

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

CRL.A.No.342 of 2011

AGAINST THE JUDGMENT IN SC 308/2010 of ADDL. SESSIONS COURT (ADHOC)
III (FAST TRACK COURT-III), PALAKKAD DATED 29-10-2010

APPELLANT:

RAMAN, S/O CHATHAN, CONVICT NO.8922,
CENTRAL PRISON, KANNUR.

BY ADV. BEENA. V (STATE BRIEF)

RESPONDENT:

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

BY ADV. PUBLIC PROSECUTOR SMT.PRAICY JOSEPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K. T. SANKARAN
&
BABU MATHEW P. JOSEPH, JJ.**

Crl. Appeal No.342 of 2011

Dated this the 23rd day of January, 2015

JUDGMENT

K. T. Sankaran, J.

The appellant, the accused in Sessions Case No.308 of 2010 on the file of the Court of Session, Palakkad, was found guilty for the offence under Section 302 of the IPC and he was sentenced to undergo imprisonment for life and to pay a fine of ₹ 10,000/- and, in default of payment of fine, to undergo rigorous imprisonment for a period of one year. The conviction and sentence are under challenge in this appeal.

2. The prosecution case is that on the night intervening 20/11/2008 and 21/11/2008, the accused inflicted injuries on various parts of the body of his wife, Kunhamma, with sticks and due to the combined effect of the multiple injuries sustained by her, she died. The prosecution alleged that the accused suspected that his wife had illicit relationship with

other persons and that was the motive alleged by the prosecution. PW1, a neighbour of the accused furnished Ext.P1 First Information Statement before the police, which was registered by PW5, the Sub Inspector of Police, Sreekrishnapuram, as per Ext.P1(a) FIR. PW8, the Circle Inspector of Police, investigated the case and laid the charge. On behalf of the prosecution, PWs.1 to 9 were examined and Exts.P1 to P10 were marked and MOs.1 to 3 were identified. Ext.D1 Ration Card was marked on the side of the defence.

3. PW1, Subramanian, is a neighbour of the accused. He stated in evidence that at about 4.00 a.m. on the date of the incident the accused came to his house and woke him up. The accused stated to PW1 that he had beaten his wife with a stick and that it is likely that he would have to go to jail. PW1 stated that he enquired with the accused as to whether the injured died as a result of the injuries. The accused replied that though water was given to Kunhamma, she did not drink the same. After sometime, PW1 went to the house

of the accused and he saw Kunhamma lying dead in the house. PW1 testified that the accused had suspicion about the chastity of Kunhamma. He also stated that the accused used to manhandle his wife after coming drunk. Kunhamma was in the house of his daughter and only a few days back, she came to the house of the accused.

4. PW2, Anitha, is a daughter of the accused. She is residing separately. She stated that there used to be frequent quarrels between the accused and Kunhamma and therefore, Kunhamma used to come and stay in the house of PW2 and her sister. She stated that the accused used to manhandle her mother after consuming alcohol. One week before the date of the incident, the deceased went to the house of the accused. The witness also stated that in the house where the incident took place, only her mother and father were residing and none else was residing. According to PW2, the accused had suspicion about the chastity of his wife and that was the reason why he used to harass and manhandle the deceased.

5. PW3, Krishnakumar @ Kunhikkannan, is also a neighbour of the accused. At about 8.00 p.m. on the night of the incident, he had passed through the pathway lying behind the house of the accused and at that time, he heard the sound of a quarrel between the accused and the deceased. Before the witness went to sleep, the accused came near the house of the witness and stated that the deceased scolded him and at that time, he had given two blows on her.

6. PW9, the lecturer in Forensic Medicine at the Medical College, Thrissur, conducted the post-mortem on the body of the deceased and issued Ext.P10 Post-mortem Certificate. The ante-mortem injuries noted in the Post-mortem Report are the following:-

“Injuries (Antemortem) :

1. Lacerated wound 6 x 1 x 0.8 cm., oblique on left side of head, front inner end 7 cm outer to midline and 10 cm above eyebrow.
2. Lacerated wound 2 x 0.7 x 0.5 cm, oblique on left side of forehead, lower inner end 3

cm above eyebrow and 4 cm outer to midline.

On dissection there was contusion of scalp underneath over an area 24 x 16 x 1 cm involving frontal, parietal, temporal regions on the left side. A fissured fracture, 4 cm long, seen on outer table of squamous part of left temporal bone. A fissured fracture, 4 cm seen in left anterior cranial fossa floor. Brain showed thin subdural and subarachnoid haemorrhage over the cerebral hemispheres.

3. Lacerated wound 1.5 x 0.5 x 0.8 cm, vertical on left temple region, upper end at outer end of eyebrow.
4. Lacerated wound 2.5 x 1 x 0.5 cm, oblique, on right side of forehead, upper inner end 3 cm outer to midline and 4 cm above eyebrow.
5. Lacerated wound, 1 x 0.5 x 0.2 cm on right eyebrow 2.5 cm below injury No.4.
6. Multiple abrasions over an area 11 x 5 cm on forehead across midline, varying in size 0.5 x 0.5 cm to 1.5 x 1 cm.
7. Multiple abrasions over an area 9 x 4 cm on right side of face, varying in size 1 x 1 cm to 2.5 x 1.5 cm.
8. Lacerated wound 1.5 x 1 cm on left side of upper lip, through and through underneath there was fracture of left maxilla with

fracture separation of left central and lateral incisors.

9. Crushed lacerated wound 5 x 3.5 cm of lower lip across midline, there was fracture separation of lower jaw, right central and lateral incisors.
10. Contusion 9 x 6 x 1 cm involving upper lip, lower lip and chin (around mouth).
11. Multiple linear oblique abrasions, irregularly arranged over an area 9 x 6 cm on right side of front of chest, lower inner end 3 cm outer to midline and 9 cm below collar bone.
12. Multiple linear oblique abrasions, irregularly arranged, over an area 13 x 7 cm on left side of front of chest, upper margin 3 cm outer to midline and 9 cm below collarbone, varying in size 1 x 0.1 cm to 4 x 0.1 cm.
13. Multiple linear oblique abrasions, irregularly arranged, over an area 9 x 6 cm on left side of front of abdomen 5 cm below costal margin.
14. Skin contusion, 8 x 4 cm on front and outer aspect of right arm, 15 cm below elbow.
15. Multiple linear oblique abrasions, irregularly arranged, over an area 4 x 3.5 cm on outer aspect of left shoulder.

16. Contusion, 16 x 7 x 1.5 cm on back of right forearm and wrist, upper margin, 10 cm below elbow, there was fracture of lower end of radius and its carpal bones.
17. Multiple linear abrasions, irregularly arranged, over an area 7 x 5 cm on back of middle of right forearm.
18. Contusion 26 x 21 x 5 cm on front and outer aspect of right thigh, lower margin 10 cm above knee.
19. Multiple linear abrasions, irregularly arranged over an area 38 x 16 cm on front and outer aspect of right thigh and knee varying in size 2 x 0.1 cm to 7 x 0.3 cm.
20. Contusion 15 x 9 x 2 cm on front of right knee.
21. Two abrasions, 3.5 x 2 cm and 1.5 x 1 cm on front of right knee and upper part of leg, 2 cm apart.
22. Lacerated wound, 1.5 x 0.5 x 0.5 cm on inner aspect of right foot, 7 cm above tip of big toe.
23. Multiple linear abrasions, irregularly arranged, over an area 30 x 11 cm on front and inner aspect of right leg, varying in size 3 x 0.1 cm to 8 x 0.2 cm.
24. Contusion, 34 x 19 x 4 cm on front, outer and inner aspect of left leg and knee.

25. Contusion 42 x 30 x 5 cm on front, outer and inner aspect of left thigh.
26. Multiple linear abrasions, irregularly arranged, over an area 35 x 15 cm on front and both sides of left leg, varying in size 0.3 x 0.1 cm to 7 x 0.2 cm.
27. Multiple linear abrasions, irregularly arranged, over an area 30 x 8 cm on front and inner aspect of left leg, varying in size 0.5 x 0.1 cm to 8 x 0.2 cm.
28. Contusion, 60 x 18 x 4 cm on front and outer aspect of left arm and elbow, back aspect of left forearm and hand, there was fracture of 3rd and 4th metacarpals of hand.
29. Two linear contusions each measuring 4 x 0.3 cm with a sparing area of width 1.5 cm in between, obliquely placed on left side of back of chest, lower inner and 11 cm outer to midline and 23 cm below shoulder.
30. Two linear contusions each measuring 8 x 0.3 cm obliquely placed with a sparing area of width 1.5 cm in between on outer aspect of left side of chest, 8 cm below armpit. Underneath there was fracture of 7th and 8th ribs with blood infiltration to the surrounding tissues.
31. On dissection, there was contusion of strap muscles over an area 4 x 3 cm in front of lower part of thyroid and cricoid cartilage. Contusion seen on upper part of thyroid gland. Underneath, there was

fracture of cricoid cartilage on front aspect, and left greater horn of thyroid cartilage.”

The opinion as to the cause of death is shown in Ext.P10

Post-mortem Certificate as follows:-

“THE DECEASED DIED DUE TO COMBINED EFFECTS OF MULTIPLE INJURIES SUSTAINED (INJURY NOS.1, 2, 8, 9, 10, 16, 18, 20, 24, 25, 28, 30, 31).”

PW1 stated that the injuries found on the body of the deceased could be caused by M.O.1 (stem of a coconut leaf) as stated by the prosecution.

7. There is no eye witness to the incident. The prosecution relies on the circumstantial evidence. The court below held that the prosecution was not able to establish that the accused had suspected that the deceased had illicit relationship with other persons. That means, the motive alleged by the prosecution was not proved as held by the court below. There is nothing in evidence to indicate that the deceased had any illicit relationship with any other person and there was any reasonable basis for the accused to believe in such illicit relationship. Except the statement

made by the witnesses that the accused had such a suspicion, the court below was not inclined to rely on that part of the evidence to hold that the accused had suspicion about the chastity of the deceased. When a case is based on circumstantial evidence, motive alleged by the prosecution is of great importance.

8. According to the prosecution, MOs.1 to 3 sticks were recovered as per Ext.P3 Mahazar prepared by PW8 after 6.00 p.m. on 21/11/2008. According to the prosecution, that was based on the disclosure statement made by the accused. It is to be noted that in Ext.P4 Scene Mahazar prepared at 3.30 p.m. on 21/11/2008, it is mentioned that MOs.1 and 2 were seized from the Scene of Occurrence. The court below held that the case of the prosecution that MOs.1 to 3 sticks were seized as per Ext.P3 Seizure Mahazar cannot be accepted as true. However, the court below relied on the evidence of PW8 and Ext.P4 Scene Mahazar that MOs.1 and 2 were seized from a room in the house of the accused. The accused was arrested at 6.00 p.m on 21/11/2008.

9. The court below relied on the evidence of PWs.1 to 3. On a careful consideration of the evidence of PWs.1 to 3, we also do not find any ground to disbelieve them.

10. From the medical evidence, it is clear that the deceased died due to the combined effect of the multiple injuries sustained by her. It is established in the case that the accused and the deceased were the only inmates in the house and the neighbours had seen them together in the house. The accused went to the house of PW1 in the early hours and told him that he had beaten his wife. PW1 went to the house of the accused and saw the dead body of the deceased in the house. The evidence of PWs.1, 2 and 3 would establish that the accused and the deceased used to quarrel with each other. The accused stated to PW3 also that he had beaten the deceased on the night in question. It has come out in evidence that the accused used to consume alcohol and quarrel with his wife and manhandle her. Human blood was found on MOs.1 and 3 sticks. The accused did not offer any explanation as to how his wife sustained the fatal

injuries. The accused and the deceased were the only persons residing in the house. There is no case for the accused that he was not available in the house on the night in question. The accused was bound to speak and explain as to how his wife sustained the fatal injuries. He did not say anything in the statement given by him under Section 313 of the Code of Criminal Procedure. There is also no suggestion in the cross examination of the prosecution witnesses which would explain the circumstance against the accused. The court below on the basis of these circumstances came to the conclusion that the prosecution established all the aforementioned circumstances. However, as stated earlier, the court below held that the prosecution failed to prove the motive alleged in the case.

11. The learned counsel for the appellant submitted that the evidence of PWs.1 to 3 cannot be believed. She submitted that the behaviour of PW1 is suspicious since he did not go to the house of the accused on the information given by the accused that the deceased did not take water

and the accused had beaten her. The learned counsel also submitted that the recovery of material objects is doubtful and many blood stained articles alleged to have been seized by the police were not sent for Chemical Analysis. The learned counsel also submitted that even assuming that the accused has committed any offence, it would not attract Section 302 of the IPC and at best, the offence would be one under the second part of 304 IPC.

12. She also relied on the decision of the Supreme Court in **Kusha Laxman Waghmare v. State of Maharashtra (AIR 2014 SC 3839)**.

13. As stated earlier, there is nothing to disbelieve the evidence of PWs.1 to 3. We do not also think that the conduct and behaviour of PW1 was suspicious in the facts and circumstances. MOs.1 to 3 were seized as per Ext.P4 Scene Mahazar. As rightly held by the court below, we do not think that MOs.1 and 3 were recovered as per Ext.P3 Mahazar. The prosecution case to that extent is not believable.

14. In **Kusha Laxman Waghmare v. State of Maharashtra (AIR 2014 SC 3839)**, the Supreme Court held thus:-

“After giving our anxious consideration in the matter and after analysing the entire evidence, we are of the view that it is not a fit case where conviction could be sustained under Section 302, IPC. The weapon used by the appellant is a wooden stick and as per the prosecution case, the deceased was severely beaten by the said stick. As a result thereof, she died. There is no cogent evidence to show that the appellant had beaten the deceased with an intention to cause her death. In such circumstances, the conviction of the appellant under Section 304, Part-II, IPC will be just and proper.”

15. In **Anil v. State of Kerala (2014 (4) KLT 489)**, a Division Bench of this Court held thus:

“But, the nature of the transaction and all attendant circumstances would clearly show that the alleged acts, though could have been done with the knowledge that they are likely to cause death, were evidently done without any intention to cause death or to cause such bodily injury as is likely to cause death. Under such circumstances, we are of the view that the legal evidence on record proves only that the accused had committed the offence punishable under Part-II of S. 304 IPC. The conviction and sentence are, therefore, to be altered accordingly.”

Ext.P4 Scene Mahazar shows that one crow bar and a hammer were found in the house of the accused. There is no case that the crow bar or hammer were used by the accused to beat his wife. On the other hand, the specific case of the prosecution is that the accused inflicted injuries on the deceased with M.O.1 and M.O.2. When PW9 was examined, he was asked whether the injuries could be caused with M.O.1 stick. It is also alleged that M.O.3 stem of a coconut leaf was also used for inflicting the injuries. From the facts and circumstances, it is not discernible that the injuries were inflicted with an intention to cause the death of the victim or to cause such bodily injury as is likely to cause death. However, it is clear that the acts were done by the accused with the knowledge that it is likely to cause death of the victim. We are of the view that the offence under Section 302 IPC is not attracted in the case and only an offence under Section 304 Part-II IPC is made out.

16. Accordingly, we find that the appellant/accused is guilty of the offence under Section 304 Part II of the IPC and

he is sentenced to undergo rigorous imprisonment for a period of eight years. The conviction and sentence imposed by the court below on the appellant/accused under Section 302 IPC are set aside. It is seen from the judgment of the court below that the appellant/accused was in judicial custody from 21/11/2008 to the date of judgment (29/10/2010). The said period will be set off from the term of sentence.

This appeal is allowed in part as indicated above.

Sd/-
K. T. SANKARAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

