IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 08TH DAY OF DECEMBER 2020 / 17TH AGRAHAYANA, 1942

CRL.A.No.470 OF 2005

AGAINST THE JUDGMENT IN SC 757/2001 DATED 01-03-2005 OF II ADDITIONAL DISTRICT COURT & ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOLLAM

APPELLANT/ACCUSED:

SREENIVASAN, S/O. PURUSHOTHAMAN,
PERIPARA KIZHAKKATHIL VEEDU,
EDACODE MURI,, EZHUKONE VILLAGE.

BY ADVS.
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

RESPONDENT/COMPLAINANT:

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

OTHER PRESENT:

R1 BY SRI.P.K.BABU, SR.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-11-2020, THE COURT ON 08-12-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 8th day of December 2020

The appellant is the accused in S.C. No. 757/2001 on the file of the II Additional Sessions Judge, Kollam. The above case is charge sheeted against the appellant alleging offences punishable under Sections 341, 323 & 304 IPC.

2. The prosecution case in short is that the accused found the deceased Sudhakaran, looking towards his house on 19.03.1997 at 11 a.m. This provoked the accused. Then the accused with the intention of causing the death of Sudhakaran stamped him on his lower and upper portion of his abdomen and hit him with a dangerous stone on his right ear . As a result of the injuries sustained to Sudhakaran on his abdomen, he died at 2.40 p.m, on 21.3.1997, at Medical College Hospital, Thiruvananthapuram. Hence it is alleged that the accused committed offences punishable under Sections 341,323 & 304 IPC.

3. To substantiate the case, the prosecution examined PW1 to PW18. Ext.P1 to Ext.P17 are also marked on the side of the prosecution. MO1 to MO5 are the material objects.

4. After going through the evidence and documents the trial Court found that, the accused committed the offences punishable under Section 304 part II and Section 324 IPC. The accused was sentenced to undergo rigorous imprisonment for a period of 5 years under Section 304 part II IPC and to undergo rigorous imprisonment for one year under Section 324 IPC. Aggrieved by the conviction and sentence, this Criminal Appeal is filed.

5. Heard the learned counsel for the appellant and learned Public Prosecutor.

6. Learned counsel for the appellant submitted that, even if the entire allegations are accepted, the offence under Section 304 part II IPC is not made out in this case. The learned counsel submitted that, there is only the evidence of PW1 and the evidence of all other witnesses were disbelieved by the court below. The learned counsel submitted that, the evidence of PW1 is not believable. The learned counsel also submitted that, the medical evidence in this case is contradictory to the occular evidence. According to the counsel, the prosecution case is that, the accused died because of the injury on his abdomen. When

PW5 the Doctor, examined the deceased there is no external injuries seen on the body of the deceased. Therefore, according to the counsel, the medical evidence is contradictory to the ocular evidence. For that simple reason the accused is entitled the benefit of doubt. The learned counsel also submitted that, the evidence of PW1 is not at all convincing to convict the appellant in this case. According to the learned counsel, no serious motive is alleged against the accused for committing the offence. According to the prosecution the accused saw the deceased looking towards his house, and therefore attacked the deceased. According to the learned counsel, that is not at all a motive to commit a serious offence like this. The learned counsel submitted that, simply because the deceased sustained injury, that is not a reason to convict the appellant. According to the learned counsel, there is no evidence to connect the accused with the crime.

7. The learned Public Prosecutor submitted that, there is adequate oral and documentary evidence to prove the offence punishable under Section 324 and 304 part II IPC. According to the learned Public Prosecutor, the trial Court after scanning

the entire oral and documentary evidence came to a definite conclusion that the accused committed the offence punishable under Sections 324 and 304 part II IPC. According to the Learned Public Prosecutor the evidence of PW13 the Doctor, who conducted Postmortem, categorically stated that the injury sustained to the deceased is sufficient in the ordinary course for his death. According the Learned Public Prosecutor the injury No.3 shown in the postmortem certificate is fatal and there is oral evidence of PW1 to show that the accused inflicted the same on the deceased and therefore the accused is liable to be convicted for the offence under Section 304 part II IPC.

8. The point for consideration in this case is whether the appellant committed the offence punishable under Sections 304 part II and 324 IPC.

9. Altogether 18 witnesses were examined. PW1 is the eye witness to the incident. Even though PW2 is examined to prove the occurrence his evidence was disbelieved by the Court below. Similarly the evidence of PW3 is also disbelieved by the Court below. PW4 is the Doctor of Laxmi Hospital, who gave first aid to the deceased. PW5 is the Doctor, who issued Ext.P1

certificate. He is the Doctor of Taluk Hospital. PW6 is the Doctor of District Hospital, who issued Ext.P2 discharge Certificate. PW7 is the Village Officer, who issued Ext.P3 sketch. PW8 is a mahazar witness. PW9 is the jeep Driver, who took the deceased to the hospital. PW10 is the Head Constable, who recorded the statement of the deceased. PW11 is the superintendent of Government Hospital, Kottarakkara. PW12 is the Doctor of District Hospital, Kottarakkara, who issued Ext.P6 treatment certificate. PW13 is the Doctor, who conducted the postmortem and Ext.P7 is the postmortem certificate. PW14 is the scene mahazar witness and PW15 is the Sub Inspector,who conducted the inquest. PW16 is the Doctor, who examined to prove Ext.P6. PW17 is the Doctor of Medical College Hospital, through whom Exts.P11 and P12 are marked. PW18 is the Investigating Officer and PW19 is the officer who laid the charge. This is the evidence available in this case.

10. I perused the evidence of PW1. The PW1 narrated the incident in detail. According to him, he and deceased were going to see the carving of a vanchi near a temple. The carving out was being done on the southern side of the road to the north

of his house. They went there on 19-03-1997 at 11 a.m. While they were moving towards the place where the vanchi was being carved out, they saw the accused. The accused saying that, " നീ എന്താടാ എന്റെ വീട്ടിൽ വന്നു നോക്കാൻ ", took a stone from the road and attacked the deceased Sudhakaran. It is alleged that the accused caught him by the collar of his shirt and hit him on his right ear with the stone. As a result of the hit, he sustained injury. He also deposed that, the accused was attempting to cause further harm to Sudhakaran. Then the witness told the accused not to do that. Then Sudhakaran fell down. At that time, the accused stamped Sudhakaran on his lower abdomen forcefully using his foot. When Sudhakaran cried aloud the accused left the place. This is the crux of the evidence adduced by PW1. The Doctor, who conducted the postmortem noted the following injuries on the deceased which is extracted.

(1) Contusion 4x1, 5x1cm, on the right side of face, just in front of the ear.

(2) Two abrasions 1x0.3.cm. and 0.7x0.3cm. 1cm apart, on the front of middle of neck 2.5cm. above breast bone.

(3) Contusion 13x6x0.2cm. of the middle of abdomen

12cm. above pubic bone. Ileum underneath showed a sutured tear 3cm long, 58cm. proximal to ileocaecal junction omentum was infiltrated with blood. Intestine were lustreless and inflammed with flakes of pus at places.

(4) Superficial lacerations over an area 11x1 cm. involving the outer aspect of right lobe of liver.

(5) Surgical laparatomy wound 17cm. on the middle of abdomen 7cm. below the breast bone.

(6) Surgical drainage wound 3.5cm. long on the right flank 10cm outer to umbilious with a corrugated rubber drain in situ draining the peritonal cavity.

(7) Abrasion 1.5x0.5cm. on the back of right elbow.

(8) Abrasion 1.5x1.5cm. on the back of left arm, 4cm. below elbow.

(9) Abrasion 1x0.5cm, on the back of left elbow.

11. The postmortem Doctor deposed before the Court that, the injury No.3 and 4 would be caused by stamping on the abdomen of the deceased. The Doctor also deposed that, injury No.1 could be caused by a blunt impact. As per Ext.P7 the postmortem certificate the opinion as to cause of death is

mentioned as “death was due to blunt injury sustained to abdomen”.

12. In the light of the evidence of PW1 coupled with the medical evidence in this case, it is clear that, the accused inflicted injury on the middle of the neck and abdomen. The case of the prosecution is that, the accused inflicted injury on the neck using a stone. It is true that the stone is not seized. But the oral evidence of PW1 is clear that the accused inflicted the injury on the deceased using a stone. There is nothing to disbelieve the evidence of PW1 on this aspect. PW1 is the natural witness available in that place. The reason for the presence of PW1 at the place of occurrence is narrated by him in detail. He is a retired school teacher, who accompanied the deceased to the place of occurrence where carving of vanchi is going on. There is nothing to disbelieve the evidence of PW1. Therefore according to me, the oral evidence of PW1 is corroborated with the medical evidence adduced by the prosecution. The Doctor deposed that, the accused died because of the injury on abdomen. PW1 deposed that, the accused stamped the deceased on his abdomen. In such circumstances

according to me, there is oral and documentary evidence to prove that, the accused inflicted injury on the neck of the deceased using a dangerous weapon and the accused inflicted grievous hurt to the deceased on his abdomen, which resulted his death. In such circumstances according to me, there is nothing to disbelieve the evidence adduced by the prosecution, as far as the incident and the infliction of injury on the deceased.

13. Then the next question to be decided is what is the offence committed by the accused. He is convicted under Section 304 part II IPC. To attract an offence under Section 304 part II IPC the prosecution has to prove that the accused done the act with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as likely to cause death. Admittedly there is no serious motive alleged against the appellant. No weapon is used by the accused for inflicting the fatal injury on the abdomen of the deceased. It is true that, he stamped on the abdomen of the deceased. The motive for the act of the accused, according to the prosecution is that, the deceased looked towards the house of the accused. That itself shows that there is no intention on

the part of the accused to commit an offence punishable under Section 304 part II IPC. The incident happened because of the sudden provocation. According to me, the offence punishable under Section 304 part II IPC is not attracted in the facts and circumstances of this case.

14. Then what is the offence committed by the accused is the next question. Accused stamped on the abdomen of the deceased. Deceased sustained a grievous hurt. Admittedly no weapon is used by the accused while attacking on the abdomen of the deceased. In such circumstances according to me, only an offence punishable under Section 325 IPC is made out. But the lower court is justified in convicting the accused under Section 324 IPC, because PW1 deposed that using a stone, the accused attacked the deceased and he sustained injury on his neck. Therefore according to me, the accused is liable to be convicted for the offence punishable under Sections 324 and 325 IPC. Since Section 325 IPC is a minor offence, there is no prohibition in convicting the accused in the light of the Section 222 Cr.P.C.

15. Next question is what is the sentence to be imposed. The accused undergone pre-trial detention from 20-03-1997 to

21-05-1997. That means he had undergone about 2 months imprisonment during pre-trial period. It is a fact that, Sudhakaran died because of the injury sustained to him on his abdomen. Accused inflicted the injury. Hence the accused cannot be exonerated without imposing a fine. Therefore the accused is liable to pay a fine of Rs.1,00,000/-, which can be disbursed to the legal heirs of the deceased as compensation.

Therefore, the Criminal Appeal is allowed in part.

(i) The conviction and sentence imposed on the appellant for the offence punishable under Section 304 part II IPC is set aside. The appellant/ accused is convicted under Sections 324 and 325 IPC.

(ii) The appellant is sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs.1,00,000/- under Section 325 IPC. In default of payment of fine, the accused is directed to undergo simple imprisonment for one year.

(iii) Accused is sentenced to pay a fine of Rs.5,000/- under Section 324. IPC. In default of payment of fine, the accused is directed to undergo simple imprisonment for one month.

(iv) The sentence will run concurrently.

(v) Set off is allowed.

(vi) If the fine amount is realised, the entire amount should be disbursed to the legal heirs of the deceased, under Section 357 Cr.P.C.

(Sd/-)

P.V.KUNHIKRISHNAN

JUDGE

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