

(2025) 02 KL CK 0033

High Court Of Kerala

Case No: Criminal Appeal No.887 Of 2018

Rajesh

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Feb. 6, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 174, 232
- Indian Penal Code, 1860 - Section 34, 302, 304, 323, 324, 325

Hon'ble Judges: P.B. Suresh Kumar, J; Jobin Sebastian, J

Bench: Division Bench

Advocate: Sajiv.C.K., Alex M.Thombra

Final Decision: Allowed

Judgement

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P.B.Suresh Kumar, J."//////////

1. Accused 1 and 2 in S.C.No.74 of 2017 on the files of the Court of the Additional Sessions Judge-II, North Paravur, are the appellants in the appeal."//////////

Among them, accused 1, 3 and 4 in the case are the son, wife and daughter of the second accused respectively. Accused 3 and 4 were acquitted and"//////////

accused 1 and 2 were convicted for the offences punishable under Sections 302, 323 and 325 read with Section 34 of the Indian Penal Code (IPC)."//////////

2. The second accused and his brother, Mohanan were residing in houses close to their family house. Their brother Ravindran was residing in the"//////////

family house. The second accused and his brother, Mohanan were performing a customary ritual in connection with the festival of a nearby temple as"//////////

their hereditary right. There was a verbal altercation between Mohanan and the second accused on 06.03.2010 in connection with the performance of,,,,,,,,,,,,,
the said customary ritual. A few minutes past midnight on 06.03.2010, when Ravindran came out of the family house to lock his bicycle, he noticed",,,,,,,,,,,,,,
that Mohanan was lying inert in the courtyard of the house of the former. Ravindran immediately informed the matter to the wife of Mohanan and,,,,,,,,,,,,,
they together took Mohanan to the Government Hospital, North Paravur. On the following day, Mohanan was taken to the General Hospital,",,,,,,,,,,,,,
Ernakulam for scanning and he was brought back home on the same day itself. At about 5.45 a.m. on 08.03.2010, Mohanan developed inability to pass",,,,,,,,,,,,,,
urine and when the said fact was brought to the notice of Ravindran, he along with the wife of Mohanan again took Mohanan to the Government",,,,,,,,,,,,,,
Hospital, North Paravur and by the time they reached the said hospital, Mohanan passed away.",,,,,,,,,,,,,

3. On the basis of the information furnished by Ravindran, a case was registered by North Paravur Police on 08.03.2010 under Section 174 of the",,,,,,,,,,,,,,
Code of Criminal Procedure (the Code). The investigation in the case revealed that the death of Mohanan is a homicide and that it was the accused,,,,,,,,,,,,,
who caused the death of Mohanan. Accordingly, the final report was filed in the case against the accused under Sections 323, 324, 325 and 304 read",,,,,,,,,,,,,,
with Section 34 IPC. The accusation against the accused in the final report is that there was a verbal altercation between Mohanan and the second,,,,,,,,,,,,,
accused at about 7.00 p.m on 06.03.2010 in connection with ritual performed by them during the temple festival; that at about 8.45 p.m. on the same,,,,,,,,,,,,,
day, the accused went together to the house of Mohanan, hurled abusive words at him and provoked him to come out of the house by banging on the",,,,,,,,,,,,,,
doors and windows of his house; that when Mohanan came out of the house, they beat him with wooden rods and when he fell down, the first",,,,,,,,,,,,,,
accused squeezed his testicles and thereupon, the accused beat Mohanan and stamped him on his abdomen and Mohanan succumbed to the injuries",,,,,,,,,,,,,,
caused by the accused.,,,,,,,,,,,,,,

4. On the accused being committed to trial, the Court of Session framed charges against the accused under Sections 323, 324, 325 and 302 read with",,,,,,,,,,,,,,

Section 34 IPC. The accused pleaded not guilty. The evidence in the case consists of the oral evidence of PWs 1 to 23 and Exts.P1 to P30 proved,,,,,,,,,,,,,

through them. MO1 is the material object identified in the case. As the Court of Session did not find the case to be one fit for acquittal under Section,,,,,,,,,,,,,

232 of the Code, the accused were called upon to enter on their defence. At that stage, the accused examined two witnesses on their side as DW1",,,,,,,,,,,,,

and DW2 and proved through them Exts.D1 to D4 documents,,,,,,,,,,,,,

On an appreciation of the evidence, the Court of Session thereupon found accused 1 and 2 guilty of the offences punishable under Sections 323, 325",,,,,,,,,,,,,

and 302 read with Section 34 IPC and sentenced them, among others, to imprisonment for life. They were however found not guilty of the offence",,,,,,,,,,,,,

punishable under Section 324 IPC. Accused 3 and 4 were however acquitted of all the charges. Accused 1 and 2 are deeply aggrieved by their,,,,,,,,,,,,,

conviction and sentence, hence this appeal.",,,,,,,,,,,,,

5. Heard the learned counsel for accused 1 and 2 as also the learned Public Prosecutor,,,,,,,,,,,,,

6. It is mainly based on the oral evidence tendered by the daughter and wife of Mohanan who were examined as PWs 2 and 4 respectively that the,,,,,,,,,,,,,

Court of Session found accused 1 and 2 guilty of the offences punishable under Sections 323, 325 and 302 read with Section 34 IPC. The essence of",,,,,,,,,,,,,

the arguments advanced by the learned counsel for accused 1 and 2 is that the evidence tendered by the said witnesses are wholly unreliable. In order,,,,,,,,,,,,,

to bring home the said point, the learned counsel pointed out various circumstances. We are not referring to the circumstances pointed out by the",,,,,,,,,,,,,

learned counsel, as we propose to deal with the same elaborately at a later part of this judgment. It was also contended by the learned counsel that",,,,,,,,,,,,,

even assuming that there was an occurrence as alleged by the prosecution, there is nothing on record to indicate that the injuries allegedly inflicted by",,,,,,,,,,,,,

the accused was the cause of the death of Mohanan for, even according to the prosecution, the cause of the death is sepsis. It was also argued by the",,,,,,,,,,,,,

learned counsel that even if it is taken that the internal injury sustained by Mohanan was a cause for the sepsis, accused 1 and 2 cannot be convicted",,,,,,,,,,,,,

for the offence punishable under Section 302 IPC. Per contra, the learned Public Prosecutor argued that PWs 2 and 4 being the daughter and wife of" ,,,,,,,,,,,,,,
Mohan, they are natural witnesses whose presence at the scene at the time of occurrence cannot be doubted and that there are absolutely no" ,,,,,,,,,,,,,,
reasons to disbelieve them and if that be so, the impugned judgment is in order." ,,,,,,,,,,,,,,

7. The point that arises for consideration in the appeal is whether the conviction and sentence passed against accused 1 and 2, are sustainable in law." ,,,,,,,,,,,,,,

8. Let us now examine the evidence in the case. PW1 is Ravindran. His evidence was only that there was a quarrel on 06.03.2010 between the,,,,,,,,,,,,,

second accused and Mohan; that at about 10 p.m., there was a commotion in the midst of which he heard a heated exchange of words between the" ,,,,,,,,,,,,,,

second accused and Mohan as also the cries of Mohan and that after sometime, when he came out of his house to lock his bicycle, he saw" ,,,,,,,,,,,,,,

Mohan lying inert in the courtyard of his house. It was deposed by PW1 that he then called the wife of Mohan as also the Councillor," ,,,,,,,,,,,,,,

Ramachandran and took Mohan along with them to the Government Hospital, Paravur. It was deposed by PW1 that he came to know that" ,,,,,,,,,,,,,,

Mohan was taken to Ernakulam on the following day and was brought back home on the same day. It was deposed by PW1 that on 08.03.2010, the" ,,,,,,,,,,,,,,

wife of Mohan informed him that Mohan was unable to drink water and pass urine. According to PW1, he immediately took Mohan again to" ,,,,,,,,,,,,,,

the Government Hospital, Paravur and the doctor there, after examining Mohan, informed PW1 that he is no more. PW1 affirmed that it was he" ,,,,,,,,,,,,,,

who gave Ext.P1 First Information Statement. PW1 explained in his evidence that there was a verbal altercation between the second accused and,,,,,,,,,,,,,

Mohan at 7.00 p.m. on 06.03.2010 and it was thereafter that he heard the commotion. It was deposed by PW1 that it was about two hours after the,,,,,,,,,,,,,

commotion that he saw Mohan lying in the courtyard of his house. In cross-examination, it was clarified by PW1 that Mohan was a person who" ,,,,,,,,,,,,,,

often drinks and it was since Mohan did not take the quarrel that took place on 06.03.2010 seriously, that he did not prefer any complaint in respect" ,,,,,,,,,,,,,,

of the same. When it was suggested to PW1 that Mohan, who fell down since he was inebriated, he died due to lack of proper treatment, PW1" ,,,,,,,,,,,,,,

responded that he does not know.,,,,,,,,,,,,,,,,,,,,,,

9. PW2 is the daughter of Mohanan. Her version in the evidence was that on 06.03.2010 she saw the occurrence in which the accused caused injuries,,,,,,,,,,,,,,,,,,,,,

to her father, Mohanan. PW2 also deposed as was deposed by PW1 that there was a verbal altercation between the second accused and Mohanan",,,,,,,,,,,,,,,,,,,,,,

over the ritual that was being performed in the temple. It was further deposed by PW2 that it was her mother who intervened in the altercation and,,,,,,,,,,,,,,,,,,,,,

separated them. It was deposed by PW2 that the first accused namely, the son of the second accused, was not present at that time when the said",,,,,,,,,,,,,,,,,,,,,,

altercation took place and that later when the first accused returned to his house at about 8.30 p.m., he went behind the house of PW2 and hurled",,,,,,,,,,,,,,,,,,,,,,

obscene and abusive words at Mohanan and banged on the back window of her house. It was deposed by PW2 that Mohanan then went out of the,,,,,,,,,,,,,,,,,,,,,

house and whilst so, accused 1 and 2 beat him repeatedly with pieces of firewood carried by them and when Mohanan fell down on account of the",,,,,,,,,,,,,,,,,,,,,,

attack, the first accused sat on his body and squeezed his testicles. It was deposed by PW2 that thereupon, accused 1 and 2 stamped Mohanan",,,,,,,,,,,,,,,,,,,,,,

repeatedly all over his body and that when he attempted to get up, accused 3 and 4 also stamped him, apprehending that he might attack them and that",,,,,,,,,,,,,,,,,,,,,,

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