

# SUPREME COURT OF INDIA

Hamza

Vs.

Muhammadvkuty Alias Mani

AIR 2013 SC 3173

(A.K.Patnaik and Gyan Sudha Misra JJ.)

20.06.2013

## JUDGEMENT

### **A.K. Patnaik, J.**

1. These are appeals by way of special leave under Article 136 of the Constitution against the judgment dated 23.09.2005 of the Division Bench of the Kerala High Court in Criminal Appeal No. 1187 of 2005 (B). Facts of the Case:

2. The facts very briefly are that on 26.02.1998 between 7.00 p.m. to 7.30 p.m. Suhara sustained stab injuries on her neck while she was in the house of her in -laws. She was initially taken to the Government hospital, Pattambi and was thereafter taken to Moulana Hospital, Perinthalmanna, where she succumbed to the injuries and died. On 27.02.1998, the Pattambi Police registered the First Information Report (FIR) on the statement given by one Saidalavi, a relative of Suhara, that she had suspicion regarding the death of Suhara (hereinafter referred to as 'the deceased'). On 27.02.1998, postmortem was conducted on the body of the deceased by the Lecturer, Forensic Medicine and Assistant Police Surgeon, Medical College, Trichur. The local police then investigated into the case and came to the conclusion that it was a case of harassment and suicide and filed a charge - sheet against four members of the family of the in -laws of the deceased for offences under Sections 498 -A and 306 of the Indian Penal Code (for short 'the IPC') but the accused persons were subsequently acquitted of the offences under Sections 498 -A and 306 of the IPC and no appeal was filed by the State against the judgment of acquittal passed by the trial court. After two years of the incident, Hamza, the brother of the deceased, lodged a complaint before the Magistrate on 26.02.2000. In the complaint, Hamza stated that the deceased was married to Ishaq, who was employed abroad and the couple had two children, a boy Mohd. Faizal and a girl Fasila. Hamza alleged that in the beginning Ishaq was sending cash from abroad to his brother Muhammadvkuty, but later on stopped sending cash to him and instead sent the cash to the deceased and as a result a quarrel started between the brothers of Ishaq and the deceased and on 26.02.1998 at 6.30 p.m. Hamsappa (Accused No.2 for short 'A -2'), brother of Ishaq, caught hold of the hands and legs of the deceased and Muhammadvkuty (Accused No.1 for

short 'A -1') killed her by stabbing her neck with a knife and stuffing clothes into her mouth. Ayisha (mother -in -law of the deceased), Asia (wife of Hamsappa), Pathummakutty (wife of Muhammadkutty) and Saju @ Sajitha (daughter of Muhammadkutty) (Accused No. 3 to Accused No.6 for short 'A -3 to A -6') changed the dress of the deceased and washed all the blood from the scene of occurrence and caused disappearance of the evidence of the murder. Accordingly, the aforesaid six accused persons committed offences punishable under Sections 302 and 201 read with Section 34 of the IPC. The complainant and his witnesses were examined by the Magistrate under Section 202 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.'). The Magistrate took cognizance of the case and issued processes against all the six accused persons. After the accused persons entered appearance and were served with the copies of all the relevant documents, the Magistrate committed the case to the Sessions Court, Palakkad on 03.04.2001. The Sessions Court thereafter framed charges against the six accused persons under Sections 302 and 201 read with Section 34 of the IPC and conducted trial in Sessions Case No.447 of 2001. At the trial, altogether six witnesses were examined and 17 documents were marked as exhibits on behalf of the prosecution. Mohd. Faizal, the son of the deceased, was examined as PW -1. He was about 7 years old on 26.02.1998 and he claimed to be a witness to the murder of the deceased. He deposed before the Court that on 26.02.1998 at 7.00 p.m when he, his mother and younger sister were lying in the bedroom for the purpose of sleeping, A -1 and A -2 came to the bedroom and A -1 took him to the sofa placed in the portico and when A -1 took his sister, the deceased cried and on hearing this, he looked into the room through a window and he saw A -2 catching hold of the hands of the deceased and A -1 pushing cloth into her mouth and stabbing on her neck with a knife. PW -1 further deposed that on seeing this he cried aloud and A -1 came out of the room, took him to the kitchen side and told him that he will also do the same thing to him if he divulged the incident to anybody. PW -1 further stated before the Court that there was light in the room at the time of the occurrence and he saw A - 3 cleaning the bedroom and A -4 and A -6 changing the dress of his mother and his mother was thereafter taken to the hospital by family members and neighbors and later somebody telephoned to the house and intimated that his mother has expired. PW -1 also deposed that on the next day he slept in his maternal aunt's house and in the night he narrated the incident to his aunt and uncle (the complainant). He also stated that on the day of the burial of the deceased the police questioned him and he stated to the police that his mother was murdered and he also met the doctors of Trichur and told them that his mother was murdered. The complainant was also examined as PW -2, who inter alia stated before the Court that on the day next to the date of incident, PW -1 slept in his house with his aunt and told him and his other family members that the deceased was stabbed to death by A -1 with the help of A -2. The Lecturer in Forensic Medicine and Assistant Police Surgeon, Medical College Trichur, who conducted the autopsy on the dead body of the deceased on 27.02.1998 and issued a postmortem certificate Ex. P -12 was examined as PW -4 and he stated that the deceased died due to cut injuries on the neck and the injuries were more likely self inflicted, but the possibility of homicide could not be ruled out. In defence, the accused persons examined the Professor and Head of the Department of Forensic Medicine and Police Surgeon, Medical College, Trichur as DW -1, who had given a medico -legal opinion, which was marked as Ex. D -1. DW -1 has concluded in his opinion that the injuries on the neck of the deceased are consistent with the

case of a suicide.

3. The trial court relied on the sole oral testimony of PW -1 and convicted A -1 and A -2 for the offence under Section 302 read with Section 34 of the IPC. The trial court, however, held that there was nothing to suggest that A -3 to A -6 shared the common intention of A -1 and A -2 to murder the deceased. The trial court further held that there was nothing also to show that A -3 to A -6 were aware that A -1 and A -2 had committed the murder and that they cleaned the room and changed the dress of the deceased with a view to cause disappearance of evidence to screen the offenders. The trial court accordingly acquitted A -3 to A -6 of the offences under Sections 302 and 201 read with Section 34 of the IPC. Aggrieved, A -1 and A -2 filed a Criminal Appeal No. 1187 of 2005 (B) before the High Court. The High Court held in the impugned judgment that the oral evidence of PW -1 did not inspire confidence and it was not safe to convict the accused persons on the sole testimony of the child witness. The High Court also held that the possibility of suicide by the deceased could not be ruled out; rather the suicide by the deceased was more probable. The High Court held that in any event it is a case in which two views are possible, one in favour of the accused and the other against the accused and in such cases the view in favour of the accused must be preferred and therefore the accused persons were entitled to be acquitted. Accordingly, the High Court set aside the conviction and sentence under Section 302 read with Section 34 of the IPC imposed on A -1 and A -2 by the trial court and allowed the Criminal Appeal. Contentions on behalf of the Appellants.