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**(2023) 08 KL CK 0214**

**High Court Of Kerala**

**Case No:** Criminal Appeal No.593 Of 2020

Hakkim

APPELLANT

Vs

State Of Kerala

RESPONDENT

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**Date of Decision:** Aug. 22, 2023

**Acts Referred:**

Code of Criminal Procedure, 1973 " Section 161, 164, 232, 313(1)(b), 357(1)(b), 374(2),  
428#Indian Penal Code, 1860 " Section 299, 299(b), 300, 302, 304, 304I, 304II

**Citation:** (2023) 08 KL CK 0214

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

**Bench:** Division Bench

**Advocate:** Ramesh .P, Ambika Devi S

**Final Decision:** Partly Allowed

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**Judgement**

C.S.Sudha, J.

1. This appeal under Section 374(2) Cr.P.C. by the sole accused in S.C.No.99/2016 on the file of the Court of Session, Thrissur, has been filed

challenging the conviction entered and sentence passed against him for the offence punishable under Section 302 IPC.

2. The prosecution case is that the accused due to his enmity towards his mother Jumaila, as she refused to give him money and his share in the family

property, on 06/07/2015 at 14:00 hours with the intention to murder her, beat on her face and head with MO.7 steel glass and MO.8 steel vessel

(Ã, Ã, Ã, Ã, ) causing grievous injuries to which she succumbed. The place of occurrence is the bedroom and courtyard on the eastern side of their

house bearing no.VI/216, Vadanappally Grama Panchayat.

3. Based on Ext.P1 FIS of PW1, crime no.948/2015 of Vadanappally police station, that is, Ext.P1(a) FIR, for the offence punishable under Section

302 IPC was registered by PW15, the then Sub Inspector of Police of the aforesaid police station. PW21, the then Circle Inspector of Police,

Valappad, the investigating officer, conducted the investigation and submitted the charge sheet before the court.

4. On the final report being submitted, the jurisdictional magistrate, after complying with the statutory formalities, committed the case against the

accused to the Sessions Court, which court took the case on file as S.C.No.99/2016. On the appearance of the accused before the Court of Session,

he was furnished with copies of all the prosecution records. On 05/10/2018, the trial court framed a charge for the offence punishable under Section

302 IPC, which was read over and explained to the accused to which he pleaded not guilty.

5. The prosecution examined PWs.1 to 21 and got marked Exts.P1 to P29 and MO.1 to MO.20. After the close of the prosecution evidence, the

accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the

prosecution. The accused denied all those circumstances and maintained his innocence.

6. As the Sessions Court did not find it a fit case to acquit the accused under Section 232 Cr.P.C., he was asked to enter on his defence and adduce

evidence in support thereof. No oral or documentary evidence has been adduced by the accused.

7. On a consideration of the oral and documentary evidence and after hearing both sides, the trial court by the impugned judgment found the accused

guilty of the offence punishable under Section 302 IPC and hence convicted and sentenced him to imprisonment for life and to a fine of â,150,000/- and

in default of payment of fine, to undergo rigorous imprisonment for a period of one year. The fine amount if realized was directed to be paid to

Mumtaz, the daughter of the deceased, as compensation under Section 357(1)(b) Cr.P.C. Set off under Section 428 has also been allowed.

8. The only point that arises for consideration in this appeal is whether the conviction entered, and sentence passed against the accused by the trial

court is sustainable or not.

9. Heard Sri. Ramesh P., the learned counsel for the appellant and Smt.Ambika Devi S., the learned Special Public Prosecutor.

10. During arguments, no serious challenge was made to the finding of the trial court that the death of Jumaila, the mother of the accused, was a case

of culpable homicide falling under Section 299 IPC or that it was not the accused who caused the injuries resulting in her death. The learned counsel

did make a reference to the testimony of PW2, the sole eyewitness, and pointed out that the said witness is not believable as several omissions have

been brought out in her testimony. On going through her testimony, we do find that there are several significant omissions in her 161 statement to the

police. She admits that many of the facts that she had stated in the court does not find a place in her 161 statement for which she was unable to give

any explanation. However, in her Ext.P11 164 statement she has referred to all the overt acts of the accused. The testimony of PW2 is corroborated

by her 164 statement to the magistrate.

11. Further, it is admitted that the accused was very much present at home when the incident took place. At the time of the incident, Mumtaz, the

sister of the accused and the daughter of the deceased, was also present in the house. The prosecution case is that Mumtaz is schizophrenic and

hence incompetent to depose and so has not been cited or examined as a witness in the case. The prosecution relies on the testimony of PW12 and

Ext.P9 medical record to establish that Mumtaz is mentally unsound and hence the reason why she was not examined. PW12, Consultant Psychiatrist,

Ansar Hospital, Perumpilavu deposed that Mumtaz is his patient and that Mumtaz has been diagnosed with schizophrenia. Ext.P9 is her case sheet

showing the details of the treatment given to Mumtaz. In the cross-examination, PW12 deposed that schizophrenia is a severe type of mental illness.

Such patients will have lucid intervals also. PW12 also deposed that Mumtaz has been ill for the past thirteen years. He had examined Mumtaz for the

first time on 05/08/2015 and thereafter she was admitted in the hospital on 24/08/2015. She was transferred to the rehabilitation centre on 03/09/2015.

Even thereafter her mental condition has not become normal. In the re-examination PW12 when asked about the cause of illness, stated that it is

hereditary and that the father, maternal and paternal uncles of Mumtaz also had the same ailment.

12. It was pointed out by the learned defence counsel that the date of incident in this case is 06/07/2015, whereas going by the testimony of PW12 and

Ext.P9, Mumtaz was admitted in the hospital only on 05/08/2015, that is, a month after the incident and therefore it cannot be said that she was

mentally unsound at the time when the incident occurred. This argument is apparently incorrect as PW12 has deposed that for more than 13 years, the

girl had been afflicted with the said ailment. Moreover, the accused has no case that it was his sister who had caused the injuries resulting in the death

of his mother. In his 313 statement, the case of the accused is that at the time of the incident he was sleeping in his house; that he does not know what

had happened and that the police came and took him into custody. Apart from Mumtaz, the accused and the deceased, nobody else was at home.

Therefore, the accused has certainly a duty to explain how his mother had sustained injuries resulting in her death. No explanation whatsoever has

been given by the accused, on the other hand, he takes up a stand of complete denial. It is in this background an argument is advanced that even

assuming that the entire case of the prosecution is believed and taken to be true, it is not a case of murder coming under Section 300 IPC and that as it

is not a case of murder, the accused is liable to be punished under Section 304 Part II IPC only. It is also submitted that the case falls under the first

exception to Section 300 IPC and hence the accused is not liable to be punished for the offence under Section 302 IPC.

13. Per contra the learned Public Prosecutor quite vehemently, strenuously and persuasively argued that the present case is a clear case of murder

coming under '1stly' as well as '3rdly' of Section 300 IPC. It is not one blow that was inflicted by the accused on the deceased. On the other hand,

repeated blows with MO.7 and MO.8 were made on the vital parts of the body, that is, on the head and the face, which shows the intention of the

accused to cause death. The learned Prosecutor also drew our attention to Ext.P10 postmortem certificate, which shows that there were 16 ante-

mortem injuries. Therefore, the argument is that if not '1stly' of Section 300 IPC, certainly '3rdly' of Section 300 IPC, would be attracted in this case.

14. As explained by us in our judgment dated 01/08/2023 in Crl.Appeal No.467/2017 relying on the decision in State of A.P. v. Rayavarapu Punnayya,

1976 KHC 957: AIR 1977 SC 45, all 'murder' is 'culpable homicide' but not vice versa. Speaking generally, 'culpable homicide' sans 'special

characteristics of murder', is 'culpable homicide not amounting to. murder'. For the purpose of fixing punishment, proportionate to the gravity of this

generic offence, the Code practically recognizes three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first

degree. This is the gravest form of culpable homicide which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of

the second degree'. This is punishable under the 1st part of Section 304. Then, there is 'culpable homicide of the third degree.' This is the lowest type

of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of

this degree is punishable under the second Part of Section 304.

14.1. Clause (a) of Section 299 IPC corresponds to '1stly' of Section 300 IPC. Clause (b) of Section 299 corresponds with '2ndly' and '3rdly' of

Section 300. The distinguishing feature of the mens rea requisite under '2ndly' is the knowledge possessed by the offender regarding the particular

victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such

harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. Here the 'intention to cause death'

is not an essential requirement of '2ndly'. Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of

such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. Clause (b) of Section 299 does not

postulate any such knowledge on the part of the offender. Instances of cases falling under '2ndly' of Section 300 can be where the assailant causes

death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow

is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the

assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the

ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

14.2. In '3rdly' of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words

'sufficient in the ordinary course of nature' have been used. The distinction lies between a bodily injury likely to cause death and a bodily injury

sufficient in the ordinary course of nature to cause death. The difference between Clause (b) of Section 299 and '3rdly' of Section 300 is one of

degree of probability of death resulting from the intended bodily injury. It is the degree of probability of death which determines whether a culpable

homicide is of the gravest, medium or the lowest degree. The word

'likely' in Clause (b) of Section 299 conveys the sense of 'probable' as

distinguished from a mere possibility. The words 'bodily injury sufficient in the ordinary course of nature to cause death' means that death will

be the most probable result of the injury having regard to the ordinary course of nature. For cases to fall within '3rdly' of Section 300, it is not

necessary that the offender intended to cause death, so long as death ensues from the intentional bodily injury or injuries sufficient to cause death in

the ordinary course of nature. As held in *Virsa Singh v. State of Punjab*, [1958] SCR 1495: AIR 1958 SC 465, even if the intention of accused was

limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death,

the offence would still be murder as contemplated under '3rdly' of Section 300 IPC.

14.3. Clause (c) of Section 299 and '4thly' of Section 300 both require knowledge of the probability of causing death. '4thly' of Section 300 would be

applicable where the knowledge of the offender as to the probability of death of a person or persons in general--as distinguished from a particular

person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender

must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death

or such injury.

14.4. Therefore, when a court is confronted with the question whether the offence is 'murder', or 'culpable homicide not amounting to murder', the

question to be considered at the first stage is whether the accused has done an act by doing which he has caused the death of another. Proof of such

causal connection between the act of the accused and the death, leads us to the second stage for considering whether the act of the accused amounts

to culpable homicide as defined in Section 299 IPC. If the answer to this question is prima facie found in the affirmative, the stage for considering the

operation of Section 300 IPC, is reached. This is the stage for the court to determine whether the facts proved by the prosecution brings the case

within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If only the answer to this question is in the negative,

the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending,

respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes under

any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part

of Section 304 IPC.

15. Reverting to the case on hand, the evidence on record establishes that the accused by his act has caused the death of his mother. This leads us to

the second stage for considering whether the act of the accused amounts to culpable homicide as defined in Section 299 IPC. The facts of the case

certainly do not make out a case under Clause (c) of Section 299 as the situation as explained in para 14.3 of this judgment does not exist. Clause (a)

of Section 299 cannot also be stated to be attracted, as under the said clause, there has to be an intention to cause death. It is true that the blows were

given on the head and the face of the deceased. But the weapons used by the accused are MO.7 steel glass and MO.8 steel vessel, which cannot be

termed or described as dangerous weapons like a knife, chopper or some such sharp-edged weapon. Therefore no intention to cause death appears to

be there.

16. Section 299 (b) corresponds to '2ndly' and '3rdly' of Section 300. As per Clause (b) to Section 299, whoever causes death by doing an act with the

intention of causing him bodily injury as is likely to cause death, commits culpable homicide. The act of the accused in repeatedly assaulting his mother

with MO.7 and MO.8 do certainly come under Clause (b) of Section 299 IPC. However, '2ndly' of Section 300 apparently is not attracted because it

is not a case where the deceased was in a peculiar condition or state of health and that the accused having knowledge of the said condition or ailment

caused intentional harm knowing that it would be fatal, though such harm would not in the ordinary way of nature be sufficient to cause death of a

person in normal health or condition. The act of the accused cannot also fall under '3rdly' of Section 300 because then the act must have been done

with the intention of causing such bodily injury and the bodily injury intended to be inflicted must be sufficient in the ordinary course of nature to cause

death. PW13, Assistant Professor, Forensic Medicine, Government Medical College, Thrissur had conducted the postmortem on the dead body of

Jumaila. His opinion as to cause of death was due to the head injuries sustained by her. According to him, injuries no.1 to 8 were fatal injuries and the

same could have cause death. The doctor does not say, nor has it been brought out through his examination by the prosecutor that the injuries

sustained by the deceased were sufficient in the ordinary course of nature to cause death. No evidence has come on record that the injuries inflicted

by the accused were sufficient in the ordinary course of nature to cause death. In these circumstances it can only be held that the facts proved by the

prosecution do not bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300 IPC. Hence the

offence can only be 'culpable homicide not amounting to murder', punishable under the 1st or 2nd part of Section 304 IPC, depending on whether

Clause (a) or (b) of Section 299 is applicable. We have already found that Clause(a) or (c) of Section 299 IPC is not attracted. Hence the act of the

accused can only fall under Clause (b) of Section 299 IPC which is punishable under the 1st part of Section 304 IPC. We need not go into the

argument advanced by the defence counsel that the 1st exception to Section 300 IPC is attracted as the said contingency arises only when the

prosecution establishes that the case falls under any of the Clauses of Section 300 IPC. Only if the same is established, we need to look into the

question whether the case falls under any of the Exceptions to Section 300 IPC. The said contingency apparently does not arise in the case on hand.

17. We have found that the act of the accused is only culpable homicide not amounting to murder falling under Clause (b) of Section 299 IPC. Hence

he is liable to be punished only under Part-I of Section 304 IPC. As it is a case of matricide, we are of the opinion that ten years rigorous

imprisonment would be the appropriate sentence in this case.

In the result, the Crl.Appeal is partly allowed. The conviction and sentence entered into by the trial court for the offence under Section 302 IPC is set

aside. The accused is found guilty of having committed culpable homicide not amounting to murder falling under Section 299(b) IPC and hence he is

sentenced to rigorous imprisonment for ten years under Section 304 Part-I IPC.

Interlocutory application, if any pending, shall stand closed.