
(1987) 11 KL CK 0043

In the High Court Of Kerala

Case No : Criminal A. No"s. 496/84 and 9/85

P. Abdul Aziz and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 299, 300, 302, 304

Citation : (1988) 1 KLJ 156

Hon'ble Judges : U.L. Bhat, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : M. Ratna Singh, V. Divakaran Potti and T.V. Ajayakumar, for the Appellant;

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Criminal Appeal No 496 of 1984 has been filed by accused 2 and 3 and Crl. Appeal No 9 of 1985 has been filed by the first accused in Sessions Case No 140 of 1983 of the Sessions Court, Tellicherry. First accused was tried for the offence of murder of now deceased Nabeesa (section 302I.P.C.) offence of voluntarily causing hurt to Maimoon section 323I. P. C) and offence of attempt to commit murder of P.W. 4 (section 307 I.P.C.) and other accused were tried for these offences as abettors u/s 114 I.P.C. Second accused was tried for. the offence of attempt to commit murder of three months old baby Shahul Hameed (section 307 I.P.C) and other accused as abettors u/s 114 I.P.C. There were also charges under sections 342 and 506 (i) I.P.C. against all the accused. The Sessions Court convicted the first accused " u/s 302 I.P.C. and other accused as abettors thereof, convicted the second accused u/s 307 I.P.C. for the offence of attempting to commit murder of the baby and the first accused as abet or, first accused u/s 506(i) I.P.C. and all the accused u/s 342 I.P.C. All the accused were acquitted of the charge u/s 307 I.P.C. relating to the alleged attempt to commit murder of P. W. 4 and causing simple hurt u/s 323I.P.C. Further, third accused was acquitted of the charge u/s 307I.P.C. read with section 114 relating to the

offence of attempt to commit murder of the baby and accused 2 and 3 were acquitted of the charge u/s 506 (i) I.P.C. For the offence u/s 302I.P.C. sentence of imprisonment of life was imposed, for the offence u/s 307 I.P.C. sentence of rigorous imprisonment for five years and fine of Rs. 200/-and in default of payment of fine S. I. for two months was imposed, for the offence u/s 342 I.P.C. sentence of R.I. for six months was imposed and for the offence u/s 506(i) I.P.C. sentence of R.I. for one year was imposed. Sentences were directed to run concurrently. Accused are aggrieved by the conviction and sentence entered against them. Prosecution case can be summarised as follows: Deceased Nabeesa was suffering from epilepsy during her youth. For treatment her father approached first accused, who was undertaking quack treatment for mental disorders. When treatment was not successful first accused advised that disease will be cured if she married. A proper alliance could not be arranged. First accused himself married her about 1/2 years prior to the occurrence. A baby, Shahul Hameed, was born to them, about two months prior to the occurrence. After the marriage, first accused started living with his wife in her house along with her parents, brothers, sister etc. P.Ws 4 and 7, sisters of Nabeesa were living in their own houses in the neighbourhood. One of the brothers, P.W.6, was living five miles away. First accused used to conduct "Nerchas" and undertake treatment for mental disorders at this house.

2. Since a week prior to the occurrence, P.W. 1, brother of Nabeesa was working in the house of the second accused situated about five miles away. Second accused was found to be behaving abnormally on 11-8-1983. P.W.5, wife of second accused requested P.W.1 to fetch first accused. First accused went there and started conducting Nerchas. On 12-8-1983 first accused took the second accused and another person to Vanchiyam mosque. On 13-8-1983 on the ground that the condition of the second accused had worsened first accused took him to the house of his parents in law, where he was residing. On his message, P.W. 1 took P.W. 5 and children to the house on the evening of 14-8-1983. Third accused was also present. On that day as well as on the succeeding days Nercha was conducted, though during day time second accused was all right. Nabeesa's father was absent as he was undertaking a fast in the mosque.

3. At about 8 a.m. on 16-8-1983 when Nercha (regarding treatment of second accused) was being conducted in the central room of the house, Nabeesa complained to P. W. 2 of mental depression. P.W.1 informed first accused about it. First accused asked the other accused to fetch Nabeesa to the central room from the kitchen. They brought Nabeesa. Thereupon all the three accused began to beat Nabeesa with hands and cane. At about 10 a.m. all the three accused took Nabeesa to the bedroom of the first accused. They removed the clothes of Nabeesa and made her lie down on her back. M.O. 8 wooden block was placed under Nabeesa's head. First accused stood on her neck, pressing the neck and the head. Accused 2 and 3 were pressing her abdomen holding her hands and often kicking her on the stomach and chest. Nabeesa was crying out "I will die, don't kill me, I have no saithan (Satan) When P.W. 1 tried to enter the room first

accused threatened him with death and pushed him. P.W 2 came from the kitchen and when she tried to enter the room, first accused pushed her and she fell down. She was crying out Hearing the cries, Nabeesa's sisters, P.W. 4 and 7 residing in the neighbourhood rushed to the scene. First accused beat them with cane. P.W. 7 ran away. First accused threatened saying that no one should go out of the house and he would kill them if they do so. P.W. 1 and 4 took P.W. 2 to the room adjoining the kitchen. From there the activities in the bedroom of the first accused were visible. The three accused were shouting (go away satan and come life) and beating Nabeesa with cane and kicking her. P. W. 4 again tried to enter the room. On the direction of the first accused, who said that she was also under the spell of satan, accused 2 and 3 tied her up, took her to the central room and tied her to the ceiling and beat her with cane. Some time later her husband came and rescued her. Meanwhile Nabeesa died, In the evening the three accused took the dead body and placed it in the veranda of the room of the accused. The accused were found lying on the body of Nabeesa and kicking. They clipped her hair and put it in M.O. 5 kindi (vessel with a long nozzle) and inserted the nozzle into the vagina of Nabeesa and that part was covered with a towel. The three accused thereupon stood on the chest of the body. First accused said that no one should go out of the house and threatened to set fire to the house and kill all the inmates if they do not obey him.

4. On 17-8-1983 P.W.1 went to Vanchiyam mosque and informed his father and younger brother about the death of Nabeesa. The information was conveyed to P.W 6. P.W1 and his father returned to the house. All the accused were saying that Nabeesa would get back life within two hours. First accused tied a lungi on the neck of Nabeesa. Late in the evening first accused took the three months old baby Shahul Hameed and placed him on the dead body and then handed him over to the Second accused. Second accused catching hold of one of the hands and legs swung him and placed him on the dead body. He again picked up the baby and then one of the hands of the baby was found hanging loose. Meanwhile neighbours, P.W. 10 and others had come there on hearing about the death of Nabeesa. On the entreaty of P.W.I and others P.W. 10 snatched away the baby. First accused warned him that he was interfering in religious rites and further said Nabeesa's life would come back. Meanwhile accused had also inflicted burns on the body of in the region of face and breasts.

5. On the advice of P.W. 10 and others, on the night of 17-8-1983. P.W.1 proceeded to Kudiyanmala police station, 5 kms away and laid Ext P1 information against accused 1 and 2 on the basis of which P.W.17 Head Constable of Police registered a case against accused one and two u/s 302 read with section 34 I.P.C. He proceeded to the scene to guard the scene, after informing his superiors.

6. P.W. 18, C.I. of Police. Taliparamba reached the scene of occurrence on 18-8-1983, held inquest over the dead body of Nabeesa, questioned some of the eye witnesses and seized Mos 1 to 29 and prepared Ext P4 inquest report.

Postmortem was conducted by P.W.13 at the scene itself P.W. 18 sent report to court including sections 323, 342, 307 and 506 (i) and also implicating the third accused. He arrested the accused on 18-8-1983 at 4 p.m. Second accused was sent to Rural Dispensary and then to Government Hospital, Taliparamba as some injuries were found on him. P.W.4 and baby Shahul Hameed were also caused to be medically examined. Plan "of the scene was secured. M.Os were caused to be sent for chemical examination and after completing investigation final report was submitted against all the accused.

7. On the accused pleading not guilty to the charges against them, prosecution examined 18 witnesses and marked Exts. PI to P16 and M. Os 1 to 29. Defence marked Exts DI to D13, but did not tender any oral evidence. Accused when questioned generally denied the truth and the implicating evidence. First accused further stated that they were conducting Nechas in the veranda while Nabeesa was in her father's room. He stated that the face and expression of Nabeesa were changed. He called Nibeesa, who did not respond. Somebody else fetched Nabeesa. She was made to sit down in the eastern part of the veranda. She suddenly got an attack. She fell down striking her head against wooden block. FVst accused went near and since she was breathing he massaged her body. Nabeesa was dead. He went to his room Nabeesa was sickly. Second accused said that Nabeesa was an epilepsy patient. Second accused was taken there for treatment for mental disorders. His hand and feet were tied up. He was freed only when the police came. He was treated in several hospitals. Third accused stated that he went to the scene only on the evening of Wednesday and he found a crowd there. Nabeesa's body was in the veranda The court below accepted some of the charges as proved against the accused.

8. We are not now concerned with the charge against the accused for attempting to commit murder of P.W. 4 and causing simple hurt to Maimoon because the lower court did not act on the prosecution evidence in that behalf. We are concerned only with the alleged murder of Nabeesa, attempt to murder of baby Shahul Hameed and wrongful restraint and intimidation.

9. P.W. 13. who conducted post-mortem examination over the dead body issued Ext P8 certificate, Body was lying flat on back. legs kept apart and arms kept at right angle to the body. Body was swollen. Hair was seen cropped. Eye lashes were seen cut. Pubic hair was seen over the face and chest scattered. There was big blister over the left palm. Face was burnt here and there. Lips were swollen. Skin abrasions seen all over the face and right side of chest. Depressed area of 5 cm diameter seen over right side of scalp. Bleeding present from nose and left ear. Breasts were swollen. Abrasions seen over nipples. There were contusions over lower part of abdomen and upper part of front of both thighs. A vessel with nozzle was seen between the thighs with its spout inside the vagina. Pubic and vulval regions edematous and skin abrasions seen over vulval region. Pubic hair absent. Fracture ribs 8th and 9th over left side and 7th, 8th 9th and 10th over right side. Chambers of the heart were empty Blackish discolouration with

multiple abrasions in the vagina. Haematoma of 4cm x 3cm x 1cm seen, over the right side of brain which was pale P.W. 13 initially deposed that death was due to head injury and multiple injuries of ribs. She sent visera for chemical examination. But even without the report in her opinion it is clear that head injury was responsible for the death. She deposed initially that head and rib injuries noted were ante mortem. Head injury and fractures could be caused by kicking with sufficient force. In cross-examination she indicated that the fracture of the ribs could be post-mortem. On consideration of the medical evidence, learned Sessions Judge came to the conclusion that many of the injuries including the head injury though not the injuries of the ribs were ante mortem, the death was caused by the head injury and that injury was sufficient in the ordinary course of nature to cause death We agree with the conclusion.

10. P.W. 15, Assistant Surgeon in the Government Rural. Dispensary, Kudiyanmala examined the baby Shahul Hameed on 18-8-1983. He found on the body two injuries, viz., fracture left humerus at the handle and fracture left clavicle. Ext P13 is the wound certificate. He deposed that the above injuries could be caused if the infant is held by hand and leg and swung around. He also indicated that the fracture could be caused by a fall.

11. The incriminating evidence consists of the evidence of eye witnesses P.Ws 1, 2, 4 to 7 and 10. Of them P.W. 5, wife of second accused declined to support the prosecution case and was treated hostile. However, she stated that on the day of the death of Nabeesa she had gone to that house and she was present there. Son of the third accused was sent to her house to fetch her. She went to the house with P.W. 1, who was working in her house. She was told that the condition of her husband, second accused, had worsened. Her husband had gone with the first accused on Friday. Second accused had mental illness-First accused took her husband saying that treatment can be given in his house. She had sent for first accused for treatment at her house. - First accused performed Nercha and then took away her husband. When she went to the house of Nabeesa, accused land 2 were there. Third accused came later She denied having seen the occurrence. In her statement to the police, marked as, Ext P38, she had supported the prosecution. She denied having made the statement. Being the wife of the second accused it would be natural for her to help her husband and for that purpose to help the other accused also. Significance of her evidence, as rightly pointed out by the learned Sessions Judge, lies in the fact that even according to her, all the three accused were present in the house of Nabeesa.

12. We will now advert to the evidence given by P. Ws 1, 2, 4, 6, 7 and 10 regarding various acts which took place in the house. The acts can be broadly divided into those which took place before the death of Nabeesa and those which took place subsequently. Among these witnesses P. Ws 1 and 6 are the brothers. P.W. 2 is the mother and P. Ws 4 and 7 are the sisters of Nabeesa. P.W. 10 is an independent witness. There could be no dispute about the presence of the three accused in the house of Nabeesa. It is in evidence that Nabeesa during her

younger years was suffering from epilepsy. First accused claimed to be capable of curing mental disorders by non-medical means such as performance of Nerchas etc He was asked to treat Nabeesa which he did unsuccessfully. It appears ultimately he suggested marriage as cure and finally he himself married Nabeesa and started living in Nabeesa's house along with her parents and some of her brothers and sisters. A baby by name Shahul Hameed was born in that connection about 2 months prior to the occurrence. P.W. 1 deposed that accused 2 and 3 were close friends of first accused and used to come to the house to see first accused.

13. The prelude to the occurrence was the alleged sickness of the second accused. About a week prior to the occurrence P.W.I was working in the house of the second accused. He was digging a well and staying in that house, five miles away from the scene. He deposed that on 11-8-1983 second accused was found behaving abnormally. His wife, P.W. 5 asked the witness to fetch first accused which he did. First accused went there and started concluding Nercha. On 12-8-1983 first accused took away second accused. On 13-8-1983 son of the third accused came with a letter of the first accused saying that the condition of the second accused had worsened and asking him to take P.W.5 and her children there. Meanwhile first accused had taken second accused to the house of Nabeesa. P.W.I took P.W. 5 and her children to that house on the evening of 13-8-1983. All the three accused were present there. Nercha was performed on that night and on the succeeding days. He definitely deposed that during day time second accused was all right though during night he used to behave abnormally. Events which led to second accused being taken to the house of Nabeesa as spoken to by P.W. 1 were corroborated by P.W. 5. P.W. 2 also deposed that first accused was treating the second accused in her house. There is no serious dispute about these facts either.

14. P.W. 2 deposed that on the morning of 16-8-1983 Nabeesa complained of mental depression and the witness informed first accused about it. First accused said that Nabeesa was under the grip of saithan and asked accused 2 and 3 to fetch Nabeesa to the central room, where Nercha was going on. Accused 2 and 3 fetched Nabeesa to that room. At the request of the first accused P.W. 2 lighted incense and first accused began to chant prayers and to beat Nabeesa with cane. The evidence of P.W. 2 was fully supported by P.W. 1.

15. P.W. 1 deposed that at about 10 a.m. all the three accused took Nabeesa to the bedroom of the first accused, removed her clothes and made her lie down on her back. First accused stood on the neck of Nabeesa. Accused 2 and 3 pressed her abdomen holding her hand and kicked her. Nabeesa was crying out "don't kill me". P.W. 1 attempted to enter the room. First accused threatened him with death and beat him. P.W. 2 came from the kitchen and tried to enter the room. She was also beaten by him and she fell down. P.W. 1 cried out aloud. Hearing the cries his sisters P. Ws 4 and 7, living in the neighborhood, came to the scene. They were also beaten by (he first accused with cane. P. W. 7 ran away to her

house. P. Ws 1 and 4 took P.W. 2 to the room adjoining the Kitchen They heard the three accused shouting (go away saithan, come life). They saw the three accused beating Nabeesa with cane and kicking her. The scene was visible from where they were. This evidence was broadly corroborated by P. Ws 2, 4 and 7, of who P.Ws 2 and 4 spoke to most of the details.

16. P.W. 1 further deposed that thereafter P.W. 4 again tried to enter the room. First accused asked other accused to tie her up and take her to the central room as she also was under the spell of saithan. Accused 2 and 3 did so and hung her by the ceiling and beat her with cane. After some time her husband, Beeran who came there rescued P.W.4. This part of the occurrence was also broadly corroborated by P.Ws 2 and 4.

17. P.W.I further deposed that by evening the three accused took the dead body of Nabeesa and placed it in the front veranda of the bed room of the first accused. The three accused stood on, her body. They told the inmates not to go out of the house and threatened that if they violate the direction the house will be set at fire and all the inmates killed.

18. We now turn to the events which took place on 17-8-1983 P.W.I went to the mosque and informed his father and brother about Nabeesa's death and made arrangements to give information to P.W.6 and came back to the house. At that time accused were saying that Nabeesa would regain late within two hours. P.W. 8, a neighbour deposed that he was returning home from work at about 3 p.m. He found the children of P.W.7 crying and going away from the scene towards the house of P.W. 7 and he questioned them and came to know about Nabeesa's death. He later went to P.W.7's house and questioned her. She will tell him about the same later and Nercha was going on. He informed P.W.9. P.W.9 deposed that he passed on the information to P.W. 10 and others. P.W. 10 deposed that he along with Babu and Gopi were informed about the death of Nabeesa as a result of the acts of the accused. They went to the house, saw raked body of Nabeesa lying in the front veranda covered with a towel and all the three accused present. He saw second accused swinging the baby holding hand and leg and placing him over the dead body. P.W.6 said that the baby will the and asked P.W.10 and others to interfere. Second accused tried to hit the baby. P.W.10 caught the hand of second accused and rescued the baby. This evidence was broadly corroborated by P.W.6 who further said that first accused had earlier caught the baby and placed him on the dead body and moved him and then gave him to the second accused who swung the baby holding him by hand and leg. When he again tried to pick up the baby one of the hands of the baby was found hanging loose. P.W.10 interfered. First accused told him that they were religious rites and he should not interfere. His evidence also shows that M.O. 8 wooden block was found under the head of the baby.

19. The evidence would clearly show that Nabeesa died some time in the afternoon of 16-6-1983. The acts which were committed subsequently were committed on the dead body. The question arising for consideration is whether

the learned Sessions Judge was justified in accepting the above evidence with reference to the injuries caused on Nabeesa and the dead body.

20. According to the learned counsel for the appellants, F.I.R. was belated and manipulated document. The F.I.R. came into existence at 1145 p.m. on 17-8-1983, no doubt long after the death of Nabeesa. However, we are not able to agree that it was a manipulated document. The delay in informing the police is clearly explained by the circumstances emerging in the case. The evidence clearly shows that first accused, a quack, claiming to possess the power and ability to cure mental disorders was called "Usthad". Evidently he was held in awe and fear. He repeatedly threatened the assembled persons, first threat was to kill them if they interfere Next threat was to kill them and set fire to the house if they go out of the premises. He even warned P.W.10 against interfering with religious ceremonies The evidence would also suggest that some of the witnesses believed that first accused possessed the powers which he claimed The ultimate power he claimed was ability to bring Nabeesa back to life. The nearest relations of Nabeesa who were asked about it clearly stated that they believed that Nabeesa would come back to life. It is also significant to note that father of Nabeesa was away in the mosque undertaking a fast. We can only imagine the atmosphere of superstitious belief and awe created by the first accused in the house. It was only when persons unconnected with the family like P.W. 10 and others came to the scene and pressed P.W.I to inform the police that P.W.I proceeded to the police station. In these circumstances we are not inclined to draw any adverse inference from the delay in lodging the first information.

21. It is next contended that prosecution evidence was manipulated inasmuch as it clearly implicated third accused even though the F.I.R. did not implicate him. The F.I.R. mentioned the presence of third accused but did not mention any overt act by him. Learned Sessions Judge discussed the matter in detail and came to the conclusion that the omission was either on account of perplexed and uncertain state of mind of P.W. I or because he wanted to help the third accused. Having considered the evidence carefully and cautiously we are inclined to agree with the conclusion of the learned Sessions Judge. P.W. 1. was only 18 years old at that time. He must have been really out of his wits on witnessing the happenings in his house. He never thought that he should inform the police evidently because he was also awed by the situation. It was only at the instance of P.W. 10 he went to the police station. He must have been in a very perplexed mood. Third accused was an outsider, whose services were evidently requisitioned by the first accused. P.W. 1 when questioned about the omission stated that it was only an omission and the very next day he went to the police and set right the omission. Many of the eye witnesses were questioned during inquest. It has not been brought out that they did not implicate the third accused. In these circumstances we agree with the learned Sessions Judge that the omission in the F.I.R. of the overt acts of the third accused could not be viewed with any suspicion.

22. Our attention is invited to certain contradictions in the testimony of witnesses. The occurrence lasted for a long time and the witnesses were not continuously viewing the occurrence. In the very nature of things there are bound to be contradictions which in the circumstances appear to be guarantee of the truthfulness of the witnesses. It is clear that the witnesses were not tutored witnesses. It is argued that P. Ws 1, 2, 4, 6 and 7 being close relations of Nabeesa must be treated as interested witnesses. We fail to appreciate this contention. The occurrence took place inside the house in which Nabeesa and the first accused were residing and second accused was allegedly being treated and the third accused was also present. In the very nature of things only the inmates and relations would be in a position to witness the occurrence. Their evidence cannot be brushed aside on the ground that they are relations of the deceased. A reading of their evidence convinces us that they were speaking the truth, and were not carried away by any animosity against the accused. They repeatedly asserted that they believed that the first accused would bring back Nabeesa to life. The events which took place in the evening were witnessed by a disinterested witness, viz., P.W. 10. His evidence furnished a clue to the acts which would have been performed by the accused before the death of Nabeesa and provided broad corroboration to the evidence of the other witnesses who spoke about the events prior to the death of Nabeesa. It is argued that P.W. 10 belongs to a political group from which the third accused had resigned earlier. "We do not think this is a circumstance which would persuade us to view the evidence of P.W. 10 with any degree of suspicion.

23. It is argued that the prosecution version is highly improbable, No doubt the prosecution case appears to be unusual. But then the very setting of the occurrence is unusual. We are dealing in this case with persons who are steeped in superstitious belief. It will be difficult to judge their motives and actions from the stand point of rational people. There are decided cases, to which we will refer presently, which deal with similar, if not more unusual crimes. It is argued that the conduct of the eye witnesses is unnatural inasmuch as they did nothing to save Nabeesa or the baby. We are unable to accept this argument. P.Ws 1, 2, 4 and 7 tried to interfere to help Nabeesa P.W. IO actually snatched away the baby. They were threatened and intimidated by the first accused who had created an awesome atmosphere. It is contended that the accused had no motive to kill Nabeesa or the baby. If the other evidence is clear and cogent, motive is really not important. Having bestowed our anxious, careful and cautious consideration to the evidence and circumstances of the case, we are inclined to accept the prosecution version of the occurrence relating to the injuries inflicted on Nabeesa and the baby Shahul Hameed and wrongful confinement and intimidation, and agree with the conclusions arrived at by the learned Sessions Judge in this behalf.

24. The eye witness testimony and medical evidence leaves us in no doubt that Nabeesa died on account of forcible pressure applied on her neck and head, most probably with wooden block kept under her head. Such forcible pressure was applied by the first accused, who was standing on her neck and most probably on

the head also. The medical evidence clearly shows that the cause of death was head injury, viz., depressed area of 5 cm diameter over right side of the scalp with extending haematoma of 4 x 3 x 1 cm over right side of brain. The injury must necessarily have been caused by the overt acts of the first accused. No doubt in chief examination P. W. 13 deposed that cause of death was head injury as well as fracture of ribs. But her evidence in cross-examination would indicate that the fracture of ribs was post mortem. A suggestion was put in cross-examination to some of the witnesses that on the day of occurrence Nabeesa had epileptic fit and in the course of fit she fell down and struck her head on the wooden block and thus sustained death. P.W.13 deposed that such a fall could cause death. However, we are unable to see how in the course of an epileptic fit a sick person could fall suddenly and particularly in a horizontal position so as to strike the head on the wooden block kept on the floor. Further there is absolutely no material to show that Nabeesa had an attack of epilepsy on that day. P. W. 2 no doubt stated that Nabeesa complained of mental depression. That could be due to the Nercha being conducted in the house and the commotion created thereby. It is true that Nabeesa in her younger days had epilepsy. But the evidence of the mother and other witnesses would clearly show that after the marriage she was happy and free from sickness. In these circumstances the suggestion of a fall leading to death can be safely ruled out. The death was caused by pressure applied on the neck and the head by the first accused. The evidence would also clearly establish that all along accused 2 and 3 were kicking Nabeesa on the upper part of her body.

25. P.W. 13 did not in so many words depose that the head injury was sufficient in the ordinary course of nature to cause death. But her evidence would indicate that the only major injury was the head injury and the head injury actually caused the death. Considering the nature and extent of the injury we have no doubt in our mind that this injury was sufficient in the ordinary course of nature of cause death.

26. What is the offence committed by the first accused in causing death of Nabeesa by causing the head injury? According to the learned Sessions Judge the act attracts thirdly of section 300 and would be murder. Learned counsel for the appellants strenuously challenged this finding. According to them the act would be a rash and negligent act attracting sections 304-A and at the most, culpable homicide not amounting to murder falling under third clause of section 299 and punishable u/s 304 part II. They contended that the intention of the first accused was only to abuse her condition and he had no idea of causing her death. They placed reliance on certain decisions, which we shall presently notice.

27. The earliest of these decisions is the one in *Nga Po Tha v. Emperor* (AIR 1918 Upper Burma 24). The accused in that case beat the deceased to death, superstitiously believing the deceased to be possessed by an evil spirit and in the hope of curing her and despite the protests of the deceased. The learned Judicial Commissioner observed that the accused certainly had no intention to kill the

deceased and the intention which may be inferred from knowledge is not an intention which must necessarily be inferred in every case. Up to a certain point acts of the accused did not endanger life and it was not necessary to infer that because he went beyond that point he intended to cause injuries which he knew to be likely to cause death. The prevailing intention throughout would seem to have been to drive out the spirit. In treating the deceased woman as he did, the woman being elderly and weakly, the accused must have known that the acts were likely to cause death. Therefore the court convicted the accused under section. 304part II The next decision relied on is one in *King Emperor v. Bharat Bepari* (AIR 1921 Cal. 501(1)). The accused in that case were parents who lost all their children and were told that there was an evil influence brooding over them and their children and vowed that they would offer their next child to crocodile in a certain tank at a particular time in order to exercise the evil influence. When the next child was born to them they took the child to the tank in question and placed it there near the water's edge and called the crocodiles. Two crocodiles appeared and one of the two caught up the child in its mouth and disappeared with it into the water. Neither the crocodile nor the child re-appeared. The child was devoured by the crocodile. The court held that the accused had no intention causing death of the child but then did the act with the knowledge that their act would result in the death of the child. Accordingly the accused were convicted u/s 304part II I.P.C. Appellants also rely on the decision in *Haku v. Emperor* (AIR 1928 Lahore 917). In that case the accused inflicted many blows and many kicks on the body of the deceased in order to drive away the evil spirit and thereby caused death by shock. The court followed the *Upper Burma* decision (AIR 1918 Upp. Burma 24) and held that the offence made out was one punishable u/s 304 part 11 I.P.C. The last decision relied on by the appellants is in *In Re: Divan Sahib alias Pythiakkaran alias Samiyar*, . The accused in that case, an exorcist believed the deceased woman to be possessed by an evil spirit and subjected her to prolonged suffocation by smoke during the course of ritual, and also by heat brought too near the body and thereby caused her death. Following the " decisions of the Judicial Commissioner (ATR 1918 Upp. Burma 24) and the Lahore Court (A.T.R 1928 Lahore 917) the Court held that the offence was one punishable u/s 304part II I.P.C. on the ground that only third clause of section 299is applicable. We have to point out that in none of these cases the applicability of "thirdly" or "fourthly of section 300I.P.C. was considered.

28. We now refer the decision of the Supreme Court relied on by the Public Prosecutor, viz *Paras Ram and Ors. Vs. State of Punjab*, (1981) 2 SCC 508 . The accused in that case viz father of four year old boy and other relations ceremoniously beheaded the child at the crescendo of morning bhajan. The accused were convicted u/s 302I.P.C. overruling the plea of insanity. The Supreme Court declined to grant special leave observing that the monstrosity of the crime provided no proof of insanity sufficient to exculpate the offender u/s 84I.P.C. and further observed:

The poignantly pathological grip of macabre superstitions on some crude Indian minds... in defiance of the scientific ethos of our cultural heritage and the scientific impact of our technological century shows up in crimes of primitive horror such as the one we are dealing with now. where a blood-curdling butchery of one's own beloved son was perpetrated, aided by other pious" criminals... Secular India, speaking through the court must administer shock therapy to such anti-social "piety", when the manifestation is in terms of in-human and Criminal violence.

29. We now propose to consider the applicability of the different clauses of sections 299 and 300 I.P.C. an examination not conducted in the four decisions relied on by the appellants. We are not satisfied that the first accused or the other accused had any intention of causing death of Nabeesa as contemplated in the first clause of Section 299 or "firstly" of section 300.

30. Second clause of section 299 refers to with the intention of causing such bodily injury as is likely to cause death aggravated forms of which are found in secondly and thirdly of section 300. Obviously secondly of section 300 cannot have any application to the fact's of this case. "Thirdly" of section 300 refers to "if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death". In both the provisions there must be intention in one case intention is to cause such bodily injury as is likely to cause death and in the other case intention is to cause the bodily injury. Intention means expectation of consequence in question and does not necessarily involve pre-meditation. A person expects the natural consequence of his act and is presumed to intend the same. The argument that first accused never wanted his wife dead is wholly beside the point. Assume the bonafides of first accused (it is difficult to assume bonfires in a superstitious and callous adventurer), it may be that his motive in committing the act was to effect a cure. Proof of motive is relevant not as proving the offence but as spring of human action supporting proof of intention explaining and connecting it with the act. The intention to cause an injury likely to cause death does not necessarily imply that the consequence of death was foreseen or intended. Intention must be to cause the injury which in fact is of such of a nature as likely to cause death. It need not be death itself nor the effect of the injury which is intended. Intention generally can be judged by the external manifestation of the act. The act of the first accused standing on the neck of Nabeesa and applying pressure on the vital part of the body must necessarily have been committed with the intention of causing bodily injury. Depressed fracture on the skull and the extensive fracture underneath indicate that considerable pressure must have been used. Considering the nature of the injury inflicted, the enormity of pressure applied and the vital part on which pressure was applied, we have no hesitation in concluding that the first accused committed the act with the intention of causing such bodily injury as is likely to cause death as contemplated in second clause of section 299.

31. We have now to consider whether the act attracts "thirdly" of Section 300, i.e., murder, which is an aggravated form of culpable homicide as defined in the second clause of section 299 I.P.C. The clause requires that the act which caused the death is done with the intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. First ingredient is subjective while the second is objective. Once injury is present, intention to cause it is presumed unless circumstances of the case lead to a different conclusion. The question is not whether he intended to cause a serious or trivial injury. The question is whether he intended this injury. His knowledge about the seriousness or otherwise of the injury is immaterial. It does not matter if there is no intention to cause death or an injury of a kind that is sufficient in the ordinary course of nature to cause death. It is sufficient that the injury inflicted is intended and that the injury is of a nature sufficient to cause death in the ordinary course of nature. The word "likely" in second clause of section 299 means probably. What thirdly of section 300 contemplates is that death must be the most probable result of the injury having regard to the ordinary course of nature. When the first accused applied great pressure on the neck and consequently on the head, that is, on vital parts of the body using his weight for the purpose, there can be no doubt that he intended to cause the particular injury. We have also indicated that considering the nature of the injury, vital parts of the body and the pressure exerted, the injury is one that is sufficient in the ordinary course of nature to cause death. On a consideration of the entire circumstances, we are of the opinion that the act committed by the first accused falls under "thirdly" of section 300 I.P.C.

32. We will now assume that clause (b) of section 299 and "thirdly" of section 300 are not attracted in the instant case. That would compel us to consider whether third clause of section 299 and its aggravated form, viz., fourthly "of section 300 would apply. Third Clause of section 299 refers to "with the knowledge that he is likely by such act to cause death. Knowledge implies consciousness of a further contingency, that is, such knowledge as a person in the position of accused might be expected to possess. When death is more likely than recovery the person who commits the act can be imputed knowledge of the likelihood of death. Knowledge is invariably incapable of direct proof. The ingredient takes not only knowledge but also means of knowledge, not only knowledge which is, but which judging from the effect ought to have been in him. The standard is of a reasonable person, whether as a reasonable person he could have had that knowledge. Judging the acts of the first accused from this standard we have no doubt in our mind that he had knowledge that his act are likely to cause death. Therefore certainly clause (c) of section 299 is attracted.

33. The next question is whether the aggravated form of third clause of section 299, viz "fourthly" of section 300 is attracted? "Fourthly" of section 300 refers to "if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing

death or such injury as aforesaid. There can be no doubt that first accused had no excuse for incurring the risk of causing death or such injury as is likely to cause death. He is a quack pretending to cure mental disorders. The evidence does not show that at the time of occurrence Nabeesa was suffering from any mental disorder. First accused proclaimed that she was under the influence of Satan and purported to treat her for that condition by subjecting her to severe torture by himself and the other accused. The acts committed by him were certainly dangerous acts. He must necessarily have known that there was nothing wrong with the health or mental condition of Nabeesa which required the incurring of any such risk. He had no excuse for incurring such risk at all.

34. Was the act committed with the knowledge that it was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death? The illustration (d) of section 300 is said to be illustration for "fourthly" of section 300. The illustration reads:

A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

The usual examples given for "fourthly" of section 300 are "furious driving, firing at a mark near public road", that is, cases in which act of the accused is not directed against any particular individual, but there is considerable recklessness or negligence which places many lives in jeopardy of which the accused is well aware. However, the clause can be said to attract, generally commission of an imminently dangerous act which must in all probability cause death. See the observations of Hidayathulla, J. (as he then was) in the decision in *Rajwant Singh v. State of Kerala* (AIR 1966 SC 1874). In *State of Madhya Pradesh Vs. Ram Prasad*, the Supreme Court was considering the case of an accused who set fire on the clothes of the victim and caused her death. Hidayatullah, J. (as he then was) observed:

It is obvious that there was no excuse for Ramprasad to have taken the risk of causing the death or such bodily injury as was likely to cause death. The question therefore arises whether Ramprasad knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, so as to bring the matter within the clauses. Although clause "fourthly" is usually invoked in those cases where there is no intention to cause the death of any particular person as the illustration shows) the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death... No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore it is obvious that Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he has no excuse for incurring that risk, the offence must be taken, to fall within "fourthly" of section 300 I.P.C. ...

He committed an act so imminently dangerous that it was in all probability likely to cause death".

35. "Fourthly" of section 300 requires a higher or greater knowledge than the one contemplated in third clause of section 299. The extent of knowledge is not capable of direct proof it must necessarily be inferred from various circumstances of the case including the nature of the act, expected consequences of the act and the degree of risk to human life. If death is only likely result, it is third clause of section 299 which will apply. If death is most probable result of the act, "fourthly" of section 300 will be attracted. "Fourthly" contemplates extreme culpable negligence of very high degree coupled with lack of excuse. It contemplates much higher degree of knowledge and greater culpability of the act. If the circumstances betray such callousness towards the result and the risk taken is such that it can be stated that the act is so immediately dangerous that it is in all probability likely to cause death or such bodily injury as is likely to cause death, this provision is attracted. The character of the act must be such as to necessarily lead to the inference that the accused had full consciousness of the probable consequence. There must be knowledge of the imminent danger, ordinarily such knowledge can be presumed if the act causing death is so imminently dangerous.

36. No special knowledge is necessary to know that acts such as those performed by the first accused on vital parts of the body of Nabeesa were so imminently dangerous, that in all probability they must cause death or such bodily injury as is likely to cause death. First accused must necessarily have had such knowledge. We are therefore of the opinion that even assuming that "thirdly" of section 300 is not attracted, "fourthly" of section 300 would be attracted in this case. First accused has therefore committed the offence of murder punishable u/s 302 I.P.C.

37. On behalf of the second accused it was unsuccessfully urged before the lower court that at the time of the occurrence he was of unsound mind and on that account was incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. This contention has been urged before us also. Reliance is placed on the evidence of P. Ws 1, 2, 4 and 5 to the effect that second accused was showing signs of abnormality and was placed under the treatment of the first accused. P.W. 1. referred to the conduct of the second accused as of excitement similar to madness. P.W. 5, Wife of the second accused (she turned hostile to the prosecution) deposed that her husband had mental illness before her marriage which took place nine years previously, that there was an attack four years previously and that after the occurrence his hands and feet were tied and he was untied only after the arrival of the police. Her interested evidence was not supported by any other witness. On the other hand, P. W. 10 deposed that on 17-8-1983 second accused tried to escape and was detained by the people who gathered there. His attempt to escape would clearly show that he was quite normal and he was aware of the nature of the acts and consequences

of the acts committed during occurrence, If he was a mental patient even before his marriage, there must be evidence available in proof of it. No evidence was placed before court to indicate that he was under treatment for any mental illness before or after the marriage. Evidently the lower court had been appraised of his alleged mental condition, and therefore called for the report from P. W. 3 Civil Surgeon of the District Hospital, Cannanore. Ext P2 is the report. The report clearly shows absence of any mental illness After his arrest second accused was sent to Kodiyanmala Rural Dispensary and thereafter to the Government Hospital, Taliparamba, as he had some minor injuries. It is not argued before us that the Doctors at the dispensary or the hospital discovered any mental illness in him. It is argued that the acts attributed to the second accused are so gruesome and peculiar in nature that the court can draw a conclusion that he was insane at that time. This argument, if accepted, would apply equally to other two accused, on whose behalf no defence of insanity had ever been set up. Even the witnesses who indicated some abnormality in the second accused deposed that on the date of occurrence and the next day though during night time he was showing signs of abnormality, he was all right during day time. In the absence of any satisfactory evidence or circumstances we are not prepared to accept that the gruesome nature of the acts committed are suggestive of unsoundness of mind. There is total lack of acceptable evidence in proof of alleged insanity of the second accused much less is there any circumstance indicative of any incapacity to know the nature of the act or that what he was doing was either in law or contrary to law. The lower court was therefore justified in rejecting the defence raised by the second accused u/s 84 of the I.P.C.

38. The acts of the first accused were keenly supported by the other accused. They abetted in the commission of the offence by the first accused. When the first accused was committing violent acts on the neck of Nabeesa other accused were kicking her. At every stage they were co-operating with the first accused. The learned Sessions Judge was absolutely justified in holding that they abetted in the commission of offence of murder.

39. We have already indicated that the acts performed by the second accused were responsible for the grievous injury caused to the Baby Shahul Hameed. This act was committed certainly at the instigation of the first accused, who handed over the baby to the second accused. The first act was that of the first accused in catching the child by one hand and one leg and placing him on the dead body. The baby was about three months old. There can be no doubt that if the act of the second accused had caused the death of baby, that would have amounted to murder. He was therefore rightly found guilty of attempt to commit murder punishable u/s 307 and the first accused was rightly found to be abettor.

40. The evidence referred to above already clearly establishes the commission of offence of wrongful restraint of P. Ws 1, 2, 4 and 5 and also intimidation of these and other witnesses. We therefore affirm the conviction entered against the appellants. We find no ground to interfere with the sentence imposed against the

appellants The appeals are accordingly dismissed.