

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.272 OF 2011

OMANAKUTTAN @ KEERIKKADAN

... APPELLANT

Versus

STATE OF KERALA

... RESPONDENT

O R D E R

This appeal is directed against the final judgment and order dated 21.10.2009 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.1965 of 2005 whereby the High Court has dismissed the appeal filed by the appellant herein.

2. At the outset, we would like to record that Mr. Pradeep Kumar Goswami, advocate, was appointed as an amicus curiae in this case but he neither appeared yesterday (i.e, 10.10.2018) nor today when this matter was listed before this Court for hearing. Therefore, in the interest of justice, we requested Ms. Fauzia Shakil, advocate, to assist the Court on behalf of the appellant. We must appreciate that she readily agreed for the same.

3. A brief reference to facts of the case may be necessary for the disposal of this case. It is alleged by the prosecution that a case was pending against the appellant before the CJM and to settle it, the appellant required Rs.20,000/- which he was looking for a way to arrange the amount. He met the deceased Shine on 09.11.1998 at 8.30 P.M. while both of them were travelling in a bus. It is also the case of the prosecution that the appellant with the intention of stealing money from the deceased went with him and served liquor to the deceased from TTH Bar after purchasing a pinte bottle and both of them returned from Tripunithura. After having got down in the place of occurrence, they also had food from a road side shop. Later the appellant induced the deceased to have unnatural sex and they had unnatural sex. The appellant tried to take money from the pocket of the pants which the deceased had worn. As a result, there was a scuffle between them. The appellant pushed down the deceased and when the deceased tried to make hue and cry, the accused—appellant punched on the nose of the deceased and strangulated him with a bathing towel and committed murder of Shine. After having murdered Shine, the appellant also stolen Rs.1,050/- from the pants pocket of the deceased and left the place.

4. According to the version of the appellant before the

Courts below, it was submitted that the appellant had beaten deceased Shine during his school days and the deceased had grudge against the appellant. In order to wreak vengeance against the appellant, the deceased behaved in a friendly manner with him, when the appellant accidentally met the deceased in the bus on the date of offence. To achieve the objective of the deceased, he himself purchased a bottle of liquor and offered liquor to the appellant-accused and both of them after consuming some liquor from the bar at Tripunithura came back in Puthiyakavu along with the balance quantity of liquor in the bottle and after having some food from the nearby shops they went near the Karayogam Hall and had consumed the remaining quantity of liquor. After that both of them decided to sleep there as the deceased cannot go to his house at the odd hour fearing his uncle. While the appellant-accused was sleeping, he was suddenly got up from his sleep on finding that the deceased was sitting on his chest in a completely nude stage. In order to wriggle out of the clutch of the deceased, the appellant got up from the ground. Thereafter, a scuffle ensued. The appellant kicked on the face of the deceased and as a result, he fell down hitting his head on the floor. After two days of the incident, he came to know that Shine was dead. Subsequently, on 12.11.1998,

the appellant surrendered before the Hill Palace Police Station. It was alleged that the deceased tried to sexually assault the appellant and he had not strangled the deceased by using any towel or any similar things.

5. The Trial Court found the appellant guilty of the offence punishable under Section 302 and 392 IPC and convicted the appellant and sentenced him to suffer imprisonment for life under Section 302 IPC and to pay a fine of Rs.15,000/-. In default of payment of fine, the appellant had to undergo simple imprisonment for one year. He was also sentenced to R.I. for five years under Section 392 and to pay a fine of Rs.10,000/-. In default of payment of fine, the appellant had to undergo simple imprisonment for one year.

6. The appellant filed an appeal against the conviction and sentence imposed by the trial court before the High Court of Kerala. The High Court taking note of the fact that the deceased and the appellant were together at the intervening night, held the appellant guilty. It also considered the confessional statement of the appellant and the recovery made thereby and accordingly dismissed the appeal and confirmed the sentence imposed by the trial court.

7. Having heard learned counsel for the parties and

perusing the materials on record, we are of the considered opinion that the conviction is based on the confessional statement made by the appellant under Section 313 CrI.P.C. where the appellant-accused admitted that he was with the deceased on the date of occurrence. There are no eye witnesses to the crime and this case rests on circumstantial evidence.

8. Taking into consideration all these facts, we deem it proper to record that the material available in this case does not indicate that the appellant has committed an offence punishable under Section 302, IPC. In our considered opinion, the offence falls under Section 304 Part I, IPC. The charge against the appellant is that he kicked the deceased on his face due to which the deceased fell down with his head hitting the floor. The intrinsic fact of the scuffle depicts the intention of the appellant leading to the death of the victim which tantamounts that the appellant had caused the injury that was likely to cause the death of the deceased. Hence, the offence invariably attracts the provisions of Part I of Section 304, IPC. We, therefore, set aside the conviction of the appellant under Section 302, IPC as recorded by the Courts below and convert the same for the offence under Section 304 Part I, IPC.

9. It is worthwhile to note that the appellant has been

undergoing imprisonment since 13.07.2005 that means he has already undergone more than 13 years of sentence. He is therefore directed to be released forthwith, if not required in any other case.

10. Before parting with the case, we would like to put on record that the appellant being a prisoner having no financial soundness, his case was defended by a counsel appointed at State expenses at the High Court of Kerala. Similarly, Ms. Fauzia Shakil, learned counsel has defended the case of the appellant before this Court. We direct the Supreme Court Legal Services Committee to pay the requisite fee to the counsel for the appellant.

.....**J.**
(N.V.RAMANA)

.....**J.**
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
OCTOBER 11, 2018.

ITEM NO.103/1

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCriminal Appeal No(s).272/2011

OMANAKUTTAN @ KEERIKKADAM

Appellant(s)

VERSUS

STATE OF KERALA

Respondent(s)

(MR. PRADEEP KUMAR GOSWAMI, ADVOCATE(NON AOR)(A.C.) FOR APPELLANT)

Date : 11-10-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Ms.Fauzia Shakil, Adv.

For Respondent(s) Mr.C.K. Sasi, AOR
Ms.Nayantara Roy, Adv.UPON hearing the counsel the Court made the following
O R D E RThe appeal is allowed in terms of the signed reasoned
order.We direct the Supreme Court Legal Services Committee to
pay the requisite fee to the counsel for the appellant.(SATISH KUMAR YADAV)
AR-CUM-PS(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed reasoned order is placed on the file)

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R E C O R D O F P R O C E E D I N G SCriminal Appeal No(s).272/2011

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HON'BLE MR. JUSTICE N.V. RAMANA

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For Appellant(s) Ms.Fauzia Shakil, Adv.

For Respondent(s) Mr.C.K. Sasi, AOR
Ms.Nayantara Roy, Adv.UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is allowed.
2. Reasoned order will follow.
3. The appellant is directed to be released forthwith,

if not required in any other case.

(SATISH KUMAR YADAV)
AR-CUM-PS(RAJ RANI NEGI)
ASSISTANT REGISTRAR