

Sreenivasan Alias Sreeni Vs. State of Kerala

Sreenivasan Alias Sreeni Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/730640

Court : Kerala

Decided On : Nov-07-2005

Reported in : 2006CriLJ1485

Judge : R. Basant, J.

Acts : [Evidence Act, 1872](#) - Sections 4 and 96 to 106; [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300, 302, 304, 304(1), 320, 323, 324 and 326; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A. No. 395 of 2000

Appellant : Sreenivasan Alias Sreeni

Respondent : State of Kerala

Advocate for Def. : K. Harilal, Public Prosecutor

Advocate for Pet/Ap. : S. Ambikadevi, Adv.

Judgement :

R. Basant, J.

1. The appellant, a person undergoing imprisonment, has preferred this appeal through prison authorities to challenge the verdict of guilty, conviction and sentence imposed on him under Section 304(1) and Section 324 of IPC. He was

sentenced under Section 304(1) IPC to undergo R.I. for a period of seven years and to pay a fine of Rs. 5,000/- and in default, to undergo R.I. for a further period of six months. For the offence punishable under Section 324, IPC committed against P.W. 1, he was sentenced to undergo R.I. for a period of one year. The substantive sentences of imprisonment were directed to run concurrently.

2. The crux of the allegation against the appellant is that at about 9.30 p.m. on 9-4-1995 at the scene of occurrence, which is a pathway, the appellant had inflicted injuries on the deceased and P.W. 1 with M.O. 1 knife, a dangerous weapon. The F.I. Statement was allegedly lodged at 2.30 p.m. on 10-4-1995 and the FIR was promptly registered. The deceased, who had suffered injury on his face was treated at the Malankara Mission Hospital at Kolenchery. P.W. 1 was referred to the Medical College Hospital. The deceased expired on 13-4-1995. Cognizance of the offences under Sections 302 and 324, IPC was taken on the final report submitted by the police after completing the investigation.

3. Before the learned Additional Sessions Judge, the accused denied the offence alleged against him and thereupon the prosecution examined P.Ws. 1 to 17 and proved Exts. PI to P27. MOs 1 to 3 were also marked.

4. P.W. 1 is the injured. He is the nephew of the deceased. He had allegedly witnessed the entire incident. Ext. PI is the F.I. Statement lodged by him on the next day. P.Ws. 2 and 3 are alleged eye-witnesses who had, according to the prosecution, witnessed the entire incident. P.Ws. 2 and 3 turned hostile to the prosecution and did not support the entire version of the prosecution. About the commencement of the incident, P.Ws. 1 to 3 spoke in one voice. The appellant/accused had allegedly flashed a torch light on the face of P.W. 1, who was allegedly standing at the scene of the occurrence along with P.Ws. 2 and 3. A quarrel ensued. P.W. 1 was allegedly attacked and injury caused to him by the appellant. The deceased, uncle of P.W. 1 allegedly reached the scene on hearing the commotion. It is the case of the prosecution that the appellant/accused inflicted injury on the deceased also with MO. 1. P.Ws. 2 and 3 though they spoke in one voice with P.W. 1 about the commencement of the incident, did not support the case of the prosecution about the injury caused to P.W. 1 or the deceased. They

preferred to take the stand that after the commencement of the incident, P.W. 1 and the appellant were separated and they had gone away from the scene. They did not speak of any incident in which P.W. 1 or the deceased suffered injuries. Exis. P2 to P7 case diary contradictions were marked by the prosecution when P.W. 2 was examined and Exts. P8 to P13 contradictions were marked when P.W. 3 was examined in an attempt to discredit both of them. P.W. 4 is an attesor to the inquest report Ext. P. 14. P.W. 5 is the brother of P.W. 1 and he was examined to say that the deceased had made a dying declaration to him that he had suffered injury at the hands of the appellant. P.W. 6 is the father of P.W. 1 and brother-in-law of the deceased. According to him, after the incident, the knife M.O.1 which the appellant had brought to the scene had come into his possession through P.W. 3 and he had produced the same before the police under Ext. PI5. M.Os. 2 and 3, clothes worn by the deceased and P.W. 1 were also produced by P.W. 6 before the police under Ext. P. 15. P.W. 7 is an attesor to the said seizure mahazar, Ext. P15. P.W. 8 is an attesor to Ext. P16 scene mahazar. The scene bears indications to show that bleeding injuries were suffered at the scene. P.W. 8 is the village officer, who prepared Ext. PI7 plan. P.Ws. 14, 15, 10 and 11 are medical witnesses examined by the prosecution. P.W. 14 had examined both P.W. 1 and the deceased and proved Exts. P23 and P24 wound certificates. As stated earlier, P.W. 1 was referred to the Medical College hospital and the deceased continued his treatment at the Kolenchery Hospital. There, P.W. 10, a neuro surgeon had treated the deceased. Ext. P18 is a certificate proved by P.W. 10. The case sheet is not produced. P.W. 11 is the Doctor, who had examined P.W. 1 after he was referred to the Medical College Hospital and Ext. P. 19 is the wound certificate issued by him. P.W. 15 had conducted the post-mortem examination and had issued Ext. P. 27 postmortem certificate. P.W. 12 is the expert from the Forensic Science Laboratory and he proved Ext. P20 report of chemical examination. P.W. 13, property clerk of the Court was examined to prove Ext. P21 forwarding note and Ext. P22 property list. P.Ws. 16 and 17 are police, officials who had various roles to play in the registration of the crime, its investigation and the filing of the charge-sheet. Ext. P26 is the FIR registered on the basis of Ext. PI F.I. Statement and Ext. P27 is the report filed by the investigating officer before the Court.

5. The accused in the course of cross-examination of the prosecution witnesses and when examined under Section 313, Cr. P.C. denied all circumstances which appeared in evidence and which were put to him. He did not dispute the commencement of the incident. But following the evidence tendered by P.Ws. 2 and 3, he took the stand that after the commencement of the incident he and P.W. 1 were separated and they had returned from the scene of the crime. According to him, later P.W. 1 and the deceased had gone to him when he was sitting by the side of a Panchayat well and he was attacked by the deceased, who had M.O. 1 weapon with him. He had tried to save himself from harm and in the course of such attempt the knife held by the deceased was thrown away from the hands of the deceased and 'someone suffered injuries'. He did not examine any defence witness but, Ext. D1 was marked. Ext. D1 is a portion of Ext. P14 inquest report.

6. The learned Additional Sessions Judge on an anxious consideration of all the relevant inputs came to the conclusion that oral evidence of P.W. 1 can be safely relied on. Notwithstanding the hostility of P.Ws. 2 and 3, the learned Additional Sessions Judge found that their evidence can be made use of to draw inspiration for the oral evidence of P.W. 1. The learned Judge further relied on Ext. P1, F.I. statement lodged by P.W. 1 while he was in the hospital on the next day to draw inspiration for the oral evidence of P.W. 1. The learned Judge, however, came to the conclusion that the offence under Section 302, IPC is not established against the appellant and that he can be held liable only for having committed the offence punishable under Section 304(1) IPC against the deceased and Section 324, IPC against P.W. 1.

7. Detailed arguments have been advanced before me by Adv. Ambika Devi, who was appointed as State brief counsel to render assistance to the appellant. Sri. Harilal, the learned Public Prosecutor has also advanced detailed arguments. I must mention with appreciation that both the learned Counsel for the appellant and the learned Public Prosecutor have taken pains to take this Court through all the relevant aspects of this case.

8. The learned Counsel for the appellant assails the impugned judgment on various grounds. First of all, it is contended that the learned Judge erred grossly in

accepting and acting upon the oral evidence of P.W. 1. Secondly, it is contended that, at any rate, the benefit of doubt must have been conceded to the appellant on the question whether he was entitled to the right of private defence. Thirdly, it is contended that, at any rate, the learned Judge did not methodically consider the materials available first to decide whether any offence under Section 299, IPC had been established. The learned Judge did not also consider whether the offence alleged against the appellant would fall within the offence of murder under Section 300, IPC without considering all these, the learned Judge only proceeded to consider whether the offence under Section 300 would fall under second exception under Section 300, IPC and thus came to the conclusion that only the offence punishable under Section 304, IPC has been established. The approach by the learned Additional Sessions Judge is wrong and erroneous. Proper consideration was not rendered. If such proper consideration were rendered, the learned Judge must have come to the conclusion that, at any rate, no offence under Section 299, IPC has been established, much less, an offence under Section 300, IPC. Even if the entire case of the prosecution were accepted, it cannot be held that death of the deceased was a direct or proximate consequence of the alleged injury inflicted by the appellant. In any view of the matter, even if the entire evidence were accepted, no graver offence than the one punishable under Section 324, IPC can be said to be established. Finally, the counsel urges that the sentence imposed must be modified and reduced at any rate.

9. The first question to be considered is whether the oral evidence of P.W. 1 can be accepted. P.W. 1's evidence has to be considered in the light of the evidence of P.Ws. 2 and 3 as also the admitted stand taken by the accused that an accident did take place. P.W. 1 had suffered injuries and his presence at the scene of occurrence is not disputed. In these circumstances, the evidence of P.W. 1 inherently commands respect. The only thing that the Court has to be cautious about is whether P.W. 1 is speaking falsehood to save his own skin. The presence of P.W. 1 and the deceased have been admitted by the accused himself. The evidence of P.W. 1 on that aspect can safely be accepted. The evidence of P.Ws. 2 and 3 also supports the prosecution version about the commencement of the incident and presence of the deceased, P.W. 1 and the appellant at the scene of the crime.

10. I have gone through the cross-examination of P.Ws. 2 and 3. They did not support the prosecution case completely. A careful reading of the oral evidence of P.Ws. 2 and 3 must convince a prudent mind that they are not speaking the whole truth and are revealing only such portion of the truth which they find convenient and harmless to the accused.

11. The evidence of P.W. 1 is supported by the F.I. statement, Ext. P. 1 lodged by him before the police on the very next day at 2.30 p.m. The incident had taken place at 9.30 p.m. on the previous night. Both P.W. 1 and the deceased had injuries described in Exts. P23 and P24 and they were rushed to the hospital shortly after sustaining the injuries. The learned Counsel for the appellant contended that Ext. PI is hopelessly belated. We have the evidence of P.W. 16, a police official and P.W. 1, about the recording of Ext. PI F.I. statement. It is crucial that when P.W. 16 was in the witness stand there was no attempt to challenge his testimony at all. P.Ws. 1 and 16 on oath have asserted and Ext. PI shows that the F.I. statement Ext. PI was lodged by P.W. 1 before P.W. 16 at 2.30 p.m. on 10-4-1994. On broad probabilities and on inherent possibilities, I find no reason whatsoever not to accept that assertion by P.Ws. 1 and 16.

12. The FIR Ext. P. 26 registered at 6.00 p.m. on 10-4-1995 reaches the Court only on 17-4-1995. The counsel relying on precedents contends that the delay must arouse suspicion. No satisfactory reasons are shown to explain the delay. In all probability, Ext. PI must have been manufactured and Ext. P26 must have been registered long later and that is why Ext. P26 along with Ext. PI reaches the Court only on 17-4-1995, contends the learned Counsel for the appellant strenuously.

13. I am not persuaded to accept the challenge against Ext. P-1 and P-26 for the reason that Ext. P. 26 reached the Court only on 17-4-1995. I have taken assistance of the calendar that shows that 13-4-1995 to 16-4-1995 (both days inclusive) were holidays for the Court. I cannot also lose sight of the fact that P.W. 16 when he was in the witness stand was not challenged all on his evidence regarding the recording of Ext. P-1 and registration of Ext. P-26. Even then, the FIR registered on 10-4-1995 must have reached the Court earlier. In this context, it must be noted that at the time when Exts. P-1 and P-26 were recorded/registered

such consequences which ensued were not anticipated by anyone concerned. That is evident from the sequence of events. When it was registered, it was only a crime under Sections 323 and 324. Not that the Courts do not expect the FIRs in such cases to reach the Court immediately and promptly; but the amount of attention that must have been rendered to ensure that Ext. P-26 reaches the Court must certainly and naturally depend on the gravity of the offences alleged in Exts. P-1 and P-26. In that view of the matter I am not persuaded to attach any undeserved significance and importance to the delay in Ext. P-26 reaching the Court though dissatisfied that it did not reach the Court earlier.

14. A careful intrinsic examination of Ext. P-1 does not at all suggest that Ext. P-1 could have been manipulated and Ext. P-26 could have been concocted later. For this purpose. I have looked into the intrinsic materials in Ext. P-1. Not even a specific overt act is alleged against the appellant in Ext. P-1 which is one limb of the contention of the learned Counsel for the appellant. That indicates convincingly to me that Ext. P-1 is not the result of any subsequent concoction. The delay in Ext. P-26 FIR reaching the Court does not in these circumstances, arouse any dissatisfaction in my mind about the recording of Ext. P-1 F.I. Statement from P.W. 1 by P.W. 16 on 10-4-1995.

15. It is contended that there are several omissions, incongruities and inconsistencies in Ext. P-1 vis-a-vis in the evidence of P.W. 1 in Court. A specific overt act with M.O. 1 by the appellant against the deceased is not mentioned though it is stated that the accused had attacked (upadravichu) the deceased. The sequence of events which P.W. 1 had spoken before this Court is clearly narrated in Ext. P-1 and to this extent Ext. P-1 does offer to this Court the assurance which he is looking for the evidence of P.W. 1. The evidence of P.W. 1 explains the scene of the occurrence which is supported by the intrinsic data available in Ext. P. 16. It explains that the injuries were suffered by P.W. 1 and the deceased as alleged by the prosecution not elsewhere as suggested by the accused. His evidence rhymes well with the evidence of the medical experts that injuries suffered by P.W. 1 and the deceased could have been inflicted with a weapon like M.O.I. Thus on broad probabilities and intrinsically, I am satisfied that the evidence of P.W. 1 does not suffer from any inherent improbabilities or incongruities which

should, at any rate, generate doubt, distrust or suspicion against his evidence.

16. What remains to be considered is only the acceptability of the defence version advanced by the accused. It is his case that P.W. 1 and the deceased attacked him. He had admittedly not suffered any injuries. That may not be final and conclusive in itself. But, that is definitely an indicative factor. It is also of crucial significance that the appellant had not raised any complaint before anyone of any attack on him by P.W. 1 and the deceased at any time prior to the commencement of the trial. That is also a relevant indication.

17. Under Section 106 of the evidence Act a Court is bound to presume absence of circumstances which fall within the exclusive knowledge of any person. Under Section 105 of the Evidence Act the burden of proving the general exception of private defence under Sections 96 to 106 of the Evidence Act falls squarely on the shoulders of the accused. All Courts shall presume the absence of such circumstances. The expression shall presume is defined under Section 4 of the Evidence Act. It is, of course, trite that the burden on an accused raising the plea of private defence is not as heavy or onerous as an initial paramount burden resting on the shoulders of the prosecution. At least by the inferior standards applicable to an accused facing a criminal trial, the burden under Section 105 has to be discharged by the accused. No such successful attempt is made by the accused. The slender and feeble attempt to claim the right of private defence cannot succeed in generating any reasonable doubts in the mind of the Court. The first two contentions raised by the learned Counsel for the appellant cannot, in these circumstances, be accepted.

18. The learned Counsel for the appellant raises a grievance that the learned additional Sessions Judge had not approached the crucial questions in the proper perspective. I am inclined to readily agree with the learned Counsel for the appellant. Once it is found that an injury has been suffered by the deceased, it is incumbent on the Court to ascertain whether such injury can be said to have caused the death of the deceased, in the facts and circumstances of the case, I shall advert in detail to those facts. The conclusion appears to be inevitable that proper consideration has not been rendered by the Court below. The question

whether an offence under Section 299, IPC had been committed is not seen considered at all.

19. Section 299, IPC reads as follows :

299. Culpable homicide :- whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

(Emphasis supplied)

20. Culpable homicide is the genus of which murder is a specie. The Court must hence, first consider whether the offence alleged would be culpable homicide. In order to come within the four walls of culpable homicide it must first be shown that death was caused by theindicatee by doing an act. It is in this context, that the question whether death was the result of the injury inflicted assumes significance. It need not be an immediate or instant cause. It is enough if death is the direct and proximate result of the injury suffered. The number of days that have intervened between infliction of injury and death may not be and cannot be held to be conclusive in itself. The crucial question is whether death was a natural, reasonable, direct or proximate consequence or result of the injury suffered. I am in agreement with the learned Counsel for the appellant that the question was not pointedly considered by the learned Additional Sessions Judge and the impugned judgment is wanting to that extent.

21. It is not enough if it is proved that the injury had caused death. In order to attract Section 299, IPC it must further be shown that the act was committed with the requisite intention or knowledge contemplated in the latter portion of Section 299, IPC. The act which caused death must have been committed by the indictee :

(1) with the intention of causing death or

(2) with the intention of causing such (bady) injury as is likely to cause death or

(3) with the knowledge that the offender is likely to by such act to cause death.

Only then will the offence fall under the genus of culpable homicide.

22. It is only after finding that the offence is culpable homicide defined under Section 299, IPC that the Court must proceed to consider whether it falls within the definition of murder under Clauses firstly to fourthly in Section 300, IPC. That attempt has also been not made in this case.

23. In is thereafter that the Court must proceed to consider whether the offence would fall under any of the five exceptions contemplated under Section 300, IPC, so that the offence would again slide back to the offence of culpable homicide defined under Section 299, IPC only. Every Court must methodically follow these steps before coming to a conclusion whether the offence of murder has been proved and whether the offence of murder would slide back to the offence of culpable homicide defined under Section 299, IPC. In this case, I find that without pointedly considering whether the offence would be one of culpable homicide and whether it would be one of murder under Section 300, IPC, the learned Judge had come to the conclusion that exception 4 under Section 300 would apply and the offence would be only culpable homicide not amounting to murder.

24. This Court is hence called upon to consider the question afresh whether any offence under Section 299, IPC is established. I have already come to the conclusion that the appellant had caused the only injury suffered by the deceased and that the accused is not protected by the right of private act.

25. The learned Public Prosecutor has alertly pointed out to this Court the decisions reported in *Devasia Yohannan v. State* 1958 Ker LT 273: 1958 Cri LJ 1021, *State of Kerala v. Narayanankutty* 1980 Ker LT 908 and *Joy v. State of Kerala* 1986 Ker LT 376.

26. It is not necessary for me to extract all the relevant passages from the said decisions. It will be sufficient if I extract Paragraph 15 in *Joy v. State of Kerala* contains the quintessence of law on this subject,

We have to determine whether in the circumstances of the case the appellant caused the death of the deceased or death was due to supervening cause, so

unrelated to the act of the appellants that the appellants could not be held responsible. When death results from consequences naturally of necessarily flowing the act, there need not be any hesitation in saying that the act caused the death. The difficulty arises in cases in which there are recognizable contributory causes leading to the ultimate and the Court is called upon to consider in such cases the relative strengths and effect of the different causes in bringing about the effect and then find whether the responsibility for the result could be assigned to a particular act or not as the proximate or effective cause. The question, when there are later complications would be, whether the complications are the natural or likely consequences of the injury (1). The consequences are labelled as a supervening condition or disease, given a name and shown as the immediate cause of death. At the end, all death is brought about by coma, syncope or asphyxia. If the complication or development is the natural and probable consequence of the injury, it can be said that there is proximate relationship between death and the injury. If the original injury itself was fatal and sufficient in the ordinary course of nature to cause death. It is of no consequence that death was delayed and the immediate cause of death was some complication naturally arising from that injury.

(Emphasis supplied)

27. The learned public prosecutor further submits that it is not necessary for the Court in all cases to invariably look for medical evidence to decide whether the death had resulted from the injury suffered. The counsel relies on the following passage in the decision reported in Ouseph v. State of Kerala 1983 KLT SN page 42 case No. 69 : 1983 Cri LJ NOC 206.

The Court, not being an expert on these matters will naturally seek the help of medical evidence. This however, does not mean that Court is dependent entirely on the medical evidence or that the medical evidence is conclusive. The Court is not bound to accept medical evidence in a given case. But there can be no two opinions on the utility and importance of medical evidence in these matters. In a given case, the Court, on an appreciation of medical evidence in the light of its own knowledge, common-sense and experience may choose to reject medical

evidence. But that is not to say that medical evidence is unnecessary or irrelevant. Even where medical evidence is absent, the Court has to arrive at a conclusion on an appreciation of all the relevant circumstances.

28. The learned public prosecutor also wants to rely on the following passage in *State of West Bengal v. Mir Mohammad Omar etc. etc.* : 2000 CriLJ4047 .

23. No doubt it would have been of advantage to the Court if the public prosecutor had put the said question to the doctor when he was examined. But mere omission to put that question is not enough for the Court to reach a wrong conclusion. Though not an expert as P.W. 30, the Sessions Judge himself would have been an experienced judicial officer. Looking at the injuries he himself could have deduced whether those injuries were sufficient in the ordinary course of nature to cause death. No sensible man with some idea regarding the features of homicidal cases would come to a different conclusion from the injuries indicated above, the details of which have been stated by the doctor (P.W. 30) in his evidence.

29. Having thus understood the burden on a Court while considering the question whether injury suffered by the deceased at the hands of the indicatee had led to death, I shall now consider the materials available in this case.

30. Ext. P-24 is the wound certificate of the deceased issued by P.W. 14. The wound certificate was signed by another doctor and P.W. 14 proved the same. He had himself issued the same also. It shows that there was bleeding from the nose. Patient was vomiting out blood. There were two injuries which are described as follows :

(1) Incised wound about two cms. long Maxillary area right side of the face.

(2) Deformity of the right lower half of face.

The deceased was treated by P.W. 10 who issued Ext. P-18 certificate. The case sheet showing the treatment given to the deceased at the hospital is not produced. The procedures undergone in the hospital cannot be ascertained from Ext. P-18. In Ext. P-18 we have only the history of the patient which is given in the following words :

Patient was admitted following an alleged assault. He was drowsy at the time of admission and was bleeding from the nostrils. He also have vomiting which contained blood. He had injuries over the face and scalp. X-ray skull showed air trapped inside the skull. C.T. scan of the head showed massive pneumocephalus with air filling almost the whole of the frontal lobes and going inside the ventricular system. The brain parenchyma was oedematous. He was treated with antioedema measures with which he showed initial improvement in conscious level. On the fourth day of treatment patient started getting high fever and his sensorium deteriorated. He was treated energetically with antibiotics, but he continued to deteriorate and expired at 5.15 p.m. on 13-4-1995.

31. P.W. 10 gave evidence in Court and proved Exts. P18. E-ray and C.T. scan were taken and there was massive pneumocephalus (air inside the skull). There is no specific indication to show that the skull bone was fractured anywhere. Till the fourth day of treatment no complication appears to have been perceived and it was on the forth day that the condition of the patient deteriorated and the patient expired later on that day i.e. 13-4-1995.

32. The following portion in the cross-examination of P.W. 10 who proved Ext. P18 appears to be of crucial significance. Hence, I extract the same below :

Skull has to be fractured for the air to enter the brain. When the air enters the brain pneunocaphalis will develop. If skull is fractured and air enters the brain bacteria can also enter the brain. Due to such infection meningitis may develop. Facial injury will not normally cause death. It can be treated and cured.

The only other piece of evidence relevant on this aspect is that of P.W. 15, the doctor who conducted the post mortem examination and issued Ext. P-25. P.W. 15 only opines that the death was due to meningitis. In the post-mortem certificate, Ext. P-25, of P.W. 15 it is evidence that he did not choose to explain how meningitis had developed. Internal findings noted in Ext. P25 under the head 'C' appears to me of vital relevance and I extract the same below :

C. Internal Findings :

Scalp was normal. On removing the vault of skull and duramatter, subarachnoid space was found to contain a layer of pus, Brain was pale. Copious amounts of thick purulent fluid was seen on the base of brain and also inside both ventricles of brain. All mid-line structures of neck were intact. Air passages were normal. Lungs were pale. Chambers, valves and coronary arteries of heart were normal. Stomach contained 60 ml of bile stained fluid. No unusual smell. Mucosa was pale. Bladder contained 20 ml of urine. All other internal organs were pale, otherwise normal.

P.W. 15 in his evidence did not tender any evidence on the crucial aspect as to whether the injury was sufficient in the ordinary course of nature to cause death or whether the injury was likely to cause death. On the contrary, he tendered the following evidence on the crucial aspect

the wound cut the right maxilla. The injury itself was not fatal. But it was a grievous injury.

33. It is with these pieces of evidence that this Court has now got to decide whether the injury had led to death. Was the injury the direct and proximate cause of death All the relevant inputs have got to be taken into account. Though it is stated that meningitis was the cause of death, a careful reading of Ext. P-25 suggests that it was not merely an infection of the three layered Meninges. There was infection in the inner portions of the brain also. Whatever that be, the specific evidence is that the death was due to Meningitis and there was no better explanation offered for death. Both sides did not pursue the matter and probe further. Meningitis must therefore be held to be the cause of death.

34. How did the meningitis creep in The evidence of P.W. 10 which I have extracted above suggests that air was found trapped inside the cranial cavity and bacteria must have entered into the brain along with such air and that in turn caused the meningitis. This appears to be the only explanation which can be arrived at from the materials available.

35. That takes us to the next question as to how the air could have entered the skull cavity. Except that the maxilla was cut there was nothing to suggest any injury to any bony portion of the skull. For air outside to enter the brain, there must

certainly have been a fracture of the skull bones or other facility to enable such entry. What was that facilitated entry of air into the brain Did any injury suffered by the deceased described in Exts. P-24 or P-25 lead to or result in any such entry of air into the brain This is the crucial question that has to be considered.

36. The learned public prosecutor submits that it must be possible for this Court on a perusal of the evidence tendered by the medical experts and documents proved to come to the conclusion that the cause of death due to meningitis was a result of entry of air and bacteria into the cranial cavity which in turn must have been caused by the injuries suffered. No reasonable doubt can be left in the mind of the Court that death was the result of the external injury described in Ext. P-24 inflicted by the accused on the deceased, contends the learned public prosecutor.

37. The learned public prosecutor has taken me through books of forensic science. The learned public prosecutor wants to impress upon the Court that the area around the nose and mouth are reckoned as dangerous area so far as the injuries suffered are concerned. The learned public prosecutor contends that in these circumstances notwithstanding the fact that better evidence which ought to have been made available to the Court is not available, a conclusion on that aspect in favour of the prosecution is avoidable and it has to be held that death resulted from the injury suffered.

38. I must always remind myself of the golden thread that runs through the entire fabric of criminal law in our system. The prosecution is expected to prove the essential ingredients of the offence alleged. In a case where even without medical evidence such a conclusion can be drawn, the Court should not hesitate to reach such a conclusion. But is the present case one where this Court will be justified in assuming that entry of air into the skull cavity and the consequent meningitis was the result of the external injury suffered by the deceased I must straightway note that no material whatsoever has been produced to show what treatment the deceased had undergone while he was in the hospital from 9-4-1995 to 13-4-1995. My attention has not been drawn to any specific circumstances available in the medical evidence or documents to suggest that external air could have found its way into the cranial cavity on account of the injury suffered. No passage

suggesting entry of external air into the skull cavity is even indicated from the materials produced. Fracture of the Maxilla, even if it be assumed, is not sufficient to lead the Court to such a conclusion and inference. There is no case for the prosecution that the infection in the wound suffered had led to the infecting organism crossing the blood-brain barrier and infecting the organ in the skull cavity. There is no contention that any gas gangrene developed resulting in production of air/gas within the cranial cavity. After perusing the textbooks which have been produced before me I have looked for evidence, if any, to suggest that the maxillary sinus was entered by the injury as to suggest the possible entry of external air through such sinus into the cranial cavity. All the efforts taken do not lead me to any safe conclusion that the injury suffered could have caused entry of air into the skull cavity.

39. What other reason could be there to justify such presence of air inside the skull cavity? This is certainly a pertinent question asked by the learned public prosecutor. The learned public prosecutor submits that in the absence of any other reason to explain the presence of air trapped inside the skull cavity, the conclusion is inevitable, though better evidence is not made available to the Court, that such air had found its way into the skull cavity because of the injury.

40. In this context further doubts vex me. P.W. 10, the Neuro Surgeon appears to have seen some injury on the scalp. Ext. P-18 the history recorded by him suggested the presence of injury on the scalp. His evidence confirms the same. But surprisingly no other medical expert appears to have perceived this injury. What was that injury Did it leave behind any bony injury beneath, which the medical experts have omitted to perceive? In the course of treatment from 9-4-1995 to 13-4-1995 was probing into the internal injury done and did that result in any unfortunate and unexpected injury? These questions are not answered effectively and satisfactorily by the materials available on the Court.

41. In a situation like this certainly the Court will be justified in insisting on specific expert evidence to explain the presence of external air inside the skull cavity and the consequent presence of bacteria which allegedly precipitated meningitis which was the declared cause of death. One cannot lose sight of the evidence tendered

by the medical experts that the injury was not fatal. One cannot also ignore the evidence of the experts that the facial injury could have been treated and cured and was not fatal. I cannot assume that the expert when he so tendered evidence was not referring to the particular facial injury suffered by the deceased and was only speaking generally about non-serious facial injuries suffered by the victims. That must certainly be referred to the specific injury suffered by the deceased in this case. The burden in these circumstances was undoubtedly on the prosecution to explain the injury and its possible effects. Specific expert evidence to show that the injury was not fatal is available. There is no specific evidence to show that the injury was sufficient in the ordinary course of nature to cause death. May, there is not even evidence to show that the injury suffered was likely to cause death. This being the state of affairs, I am certainly of the opinion that the prosecution is not justified in requesting the Court to draw on its reserves of common sense and elementary knowledge of men and medical matters to conclude that the external injury described in Ext. P-24 and the internal injury consequently suffered must have resulted in the entry of external air with bacteria into the cranial cavity and must have precipitated the fatal cause, the meningitis. Of course, there is no specific material to conclude that there might have been the possibility of such entry of air by any other means. The burden to explain death is on the prosecution. That burden is not on the accused. In fact, a perusal of the cross-examination reveals that the counsel for the petitioner was conscious of the necessity to probe whether there was any injury to the skull. The evidence indicates that the doctors were emphatic that there was no specific injury on the skull though there is evidence to show that the maxilla was cut.

42. I am in these circumstances, of the opinion that a safe conclusion that the injury described in Ext. P24 and the injury on the face described by P.W. 10 in Ext. P-18 and P.W. 15, the doctor in Ext. P-25, do not sufficiently explain the terminal cause - meningitis which it is asserted was the result of air entry and consequent entry of bacteria into the skull cavity. It is not shown that death was the direct and proximate effect of the injury. At any rate, I am persuaded to concede the benefit of doubt on this aspect.

43. Having coming to the conclusion that the accused is entitled to the benefit of doubt on the question whether the injury inflicted by him has resulted in death. I am of the opinion that it is not necessary for this Court to further consider whether any of the three states of mind contemplated under Section 299, IPC had accompanied the act of infliction of injury. However, it appears to be very evident, and the Court below has come to that conclusion specifically, that there was no intention of causing death. The evidence does not also show that there was any intention of causing any such bodily injury as is likely to cause death as the injury suffered is not proved to be one likely to cause death. Needless to say, there is nothing to show that the accused had the requisite knowledge that he is likely by such an act to cause death. The offence committed by the accused cannot, in these circumstances, fall within the sweep of the offence of culpable homicide defined under Section 299, IPC. Inasmuch as the offence of culpable homicide the genus is not established, needless to say, the specie - the offence of murder is also not established. It is not necessary to further consider whether any of the exceptions under Section 300 would apply.

44. What then is the offence committed by the accused This is the next question to be considered. The learned Counsel for the appellant/accused contends that the offence committed against the deceased at any rate is only one of causing simple hurt with a dangerous weapon punishable under Sections 324, IPC. The learned public prosecutor, on the contrary, contends that even conceding every possible reasonable doubt to the accused it must be held that the injury inflicted was a grievous injury. Reliance was placed by the learned Counsel for the appellant on the decision in Mathai v. State of Kerala 2005 (1) KLT 719 : 2005 Cri LJ 898. It is contended that it must be proved that the hurt suffered is grievous hurt falling within one of the limbs of the Section 320, IPC.

45. Was there fractures suffered by the deceased This is the next question. Before considering this aspect I must express my anguish against the manner in which the experts have tendered evidence, the manner in which the prosecution has the expert evidence and the manner in which the Court has received such evidence. The accused was facing indictment for an offence under Section 302, IPC. It is therefore, incumbent on the medical expert to tender evidence as to whether the

injury was necessarily fatal or at least sufficient in the ordinary course of nature to cause death or likely to cause death. If the medical expert is not experienced and does not tender evidence on that aspect voluntarily, certainly the prosecutor must have led evidence on that specific aspect. Even assuming that an inexperienced prosecutor had omitted to lead relevant evidence on that aspect the Court should never have omitted to seek clarification and elicit relevant evidence. One question on that crucial aspect would have resolved the major area of conflict and contention in this case. I have already noted that this has not been done by the experts, the prosecutor or the Court.

46. I find inadequacy of specific evidence on the question whether the deceased had suffered a fracture. Maxilla has been cut is the evidence tendered. The counsel for the accused relying on law dictionaries contends that the expression employed 'Maxilla cut' is not sufficient to convey that a fracture has been suffered. A structural break in the normal continuity of the bone is by definition a fracture. Cut as per the dictionary can only mean 'to penetrate, separate or lacerate with a sharp instrument'. Relying on these materials, the learned Counsel for the appellant contends that there is no satisfactory evidence of any fracture of the Maxilla.

47. When the expert used the expression 'maxilla cut', I am of the opinion that it has got to be understood reasonably. The expert did not say that there was a cut on the Maxilla. Instead what was specifically stated was that the Maxilla was cut. In Ext. P-24 there is a further statement that there was deformity on the right side of the face where the Maxilla was reportedly cut. This must also give indication to the Court as to whether there was fracture/displacement or not. To crown all these aspects we also have the specific statement from the expert that it was a grievous injury. I must assume that P.W. 15 the medical expert who was working as a police surgeon in the district hospital at Manjeri when he tendered evidence was conscious of what in law was a grievous injury. After stating that the Maxilla was cut he proceeded to tender evidence that the injury was grievous. There was no cross-examination on that aspect also. Even though, the medical expert has not used the very technical expression that the Maxilla was fractured, in the totality of circumstances no semblance of doubt is left in my mind as to whether the Maxilla

was actually cut amounting to a fracture. I am in these circumstances, satisfied that a fracture had been suffered by the deceased as is evident from the medical evidence tendered by the witnesses.

48. M.O. 1, a knife which was allegedly used to commit the offence is opined to be one which could have caused the injury suffered by the deceased. I find no reason not to accept the said evidence. The description of MO1 available in Ext. P15 and that it could cause the Maxilla to be cut are sufficient indications to show that it answers the description of a dangerous weapon under Section 326, IPC. A grievous hurt with a dangerous weapon is thus clearly indicated. I am in these circumstances satisfied that the accused can be found guilty, convicted and sentenced only for the offence punishable under Section 326, IPC, insofar as the injury inflicted on the deceased is concerned. Insofar as the injury inflicted on P.W. 1 is concerned, the injury suffered was only a simple injury and I agree with the conclusion of the learned Sessions Judge that the offence punishable under Section 324, IPC was committed against P.W. 1 by the appellant.

49. Coming to the question of sentence, I note that the learned Sessions Judge had imposed a sentence of R.I. for a period of seven years and a fine of Rs. 5,000/- along with a default sentence R.I. for six months on the appellant for the injury caused to the deceased. Under Section 304(1), IPC, conviction has been altered. I am satisfied that alteration of the conviction must be reflected in the sentence imposed also. In the facts and circumstances, I am satisfied that the imposition of a sentence of R.I. for five years shall eminently meet the ends of justice. The sentence of fine and default sentence imposed on the appellant also deserves to be upheld.

50. In the result:

(a) This appeal is allowed in part.

(b) The verdict of guilty, conviction and sentence imposed on the appellant for the offence punishable under Section 304(1), IPC are set aside. The appellant is found guilty and convicted under Section 326, IPC for the injury caused to the deceased.

(c) In supersession of the sentence imposed on the appellant under Section 304(1), IPC, the appellant/accused is sentenced under Section 326, IPC to undergo R.I. for a period of 5 years and to pay a fine of Rs. 5,000/- and in default, to undergo R.I. for a period of six months.

(d) The verdict of guilty, conviction and sentence imposed on the appellant for the infliction of injury on P.W. 1 under Section 324, IPC is upheld.

(e) The direction that the substantive sentences of imprisonment shall run concurrently is also upheld.

51. Communicate a copy of this judgment to the Court below. Communicate copies of this judgment to the prison authorities and the appellant.

52. If the appellant has already served the modified sentence hereby imposed and if the appellant is not wanted to be detained in connection with any other crime, he shall be released forthwith by the prison authorities.

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