SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State of Kerala Vs. Kuttappan

State of Kerala Vs. Kuttappan

SooperKanoon Citation : sooperkanoon.com/724244

Court : Kerala

Decided On : Jan-28-1982

Reported in : 1982CriLJ1702

Judge : K. Bhaskaran and ; S.K. Kader, JJ.

Appellant : State of Kerala

Respondent : Kuttappan

Judgement :

S.K. KADER, J.

1. Kuttappan, a carpenter, aged 30, was tried by the Court of Session, Ernakulam, for offences punishable under Sections 302, 324 and 323, I.P.C.' on a charge that he intentionally caused the death of Asha, his two-year-old female child, by holding it by its legs and violently striking its head against floor and voluntarily caused hurt to Karthiayani, his wife (PW 1), by beating her with hand and with a wooden plank (M.O. 1). The incident happened inside the western room of the house where Kuttappan was residing with his wife Karthiayani, son Aji aged 7 and Asha aged 2 and was at about 2 a.m. on the night between April 7 and 8, 1979. On the conclusion of the trial, the First Addl. Sessions Judge accepted the prosecution evidence as reliable and found that 'the prosecution has proved the case that the accused caught hold of the legs of the sleeping child Asha and struck her violently against the floor and that as a result of the injuries sustained

the child died the next day at the hospital.' It was also found that the accused voluntarily caused hurt to PW1 by hitting her on her left eye brow with M.O.I wooden plank. But strangely on the basis of these findings, the trial court convicted the accused only under Section 304-A, I.P.C. for having caused the death of Asha acquitting him. of the charge under Section 302, I P.C. and for having voluntarily caused hurt to PW 1 he was convicted only under Section 323, I.P.C. and sentenced to suffer simple imprisonment for 3 months on each count, with the direction that the sentences shall run concurrently.

2. The State has now come up in appeal challenging the order of acquittal of the charge under Sections 302 and 324, IP.C. The accused has-not filed any appeal against the convictions and sentences passed against him.

3. Kuttappan, the accused, married PW 1 some nine years ago and immediately after the marriage they were living together in the accused's house for 3 years. Aji was born to them during this period. A balance amount of Rs. 200/- towards stridhanam was due to the accused. There used to be quarrels between PW. 1 and the accused on account of the non-payment of this amount and on one such occasion, leaving the accused's house PW 1 came to her parents' house and was residing with them for two years. During this period, the father and brothers of PW 1 purchased a six cent plot of land and constructed a small building thereon. Thereafter PW 1 along with Aji was residing there. While so there was a reconciliation between the accused and PW 1 as a result of which the accused started residing in the house of PW 1. It was thereafter Asha, the second child, was born to them. Even while they were residing there, the accused used to remind PW 1 about the balance amount of stridhanam which remained unpaid. On the night of occurrence, the accused came home late at about midnight and after taking food took a mat and went to the western room to sleep. Aji was sleeping on a mat spread on the western end of the room and near to that was lying Asha, PW 1 and the accused were also sleeping close to the children in the same room on another mat. By about 2 a.m. the accused started talking about the stridhanam remaining unpaid and also about the sale of the house and property where they were living. On prior occasions also the accused used to tell PW 1 about the sale of the house and the property. As PW 1 did the suggestion of the sale of the house

and the property she kept mum without giving any reply. This irritated the accused arid he gave a slap on her cheek with hand. At this time All got up. A small kerosene lamp was burning inside the room. Even after receiving the blow, PW 1 did not give any reply to his suggestion. Thereafter she got up from the mat and moved towards the door of the room facing the verandah. The accused then went near sleeping Asha and holding her legs in both his hands violently struck her head against the floor. PW 1 entreating not to kill her child rushed towards the accused when the accused took M. 0.1 and gave a blow on the left eye brow of PW 1 causing an injury. PW 1 raised a hue and cry. On hearing the cries neighbours, Saramma (PW 5), Kunjipennu (PW 8), Ramakrishnan (PW 6), brother of PW 1 and others came running to the place of occurrence. The accused left the house immediately. Asha and PW 1 were removed in a vehicle to the Government Hospital at Kothaman-galam, where they were examined and treated by PW 2 doctor in-charge of that hospital.

4. As advised by PW 3 doctor who examined them at the hospital at Muvattupuzha. PW 1 and Asha were taken to the Medical College Hospital, Kottayam. PW 4, Tutor in Surgery, examined them at about 6.20 a.m. on 8-4-1979. While under treatment Asha died at 11.25 a.m. on 8-4-1979. In pursuance of intimation Ex P3 sent by PW 2 from the Kothamangalam Hospital, a case was registered by PW 13, Sub-Inspector of Police, Kothamangalam Police Station under Section 324, I.P.C. Ex. P8 being the F.I.R. After registering the case, PW 12, Assistant Sub-Inspector, went to the Medical College Hospital, Kottayam and recorded the statement of PW 1 on the evening of 8-4-1979. PW 13, Sub-Inspector of Police prepared Ex. P6 scene mahazar and recovered M.O. 1 sitting plank and M.O. 2. bloodstained mat, under Ex. P6, attested by PW 9. Taking up investigation in the case PW 15, Circle Inspector of Police, held inquest over the dead body of Asha under Ex. P10 inquest report. PW 14, Professor of Forensic Medicine, held autopsy over the dead body and issued Ex. P9 post-mortem certificate. The accused was arrested at 7 p.m. on 11-4-1979.

5. In denying his guilt, when examined under Section 313, Cr. P.C. the accused came forward with a version of his own of the incident. He, stated that on the night in question when he reached home at about 8 p.m., his wife was not seen there.

There was a quarrel between him and his wife on the previous day. He then went to the house of the parents of PW 1 which was nearby. There he saw Asha sleeping on the verandah. The accused then attempted to carry away Asha when his wife came and objected. He then forcibly took the child and left the house. His wife ran behind him and pulled the child from his hands. There was a push and pull between him and his wife in the course of which the child and his wife fell down and rolled. On hearing the cries of his wife, Ramakrishnan (PW 6), his brother-in-law, and father-in-law came running. He did not know what happened to the child which was lying on the ground. He took the child to his house, Ramakrishnan and Vasu brought a jeep and took him and the child in the jeep to Kothamangalam. The child was taken to the hospital while he was taken to the police station.

6. On behalf of the accused witness DW 1 was examined but he was declared hostile and cross-examined on behalf of the accused.

7. There is no dispute that Asha died as a result of the injuries sustained by her on the night of occurrence and PW 1 also sustained injuries on the same night. This fact has been sufficiently proved by the evidence of PWs 2. 3, 4, 14 and 15 and Exs. PI, P2, P4, P5, P9 and P10. During autopsy PW 14 noticed (1) an abraded contusion 7 x 6 cms. on the left side of the forehead and face near the outer angle of eye; (2) a contusion 3.5 x 3 cms. on the right side of the head, over the parietal eminence; (3) a sutured incised bone deep wound 5.5 cms; vertical, on the left side of the head 2 cms. in front of the ear; (4) sutured incised bone deep wound 6.5 cms. in length on the left side of the hand over the parietal eminence and (5) a skin deep incised wound 1.5 cms. in length, horizontal, on the inner aspect of left ankle. Under injury No. 1, PW 14, noticed that the scalp tissues over an area 18x14 cms. involving the front. top and left side of the head was infiltrated with blood. The left side of the coronal and the front part of the sagittal sutures showed fracture separation. From these fractures, multiple fissured fractures were extending radially to the left frontal bone, left parietal and temporal bones and floor of the left posterior cranial fossa. The brain showed a thick film of extradural haemorrhage on the left side and diffuse subdural and sub-arachnoid haemorrhage on either side. The white matter of the cerebral hae-mispheres

showed pin point bleeding. Injuries Nos. 3 to 5 are surgical wounds. According to the doctor, injury described as No. 1 in Ex. P9 with its corresponding internal injuries is sufficient in the ordinary course of nature to cause death and the injured died as a result of sustaining this injury. PW 2 was the first person who examined PW 1 and Asha. PW 1 had a lacerated wound above the left eye brow. There was a contusion on both lids of left eye and laceration on the left, lower eye. Exs. P2 and P5 are the wound certificates respectively issued by PW 2 and PW 4 in respect of the injuries found on Asha, while Ex. P1 and Ex. P4 detail the injuries noticed on PW 1 respectively by PW 2 and PW 4.

8. The vital point that arises for determination in this case is whether the acquittal of the accused under Section 302, I.P.C. was correct and whether he was responsible for causing the death of Asha in the mannei and under the circumstances alleged by the prosecution. As stated earlier, the accused has not chosen to file an appeal challenging the findings of the trial court convicting and sentencing him. It was relying on the direct testimony of PW 1 and the evidence of PWs. 5, 6, 7 and 8 and the medical evidence in the case that the trial court found that the prosecution has succeeded in proving the acts attributed to the accused and convicted and sentenced him in the manner stated above.

9. The learned advocate appearing for the accused submitted that PW 1 was the only eye witness examined in the case, that she is not on good terms with the accused and therefore it is unsafe to rely on the solitary evidence of this witness and enter a conviction in this case. The counsel also argued that at the earliest point of time PW 1 did not mention the name of the accused or implicate him and therefore this is a serious infirmity in the evidence of this witness which will militate against her veracity and credibility

10. The incident happened inside the room where the accused was sleeping with his wife (PW 1) and children. It was at about 2 a.m. that the unfortunate incident took place. Besides the accused, the only persons present in the room at the time of occurrence was PW 1, Aji and Asha. PW l has sustained injuries. There is nothing brought out in her evidence to show that she is hostile to the accused or has a grudge or motive to falsely implicate him in a crime of this nature. Her

evidence shows that she was having love and affection for her husband and she never used to question her husband on anything. In the circumstances, she is the most competent. natural and probable witness. Another attack against her evidence is that she did not mention the name of accused when PW 2 examined her and questioned her about the cause of injuries. According to her, while she was 'being taken to the hospital, she was not fully conscious, although the doctor stated that at the time when she was examined she was in a position to talk. The doctor asked P. W. 1 only about the cause of injuries and not about the authorship. She stated that she sustained injuries as a result of beating with a wooden plank. As regards the injuries sustained by Asha what she stated to the doctor was that holding the child by its legs its head was struck against the floor. In Exs. P 1 and P 2 in column 9, relating to the history and alleged cause of injuries, these facts have been stated. In Ex. PI, it has been further stated that the injuries were caused at 2 a. m. on the date of occurrence. On the basis of these facts stated in Exs. P 1 and P 2, the doctor sent Ex. P 3 intimation to the police on the basis of which a case was registered by them. There is no evidence to show that P. W. 2, the doctor, at any time asked P.W. 1 as to who caused the injuries on her and Asha. In the circumstances, the fact that the name of the accused is not seen mentioned in Exs, P. 1 and P 2 is of no serious consequence. Ex, P. 4 is the wound certificate issued by P.W. 4 in respect of injuries noticed on P.W. 1 while Ex. P 5 is the wound certificate of the injuries found on Asha. There it has been mentioned to P.W. 4, the doctor, that it was the accused who caused the injuries, on P. W. 1 and Asha. These facts are seen recorded in Exs. P4 and P 5, There is no legal bar for basing a conviction on the uncorroborated testimony of a single witness, provided the evidence of that witness is found to be wholly true and reliable. It is not the quantity but the quality that matters. We have been taken through the evidence of P. W. 1 and we find no serious defect or infirmity or any striking improbability in her evidence. We are satisfied that her evidence is wholly true and reliable. It has clearly come out in her evidence that the accused went near Asha who was sleeping, held her by her legs and then violently struck her head against the floor. The evidence of P. Ws. 5, 6, 7 and 8, who reached there immediately after the occurrence on hearing the cries, shows that when they reached the scene house they saw P.W. 1 standing on the verandah crying and

she told them that the accused held the child Asha by its legs and struck its head violently against the floor and he also beat her with a wooden plank causing injuries. The cross-examination of P. Ws. 1, 5, 6, 7 and 8 did not yield any fruitful result.

11. Although P. W. 1 was examined in support of the version put forward by the accused, his evidence did not in any way support the case of the accused. It is not necessary that an accused should always lead or adduce evidence in support of his plea and he can rely on the circumstances disclosed in the prosecution evidence. The prosecution evidence does not spell out any circumstance to prove or probabilise the version put forward by the accused. The accused has admitted his presence on the date of occurrence in his house and also the fact that the child was there in his house. The version put forward by him on the face of it appears to be artificial and improbable. The doctor, during cross-examination has categorically stated that it was not possible that Asha sustained the injuries which resulted in her death as a result of push and pull as suggested on behalf of the accused. The prosecution evidence belies the version put forward by the accused.

12. The evidence of P. W. 1 is corroborated on material particulars by the evidence of P. Ws. 5 to 8, the medical evidence and other circumstances proved in the case. The prosecution has succeeded in proving the case against, the accused beyond any reasonable doubt.

13. The next question for consideration is what is the offence committed by the accused. It is a matter of regret that the learned Sessions Judge has not properly applied his mind with due care to the provisions in Sections 299, 300 302 and 304A I.P.C. and after having come to a definite finding as referred to above, chose to convict the accused under Section 304A I.P.C One of the reasons given in the judgment is that the accused had no intention to murder Asha. But that alone is not sufficient to acquit an accused who stands charged with an offence punishable under Section 302 I.P.C. Intention is only one of the essential requirements of murder. Intention can be inferred from act, as every man is presumed to intend the natural consequences of his acts. All acts of killing done with the intention to kill, or to inflict bodily injury likely to cause or with the knowledge that death must be the

most probable result are prima facie murder. Section 304A, I.P.C. generally contemplates cases where the element, of intention and knowledge are absent. Violence inflicted intentionally or knowingly or caused directly and willingly is excluded from the ambit of Section 304-A, I.P.C. Where an act in its very nature is criminal. Section 304A I.P.C. cannot have any application. In other words, Section 304A I.P.C. does not apply to a case where there has been voluntary commission of an offence against a person. Strangely another reason given by the trial Judge is that it was for bringing back to the mat his wife (P.W. 1) who went away from the mat where she was laying with him that he caused hurt to Asha. (See paragraph 21 'when his wife P. W. 1 was lying close to him in the mat left him he took the innocent sleeping child to bring back P.W. 1 to his side'.) The finding of the trial Court is that the accused caught hold of the legs of the sleeping child and struck her head violently against the floor. Asha was aged only 2. The medical evidence shows that the injuries could have been caused as a result of direct violent act, and considerable force must have been used for causing the injuries noted. The doctor is of opinion that injury No,. 1 was Sufficient in the ordinary course of nature to cause death. It is clear from the facts proved in the case that the accused intended to cause this injury which was found to be sufficient in the ordinary course of nature to cause death and it was not an accidental or a rash or negligent act. The case therefore squarely falls under clause third of Section 300, I.P.C. and the offence committed by the accused in this respect is nothing short of murder punishable under Section 302 I.P.C. The trial Court convicted the accused only under Section 323 I.P.C. for having voluntarily caused hurt to P. W, 1 with a wooden plank on the fallowing reasoning :

Regarding the hurt caused voluntarily on the person of P.W. 1 it comes under Section 323 I.P.C. as P. W. 1 was discharged from the hospital in two days.

This reasoning is palpably wrong and appears to be curious. But as there is no reliable evidence to show that the wooden plank said to have been used by the accused was and instrument coming within the purview of Section 324 IPC the acquittal of the charge under Section 324 IPC does not call for any interference. We would also like to bring to the notice of the learned Sessions Judge that no oath need as administered to a child witness below the age of 12 and simply

because oath cannot be administered, no child witness can be refused to be examined.

In the result this appeal is allowed. The conviction of the accused under Section 304A, IPC and sentence of simple imprisonment for 3 months passed thereunder are set aside and instead, he is convicted under Section 302 IPC and, taking into account all the facts and circumstances of the case, sentenced to imprisonment for life.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com