,000/- and in default of payment of fine to undergo imprisonment for two years and for the offence under Section 452 of the I.P.C., the appellant was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of ₹5,000/- and in default, to undergo imprisonment for two years.

2. The appellant is a resident of Ambedkar Colony of Bedakam gramam, Kasaragod. He has wife and four children. It is alleged that the appellant used to consume alcohol and harass his wife and children. The wife of the appellant left for her home at the time of delivery of the fourth child and she did not return thereafter. The three children continued to stay with the appellant. The children of the appellant used to go to the nearby house of the

sister of the appellant and used to sleep there occasionally.

3. The prosecution alleged that on 14.8.2007 at about 10 P.M., the appellant came home fully drunk. As he did not see the children in his house, he went to the house of his sister Radhika (PW3). He found the children sleeping in the house of Radhika. He forcibly took his second child Akhilraj and struck him on the floor. Radhika and her husband K.Rajan (PW2) rescued Akhilraj. It is alleged that the appellant, thereafter, forcibly took Athira, aged 4½ years, the elder daughter of the appellant, by her legs and forcibly struck her on the floor. Thereafter, he took the child outside the house and forcibly struck her on the floor thrice. Therefore, he took the child on his shoulders and went to his house. At about 7.30 A.M. on 15.08.2007, the neighbours came to know that Athira was dead. N.Rajan, a neighbour (PW1) lodged Ext.P1 F.I. Statement at 8.30 A.M. on 15.8.2007, on the basis of which Ext.P1(a) F.I.R. was registered by PW13 for the offence

under Section 302 of the I.P.C. The Police rushed to the house of the appellant, conducted the inquest and caused the post-mortem to be conducted by PW8, the Professor of Forensic Medicine and Police Surgeon. The Investigating Officer found blood clots in the courtyard of the house of PW2 and PW3, samples of which were taken and sent for chemical analysis. The appellant was arrested at 12.10 hours on 15.8.2007. Akhilraj was admitted in the hospital and he remained as inpatient in the hospital from 15.8.2007 and 20.8.2007. PW14 conducted the investigation and lodged the charge.

4. PWs 1 to 14 were examined and Exts.P1 to 13(a) series were marked on the side of the prosecution.

5. Ext.P4 postmortem report shows that the deceased Athira sustained the following ante-mortem injuries:

“Injuries (Antemortem):-

1. Multiple small contusions and abrasions on the right side of face.

2. Two abrasions, 1.5x1 c.m. each, 1.5 c.m. apart on the left side of face, the upper one being just below the eye.

3. Punctured lacerated wound 0.5x0.3 c.m. on the front of head, 5.5 c.m. above the middle of left eyebrow.

On dissection, the whole scalp tissues were infiltrated with blood. There was a vertical fissured fracture in the frontal bone, slightly towards the left of midline. The fracture line was traced backwards as fracture separation of the whole of sagittal suture. Bilateral subdural bleeding was present. Brain also showed laceration of the orbital surface of frontal lobes, contusion of both temporal poles, contusion on the dorsal aspect of right frontal lobe (4x2 c.m.) and features of increased intracranial tension.”

6. The opinion as to the cause of death is shown in Ext.P4, postmortem certificate as follows:

“Died of blunt violence sustained to the head”.

7. During investigation, it was found that the appellant/accused committed offences under Sections 307 and 452 of the I.P.C. and a report to include those sections of offence was

filed by the Investigating Officer before court. Accordingly, those offences were also included in the charge.

8. PW1 is not an eye witness. He is a neighbour of the accused. He stated that on 15.8.2007 at 7.30 A.M., he saw people having assembled near the house of the accused. On enquiry, he came to know that Athira, the daughter of the accused, is no more. He had heard about the criminal acts done by the accused towards Athira. He lodged Ext.P1 F.I.Statement before PW13.

9. PW2 is the brother-in-law of the appellant. His house is situated only 200 metres away from the house of the appellant. PW2, inter-alia stated the following. The wife of the appellant and his youngest child are in the house of the wife of the appellant. The appellant used to consume alcohol and used to beat his wife and children. She had gone to her house on account of the ill-treatment. On 14.8.2007, the three children of the accused came to his house and after taking food they went to bed. On the days on

which the appellant used to come home drunk and when he used to ill treat the children, they used to sleep in the house of PW2. At about 5 P.M. on 14.8.2007, the appellant came drunk and attempted to kill Athira by pushing her to the Panchayat well. Somehow, or other, Athira escaped and took shelter in the house of Veluthan, the paternal uncle of PW2. At about 7 P.M. on 14.8.2007, the three children of the appellant came to the house of PW2. When they were asleep, the accused came to the house of PW2 at about 10 P.M., forcibly removed the door made of coconut leaves and attacked Akhilraj by striking him on the floor. That was done in order to kill him. PW2 and his wife PW3 rescued Akhilraj. Akhilraj had sustained injuries. Thereafter, the appellant turned to Athira, forcibly took her and struck her on the mat. Athira was taken out by the appellant and he struck her on the floor thrice. Later, Athira was taken to the house of the appellant. When PW2 attempted to rescue the child, the appellant took Athira by her legs,

swayed her and had beaten PW2. On hearing the hue and cry, the neighbours came to the scene of occurrence. But nobody intervened, fearing the appellant. While going home, the appellant threatened to set fire on the house of PW2. At about 7.30 A.M. on 15.8.2007 PW2 peeped through the window of the house of the appellant and saw Athira lying on the floor. Though the appellant tried to awake her, he could not do so.

10. PW3, the wife of PW2 and the sister of the appellant, narrated the incident in a similar manner. She also stated about the ill-treatment meted out by the appellant to his wife and children.

11. PW4 (N.Chandran), who is a resident of Chambakad Harijan Colony, went near to the house of PW2. He saw the accused striking Athira on the floor after holding her legs.

12. The wife of the appellant/accused was examined as PW5. Her evidence shows that she is residing in her house only because of the ill-treatment and harassment made by the appellant. She

stated that the accused used to consume alcohol regularly and used to beat her and her children. She stated that she was also present at the time of inquest and narrated the incident at that time.

13. PW6 Kunhambu is the neighbour of the accused. He saw the incident on 14.8.2007 and saw the striking of Athira by the accused on three occasions on the floor. He also stated that the accused took the child to his house thereafter.

14. PW7 is the Assistant Surgeon, District Hospital Kanhangad, who examined Akhilraj and issued Ext.P3 wound certificate.

15. The trial court believed the evidence of PWs 2, 3, 4 and 6 and held that the prosecution established that the appellant committed the offences alleged against him.

16. When examined under Section 313 Cr.P.C., the appellant stated that on the date of incident, he went to the house of PW2 and there occurred a quarrel between him and PW2. The children

of the accused came out of the house of PW2 on hearing the quarrel. The appellant stated that he took Athira on his shoulder and also took Akhilraj on his waist. At that time PW2 pushed him and Akhilraj fell down. When the appellant was about to fall, the head of Athira hit on the floor. He took Athira to the house of Veluthan and gave her water. He could not take the child to the hospital, since he did not get any vehicle. He could not take Akhilraj also, since the appellant was in a drunken state. The appellant stated that he came to know that Athira was dead only on the next day morning.

17. We have carefully gone through the oral and documentary evidence in the case. The evidence of PWs 2 to 4 and 6 is wholly reliable and believable. The evidence in the case would not probablise the explanation given by the appellant in his examination under Section 313 Cr.P.C. There is nothing to indicate that the version of the accused in his 313 Cr.P.C. examination is

probable. There is no reason to disbelieve PWs 2, 3, 4 and 6. PW5, the wife of the appellant has also convincingly narrated the ill-treatment and harassment made by the appellant and his addiction to alcoholic drinks. There is nothing to disbelieve that she had left her matrimonial home only because of the ill-treatment made by the appellant.

18. PW3 is none other than the sister of the appellant and there is no reason why she should falsely implicate her brother. There is not even a suggestion that she and her husband (PW2) are on enemical terms with the appellant. The independent evidence available in the case is also corroborated by the medical evidence in this case. It is not probable at all that Athira would have sustained injuries as noted in Ext.P4 postmortem certificate, when she came into contact with the floor as explained by the accused.

19. The learned counsel for the appellant submitted that in cross-examination, PW1 stated that during the course of the

incident when PW2 attempted to rescue Athira, he was attacked by the accused with a broken bottle. PW14, the Investigating Officer stated that he had seized the bottle. But no such bottle was produced before Court. Even though the bottle, which was allegedly produced by PW14 was not produced in this case, that would not weaken the prosecution case.

20. The learned counsel for the appellant submitted that according to the prosecution, blood was found on the soil at the place of occurrence. But no stains of blood was seen on the dress of the accused, which would probalise the case put forward by the accused. It is submitted that Ext.P5 inquest report shows that blood was found on the mat and on the floor in the house of the appellant. The mat was not seized and no sample of blood was taken.

21. The learned counsel also submitted that there was delay in registering the F.I.R.

22. There is no evidence to show that the shirt or lungi or dhoti worn by the accused were stained with blood. The Investigating Officer did not seize the dress worn by the appellant. It is true that Ext.P5 inquest report shows that blood was found on the mat and on the floor in the house of the accused. The incident occurred not in the house of the accused, but in the house of PW2. Samples of blood were taken from the courtyard of the house of PW2 and Ext.P12 chemical analysis report shows that stains of blood were found in the sample. Ext.P1(a) F.I.R. was registered at 8.30 A.M. on 15.8.2007. The evidence in the case would show that PW1 and the neighbours came to know of the death of Athira only on 7.30 A.M. on 15.8.2007. It has come out in the evidence that the Police Station is about 5 Kms. away from the place of occurrence. So, it cannot be said that there was any delay in lodging the F.I.S. or in registering the F.I.R.

We are of the view that the prosecution has established the guilt of the accused beyond reasonable doubt. We concur with the reasoning and conclusion made by the court below. There is no ground to interfere with the conviction and sentence.

The Crl.Appeal is, accordingly, dismissed.

Sd/

**K.T.SANKARAN,
JUDGE**

Sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

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PA TO JUDGE