

Vijayan Vs. State of Kerala

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Court : Kerala

Decided On : Mar-03-2005

Reported in : II(2005)DMC658

Judge : J.B. Koshy and; V. Ramkumar, JJ.

Acts : Evidence Act - Sections 24; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 325; ;Code of Criminal Procedure (CrPC) - Sections 313 and 428

Appeal No. : Crl. Appeal No. 578 of 2003

Appellant : Vijayan

Respondent : State of Kerala

Advocate for Def. : Sujith Mathew Jose, P.P. by; Saira Revikumar, Adv.

Advocate for Pet/Ap. : Grashious Kuriakose, Adv.

Disposition : Appeal dismissed

Judgement :

V. Ramkumar, J.

1. In this appeal preferred from the Central Prison, Thiruvananthapuram, the first accused in S.C. No. 256/2000 on the file of the Addl. Sessions Court, Thodupuzha challenges the conviction entered and the sentences passed against him for

offences punishable under Sections 323, 325 and 302 read with Section 34, IPC.

2. The case of the prosecution can be summarised as follows :

The first accused (appellant herein) was living at Arakkulam along with his wife Latha. On 26.3.2000, at about 2 p.m. he struck his wife on her cheeks and face causing the dislocation of one tooth of the lower jaw. Subsequently, on the same day at about 7 p.m. the first accused intentionally caused her death by throttling her. Thereafter, in furtherance of the common intention of the first and 2nd accused to cause disappearance of the evidence of the offence and to screen the first accused from legal punishment, both the accused together poured kerosene over the dead body of Latha in front of the house of the first accused, set fire to her body and threw the dead body into a thicket in the property of the first accused. The two accused persons have thereby committed the offences referred to above.

3. On both the accused pleading not guilty to the charge framed against them by the Court below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution examined 23 witnesses as P.Ws. 1 to 23 and got marked 19 documents as Exts. P1 to P19, two Forensic Science Laboratory reports as Exts. C1 and C2 and 13 material objects as MOs 1 to 13. After the close of the prosecution evidence, the accused were questioned under Section 313(1)(b), Cr.PC with regard to the incriminating circumstances appearing against them in the evidence of the prosecution. They denied those circumstances and maintained their innocence.

4. The appellant/first accused gave the following version before Court:

It is true that he had married Latha at Marikulam as deposed by P.Ws. 10, 14 and 15. But, there was no valid marriage between him and Latha by tying Thali chain. P.W. 10 had given him Rs. 10,000/- and gold ornaments weighing four sovereigns which were however spent for the treatment of P.W. 10's son. The evidence tendered by P.W. 4 and P.W. 7 that the appellant and Latha were residing together as man and wife is true. P.W. 12 Mohanan had sexually assaulted her and she had become pregnant. She complained of bleeding and the foetus was

lost. On 21.3.2000, that is, five days before the alleged occurrence, he had brought her back to his house from the house of her brother Sukumaran where she was staying. It was at that time that she disclosed to him about the sexual assault made by P.W. 12. On 26.3.2000, she had stomachache. He gave her Rs. 300/- and sent her to Sukumaran's house promising to join her on the following Sunday and left for Pullikkanam. When he returned home in the afternoon the kitchen door was found wide open and Latha was found missing. Many of the articles were also found missing. P.W. 7 Aji, P.W. 12 Mohanan, P.W. 18 Gopalan, one Damodaran and a few others were found running away from the boundary of his property. He had gone to the bazaar to sell cashewnuts. He did not return to his house on that day but spent the night at the house of his uncle Peethambaran. The next day morning, he came back to his house and attended to some work in the property and slept in the house of Peethambaran during the night. The above routine continued till 30.2.2000 in the evening of which day P.Ws. 1, 7, 12, 18 and some others forcibly entered his house and P.W. 1 assaulted him with a stick. They tied his hands and legs and handed him over to the police during the night. He is innocent and he has been falsely implicated in the case in view of the fact that he had undergone sentence in a murder case.

5. No defence evidence was adduced by the accused.

6. The learned Addl. Sessions Judge after trial, as per judgment dated 30.9.2002 acquitted the 2nd accused but convicted the appellant/first accused and sentenced him to undergo rigorous imprisonment for six months under Section 323, IPC, rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- and on default, to suffer rigorous imprisonment for a further period of two months under Section 325, I.P.C., rigorous imprisonment for life and to pay a fine of Rs. 50,000/- and on default, to suffer rigorous imprisonment for a further period of one year under Section 302, IPC and rigorous imprisonment for six months and to pay a fine of Rs. 5,000/- and on default, to suffer rigorous imprisonment for a further period of one month under Section 201, IPC. The substantive sentences of imprisonment were directed to run concurrently. Set-off under Section 428, Cr.P.C. was allowed. It is the said judgment which is assailed in this appeal.

7. We heard Adv. Mr. Grassious Kuriakose, the learned Counsel appearing for the appellant, and Adv. Mr. Sujith Mathew Jose, the Public Prosecutor appearing for the State.

8. The learned Counsel for the appellant made the following submissions before us in support of the appeal and pleaded for an acquittal:

The stand of the appellant has been one of total denial of the prosecution case. There is no direct ocular evidence for the prosecution in support of its case. The prosecution was canvassing for a conviction on the basis of circumstantial evidence. The evidence of the prosecution does not satisfy the tests for proving the guilt of the accused by means of circumstantial evidence.

The first wife of the appellant was the sister of P.W. 7's father (P.W. 18). P.W. 7 was having an axe to grind against the appellant for allegedly ill-treating his aunt and driving her away from the appellant's house. P.Ws. 1 and 12 who supported the prosecution were close friends of P.W. 7 and were, therefore, turning out to be cunning performers in the witness box to falsely implicate the appellant. Even though these witnesses would say that the deceased who was the wife of the appellant was missing since 26.3.2000, none of them felt it necessary to lodge a complaint. The police did not visit or inspect the spot near the river side where the appellant was allegedly hiding. P.W. 7 and his companions were virtually taking up the role of the investigating agency by hunting for the appellant and tracing him out and physically apprehending him and handing over to the police. When no cognizable offence was committed by the appellant in their presence, they had no authority to catch hold of the appellant, wrongfully restrain him, tie up his hands and eventually hand him over to the police. The alleged extra-judicial confession spoken to by the prosecution witnesses is nothing but a planted story apart from being irrelevant under Section 24 of the Evidence Act since it was secured by a promise from P.Ws. 1, 7, 12 and others that the appellant would be saved of the torture by the police if he confessed everything. While according to P.W. 18 who was a witness to Ext. P7 scene mahazar, there were signs of there having been a pool of blood in the house of the appellant, the scrappings taken by the investigating officer from the house of the accused, when tested in the Forensic

Science Laboratory showed that they did not contain human blood. This shows that P.Ws. 1, 7, 12 and 18 might have stage managed the blood marks for which no explanation is forthcoming from the investigating officer. Merely because P.W. 3 saw the deceased with injuries on her face in the afternoon of the ill-fated day and the deceased told her that she was apprehending an attack and resultant death at the hands of the appellant, it cannot be straightaway presumed that it was the appellant who murdered her. As a matter of fact, P.W. 3 had seen the injury on the neck of the deceased in the afternoon itself. So the blunt force on her neck was already applied for which the conviction under Sections 320 and 325 could be justifiable. But in the absence of any material to suggest the presence of the accused with the deceased later in the day, it cannot be simply assumed that the appellant might have bludgeoned her to death. In any view of the matter, the fatal blunt force must have been applied subsequent to the day time incident for which the appellant cannot be held responsible. If as spoken by P.W. 3 the deceased was expecting an attack from the accused, the chances are that the deceased might have escaped from that house and might have sustained the fatal injuries at the hands of somebody else which explains the absence of blood at the alleged scene of occurrence. The fact that the deceased might have sustained other injuries as well is indicated by Ext. 9 post-mortem certificate wherein the doctor has stated that other superficial injuries, if any, could not be detected due to decomposition changes. Ext. P2 letter which admittedly does not contain the signature of the deceased cannot be relied on to hold that it was letter sent by her to her brother P.W. 10. While according to P.W. 3 it was about one month prior to the occurrence that the deceased approached her to write Ext. P2 letter, P.W. 4 would say that it was 3 or 4 months ago. P.W. 5 would say that the said letter was got written by P.W. 4 two or three months ago. According to PW. 10, it was three months prior to her death that he got Ext. P2 letter. The year alone can be spelt out from the postal seal on Ext. P2 letter and that is 1999. This does not tally with the testimonies of P.Ws. 3, 4, 5 or 10. The admitted case of the prosecution is that the dead body that was recovered from the bushes in the compound of the appellant's house was five days after the occurrence and was in a decomposed state with the face completely mutilated. The prosecution witnesses claim to have identified the dead body as that of Latha, the deceased, by noticing the special

feature namely, the thinning of both her legs afflicted by polio. But the inquest report as well as the post-mortem report are significantly silent about this peculiar feature of her legs. If so, it may not be safe to hold that the dead body that was recovered was that of Latha by merely relying on the super-imposition test conducted by Dr. Sreekumar (P.W. 22).

9. We are afraid that we find ourselves unable to accept the above arguments raised by the appellant. It is true that there are no eye-witnesses to the occurrence and the guilt of the accused was sought to be established on the basis of circumstantial evidence. But after an anxious reappraisal of the oral and documentary evidence in the case, we have no hesitation to conclude that the prosecution has brought home the guilt of the accused beyond reasonable doubt and that the appellant was rightly convicted by the learned Addl. Sessions Judge. P.W. 1 (Mohandas) is a neighbour who gave Ext. PI F.1 statement at 3 a.m. on 31.3.2000 to PW 20 (Ramesh) who was the Sub-Inspector of Kanjar Police Station. PW2 (Bhavani) is the sister of the appellant and she turned hostile to the prosecution. P.W. 3 (Kamalakshi) is a close neighbour of the appellant and she had allegedly seen the deceased during the day time of the ill-fated day with a swollen face and injuries on her lips and neck. P.W. 4 (Eliyamma) is an Anganwadi teacher who allegedly scribed Ext. P2 letter at the request of the deceased to be sent to her brother Vijayan Nair (P.W. 10) a few months prior to the occurrence. P.W. 5 (Santha) is a helper of PW4 in the Anganwadi, She was examined to support the version of P.W. 4. PW6 (Viswanathan) was a witness to Ext. P3 inquest report prepared by PW23 (Circle Inspector of Police, Kanjar) who investigated the case. P.W. 7 (Aji) is another neighbour and relative of the appellant. The appellant's first wife was the sister of P.W. 7's father (P.W. 18). P.W. 8 (Sabu) is the driver of the jeep in which the appellant was taken to the Kanjar Police Station. P.W.9 (P.J. Gervasis) who was the Scientific Assistant in the Forensic Science Laboratory, Thiruvananthapuram proved Exts. C1 and C2 reports. P.W. 10, (P. Vijayan) is the brother of the deceased. He proved the marriage between the deceased and the appellant, Ext. P2 inland letter and MO1 thali chain and MO2 series of ear-studs belonging to his sister. P.W. 11 (Vijayan) is a friend of P.W. 10 who first got Ext. P2 letter. P.W. 12 (Mohan) is a neighbour of the appellant. P.W. 13 (Kumaran Nair) is a witness to Ext. P4

mahazar prepared for the recovery of Ext. P2 letter from P.W. 10. P.W. 14 (Babu) and P.W. 15 (Velu) are the Secretary and President respectively of the Elappara Sreekrishna Swami Temple Committee. They proved Ext. P5 marriage register evidencing the marriage between the appellant and the deceased on 14.11.1999 between 10.30 and 11.50 a.m. P.W. 16 (Mani) is a Goldsmith at Vagamon to whom MO1 and MO2 series of ornaments were allegedly sold by the appellant on 28.3.2000. P.W. 17 (Johnson) is a witness to Ext. P6 mahazar as per which MO1 and MO2 series were seized. P.W. 18 (Gopalan) is the brother of the first wife of the appellant and the father of P.W. 7. He also proved Ext. P7 scene mahazar as per which MO3 photograph, MO4 series of anklets, MO5 shirt and MO6 chain etc. were seized. P.W. 19 is the Village Officer, Elappalli who proved Ext. P8 scene plan. P.W. 20 (Ramesh) was the Sub-Inspector of Police, Kanjar who recorded Ext. P1 F.I. statement of P.W. 1 and registered Ext. P1(a) FIR. P.W. 21 (Dr. P. Babu) conducted the post-mortem examination of the dead body of the deceased on 1.4.2000 at 9.30 a.m. and proved Ext. P9 post-mortem certificate. He had noted tooth number 31 in the lower jaw of the dead body missing with infiltration of blood in the socket. The skull and mandible of the dead body were retained by him for the purpose of superimposition technique on the request of the Investigating Officer. P.W. 22, (Dr. R. Sreekumar) who was the Scientific Assistant in the Forensic Science Laboratory, Thiruvananthapuram conducted the superimposition tests on MO7 skull and mandible using enlarged photograph of the deceased found in MO3 photograph and submitted Exts. P12 video film and P11 report to conclude that MO7 skull and mandible were that of deceased Latha. P.W. 23 (Vijayan) who was the Circle Inspector of Police, Kanjar conducted the investigation and charge-sheeted the two accused persons.

10. What is unraveled by the prosecution evidence is the following :

The appellant/first accused is residing in his own house at Edadu Kara in Elappilli Village in the Arakulam Panchayath area of Idukki District. The appellant has about five acres of land there. It is a precipice in a hilly terrain with the houses of P.W. 3 (Kamalakshi), P.W. 18 (Gopalan) and P.W. 7 (Ajimon) situated in close proximity to the house of the appellant. Some distance above the house of P.W. 7 there is a road which ends in a forest through which there is a pathway. If one

goes further up he can reach the place called Pullikkanam. There are shrubs and a thicket towards the lower portion of the property of the appellant. Still lower is a stream on the other side of which is a dense forest. One Kunjamma was the first wife of the appellant [she is the sister of P.W. 18 (Gopalan) who is the father of P.W. 7 (Aji)]. There used to be frequent quarrels between the appellant and his first wife attended by physical assaults. The appellant was in jail for killing his sister's husband. After coming back from the prison also he used to torture his first wife Kunjamma who atlast abandoned him and went back to her house at Pullikkanam. Thereafter, the appellant was keeping a woman by name Sarasamma. He used to pick up quarrels with her also and she also left him. It was thereafter that the appellant married Latha, the deceased on 14.11.1999 in the Sree Krishna Swami Temple, Elappara evidenced by Ext.P5 marriage certificate, proved by P.W. 14 and P.W. 15. The appellant belongs to Ezhava community. Deceased Latha was a Nair. Marriage between the appellant and the deceased was an arranged one conducted in the house of Sukumaran, the brother of Latha who was then residing at Marikulam. Rs. 15,000/- in cash and 5 sovereign of gold ornaments had also been given. (This was admitted by the appellant during his examination under Section 313, Cr. P.C.). The fact that the appellant had married earlier was unknown to Latha and her family members. Latha had a physical deformity. Both her legs below the knee were unusually slim and withered due to poliomyelitis. She was in the habit of applying nail polish on her toe nails. (Appellant had admitted this also). The appellant used to pick up quarrels with Latha also and very often physically assaulted her too. (The cruelty meted out to the deceased by the appellant has been spoken to by P.Ws. 3, 4, 7 and 12. P.W. 3 is a 68 year old woman who had every opportunity to know the goings on in the appellant's house, she being the immediate neighbour. She has credibly deposed before Court that the deceased had told her twice or thrice about the physical torture on her by the appellant and the deceased had requested the witness to inform her brother (P.W. 10) about her plight.) This evidence of P.W. 3 gains corroboration from Ext. P2 inland letter which the brother of the deceased received by post a few months prior to the disappearance of Latha. Ext. P2 reads as follows : 'I have learnt the antecedents of my husband from the neighbours of this locality. After hearing them I don't get sleep. I am unable to eat anything. All

my ornaments have been sold. What remains will also be sold. I never expected that this would be my fate. You should enquire about my whereabouts and should save me at the earliest. He drinks every day. The threat is that I will be killed and cut to pieces and buried inside the house and the floor coated with cowdung and none of my brothers will be able to do anything about it. No neighbour will be allowed inside the house. I have no permission to talk to anyone. As soon as you get this letter please come and rescue me before I am done away with. Reach Pullikkanam and ask for Vijayan's house. Do not come alone. Take two or three persons with you. I want to see you, brother. Please come fast before I am killed. My husband should not know the contents of this letter. I shall tell you more if we chance to meet again. Please come fast, come fast, brother. I want to see you before I die.'

Anybody who reads Ext. P2 letter can very well imagine the sad plight of the deceased who was then aged only 31 years. The contents of Ext. P2 letter is indeed heart-rending. Ext. P2 letter was a distress call from a despondent lady who had lost all hopes of survival from the clutches of her despicable husband. Latha was illiterate and therefore, she needed somebody's help to write a letter to her brother. PW3, who was her neighbour is also an illiterate woman. Hence, Latha accompanied by P.W. 3 went to an Anganwadi situated about 1 km. away from the appellant's house. P.W. 4 (Eliamma) was a teacher in that Anganwadi and P.W. 5 (Santha) was a Helper there. On the request of the deceased it was P.W. 4 who scribed Ext. P2 letter in an inland form brought by the deceased. After finishing the letter P.W. 4 posted the same in the Edad Post Office in the address of P.W. 10, (Vijayan) the brother of the deceased. The letter was initially delivered to P.W. 11 (Vijayan) who also bears the same and who was a close friend of P.W. 10. P.W. 11 took the liberty of reading the letter and handed over the same to P.W. 10. (All that could be made out from the postal seal on Ext. P2 inland letter is 1999 which is presumably the year of despatch. The chances are that Ext. P2 letter might have been sent in the month of December 1999 which was about three months prior to the occurrence.) The evidence of P.W. 18 shows that the appellant and the deceased were the only inmates of the appellant's house after their marriage. (This is a fact admitted by the appellant also during his examination under Section 313, Cr. P.C.). On 26.3.2000 at about 5.30 p.m. P.W. 3

(Kamalakshi) saw the deceased on the veranda of the house of the appellant. Her lips, face and neck were swollen. When enquired, the deceased told the witness that the appellant has assaulted her and she had lost one tooth from her lower jaw. The deceased also told P.W. 3 that the accused had gone to the liquor shop and she would be killed on that day and the people will see only her dead body on the next day. P.W. 3 had told P.W. 18 that she had seen the deceased with bleeding injuries on her face on that day evening. P.W. 18 remarked that the appellant had brought back the deceased the previous Tuesday to kill her. Deceased Latha was missing from the house of the appellant from 26.3.2000 onwards and thereafter his house remained locked. (This has been admitted by the appellant also when examined under Section 313, Cr. PC.). After 26.3.2000, the appellant was not staying in the house during night time. He used to make hurried visits to his house during day time. The appellant was hiding in a place called Aruvikkuzhy which is an uninhabited rocky area near the river situated about 1 k.m. away from the appellant's house. It is inside the forest. The appellant had not lodged any complaint before any authority regarding the disappearance of his wife. After three days of the disappearance of Latha, a foul smell was emanating from the lower portion of the appellant's property where there were bushes and a thicket. On 30.3.2000, P.W. 1, P.W. 7 and others had attended the marriage of the son of one Ravi. P.W. 7 told P.W. 1 that there was a stink coming from the property of the appellant. Thereupon, on the same day at about 2 p.m. P.Ws. 1, 7, 12 and others went to the property of the appellant and found a partially burnt and decomposed body. From the withered appearance of the legs they could make out that it was the dead body of Latha. All of them then went in search of the appellant. They found the light of fire on a rock inside the forest and proceeded to the spot with torch light to find the two accused persons cooking food and living there. It was at or about 7 p.m. on 30.3.2000. Some of them took up positions behind the trees to catch hold of the accused in case, they attempted to escape. P.W. 1 and three others proceeded towards the accused giving them the impression that they came there for fishing. They asked the appellant as to why he was staying there when his wife was missing and enquired with the appellant whether he was aware about the disappearance of his wife. Thereupon the appellant retortingly asked them as to how were they concerned if his wife was

missing. The visiting party told him that they had come there with full knowledge about what transpired and asked the appellant to accompany them to the police station. Thereupon the appellant jumped to the side of the rock. Then Sasi and Reji caught hold of the appellant and they called others who had taken up positions elsewhere. The appellant who offered stiff resistance was soon overpowered and both his hands were tied. Since the visiting villagers did not know about the complicity of the 2nd accused at that time they did not make any attempt to apprehend the 2nd accused who did not accompany them also to the Police Station. When it was almost sure for the appellant that he would be taken to the police station he reluctantly told them that if he was not handed over to the police and got tortured, he would make a clean breast of what transpired. The visiting party agreed. The appellant then made a confession in the presence of P.Ws. 1, 7, 12 and others to the effect that he committed a mistake by accident and asked them not to tell anyone. To the question as to where his wife was, the appellant confessed that the previous Sunday he picked up a quarrel with her and he beat her up and throttled her and that in the course of that incident his wife died and her body was taken to his Pramba and set on fire. By about midnight the Jeep of PW8 (Sabu) was procured and the appellant was taken to the Kanjar Police Station. While inside the Jeep also he once again confessed with an earnest request to his apprehenders not to allow him to be tortured by the police. P.W. 20 (Ramesh) who was the Sub-Inspector of Kanjar Police Station recorded the first information statement of P.W. 1 at about 3 a.m. on 31.3.2000 and registered Ext. P1(a) FIR against the accused. P.W. 23 (Vijayan) who was the Circle Inspector of Police, Kanjar conducted the investigation of the case. He held the inquest over the dead body and prepared Ext. P3 inquest report. He sent the dead body to the Medical College Hospital, Kottayam for post-mortem examination. P.W. 21 (Dr. Babu) who was the Assistant Professor of Forensic Medicine conducted the autopsy on the dead body on 1.4.2000 at 9.30 a.m. Ext. P9 is the post-mortem certificate issued by him. P.W. 21 opined that the death was due to blunt force applied on the neck inside which the right thyroid cartilage had shown an irregular fracture and cricoid cartilage showed a vertical fracture with infiltration of blood. He had also noted that tooth number 31 on the lower jaw of the dead body was missing with infiltration of blood in its socket. As requested by the Investigating

Officer he retained MO7 skull and mandible from the dead body. After sending the dead body for post-mortem P.W. 3 proceeded to the scene of crime on 31.3.2000 at 2 p.m. and prepared Ext. P7 scene mahazar as per which he recovered certain objects including MO3 photograph containing the photograph of deceased Latha. On questioning the appellant he made a confession to P.W. 23 that MO1 Thali chain and MO2 series of earstuds had been sold by him to a jeweller at Vagamon. Accordingly the appellant took PW23 to the jeweller (P.W. 16) from whom the Thali chain and the pair of earstuds were recovered as per Ext. P6 mahazar to which PW17 is a witness. During the course of investigation P.W. 23 had made a requisition to P.W. 22 (Dr. R. Sreekumar, the Scientific Assistant in the Forensic Science Laboratory, Thiruvananthapuram) to conduct super-imposition tests on MO7 skull and mandible with the aid of MO3 photograph. P.W. 22 conducted the said test and as per Ext. P11 report and P12 video film concluded that MO7 skull and mandible was that of Latha of MO3 photograph. After the close of investigation, P.W. 23 charge-sheeted to the two accused persons for the offences referred to earlier.

11. All the non-official prosecution witnesses in this case are rustic villagers who are used to a slow life when compared to the fast and sophisticated life style of their urban brotheren. The sluggish chronometric sense of the countryside community in India is too well known. Coupled with this, there is the other well-known fact that the powers of observation, retention and recapitulation differ from person to person. Witnesses cannot be expected to possess a photographic memory so as to recall accurately the sequence of events or every minute detail of an occurrence witnessed by them sometime in the past especially when they are overtaken by other events. (See Sahebrao Bobade v. State of Maharashtra, : 1973 CriLJ1783 and Bhogin Bhai Kirji v. State of Gujarat, : 1983 CriLJ1096 . Exaggerations, omissions and contradictions are bound to occur even in the statement of the most truthful witnesses because those are attributes or frailties of the human mind. As long as the main core of their testimonies remains unshaken, Judges, having regard to their experiences in life and to the common course of human conduct, generally ignore the minor discrepancies and inconsequential omissions. In assessing the value of evidence Judges are bound to call to their aid their experience of life and test the evidence on the anvil of probabilities. (See

Chaturbhuj Pande v. Collector, : [1968]1SCR412). Even wholly truthful witnesses are liable to be overawed by the Court atmosphere and the incisive and intimidatory cross-examination and very often they fumble out of nervousness or confusion and may even try to give foolish answers from imagination. There is nothing in the evidence of P.Ws. 7, 10, 12 to suggest that their testimony is unworthy of credence for all or any of the grounds alleged by the appellant. The Trial Judge who had the advantage of seeing the witnesses and assessing their demeanour and credibility has chosen to believe those witnesses who are country folk with average intelligence and imperfect recollection.

12. It is true that the evidence of P.Ws. 1, 7 and 12 would go to show that it was only when they gave some assurance to the appellant that he will not be handed over to the police to be tortured that the appellant came out with the extra-judicial confession. But since these witnesses are not persons in authority there is no merit in the contention that the confession was secured through inducement, threat or promise. In order to attract the bar under Section 24 of the Evidence Act, the threat, inducement or promise must proceed from persons in authority. The circumstances relied on by the appellant do not in any manner affect the voluntariness of the confession made by the appellant. We, therefore, endorse the finding of the Trial Judge that the extra-judicial confession made by the appellant was one which can safely be relied on as one of the circumstances against the appellant.

13. The stand taken by the appellant was one of total denial. Even after the disappearance of his wife from 26.3.2000 as admitted by him, he did not complain to any of his neighbours or to the police. It was only for the first time in this appeal that the appellant came out with a plea based on corpus delicti (the existence of the essential facts, such as the body of the offence etc. which prove the commission of the crime). It is well settled that even failure to recover the dead body is not by itself a ground to discard the prosecution case as false. (See Sheopujan Chamar and Ors. v. State of Bihar, AIR 1991 1463; Ram Gulam Chaudhury and Ors. v. State of Bihar, : 2001 CriLJ4632 ; Mani Kumar Thapa v. State of Sikkim, : 2002 CriLJ4069) Secondly, there is ample evidence to prove the identity of the dead body as that of Latha, the wife of the appellant. Latha had a

physical deformity. Both her legs below the knee were unusually slim and withered due to polio and she was found of applying nail polish on her toe nails. It was the aforesaid deformity which helped the local people and P.W. 10 the brother of the deceased to identify the partly burnt and decomposed deadbody, the face of which was mutilated beyond recognition. No doubt, the above deformity of deceased Latha is not specifically highlighted either in Ext. P3 inquest report or in Ext. P9 postmortem certificate. But it is well settled that inquest is held to find out the apparent cause of death and autopsy is conducted for medically confirming the cause of death. The appearance of the legs of the deceased was not a relevant aspect in that direction. It cannot also be forgotten that the dead body was recovered from the compound of the appellant in a decomposed and partly charred state. It was full of maggots and worms. In that state of putrefaction one cannot expect either the investigating officer or the autopsy surgeon to closely examine the legs of the deceased.

14. The identity of the dead body has otherwise been confirmed by PW22 (Dr. Sreekumar) through the super imposition technique. P.W. 22 observed similarities in 8 important parameters. The decisions reported in *Ram Lochan Ahir v. State of West Bengal*, : 1963 CriLJ170 ; *State of Karnataka v. Bhoja Poojari and Anr.*, 1998 SCC (Cr.) 184; *Chandran v. State of Kerala*, 1994 (2) KLT 175; and *State of Kerala v. Venga Gopalan and Ors.*, 1994 (2) KLJ 507, indicate that super-imposition technique is a judicially accepted mode for identifying dead bodies and other disputed objects. That apart, the appellant has no case that his wife is still alive. He did not even care to complain that his wife was missing. The recovery at the instance of the appellant of MO1 Thali chain and MO2 series of earstuds identified by P.W. 10, P.W. 3 and others as unmistakably that of deceased Latha lends further assurance to the fact that it was none other than the appellant who abstracted the same from dead body that was recovered from the shurbs in the property of the appellant. It was the appellant who had sold those ornaments to P.W. 16 the jeweller after the death of the deceased. No Indian woman while alive will ordinarily allow her Thali chain which is so sacrosanct to her to be appropriated by her husband or anybody else. The loss of one tooth from the lower jaw on the mandible in MO 7 confirms the evidence of P.W. 3 (Kamalakshi) that on the date of occurrence she had seen the deceased with a swollen face and

a dislocated teeth exactly at the spot where the socket in MO3 mandible was found empty.

After an anxious re-appraisal of the oral and documentary evidence of the case we see no reasons to interfere with the conviction entered and the sentence passed against the appellant by the Court below. This appeal is accordingly dismissed.

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