

Abu Tahir vs State of Kerala Represented by Public Prosecutor

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Court : Kerala

Decided On : Jan-30-2024

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mr. Justice Johnson John

Appeal No. : CRL.A/1500/2023

Appellant : Abu Tahir

Respondent : State of Kerala Represented by Public Prosecutor

Judgement :

Crl. Appeal No. 1500 of 2023 :1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MR. JUSTICE JOHNSON JOHN TUESDAY, THE 30TH DAY OF JANUARY 2024 / 10TH MAGHA, 1945 CRL.A NO. 1500 OF 2023 CRIME NO.1718/2015 OF Kunnankulam Police Station, Thrissur SC 718/2016 OF IV ADDITIONAL SESSIONS COURT, THRISSUR APPELLANT/ACCUSED: ABU TAHIR , AGED 44 YEARS, S/O MUHAMMED KOYA C NO:5182, CENTRAL PRISON & CORRECTIONAL HOME, POOJAPURA, THIRUVNANTHAPURAM-695 012, AND RESIDED AT

VALIYAPEEDIKAYIL(H),PUTHIYANCHERYKAVU DESOM,
PERUMPILAVU VILLAGE,KUNNAMKULAM THROUGH THE
SUPERINTENDENT, CENTRAL PRISON & CORRECTIONAL HOME,
POOJAPURA,THIRUVANATHAPURAM-695 012. BY ADV
K.S.SREENATH (K/340/2012) (STATE BRIEF)
RESPONDENT/RESPONDENT: STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-
682 031. BY ADVS. ADVOCATE GENERAL OFFICE KERALA SMT. S.
AMBIKA DEVI, SPL. PUBLIC PROSECUTOR THIS CRIMINAL APPEAL
HAVING BEEN FINALLY HEARD ON 12.01.2024, THE COURT ON
30.01.2024 DELIVERED THE FOLLOWING: Crl. Appeal No. 1500 of
2023 :2: P.B. SURESH KUMAR & JOHNSON JOHN, JJ.
----- Crl. Appeal No. 1500 of 2023
----- Dated this the 30th day of
January, 2024.

JUDGMENT

Johnson John, J.

This appeal is filed under Section 374(2) Cr.P.C by the accused in S.C. No. 718 of 2016 of the Additional Sessions Judge- IV, Thrissur challenging the conviction and sentence passed against him for the offence punishable under Section 302 of IPC.

2. The prosecution case is that the deceased Shemeera was

residing with the accused as his wife and on 18.09.2015, she reached the family house of the accused at Puthiya Cherukavu and insisted for permission to reside there as the wife of the accused and when the father of the accused raised objection, the accused and the deceased returned from the family house of the accused and on their return, they picked up a quarrel and at about 9.15 p.m., when they reached near Kattukulam, the accused, with the intention to commit murder of Shemeera, stabbed her several times with a knife and caused her death and the accused is thereby alleged to have committed the offence as aforesaid.

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3. When the accused was produced before the trial court, after

hearing both sides, charge was framed against him for the offence punishable under Section 302 of IPC and when the charge was read over and explained to him, he pleaded not guilty. Thereafter, the prosecution examined PWs 1 to 31 and marked Exhibits P1 to P47(a) and Mos 1 to 7 to prove the charge against the accused. Since it is found that the accused is not entitled for an acquittal under Section 232 Cr.P.C., he was called upon to enter on his defence. From the side of the defence, Exhibits D1 to D2(a) were marked.

4. After hearing both sides and considering the oral and

documentary evidence on record, the learned Additional Sessions Judge, by the impugned judgment dated 27.08.2021, convicted the accused and sentenced him to undergo imprisonment for life and to pay fine of Rs.50000/- and in default of payment of fine, to undergo rigorous imprisonment for six months for the offence under Section 302 IPC.

5. Heard Sri. Sreenath K.S., the learned counsel for the appellant and Smt. S. Ambika Devi, the learned Special Public Prosecutor and perused the records.

6. The point that arises for consideration in this appeal is whether the conviction entered and the sentence passed against the accused is legally sustainable. Crl. Appeal No. 1500 of 2023 :4:

7. The learned counsel for the appellant argued that the

prosecution has not proved any motive and that the evidence adduced from the side of the prosecution is of a circumstantial nature and the prosecution has not succeeded in fully establishing the circumstances from which the conclusion of guilt is to be drawn. It is also argued that the material witnesses who supported the prosecution are highly interested witnesses and their exaggerated testimonies cannot be relied upon and that the accused is entitled for the benefit of reasonable doubt.

8. But, the learned Special Public Prosecutor argued that the

prosecution has adduced clear evidence to prove the strained relationship and problems between the accused and the deceased and the fact that the deceased and the accused were seen together near to the place of occurrence at about 8.30 p.m., on 18.09.2015 and also proved the previous and subsequent conduct of the accused. It is also pointed out that after the occurrence, the accused has surrendered in the Police Station and the dead body and the weapon of offence are recovered on the basis of the disclosure statement of the accused and the circumstances proved by the prosecution are having a definite tendency unerringly pointing towards the guilt of the accused.

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9. It is not in dispute that the death of Shemeera is homicidal.

The findings in Exhibit P7 postmortem certificate and the evidence of PW7, doctor who conducted the postmortem, proves the said fact beyond reasonable doubt.

The following ante-mortem injuries are noted in Exhibit P7 postmortem certificate:

1.Lacerated wound 2 x 0.3 cm mucosal deep obliquely placed on the inner aspect of left side of lower lip, 1 cm outer to midline corresponding to the lower lateral incisor teeth. 2.Contusion 2 x 1 x 0.5 cm on the lateral half of right upper eyelid.

3.Incised punctured wound 3.5 x 0.5 x 4 cm obliquely placed on the right side of front of neck, its inner lower end 1.5 cm above the right collar bone and 2 cm outer to midline. The injury was seen partly cutting the medial half of right sternocleidomastoid muscle. The wound was directed upwards, backwards, medially and towards the left.

4.Incised penetrating wound 6.3 x 1.5 cm obliquely placed on the left side of front of chest, its inner lower end 0.5 cm below the left collar bone and 3 cm to left of midline. The injury showed a cut 3.5 cm from its medial end. The wound was seen cleanly cutting the muscles tissue, partly cutting the lower border of left first costal cartilage obliquely, its

inner lower end 2 cm below the left collar bone and the 5 cm to left of midline. The wound was entering into the left chest cavity and piercing the front aspect of upper lobe of left lung producing an incised wound 3 x 0.5 cm, obliquely placed and 7 cm

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below the apex of left lung. The injury was transfixing the whole upper lobe of left lung and coming out through the outer aspect of upper lobe of left lung near the oblique fissure and 11 cm below the apex of left lung. The wound terminated at the outer and back aspect of inner aspect of left side of chest wall producing an incised wound 2 x 1.5 cm and 0.5 cm deep, obliquely placed and partly cutting the lower border of left fifth rib and 13 cm below the corresponding wound on the front aspect of the left side of the chest wall. Another incised wound 0.5 x 0.5 x 0.5 cm noted on the inner aspect of the left chest wall and 0.2 cm outer to the previous wound. The left chest cavity contained about 1.5 kg of blood clots and 300 ml fluid blood. The wound track was directed downwards, outwards and towards the left. The minimum depth of the wound was 15 cm.

5. Incised punctured wound 1.5 cm x 0.4 cm and 2.5 cm deep transversely placed on the right side of front of chest, its inner end 2.5 cm below right collar bone and 4 cm outer to midline and 5 cm below injury no.3. The wound was terminated in the chest wall by partly cutting the right second costal cartilage near its upper border. The wound was directed backwards, upwards and towards left.

6. Incised punctured wound 0.5 x 0.3 x 2 cm on the left side and front of chest, transversely placed, its inner end 4.5 cm below the suprasternal notch and 1 cm outer to midline.

7. Incised punctured wound 2 x 0.6 cm and 3 cm deep on the front

of chest at midline. 8 cm below the suprasternal notch and 4 cm Crl. Appeal No. 1500 of 2023 :7: below injury no.6. The wound terminated by partly cutting the periosteum of the sternum underneath. 8.Abrasion 0.3 x 0.3 cm on the front of right side of chest, 8 cm below the right collar bone and 5 cm outer to midline. 9.Abrasion 0.3 x 0.3 cm on the left side of front of chest 8.5 cm below the left collar bone and 4 cm outer to midline. 10.Abrasion 1 x 1 cm on the left gluteal region, 2 cm below the gluteal cleft and 5 cm outer to midline. 11.Contusion 1.5 x 1 x 0.2 cm on the inner aspect of lower lip, 2 cm outer to midline.

12. Incised wound 1 x 0.3 cm and 0.5 cm deep transversely placed on the palmar aspect of left ring finger, 5 cm above the tip. The wound showed beveling and upper margin was raised as a flap 1 x 0.3 cm.

13.Incised wound 4 x 0.2 cm and 0.3 cm deep obliquely placed on the inner aspect of left forearm 12 cm below the elbow. The wound showed beveling and the upper margin was raised as a flap 4 x 0.2 cm. 14.Incised wound 3 x 0.2 x 0.3 cm obliquely placed on the inner aspect of left forearm and parallel to the previous injury (injury no.13), 16 cm below the left elbow. Crl. Appeal No. 1500 of 2023 :8: 15.Incised wound 0.5 x 0.2 and 0.2 cm deep on the outer aspect of left arm, 2 cm above the left elbow. All injuries mentioned above were fresh.

10. According to PW12, the death was due to the incised

penetrating injury sustained to chest and he also stated that injury No.4 in Exhibit P7 was sufficient in the ordinary course to cause death. PW12 also stated that injury Nos. 3 to 7 and 12 to 15 can be caused by MO2 Knife. PWs 3 to 5, 10, 20, 25 and 31 are material witnesses, who deposed regarding the presence of the accused proximate to the time and place of occurrence and regarding his previous and subsequent conduct.

11. PW4 is an autorickshaw driver who deposed that the accused and the deceased are known to him and that they used to hire his

autorickshaw and that they were residing together at Mulankunnathukavu. According to PW4, he saw the accused and the deceased together on 18.09.2015

and at about noon, they hired his autorickshaw for going to beverages at Mullassery and thereafter, he took them to Guruvayur bus stand. Subsequently, Shemeera approached him by saying that she is not well and accordingly, he took both of them in his autorickshaw to Guruvayur Devaswom hospital.

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12. Thereafter, at about 5.30 p.m., on the same day, they hired

his autorickshaw and they proceeded to Choondal and subsequently, he dropped them at Guruvayur bus stop. PW4 deposed that while the deceased and the accused were in his autorickshaw, he heard them talking about financial matters and also regarding the purchase of a nano car. He heard them talking in an angry mood about the withdrawal of money by the deceased from the Bank, while the accused was in jail. PW4 also deposed that he came to know about the death of Shemeera on the next day.

13. PW3 deposed that he is working in a fish market at

Kunnamkulam and he used to go for work at about 4.30 a.m. According to PW3, the accused is his neighbour and the parents and the brothers of the accused are also known to him. PW3 deposed that Gaffur, who is the brother of the accused, is working in the same fish market where the witness is working. He would say that at about 4.45 a.m., on a day in 2015, he saw the accused lying at Puthiyancherry bus stop. The witness would say that it was on 19th September, and on seeing the accused, he used the torch of his mobile and asked the accused as to why he is lying there and then the accused told the witness that he had committed a murder. On hearing the same and out of fear, the witness immediately moved to the other side of the road and boarded an autorickshaw and then the accused also came to that place and got into the very same

Crl. Appeal No. 1500 of 2023 : 10 : autorickshaw and at that time, the accused was holding a bag in his hand. According to PW3, the accused also requested for Rs.10/- and accordingly, he has given the same to the accused.

14. PW10 deposed that the accused is his neighbour and on

18.09.2015, at about 8.30 p.m., he saw the accused and one woman alighting from an autorickshaw in front of his house. According to PW10, the road ends in front of his house and from there, the accused has to walk to his house. The evidence of PW10 shows that on the next day, he came to know about the murder of a woman there and he also understood that the deceased is the woman who came along with the accused in the autorickshaw on the previous day.

15. PW20, Senior Civil Police Officer, was on night duty in

Kunnamkulam Police Station on 18.09.2015. He deposed that at about 11 p.m., the accused herein came to the Police Station and enquired about the Sub Inspector and then the witness informed the accused that the Sub Inspector is on night patrol duty and he will return only by 6 a.m. and then the accused returned without saying anything else. Thereafter at about 6 a.m., on 19.09.2015, the accused again came to the Police Station and enquired about the Sub Inspector and by that time, the Sub Inspector has already returned after the night patrol duty. When the Sub Inspector enquired the matter to the accused, he told the

Crl. Appeal No. 1500 of 2023 : 11 : Sub Inspector that his name is Abu Tahir and that he came to the Police

Station after stabbing and killing his wife at a place near Puthiyancherikavu and in order to verify the statement, the Sub Inspector proceeded to the said place along with the accused and later, the Sub Inspector informed the witness that the dead body of Shemeera, the wife of the accused, is seen on the side of the road at Kattukulam and then the witness informed the Sub Inspector that the accused came to the Police Station on the previous day also. PW20 identified the accused as the person who came to the Police Station on the night of 18.09.2015 and in the morning on 19.09.2015.

16. The then Additional Sub Inspector of Kunnamkulam Police

Station was examined as PW31 and he deposed that at about 6.10 a.m., on 19.05.2015, the accused came to the Police Station and informed him that he stabbed his wife, Shemeera, with a knife and killed her at a place near to his

house at Puthiyancherikavu. After ascertaining the name and address of the accused and searching the body of the accused, he proceeded to the place of occurrence along with the accused and saw the dead body lying near a wall at Puthiyancherikavu temple. The evidence of PW31 shows that he informed the higher officials and also made arrangements for guarding the scene and returned to the Police Station along with the accused. Exhibit P47 is the First Information Statement and Exhibit P47(a) is the FIR registered by PW31.

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17. The brother of the deceased Shemeera is examined as PW1

and he deposed that his sister Shemeera was murdered on 18.09.2015. According to PW1, Shemeera left their house about 20 years before by deserting her husband and daughter and later, he came to know that his sister Shemeera is involved in several cases. According to PW1, he saw the dead body of Shemeera at Kattukulam on the road side in front of the gate of a vacant land. The evidence of PW1 shows that when he reached there, the police was examining the dead body and he saw several stab injuries on the chest and other parts of the body of his sister.

18. PW2 is a neighbour of the accused and according to PW2, on

the morning of 19.09.2015, she came to know that the dead body of a woman is lying in front of the gate of the property of Impiatha and when she reached there, she saw the dead body and a spade belonging to her lying there. She would say that subsequently, when she verified her bath room where it was kept, it was missing and her husband also informed her that their spade is seen lying in the property of Impiatha. PW2 also identified MO1 spade before the court.

19. PW6 is an autorickshaw driver and his evidence shows that the accused and Shemeera used to hire his autorickshaw and that about 9 to 10 months before the occurrence, they hired his autorickshaw and Crl. Appeal No. 1500 of 2023 : 13 :

on the way, there occurred a quarrel between the accused and the deceased and when the witness intervened, the accused took out a knife and threatened the

deceased and the witness. The evidence of PW6 shows that the accused and the deceased quarrelled on financial matters and when the accused threatened the witness by showing the knife, he had driven the autorickshaw to Guruvayur Temple Police Station and also preferred a complaint in the Police Station.

20. PW7 is another autorickshaw driver who turned hostile to the

prosecution and deposed that he has not given statement to the police as per Exhibits P1 and P1(a). PW8 deposed that the deceased SHEMEERA used to hire his autorickshaw and while he was returning from Guruvayur Temple, SHEMEERA hired his autorickshaw for going to Medical College Hospital and at that time, there was an injury on her leg and on enquiry, she informed him that the accused pushed her down from a train and thereby, she sustained the said injury. The evidence of PW8 shows that the accused is also known to him. According to PW8, SHEMEERA used to withdraw money by using the ATM card of the accused and while the accused was in jail, he tore the ATM card and thereafter, the deceased was unable to withdraw money.

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21. The Medical Superintendent of Guruvayur Devaswom Medical Centre is examined as PW14 and the treatment records of SHEMEERA from the said hospital is marked as Exhibit P13.

22. PW24 is another witness examined to prove the relationship

between the accused and the deceased. PW24 testified that the deceased SHEMEERA is known to her and that one RAFEQUE was originally the husband of SHEMEERA and when the said RAFEQUE was in jail, SHEMEERA and her children were staying at the east nada of Guruvayur Temple and they were not having a house of their own. Subsequently, SHEMEERA and her children started to reside with the accused and they used to quarrel with each other. According to PW24, the accused and SHEMEERA were residing near the Medical College at that time and SHEMEERA called the witness for help, when she sustained injury to her leg. PW24 deposed that on the previous day of the death of SHEMEERA, the accused

and Shemeera went together in an autorickshaw from Guruvayur by saying that there is a case at Chavakkad.

23. At the time of 313 questioning, apart from denying the incriminating circumstances, the accused only stated that there was no

enmity between himself and Shemeera and that he is innocent. The learned counsel for the appellant argued that the evidence in this case is of a circumstantial nature and the prosecution has not succeeded in fully CrI. Appeal No. 1500 of 2023 : 15 : establishing all the facts so as to cogently and firmly establish the guilt of the accused.

24. In Padala Veera Reddy Vs. State of A.P. and Ors. (AIR 1990 SC 79), the Hon'ble Supreme Court has laid down that:- "When a case rests upon circumstantial evidence, such evidence must satisfy the following tests: "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must

be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

25. The Hon'ble Supreme Court of India in "Hanumant Govind Nargundkar and Anr. Vs. State of Madhya Pradesh", reported in AIR 1952 SC 343, has observed thus:- CrI. Appeal No. 1500 of 2023 : 16 :

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

26. In *Mulakh Raj v. Satish Kumar* (1992) 3 S.C.C. 43, the Honble Supreme Court held as follows:-

Undoubtedly this case hinges upon circumstantial evidence. It is trite to reiterate that in a case founded on circumstantial evidence, the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of the accused can be inferred from the proved circumstances, the accused would be entitled to the benefit. What is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the crime comes into question the previous and subsequent conduct are also relevant facts. Therefore, the absence of ordinary course of conduct of the accused and human probabilities of the case also would be relevant. The Court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the

conclusion that the accused committed the crime, the charge

Crl. Appeal No. 1500 of 2023 : 17 : must be held proved and the conviction and the sentence would follow.

27. In *Zahira Habibullah H. Sheikh V. State Of Gujarat* 2004

(4) SCC 158, the Honble Supreme Court held thus: A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as a fact or relevant

facts which may lead to the discovery of the fact issue and obtain proof of

such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

28. In this case, there is no reason to disbelieve the evidence of

PW4 autorickshaw driver that the accused and the deceased hired his autorickshaw on 18.09.2015 at about noon for going to beverages at Mullassery. The evidence of PW4 that he took both of them in his autorickshaw to Guruvayur Devaswom hospital is also supported by the evidence of PW14 and Exhibit P13 medical record dated 18.09.2015 from

Guruvayur Devaswom Medical Centre. The evidence of PW25, autorickshaw driver, shows that the accused and the deceased travelled Crl. Appeal No. 1500 of 2023 : 18 :

in his autorickshaw and they alighted at Korattikkara road at about 8 p.m. on 18.09.2015. The evidence of PW25 in this regard is supported by the evidence of PW10, who is a neighbor of the accused, who deposed that at about 8.30 p.m., on 18.09.2015, he saw the accused along with a woman alighting from the autorickshaw in front of his house.

29. It is clear from the evidence of PW10 that the said road ends

in front of his house and there is only a walkable road to the house of the accused therefrom. In this case, the dead body of the deceased was recovered subsequent to the surrender of the accused before the Police Station and when the Sub Inspector reached the place of occurrence along with the accused on the basis of the disclosure statement of the accused. The evidence of PW5 who was detained in the Police Station in connection with another case also shows that at about 5 a.m., on 19.09.2015, the accused reached the Police Station and informed the police officers that he reached there after stabbing a person.

30. Further, the prosecution has also examined PW3, a neighbour

of the accused who saw the accused lying at Puthiyancherikavu bus stop at about 4.45 a.m. on 19.09.2015 and it is in evidence that when the said witness asked the accused as to why he is lying there, the accused told him that he had committed a murder. The evidence of PW3 shows CrI. Appeal No. 1500 of 2023 : 19 :

that immediately on hearing about the murder, the witness moved to the other side of the road to get into an autorickshaw and then the accused also got into the very same autorickshaw holding a bag in his hand and also borrowed a sum of Rs. 10/- from the witness. It is pertinent to note that there is no reason for the above witnesses to falsely depose against the accused. The learned counsel for the accused argued that there are serious omissions and exaggerations in the evidence of material witnesses. But, it is well settled that minor discrepancies on trivial matters not touching the core of the case would not permit rejection of the evidence as a whole and that when material witness is examined at length, it is possible for him to make some discrepancies and no true witness can possibly escape from making some discrepant details.

31. It is pertinent to note that all the material witnesses, who

supported the prosecution case, are independent witnesses and even though they were seriously cross examined, nothing material was brought out to discredit their evidence in chief examination regarding the previous and subsequent conduct of

the accused. It is well settled that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, may not prompt the court to reject the evidence in its entirety. The fact that the accused and the deceased were living as husband and wife for the last several years and that they used to travel together to various places

Crl. Appeal No. 1500 of 2023 : 20 : is brought out in evidence and it is also in evidence that on a previous occasion, while they were travelling together in the autorickshaw of PW6, there occurred a quarrel between the accused and the deceased and when PW6 intervened, the accused threatened the deceased and the witness with a knife.

32. In this case, the prosecution is also relying on the

extrajudicial confession made by the accused to PW3, who is working in a fish market at Kunnankulam. The evidence of PW3 shows that Gafoor, the brother of the accused, is also working in the same fish market and on seeing the accused lying at Puthiyakavu bus stop at about 4.45 am on 19.09.2015, the witness asked the accused as to why he is lying there and then the accused told the witness that he had committed a

murder. The evidence of PW5 who was detained in Kunnankulam Police Station on 19.09.2015 and the evidence of PW20, Senior Civil Police Officer, who was on night duty in the police Station regarding the conduct of the accused in reaching the Police Station and enquiring about the Sub Inspector and his subsequent surrender before the Sub Inspector at about 6 a.m. on 19.09.2015 lends credence to the evidence of PW3 regarding the extrajudicial confession of the accused that he had

committed a murder. It is true that an extrajudicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. But, in this case, considering the Crl. Appeal No. 1500 of 2023 : 21 :

previous and subsequent conduct of the accused and the evidence of PW5, who was detained in the Police Station and PW20 Senior Civil Police Officer on night

duty in the Police Station and the subsequent surrender of the accused before the Sub Inspector clearly shows that the extrajudicial confession of the accused to PW3 is voluntary, truthful and reliable. In Bhaskaran and another v. State of Tamil Nadu [2014 KHC 4315], the Honble Supreme Court has held that it is not open to any court to start with the presumption that extrajudicial confession is insufficient to convict the accused, even though it is supported by the other circumstantial evidence and corroborated by independent witness.

33. The evidence of PW28 and Exhibit P24(a), relevant portion of

the confession statement of the accused, shows that MO2 knife was recovered on the basis of the disclosure statement of the accused. The evidence of PW12, doctor, shows that injury Nos. 3 to 7 and 12 to 15 can be caused by MO2 weapon and therefore, the knowledge of the accused as to where he kept the weapon of offence is a relevant fact admissible under Section 27 of the Indian Evidence Act.

34. Further, in this case, it is proved beyond reasonable doubt

that the accused along with the deceased alighted from an autorickshaw in front of the house of PW10, a neighbour of the accused and that there is only a walkable way to the house of the accused from there and it is also in evidence that the dead body of the deceased was recovered on CrI. Appeal No. 1500 of 2023 : 22 :

the next day morning from a nearby place and the accused has not given any explanation as to what happened to the deceased. It is well settled that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and considering the fact that the deceased and the accused were living together as husband and wife and they together reached near to the place of occurrence in an autorickshaw at about 8.30 p.m., on 18.09.2015 and thereafter, on the next day morning, the dead body of the deceased was recovered on the basis of the disclosure statement of the accused, we find that the accused has failed to discharge his burden under Section 106 of the Evidence Act.

35. Therefore, we find that the circumstances proved by the

prosecution are complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and the cumulative effect of the circumstances proved unerringly points towards the guilt of the accused.

36. Therefore, on a careful reappraisal of the entire evidence,

we find that the trial court was right in convicting the accused for the offence under Section 302 IPC and in view of the fact that the court below has awarded the minimum sentence of imprisonment for life, we

Crl. Appeal No. 1500 of 2023 : 23 : find no reason to interfere with the sentence imposed on the accused by the trial court. In the result, this appeal is dismissed confirming the conviction entered and the sentence passed by the learned Sessions Judge in S.C No. 718 of 2016. Interlocutory applications, if any pending, shall stand closed. sd/- P.B. SURESH KUMAR, JUDGE. sd/- JOHNSON JOHN, JUDGE. Rv

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