

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE B. SUDHEENDRA KUMAR
MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

CRL.A.No. 1601 of 2010 (G)

AGAINST THE JUDGMENT IN SC.NO.519/2009 OF THE SESSIONS COURT,
THRISSUR DATED 30-01-2010

APPELLANT: ACCUSED:

SUNIL S/O. NOCHIYIL KARTHIKEYAN,
C.NO.8173, CENTRAL PRISON, KANNUR

BY ADV. SMT. PINKU H. THALIATH (STATE BRIEF)

RESPONDENT: COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. K.K. RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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Dated this the 27th day of July, 2015

JUDGMENT

Sudheendra Kumar, J.

The sole accused in S.C.No.519 of 2009 on the files of the Sessions Court, Thrissur, has filed this appeal challenging the judgment of conviction and sentence passed by the trial court under Section 302 IPC.

2. The deceased Devu was the wife of the appellant. The appellant was residing with deceased Devu and their two children in a house in Pallikkappadom. The appellant was a coconut climber by profession. He was also a habitual drunkard. He always used to make quarrel with the deceased. On 30.10.2008 in the morning, the appellant demanded his identity card from the deceased. The deceased answered that the same was not there in the house. Then the appellant left the place after threatening her that if he would not get the identity card by noon, he would set things correct.

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Thereafter, the appellant went for the job and came back at about 6.30 p.m. on that day after consuming alcohol. When he came back in the evening, PW1 was also there in the house. The appellant again demanded his identity card. Then also, the deceased replied that the same was not there in the house. Then the appellant took MO1 chopper and wielded it against PW1. However, PW1 did not sustain any injury as the handle portion of MO1 chopper alone hit on his hand. PW1 ran away from there to the house of PW8 and informed the matter to PW8. PW1 also requested the help of PW8. PW8 was taking bath at that time. Therefore, PW8 told PW1 that he would intervene the matter after completing the bath. PW1 came back to his house immediately. When PW1 reached near to his house, he saw the appellant inflicting cut injuries on the neck of the deceased thrice with MO1 chopper. The deceased collapsed. The appellant left the place after throwing away MO1 chopper. The deceased succumbed to the injuries at or about the same time.

3. PW1 went to the police station and lodged Ext.P1 First Information Statement on the same day in connection with the incident. PW9 recorded Ext.P1 statement of PW1 and registered

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Ext.P1(a) FIR under Section 302 IPC. The investigation was taken over by PW10, the Circle Inspector of Police, Irinjalakuda, on 31.10.2008. On that day at about 8.15 a.m., he conducted the inquest on the body of deceased Devu and prepared Ext.P6 inquest report. He seized MO1 chopper from a place near to the place of occurrence. He also prepared Ext.P3 scene mahazar on the same day. PW10 arrested the appellant on 31.10.2008 at 4 p.m. After completing the investigation, PW10 laid the charge before the court.

4. Before the trial court, PW1 to PW10 were examined and Exts.P1 to P14 and C1 were marked for the prosecution, besides identifying MO1 to MO11. No evidence was adduced on the side of the defence. 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 and a fine of Rupees two lakhs with a default clause for simple imprisonment for four years under Section 302 IPC.

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

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6. PW7 was the Assistant Professor in Forensic Medicine and the Deputy Police Surgeon, Medical College Hospital, Thrissur, who conducted the autopsy on the body of the deceased and issued Ext.P7 postmortem certificate. PW7 noted the following ante-mortem injuries as per Ext.P7 postmortem certificate:-

“INJURIES (ANTEMORTEM):

1. Incised wound 11x3x6cm on the back of neck horizontally placed with its upper margin 6cm below the occipital protuberance. The left end of the wound was placed 6cm below left ear and the right end was placed 3 cm below mastoid process. The wound had cut the paravertibral muscles of the body of the 2nd cervical vertebra for its full thickness. Vertebral arteries on both sides were completely severed. The spinal cord was cleanly cut under this injury.
2. Incised wound with bevelled left margins 5x1x bone deep on the left side of back of head obliquely placed with its lower margin 4 cm above injury No.1 and 3 cm outer to midline.
3. Incised wound 4x1x1 cm on the back of right shoulder oblique with a tailing 1.5 cm from its lower

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end. The upper inner end was 9 cm outer to midline and 3 cm below shoulder.

4. Linear abrasion 5x0.1 cm on the back of right shoulder with its inner end 2 cm below injury No.3.
5. Skin deep incised wound 2x0.3x0.1 cm on the right side of back of chest 4 cm outer to midline and 5 cm below shoulder.
6. Incised wound 8x4x6 cm on the outer aspect of right upper arm horizontally placed with its upper margin 6 cm below the top of shoulder. The wound had cut the muscles and muscular blood vessels and nerves. The right humerus was found cut for a depth of 1 cm.”

PW7 opined that the deceased died due to incised wound sustained to neck. PW7 further stated that all the injuries noted in Ext.P7 could be caused with MO1 chopper. It was further stated by PW7 that injury No.1 noted in Ext.P7 postmortem certificate was fatal and was sufficient in the ordinary course of nature to cause death. There is no material before the Court inconsistent with the finding of PW7 that the deceased died due to the injury sustained to the neck.

7. PW1 is the only person who witnessed the incident. PW1 is the son of deceased Devu and the appellant. According to PW1, the incident was on 30.10.2008 at about 6.45 p.m. PW1 stated that in the morning on that day, the appellant demanded his identity card from the deceased mother of PW1. Then the deceased mother told the appellant that the identity card was not there in the house. Then the appellant told the deceased that he would set things correct if he would not get the identity card by noon. Thereafter, the appellant went for the job. He did not come for lunch. He came back to the house only at about 6.30 p.m. on that day. When the appellant came back to the house, he was drunk. The appellant demanded the identity card from the deceased. Then the deceased said that the identity card was not there. Then the appellant beat the deceased and PW1. The appellant also wielded MO1 chopper against PW1. The handle portion of MO1 chopper hit on the hand of PW1. PW1 ran away from there to the house of PW8. However, PW8 was taking bath at that time. Therefore, PW1 came back to the house immediately. When he reached nearly 35 feet away from the house, he saw the appellant inflicting cut injuries on the neck of the

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deceased thrice with MO1 chopper. The deceased cried aloud. However, due to fear, PW1 did not proceed to the place. After some time, the appellant threw away MO1 chopper and left the place. The deceased died at or about the same time. The evidence of PW1 would show that the deceased Devu was murdered by the appellant by inflicting cut injuries on the neck of the deceased. PW1 is the son of both the appellant and the deceased. PW1, being the son of the deceased and the appellant, would not normally give false evidence against the appellant in a case like this, to give room for the real culprit to escape. PW1 had no reason to give evidence against the appellant to falsely implicate the appellant in a case like this. The evidence of PW1 is fully corroborated by Ext. P1 First Information Statement. The evidence of PW1 would show that his younger brother had gone to the shop to purchase something at the relevant time. Therefore, PW1 was the only ocular witness to the incident. We have carefully gone through the evidence of PW1 and we find no reason to disbelieve him. The evidence of PW1 is fully corroborated by the medical evidence of PW7, who conducted the autopsy on the body of the deceased and issued Ext.P7 postmortem certificate. MO1 chopper was identified by PW1 as the weapon used by the

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appellant to inflict injuries on the deceased. MO1 was found to be stained with human blood as per Ext.P14 certificate of chemical analysis. The accused has no explanation as to how MO1 chopper happened to be stained with human blood. The detection of human blood on MO1 chopper fastens the culpability of the appellant. On an anxious consideration of the entire evidence on record discussed above, we are satisfied that the prosecution succeeded in establishing that the appellant committed the murder of deceased Devu as alleged by the prosecution.

8. The evidence of PW1 would show that the appellant had suspicion regarding the chastity of deceased Devu. The appellant had the suspicion that PW1 is not the son of the appellant. The appellant used to come to the house everyday after consuming liquor. The appellant also used to manhandle the deceased on almost every day under one pretext or other. The evidence of PW1 would show that an amount of ₹23,000/- was granted by the Panchayath to the deceased for the construction of the house. The said amount was received by the deceased from the Panchayath. However, the same was in the custody of the appellant. The

deceased used to demand the said amount for the construction of the house. This also annoyed the appellant. The above said aspects contributed to the motive.

9. The learned State Brief, relying on the decision of the Apex Court in **Gopal v. State of Maharashtra (2007 (4) KLT 934(SC))** and the decision of this Court in **Paulson v. State of Kerala (2014 (3) KLT 743)**, argued that the appellant is entitled to get the benefit of Exception(4) to Section 300 IPC. In Gopal's case (supra), the appellant inflicted a single injury on the head of the deceased and as a result, she sustained bleeding from the head and later on, she succumbed to the injury. Before inflicting the injury, there was quarrel between the accused therein and the deceased. Considering the facts and circumstances of that case, the Apex Court granted the benefit of Exception (4) to Section 300 IPC to the accused therein.

10. In Paulson's case (supra), there was a sudden fight. On the facts of that case, a Division Bench of this Court granted the benefit of Exception (4) to Section 300 IPC to the accused therein.

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However, the facts of the present case are different from the facts in the above cited decisions. In this case, there was no fight at all. The evidence on record would show that the appellant used to assault the deceased on almost every day after consuming alcohol. PW1 stated that the appellant demanded his identity card from the deceased in the morning on the fateful day. The deceased told the appellant that the identity card was not there in the house. Then, the appellant threatened the deceased that he would set things correct if she would not give the identity card of the appellant by noon. Thereafter, the appellant went for the job. He came back to the house by about 6.30 p.m. in the evening after consuming alcohol. Thereafter, he again asked for the identity card. Since the deceased said that the identity card was not there in the house, the appellant beat the deceased and PW1. He also attempted to inflict cut injuries on PW1 with MO1 chopper. However, the said attempt was not successful. Thereafter, the appellant mercilessly inflicted three cut injuries on the neck of the deceased with MO1 chopper, which is a deadly weapon, being used by coconut climbers.

11. From the evidence discussed above, we are satisfied that there was pre-meditation on the part of the appellant in doing away with the deceased. There is also no material before the court to indicate that there was any sudden fight in the heat of passion upon a sudden quarrel in this case as provided in Exception (4) to Section 300 IPC. Having gone through the relevant inputs, we are satisfied that the present case does not fall within the ambit of Exception (4) to Section 300 IPC. In the said circumstances, the court below rightly convicted the appellant under Section 302 IPC. Consequently, we find no reason to interfere with the verdict of guilty, conviction and sentence passed by the trial court under Section 302 IPC.

In the result, this Appeal stands dismissed.

K.T.SANKARAN
Judge

B.SUDHEENDRA KUMAR
Judge

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