

(2023) 08 KL CK 0024

High Court Of Kerala

Case No: Criminal Appeal No. 1283 Of 2019

Amiya Samantha

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Aug. 3, 2023

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 232, 313, 464
- Indian Penal Code, 1860 - Section 302, 394, 450

Hon'ble Judges: P.B.Suresh Kumar, J; C.S.Sudha, J

Bench: Division Bench

Advocate: Mahesh V.Menon, E.C.Bineesh

Final Decision: Dismissed

Judgement

P.B.Suresh Kumar, J.

1. The sole accused in S.C. No.245 of 2013 on the files of the III Additional Sessions Court, Thrissur who stands convicted and sentenced for the offences punishable under Sections 450, 394 and 302 of Indian Penal Code (IPC) challenges in this appeal, his conviction and sentence in the said case.

2. The body of one Jadab Kumar Das, a goldsmith at Irinjalakkuda, hailing from the State of West Bengal, was found in a partly decomposed state in the building in which he was residing on 14.10.2012. A case was registered in connection with the death of Jadab Kumar Das on the said day itself by Irinjalakkuda Police on the basis of the information furnished by his employer. On investigation, it was revealed that the accused, who is a relative of the deceased and who was residing with him, caused the death of the victim and committed robbery of the unfinished gold articles kept by him. Accordingly, a final report was filed in the case alleging commission of the offences

punishable under Sections 450, 394 and 302 of IPC. The accusation in the case is that on the night of 12.10.2012, the accused caused the death of the victim by inflicting stab injuries on him and robbed the unfinished gold articles kept by him weighing 203.690 grams, after intoxicating him.

3. The accused pleaded not guilty of the charges framed against him by the Court of Session, on committal for trial. Consequently, the prosecution examined 26 witnesses as PW1 to PW26 and proved 30 documents through them as Exts.P1 to P30 series. MOs 1 to 23 are the material objects in the case. After the prosecution tendered its evidence, when the accused was questioned under Section 313 of the Code of Criminal Procedure (the Code), he denied the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Since the Court of Session did not consider the case to be one fit for acquittal under Section 232 of the Code, the accused was called upon to enter on his defence. The accused, however chose not to adduce any evidence.

4. The Court of Session, in the circumstances, on an appraisal of the materials on record, found the accused guilty of the offences alleged against him and sentenced him to undergo imprisonment for life and to pay a fine of Rs.25,000/- for the offence punishable under Section 450 IPC, to undergo imprisonment for life and to pay a fine of Rs.50,000/- for the offence punishable under Section 394 IPC and to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- for the offence punishable under Section 302 IPC. Default sentences were also imposed on the accused. The substantive sentences were ordered to run concurrently. The accused is aggrieved by his conviction and sentence in the case and hence, this appeal.

5. Heard the learned counsel for the accused as also the learned Public Prosecutor.

6. The point that arises for consideration is whether the conviction of the accused and the sentence imposed on him, are sustainable in law.

7. In order to consider the point, the first and foremost aspect to be examined is whether the case on hand is a case of homicide. PW16 is the Forensic Surgeon who conducted post-mortem examination on the body of the deceased. Ext.P7 is the post-mortem certificate. PW16 deposed the particulars of the 27 ante-mortem injuries noted on the body of the deceased at the time of the post-mortem examination. Injury Nos.8 to 10 among them are the following:

"8. Chop wound 10.5x3x1 cm, transversely placed across right side of neck, it was deeper laterally and shallower medially (slash wound). Inner end was placed 1.5 cm outer to midline and upper edge was placed 3 cm below lower jaw border. Underneath the strap muscles of neck was seen to be cut. Underneath, the carotid artery (right) was also seen cut and gaping and a corresponding cut on the underlying 3rd cervical vertebra.

9. Chop wound 6.5x2.1x2cm on right side of root of neck. It was placed 3.5 cm below previous injury, the inner end was placed 4 cm outer to midline and from the outer end there was a superficial tail cut extending outwards for a distance of 5 cm. Underneath, the strap muscles of neck and right jugular vein and right subclavian vein was cut.

(Air embolism could be demonstrated in the right ventricle of heart)

10. Chop wound 4.5x1.7x1 cm obliquely placed across lower part of front of neck at midline; inner end showed a tailing for a distance of 2 cm. It showed beveling upwards. Underneath the superficial veins of neck were noted cut and opened."

The opinion deposed by PW16 was that the death was due to the said injuries which were sharp wounds sustained on the neck which had cut the arteries. He deposed that those injuries are possible with MO9 chopper with which it was alleged that the accused caused the injuries. PW16 was cross-examined by the learned counsel for the accused. The attempt of the learned counsel for the accused during cross-examination was only to establish that the death occurred in the afternoon of 13.10.2012. In other words, the accused did not challenge the fact that it is a case of homicide. We, therefore, affirm the finding of the Court of Session that the case on hand is a case of homicide.

8. The next question is whether the prosecution has established beyond reasonable doubt that it is the accused who caused the death of the victim and committed robbery. It is necessary to refer to the evidence let in by the prosecution to deal with this question.

9. PW1 is a friend of the brother of the accused. He is a goldsmith residing in Farganas District of West Bengal. He deposed that on 15.10.2012, at about 8 p.m., the accused came to his house and stayed with him that night and left his house on the following morning. He deposed that when the accused came to his house, he had two plastic covers with him and while leaving the house, he kept one plastic cover below a cot stating that he will take that cover later. He deposed that on 17.10.2012, the Police brought the accused to his house and at that time, the accused took the cover kept by him in his house and handed over the same to the police. He deposed that when the said cover was opened by the police, there were several articles inside the cover including a tiffin box in which unfinished gold articles were found. He deposed that the Police seized the cover and articles kept by the accused in the cover, including the unfinished gold articles and he attested Ext.P1 mahazar prepared by the Police in connection with the seizure of the said articles. PW1 identified MO1 series unfinished gold articles and MO5 cover.

10. PW2 is one of the owners of the building where the deceased was staying at the time of occurrence. He deposed that he is conducting gold business; that the deceased

and the accused were working under him; that the deceased was carrying out the work and staying in the first floor of the building; that he used to give the deceased gold ingots for making ornaments; that he was informed the occurrence by the goldsmiths staying in the neighbouring buildings and that when he went to the building, it was found that the deceased was lying on the floor in a pool of blood. He deposed that the body was in a partly decomposed state and it is he who gave Ext.P2 First Information Statement. He deposed that on 12.10.2012, when he met the deceased in the building to ascertain the progress of the work relating to 215 grams of gold entrusted to him for making the ornaments, he found that the deceased had altered the gold ingots into gold threads, gold ribbons, gold powder etc. PW2 identified MO1 series unfinished gold articles seized from the house of PW1 as the unfinished gold articles found by him with the deceased when he met him on 12.10.2012. He deposed that the accused was also working under him and staying with the deceased for sometime earlier and the accused left the company of the deceased due to some difference of opinion with the deceased. He deposed that when he met the deceased on 12.10.2012, the deceased informed him that the accused had come back.

11. PW3 is another goldsmith hailing from West Bengal and working at Puthenpalli in Thrissur District for one Krishnakumar. He was residing with one Sidharth Mandal at Puthenpalli who was also a goldsmith working for Krishnakumar. PW3 deposed that the accused was his friend; that the accused used to visit him in his room; that he met the accused on the morning of 13.10.2012 at about 6.45 a.m. when he came to his room and that on the said day, he seemed tensed and when he was asked about the reason, the accused whispered in a particular manner that he attacked a person. PW3 deposed that on the said day, the accused was carrying a plastic cover with him and he left the room with the cover after taking a bath. PW3 identified MO5 as the plastic cover carried by the accused when he came to his room on 13.10.2012. PW5 is a person who was working as a conductor in the Irinjalakkuda depot of the Kerala State Road Transport Corporation. He deposed that on 13.10.2012, he was on duty in a bus from Irinjalakkuda to Thrissur; that one Pavithran was the driver of the said bus; that the bus started at 5:10 a.m. from Irinjalakkuda bus stand; that there were only four passengers, and the accused was one among them. He deposed that the accused bought a ticket to Thrissur and alighted at Thrissur bus stand.

12. PW6, a native of Palakkad is a person engaged in the making and sale of knives. He deposed that he is conducting the said business from the year 1998; that he can identify the knives made by him as it has some special features and that it is he who sold MO9 chopper to the accused in the year 2012. PW7 is a person who is running a provisions store near the place of occurrence. He deposed that he knew the deceased, as he used to purchase provisions from his shop. He deposed that the accused was residing with the deceased and that the accused also used to come to his shop. In

cross-examination, PW7 deposed that on 12.10.2012, when the deceased came to his shop for purchasing provisions, the deceased told him that the accused is back in his room. PW8 is another goldsmith residing in a building adjacent to the building in which the occurrence took place. He deposed that the accused and the deceased were residing together and carrying on the work of making gold ornaments. PW11 is another goldsmith working for PW2. He was residing in the adjacent building where the occurrence took place. He deposed that on the morning of 12.10.2012, the deceased and the accused came to his bathroom at about 6 a.m. as the bathroom in the building occupied by the deceased was not usable. He deposed that about a month prior to 12.10.2012 also, the accused was residing with the deceased. PW12 is Sidharth Mandal who was residing with PW3 at Thrissur on 13.10.2012. He too deposed that on 13.10.2012 morning, the accused came to their room with a plastic cover and left the room after taking bath.

13. PW20 is a goldsmith hailing from Calcutta. He deposed that he was working in Kerala during 2012; that the accused and deceased were residing together in the building adjacent to the building where he was residing and that they came together to his building 12.10.2012 for taking bath. PW21 is also a goldsmith. He deposed that on 20.10.2012, the police brought the accused to Valiyannur, a kilometer and a half away from his workplace; that he had seen the accused taking a cover from the bushes on the side of the road and that the same contained a brown coloured shirt and a dhoti. Ext.P19 is the mahazar prepared by the police in connection with the seizure of the said articles. PW21 deposed that he attested Ext.P19 mahazar. PW21 has also identified the seized articles and cover as MOs 13 to 15.

14. PW10 was the Tester Inspector attached to the Single Digit Fingerprint Bureau, Thrissur. PW10 developed a few chance fingerprints from the place of occurrence. PW10 deposed that one of the chance fingerprints developed by him from a steel glass available at the place of occurrence on 14.10.2012 tallied with the impression of the left middle finger of the accused. Ext.P4 is the report given by PW10 in this regard. Exts.P4(a) and P4(b) are the photographic enlargements of the chance print and the specimen print.

15. PW13 was the Scientific Assistant attached to the Forensic Science Laboratory, Ernakulam. PW13 deposed that she collected the hair found in the hands of the deceased and on the floor of the building after the occurrence. PW15 is the doctor who collected the specimen of scalp, pubic and body hairs of the accused for forensic examination.

16. PW17 was the Assistant Director, Serology of the State Forensic Science Laboratory, Thrissur. Ext.P8 is the report given by PW17 after conducting forensic examination of the various objects collected from the body of the deceased and the scene of

occurrence as also the specimen of scalp, pubic and body hairs collected from the accused. Item No.1 referred to in Ext.P8 report are the hairs collected from the right hand of the deceased and item No.2 are the hairs collected from the left hand of the deceased. Item No.3 are the hairs collected from the floor of the scene. Item No.10 are the specimen hairs collected from the body of the accused. Item No.9 are the specimen hairs collected from the scalp of the deceased. Item No.13 is MO9 weapon. Items Nos. 15(a), 15(b) and 15(c) are the scalp, body and pubic hair respectively of the deceased which were collected at the time of post-mortem examination. PW17 deposed that the blood stain in item 13 metallic chopper was found to be human belonging to Group B; that item No.1 hairs were found to be similar to item No.10 hairs and that item No.3 hairs were found to be similar to item No.9 hairs.

17. PW25 is the Chemical Examiner who issued Ext.P22 report after examining the blood soaked gauze collected from the body of the deceased. He deposed that the blood group of the stains found on the blood soaked gauze was identified to be "B". He also deposed that he issued Ext.P23 report after examining the dhoti of the accused, seized as per Ext.P19 mahazar and the human blood detected in the said dhoti was also found to be stained with "B" group blood.

18. PW26 is the investigating officer in the case. He deposed that MO9 chopper was seized by him in terms of Ext.P24 inquest report; that he went to West Bengal and arrested the accused with the assistance of Usthi Police on 17.10.2012; that on 17.10.2012, on the basis of the disclosure made by the accused, he discovered and seized MO1 series gold articles as per Ext.P1 mahazar. He deposed that Ext.P1(a) is the disclosure statement given by the accused in this regard. He also deposed that on 20.10.2012, on the basis of the disclosure made by the accused, he discovered MO14 dhoti as per Ext.P19 mahazar. He deposed that Ext.P19(a) is the disclosure statement given by the accused in this regard.

19. From the evidence tendered by the witnesses referred to above which has not been discredited in any manner by the accused in his cross-examination, it is established that the accused and deceased were relatives; that they were goldsmiths by profession; that both of them were working under PW2 and residing together in the building where the occurrence took place; that difference of opinion arose between them about three months prior to the occurrence and consequently, the accused left the company of the deceased and went to his native place. It is also established that the accused came back from his native place and stayed with the deceased again on 12.10.2012; that he left that building in the early hours of 13.10.2012 and went thereupon to the house of PW3 at Puthanpalli in Thrissur with a cover and left that place, after taking a bath, with the said cover. The accused was in a disturbed state of mind at the relevant time and that he mentioned to PW3 that he attacked someone. It is also established that in the meanwhile, he purchased MO9 chopper from PW6 and while leaving

Thrissur, he abandoned the clothes worn by him. It is also established that the accused was arrested by the police on 17.12.2012 and on his arrest, based on the disclosure made by him, the unfinished gold articles made by the deceased by making use of the gold ingots entrusted to him by PW2 were discovered and seized by the police as per Ext.P1 mahazar.

20. The evidence of PW10, the Tester Inspector attached to the Fingerprint Bureau reveals that one of the chance fingerprints developed by him from a steel glass in the scene of occurrence tallied with the impression of the left middle finger of the accused. Similarly, the evidence of PW17, the Assistant Director, Serology of the State Forensic Laboratory reveals that the blood stains contained in MO9 chopper is human blood belonging to the blood group of the deceased; that the hairs collected from the right hand of the deceased were found to be similar to the hairs collected from the body of the accused and that the hairs collected from the floor of the scene of occurrence were found to be similar to the hairs collected from the scalp of the accused. Similarly, the evidence of PW25, the Chemical Examiner reveals that the blood stains found in the dhoti of the accused discovered and seized based on the disclosure made by him was human blood and belonged to the blood group of the deceased. As already noticed, PW16, the Forensic Surgeon who conducted the post-mortem examination, opined that the fatal injuries suffered by the deceased are injuries that could be caused by MO9 chopper. There is no explanation from the accused as to how his left middle fingerprint tallied with the chance fingerprint developed from the steel glass found at the scene of occurrence. There is also no explanation from the accused as to how the blood stain found on his dhoti happened to be the same blood group as that of the deceased. There is no explanation from the accused as to how the hairs found in the hand of the deceased and the floor of the scene of occurrence happened to be similar to the hairs collected from the body and the scalp of the accused. As already noticed, the evidence tendered by PW26 and PW21 concerning the discovery and seizure of MO1 series unfinished gold articles based on the disclosure made by the accused, have not been discredited by the accused in any manner, whatsoever. Similarly, the evidence tendered by PW26 and PW21 concerning the discovery and seizure of MO14 dhoti based on the disclosure made by the accused, have also not been discredited by the accused.

21. It is trite that this being a case of circumstantial evidence, the court has to ensure that the circumstances are established beyond reasonable doubt and that they constitute a chain so complete as to conclusively indicate that it was the accused and no one else, in all human probability, committed the crime. Having regard to the facts and circumstances, we are in agreement with the finding rendered by the Court of Session that the incriminating circumstances in this case have been proved beyond reasonable doubt and that they constitute a chain so complete as to conclusively

indicate that it was the accused and no one else who, in all probability, committed the crime.

22. Let us now consider the arguments advanced by the learned counsel for the accused. The first and foremost argument is that the putrefaction changes observed by PW16 on the body of the deceased at the time of the post-mortem examination conducted at about 1 p.m. on 15.10.2012 would show that the death of the victim occurred within 18 to 48 hours prior to the post-mortem examination. If that be so, according to the learned counsel, the accused cannot be held responsible for the occurrence as, even according to the prosecution, the accused left the scene of occurrence in the early hours of 13.10.2012. The learned counsel attempted to bring home the said point placing reliance on the observations made by PW16 in the post-mortem certificate and also a passage from the 25th Edition of Modi, a Textbook of Medical Jurisprudence and Toxicology. The observation made by PW16 in the post-mortem certificate reads thus:

"Body of a moderately built and nourished, fair complexioned adult male in a state of putrefaction. Face blotted. Eyeballs protruding. Mouth open. Tongue swollen and protruding"

The passage from the textbook referred to above on which reliance was placed by the learned counsel, reads thus:

"From 18 to 36 or 48 hours after death, the gases collect in the tissues, cavities and hollow viscera under considerable pressure with the result that the features become bloated and distorted, the eyes are forced out of their sockets, the tongue is protruded between the teeth, and the lips become swollen and everted."

The argument advanced by the learned counsel based on the above passage is that, inasmuch as the face of the deceased was found to be bloated and the eyeballs and tongue were found to be protruded, the death must have occurred 48 hours prior to the post-mortem examination. We do not find any substance in this argument, for such an inference cannot be drawn from the passage referred to by the counsel from the textbook. Though in a given case, if putrefaction changes are absent, it is possible to contend that the death occurred within 48 hours. But, according to us, in a case where putrefaction changes referred to in the text book are observed, it cannot be said that the death occurred within 48 hours, in the absence of any material that such putrefaction changes would disappear after 48 hours. In this context, it is necessary to refer to the fact that PW16 who conducted the post-mortem examination in this case is an experienced doctor who conducted more than 2000 autopsies and he denied the suggestion put to him by the learned counsel for the accused that the putrefaction changes noticed in the post-mortem certificate are changes that may be present during 18 to 24 hours.

23. Another argument advanced by the learned counsel for the accused was that the prosecution does not have a consistent case as regards the weapon used for committing the crime. It was pointed out that there were two weapons at the scene, a knife and a chopper and though both the said weapons were seized, only one among them is seen marked in the proceedings as a material object and there is no evidence to indicate as to how the prosecution came to the conclusion that injuries were caused making use of the marked weapon. True, as pointed out by the learned counsel for the accused, there were two weapons at the scene when the inquest report was prepared, a knife and a chopper and both the weapons were seized by the investigating officer and produced before the court. It is seen that in the course of investigation, it was revealed to the investigating officer that the injuries were inflicted making use of the chopper and consequently, only the chopper was sent for chemical examination as it contained bloodstains as well. It is also seen that it is that weapon that is marked as MO9 in the proceedings and it is that material object that was shown to PW16 for his opinion. It is having regard to MO9 that PW16 opined that the injury sustained by the deceased could be caused using the said weapon. As already noticed, the counsel for the accused had put to PW16 a suggestion during cross-examination that the injuries sustained by the deceased cannot be caused using MO9 chopper and PW16 not only denied the said suggestion, but also gave a satisfactory answer as to the reason, on the basis of which he came to the conclusion that the weapon used is MO9 chopper. The answer given by PW16 to the suggestion aforesaid is as follows:

"I disagree. sharpness chop wound ;
of wound shall be contused".

In the circumstances, we do not find any merit in the argument.

24. It is, however, seen that the very case of the prosecution in the final report is that the accused caused the death by inflicting stab injuries using a knife. The charge framed by the court is also in tune with the final report. It is stated in the charge also that the accused caused the death of the victim by inflicting stab injuries. As noted, the fatal injuries sustained by the deceased are not stab wounds, but are chop wounds and evidence was let in by the prosecution only to prove the said fact and that such injuries could be inflicted using MO9 chopper. Even though no argument was advanced by the learned counsel for the accused in this regard, we have considered the question whether the accused is entitled to any legal protection on the above basis and we find that the accused is not entitled to any legal protection on this basis in the light of the provision contained in Section 464 of the Code, since there is nothing on record to indicate that failure of justice has occasioned to the accused on account of the same. We take this view also for the reason that though there was an error in the charge framed by the court, it gives the accused a clear picture as to the case which he has to meet, namely, that he has caused the death of the victim by inflicting injuries on him

and in that context, merely for the reason that there was an error in the charge as regards the manner in which the injuries were inflicted on the deceased, it cannot be contended that he was misled on account of the same and failure of justice had occasioned for that reason.

25. Yet another argument advanced by the learned counsel for the accused is that no reliance can be placed on Ext.P8 report proved by PW17, insofar as it relates to the finding as regards the hairs, as the opinion is only that the hairs found on the hand of the deceased and on the floor of the scene of occurrence are only 'similar' to the hairs of the accused and not 'identical'. In this context, it is apposite to refer to paragraph 16 of the decision of the Division Bench of this Court in *State of Kerala v. Rajan*, 2003 KHC 1311, which reads thus:

"16. The last circumstance relied on by the prosecution is that some hair collected from the scene of occurrence were similar to those of the accused. It is in evidence that P.W. 14, Dr. Vinodkumar, Scientific Assistant (Biology) District Police Office, D.C.R.B. Pathanamthitta, collected hair from the scene of occurrence and they were packed, sealed and handed over to the investigating officer. The sealed packets were sent to chemical, examination and Ext. P13 report was obtained. It was P.W. 15, Sri. S. Parameswaran Nair, Assistant Director (Biology) F.S.L., Thiruvananthapuram, who examined the hair and sent the report. He has sworn that some of the hair collected from the scene of occurrence were found to be similar to the hair collected from the accused. It is also in evidence that on 29.1.1998 Dr. Umesh along with the investigating officer went to the sub jail and collected the scalp hair and public hair of the accused. According to the court below, the recovery of scalp hair and public hair etc. are suspicious in nature since most of the recoveries were made by P.W. 11 on different dates. Therefore the court below placed no reliance on the scientific evidence. The learned counsel for the respondent contended that by laboratory examination of hairs it would be possible to say that it cannot belong to a particular individual, but it cannot be opined that it definitely belongs to him. We cannot agree with the learned counsel that the result of scientific examination of hair should not be relied upon to connect the accused with the crime. The science of hair identification is a fast advancing science and even if it is assumed that individualization is not possible the results of scientific examination of hair can be relied upon along with other circumstances connecting the accused with the crime. In *Kanbikarsan Jadav v. State of Gujarat* (1966 S.C. 821) it was held that the results of scientific examination of hair can be relied on along with other circumstances connecting the accused with the crime. In this connection it is also relevant to note a Division Bench decision of this Court in *Mohan Kani v. State of Kerala* (1992 (2) KLT 839). In that case that the scalp hair recovered from the dead body were similar to the scalp hair of the accused in all the parameters chosen for comparison. It was held that chemical examination of scalp hair can be considered as

an acceptable piece of evidence to connect the accused. The learned counsel for the respondent brought to our notice another Division Bench decision of this Court in Fr. George Cherian v. State of Kerala (ILR 1989 (2) Ker. 95) in support of his contention that chemical examination of scalp hair cannot be relied on for identifying the accused. In Mohanan Kani's case the Division Bench considered the decision in Fr. George Cherian's case and observed as follows:

"In that case, there was no other circumstance pointing to the guilt of the accused. That decision also shows that if there are other circumstances pointing to the guilt of the accused, the results of scientific examination of hair also can be pressed into service."

In this case, as already noticed, there are other strong circumstances to connect the accused with the crime. Therefore, the results of scientific examination of hair can be relied on along with the other circumstances connecting the accused with the crime."

We are in respectful agreement with the view taken by the Division Bench in the said case, and inasmuch as there are other strong circumstances to connect the accused with the crime, the argument advanced by the learned counsel for the accused is only to be rejected and we do so.

In the light of the discussion and the findings aforesaid, we do not find any merit in the appeal and the same is, accordingly, dismissed.