

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

THURSDAY, THE 13TH DAY OF JUNE 2024/23RD JYAISHTA, 1946

CRL.A.NO.763 OF 2018

AGAINST THE JUDGMENT DATED 30.09.2016 IN S.C.NO.415 OF 2014
OF ADDITIONAL SESSIONS COURT - TRIAL OF ABKARI ACT CASES, NEYYATTINKARA
ARISING OUT OF C.P.NO.76 OF 2013 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -III, NEYYATTINKARA

APPELLANT/ACCUSED:

REGHUNADAN

AGED 68 YEARS, S/O. PONNU PANICKER, PUTHRAVILAKAM
VEEDU, KOZHODU, ANTHOYLOOR DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.

BY ADV.SRI.S.RAJEEV

BY ADV.SRI.K.K.DHEERENDRAKRISHNAN

BY ADV.SRI.D.FEROZE

BY ADV.SRI.V.VINAY

RESPONDENT/STATE:

STATE OF KERALA

REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

(CRIME NO.158/2013 OF BALARAMAPURAM POLICE STATION,
THIRUVANANTHAPURAM DISTRICT)

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
13.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

When the case was taken up for hearing, it was reported to us by the learned counsel appearing for the appellant/accused that the appellant has expired on 24.06.2023. Taking note of the said submission, we have to examine whether the appeal would abate in terms of Section 394(2) of the Code of Criminal Procedure. We note, in this connection, that the conviction of the appellant was for the offences under Section 307 and 302 of the Indian Penal Code [IPC] and the prosecution case was that he had murdered his wife on 25.02.2013. The learned Sessions Judge found the appellant guilty of the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.50,000/- and in default to undergo rigorous imprisonment for one year. It was further directed that out of the fine amount, if realised, amounts of Rs.25,000/- each were to be paid to PW1 and PW3, who are the children of the late appellant.

2. Inasmuch as there is a sentence of fine that is impugned in this appeal, we have to take note of the Full Bench judgment of this Court in **Pazhani v. State of Kerala - [2017 (1) KHC 173]**, which mandates that even if the near relatives of the appellant do not file an application to come on record, for the purposes of continuing to prosecute the appeal in terms of the proviso to Section 394(2) of the Cr.P.C., the Court has to consign the appeal to the record room. On the facts in the instant case, we do not see a possibility of any near relative of the appellant approaching this Court for pursuing the appeal. It is trite that the permission granted by the Statute to a near relative for leave to continue the appeal is with the object of providing a machinery whereby the children or member of the family of a convicted person, who dies during the pendency of an appeal, can challenge the conviction and get rid of the stigma attached to the family. In a case such as the present, where the children of the late appellant, who are lineal descendants, are also, in a sense, victims of the crime for which he was convicted since the conviction and sentence imposed on him was for the murder of his wife i.e. the mother to his children, we don't perceive of the situation where his children would be interested in pursuing the appeal.

3. We also note that inasmuch as the recovery of the fine amount, if directed, would have to be from the estate of the late appellant, which would now devolve upon PW1 and PW3, his children, in the peculiar circumstances of this case, the ends of justice would be met by partly allowing the appeal solely for the purposes of modifying the sentence imposed by the trial court and cancelling the sentence of fine imposed by the said court. In all other respects, the impugned judgment of the trial court shall stand confirmed and the appeal against the conviction is dismissed as abated. We make it clear that the Full Bench judgment of this Court in **Pazhani v. State of Kerala - [2017 (1) KHC 173]** is distinguished on the peculiar facts presented in this appeal.

The Criminal Appeal is disposed as above.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE