

Rajesh Vs. State of Kerala

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Court : Kerala

Decided On : Jan-27-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Rajesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN & THE HONOURABLE MR. JUSTICE B.KEMAL PASHA MONDAY, THE 27TH DAY OF JANUARY 2014 7TH MAGHA, 1935 CRL.A.No. 2468 of 2009 (C) ----- AGAINST THE

JUDGMENT

IN SC2272006 of I ADDL.SESIONS COURT, ERNAKULAM DATED 18-09-2009 APPELLANT/1ST ACCUSED: ----- RAJESH, S/O. MURALEEDHARAN EDATHIPARAMBU VEEDU, MUPPATHIRANDU COLONY CHAPPARA DESOM, KODUNGALLUR. BY ADVS.SRI.P.SANTHOSH (PODUVAL) SMT.R.RAJITHA SRI.PRASUN.S RESPONDENT/RESPONDENT: ----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI.JIKKU JACOB THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: V.K.MOHANAN & B.KEMAL PASHA, JJ.

..... Crl. Appeal No.2468 of 2009 C
..... Dated this the 27th day of January,
2014

JUDGMENT

~ ~ ~ ~ ~ Kemal Pasha, J.

The 1st accused in S.C. No.227/2006 of the First Additional Sessions Court, Ernakulam, who stands convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of 25,000/-, in default, to undergo rigorous imprisonment for three more months, has come up in appeal.

2. The allegation against the 1st accused is one of uxoricide. The appellant along with his father and mother, who are A2 and A3, faced the trial before the court below for Crl.A.2468/2009 :

2. : the offences under Section 498A read with Section 34 IPC and Section 302 of the Indian Penal Code. Through the impugned judgment, the appellant alone was convicted and sentenced, and A2 and A3 were acquitted.

3. Deceased Gayathri, aged 25 at the time of her death, was given in marriage to the appellant on 12.05.1996. Thereafter, she was residing along with the appellant and A2 and A3 at the house of the appellant. Three children were born in the wedlock. The relationship between the deceased and the appellant was not at all cordial. She was being harassed, pestered and tortured by the appellant and his parents by forwarding a complaint that the gold ornaments provided to her by her parents at the time of her marriage were not adequate to their expectation. Due to constant harassment and tortures from the part of the appellant and his parents, she took shelter at her family house and started residing with her parents. She was Crl.A.2468/2009 :

3. : working as housemaid and was eking her livelihood and also that of her children. It is alleged that the appellant used to harm her on her way to her work place. It is also alleged that once he had attempted to cause her death by attempting to put her into the water from a bridge. As harassment from the part of

the appellant became unbearable, she wanted to take shelter at somewhere away from her family house. She requested her father, PW7, to take her to the house of PW1, who is her mother's younger sister residing at Palarivattom so that she can safely reside there and do some works for eking her livelihood.

4. Finally, in the early morning on 05.07.2004, PW7 took her to the house of PW1 and left the place after accommodating her there. PW1 is also working as housemaid in 2-3 houses. As PW1 could not leave the deceased alone at house, she took her also to her places of work on that day. When they returned by about noon, the CrI.A.2468/2009 :

4. : lady from one of the houses where PW1 was working, also came along with them to see the house of PW1. After paying a short visit, she left the place, and PW1 accompanied her to the bus stop in order to see her off. When PW1 returned, to her utter dismay, she could see the appellant present at her house and was talking with the deceased.

5. Even though PW1 insisted the appellant to have lunch from the house, he avoided it and told her that he required only a tea. PW1 prepared tea and served it to the appellant. The appellant had the tea and then, demanded the deceased to go along with him. The circumstances revealed that the deceased was not willing to go along with him; over and above it, PW1 told the appellant that she would send the deceased to the house of PW7 on the next day, as it was PW7 who had entrusted her custody with PW1. The appellant spent some time there and by about 3 CrI.A.2468/2009 :

5. : p.m., PW1 wanted to go for her work. She waited there as the appellant remained at the house. By about 3 p.m., the appellant went out and again came back. When PW1 was sitting outside the house, she could see the appellant going inside the room wherein the deceased was present. By that time, the deceased was putting oil on her head for taking her bath. Within 5 minutes, PW1 could hear the cries of the deceased from the room. When she rushed inside the room, she could see the appellant stabbing the deceased on her chest and on seeing PW1, he threw away MO1 knife into the very same room and ran out. In a fury, PW1 also chased the appellant by shouting for catching him. Many persons saw the

appellant running away from the scene and PW1 chasing him.

6. PW5 Arifa Beevi, who was taking tea from a nearby petty tea shop at the road side, saw the appellant running from the house of PW1, and PW1 chasing the Crl.A.2468/2009 :

6. : appellant. She poured the hot tea, which she was consuming, to the body of the appellant; but he ran away from there. In the meantime, PW3, who reached there on hearing the cries, saw the deceased in a miserable state and he along with PW2 took her to the autorickshaw of PW4 and by that autorickshaw she was taken to the Medical Centre, Ernakulam. The Doctor, on seeing her, declared her death and stated that she had died 10 minutes back.

7. On the basis of Ext.P1 F.I. Statement furnished by PW1 before PW16, Head Constable of Palarivattom Police Station who was in G.D. Charge, PW16 registered crime No.146/2004 of Palarivattom Police Station for the offence under Section 302 IPC through Ext.P1(a) FIR.

8. The investigation was taken over by PW18, Circle Inspector of Police, Ernakulam Town North Police Station, on 06.07.2004. The appellant surrendered at the office of the Deputy Superintendent of Police, Irinjalakkuda on Crl.A.2468/2009 :

7. :

06. 07.2004. As per the direction of PW18, who was informed by the Dy.S.P., Irinjalakkuda, PW17 S.I. of Police, Eloor Police Station, reached the office of the Dy.S.P., Irinjalakkuda at 7 p.m. on 06.07.2004 and placed the appellant under arrest.

9. PW18 reached the mortuary of Ernakulam Medical Centre at 9.10 a.m. on 06.07.2004, conducted the inquest and prepared Ext.P5 inquest report by which he seized MO4 churidar top, MO11 brassiers, MO5 churidar pants, MO10 skirt, MO9 bed sheet and MO12 shuddy of the deceased. The body was sent for postmortem examination. At 12.15 p.m. on the same day, he reached the scene of occurrence and identified the scene as pointed out by PW1 and prepared Ext.P10

scene mahazar. He seized MO1 knife from the scene room through Ext.P10. Over and above it, he seized MO7 bed cover, MO8 pillow cover, MO9 blanket, and also MO6 chappals of the appellant from the CrI.A.2468/2009 :

8. : room.

10. PW17, who placed the appellant under arrest, produced him before PW18. PW18 seized MO2 shirt and MO3 pants worn by the appellant through Ext.P13 mahazar. During investigation, PW18 collected evidence relating to the cruelty towards the deceased by A2 and A3 along with A1 which could constitute an offence under Section 498A IPC. Therefore, PW18 filed final report incorporating an offence punishable under Section 498A read with Section 34 IPC as against the appellant as well as A2 and A3 and the offence under Section 302 IPC as against the appellant herein.

11. On the side of the prosecution, PWs 1 to 18 were examined and Exts.P1 to P24 were marked. MOs 1 to 12 were identified. After closing the evidence of the prosecution, the appellant and the other accused were examined under Section 313 Cr.P.C. The appellant denied CrI.A.2468/2009 :

9. : all the incriminating circumstances appeared in the evidence against him and contended that he had never reached Thammanam at Ernakulam on 05.07.2004 and that he did not know anything relating to the murder. According to him, he did not do anything at all and that he was falsely implicated by the police in the crime. It was also stated that he has not inflicted any injury or harm on the deceased. After hearing the prosecution and the appellant, the court below could not find any grounds to acquit the appellant under Section 232 Cr.P.C. and, therefore, he was called upon to enter on his defence. No defence evidence was adduced. Again, the prosecution and the appellant were heard. The court below found the appellant guilty of the offence punishable under Section 302 IPC, convicted him thereunder, and sentenced him as aforesaid. The court below acquitted all the accused from the charge under Section 498A read with Section 34 IPC. CrI.A.2468/2009 :

10. :

12. Heard learned counsel for the appellant Sri.Prasun S., and learned Public Prosecutor Sri.Jikku Jacob. The learned counsel for the appellant has in detail invited our attention to all the evidences in this case and strenuously argued that the appellant is entitled to 'benefit of doubt' and, therefore, he is entitled to an acquittal in this case. It is also argued that the prosecution has failed to explain all the injuries found on the body of the deceased and further that the prosecution has failed to examine the Doctor, who had declared the death of the deceased on seeing her. Another argument has been forwarded to the effect that there is nothing to corroborate the evidence of PW1 and further that even the evidence of PW1 is shaky and cannot be relied on. The learned Public Prosecutor has argued that the case clearly stands on the footing of direct evidence as well as circumstantial evidence and all such circumstances as well as the direct evidence adduced by CrI.A.2468/2009 :

11. : PW1 are more than sufficient to find the guilt of the appellant beyond doubt.

13. PW1 has stated in evidence that on 05.07.2004 in the morning by 7-7.30 a.m., PW7 brought the deceased to her house and requested her to accommodate the deceased there for some days by telling that it was for avoiding the harassment from the part of the appellant. PW7 left the place by undertaking that he would come back after two days and also requested PW1 to search for some employment for the deceased also. As PW1 had to go for her works, she took the deceased also with her on that particular day to the two houses wherein she was working and after her works, they returned to the house of PW1 by about noon. The lady in one of the houses wherein she was working also came to her house in order to pay a short visit. When that lady went to the bus stop, PW1 also accompanied her to see her off. When PW1 returned, she CrI.A.2468/2009 :

12. : could see the appellant engaged in a talk with the deceased at her house. She provided meals to the deceased. Even though she insisted the appellant to take meals, he did not take it and requested for a tea. PW1 prepared the tea and served it to the appellant. After taking the tea, the appellant called the deceased to his house. At that time, PW1 intervened and told the appellant that she would send her back to the house of her parents on the next day itself as the deceased was

brought by PW7 to that house. By about 3 p.m., PW1 told the appellant that she wanted to go for works. By that time, the deceased was putting oil on her head for taking bath. Even though the appellant went out, he again came back and was seen getting inside the room wherein the deceased was present. After about 5 minutes, PW1 could hear cries from the room and thereby she went inside. She could see the appellant stabbing on the chest of the deceased with MO1 knife. On seeing her, the appellant

CrI.A.2468/2009 :

13. : looked at her and threw away the knife into the room and ran out. She also ran behind the appellant and chased him by crying.

14. According to PW1, on the same day, in the evening, she went to the police station and furnished Ext.P1 F.I.Statement. She identified the appellant in court. She identified MO1 knife also. She identified MO2 green shirt and MO3 pants worn by the appellant at the time of occurrence. She identified MO4 churidar top and MO5 churidar bottom worn by the deceased. She further identified MO6 chappals of the appellant, which were worn by him at the time when he reached her house on the date of incident. It seems that PW1 was subjected to searching cross examination. Some omissions in Ext.P1 F.I. Statement furnished by PW1 were brought out by the learned defence counsel in the cross examination of PW1. At the same time, no other contradictions were seen marked in her statement

CrI.A.2468/2009 :

14. : before the police.

15. Now, we shall deal with the contents of Ext.P1 F.I.Statement furnished by PW1 at 5.15 p.m. on 05.07.2004 itself before PW16. It seems that she had stated in Ext.P1 that by about 2 p.m. the appellant reached her house and directed the deceased to go along with him to which she was not prepared. According to her, after having tea, he was standing at the courtyard and talking with her and after some time, he entered inside the house. She also went behind him. Then, she could see the appellant taking a knife from his waist and inflicting a stab on the chest of the deceased. On seeing her, he wielded the knife towards her thereby she moved back, and then the appellant threw away the knife into the room and ran out. She ran behind the appellant for some distance; but the appellant

escaped. Apart from some minor omissions, we do not find any material deviation in her evidence and the contents of Crl.A.2468/2009 :

15. : Ext.P1. It has to be noted that Ext.P1 was furnished by her in a hurry on the date of incident itself that too within two hours of the death of the deceased. Such omissions are quite natural in such a circumstance. When she got time to recollect the entire incident, she narrated it to the police and also before court.

16. Of course, we are guided by the caution given by the Apex Court in accepting the evidence of solitary eye witness as it is safe to look for corroboration. Now, let us consider the evidence of the other witnesses, who were cited and examined by the prosecution to prove the circumstances which allegedly point towards the guilt of the appellant.

17. PW2 is the sister-in-law of PW1, who is residing at the neighbourhood. According to her, on the date of incident, by about 1.30 p.m., while she was coming back to her house after her works, she could see the deceased Crl.A.2468/2009 :

16. : applying oil on her head for taking bath, at the courtyard at the house of PW1, and the appellant standing at the door step of that house. Her mother was also standing there. After having a small chat with the deceased, she went to her house and had a nap. While so, she heard cries and screams from the house of PW1 by about 3 p.m. When she looked out, she could see the appellant coming out of the house of PW1 and running away. PW1 was seen chasing the appellant by shouting to catch him. When she rushed to the house of PW1, she could see the deceased who was about to fall on getting stab injury. She supported her; but the deceased collapsed. She took a bed sheet and tied around the injury on the chest for stopping the sprouting of blood. PW3 Babu also rushed to the spot. PW2 told him to procure a vehicle. PW2 along with PW3 took the deceased to the autorickshaw of PW4 and took her to Ernakulam Medical Centre. On reaching there, the Doctor declared her Crl.A.2468/2009 :

17. : death. PW2 has categorically stated in evidence that the appellant was wearing a green shirt at the time when he was running away from the house of

PW1. She identified MO2 as the said shirt and MO3 as the pants worn by the appellant. She could see MO1 knife lying in the room wherein the incident had taken place. She identified MO1 also. The learned counsel for the appellant has attempted to argue that PW2 has not stated anything regarding the presence of the appellant at the house of PW1, in the statement of PW2 under Section 161 Cr.P.C. before the investigating officer. It seems that no such question was asked to PW2 in cross examination and, therefore, the same cannot be brought out as a material omission even though it was put to PW18. It is true that such a question was put to PW18; at the same time, the same is not admissible in evidence as a material omission as the same was not specifically put to PW2. The evidence of PW1 and CrI.A.2468/2009 :

18. : the contents of Ext.P1 regarding the presence of the appellant at the house of PW1 just before the incident, are fully corroborated by the evidence of PW2. The fact that the appellant came out of the house of PW1, after the cries of the women, and his running away from the scene of occurrence, is also proved by the evidence of PW2.

18. Regarding the evidence of PW3, it could be seen that he is also one of the neighbours of PW1 and on 05.07.2004 at 3 p.m. he could hear the cries from the house of PW1. When he rushed to the spot, he could see PW1, running behind a man wearing a green shirt and was shouting to catch him. He clearly identified the said person who was in green shirt as the appellant. When he entered the house, he could see the deceased lying on the lap of PW2 in an injured state. Even though the injury at the chest of the deceased was attempted to be closed by PW2 with her hand, blood was seen sprouting through the portion CrI.A.2468/2009 :

19. : among the fingers of PW2. PW2 took a sheet and tied it around the wound for arresting the bleeding. The autorickshaw of PW4, who is another neighbour, was present near the house. He along with PW2 took the deceased into that autorickshaw and took her to Medical Centre, Ernakulam. On reaching there, the Doctor declared the death of the deceased. PW3 identified MO2 shirt and MO3 pants worn by the appellant while he was seen running away from the house of PW1 just after the incident.

19. PW4 is the autorickshaw driver who has stated in evidence that the deceased was taken to Ernakulam Medical Centre by his autorickshaw by 3-3.30 p.m. on 05.07.2004. According to him, he was called by PW3 and when he went over there and looked, he could see the deceased lying injured. Further, according to him, on reaching the hospital, the Doctor, after examining the deceased, declared that the deceased had died 10 minutes Crl.A.2468/2009 :

20. : back.

20. According to PW5, Arifa Beevi, while she was taking tea by about 3 p.m. on 05.07.2004 from a petty tea shop near the house of PW1, she could see the appellant came running through the road as chased by PW1. PW1 was shouting to catch the appellant. PW5 immediately poured the tea on to the appellant. The appellant did not stop there and continued to run. According to her, PW1 had declared then and there that the appellant was running away after stabbing the daughter of her elder sister. That part of the evidence of PW5 is clearly admissible in evidence as *res gestae* under Section 6 of the Indian Evidence Act. The same has not been challenged in the cross examination of PW5.

21. PW6 is a painting worker, who is also one of the neighbours of PW1. According to him, on the date of incident, the appellant asked him about the location of the Crl.A.2468/2009 :

21. : house of PW1. He took the appellant with him to the house of PW1 and showed him the house and went away. Later, he came to know that the appellant stabbed the deceased on that day. He identified the appellant as the said person to whom he pointed out the house of PW1 on the date of incident. The learned counsel for the appellant has pointed out that the said witness and also PW3 and PW5 had no prior acquaintance with the appellant and, therefore, their identification of the appellant before the court below cannot be relied on in the absence of a Test Identification Parade. The said interdict is applicable only in cases wherein the accused is being identified by witnesses for the first time in court after incident. But, in this case, it has come out in evidence that all these witnesses had identified the appellant, when the appellant was in police custody and that the investigating officer had made doubly sure that it was the appellant,

who was found by these witnesses on the Crl.A.2468/2009 :

22. : date of incident. Therefore, this is not a case wherein PW3, PW5 and PW6 had identified the appellant for the first time in court after the incident. Matters being so, there is no legal infirmity in relying on the identification of the appellant by these witnesses.

22. The other aspects in the matter have come out through the evidence of PW7. The tortures and sufferings of his daughter at the house of the appellant have been clearly discussed in detail by PW7, who is the father of the deceased. Further, it has come out that when the tortures became unbearable, he advised the deceased to file a complaint before the police, in turn, a complaint was filed. As a consequence of the same, the father of the appellant visited the house of PW7 and he along with his wife were severely beaten and they were hospitalised. In the incident, one of the teeth of PW7 was also lost. Further, the evidence of PW7 clearly shows that on the date of incident, at the Crl.A.2468/2009 :

23. : dawn, the appellant had reached his house when his wife only was present there and questioned about the whereabouts of the deceased. The evidence of PW8, who is one of the neighbours of PW7, clearly reveals that the cry of the mother-in-law of the appellant was heard in the dawn on the date of incident from her house. It seems that she was also beaten by the appellant. The evidence of PW8, who is one of the neighbours of PW7, also clearly revealed the circumstances in which the deceased happened to take shelter at the house of PW7 prior to the incident. There were frequent quarrels between the appellant and the deceased. According to PW7, it was on account of the request of the deceased that he had taken his daughter to the house of PW1 on the date of incident at dawn.

23. Even though the prosecution has cited PW9 to prove that he was the street vendor from whom the appellant had purchased MO1 knife, he turned hostile to the Crl.A.2468/2009 :

24. : prosecution and did not identify the appellant. At the same time, it has come out in the evidence of PW9 that he was a street vendor who was dealing in knives

also. The contradiction in his evidence with his statement under section 161 Cr.P.C statement was brought out by the prosecution was marked as Ext.P4.

24. Now, coming to the cause of death of the deceased, it has to be noted that it was PW13, who was the Assistant Professor of Department of Forensic Medicine at the Medical College Hospital, Alappuzha, who conducted the autopsy of the deceased and prepared and furnished Ext.P8 postmortem certificate. He has noted the following antemortem injuries on the body of the deceased. "(1) Incised penetrating wound 4 x 1.5 cm communicating to chest cavity, on front of left side of chest, oblique, lower outer end 3.5 cm to the left of midline and 17 cm below suprasternal notch. Outer end rounded and inner end sharp. (chest wall thickness 2.5 cm). The wound was directed Crl.A.2468/2009 :

25. : backwards, upwards and to the right. Cutting the 6th costal cartilage close to sternum transversely penetrating pericardium and right border of heart through and through (only wall of right ventricle involved) and injuring the lower lobe of right lung 1 x 0.5 x 0.5 cm. Left chest cavity contained 500 ml of blood with 70 gm of clot. (2) Incised penetrating wound 2.5 x 1 cm, transverse on the back of right side of abdomen, inner end 35 cm below root of neck and 1.5 cm to the right of midline. Inner end rounded and outer end sharp. The wound entered the abdominal cavity just below the 12th rib right side. Then penetrating the diaphragm and injury the right lobe of liver under aspect 4 x 0.2 x 3 cm. Cut injury in upper pole of right kidney and contusion of retroperitoneal tissues 5 x 3 x 2 cm. Abdominal cavity contained one litre of fluid blood. (3) Incised wound 2.5 x 1 cm bone deep over left shoulder blade 7 cm to the left of midline, 7 cm below top of shoulder. (4) Two superficial incised wounds 4.5 and Crl.A.2468/2009 :

26. :

3. cm long over left shoulder blade, oblique 0.2 cm apart upper outer end at top of shoulder and 8 cm to the left of midline. (5) Lacerated wound over an area 2 x 1.5 cm muscle deep on top of left shoulder 6 cm to the left of midline. (6) Superficial incised wound 1 x 0.5 cm on the back of left shoulder blade, 8 cm below top of shoulder." His opinion as to the cause of death of the deceased is that the deceased died due to stab injuries to chest and abdomen. Further, according to

PW13, all the said antemortem injuries in Ext.P8 could be caused by stabbing with MO1 knife. It is pertinent to note that the examination of PW13 by the prosecution was in a casual manner and not even a question as to whether the said injuries were sufficient in the ordinary course of nature to cause the death of the deceased was asked by the Prosecutor who conducted the prosecution. At the same time, it has to be noted that injury Nos.1 and 2 in Ext.P8 are self speaking to Crl.A.2468/2009 :

27. : its seriousness. Injury No.1 involves the piercing of the heart through its ventricle and there was sprouting of blood. It is only common knowledge the the same cannot be repaired and the said injury is necessarily fatal. Similar is the case with injury No.2 also. In injury No.2, the liver has been pierced and even one of the kidneys was pierced. No doubt, those injuries are necessarily fatal. But, at the same time, it was the duty of the prosecution to put such questions during the examination of PW13. Whatever it is, in this particular case, the same is of no consequence at all and the said injuries can be noted as necessarily fatal even without any opinion of an expert. Regarding the cause of the death of the deceased, as furnished by PW13 in Ext.P8, there is no reason for us to take a different view than the opinion expressed by PW13 in Ext.P8. Both the said injuries, i.e. Injury Nos.1 and 2, are necessarily fatal, that too independently, and the deceased died because of those Crl.A.2468/2009 :

28. : injuries, and the death is proved to be homicidal.

25. The only question remains to be decided is as to who caused those injuries. It is the case of PW1 that she could see the appellant causing one stab injury on the chest of the deceased. Regarding the other injuries, of course, there is no direct evidence. At the same time, the prosecution is relying on other circumstances to prove the guilt of the appellant. It has clearly come out in evidence that the appellant reached the house of PW1 by about 1 p.m. on the date of incident. He remained there till 3 p.m. He went into the room wherein the deceased was present Thereafter, PW1 could hear the cries of the deceased, within around 5 minutes. When PW1 entered inside the room, she could see the appellant stabbing on the chest of the deceased with MO1 knife. He threw away MO1 and

ran out of the house and ran through the road. In a fury, PW1 chased him by shouting to catch him. PW2 could see the Crl.A.2468/2009 :

29. : appellant at the house of PW1 at about 1.30 p.m. Thereafter, on hearing the cries, when she rushed to the scene, she also could see the appellant getting out of the house and running away and was being chased by PW1. Similar is the case with PW3 also. Further, the version of PW5 also clearly shows that the appellant was being chased by PW1. Therefore, the circumstances clearly reveal that the appellant was present at the house of PW1 immediately before the incident and he continued to be there till 3 p.m. After stabbing the deceased, he got out of the house and ran away. Matters being so, there is a duty cast upon the appellant to explain as to how the deceased sustained injuries. The appellant has no case that apart from him, PW1, and the deceased, there were any other persons at the house of PW1 at the time of the incident. In the absence of any explanation, the fingers clearly point towards the guilt of the appellant and none else. Crl.A.2468/2009 :

30. :

26. In Ravirala Laxmaiah Vs. State of Andhra Pradesh [(2013) 9 SCC283, the Apex Court, by following the decision in State of Tamil Nadu Vs. Rajendran [(1999) 8 SCC679, it was held: "When an incriminating circumstance is put to the accused and the said accused either offers no explanation for the same, or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete".

27. In Rumi Bora Dutta Vs. State of Assam [(2013) 7 SCC417, by relying on the decision in State of Maharashtra Vs. Suresh [(2000) 1 SCC471, it was held: "A false answer offered by the accused when his attention is drawn to the circumstances, it renders the circumstances to be of inculpatory nature. In such a situation a false answer can also be counted as providing 'a missing link'." 28. In Aftab Ahmad Anasari Vs. State of Uttaranchal [(2010) 2 SCC583, it was held: Crl.A.2468/2009 :

31. : "While recording the statement of the appellant under Section 313 of the Code, it was put to him by the learned Judge that during the course of investigation his blood stained underwear was seized by the Police and his explanation was sought. In answer to the said question, it was never claimed by the appellant that the underwear seized was not bloodstained and that another underwear was substituted in place of his underwear which was seized. Thus, this Court finds that the High Court was not justified at all in ignoring the circumstance sought to be relied upon by the prosecution that bloodstained underwear of the appellant was recovered during the course of investigation." 29. In *Vasa Chandrasekhar Rao Vs. Ponna Satyanarayana* (2000 SCC (Cri) 1104) and *Geetha Vs. State of Karnataka* (2000 SCC(Cri)1208) while explaining the law relating to circumstantial evidence has ruled that where circumstances proved are put to the accused through his examination under Section 313 of the Code and the Crl.A.2468/2009 :

32. : accused merely denies the same, then such denial would be an additional link in the chain of circumstances to bring home the charge against the accused.377. In *Ganesh Lal Vs. State of Rajasthan* [(2002) 1 SCC731, it was held as follows:- "In *State of Maharashtra Vs. Suresh* [(2000) 1 SCC471 a female child of tender years was raped and murdered. Case against the accused rested on circumstantial evidence. The accused when arrested was found to have injuries on his person and blood and semen on the underclothes. There were several other incriminating circumstances pointing to the guilt of the accused and this one, mentioned just before, termed by this Court in its judgment as "most formidable incriminating circumstance" was put to the accused but he could not give any explanation what's over and instead chose to deny the existence thereof. This Court held that a false answer offered by the accused on his attention being drawn to such circumstance renders the circumstance capable of inculcating him. The Crl.A.2468/2009 :

33. : Court went on to say that in a situation like this such a false answer can also be counted as providing "a missing link: for completing the chain of circumstantial evidence." 30. From the decisions of the Apex Court noted above, it is trite that the absence of any explanation by the accused, to the questions on such incriminating

circumstances appeared in the prosecution evidence as against the accused, which were specifically put to the accused when examined under Section 313 of the Code of Criminal Procedure, clearly fill up any 'missing link' or act as 'additional links' in the chain of circumstances.

31. Apart from the above, when the incident had occurred in secrecy inside a room wherein the appellant and the deceased only were present, it is for the appellant to explain and to reveal as to how the deceased sustained injuries, as it was a fact especially within the knowledge of the appellant, under Section 106 of the Indian evidence Act. Crl.A.2468/2009 :

34. : His silence on the said aspect speaks volumes against him.

32. The learned counsel for the appellant has invited our attention to the decision in Govindaraju alias Govinda Vs. State and another [(2012) 4 SCC722 in a case wherein the prosecution had failed to explain all the injuries sustained to the deceased. On going through the facts and circumstances of that case, we do not find that those circumstances have any similarity with the circumstances involved in this case.

33. The learned counsel for the appellant has pointed out that injury No.5 is a lacerated wound over an area of 2 x 1.5 cm muscle deep on the top of left shoulder. In cross examination, PW13 has stated that injury No.5 could be caused by a weapon with a tip which is not that much sharp. In chief examination, when MO1 was shown to him, he has stated that it is possible to cause the said injury by stabbing with MO1. It has to be noted that in cross examination, Crl.A.2468/2009 :

35. : MO1 was not shown to the said witness when the said question was asked. When PW13, who is an expert in forensic medicine, has stated in evidence that the said injury could be caused by the use of MO1, there is absolutely nothing to disbelieve the genuineness of the said opinion.

34. The learned counsel for the appellant has invited our attention to the decision in Meharaj Singh Vs. State of U.P. [(1994) 5 SCC188. In that case, by taking into consideration the shape of the injuries, which are L shaped and semicircular, etc.,

it was held that the possibility of three different weapons could not be ruled out. The said decision has no application to the facts and circumstances of this case. Even though the learned counsel for the appellant has argued that there is a possibility of another weapon also used by somebody in the incident in this case, we are not impressed when PW13 has clearly stated in evidence that injury No.5 also could be caused by using CrI.A.2468/2009 :

36. : MO1. It has come out that the tip of MO1 has become slightly bent. According to PW13, the said slight bent occurred to MO1 could be due to its coming into contact with the bone.

35. Even though the learned counsel for the appellant has invited our attention to the decision in State of Haryana Vs. Ram Singh [(2002) 2 SCC426, we do not find anything in this case to apply the said decision to the facts and circumstances of this case.

36. The learned counsel for the appellant has argued that the Doctor, who confirmed the death of the deceased at Ernakulam Medical Centre, has not been examined and, therefore, it creates a lacuna in the prosecution case. There is no dispute at all regarding the time of death or the factum of death in this case and, therefore, the non-examination of the said Doctor is of no consequence at all. Apart from that, PW4, who was the driver of the autorickshaw by which the CrI.A.2468/2009 :

37. : deceased was taken to Ernakulam Medical Centre, has clearly deposed that when they reached Ernakulam Medical Centre with the deceased, the Doctor, after examining the deceased, told them that the deceased had died 10 minutes back. The said portion of the evidence of PW4 stands unchallenged. Regarding corroboration of the evidence of PW1, it has to be noted that all the other circumstances cogently and firmly established by the prosecution in this case clearly corroborate the evidence of PW1. Further, the contents of Ext.P1 F.I. Statement furnished by her at 5.15 p.m. on the date of incident itself, that too within two hours of the incident, also clearly corroborate the evidence of PW1 in all material particulars.

37. All the circumstances are clearly and cogently made out by the prosecution and the cumulative effect of all such circumstances clearly points towards the guilt of the appellant and none else. There is no other hypothesis than CrI.A.2468/2009 :

38. : the guilt of the appellant. Apart from all these, all the proved circumstances clearly form a complete chain and all such circumstances are incompatible with the innocence of the appellant. Matters being so, the direct evidence adduced by PW1 coupled with the circumstances made out by the prosecution clearly point towards the guilt of the appellant and none else.

38. From all the discussions made above, we do not find any infirmity in the conviction entered by the court below. On a threadbare examination of the entire evidence adduced by the prosecution, we disagree with the arguments forwarded by the learned counsel for the appellant.

39. Finally, the learned counsel for the appellant has argued that as the incident had occurred in a heat of passion, even if the incident is admitted, the conviction may be brought within the purview of Section 304 Part I IPC. We CrI.A.2468/2009 :

39. : disagree with the said submission made by the learned counsel for the appellant. There is absolutely nothing to bring this case within the purview of Part I of Section 304 IPC. The appellant has not made out any circumstance to show that the incident had occurred in a heat of passion or on the spur of a moment. The appellant came over there armed with MO1 knife, and it was concealed at his waist. It seems that he came to the house fully prepared and he called the deceased to his house. When the deceased did not agree to accompany him, the appellant has intentionally caused her death.

40. The nature of the injuries found on the body of the deceased itself is sufficient to prove the intention of the appellant to cause the death of the deceased. Injury No.1 pierced the heart. Injury No.2 pierced the liver as well as the right kidney. All the said injuries were intentionally inflicted. Injuries 1 and 2 are necessarily fatal. Matters being CrI.A.2468/2009 :

40. : so, the offence involved in this case clearly comes within the category of murder as defined in Section 300 IPC, which is punishable under Section 302 IPC. We find that the prosecution has succeeded in proving the guilt of the appellant beyond the shadow of doubt. There is absolutely nothing to interfere with the conviction entered by the court below.

41. Regarding sentence also, we do not find any infirmity or irregularity in the sentence imposed by the court below. Matters being so, we confirm the conviction and sentence passed by the court below. This appeal is devoid of merits, and only to be dismissed, and we do so. In the result, this Criminal Appeal is dismissed. Sd/- (V.K.MOHANAN, JUDGE) Sd/- (B.KEMAL PASHA, JUDGE) aks/29/01 // True Copy // PA to Judge

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