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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 8TH DAY OF NOVEMBER 2024 / 17TH KARTHIKA, 1946

CRL.A NO. 17 OF 2023

AGAINST THE JUDGMENT DATED 25.05.2018 IN SC NO.473/2015 OF ADDITIONAL SESSIONS COURT - I, KASARAGOD CRIME NO.314/2015 OF Rajapuram Police Station, Kasargod

APPELLANT/ACCUSED:

RAJU M.A. @ UNDACHI RAJU, AGED 45 YEARS
S/O. ALAMI, CONVICT NO. 873, OPEN PRISON AND CORRECTIONAL HOME, CHEEMENI, PERMANENTLY RESIDING AT MAILATTY COLONY, MAILATTY, PANANTHOOR, VELLARIKUNDU, PANATHADI, KASARGOD, PIN - 671533

BY ADVS.
RAMESH .P
FATHIMA NARGIS K.A.
SANGEERTHANA M.

RESPONDENT/STATE:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031

BY ADV.SRI. ALEX M THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 08.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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"C.R."

JUDGMENT

Jobin Sebastian, J.

The accused in SC No.473/2015 (Crime No.314/2015 of Rajapuram Police Station) on the file of Additional Sessions Court-I, Kasaragod has preferred this appeal assailing the finding of guilt, conviction and sentence passed against him for offence punishable under Section 302 of the IPC.

2. The facts of the case in brief are as follows:

The accused driven by hostility towards his wife and following a quarrel, took his children to the neighbouring house bearing No.IX-511 of Panathadi Grama Panchayat and committed murder of his son, Rahul, aged 3 years, by strangulation and also by assaulting him with a coconut scraper on 21.07.2015 at about 9.30 p.m.

3. On completion of the investigation, the final report was submitted before the Judicial First Class Magistrate Court-I, Hosdurg. Being satisfied that the case is one triable exclusively by a Court of Session, the learned Magistrate after complying with all the necessary formalities committed the case to the Court of Session, Kasaragod. After taking cognizance, the learned Sessions Judge made over the case for trial

to Additional Sessions Court-I, Kasaragod. After trial, the accused was found guilty for offence punishable under Section 302 of the IPC and he was sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- (Rupees fifty thousand only) with a default clause to undergo rigorous imprisonment for three more years. The said judgment of conviction and order of sentence is assailed by way of this appeal.

4. To bring home the guilt of the accused, the prosecution examined 16 witnesses as PW1 to PW16. Exts.P1 to P22 were exhibited and marked and MO1 series to MO8 were produced and identified.

5. The prosecution mainly relies on the evidence of PW1 and PW2, to prove the occurrence. PW1 and PW2 are none other than the inmates of the house where the gruesome incident allegedly occurred.

6. The law was set in motion in this case on the strength of the FIS given by PW1 to PW9, the Sub Inspector of Police, Rajapuram, and the said FIS is marked as Ext.P1. On examination before the court, PW1 deposed that she is a coolie and had been residing at Mailatty Colony along with her mother, grandmother, and uncle. The accused is her neighbour. Though she was not able to recollect the exact date of the incident, she remembered that it had occurred at night about 2 ½ years

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back. On the alleged date of the incident at 8 p.m., after picking up a quarrel with his wife, the accused entered her house with his two children. The wife of the accused, Padmini, followed the accused and came to the courtyard and demanded back the children. The accused gave the younger child to his wife and she returned home with the child. Thereafter, the accused closed the door of the house. Her mother Kumba (PW2) and grandmother Chitta were present in the house at that time. Thereafter, she saw the accused dragging his elder son, Rahul, who was crying, inside the house. She stated that her house was not electrified and she was able to see what the accused was doing in the light emanating from the kerosene lamp. She stated that she saw the accused dragging the child to her kitchen and thereafter, he stabbed the child on the backside of his neck with a coconut scraper. Then she saw the accused take a dhoti and strangled the child using the same. She stated that the inmates including herself went to the nearby house of a relative to save themselves. Though she intimated the incident to the neighbours, none intervened. Thereafter, Vineesh and Abhilash, who arrived at the spot garnered the courage and went inside the house. They found that the child was lying motionless. The child was then rushed to the hospital.

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According to her, the incident occurred between 9 p.m and 9.30 p.m. and she saw the incident in the light of a kerosene lamp that kept burning in her house. She lodged a statement to the Police and Ext.P1 is the statement so given. The Police prepared a scene mahazar and seized the coconut scraper, one knife, one dhoti and two vessels from her house. PW1 identified the articles seized from her house.

7. PW2, the mother of PW1, who is also an inmate in the house where the alleged incident occurred, gave evidence in similar lines to those spoken by PW1.

8. The Doctor, who conducted the autopsy on the body of the deceased child and prepared Ext.P6 postmortem certificate, was examined as PW5. PW5 deposed that on 23.07.2015 he conducted the postmortem examination on the body of a male child named Rahul aged about 3 years involved in crime No.314/2015. Referring to Ext.P6 postmortem report, PW5 deposed that in the autopsy examination, he had noticed the following anti-mortem injuries:

> 1. Incised looking lacerated (Page No.3) wound 2.5 x 0.5 cm, obliquely placed on the forehead, over the right eye brow. Another similar wound 2x0.5 cm was seen just above the previous injury. The upper half of the injury was close to the lower half of the first injury. Surrounding area was contused (5x3.5 cm).

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2. Abrasion 1.5 x 1 cm on the back of left wrist on the inner aspect.
3. Multiple small abrasion on the back of left elbow.
4. Healing wet injury 3x0.3 cm oblique over the right hip region.
5. Multiple small healing abrasion 4 cm below injury (Page No.4) No.4 (2x0.5 cm).
6. On dissection the scalp tissues were contused on the right side and back of head. Skull showed a depressed fracture 7x4.5 cm on the left side of back of head involving the occipital, parietal and temporal bones, a linear fracture was seen extending from the depressed segment to the left parietal eminence. Another linear fracture was seen along the squamosal suture on the right side with an extension of linear fracture to the right parietal (Page No.5) eminence. Data was intact. Brain showed thin films of bilateral subdural and subarachnoid bleeding.

9. PW5 stated that a pressure abrasion was seen on the right side of back of neck (6x7 cm), it was absent for 2.5 cm at the left side of back of neck, again it was seen on the left side of neck for a length of 5 cm where it was 3.5 cm below the ear and having a width of 2.5 cm. The front end was 4 cm below the left angle of the jaw (0.5 cm wide). The remaining (Page No.6) part of the front of the neck was devoid of pressure abrasion. Underneath, the subcutaneous tissues were pale. However, there was a contusion 2.5 x 1 cm involving the subcutaneous tissue just below the left angle of jaw bone. All the muscles, blood vessels, cartilage, and hyoid bones were intact.

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10. Apart from the above-mentioned anti-mortem injuries, the following general findings were also noted on the external examination.

> Stomach was full with softened rice, no unusual smell. Lungs were congested and odematous. Ear was normal. All other internal organs were (Page No.7) congested other wise normal. The blood group of the child was determined to be AB+ve.

Referring to Ext.P6 postmortem certificate, PW5 opined that postmortem findings are consistent with death due to homicidal hanging after sustaining blunt violence on the head. When MO6 coconut scraper was shown to the Doctor, he deposed that injury No.6 can be caused by using a weapon like MO6. Injury No.6 is fatal injury and is sufficient in the ordinary course of nature to cause death. However, in this case, the final cause of death is constriction of the neck. A conjoint reading of the evidence of PW5, the Doctor, and Ext.P6 postmortem certificate points towards the fact that the death of Rahul, the son of the accused, was certainly and undoubtedly a homicidal one.

11. The Sub Inspector of Police, Rajapuram Police Station, when examined as PW9 had given evidence to the effect that on 22.07.2015 at 2 a.m., he recorded the statement of PW1, and on the basis of the same, he registered the present case as Crime No.314/2015 under Section 302 of

the IPC. The First Information Report registered in this case is marked as Ext.P9. PW1 admitted that a telephonic message was received in the Police Station with respect to the incident and the same was entered in the General Diary. A perusal of Ext.P9 FIR would show that after its registration, the same reached the jurisdictional Magistrate Court at 10.30 a.m. on 22.07.2015 itself without any delay.

12. PW4, a resident of Mailatty Colony, deposed that the incident occurred in his aunt's house. On hearing about the incident, he rushed to the said house and found the accused standing on the doorstep. Meanwhile, the accused's brother and some other locals arrived at the scene and restrained the accused, thereafter contacted the Rajapuram Police Station over the phone. Thereafter, two police officers arrived and when he along with the police officers and the other neighbours entered the house of PW1, the victim child was found lying motionless in the hall room of the said house. Immediately, the minor child was taken to Panathur Primary Health Centre from where he was referred to Community Health Centre, Poodamkallu. The Doctor confirmed the death of the child after examination.

13. PW10, the nephew of the accused and PW11, a resident in

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the Mailatty Colony gave evidence to the effect that upon hearing about the incident, they rushed to PW1's house where they found a minor boy lying unconscious, in a pool of blood in the hall room of the said house. Both of them testified that they saw the child in the light of a kerosene lamp that was lit inside the house. PW11, another resident of Mailatty Colony deposed that, on 21.07.2015 at about 9.30 p.m., while he was having dinner along with his family members, the accused came to his house and asked to open the door. As he was reluctant to open the door, the accused attempted to break it open. Hence, he contacted PW4 Suresh and CW11 Lakshmanan (not examined), and the brother of the accused and informed them about the said incident. He also made a call to the Police Station and informed the situation. Immediately thereafter, two police officers arrived. He along with the Police Officers entered the house of PW1 and saw the minor boy lying motionless in the hall room of the said house. Thereafter, the boy was initially taken to Panathur Primary Health Centre and from there, to Community Health Centre, Poodamkallu. After examination, the Doctor confirmed the death of the boy. PW11 is also an attestor to the inquest report prepared in this case. PW11 asserted that the accused was in the habit of quarreling with his wife. In

his cross-examination, PW11 stated that the accused was taken into police custody on the same night from his house.

14. The Civil Police Officer, who reached at the place of occurrence immediately after the commission of the offence, was examined as PW12. He deposed that on 21.07.2015 at 9.30 p.m. while he was on Outpost duty along with CPO 1888 named Mohanan, the Sub Inspector of Police, Rajapuram directed him to go to Mailatty colony and report on the situation. It was informed that one person named Raju was creating problems in the said colony. Thereupon, he along with another CPO went to the colony on a motorcycle and reached PW11 Reji's house. He found that certain people had kept the accused under restraint. On enquiry, he was told that the accused had brutally assaulted his own child in the house of PW1 and thereafter created violence in the colony. He stated that he went to the house of PW1, and saw one boy aged about 3 years lying in the hall room in a pool of blood. He saw the boy with the light from his torch and the lighted kerosene lamp which was placed nearby. The injured boy was rushed to Panathur Primary Health Center in a car. The boy was then referred to the Community Health Center, Poodamkallu and after examination, the Doctor confirmed the death of the

boy.

15. The testimony of PW15, the then Circle Inspector of Police at Nileshwaram, indicates that he conducted the initial investigation in this case. He performed the inquest on the body of the deceased at the mortuary attached to the Government Hospital in Kanhangad. Ext. P5 is the inquest report that he prepared. According to PW15, he seized a dhoti, a T-shirt, and a black twine tied around the deceased boy's waist, all of which were described in Ext. P5 inquest report. The body was then forwarded for postmortem examination. PW15 further stated that he proceeded to the crime scene and, in the presence of independent witnesses and with assistance from a Scientific Officer, prepared Ext.P10 scene mahazar. According to him, the scene of the crime was located in the kitchen and hall of PW1's residence, House No. IX/511, in Panathur Grama Panchayat, Mailatty Colony. He observed a blood-stained coconut scraper, crumpled aluminum vessels, and a knife at the crime scene, along with a clot of blood. Additionally, he found a blood-stained dhoti. These items were documented in Ext. P10. PW15 stated that, on 22.07.2015 at 3:15 p.m., he recorded the arrest of the accused as per Ext.P13 arrest memo. PW16, the Circle Inspector of Vellarikundu Police Station,

conducted the final stages of the investigation and submitted the final report. The FSL reports, detailing the forensic examination of the seized 'thondi' articles, were submitted through PW16 as Ext. P20 and P21. Ext.P20, prepared by the Scientific Assistant (Biology) at RFSL, Kannur, indicates that human blood belonging to group AB+ was found on item No. 5 (blood stain collected from the northwest side of the southeast room of House No. IX/511) and item No. 6 (blood stain collected from the kitchen of the same house). The medical evidence confirms the victim's blood group as AB+. It is noted in Ext. P20 that items Nos. 1, 2, and 3 (MO2 T-shirt, MO3 lungi, MO6 coconut scraper) also contained blood. Items Nos. 1, 2, 5, and 6 were found to contain human blood of group AB+, though the blood on item No. 3 was insufficient for determining origin and group. Ext. P21 confirms the presence of human blood on a white dhoti (MO8). The scientific evidence provides substantial corroboration for the ocular evidence presented in this case.

16. While considering the reliability of ocular evidence of PW1 and PW2, first of all it is to be noted that the incident in this case had occurred in their house at late night. Even the defence is not having any dispute with the alleged place of occurrence. The presence of PW1 and PW2 in

their house in the late night is quite natural. The evidence reveals that the house of the accused is located in close proximity to the residence of PW1 and PW2. PW1 and PW2 are having a case that it was after quarreling with his wife, the accused came to their house with his both children and thereafter committed murder of his elder minor son. PW1 and PW2 have consistently testified that they witnessed the incident in the light of a kerosene lamp that was lit inside their house. We find no reason to disbelieve the presence of PW1 and PW2 in their own house in the late night and that there was sufficient source of light to enable them to witness the incident in this case. The evidence of ocular witnesses clearly portrays the way in which the accused took away the life of the deceased minor boy. The sequence of events as narrated by PW1 and PW2 clearly indicates that the accused had taken sufficient time in the perpetration of the criminal act and that itself rules out any chance of implication of the accused in this case on the basis of any mistaken identity. Moreover, being neighbours, PW1 and PW2 have prior acquaintance with the accused. Significantly, even the accused does not have a case that PW1 and PW2 are having any sort of animosity or grudge towards him to falsely implicate him in a case of this nature. The Hon'ble Supreme Court in

Manoj Kumar v. State of Uttarakhand [AIR 2019 (SC) 1787] has held that in the absence of any existing enmity between the accused and the witnesses there exists no ground to question the veracity of the evidence tendered by them or to raise a ground of false implication. Therefore, we are of the considered view that evidence of PW1 and PW2 alone can very well form the basis for a conviction in this case.

17. It was vehemently contended by the learned defence counsel that, although the postmortem certificate records several antemortem injuries, the star prosecution witnesses have not testified to each specific act causing those injuries. While considering the merits of the said argument, the circumstances under which PW1 and PW2 witnessed the incident cannot be overlooked. The evidence indicates that the accused treated his son in a very brutal and inhuman manner. Both PW1 and PW2 consistently stated that the accused dragged the child around the house, inflicted a fatal head injury with a coconut scraper, and strangled him by tightly wrapping a dhoti around his neck. The terror instilled by the incident is beyond comprehension. As the evidence reveals that PW1 and PW2 observed the incident by the light of a kerosene lamp, it is unreasonable to expect them to provide a detailed account of every

individual action of the accused. In evaluating the prosecution evidence, it is not essential that every specific act of the accused be minutely and exhaustively described by the witnesses. When a series of acts are involved and when the witnesses are themselves in a state of grave fear, it may not be possible for a witness to recall and recount each act with mathematical precision while tendering evidence. Moreover, the Doctor who conducted the postmortem examination when examined as PW5 made it clear that injury No. 6 can be inflicted by a weapon like MO6. Therefore, the failure of witnesses to mention about few overt acts which led to some minor injuries noted in the postmortem examination is only liable to be disregarded.

18. The next contention advanced by the learned counsel for the accused is that the trial court erred in appreciating the fact that at the time of the commission of the offence, the accused was of unsound mind thereby entitling him to exemption from criminal liability under Section 84 of the Indian Penal Code. The learned Defence Counsel urged that due to unsoundness of mind, the accused was not in a position to foresee the consequence of acts which he was doing or that what he was doing was either wrong or contrary to law. The settled position of law is that every

man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. [**State of Madhya Pradesh v. Ahmadulla**, (AIR 1961 SC 998)].

19. Similarly as spelt out under Section 105 of Indian Evidence Act when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. The Apex Court in **Bapu @ Gujraj Singh v. State of Rajasthan** [2007 (8) SCC 66] made it clear that a court is concerned with legal insanity and not with medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of 105 of the Indian Evidence Act, 1972.

20. Upon examining the evidence in this case, it is evident that the accused failed to present any evidence or circumstance to demonstrate legal insanity, thereby rendering him incapable of understanding the nature and quality of the act he committed. We do agree that when PW1 and PW2 were in the box and during cross-examination a suggestion was

made implying that the accused was of unsound mind. But the said suggestion was denied by both the witnesses with much vehemence. More notably, when the nephew of the accused was examined as PW10, he too unequivocally denied the suggestion that the accused suffered from an unsound mind dealing a significant blow to the defence claim. Moreover, the mere putting of a suggestion, itself, will not be tantamount to proof. Therefore we have no hesitation to hold that no importance could be attached to the suggestion made during the cross-examination of witnesses.

21. The learned counsel for the accused urged that the conduct of the accused after the commission of the offence, specifically, remaining in the scene of occurrence without making an attempt to flee, demonstrates a lack of rational thought suggestive of an unsound mind. We are of the view that the said contention will fail as it cannot be expected that every person will behave in a particular manner when placed in the same situation. There is no rigid or inflexible rule that after committing a crime every accused will make an attempt to abscond. The behavioral patterns of individuals facing similar situations or circumstances can vary greatly and are not necessarily uniform. Behavioral responses to similar situations

or circumstances can differ significantly from person to person. Therefore, the conduct of the accused of remaining at the crime scene without attempting to flee, in itself, is insufficient to conclude that he suffered from mental impairment, especially since the defence has failed to present any positive evidence to demonstrate that the accused was of unsound mind at the time of alleged offence.

22. It is next contended by the learned defence counsel that the prosecution miserably failed to prove the motive for the alleged offence. According to the learned counsel, despite the prosecution allegation that the accused committed the offence owing to the enmity towards his wife, the wife was not examined as a witness to establish this fact or to prove the motive. While considering the said argument it is to be noted that both PW1 and PW2 are having a case that the accused came to their house after quarreling with his wife. Similarly, PW11, one of the neighbours of the accused, deposed that the accused is in the habit of quarreling with his wife. When the custody of one of the children was handed over, the wife admittedly left the place. She was not present when the accused went on to fatally assault his son. The evidence of PW1, PW2 and PW11 in the above regard remains unchallenged and unshaken in the

cross-examination. Therefore, we are of the view that the accused cannot be heard to say that the prosecution failed to prove the motive for the commission of the alleged offence. Even otherwise, this is a case in which the prosecution is relying on the evidence of eye-witnesses to prove the occurrence and not a case built upon circumstantial evidence. The evidence of PW1 and PW2 clearly evinces the way in which the accused took away the life of this minor child. When the eyewitnesses' account is convincing and sufficient to establish the occurrence, proof of motive holds little significance. Therefore, we are of the considered view that the non examination of the wife of the accused will not adversely affect the case of the prosecution.

23. To urge that the presence of PW1 and PW2 at the scene was unlikely, the learned counsel highlighted the failure of PW1 and PW2 to intervene and rescue the child. Although PW1 and PW2 did not make any attempt to save the child from the accused, we find this conduct insufficient to doubt their presence in the house late at night. Witnessing a violent attack can naturally leave individuals shocked and immobilized by fear. It is unreasonable to expect PWs 1 and 2, who are women, to confront an armed and violent attacker in such circumstances. Therefore,

the mere fact that PW1 and PW2 did not try to rescue the child cannot lead to the conclusion that they did not witness the incident.

24. We have no doubt that PW1 and PW2 are natural witnesses. Their testimonies present a clear account of the attack inflicted by the accused on the minor boy. The record indicates that the evidence provided by PW1 and PW2 is consistent and instills confidence in the court. The trial court has thoroughly scrutinized and evaluated their evidence before placing reliance on the same and we find no reason to doubt the credibility of their testimonies.

25. The evidence tendered by the eyewitnesses coupled with the medical and forensic evidence clearly establishes that the accused inflicted injuries on the minor child using a coconut scraper and by strangling him with a dhoti tightly wrapped around his neck. The nature of the acts attributed to the accused, the weapon used, and the manner in which the injuries were inflicted on vital body parts clearly indicate that the injuries were inflicted with the intention to cause death. There is no evidence to suggest that any of five exceptions to Section 300 of the IPC are attracted in the instant case. On the contrary, the evidence demonstrates that the action of the accused falls squarely within the scope of Section 300 of the

IPC, rendering him liable for punishment under Section 302 IPC.

Resultantly, we confirm the finding of guilt, conviction, and sentence passed by the learned Sessions Judge in S.C No.473/2015 on the file of Additional Sessions Court-I, Kasaragod, and dismiss the appeal.

Sd/-

RAJA VIJAYARAGHAVAN V.

JUDGE

Sd/-

JOBIN SEBASTIAN

JUDGE

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