
(2024) 10 KL CK 0110

High Court Of Kerala

Case No: Criminal Appeal No.715 Of 2020

Manoharan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Oct. 22, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 300, 302
- Evidence Act, 1872 - Section 6, 32

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

Bench: Division Bench

Advocate: T.U.Sujith Kumar, E.C.Bineesh

Final Decision: Dismissed

Judgement

C.Pratheep Kumar, J.

1. This appeal has been preferred by the accused in Sessions Case No.256/2018 on the file of the Additional Sessions Judge, Irinjalakuda. The

appellant stands convicted under Section 302 of IPC for murdering his own son Midhun.

2. The prosecution case is that on 26.11.2017 at about 10.15 p.m, the accused, due to his enmity towards his son, as the son questioned his conduct in attacking his mother, stabbed him using a knife on his chest and as a result of which he succumbed to the injury.

3. The evidence in this case consists of the oral testimonies of PWs1 to 22 and documentary evidence Exts.P1 to P25. MOs1 to 11 were identified.

After evaluating the available evidence, the trial court found the accused guilty of the offence punishable under Section 302 of IPC and sentenced him

to undergo imprisonment for life, in addition to payment of fine. Aggrieved by the above judgment of conviction and sentence, the accused preferred this appeal raising various contentions.

4. Now the points that arise for consideration are the following :

(i) Whether the prosecution has succeeded in proving that the accused has committed murder of his son Midhun on 26.11.2017 at about 10.15 pm as alleged ?

(ii) Whether the impugned judgment of conviction and sentence calls for any interference in the light of the grounds raised in the appeal ?

5. Heard both sides.

6. Points (i) & (ii) – Sri.Sujithkumar T.U., the learned counsel appearing for the accused would argue that in this case the evidence of PWs1 to 3

are contradictory to each other so that it is not at all safe to rely upon them. Therefore, he prayed for acquitting the accused by allowing this appeal.

On the other hand, Sri.E.C.Bineesh, the learned Public Prosecutor, would argue that there is absolutely no grounds to interfere with the impugned

judgment of conviction and sentence passed by the trial court and therefore he prayed for dismissing the appeal.

7. PW1 is a friend of deceased Midhun. He would swear that on 26.11.2017 at about 6.30 p.m. he went to the residence of Midhun and at that time,

in addition to Midhun, his parents were also present there. After talking with them for about 10-15 minutes, he returned home. At about 9.45 p.m. he

received a call from Midhun stating that he was stabbed by his father and requesting him to take Midhun to the hospital. Immediately he proceeded to

the residence of Midhun. On the way. he saw Anitha Jyothi and Deepa, who were neighbours of Midhun. When he reached the residence of Midhun

he saw blood stains inside the house. On verifying the compound, he saw Midhun lying on the property of Anitha Jyothi, with stab injury. On seeing

him, Midhun told him that he was stabbed by his father and requested to take him to the hospital. He informed about the incident to the cousin of

Midhun and thereafter took Midhun to M.I. hospital in an ambulance which came there, as called by somebody else. Later on, he came to know that

Midhun died. Thereafter, he proceeded to the police station and gave Ext.P1 FI statement.

8. PW2 is the wife of the accused and the mother of the deceased. She would swear that her husband is a drunkard and he always used to quarrel with her. About three years back, he tried to kill her and Midhun by opening the LP gas. He was always suspicious of her. On 26.11.2017, she along with Midhun proceeded to the residence of her deceased sister. On the way, the accused called her and requested her to return home. However, Midhun told him that they have reached the residence of her sister and that they will return only after visiting that house. At about 5.00 p.m. they returned back to the residence. At that time the accused was found in a drunken stage and he quarrelled with PW2. The accused and Midhun went out and returned by about 9.00 p.m.

9. According to PW2, after having dinner, Midhun went to his room for sleeping. She also went to her room for sleeping. At that time, the accused came and knocked at the door of PW2. When she came out, the accused beat her. On hearing the sound, Midhun opened the door of his room and came out. She moved to the courtyard and requested Midhun to get inside his room. When Midhun went inside the room, the accused knocked at the door of Midhun and hence he came out opening the door. Within no time, she heard the scream of Midhun that he was stabbed by his father. When she reached there, she saw the accused holding a knife and Midhun with bleeding injury on his chest. She tied a towel around the injury and proceeded with Midhun towards the car. On the way Midhun fell down. She called aloud her neighbours Anitha Jyothi and Deepa. PW1, Anitha Jothi and Deepa came there and they took Midhun to the hospital in an ambulance. She identified MO1 as the knife used by the accused to stab Midhun and also identified MO6 as the dress worn by the accused at the time of the incident.

10. PW3-Anitha Jyothi referred to by PWs1 and 2 was the neighbour of Midhun. She would swear that on 26.11.2017 at about 9.30 p.m. she heard PW2 calling the names of herself and Deepa. When she opened the door, she saw PW2 and the accused in their residence. PW1 and Deepa also came there. When they reached the residence of Midhun and verified the premises, found that Midhun was lying near an Anjili tree with blood on his body. He told PW1 that he was stabbed by his father and requested PW1 to take him to the hospital. His mother (PW2) and Premkumar (PW4) also

came there and took Midhun to the hospital. Later on she came to know that Midhun died.

11. PW4 was the son of the cousin of Midhun. He would swear that on 26.11.2017 Midhun called him over phone and the same was attended by his

wife, as he was not there. When he returned, he called back and at that time it was attended by the mother of Midhun. She told him that Midhun was

stabbed by his father and is lying unconscious and requested him to reach there. Immediately, he came there by car and when he proceeded towards

the place where Midhun was lying, the accused who was standing nearby restrained him. When he pushed the accused away and proceeded towards

Midhun, the accused beat him. He tied the wound using a dhoti and took Midhun to the hospital and when he reached the hospital, he died. PW4

would further swear that on an earlier occasion, the accused created scene by opening LP gas. When he went to close the cylinder, he was attacked

by the accused using an axe.

12. PW5, the ambulance driver who had taken Midhun to the hospital would swear that at about 9.30 p.m. he received a call and reached the

residence of Midhun by 9.45 p.m. and took Midhun to M.I hospital at Engandiyur and when he was brought to the hospital it was declared that he was

brought dead.

13. PW7 is the son-in-law of the accused and also an attester to Ext.P4 mahazar for recovery of MO1 knife. He would swear that he saw the

accused taking MO1 knife from behind an almirah in his house and handing over the same to the Investigating Officer. PW20 was the sub inspector

of Valapad police station who had recorded Ext.P1 FI statement and registered Ext.P18 FIR at 00.31 a.m on 27.11.2017. PWs 21 and 22 are the

Circle Inspectors who had conducted the investigation of this case. PW21 deposed that on questioning the accused, he furnished Ext.P4(a)

information to the effect that the knife is kept in his house and accordingly, when the accused was taken to his house, he had taken out MO1 from

below an almirah. It was seized as per Ext.P4 mahazar.

14. PW10 is the Assistant Professor, Medical College hospital, Thrissur, who had conducted the autopsy on the body of the deceased Midhun and

issued Ext.P7 postmortem certificate. He has noticed the following ante-mortem injuries on the body of the deceased :

1. Incised penetrating wound, 6 cm long, on left side of front of abdomen, oblique, upper round and 20 cm below collar bone and 3.5 cm outer to midline. Lower outer end was sharply cut. Through the defect, greater omentum was protruded out. The wound had cut the peritoneum (3 cm long) and entered peritoneal cavity just below costal margin and cut greater omentum, anterior wall of stomach (3 cm long) and mesentery of small intestine underneath (3 cm long) and ends at the left side of first lumbar vertebra with infiltration of blood over an area 5 x 2 cm). The wound was directed downwards, backwards and to right. Thickness of abdominal wall 3 cm. Peritoneal cavity contained 3 litre of blood with clots.

2. Abrasion, 3x2 cm, on lower part of front of left knee.

15. The opinion as to cause of death, according to PW10, is that the deceased died due to incised penetrating wound sustained to abdomen. According to him, injury No.1 is a fatal injury and it is sufficient in the ordinary course of nature to cause death. He also deposed that injury No.1 can be caused using MO1 knife.

16. From Ext.P25, FSL report, it is also revealed that MO1 knife and MO6 dhoti worn by the accused at the time of commission of the offence contained blood. The accused has not offered any explanation for the presence of the blood in the dress worn by him at the time of the incident. He also has not offered any explanation for the presence of blood stains in MO1 knife recovered on the basis of Ext.P4(a) information furnished by him to PW21.

17. It was argued by the learned counsel for the accused that the evidence of PW1 is not at all reliable as the time at which he allegedly reached the residence of Midhun is not in tune with the evidence of PWs2 and 3. It is true that according to PW1, when he reached the residence of Midhun at 6.30 p.m. on 26.11.2017, he saw Midhun as well as his parents at his residence. However, when PW2 was examined, she deposed that Midhun went out between 5.30 and 6.00 p.m. and returned only at about 8.00 to 8.30 p.m. On the other hand, the accused returned home only at 7.00 p.m. It is true that the above evidence of PW2 is contradictory to the evidence of PW1.

18. However, the evidence of PW2, the mother of the deceased and PW3, the neighbour of the deceased are devoid of any such disability and they are quite natural and convincing. PW2, who was present in the same house at the time of the incident, deposed that Midhun screamed aloud that he was stabbed by his father and immediately she saw the accused holding a knife and Midhun with bleeding injury on his chest. Though PW2 has not actually seen the accused stabbing Midhun, the above scream heard by her immediately at the time of the incident, is relevant as *res gestae*, under section 6 of the Evidence Act. Further, PW3 also deposed that when PW2 called her name, she proceeded to the residence of Midhun and at that time Midhun was conscious and he told PW1 that he was stabbed by his father and requested to take him to the hospital. The above statement made by the deceased, immediately before his death, about the cause of his death, is also relevant as dying declaration, under Section 32 of the Evidence Act. The evidence of PW4 that immediately on getting information about the attack on Midhun he reached the residence of Midhun and when he proceeded towards the place where Midhun was lying, the accused restrained him and when he pushed the accused away and tried to proceed towards Midhun, he was even assaulted by the accused. Even then, he tied the injury using a dhoti and took Midhun to the hospital. The above evidence of PWs2, 3 and 4 stands uncontroverted. Though they were cross-examined in detail nothing material could be brought out to discredit their testimonies. Therefore, from the evidence of PWs2 to 4 and from the evidence of PW10, the doctor, who conducted autopsy and issued Ext.P7 post-mortem certificate, it can be safely concluded that the prosecution has succeeded in proving beyond reasonable doubt that it was the accused who had inflicted stab injury on the chest of Midhun which resulted in his death.

19. As deposed by PW10, injury No.1 which is on the vital part of the body of the deceased, is fatal and is sufficient in the ordinary course of nature to cause death. Considering the size of the weapon and the nature of the injury inflicted, the place where the injury was inflicted and the force with which it was inflicted, it can be safely concluded that the accused had the intention to cause the death of Midhun. Even if it is assumed that he had no

intention to cause the death of Midhun, he had at least the intention to cause such bodily injury which is sufficient in the ordinary course of nature to

cause death and as such, the same will come within clause III of Section 300 IPC namely murder punishable under Section 302 IPC.

20. The trial court has granted only the minimum punishment of imprisonment for life provided for the offence of murder and as such, we do not find

any grounds to interfere with the above conviction as well as sentence and as such, this appeal is liable to be dismissed.

In the result, the appeal is dismissed.