

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 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

CRL.A.No. 1970 of 2010 ()

AGAINST THE JUDGMENT IN SC 175/2008 of III ADDL.SESIONS JUDGE. KOLLAM

AGAINST THE JUDGMENT IN CP 46/2007 of J.M.F.C., PARAVOOR

APPELLANT(S):

KRISHNANKUTTY PILLAI,C.NO.5167,
CENTRAL PRISON, THIRUVANANTHAPURAM.

BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.GEORGE MATHEWS

RESPONDENT(S):

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

BY ADV. PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

Crl.A.No.1970 of 2010

Dated this the 20th day of May, 2015

JUDGMENT

Sudheendra Kumar, J.

The appellant is the accused in S.C.No.175 of 2008 on the file of the III Additional Sessions Court, Kollam, who in this appeal challenges the judgment of conviction and sentence passed by the trial court under Section 302 IPC.

2. The prosecution case is that on 3.2.2007, at about 1.30 a.m., the appellant due to his enmity towards his mother, the deceased Chellamma, attacked her by hitting with a brick on her head at a place in the courtyard of the house where the deceased

Chellamma and PW1 were residing. The deceased Chellamma sustained very serious injuries in the incident and she succumbed to the injuries at or about the same time.

3. On the basis of Ext. P1 statement given by PW1, PW11, the then Sub Inspector of Police, South Paravoor Police Station registered Exhibit P1(a) F.I.R. PW11 conducted the inquest on the body of the deceased and prepared Exhibit P6 inquest report. He also visited the place of occurrence and prepared Exhibit P4 scene mahazar. The appellant was arrested by PW11 on 3-2-2007. The investigation was taken over by PW12 on 4-2-2007. After completing the investigation, PW12 laid the charge before the Magistrate court concerned. Thereafter, the appellant was produced before the Court. 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 court below for trial and disposal in accordance with law.

4. The appellant was produced before the court below in response to the process issued by the Court. The court below, after hearing both sides and perusing the records, framed the charge against the appellant for the offence under Section 302 IPC, on being satisfied that there was a prima facie case to frame charge for the said offence. The appellant pleaded not guilty to the charge.

5. In the trial, the prosecution examined PW 1 to PW12 and marked Exts.P1 to P9, besides identifying Mos 1 to 16. Ext. D1 contradiction in the case diary statement was also marked during the cross-examination of PW1. Thereafter, 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 also set up the plea of alibi. Since there was no scope for an acquittal under Section 232 Cr.P.C., the appellant was called upon by the court below to enter on his defence. However, 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 and convicted him thereunder and sentenced him to imprisonment for life and a fine of Rs. 10,000/- with a default clause for rigorous imprisonment for six months. The appellant was granted set off under Section 428 Cr.P.C for the period of his detention in connection with this case.

6. We have heard the learned counsel for the appellant Sri.Gracious Kuriakose and the learned Public Prosecutor Sri.Rajesh Vijayan.

7. The prosecution relies on circumstantial evidence to

prove its case. PW1 is the younger brother of the appellant. PW1 and his mother deceased Chellamma were residing in the house belonging to his mother. PW1 was working as a Conductor in a bus during the relevant period. The evidence of PW1 is that on 2-2-2007, when he reached the house after his job, PW2, who is his mother's sister, was also there in the house. PW1 asked his deceased mother to serve food. PW1 also asked PW2 to bring some water for drinking. When she brought the water, the appellant reached there and kicked at the door of the house, shouting to open the door. PW1 opened the door. Then, the appellant entered in to the house and threw away the water with the vessel. Thereafter, the appellant caught hold of PW2 and asked her as to what business she had there. The appellant also asked her to go away from the house in the night itself. However, when she went out from the house to go away from there, the appellant told her that she could go from there in the morning.

Thereafter, the appellant asked the deceased to bring some water. She brought some warm water. The appellant poured that water on her head. PW1 along with the deceased and PW2 came out from the house and sat near to the well of the neighbouring house. Thereafter, PW1 went to the Police Station to lodge a complaint. Since no sufficient Police Constable was available in the Police Station, nobody accompanied PW1 to his house. PW1 came back to the place where the deceased and PW2 were sitting. Thereafter, PW1 along with the deceased and PW2 moved near to their house. Then, they saw the appellant walking around the house. Therefore, they came back. PW2 and the deceased sat near to the well of the neighbouring house. PW1 sat near to the compound wall. After some time, PW1 heard the cry of his deceased mother. When he looked through the side of the wall, he saw the appellant catching hold of the neck of the deceased. On seeing the incident, he ran away from there to the

house of his colleague, to telephone to the police station. After some time, he came back and sat again near to the compound wall as he was afraid of the appellant. Early morning, when he heard the cry of PW2, he rushed to the place. Then he saw the dead body of his mother lying in a pool of blood. PW2 had also given evidence supporting the evidence of PW1. PW2 further stated that after sitting for some time near to the well of the neighbouring house, the deceased wanted to go to her house as she wanted to sleep. Therefore, she moved towards her house. Then, the appellant came from behind and caught hold of her neck. The appellant also took the deceased Chellamma with him. PW2 did not know what happened thereafter.

8. It has been argued by the learned counsel for the appellant that the unusual conduct of PW1 and PW2 in not rushing to the house to save the life of the deceased even after

hearing the cry of the deceased, eventhough the deceased was the mother of PW1 and the sister of PW2, should be taken as a circumstance to hold that PW1 and PW2 are not natural witnesses and hence their evidence cannot be believed. The appellant is none other than the son of the deceased. The evidence of PW1 and PW2 would show that they were frightened that they would be attacked by the deceased. That apart, no person would expect that his brother would commit the murder of his mother under the circumstances available in this case. Having gone through the evidence of PW1 and PW 2, we do not find any reason to hold that the conduct of PW1 and PW2 is unusual to render their evidence incredible as argued by the learned counsel for the appellant.

9. It has been further argued by the learned counsel for the appellant that PW1 and PW2 are close relatives of the

deceased and in the said circumstances, the evidence of PW1 and PW2 alone cannot be taken to find the appellant guilty, particularly when there is no other independent testimony to support the prosecution case. PW1 is the elder brother of the appellant and PW2 is the sister of the deceased mother of the appellant. PW2 is a lady aged 82 years. We do not understand why PW1 or PW2 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 PW1 or PW2 should falsely accuse the appellant in this case. There is also no material before the court to indicate that either PW1 or PW2 had any grudge or enmity towards the appellant to falsely implicate him in this case. The deceased is the mother of PW1 and the sister of PW2. Ordinarily, a close relative would be the last person to screen the real culprit and falsely implicate an innocent person. The evidence of PW1 and PW2 would show

that they were near to the spot when the incident occurred. Having meticulously scrutinized the evidence of PW1 and PW2, we are satisfied that their evidence is natural, creditworthy and hence acceptable. In the said circumstances, the mere fact that PW1 and PW2 are close relatives of the deceased cannot be a reason to disbelieve their evidence. The prosecution also examined PW3 and PW4, who are independent witnesses, to prove the presence of the appellant in the house of the deceased during the night of 2-2-2007 and also to prove the quarrel by the accused. However, PW3 and PW4 did not support the prosecution case. Merely because PW3 and PW4 did not support the prosecution case, it cannot be said to be fatal to the prosecution case, particularly when there is reliable evidence of PW 1 and PW2 to support the prosecution case.

10. The learned counsel for the appellant has argued that

since the evidence of PW1 and PW2 is not in consonance with Ext. P1 statement, the evidence of PW1 and PW2 has to be discarded in toto, granting benefit of doubt to the appellant. We have considered the above argument of the learned counsel for the appellant carefully. It is seen from Ext. P1 that PW1 had stated therein that he heard the cry of her mother at about 1.30 p.m. However, he did not go there as he had fear in his mind. Thereafter, he went to the house at about 5.30 a.m. Then, he saw his mother lying dead in a pool of blood at the courtyard of the house of the deceased. It is true that the attempt made by PW1 to bring the police to the place of occurrence, when the appellant started quarrel with the deceased, is not seen stated in Ext. P1 statement. In all other respect, Ext. P1 is in consonance with the evidence of PW1 and PW2. Having gone through Ext. P1 in the light of the evidence of PW1 and PW2, we are satisfied that Ext. P1 fully corroborates with the evidence of PW1 and PW2 in all

material aspects. In the said circumstances, we find no merit in the argument of the learned counsel for the appellant that the evidence of PW1 and PW2 is not in consonance with Ext. P1 F.

I. statement.

11. Before adverting to the evidence of PW1 and PW2, we are inclined to evaluate the medical evidence. The medical evidence of PW 9 coupled with Ext.P5 postmortem certificate would show that the deceased sustained 22 ante-mortem injuries, which are extracted below:-

“Injuries (Ante-mortem)”

1. Contusion of scalp 8x4x0.5 cm. on the back of head overlying the occipital.
2. Lacerated wound 1.5x1 cm. bone deep on the left side of head just above the ear.
3. Lacerated wound 3.2x1 cm. bone deep, sagittally placed on the right side of top of head 7.5 cm. above the top of ear lobule. Skull bone showed a depressed fracture 5.5x5x0.5 cm. Underneath.

4. Contusion of scalp 13x5x0.5 cm. on the left side of head just above the ear.

5. Abrasion 8.5x7 cm. on the right side of face, 2.8 cm. in front of tragus of ear with a contusion 10x3x0.8 cm. around.

6. Lacerated wound 1x0.5x0.2 cm. on the inner end of right upper eyelid.

7. Lacerated wound 0.5x0.3x0.2cm. on the right side of forehead, 2 cm. above the eyebrow and 2.5 cm. outer to midline.

8. Lacerated wound 1.5x0.5cm. involving the whole thickness of left ear lobe at its upper end.

9. Contused abrasion 8x3.5 cm. on the left side of face 2 cm. in front of ear.

10. Lacerated wound 1.5x0.4 cm., bone deep on the left side of top of head 8 cm. outer to midline and 5.5 cm. above the outer end of eyebrow.

11. Contusion 4.5x4x1 cm. on the outer aspect of lower lip and adjacent past chin with fracture of jaw bone in between canine and first premolar on the left side.

Fracture separation of base of skull through middle cranial fossa. Brain showed subdural and subarachnoid haemorrhages. Sulci were narrowed gyri flattened.

12. Lacerated wound 1x0.5x0.3 cm. on the front of left arm 7.5 cm. above elbow.

13. Abrasion 2x1 cm. on the front of left forearm 1.5 cm. above the wrist.

14. Abrasion 5.5x3.5 cm. on the front of left thigh 6 cm. above the knee.

15. Abrasion 4.5x1.5 cm. Horizontal on the front of right knee.

16. Contusion 3x2.5x1 cm. on the outer aspect of right leg 5 cm. Above ankle with fracture of both bones underneath.

17. Multiple small abrasions over an area 7x4.5 cm. On the front and inner aspect of left knee.

18. Abrasion 6x3.5 cm. on the back of right knee.

19. Fracture of breast bone in between third and fourth pieces.

20. Fracture of II to X ribs on the left side at multiple sites. Lungs showed corresponding lacerations and was seen partially collapsed. Chest cavity was smeared with blood.

21. Fracture of II to IX ribs of right side at multiple sites. Lungs showed corresponding lacerations on the surface and was partially collapsed. Chest cavity was

smeared with blood.

22. Laceration 5x3x2 cm. on the front surface of liver in between right and left lobes at front surface of liver in between right and left lobes at front surface. Peritoneal cavity was smeared with blood.”

12. PW9 has stated that the death of the deceased was due to the multiple injuries sustained by her. Injury Nos.1 to 11 and 20 to 22 in Ext.P5 postmortem certificate are fatal injuries. The evidence of PW9 coupled with Exhibit P5 would further show that the above said injuries are independently and in combination sufficient in the ordinary course of nature to cause death. The further evidence of PW9 is that injury Nos. 1 to 11 in Ext.P5 postmortem certificate could be caused with MO3 brick. MO3 brick was found to be stained with human blood as per Ext.P9 report of the Forensic Science Laboratory.

13. The evidence of PW1 and PW2 is that they witnessed

the appellant catching hold of the neck of the deceased. They did not see what happened thereafter. PW1 and PW2 did not see the appellant inflicting injury on the deceased with MO3 brick. However, in the early morning, both PW1 and PW2 saw the dead body of his mother lying in a pool of blood at the courtyard of the house of the deceased. It is clear from the evidence of PW1 and PW2 that the appellant alone was with the deceased immediately before her death. The evidence of PW2 would show that the deceased was taken out of sight by the appellant after the midnight and thereafter, the dead body of the deceased was found lying in a pool of blood in the courtyard of the house of the deceased in the early morning. It is clear from the evidence of PW1 and PW2 that the deceased was found murdered within a short time after she was seen alive with the appellant. No explanation, much less, plausible explanation was given by the appellant as to what happened to the deceased after the deceased

was seen alive with the appellant by PW1 and PW2. Section 106 of Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

14. In this context, we may profitably utilise the legal principle embodied in Sec. 106 of the Evidence Act which reads as follows:-

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him”.

15. Referring to section 106 of the Evidence Act, the Supreme Court in State of **W.B. v. Mir Mohammed Omar and Others [(2000) 8 SCC 382]** held thus:-

“ The section is not intended to relieve the

prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which the reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference”.

16. The Supreme Court in Mir Mohammed's case (supra) further held that where the prosecution proved that the deceased was abducted with the object of murdering him and was taken out of the place where he was staying by the accused persons and, thereafter, the deceased could not be seen until his dead body was found after the incident, what had happened to the deceased so long he was with the accused persons was known to them alone and if they failed to give plausible explanation, the presumption can be drawn that the accused had murdered the

deceased.

17. The Supreme Court in *Shambhu Natyh Mehra v. State of Ajmer* (AIR 1956 SC 404) held thus:-

“This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are per-eminently or exceptionally within his knowledge”.

18. The Apex Court in **Shyamal Ghosh v State of W.B.** [2012 Crl. L.J. 3825] held that once last-seen theory comes into

play, the onus is on the accused to explain as to what happened to the deceased after they were together seen alive.

19. The Supreme Court in **Ajitsingh Harnamsingh Gujral v. State of Maharashtra [(2011) 14 SCC 401]** held that the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible.

20. The Apex Court in **State of Rajasthan v. Kashi Ram [(2006) 12 SCC 254]** in paragraph 24 held as follows:-

“The provisions of S.106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen

with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by S.106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. S. 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain”.

The Apex Court in Dasin Bai Alias Shanti Bai v. State of Chhattisgarh [(2015) 4 SCC 186] quoted the ratio in Kashiram's case (supra) with approval.

21. In this case, the medical evidence of PW9 coupled with Ext. P5 postmortem report would show that the deceased died due to the multiple injuries sustained by her. The further evidence of PW9 would show that the fatal injuries in Ext. P5 postmortem certificate could be caused with MO3 brick. PW1 and PW2 had seen the appellant catching hold of the neck of the deceased at about 1.30 a.m on 3-2-2007. However, they could not state as to what happened thereafter. The evidence of PW1 and PW2 would show that the deceased was last seen alive in the company of the appellant at about 1.30 a.m on 3-2-2007 and, thereafter, the dead body of the deceased was found lying in a pool of blood in the courtyard of the house of the deceased in in

the early morning on the same day. The evidence of PW2 would show that the appellant had taken the deceased out of sight of PW1 and PW2. The appellant had the duty to explain as to what happened after the deceased was last seen alive in the company of the appellant, as the said fact was within the knowledge of the appellant alone. However, the appellant did not give any explanation as to what happened after the deceased was seen alive in the company of the appellant. The non-explanation by the appellant provides the missing link in the chain of circumstances which makes the chain complete.

22. The appellant had taken the plea of alibi. If the accused takes the plea of alibi, it is his duty to prove the same. The learned counsel for the appellant has argued that the failure on the part of the appellant in proving the plea of alibi shall not be taken as a circumstance to fill up the lacuna, if any, in the

prosecution case, as it is the sole burden on the prosecution to prove its case independently, irrespective of the weakness, if any, in the defence. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence.

23. The Supreme Court in *Jumni and Others v. State of*

Haryana (2014 Crl.L.J. 1936) held thus:-

“It is no doubt true that when an alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her. However, the approach of the Court should not be such as to pick holes in the case of the accused person. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty”.

24. A three Judge Bench of the Apex Court in Sushil Sharma v. State (NCT of Delhi) [(2014) 4 SCC 317] held in paragraph 65 thus:-

“The evidence on record clearly establishes that the appellant has not been able to prove the defence of alibi. Adverse inference needs to be drawn from this fact. False defence of alibi indeed forms a vital link in the chain of circumstances”.

25. In this case, there is no material to indicate that the plea of alibi taken by the appellant is correct. The presence of the appellant at the place of occurrence has been convincingly proved by the evidence of PW1 and PW2. Thus, the evidence on record would prove that the plea of alibi taken by the appellant was false.

26. The evidence of PW1 would clearly show that the deceased Chellamma executed a Will in favour of PW1 in respect of three cents of property belonging to the deceased. Because of that reason, the appellant used to come to the house of the deceased and quarrel with her. PW12 stated that he seized the Will executed by the deceased in favour of PW1 as per Ext. P7 mahazar. Thereafter, the said Will was returned on kychit. Thus, the evidence of PW1 and PW12 coupled with Ext. P7 would clearly show that the deceased Chellamma executed a Will in

favour of PW1 bequeathing her property to PW1. This made the appellant to be inimical with his mother, which was the motive for the incident. Thus, the prosecution has established the motive as well.

27. The principle for basing a conviction on the edifice of circumstantial evidence has been indicated in a number of decisions of the Supreme Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible. The Supreme Court in Chengal Reddy v. State of A.P. [(1996) 10 SCC 193] held thus:-

“In a case based on circumstantial evidence, the

settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence”.

In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), the Supreme Court held that where a case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

28. The Apex Court in State of U.P. v. Ram Balak and Another [(2008) 15 SCC 551] held that where a case rests

squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The Supreme Court in *Birdhichand Sarda v. State of Maharashtra* [(1984) 4 SCC 116] held that the onus is on the prosecution to prove that the chain is complete and the infirmity of the lacuna in prosecution cannot be cured by false defence or plea.

29. In this case, the evidence PW1 and PW2 is that they had seen the appellant catching hold of the neck of the deceased at about 1.30 a.m on 3-2-2007. The evidence of P.W.1 and P.W.2 would further prove that the deceased Chellamma was last seen alive in the company of the appellant at about 1.30 a.m on 3-2-2007 and, thereafter, the dead body of the deceased was found lying in a pool of blood in the courtyard of the house of the

deceased in the early morning on the same day. The evidence of PW9 is that the death of deceased Chellamma was due to the multiple injuries sustained by her. The further evidence of PW9 is that the fatal injury Nos. 1 to 11 in Ext. P5 postmortem certificate could be caused with MO3 brick. MO3 brick was found to be stained with human blood as per Ext.P9 report of the Forensic Science Laboratory. Thus, it is proved that the deceased was found murdered within a short time after she was seen alive with the appellant. The appellant had the duty to explain as to what happened after the deceased was last seen alive in the company of the appellant, as the said fact was within the knowledge of the appellant alone. However, instead of giving explanation as to what happened to the deceased after the deceased was last seen alive in the company of the appellant, the appellant had taken false plea of alibi. No explanation, much less, plausible explanation was given by the appellant as to what

happened to the deceased after the deceased was last seen alive with the appellant. Since the appellant failed to explain as to what happened to the deceased after the deceased was last seen alive with the appellant, it must be held that the appellant failed to discharge the burden cast upon him by Sec. 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which proves his guilt beyond reasonable doubt. Thus, the proved circumstances in this case are consistent only with the hypothesis of the guilt of the appellant and totally inconsistent with his innocence.

30. The above discussion would lead to the irresistible conclusion that the prosecution has established beyond reasonable doubt that the appellant committed the murder of his mother Chellamma as alleged by the prosecution and in the said circumstances, we do not find any ground to interfere with the

verdict of guilty and conviction passed by the court below under Section 302 IPC. The sentence awarded by the court below also does not call for any interference by this court as the court below had given the lesser sentence for the offence under Section 302 IPC.

In the result, the appeal stands dismissed.

**K.T.SANKARAN
JUDGE**

**B.SUDHEENDRA KUMAR
JUDGE**

h/cr/26/5.