

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

Crl.Rev.Pet.No. 2231 of 2012 ()

AGAINST THE ORDER IN C.M.P.NO.3490/2012 IN C.P.NO.18/2012 IN CBCID CRIME
NO.108/CR/KLM/08 IN CRIME NO.313/2008 OF CHAVARA POLICE STATION

REVISION PETITIONER(S)/PETITIONER:

SUDHARMA
W/O.THAMARAKSHAPANICKER, LEKSHMI SADANAM,
NEAR MUKKU THODU SCHOOL,
CHAVARA VILLAGE, KARUNAGAPPALLY TALUK

BY ADVS.SRI.SHABU SREEDHARAN
SRI.AVANEESH KOYIKKARA
SRI.TONY THOMAS (INCHIPARAMBIL)

RESPONDENT(S)/RESPONDENTS:

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

ADDL.2ND RESPONDENT:

ADDL.R2. MUHAMMED ANZAR, S/O.AZEEZ KUTTY, HAJIRA MANZIL,
NORTH OF MUKKUTHODU UPS, PALAKKADAVU WARD, CHAVARA
VILLAGE, CHAVARA P.O., KOLLAM -691 001

IS IMPEADED AS ADDL.2ND RESPONDENT AS PER ORDER DATED 08.07.2014 IN
CRL.M.A.NO.4181/2014 IN CRL.R.P.NO.2231/2012.

ADDL.R2 BY ADV.SRI..RAJA VIJAYARAGHAVAN
R1 BY DIRECTOR GENERAL OF PROSECUTIONS SHRI T.ASAF ALI (B/O)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
18.12.2014, THE COURT ON 06-01-2015 PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE 1 THE TRUE COPY OF THE FIR IN CRIME NO.318/08 OF CHAVARA
POLICESTATION

ANNEXURE 2 THE TRUE COPY OF THE POST-MORTEM CERTIFICATE

ANNEXURE 3 THE TRUE COPY OF THE REPORT DATED 20.05.2008

ANNEXURE 4 THE TRUE COPY OF THE PETITION BEFORE THE HON'BLE CHIEF MINISTER

ANNEXURE 5 THE TRUE COPY OF THE REPRESENTATION BEFORE THE I.G. OF POLICE,
SOUTHERN RANGE

ANNEXURE 6 THE TRUE COPY OF THE STATEMENT DATED 18.11.2008

ANNEXURE 7 THE TRUE COPY OF THE STATEMENT DATED 23.9.2010

ANNEXURE 8 THE TRUE COPY OF JUDGMENT IN WP(C) NO.30909/2008 DATED 3.8.2012

ANNEXURE 9 THE TRUE COPY OF JUDGMENT IN WA NO.45/2012 DATED 2.1.2012

ANNEXURE 10 THE TRUE COPY OF THE CHARGE SHEET

ANNEXURE 11 THE TRUE COPY OF THE STATEMENT GIVEN BY GW-26

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

A.HARIPRASAD, J.

Crl.R.P. No.2231 of 2012

Dated this the 6th day of January, 2015.

ORDER

The order impugned in this revision is passed by the learned Judicial First Class Magistrate, Karunagappally in C.M.P.No.3490 of 2012 in C.P.No.18 of 2012.

2. Facts leading to registration of the crime, briefly stated, are as follows: Petitioner is the mother of deceased Anil Kumar. Anil Kumar and Noufaljan, a friend of him, went to Kattappana for attending an examination conducted by the Public Service Commission on 17.05.2008. They belonged to Chavara. After taking the exam, they returned to their native place. When they reached in front of house of the accused at about 11.30 in the night, Anil Kumar received a missed call on his mobile phone and thereafter, he asked his friend to proceed. At about 11.45 hours in the night, the deceased went to the side of the kitchen in accused's house and at that time wife of the accused, who was having illicit relationship with the deceased, was waiting there. When both of them were chatting from kitchen, the accused, who had been sleeping, woke up and found the deceased in the kitchen in a suspicious circumstance. Immediately he pulled out a kitchen knife and attacked the deceased. The deceased

sustained injuries on hands. Perturbed and petrified by the fierce reaction of the accused, the deceased ran out for safety and the accused chased him with the knife. Prosecution case is that the deceased ran towards a canal, where drudging and other construction works were going on. It is the prosecution case that the deceased jumped into the canal for safety, but he drowned. The postmortem report shows that the deceased sustained injuries on forehead and he died due to drowning. Further prosecution case is that when the deceased was running in a panicky mood, he must have hit against the kitchen wall and also on the concrete slabs and construction materials stacked near the canal. Thereby he must have sustained a head injury. The fact remains that his body was found on 19.05.2008 near Dhalavapuram old bridge, Chavara. It was floating in the lake. After investigation, Police filed a final report alleging that the accused in the case has committed an offence under Sections 324 and 304 of the Indian Penal Code (in short, "IPC"). Grievance of the petitioner is that the investigation was not proper and her son was murdered by a gang, including the accused and other persons. Petitioner also apprehends that in execution of a conspiracy hatched by the accused, his wife and others, the deceased might have been called to their house during odd hours and he might have been killed from the house. Thereafter, the body might have been put in the lake. The petitioner strongly believes that the investigation did not proceed in the correct line. Not only that, it is alleged that the

Police was attempting to save the accused and others involved in the crime by avoiding some of the real culprits and charging the accused with minor offences.

3. Heard Shri Shabu Sreedharan, learned counsel for the petitioner and Shri T.Asaf Ali, learned Director General of Prosecution (DGP). Shri Raja Vijayaraghavan, learned counsel for the accused is also heard.

4. I have carefully perused the case diary placed before me and also the statement submitted by the Detective Inspector, Crime Branch.

5. The local Police initially registered a case under Section 174 of the Code of Criminal Procedure (in short, "Cr.P.C.") on finding the body of the deceased afloat in Chavara lake. On seeing the marks of violence on the body, the Police started investigation. Initially there was no proof as to how the death took place. It is seen from the case diary that not only the petitioner, but also the relatives and neighbours of the deceased had made many complaints to Ministers and Senior Police Officers. Learned DGP submitted that they even moved this Court for a CBI investigation in this matter. This Court as per judgment dated 03.08.2011 in W.P.(C) No.30909 of 2008 considered the request of the petitioner for a CBI investigation in the matter. After finding that the Crime Branch had investigated the case and the final report was ready to be filed, this Court disposed of the writ petition. Aggrieved by that judgment, the petitioner took the matter in a writ

appeal before the Division Bench of this Court as W.A.No.45 of 2012. On finding that the charge was filed on 30.12.2011, the writ appeal was disposed on 02.01.2012. Learned DGP, therefore, contended that this Court had scrutinised the entire materials in the case diary two times and no irregularity or lack of commitment in the investigation was noticed. Petitioner's apprehension that her son was murdered by more than one person at the behest of the accused and his wife is not borne out by any evidence gathered in thorough investigation, contended by the learned DGP.

6. Learned counsel for the petitioner submitted that one person by name Shaju, who is hailing from CW3's place, was not properly questioned. This contention is denied by the learned DGP and submitted that his statement is in the case diary file and it does not reveal anything more than what has been found out in the investigation.

7. Another contention raised by the learned counsel for the petitioner is that the deceased was a strong and hefty man and he could not have been overpowered by the accused alone. In other words, without the junction of more than one person, it would not have been possible for the accused to cause harm to the deceased. In answer to this contention, learned DGP submitted that in the investigation, it was revealed that the deceased was found along with wife of the accused in the kitchen almost at midnight and as that itself was a provoking sight, the accused took out a

kitchen knife and attacked the deceased suddenly. There were traces of blood seen in the kitchen. It is also contended by the learned DGP that even if the deceased was a strong man, in a predicament of the said nature, in which he was placed, the circumstances would have only prompted him to withdraw from the scene as quickly as possible, because the attack from the accused must have been an unexpected one. It is also the definite case of the prosecution that all the possibilities of sustaining fatal injuries by the deceased from the kitchen, except the ones inflicted by knife, were ruled out in the investigation.

8. Another contention raised by the petitioner is that the postmortem certificate reveals a contusion on the forehead of the deceased, which caused damage to brain. The petitioner apprehends that somebody must have struck a blow on the forehead of deceased and he must have become unconscious on receiving the blow. Thereafter, more persons than one must have taken the body of the deceased to the lake and put it at a distant place. On going through the case diary, I find no material suggesting such a possibility. Learned DGP contended that the canal into which the deceased had jumped was having flow towards the lake and he might have been drifted to the lake. That is the only explanation revealed in the investigation for finding body in the lake. It is also mentioned in the case diary that the thorough search for his personal belongings like chain, mobile phone, etc. ended in vain.

9. On a careful scrutiny of the entire case diary and the report submitted by the Detective Inspector, it can be seen that the date wise progress of the investigation has been narrated. The court below declined the prayer of the petitioner after going through the materials in the case diary produced before the court. The case diary reveals that Senior Officers like Superintendent of Police, Additional DGP (Crimes), et. al. have scrutinised the file and appropriate directions were given to the investigating officers. That apart, more than five investigating officers have investigated the case over a reasonably long period of time. Contention of the petitioner that all the officers did not conduct the investigation properly cannot be accepted on going through the materials in the case diary.

10. Power of the Police to conduct further investigation after laying a final report is recognised in Section 173(8) Cr.P.C. It is a settled proposition of law that even after the court took cognisance of any offence on the strength of the Police report first submitted, it is open to the Police to conduct further investigation and they can file a supplementary charge sheet. But, it is important to note that the petitioner in this case has to establish cogent reasons for substantiating her plea that this is a case in which further investigation is required. Going by the averments in the petition and materials in the case diary, I am of the view that all the possible witnesses have been questioned by the investigating officers. Considering the nature of allegations, it may not be possible to visualise

that any other person, apart from the wife of the accused, might have seen the incident directly. Even her statement cannot be said to be fully supportive to the accused. It is to be borne in mind that the power of the trial court to summon material witnesses or examine a person present in court under Section 311 Cr.P.C. and/or to proceed against other persons appearing to be guilty of the offence under Section 319 Cr.P.C. are not fettered by declining the prayer for further investigation. That apart, if in the course of trial, materials come out revealing any other kind of offence or revealing the complicity of accused in other offences, the court is not powerless to alter the charge. Viewing from all the angles possible, I am of the view that the order passed by the court below cannot be said to be legally or factually faulty. Therefore, it deserves to be confirmed.

In the result, the revision petition is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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