Sooraj Vs. the State

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Court : Kerala

Decided On : Nov-19-1993

Reported in : 1994CriLJ1155

Judge : L. Manoharan and P.A. Mohammed, JJ.

Acts : Evidence Act, 1872 - Sections 27, 32 and 32(1); Indian Penal Code (IPC), 1860 - Sections 89, 201, 302, 380 and 457; Code of Criminal Procedure (CrPC) , 1974 - Sections 313, 374, 427 and 427(1); Code of Criminal Procedure (CrPC) , 1898 - Sections 397

Appeal No. : Criminal Appeal No. 44 of 1990 and Cri. R.P. No. 51 of 1991

Appellant : Sooraj

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Elizabeth Simon, Adv.

Judgement :

P.A. Mohammed, J.

1. What is involved in the main appeal is a crime of matricide where a young man by name Sooraj killed his mother 'Sundari alias Lakshmi Narayanan'. The accused

was convicted of the offences punishable under Sections 302 and 201, I.P.C. by the learned Addl. Sessions Judge, Pathanamthitta. The said conviction and sentence imposed therein are challenged by the accused in the appeal. In the revision the accused prays for an order to direct the above sentences to run concurrently with sentences awarded against him in C. C. 201/87 under Section 380 and 457, I.P.C. by the Judicial Magistrate of First Class, Ranni.

2. The prosecution case in short can be stated thus : The accused and his deceased mother were residing together in a house called Mayasadanam' in Chittar. In the first marriage with Kochukunju, the deceased had three children by name Snahaji, Jaya Thampi and Viroji. In the second marriage with Narayanan she had one son who is the accused in this case. Narayanan was living separately since long. The accused and deceased were workers of two different political parties. Accused person's father Narayanan deserted the deceased because of her peripatetic life style due to political activities. It is said that the deceased was engaged in witchcraft for accelerating the death of Narayanan. Accused and deceased were also at logger heads and enmity developed between them. On 10-11-1987 at about 7 a.m. the accused throttled his mother with his left hand and smothered her with right hand at their residence. Thereafter he tied a lunky around her neck and strangulated her. It resulted in her death and accused buried the dead body near the courtyard of Jayasadanam. The brother of the accused Snahaji (P.W. 1) who was residing separately with his wife and children enquired accused about his mother. The accused thereupon gave him three different versions. P.W. 1 having failed to get the correct information as to the whereabouts of his missing mother, made a search of the house where she was residing with the accused. He had also inspected the surrounding areas and thereupon an earthen mound came to his notice near the western courtyard of the house. A portion of that mound was washed away due to rain with the result a wooden plank appeared out from the earthen mound. The suspicion rolled in the mind of P.W. 1 and he immediately informed as to the missing of his mother to the Chittar Police Station at about 10.15 p.m. on 13-12-1987. The First Information Statement (Ext. P 1) was recorded by P.W. 16, Assistant Sub-Inspector and Crime 171/87 was registered. Thereafter Ext. P 1 (a) was prepared under caption 'man missing'. The investigation was taken over by Circle Inspector of Police (P.W. 17). During the

course of investigation P.W. 17 questioned the accused and it was then revealed to be a case of homicide. P.W. 17 thereafter forwarded Ext. P. 10 report altering the Section of offence as one under Sections 302 and 201, I.P.C. The accused was arrested at about 10.30 p.m. on 15-12-1987 at Kumbanad and he was bought to the police station. The exhumation of the dead body was done by P.W. 14, Revenue Divisional Officer, Adoor. Post-mortem on the body of the deceased was conducted by P.W. 9 who has issued Ext. P4 certificate. After completing the investigation P.W. 17 laid the charge sheet on 24-7-1988 before the Judicial First Class Magistrate's Court, Ranni. The case was thereafter committed to Sessions Court, Pathanamthitta.

3. The accused pleaded not guilty to the charges levelled against him for the offences under Sections 302 and 201, I.P.C. He was later examined under Section 313 of the Code of Criminal Procedure after the prosecution evidence was completed. All the inculpatory circumstances revealed from evidence were put to him during the examination. His case in short is this : He was residing along with his mother. She being a Congress (I) worker was in the habit of going for political work and returning home only after one or two weeks. In the month of November 1987, she had gone for political work but not returned even after two weeks. This was informed to his elder brother (P.W. 1) and both of them together made enquiries about their mother but could not trace out her whereabouts. It was in that situation P.W. 1 filed the complaint before the police alleging his mother was missing.

4. Before this Court proceeds to examine the evidence regarding the offence, it is necessary to ascertain whether 'corpus delecti' is proved in this case inasmuch as the dead body was recovered only after exhumation. The deadbody was identified as that of Sundari alias Lakshmi Narayanan by P.W. 1 who is the son of the deceased. The material objects recovered from the dead body, namely artificial teeth (M.O. 3), spectacles (M.O. 13), ear rings (M.O. 11) were identified as that of the deceased. After the autopsy the dead body was released to the relatives. As a matter of fact the proof of 'corpus delecti' was not questioned by the defence either before the trial court or before this Court in the present appeal. That being so, there is no dispute in this case, that the dead body recovered from the court-yard

of Jayasadanam is that of the deceased Sundari alias Lakshmi Narayanan.

5. The next question to be examined is whether the death of Sundari alias Lakshmi Narayanan was homicide. P.W. 9 is the District Police Surgeon who conducted autopsy at 11.45 a.m. on 16-12-1987 on the body of the deceased. Ext. P. 4 is the postmortem certificate. Ext. P. 4, inter alia, shows that Lakshmi Narayanan died due to 'ligature strangulation and probably manual strangulation also'. But in cross-examination P.W. 9 doctor stated : 'As regards the manual strangulation there is some doubts. But as regards the ligature strangulation no doubt about'. Ext. P. 4 certificate further reveals the following position:

A piece of striped lunki 165 c.m. long was found wound round the neck with a double knot on the left side below ear. A ligature mark was found underneath the ligature on the front and sides of neck as a pale, slightly depressed transverse pressure abrasion 16 x 3 c.m. in size placed over and above the level of thyroid eartilege in front. Just above the ligature mark, on the front midline, there was a contusion measuring 2 x 2 c.m. The soft tissues underneath the ligature mark and the contusion was infiltrated with blood. The hyoid bone showed an abduction fracture in its middle. The thyroid and other cartilages of neck intact.

Therefore, we have no hesitation to hold that the ligature strangulation is the cause of the death of deceased. That being so, we can safely conclude that the death of Sundari alias Lakshmi Narayanan was a homicide amounting to murder.

6. It is a primary requisite to find out who is responsible for causing the death of Lakshmi Narayanan in this case. At the outset, it is necessary to bear in mind that this is a ease where there is no eye witness to the incident. The ultimate conclusion in this case primarily rests on the totality of circumstantial evidence made available. It is a fundamental rule that in cases dependent on circumstantial evidence in order to justify an inference of guilt the incriminating circumstance must be incompatible with the innocence of the accused. In this connection what is relevant is to ascertain what are the proved circumstances which are of inculpatory nature and to adjudicate whether such proved circumstances will be sufficient to complete all the links in the chain so as to pinpoint the guilt of the accused.

7. The learned Sessions Judge after analysing the entire evidence came to the positive conclusion that the prosecution has succeeded in proving the circumstances pleaded and those proved circumstances were able to form a chain, so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. The learned Judge further found that the accused after murdering his mother concealed the dead body very close to his residential house with the intention of screening himself from the legal indictment. Accordingly the accused is sentenced to undergo imprisonment for life for offence under Section 302 and rigorous imprisonment for a period of three years and a fine of Rs. 1,000/- and in default of payment of fine to undergo simple imprisonment for a further period of one year for the offence under Section 201, I.P.C. These sentences are ordered to be run concurrently.

8. The circumstances for the above conviction and sentence which are proved before the learned Sessions Judge are the following :

1) That the dead body of Sundari alias Lakshmi Narayanan was found buried on the western side very near the house where the accused and deceased were residing together.

2) That Sundari alias Lakshmi Narayanan died due to ligature strangulation.

3) That there was no possibility to bury the dead body of Lakshmi Narayanan without the knowledge of the accused.

4) That there is a strong motive for the accused to kill his mother.

5) That the death was some time between 9-11-1987 and 16-12-1987 (the date of exhumation).

6) That the accused did not enquire the whereabouts of his missing mother.

7) That the deceased was last seen alive in the company of the accused.

9. The prime point advanced by learned Counsel for the appellant-accused is that the police had prior information as to the dead body buried in the compound of Jayasadanam and that being so the confession leading to the discovery of the

dead body is not valid in law. The argument is, the evidence of P.Ws, 1, 4, 5 and 8 supports the case that the police had prior information as to the concealment of dead body. The reliance was placed on the decision in Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : (1956 Cri LJ 421) wherein it has been laid down to the effect that the discovery of incriminating article alleged to have been recovered by the accused is inadmissible in evidence if the police already knew where they were hidden. It was also pointed out that a Division Bench of this Court in Joy v. C. I. of Police (1989) 1 Ker LT 443 : (1990 Cri LJ NOC 124) held that in order to have a valid recovery known to Section 27 of the Evidence Act, it must be shown that the information conveyed by the accused was not previously known to the police. The court further observed that the 'Discovery is after the exhumation. That means, Section 27 was misused to make a farce of it.' As far as the present case is concerned, the accused was arrested by P.W. 17 Circle Inspector of Police on 15-12-1987 and he was thereafter questioned and confession statement was recorded. Pursuant to information supplied by the accused, he was taken to 'Jayasadanam' on 16-12-1987 at about 11.25 a.m. The accused had then shown distinctly and clearly the place where the dead body was buried. Revenue Divisional Officer (P.W. 14) and District Police Surgeon (PW 9) were present. P.W. 14 and P.W. 9 admit in their examination that the exhumation of the dead body was made on 16-12-1987 at about 11.45 a.m. and the inquest was made thereafter. Ext. P. 3 is the inquest report prepared by P.W. 17. P.W. 17 Circle Inspector also sufficiently speaks as to the exhumation made on 16-12-1987. That being the position, it is abundantly established that the exhumation was made pursuant to the disclosure made by the accused on 15-12-1987.

10. Then the next question is why police constable were found at the premises of Jayasadanam two days prior to the exhumation? P.W. 7, a neighbour who resides very close to Jayasadanam, says that he saw the police who had come to the house of Lakshmi Narayanan and on enquiry he came to know, the police had come on receiving information that Lakshmi Narayanan was missing. He was the only witness who made some attempt to find out the reason for the visit of the police to the house. He did not say that the police was actually guarding the place where the deadbody was buried. Even P.Ws. 1, 4, 5 and 8 did not say that the police was guarding the scene pursuant to the information already received by

them as to the concealment of deadbody. In this connection it may be noticed that P.W. 17 Circle Inspector said that he did not authorise the police constables to guard the premises of 'Jayasadanam' after he had taken over investigation. He took over the investigation from P.W. 16 on 15-12-1987. Ext. P. 1 F.I. statement was recorded by Asstt. Sub-Inspector of Police (P.W. 16) on 13-12-1987 under the caption 'man missing' meaning thereby Sundari alias Lakshmi Narayanan, who was residing at 'Jayasadanam' was stated to be missing. After registering the F.I.R. P.W. 16 inspected the premises of Jayasadanam and questioned the witnesses. In the course of the investigation of the crime, the police constables were naturally visiting the premises of Mayasadanam' and making vigorous attempts to find out the whereabouts of Lakshmi Narayanan as it was a 'man missing' case. P.W. 16 did not say that he had authorised the police constables to guard the scene because he had previous information as to the concealment of dead-body. There is no reason to disbelieve the evidence of P.W. 16 Asstt. Sub-Inspector of Police and P.W. 17 Circle Inspector of Police who have uniformly stated that they have not authorised the police constables to guard the scene of occurrence. They were discharging their official duties in the ordinary course of criminal investigation and we are not inclined to simply brush aside their evidence in this regard. The 'case of the accused is that the police had prior information as to the concealment of deadbody and that was why the police constables were posted to guard the place. It is difficult to agree with this position urged by the counsel for the defence. The police constables acting in the course of investigation of a crime involved in a 'man missing case' cannot be denied the power to visit frequently the place wherefrom 'man missed' and its premises or to keep a watch over the area in order to see the developments that would be taking place there in connection with the crime. The statements of the witnesses, P.Ws. 1, 4, 5 and 8 have therefore to be examined and understood in the aforesaid background. The totality of the evidence of a witness has to be taken into consideration for fixing the probative value. One or two sentences from the deposition of a witness will not determine an issue completely. The witness may narrate an incident according to his own perception. When P.Ws. 1, 4, 5 and 8 say that police constables were guarding the 'Jayasadanam' and its premises it does not mean the police had prior knowledge of the burial of deadbody which fact alone is relevant. May be there

rumours prevalent in the locality; but that fact will become relevant only when the accused is brought and discovered the deadbody from the place where it was buried. That being the position, it is difficult for this Court to hold that the discovery of the fact that the deadbody was buried in the compound of 'Jayasadanam' was not in pursuance of the information supplied by the accused. When the recovery of deadbody in pursuance of the disclosure statement of the accused is thus established, it would amount to a strong incriminating material in the chain of circumstances leading to the point of guilt of the accused in this case.

11. Is there any motive for the accused to do away with his mother? Of course, there are. The absence of motive is of no consequence when cogent and reliable evidence as to the guilt of the accused is available. However, the Supreme Court in Mulakh Raj v. Satish Kumar, AIR 1992 SC 1175 : (1992 Cri LJ 1529) held that in cases of circumstantial evidence motive bears important significance. That being so the motive is also one of the necessary links in the chain of circumstances pointing to the guilt of the accused when it is clearly and cogently established. But, the learned Counsel submits that the prosecution has not produced any evidence to pinpoint motive in this case. On the other hand, the Public Prosecutor brings to our notice, the immediate as well as distant causes which signify the motive for the accused to extirpate his mother. P.W. 1 is the son of the deceased in her first marriage with Kochu Kunju and accused is the son in the second marriage with Narayanan. P.W. 1 states that for last about eight years Narayanan was residing separately as he was on loggerheads with deceased. He further adds that Narayanan used to give money to the accused. That shows, the relationship between the accused and his father Narayanan was cordial even though he was residing with his deceased mother. P.W. 1 further discloses that deceased mother had filed petition seeking maintenance against Narayanan and she had obtained an order in her favour recently. He also states that the accused had been supporting his father in the dispute between him (Narayanan) and the deceased which dispute caused them to have separate living and that there had been quarrels between the deceased and the accused. P.W. 3 who resides in a house in the neighbourhood of 'Jayasadanam' deposed that the deceased was a Congress (I) worker whereas the accused was a worker of D.Y.F.I. The evidence reveals there was no dispute on the question that the deceased and accused were

the workers of two political parties having different political views. It is sufficiently established that when the deceased goes for political work, she will keep away from the house continuously for one or two weeks. When a mother with whom a son aged about 21 resides, adopts a peripatetic lifestyle, naturally the son will develop in his mind a feeling of hatred and animosity against his mother, who made him a destitute and importune. The evidence discloses that the accused was taking meals from hotels and from the house of other persons. In such abhorrent and frustrated situations, the accused who is still in his adolscence may naturally develop a high degree of animosity. When the mind is so obsessed and confused he may or may not turn to his father for solace and solution. But when he thinks of his father, it will naturally strike to his mind the sickening stories including the obtaining of an order of maintenance by his mother against his father. All these causes contributed largely in a strong motive being developed in the mind of the accused to do away with his mother.

12. P. W. 6 is the daughter of the deceased in her first marriage with Kochukunju. Her testimony, inter alia, reveals this : The deceased came to her house at Edathitta twice or thrice immediately prior to her death. The deceased used to talk about the accused on such occasions. There was rupture between the accused and deceased by the reason of his insistence to divide the property in equal share among all heirs, lest he would not allow the property to be sold. The deceased had spoken all these, when she visited the house on 7-11-1987. The witness came to know of the death of her mother early in December, 1987. In cross-examination P.W. 6 firmly declared that she had stated to P.W. 16 Asstt. Sub-Inspector about the property dispute between her mother and accused. This was stated by P.W. 6 when it was pointed out that such statement was not seen in her statement before the police. However, when P.W. 16 was examined no question was put to him on this aspect of the matter. Therefore the aforesaid testimony of P.W. 6 would definitely contribute to a large extent to aid the veracity of the motive part of the offence discussed herein before. But the question still lingers on, how far this testimony is admissible in evidence under Section 32(1) of the Indian Evidence Act, 1872. Lord Atkin in Pakala Narayana Swami v. Emperor, AIR 1939 PC 47 : (1939 (40) Cri LJ 364) observed while discussing the scope of the above provision thus :

It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the 'circumstances' can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction; general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible.. Circumstances of the transaction is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower than 'res gestae' Circumstances must have some proximate relation to the actual occurrence.... It will be observed that 'the circumstances are of the transaction which resulted in the death of the declarant.

(Italics underlined supplied)

The Supreme Court has placed reliance on this decision of the Privy Council in Sharad v. State of Maharashtra, AIR 1984 SC 1622 : (1984 Cri LJ 1738). One of the propositions laid down by the Supreme Court there is this :

Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

K.T. Thomas, J. of this Court while speaking on behalf of the Full Bench in State v. Ammini (1987) 1 Ker LT 928 : (1988 Cri LJ 107) observed that the Supreme Court in AIR 1984 SC 1622 : (1984 Cri LJ 1738) adopted the interpretation that the expression 'any of the circumstances of the transaction which resulted in his death' is wider in scope than the expression 'the cause of his death'. In the light of the said decision of the Supreme Court, motive factor available in the statement of the

deceased cannot be discarded as a remote circumstance, if it is otherwise intimately connected with the circumstances of the transaction which resulted in his death. The statement of the deceased must disclose that the circumstances specifically narrated by him have some direct or proximate bearing on the causes contributed in the transaction which ultimately resulted in his death. The deceased need not say or apprehend that he would be killed by the person whose conduct was referred to in his statement. At the time of giving the statement, there was no chance of having any inclination in the mind of the deceased that such person would do away with his life for the circumstances disclosed by him. Such circumstances shall only be intimately connected with the circumstances of the transaction which resulted in his death. The circumstances narrated by the deceased to her daughter (P.W.6) within three days immediately prior to her death in this case are such circumstances which this Court can safely take note of while screening the motive of the accused to commit the crime. We have therefore no hesitation in holding that the motive part of the offence has been so cogently and firmly established in this case. It can also be said that the testimony of P. W. 6 is a strong piece of incriminating circumstance pointing to the guilt of the accused.

13. The prosecution pleads, when in a case where ultimate decision is based on circumstantial evidence, the burden of the accused to explain the disappearance of the co-resident from the house where the accused also resides is onerous. In this case, the burden is particularly so high inasmuch as the recovery of the deadbody was proved to be in pursuance of the disclosure statement of the accused, so marshals the argument. While dealing with this question it is necessary to find out whether there is any circumstance so as to make the accused liable to account for the disappearance of his mother who was a co-resident with him at Jayasadanam. We are not for a moment to assume the accountability of the accused in this regard simply because he is the co-resident of the house and as such is supposed to be living in the same house, unless there is circumstance to show that both of them were found living together at some time during the relevant period. The 'last found together theory' as it is usually described is of course not an absolute rule or inflexible formula; but it is totally dependent on the facts of each case. As far as the present case is concerned the reflecting features like the relationship between the accused and deceased, their

co-residence at the house 'Jayasadanam', mutual responsibility to know the whereabouts of each other etc. assumes far greater importance in the absence of direct evidence to evince presence of the accused and deceased together at some time during the relevant period.

14. The evidence of P. Ws. 1 to 3 and 5 to 7 who are living in the neighbourhood of 'Jayasadanam', at best reveals that the accused and the deceased were staying together at 'Jayasadanam' and were frequently engaged in quarrels. The evidence of P.W. 3 who is having a grocery shop where the deceased had a cash-book account discloses, the deceased had come to his shop and purchased goods on 9-11-1987 and she was not seen thereafter. This would indicate that the deceased was found alive on 9-11-1987 and she went home after the purchase of goods from the shop of P.W. 3. There is no evidence in this case that she had left for political work on that day itself. The resultant inference is that the deceased was staying in her house 'Jayasadanam' on 9-11-1987. No evidence is available to show that accused was not staying at the house Jayasadanam on that day. So much so, there is no material before us to assume that the accused was staying somewhere outside the house on that particular day. In such circumstances, the natural inference can only be that the deceased and accused were staying together at Jayasadanam on the night of 9-11-1987. It is also pertinent to note that there is no evidence in this case to show that the accused had left the house before 7 a.m. on 9-11-1987 or some other person or persons had come to the house of Jayasadanam on 9-11-1987 or next morning till 7 a.m. From the evidence it is revealed that Lakshmi Narayanan died on 10-11-1987 at about 7 a.m. as a result of ligature strangulation. In that situation the only inference that could be drawn by this Court is, the person who caused the death of Lakshmi Narayanan was the accused alone and none else. This conclusion is very ably supported by the subsequent conduct of the accused, which is narrated herein below.

15. It is sufficiently proved that the dead-body was buried just near the western courtyard of 'Jayasadanam'. That being so, it is difficult to assume that the accused who was residing in the house had no occasion to see the appearance of earthen mound till it was noticed by PW-1. When such mound appears just near

the house the accused should have made attempts to find out what it relates to. He totally ignores it as if nothing had been taken place. He did not make any attempt to file complaint to the police even though his co-resident, mother was missing from the house for days together even according to his own statement. Of course, this conduct of the accused will create doubt in the mind of a prudent man as to his innocence. Further, look at the answers given by the accused to different persons who have asked him about Lakshminarayanan. A tilting, vacillating and confused mind is visibly obvious in all his answers. When his brother PW-1 could not meet his mother Lakshmi Narayanan in market place as before he asked the accused of her whereabouts. Readily he answers, she had gone to sister's house. On a further query, he said, she had gone to Bangalore. When again he was asked, the answer is she had gone for party work. To witnesses, P.Ws. 2 and 3, the accused said, deceased had gone for political work. But his answer to P.W. 7 is that the deceased had gone to Guruvayoor temple for Bajana. There is no reason to disbelieve the evidence given by P.Ws. 1, 2, 3 and 7 in so far as this aspect is concerned, as we see no reason for them to perjure against the accused. P.Ws. 2, 3 and 7 are the persons staying in the neighbourhood of Jayasadanam and their interest can only be to punish the real culprit. No motive is attributed, not even suggested against them for tendering evidence against the accused. It is difficult to believe that P.W. 1 will tender false evidence to implicate the accused who is none other than his brother, in an offence of murder against his own mother. No previous enmity not even unfriendliness between the accused and P.W. 1 is suggested in the examination. On the contrary, P.W. 1 said that he and accused were on friendly terms and they loved each other. He further said, the accused used to take food from his house.

16. What is the impact of the medical evidence available in his case? The doctor who was examined as P.W. 9 has deposed that deadbody was in a state of advanced decomposition. He further observed 'Body dried and shrivelled up. Melted fat covering the body. Facial features not recognisable. The entire cuticle of skin has peeled off. Hands and feet degloved.' According to the doctor, the approximate post-mortem interval is 30-40 days. The prosecution case is that Lakshminarayanan died on 10-11-1987 due to ligature strangulation. Post-mortem was conducted on 16-12-1987. That means the death could have taken place

sometime during the period between 6-11-1987 and 15-12-1987. P.W.6 says, it was on 7-11-1987 that her deceased mother finally visited her house. P.W. 3, grocery dealer says that deceased had purchased provisions from his shop finally on 9-11-1987. This is also supported by the entry in M.O.I account book. As against this evidence, there is a statement by P.W. 2 that he had seen the deceased finally on 5th or 7th of December. This appears to be a mistake. The witness is not certain about the exact date. Probably the witness has mistakenly stated the month as December instead of November. Therefore we have no hesitation in holding that the medical evidence available in the case reasonably compares and corroborates the prosecution case as regards the date as well as the cause of death.

17. We have thus anxiously examined the proved circumstances set out herein before. They are firmly and cogently established. Those proved inculpatory circumstances are totally incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of the guilt of the accused. All those proved circumstances in this case form a complete chain, unerringly and unequivocally pointing to the guilt of the accused. We have therefore no hesitation in holding that the prosecution has abundantly proved the offence under Section 302, IPC against the accused for having caused the murder of his mother Sundari alias Lakshminarayanan. We accordingly uphold the conviction and sentence passed by the trial court against the accused.

18. The only question that remains to be considered is how far the accused is liable for the offence under Section 201, IPC. We have found herein before that the accused is liable for conviction under Section 302, IPC. That does not mean the ingredients of Section 201 need not be established independently. The ingredients of Section 201 are fully satisfied in the present case. The dead body recovered pursuant to the disclosure statement of the accused, was found to be covered with a bed cover tied with plastic and iron wires. It was buried near the courtyard of the house so as to conceal it from others. Of course in order to attract the provision of Section 201, it must be established that the accused caused the disappearance of evidence with the intention of screening the offender from legal punishment. That the concealment of the deadbody in a pit is an action to detract

the attention of other persons from seeing the deadbody. The intention is obviously clear that in the above process of action, the evidence regarding the perpetration of the offence can be effaced so as to screen himself from the legal punishment. That being so, we are not persuaded to interfere in the findings of the learned Sessions Judge that the accused is also liable for conviction under Section 201, IPC.

19. Crl. R.P. No. 51/1981.

This revision arises from the judgment in CC 201/1989 of Judicial Magistrate of the First Class, Ranni dated 11th December 1989. By the aforesaid judgment the accused was convicted under Sections 380 and 457, IPC and sentenced him to undergo rigorous imprisonment for one year each under the said Sections. The appeal filed by the accused against the aforesaid conviction and sentence was dismissed by the Sessions Court, Pathanamthitta on 31-5-1990. In the meanwhile accused was convicted by the Additional Sessions Judge, Pathanamthitta in S.C. 52/89 vide the judgment dated 19-12-1989 for the offences Under Sections 302 and 201, IPC and sentenced him to undergo imprisonment for life and rigorous imprisonment for a period of three years and also a fine of Rs. 1,000/- respectively. It is further ordered that the accused shall suffer the imprisonment concurrently. Against this conviction and sentence the accused filed Crl. Appeal No. 44/1990 before this Court. During the pendency of this appeal, the accused filed the present revision where he has made a limited prayer for an order directing him to suffer the aforesaid two sentences concurrently. When this revision came up for hearing on 25-1-1991 this Court ordered to hear it along with the Crl. Appeal No. 44/1990. It is in that background this revision petition is being dealt with by us along with the Crl. Appeal No. 44/1990.

20. This revision petition has been forwarded to this Court by the accused on 24th December, 1990 counter signed by the Superintendent, Central Prison, Trivandrum while he was under going imprisonment as per the sentence awarded by the Judicial Magistrate of the First Class, Ranni in CC 201/89 under Sections 380 and 457, IPC. As there was no order to run the sentences under these two offences concurrently the accused was liable to undergo imprisonment for the total

period of two years. It was while undergoing the said imprisonment, the sentence in SC 52/89 under Sections 302 and 201 was awarded by the Sessions Court. Now the question that calls for decision is whether the accused is entitled to relief under Section 427 of the Criminal Procedure Code, Sub-section (1) of Section 427 which corresponds to Sub-section (1) of Section 397 of 1898 Code in substance deals with consecutive and concurrent sentences. As a general rule, terms of imprisonment are ordered to run consecutively and that is what Sub-section (1) of Section 427 evinces when it stipulates, the posterior sentence shall commence at the expiration of the anterior sentence. However this rule is subject to an exception contained therein itself which provides 'unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.' The Supreme Court in Ranjit Singh v. Union Territory of Chandigarh (1991) 4 SCC 304 : (1991 Cri LJ 3354) observed (at p. 3358 of Cri LJ) :

In other words, Sub-section (1) of Section 427, Cr. P.C. deals with an offender who while undergoing sentence for a fixed term is subsequently convicted to imprisonment for a fixed term or for life. In such a situation, the first sentence, being for a fixed term, expires on a definite date which is known when the subsequent conviction is made. Sub-section (1) says that in such a situation, the date of expiry of the first sentence which the offender is undergoing being known, ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence. Obviously, in cases covered by Sub-section (1) where the sentence is for a fixed term, the subsequent sentence can be consecutive unless directed to run concurrently.

21. In the absence of any restricted meaning given to the word 'Court' contained in Sub-section (1) of Section 427 it necessarily includes the High Court exercising appellate or revisional jurisdiction. That means this Court is competent while dealing with an appeal filed by the accused under Section 374, to direct that the subsequent sentence awarded shall run concurrently with the previous sentence. The next question is whether this Court can, as a matter of course so order to run the sentences concurrently without adverting to any material on record. It can never be said so. The power conferred on the courts under Section 427(1) to order

concurrent running of sentences is a discretionery power guided by judicial framework. The court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive or concurrent. The totality principle has been accepted by the courts as correct principle for guidance in this matter. Lord Lane C.J. in R. v. Edward Charles French (1982) 75 Cri App R (S) 1, 6 observed :

We would emphasize that in the end, whether the sentences are made consecutive or concurrent the sentencing judge should try to ensure that the totality of the sentences is correct in the light of all the circumstances of the case.

The above principle has been adopted by the Supreme Court in Mohd. Akhtar Hussain v. Assistt. Collector of Customs (1988) 4 SCC 183 : (1989 Cri LJ 283). There the Supreme Court said (at p. 286 of Cri LJ) :

It is no doubt true that the enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although it is grave.

22. It is for the court to decide what are the relevant considerations in a particular case to be taken note of while exercising the discretion, as to the award of consecutive or concurrent sentence. However, the maximum sentence awarded in one case against the same accused is a relevant consideration. In the present case, the Sessions Judge has awarded life-imprisonment to the accused in the subsequent conviction. The observation of the Supreme Court in Ranjit Singh's case (1991 Cri LJ 3354) supra is to the following effect (at p. 3358 of Cri LJ) :

The earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might.

Since the present case being one where the earlier sentence is only for a total period of two years and the life imprisonment is awarded in the subsequent conviction, the above principle laid down by the Supreme Court may not strictly apply. However the award of maximum sentence in one case against the same accused being a relevant consideration. We feel, the accused is entitled to the relief prayed for under Sub-section (1) of Section 427.

23. We accordingly order that the sentences awarded in S.C. 52/89 by the Additional Sessions Court, Pathanamthitta against the accused shall run concurrently with sentences awarded in C.C. 201 / 87 by the Judicial Magistrate of the First Class, Ranni, as confirmed by Sessions Court, Pathanamthitta in Crl. Appeal No. 26/40(J).

24. In the result, the conviction and sentence passed by the Court below in SC 52/89 are confirmed except to the extent indicated above. The Criminal Appeal No. 44/90 is dismissed.

The Crl. Revision No. 51/91 is allowed.