

(2024) 06 KL CK 0232

High Court Of Kerala

Case No: Criminal Appeal No.590 of 2022

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APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: June 25, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 207, 357(i)(b)
- Indian Penal Code, 1860 - Section 84, 300, 302, 304, 307, 506(ii)
- Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 23

Hon'ble Judges: P.B.Suresh Kumar, J; M.B.Snehalatha, J

Bench: Division Bench

Advocate: P.Mohamed Sabah, Libin Stanley, R.Gayathri, Saipooja, Sadik Ismayil, M.Mahin Hamza, Safiya Akbar, Bindu O.V, Ambika Devi

Final Decision: Dismissed

Judgement

M.B.Snehalatha , J

1.In this appeal appellant/accused calls in question the judgment of conviction and order of sentence passed in S.C.No.1131/2017 of Sessions Court, Thrissur, whereby he was convicted for the offences punishable under Section 302 of the Indian Penal Code [IPC].

2. In brief prosecution case is as follows: The victim is a child aged 3 years. Accused is the father of the child. PW2 is the mother of the child. They were residing in a rented building at Kiraloor, Aikyanagar Colony owned by PW1. Accused was doubtful about the paternity of the said child. Due to the said doubt, on 26.02.2017 at 1.30 p.m while the child was standing in the courtyard of the rented house, accused with intent to murder the child, threw the child into the house; beaten the child with a belt and

thereafter hit the head of the child on the floor and caused fatal injuries. Though the child was taken to hospital and it succumbed to the injuries on 03.03.2017 while undergoing treatment.

3. Pursuant to Ext.P1 First Information Statement laid by PW1, Ext.P10 FIR was registered initially under Sections 307, 506(ii) IPC and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ['J.J.Act']. Subsequently, on the death of the child, Section 302 IPC was incorporated instead of Section 307 IPC.

4. PW14, the then Circle Inspector of Kunnamkulam, conducted a major part of the investigation. Later part of the investigation was done by PW15; he completed the investigation and laid final report before the court against the accused before the jurisdictional Magistrate. The learned Magistrate received the same as C.P.No.74/2017 and after complying the legal formalities as required under Section 207 of the Code of Criminal Procedure [Cr.P.C], the case was committed to the Court of Sessions, Thrissur which in turn made over the case to First Additional Sessions Court, Thrissur for trial and disposal. The learned Additional Sessions Judge framed charge against the accused for the offences under Sections 302, 506(ii) of IPC and Section 23 of the 'J.J.Act. Charge was read over and explained to the accused. The accused abjured guilt and alleged false implication and claimed to be tried.

5. To bring home the guilt of the appellant/accused, prosecution examined PWs 1 to 15, marked Exts.P1 to P17. MOs 1 and 2 are the material objects. On the side of the appellant/accused DWs 1 and 2 were examined. Exts.D1 series were also marked.

6. By the impugned judgment appellant/accused was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹1,00,000/- for the offence punishable under Section 302 IPC. In default of payment of fine to undergo rigorous imprisonment for one year. It was further directed that if the fine amount is realised it is to be paid as compensation to PW2 namely the mother of the child under Section 357(i)(b) Cr.P.C. He was not guilty of the offence under Section 506(ii) and Section 23 of the J.J.Act and was acquitted of the said offences.

7. The point for consideration in this appeal is whether the conviction entered and the sentence passed against the appellant/accused by the trial court is sustainable or not.

8. Heard the learned counsel for the accused/appellant and the learned Public Prosecutor.

9. As stated earlier, to substantiate the charge levelled against the accused, prosecution examined as many as 15 witnesses, marked 17 documents and 2 material objects.

10. At first, let us see whether the child Maruthupandi had a homicidal death as alleged by the prosecution. To substantiate the case of the prosecution that the child was murdered by the accused and the death was due to the injuries sustained on the head due to the attack of the accused, prosecution would rely on Ext.P9 postmortem certificate, Ext.P8 series case-sheet in respect of the treatment and the evidence tendered by the doctors who were examined as PWs 9 to 11.

11. PW10 who was the Head of Department, Pediatric Cell, Medical College Hospital, Thrissur testified that on 26.02.2017 he had examined the child named Maruthupandi aged 3 years brought with a history of assault by his father. The child was unconscious. Pupils were bilateral, dilated and nonreactive. Pulse feeble. Blood pressure was not recordable. The child was incubated and was referred to Neurosurgery.

12. PW9 who was the Professor and head of Neurosurgery, Medical College, Thrissur testified that on 26.02.2017 he had examined the child named Maruthupandi; that the child was unconscious and was incubated. There was no spontaneous breathing. Ext.P8 is the copy of the case-sheet. The injuries noted therein are as follows:

“1. Left cerebral convexity SDH with mass effect.

2. Tentorial inter hemispheric hemorrhage.

3. Fracture of right parietal bone, occipital bone, frontal bone”

13. He has further testified that on the said day, surgery was done. The child died on 03.03.2017 while undergoing treatment. According to PW9, the injuries were very serious and was sufficient to cause death.

14. PW11 was the Medical Officer, Department of Forensic Medicine, Government Medical College, Thrissur who conducted postmortem examination of the dead body of the child Maruthupandi on 04.03.2017. Ext.P9 is the postmortem certificate. Ante-mortem injuries noted by the doctor who conducted the postmortem were as follows:

“1) Stapled craniectomy wound, 32 cm long, with adherent margins, 'C' shaped with convexity backwards on left side of top of head, its front inner end 2 cm outer to midline and 4 cm above eyebrow. Its outer end just in front of tragus of ear. Flap of skull bone was seen surgically removed over an area 18 x 12 cm underneath, with burr holes at periphery. Duramater was seen surgically removed underneath. Brain matter was seen protruding through the bony deficit. G patch was noted overlying the brain matter.

2) Scalp contusion 3 x 1 x 0.2 cm on left side of top of head, 2 cm outer to midline and 4 cm above supraorbital margin with an overlying abrasion 0.7 x 0.4 cm.

- 3) Scalp contusion, 3x2x0.5 cm, on back of head, at midline overlying the occipital bone, 4 cm above external occipital protuberance. Fissured fracture, 8.5 cm long over the occipital bone, traversing the floor of posterior cranial fossa to reach the foramen magnum on left side. Subdural hemorrhage was noted on base of brain. Brain showed subarachnoid hemorrhage. Flattening of gyri and narrowing of sulci was noted.
- 4) Multiple small abrasions over an area 4x4 cm on right side of top of head, 3.5 cm outer to midline and 6 cm above eyebrow.
- 5) Linear abrasion, 2 cm long, oblique, on right side of head, its upper inner end 10.5 cm outer to midline and lower outer end 2 cm above top of ear.
- 6) Multiple small abrasions over an area 11x8 cm on left side of head, 3 cm outer to midline and 3 cm above eyebrow.
- 7) Abrasion, 3x1.5 cm, on left side of back of head, just outer to midline and 8 cm above root of neck.
- 8) Multiple small linear abrasions over an area 2x2 cm on left side of back of head. 1 cm outer to midline and 4 cm above root of neck.
- 9) Abrasion, 2x1.5 cm, vertical, on left side of forehead, 1.5 cm outer to midline and 1.5 cm above eyebrow.
- 10) Abrasion, 1.5 x 0.5 cm, oblique, on top of nose, 2.5 cm below its root.
- 11) Multiple small abrasions over an area, 1x 0.5 cm, on right side of face, 6.5 cm outer to midline and 5.5 cm above jaw bone.
- 12) Infected wound, 0.5x0.2 cm, skin deep, horizontal on right side of neck, its inner end 7.5 cm outer to midline and 2 cm below ear lobule.
- 13) Infected wound, 0.5x 0.2 cm, skin deep, oblique, on right side of neck, 6.5 cm outer to midline and 2.5 cm below ear lobule.
- 14) Infected wound, 0.5x0.2 cm, skin deep, oblique, on right side of neck, 4.5 cm outer to midline and 4.2 cm below ear lobule.
- 15) Multiple linear abrasions over an area 2.2x1 cm of sizes ranging from 0.2 to 0.8 cm on right side of neck, 4.5 cm outer to midline and 2.5 cm above collar bone.
- 16) Linear abrasion, 1 cm long, oblique on back of right elbow.
- 17) Multiple small abrasions over an area 1.2x 1 cm on back of right forearm, 2 cm below elbow.

18) Multiple small abrasions over an area 4x1 cm on outer aspect of right ankle and foot.

19) Superficial lacerated wound, 0.6x0.2 cm with sticky, swollen edges, vertical on in inner aspect of right leg, 8 cm below knee.

20) Linear abrasion, 1 cm long, oblique, on outer aspect of left thigh, 11 cm below top of hipbone.

21) Multiple small abrasions over an area 7.5x 5 cm, on back of left leg, 1.5 cm below knee.

22) Multiple small abrasions in a row, of length 9 cm and width 0.5 cm, 'C' shaped with convexity backwards and outwards, on right flank of abdomen, covered with black scab at places, its lower inner end 9.5 cm outer to midline and just above top of hip bone. The distance between the two limbs at the inner end was 2 cm and both limbs were almost parallel.

23) Multiple small abrasions over an area 16x8 cm, on back of trunk, across midline 6.5 cm below root of neck.

All abrasions were covered with brown scab (except injury no.22).

All contusions were bluish in colour."

15. PW11 has testified that death was due to blunt injury sustained to the head. PW11 has also testified that injury Nos.16 to 23 could be caused by using MO1 belt.

16. Exts.P8 & P9 coupled with the testimonies of doctors namely PWs9 to 11 would reveal that the death of victim Maruthupandi, aged 3, was a case of homicide. Prosecution has succeeded in establishing that it was a case of homicide.

17. Now let us see whether the prosecution has succeeded in establishing the case that the accused intentionally committed murder of the victim child Maruthupandi as alleged.

18. According to the prosecution, PWs2 & 3 were the eye-witnesses to the incident. PW2 is the mother of the victim child. She testified that the accused is her husband; that during the said period she along with her husband and two children were residing at Kiraloor; that the incident in this crime occurred at their residence on 26.02.2017. According to her, while she was preparing food, the accused caught hold the child Maruthupandi by his hair, threw the child into the house and thereafter beat the child with MO1 belt. Accused lifted the child by holding its legs and hit the head of the child on the floor causing injuries to the head. When her daughter cried aloud, the neighbours rushed to the place; that she along with neighbours took the injured child

to the hospital; that while undergoing treatment at the hospital, the child succumbed to the injuries after five days of the incident. Her further version is that the accused used to quarrel with her and used to attack the child Maruthupandi suspecting paternity of the said child. She has also testified that on the previous day of the incident ie. on 25.02.2017 accused had quarrelled with her and manhandled her and the children by questioning her as to the reason why PW1 Krishnan visited their home.

19. PW3 in her evidence testified that she is residing nearby to the place of occurrence; that on 26.02.2017 at 1.30 pm when she had gone out to collect water from the water pipe, she heard the cry of the children and accordingly when she rushed the place she witnessed the incident; that the accused threw the child into the house and indiscriminately beat the child with MO1 belt and thereafter caught hold the child by its legs and hit the head of the child on the floor. The child was unconscious; that she took the child from the accused and brought to the house of another neighbour named Lucy and sprinkled water on his face. Neighbours Lucy and Simitha took the child to the hospital. According to her she had shown the scene of occurrence and she had shown MO1 belt to the investigating officer.

20. PW12 who was the Senior Civil Police Officer of Erumappetti Police Station testified that on 27.02.2017 at Medical College Hospital, Thrissur he recorded Ext.P1 F.I.Statement of PW1 Krishnan, who was the bystander of the injured child.

21. The version of PW1 is that he is a native of Selam; that he owns a house at Kiraloor; he has got two houses at Kiraloor of which one was rented out to the accused wherein accused was residing with his wife and two children named Maruthupandi and Mankamma. His further version is that on 26.02.2017 at 6 pm, when he returned after his job, he was told by the neighbours about the incident. Accordingly, he proceeded to the Medical College Hospital, Thrissur; the child had sustained head injuries and the child was in the Intensive Care Unit. According to him, it was he who laid Ext.P1 F.I Statement to the police.

22. PW4 is an attesting witness to Ext.P2 scene mahazar. He is also a signatory to Ext.P3 inquest report. PW5 was the Village Officer, who prepared Ext.P4 site plan. PW8 was the Sub Inspector of Police, Kunnamkulam, who conducted inquest of the dead body of the deceased child and prepared Ext.P3 inquest report. PW14, the Circle Inspector of Police, Kunnamkulam, who conducted the investigation testified that on 28.02.2017 he inspected the scene of occurrence and prepared Ext.P2 scene mahazar; seized MO1 belt used by the accused for beating the victim. On 09.03.2017 he arrested the accused. PW15 completed the investigation and laid charge-sheet.

23. It is the prosecution case that during the time of the incident, accused was residing with his wife and two children at Kiraloor in a rented house owned by PW1. The allegation against the accused is that doubting the paternity of the victim child

Maruthupandi, accused threw the child and thereafter indiscriminately beat the child with MO1 belt and hit the head of the child on the floor of the house after holding the child by its legs and thus caused grievous injuries on the head of the child, which resulted in the death of the child.

24. Both PWs 2 & 3 have testified the overt acts committed by the accused.

25. PW3, who was residing nearby to the rented house of the accused, testified that on 26.02.2017 at 1.30 pm when she had gone out to collect water from the water pipe she heard the cry of the children and accordingly when she reached near the house wherein accused was residing, she could see the accused lifting the child and throwing the child from the courtyard to the house. She has further testified that the accused indiscriminately beat the child with MO1 belt and thereafter lifted the child by catching hold its legs and hit the head of the child on the floor. She has further testified that the accused placed the child between his legs and squeezed the child and the child was found unconscious. Her further version is that she took the child from the accused and brought to the house of another neighbour named Lucy and sprinkled water on the face of the child and thereafter Lucy and Simila took the child to the hospital.

26. The learned counsel for the accused contended that PW2 viz. the mother of the victim child is a native of Tamilnadu; that she is not conversant with Malayalam and therefore the testimony of PW2 which was recorded by the trial court in Malayalam without appointing an interpreter/translator cannot be relied on. The learned counsel vehemently contended that whatever version given by PW2 was the outcome of tutoring by the prosecution and without understanding the questions put to her and therefore no reliance can be placed on her version.

27. Admittedly, PW2 is a native of Tamilnadu. The records would reveal that a major portion of the deposition of PW2 was recorded without the aid of an interpreter/translator. But it is to be borne in mind that before the trial court accused had not raised any challenge in respect of the same. Anyhow, even if we eschew the version of PW2 in view of the grievance raised by the accused that PW2 was examined without the aid of a translator, we still have the evidence of PW3 who has narrated the entire incident and there are no reasons at all to disbelieve PW3.

28. In spite of searching cross-examination of PW3, defence could not make any dent in her version regarding the incident which she witnessed. There are no material contradictions in her evidence which materially affect the core of the prosecution case which render the testimony of the said witness as unreliable. Having gone through her evidence we find that nothing could be elicited in the cross-examination which creates a doubt in the mind of the court regarding her presence at the crime scene at the time of commission of the crime. Her version regarding the incident is trustworthy, reliable and it inspires confidence in the mind of the court.

29. The learned counsel for the accused advanced argument to the effect that the prosecution failed to prove the place of occurrence. It is contended that as per Ext.P2 scene mahazar and as per the testimonies of PWs 2 & 3 and the Investigating Officers the house/building in which the incident took place does not have a door number whereas in Ext.P5 ownership certificate issued by the Secretary of Veloor Grama Panchayat, a building number has been shown is a ground to disbelieve the prosecution case, contends the learned counsel.

30. We find no merit in the above contention. It is true that in Ext.P2 scene mahazar and Ext.P4 site plan, there is no mention regarding the number of the building. But it has come out during cross-examination of PW1 who is the owner of the building that he has got two houses and it has only one number. He has also testified that the room rented to the accused has only an area of 3 sq.meter. As per Ext.P2 scene mahazar the scene of occurrence is a single room building and the western courtyard. Even if the room wherein the crime took place had a separate building number, it is not a ground to disbelieve the prosecution case. The argument put forward by the learned counsel for the accused that the absence of door number for the building wherein the crime took place is a ground to disbelieve the prosecution case cannot be countenanced.

31. The evidence on record would reveal that on 26.02.2017 at 1.30 pm while the victim child aged 3 was standing in the courtyard of the house, accused who is the father of the child, threw the child into the house and indiscriminately beat the child with MO1 belt and thereafter he hit the head of the child on the floor after lifting the child by holding the legs of the child and caused fatal injuries to the child and thus intentionally committed murder. PW11 Doctor who conducted the postmortem examination has categorically testified that the death was due to blunt injury sustained to head. The doctor has further opined that injury Nos.16 to 23 could be caused by using MO1. The ocular evidence receive corroboration from the medical evidence namely Ext.P8 series case-sheet and Ext.P9 postmortem certificate as well as from the versions of doctors who were examined as PWs 9 to 11.

32. A perusal of the records would reveal that during trial, accused had put forward a defence under Section 84 of IPC and contended that at the time of commission of the alleged offence by reason of unsoundness of mind he was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. In support of the said contention accused examined DWs 1 who was the Superintendent of Government Mental Health Centre, Thrissur and DW2 who was the director of Santhivanam Mental Hospital, Trichy on his side.

33. Ext.D1 series produced by DW1 would reveal that the accused was treated as an outpatient on 08.08.2018 at the Government Mental Health Centre, Thrissur.

34. It is to be borne in mind that the incident in this case was on 26.02.2017 whereas Ext.D1 series is to the effect that the accused was treated as an outpatient at Government Mental Health Centre, Thrissur on 08.08.2018 ie. 1½ years after the date of incident. DW2 testified that no medical records relating to the treatment undergone by the accused are available in that hospital. There is nothing on record to hold that the accused was a person of unsound mind at the time of commission of the offence or prior to the date of the incident.

35. It is a well-settled principle that the onus of proving unsoundness of mind is on the accused. The onus has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act [**Harisingh Gond v. State of Madhyapradesh [Manu/SC/ 3700/2008]**].

36. In the case on hand there is nothing on record to show that at the time of commission of offence by reason of unsoundness of mind accused was incapable of knowing the nature of act or that he was doing what was either wrong or contrary to law. Therefore accused cannot take recourse under Section 84 IPC.

37. The learned counsel for the accused contended that the accused had no intention to commit murder of the child and therefore his act will not come under Section 300 IPC and it would fall only on Section 304 IPC.

38. As mentioned earlier it is in evidence that the accused, who is the father of the victim child, threw the child from the courtyard into the house and thereafter indiscriminately beat the child with a belt and hit the head of the child on the floor by holding the child by its legs. The acts done by the accused were brutal and heinous. Hitting the head of a child aged 3 years on the floor by holding the legs cannot be said to be an act done by the accused without the intention of committing murder. Rather, there is ample evidence before the court to show that the act was done by the accused with the intention of causing bodily injury to the child and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause the death of a child aged 3. Therefore, the argument put forward by the learned counsel for the accused that the case on hand would not fall under Section 300 and the offence would fall under 304 is untenable and cannot be accepted. There is no infirmity in the finding of the learned Sessions Judge that the accused is guilty under Section 302 IPC and we find no reason to interfere with the conviction and sentence passed by the trial court.

Appeal is devoid of any merit, which deserves only dismissal. We do so.