

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 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

CRL.A.No. 2234 of 2010 (G)

AGAINST THE JUDGMENT IN SC NO.1696/2007 ON THE FILE OF THE COURT OF THE ADDITIONAL SESSIONS JUDGE I, THIRUVANANTHAPURAM DATED 08-09-2010.

APPELLANT/ACCUSED:

DIVAKARAN KANI, S/O. NANAN KANI,
ANANDHU BHAVAN, MUTHUKANI, ANADU MURI
THENNOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT.

BY ADVS. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR
SRI.K.S.PRAVEEN

RESPONDENT/COMPLAINANT:

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

PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

Crl.Appeal No.2234 of 2010 (G)

Dated this the 30th day of July, 2015

JUDGMENT

K.T.Sankaran, J.

The appellant challenges the conviction and sentence in S.C.No.1696 of 2007 on the file of the Court of the Additional Sessions Judge I, Thiruvananthapuram, whereunder he was found guilty for the offence under Section 302 of the Indian Penal Code and he was sentenced to undergo imprisonment for life and to pay a fine of ₹25,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two years.

2. The prosecution case is that on 23.2.2006 at about 3 p.m., the appellant/accused committed the murder of his neighbour Saseendran Kani by inflicting stab injuries at the vital parts of his body, at the pathway lying in between the house of the accused and

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the deceased situated in Muthukani thadam, Mullachal in Thennoor Village, an interior place in Thiruvananthapuram District.

3. The wife of the deceased lodged Ext.P1 First Information Statement to PW14, the Sub Inspector of Police, who registered Ext.P1(a) First Information Report. The investigation of the case was conducted by PW16. The inquest was conducted on 24.2.2006 by PW16. The postmortem examination of the body was conducted by PW13, who issued Ext.P8 postmortem certificate. On the basis of Ext.P13 disclosure statement made by the accused, MO1 knife, with which the offence was allegedly committed, was recovered from a firewood shed in the house of the brother-in-law of the accused, as led by the accused to that place and as shown and taken by him. MO2 Kaily and MO6 underwear of the deceased as well as MO3 and MO4 shirt and lunky of the accused were seized. The soil soaked in blood was also collected from the scene of occurrence. These items were sent for chemical examination. The accused was arrested on 25.2.2006 and, as stated above, the prosecution alleged that he made Ext.P13 disclosure statement, on the basis of which MO1 knife

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was recovered from the firewood shed near the house of the brother-in-law of the accused.

4. Before the court below, on the side of the prosecution, PW1 to PW16 were examined and Exts.P1 to P19 and X1 were marked and MO1 to MO8 were identified. On behalf of the accused, DW1 and DW2 were examined.

5. PW1 is the wife of the deceased. Her evidence would disclose that herself, her husband and children were residing in the house. The sister of the deceased (PW2), her husband (DW2) and their child were also residing in that house. On the date of incident, two Police Constables came to their house to enquire into MO5 complaint made by the wife of the accused making allegations against the deceased. The Police Constables directed the deceased to report before the police station on the next day. After the Police Constables left, the deceased went to Mullachal, a nearby place. To go to Mullachal, the deceased had to pass by the place where the house of the accused is situated. PW1 heard the cry of the

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deceased by calling her name. PW1 rushed to the place and found her husband having sustained bleeding injuries. PW1 was told by her husband that he was stabbed by Divakaran Kani (accused). PW1 saw the accused with a knife. Though PW1 brought and gave water to her husband, he could not take it. Immediately, PW1 went to call for a jeep. On her way, she met the Police Constables who came to her house earlier and requested them to get a jeep. They arranged a jeep. The injured (husband of PW1) was immediately taken to the Medical College Hospital by his sister (PW2) and her husband (DW2) in the jeep belonging to PW5. The doctor who examined the injured declared that he was brought dead. PW1 lodged the First Information Statement as mentioned above.

6. PW2, the sister of the deceased, also narrated the incident as narrated by PW1. She also saw the accused with a knife at the scene of occurrence. PW3 is one of the Police Constables who went to the house of the deceased on the date of incident in connection with an enquiry relating to MO5 complaint. PW3 also stated that PW1 met him and requested to arrange a vehicle for

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taking her husband to hospital. PW1 told PW3 that her husband was stabbed by the accused. PW3 and the other Police Constable went to the place of incident and saw the injured lying down having sustained grievous injuries. He was unconscious. A jeep was arranged and the injured was taken to the hospital. PW4, a Forest Guard, stated that while he and another Forest Guard went to the place of incident, he saw PW1 narrating the incident to PW3. PW4 gave all help to arrange a jeep for taking the injured to the hospital.

7. PW6, the wife of the accused was examined to prove MO5. Though she denied having submitted MO5 complaint, she deposed that the Police Constables made enquiries at the house of the deceased in connection with her complaint.

8. PW13, the Assistant Professor of Forensic Medicine, Medical College Hospital, Thiruvananthapuram, who conducted the postmortem examination and issued Ext.P8 postmortem certificate deposed that the death of the deceased was due to penetrating injuries sustained to chest. PW13 stated that injury No.1 was

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sufficient in the ordinary course of nature to cause death. Injury

No.1 noted in Ext.P8 postmortem certificate is the following:

“INJURIES (ANTEMORTEM):

1. Incised penetrating wound 4.2x1.3 cm, oblique on the left side of chest, its upper inner sharply cut end was 8.5 cm below the middle of armpit, the other end was blunt. It entered into the left chest cavity through the fifth intercostal space, and terminated in the chamber of left ventricle of heart (4x1.5x1.5 cm) through the outer wall 3.5 cm above the apex and cutting through the lower border of left lung (2.5x1.5x2cm) and pericardium. The wound was directed downwards, forwards and inwards for a total minimum depth of 6.9 cm. Pericardial cavity was smeared with blood. Left chest cavity contained 1350 ml of fluid blood and 750 gms of blood clots. The lung was partially collapsed.”

PW13 stated that injury Nos.1, 2, 10, 11 and 14 were possible with a sharp edged weapon like MO1 and that injury No.13 was possible with the tip of MO1. In the cross-examination of PW13, it was suggested that the injured could not call out his wife after sustaining

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the grievous injuries. PW13 stated that it was possible and the injured could speak and scream after sustaining those injuries.

9. DW1 is the brother-in-law of the deceased, that is, the husband of PW2. DW1 stated that he was not living with the deceased in the same house and that at no point of time he had such a residence in the house of the deceased. DW1 stated that the deceased was taken to the hospital by him and his wife (PW2) and the doctor at the Medical College Hospital asked him to come on the next day. According to DW1, the deceased was lying at a place called Mullachal and, on getting information, he went there and brought the dead body to the house of PW1. He also stated that at that time the deceased was dead. Then why did he take the dead body to the Medical College Hospital would be a mystery. In the cross-examination of DW1, it was suggested that he had abandoned PW2 and married another woman. The Court put questions to DW1 to which he stated that the deceased was lying in a bushy area, but he could not explain why a dead person was taken to the Medical College Hospital. He had no answer to that question. He also

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stated to the Court question that he did not inform the police about the incident. It is strange to note that DW1 stated that the injuries sustained by the deceased were one week old, which is quite contrary to the medical evidence available in the case and the evidence tendered by PW13.

10. DW2 is the brother-in-law of the accused. He was examined to show that the recovery of MO1 knife was not a true story as alleged by the prosecution. He stated that the police came to his house on the next day of the incident and enquired about the knife and the firewood shed.

11. The court below believed the evidence of the prosecution witnesses, especially PW1 and PW2 who are the eye witnesses. The court below did not rely on the evidence of DW1 and DW2.

12. The injuries noted in Ext.P8 postmortem certificate and the evidence tendered by PW13 would unmistakably show that the injuries sustained by Saseendran Kani were fatal and his death was

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as a result of those injuries. The medical evidence would also disclose that the injuries sustained by the deceased could be caused by MO1 knife. Ext.P18 FSL report shows that stains of human blood belonging to 'O' group were found on MO1 to MO4 and MO6 and MO7. The postmortem certificate would indicate that the blood group of the deceased was 'O' positive. The evidence of PW16 investigating officer and that of PW9, the witness to Ext.P4 seizure mahazar, would show that MO1 knife was recovered as alleged by the prosecution pursuant to Ext.P13 disclosure statement made by the accused. The evidence of DW2 does not inspire confidence of the Court. There is nothing to disbelieve the evidence adduced by the prosecution with respect to the recovery of MO1 knife as alleged. There is nothing to disbelieve PW1 and PW2. Even though the husband of PW2 was cited as the defence witness (DW2), PW2 clearly stated in evidence that she saw the accused with a knife at the scene of occurrence where the deceased was lying after sustaining grievous injuries and that PW1 was also there at that time. The evidence of PW3 and PW4 would corroborate the evidence of PW1 that the deceased sustained injuries at the place of

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occurrence as alleged by the prosecution and that the injured was taken to the Medical College Hospital, as stated by PW1 and PW2. The evidence of PW3 and PW4 would improbabilise the story put forward by DW2. There is no reason why PW3 and PW4, a Police Constable and a Forest Guard should make a false story with respect to a murder. The evidence of PW6 who is none other than the wife of the accused would show that enquiries were made by the police about her complaint, at the residence of the deceased. The evidence of PW1 and PW2 would clearly indicate that two Police Constables, namely, PW3 and another, came to the house of the deceased and directed him to go to the police station on the next day. The evidence of PW3 and PW6 would also improbabilise the story put forward by DW1. The medical evidence and the evidence of PW13 would also improbabilise the evidence of DW1.

13. There is nothing to disbelieve the evidence of PW1 that her husband told her that he was stabbed by the accused. PW1 saw the accused with a knife at the place of incident. PW2 also saw the accused with a knife. The statement made by the deceased to

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PW1 could be taken as a dying declaration, as rightly done by the court below.

14. The clinching evidence available in the case would prove the prosecution case and the court below was justified in arriving at the conclusion that the appellant is guilty of the offence under Section 302 IPC. We do not find any ground to interfere with the conclusion. As regards sentence, the court below has imposed a sentence of imprisonment for life for the offence under Section 302 IPC and this cannot be faulted. However, the default sentence in default of payment of fine is excessive, in the facts and circumstances of the case. Therefore, we are inclined to reduce the default sentence to simple imprisonment for a period of six months.

Accordingly, the Criminal Appeal is partly allowed. The conviction under Section 302 IPC is sustained and the sentence of imprisonment for life is confirmed. The imposition of a fine of

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₹25,000/- is confirmed, but the default sentence is altered and reduced to simple imprisonment for six months.

K.T.SANKARAN
Judge

B.SUDHEENDRA KUMAR
Judge

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