

Crl.Appeal No.82 /2019

-: 1 :-



2024:KER:97014

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

FRIDAY, THE 20TH DAY OF DECEMBER 2024 / 29TH AGRAHAYANA, 1946

CRL.A NO. 82 OF 2019

CRIME NO.1781/2011 OF Neyyattinkara Police Station,
Thiruvananthapuram

(AGAINST THE ORDER/JUDGMENT DATED 29.05.2018 IN SC NO.1900
OF 2013 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT-
VI, THIRUVANANTHAPURAM, ARISING OUT OF THE ORDER/JUDGMENT IN CP
NO.48 OF 2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS
-I, NEYYATTINKARA)

APPELLANT:

VALSALAN, C.NO. 2750
AGED 58 YEARS
S/O.DEVADASAN, C.NO.2750, CENTRAL PRISON AND
CORRECTIONAL HOME, THIRUVANANTHAPURAM AND RESIDED
AT NEDUVILA VEEDU, MAMPAZHAKKARA, MAMPAZHAKKARA
DESOM, PERUMPAZHUTHOOR VILLAGE,
THIRUVANANTHAPURAM.

ADV.D.AJITHKUMAR (STATE BRIEF)

RESPONDENT/COMPLAINANT:

1 STATE OF KERALA,

Crl.Appeal No.82 /2019

-: 2 :-



2024:KER:97014

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.

2 INSPECTOR OF POLICE, NEYYATTINKARA POLICE STATION.

BY ADV SMT.AMBIKA DEVI S, SPL.GP ATROCITIES
AGAINST WOMEN & CHILDREN & WELFARE OF W & C

OTHER PRESENT:

SMT NEEMA T V, SR. PP.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
17.12.2024, THE COURT ON 20/12/2024 DELIVERED THE
FOLLOWING:



CR

**RAJA VIJAYARAGHAVAN V,
&
P.V.BALAKRISHNAN,JJ.**

Crl.Appeal 82 of 2019

Dated this the 20th day of December 2024

JUDGMENT

P.V.BALAKRISHNAN,J

This appeal is filed by the sole accused in SC No.1900/2013, aggrieved by the conviction and sentence imposed against him under Section 302 IPC by the Additional Sessions Court–VI, Thiruvananthapuram.

2. The prosecution case is that, on 4/11/2011 at about 10.30 am, the accused hacked his wife Esther using a chopper inflicting multiple injuries on her neck and head, inside their house situated in Neduvila and murdered her.

3. In the trial court, the prosecution examined PW1 to



PW21 and marked Exhibits P1 to P26 documents and MO1 to MO10. On examining accused under Section 313 Cr.P.C, he denied all the incriminating circumstances appearing against him and pleaded innocence. From the side of the accused, no oral or documentary evidence was adduced. The trial court, on an appreciation of the evidence on record and after hearing both sides, found the accused guilty and convicted him under Section 302 IPC. The accused was sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs.2 Lakhs under Section 302 IPC. In case of default in payment of fine, the accused was ordered to undergo Rigorous Imprisonment for a period of one year.

4. Heard Adv.D.Ajithkumar (State Brief) appearing for the appellant and Adv.Neema.I.V., learned senior Public Prosecutor appearing for the respondent.

5. The learned counsel for the appellant contended that, on the basis of the evidence let in by the prosecution, the conviction



against the accused cannot be sustained. He argued that the prosecution has not established the entire chain of circumstances linking the accused to the crime. He submitted that the prosecution has not proved convincingly that the accused was last seen with the victim since the evidence of PW2 and PW4 are not credible. He also argued that the chain of circumstances allegedly proved by the prosecution is not consistent only with the hypothesis of guilt of the accused and definitely gives room for an inference that some other person can also be involved in the crime.

6. On the other hand, the learned Public Prosecutor contended that the prosecution has proved the chain of circumstances which conclusively point out the guilt of the accused. She argued that the evidence let in by the prosecution would show that a fight had occurred between the deceased and accused on the morning of the fateful day and that thereafter, it was the accused alone who was present with the deceased, till



the recovery of the body. She contended that the evidence of PW2 to PW4 would show that the accused had left the place of occurrence immediately after the incident and the evidence of PW12 would show that he had directly gone to the police station. She also argued that the scientific evidence let in by the prosecution confirms the presence of the accused with the deceased at the relevant time and the accused has not offered any explanation as to how his wife sustained fatal injuries. Hence, she argued that the said fact itself is an incriminating circumstance against the accused providing an additional link in the chain of circumstances against him.

7. Before evaluating the evidence, we would first discuss the material evidence let in by the prosecution. PW1 is the brother of the deceased Esther. He deposed that Esther was residing with her husband and son near their house, which is situated about 10 feet away. On 4/11/2011, while he was in the Church, his neighbour Murali came and called him. They went to



the house of his sister and through a window, saw his sister lying with injuries on her neck, over an induction cooker kept on a stool. He went back to the Church and after prayers, got out and saw the accused and policemen coming out of the deceased house. The police entered the house and took his sister in an ambulance to Neyyattinkara hospital where she was declared dead. Thereafter, he gave Ext.P1 FIS to the police. He also identified the lungi and blouse worn by the deceased at that time as MO1 and MO2. In his cross examination, he stated that a month ago, he and his sister fell apart and that he was informed about his sister's death by Murali at about 11.30 am. He further stated that at that time, the accused was wearing a green colour lungi and sandal colour shirt and he identified the lungi as MO3.

8. PW2 is a neighbour of the accused. He deposed that in the morning of 4/11/2011, while he was returning to his work place after having breakfast in Mampazhakkara, he saw the accused coming out of the gate at about 11 am. At that time, the



accused was wearing a green coloured lungi and a sandal coloured shirt. He was profusely sweating and his dressing was scruffy. On that day, he was working in the house of one Shobhy which is near to his house.

9. PW3 is an auto driver plying auto rickshaw from the stand at Mampazhakkara. He deposed that the deceased was staying along with her husband and son and on 4/11/2011, at about 11.00-11.30am the accused came to Mampazhakkara and hired his auto rickshaw to Neyyattinkara hospital. He dropped the accused in front of the hospital and the accused paid Rs.100/- as auto charge. After alighting from the auto rickshaw, he saw the accused walking towards the police station and at that time, he was wearing a green lungi and a sandal coloured shirt. After some time, he saw the accused being taken in a jeep by the police. He identified the lungi worn by the accused as MO3.

10. PW4 is the sister-in-law of the deceased. She deposed that the deceased is her neighbour and is residing in a house



50ft. away. From her house, she can see the house of the deceased and can even hear calls from there. From her house, she can also see the courtyard of the deceased house. On 4/11/2011 at about 10 am, she saw the deceased along with the accused standing in front of their house and at that time, their son Aneesh had gone for work. Later, while she was in the kitchen, she heard the cry of the deceased and when she came out of the kitchen, saw the accused wearing a green lungi and sandal coloured shirt going outside. She informed Murali and asked to tell her husband about it. It is thereafter, when Murali along with her husband went to the house of Esther, they saw her lying with injuries. On that day at about 8.00-8.30 am, a fight took place between the deceased and the accused, while Aneesh was present. On an earlier occasion, she has also witnessed the accused chasing the deceased to hack her and the deceased running inside her sister Rajamma's house. She also identified MO1 to MO3. In her cross examination, she stated that



she saw the body of the deceased at about 11.30 am.

11. PW5 is the son of the deceased and the accused. He deposed that he was staying along with his father and mother in the house and on the fateful day, he left for his job at about 9.55 am. Later at about 12.15 pm, he received information about the incident at his workplace and when he came back, understood that his mother had been taken to the hospital. On that morning, a fight took place between his father and mother regarding the sale of a cow and on an earlier occasion, about two months ago, there was an incident wherein his father had tried to hack his mother and his mother seeking refuge in her sister's house. In his cross examination, he stated that their family and his uncle's family were not on good terms at that time.

12. PW8 is the neighbour of the deceased. He deposed that PW4 came to him and told him about hearing a cry from the house of the deceased and the accused going towards Mampazhakkara and requested him to inform her husband who is



in the nearby Church. He went to the Church and along with PW1, went to the house of Esther and saw her lying there with injuries, in a pool of blood. After some time, the police and the accused came there and the body was taken to the hospital. On 4/11/2011, at about 8 am, there was a fight between Esther and the accused. When the accused came with the police, he was wearing a green lungi and a shirt.

13. PW9 is the sister and neighbour of the deceased. She deposed that on 4/11/2011 at about 8.00-8.30am she had gone to the house of Esther to take her for Ayurvedic treatment. At that time, the accused and his son were present and the accused did not permit her to take Esther for treatment. When she reached there, she saw the accused and Esther indulging in a fight. Later, the accused caught hold of her hand, dragged her on to the road, and ordered her not to come to his house again. On an earlier occasion, which is about two months ago, the accused tried to hack Esther and at that time, she had sought refuge in



her house.

14. PW10 is a witness to Exhibit P3 scene mahazar and the recovery of MO4 chopper from the bedroom of the house.

15. PW11 is a witness to the seizure of the lungi worn by the accused. He deposed that he was present in the police station and had signed in Ext.P4 mahazar while MO3 was seized. In his cross examination, he denied the suggestion that the accused was wearing dhoti and shirt at the time when he came to the place of occurrence with police.

16. PW 12 was the ASI attached to the Neyyattinkara police station at the relevant time. He deposed that on 4/11/2011 at about 12 pm, the accused came to the police station wearing a yellow shirt and a green lungi with black stripes and informed him that he had inflicted injuries on his wife by hacking her. Immediately, the SI took the accused in a jeep and thereafter they came back at about 1.40pm. He identified the lungi worn by the accused as MO3. In his cross examination, he denied the



suggestion that the accused was wearing a shirt and dhoti at the relevant time.

17. PW16 was the SHO attached to Neyyattinkara police station at the relevant time. He deposed that at about 1.30 pm on that day, PW1 came to the police station and gave Ext.P1 FIS and on that basis he registered Ext.P7 FIR. Before that, at about 12 pm, the accused came to the police station and told him that he had hacked his wife. On hearing the same, he along with the accused had gone to his house and saw a lady lying there with injuries. Then the victim was taken in an ambulance to the hospital where she was declared dead at about 1.10pm.

18. PW17 is the Professor of Forensic Medicine attached to the Medical College Hospital, Thiruvananthapuram, who conducted the Post Mortem examination on the body of Esther and issued Ext.P8 certificate. She noted 10 ante-mortem injuries, out of which nine are incised wounds on the head and neck and injury Nos.1 to 6 were almost horizontal and parallel to each



other. According to her, the cause of death is due to injuries sustained to the head and neck and that all the injuries could be caused by MO4. She added that injury Nos.1,6 and 9 are sufficient in the ordinary course of nature to cause death and the death was caused due to profuse bleeding and the injuries caused are not possible in a fall. She further stated that the blood group was tested at the Blood Bank and the same was found as 'A' Rh Positive.

19. PW19 is the Assistant Director, Serology, who examined the material objects in this case. He deposed that item Nos. 1 to 5, 7 8 & 9(b) (MO1, MO2, MO5, MO4, MO6, MO8, MO3, MO10 respectively) contain human blood belonging to Group-A and item No.9(a)(MO9) contains sampling human blood. Blood was not detected in item No.6, which is an unstained controlled sample and the report issued by him was marked as Ext.P15.

20. PW20 deposed that on 28/6/2014, while holding



charge of Assistant Director, DNA, in FSL, Thiruvananthapuram, he had examined eight items received in this case and had issued Ext.P16 report. On such examination, he found that the blood stains in item Nos.1 to 5, 7 and 8 belong to the deceased to whom the blood sample in item No.9(b) belong.

21. PW21 is the investigating officer. He deposed that he conducted the inquest and prepared Ext.P5 report and at that time took into custody the dresses worn by the victim. The lungi, blouse and bra of the victim thus seized were identified by him and as MO1 to MO3. Thereafter, he visited the place of occurrence along with the scientific assistant and prepared Ext.P3 scene mahazar. At that time, he recovered MO4 chopper, took samples from the blood spattered in the wall (MO6), a control sample (MO7) and blood stained cotton (MO8). He stated that the accused had appeared before him in the police station and had confessed to the commission of the crime and hence he had along with the accused gone to the spot. Later, at 7pm on



4/11/2011, he arrested the accused after preparing Exts.P18 to P20 documents and seized the MO3 lungi worn by him by preparing Ext.P4 mahazar. Later he produced all articles before the Court as per Exhibits P22 to P25 property list and also produced the scene plan and ownership certificate received by him. He completed the investigation in this case and filed the final report. In his cross examination, he stated that at the time when the accused came before him in the police station, he was wearing a green lungi and a shirt.

22. In the present case, there is no dispute regarding the fact that the death of Esther is by homicide. The evidence of PW17 coupled with Exhibit P8 Post Mortem certificate confirms the same. Her evidence coupled with Ext.P8 goes to show that Esther had suffered nine incised wounds on her neck and head and that injury Nos.1,6 and 9 are sufficient in the ordinary course of nature to cause death. She has also opined that the death was due to the injuries thus sustained by the victim in her head



and neck and that the injuries can be caused by a weapon such as MO4 chopper.

23. In the present case it is to be seen that there is no direct evidence available to inculcate the accused and that the prosecution is relying upon the circumstantial evidence including a circumstance relating to the last seen theory. In a case of circumstantial evidence, the principal fact or factum probandum can be proved indirectly by means of certain inferences drawn from factum probans ie; the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances, from which the existence of the principal fact can be legally inferred or presumed. Now before probing into the evidence in detail, we are of the view that it would be apt to discuss a few settled principles of law on this point. In **Sharad Birdhichand Sarda v. State of Maharashtra**



[(1984) 4 SCC 116], the Hon'ble Apex Court has categorised five important conditions to be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence. The conditions are:

- “1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- 2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- 3) the circumstances should be of a conclusive nature and tendency,
- 4) they should exclude every possible hypothesis except the one to be proved, and
- 5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

24. In the decision reported in **Subash Chand v. State of Rajasthan [(2002) 1 SCC 702]**, the Apex Court has reminded that even though the offence is gruesome and revolts the human conscience, an accused can be convicted only on legal evidence and that too, if the chain of circumstantial evidence has been



forged so as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In **Shankarlal Gyarsilal Dixit v. State of Maharashtra [(1981) 2 SCC 35]**, the Apex Court cautioned that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions," and held that between 'may be true' and 'must be true' there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned as a convict. In short, we may say that the inference of guilt against an accused can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person and the circumstances, which are relied on by the prosecution for drawing such an inference, are proved beyond reasonable doubt.

25. Keeping the above principles in mind we will now analyse the evidence. In the present case, the first circumstance



relied on by the prosecution is the fight which the accused and deceased Esther had among themselves immediately before the incident. While evaluating the evidence on this aspect, it is to be seen that PW4, who is their neighbour and relative and who is residing close to, has stated that at about 8.00 –8.30am both of them had a fight regarding the issue relating to the sale of a cow, in the presence of their son. It is to be taken note that evidence of PW4 is also corroborated by the evidence of PW5 who is the son of the victim and the accused. His evidence also reveals that in the morning at about 8.00-8.30 am, there occurred a tiff between his father and mother regarding the sale of a cow. His evidence also reveals that at that time his father had even attempted to demolish the cowshed. The evidence of PW4 and PW5 also is well supported by the evidence of PW9, the sister of the deceased. According to her, at about 8.00-8.30 am when she went to take Esther for Ayurvedic treatment, she saw Esther and the accused indulging in a fight. At that time, the accused



even caught hold of her hand and removed her from the house and stated to her that she must not come to his house again. Even though these witnesses are seen cross examined extensively, nothing has been brought out in their evidence to disbelieve their testimonies.

26. The second circumstance relied on by the prosecution is the sighting of the accused with the deceased at a time proximate to the alleged commission of the crime. On an appraisal of the evidence on this point, it is to be seen that PW4, has specifically stated that while she was in the kitchen she had heard the cry of Esther and on coming out, sighted the accused going out wearing MO3 lungi and a shirt. Her evidence also reveals that it is immediately thereafter, on her providing the said information to PW8, PW1 and PW8 had gone to the house of Esther and had seen her lying in a pool of blood with injuries. It is to be taken note that the evidence of PW2 also corroborates with the evidence of PW4 and shows that at about 11 am, while



he was coming back to his workplace from Mampazhakkara, he had seen the accused coming out through the gate of his house. His evidence also reveals that at that time the accused was profusely sweating and his dress was unkempt. The evidence of these witnesses is further supported by the evidence of PW3, the autorickshaw driver who took the accused to Neyyattinkara. His evidence reveals that at about 11.00-11.30 am, the accused has hired his auto rickshaw to Neyyattinkara hospital from Mampazhakkara and has paid him Rs.100/-. It is also discernible from his evidence that after alighting from the autorickshaw, the accused had gone to the police station. Further, the evidence of PW12 and PW16 also lends support to the evidence of PW3 and shows that the accused had in fact gone to the police station at 12pm on the fateful day. It is the law that in order to constitute evidence of last seen together, the evidence must definitely permit an inference being drawn that the victim and the accused were seen together at a point of time in close proximity with the



time and date of the commission of the crime. In the present case, the evidence of the afore witnesses unerringly shows that just before the victim was found lying with injuries, the accused was seen leaving his house. It also shows that the accused has thus left his house to the police station in the autorickshaw of PW3. At this juncture we will take note that the evidence of PW4 and PW5 confirms the fact that Esther was living along with her husband and son, and that PW5 was not present at the relevant time since he had left for his job. If so, it can safely be inferred that the accused was the person who was last seen with the deceased.

27. The Hon'ble Apex Court in the decision in **Nizam v. State of Rajasthan [(2016) 1 SCC 550]** has held that last seen theory is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty and it permits the court to shift the burden of proof to the accused. Then, the accused has to offer a reasonable



explanation as to the cause of death of the deceased. In **State of Rajasthan v. Kashi Ram [(2006) 12 SCC 254]**, the Apex Court has held thus:

“**23.** The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his



knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain.”

In the present case, admittedly the accused has not offered any explanation as to how his wife has sustained the fatal injuries, which is a fact within his exclusive knowledge, and has thus failed in discharging the burden cast upon him under Section 106 of the Evidence Act. If so, we are of the view that the said factor will act as an additional link in the chain of circumstances proved against the accused.

28. Another circumstance, relied on by the prosecution to complete the chain, is the presence of the blood of the deceased in the dress worn by the accused. It is the prosecution case that, immediately after the incident, the accused was seen wearing a lungi and that the blood stain of his wife was found in it. While appreciating the evidence on this aspect, it is to be



seen that the evidence of PW2 and PW3 would go to show that while leaving the house, the accused was wearing MO3 lungi. The evidence of PW12 would go to show that the accused had reached the police station at 12 pm by wearing the very same lungi. Thereafter, the accused was taken to the place of occurrence by PW16 wearing the very same lungi and the said fact is revealed from the evidence of PW8. The evidence of PW21 and PW11 coupled with Ext.P4, would go to show that the said lungi (MO3) contained blood stains and that it was seized by the police at about 7.10 pm on the same day. The evidence of PW21, coupled with Exhibit P24, would show that MO3 was sent to the court on 22/11/2011 and thereafter, was forwarded for chemical examination as per Ext.P21. The evidence of PW19, coupled with Exhibit P15, shows that MO3 contains human blood belonging to Group-A and the evidence of PW20 coupled with Ext.P16 shows that the same is the blood of the deceased person. The accused has not offered any explanation as to how



and under what circumstances, the blood of the deceased came in MO3. The afore fact also is a link in the chain of circumstances leading this Court to infer the guilt of the accused.

29. Be that as it may, the evidence on record shows that immediately after the accused left the scene, PW1 and PW8 had gone to the scene and has witnessed Esther lying in a pool of blood with injuries, inside the kitchen of the house. Further the evidence of PW21, coupled with Exhibit P3, reveals that he has reached the spot immediately along with the Scientific Assistant and has recovered MO4 chopper with blood stains in it and has taken a sample from the bespattered blood. PW21 also conducted the inquest of the deceased and seized MO1, MO2 and MO5 worn by her. All the above articles along with the sample blood collected by PW17 while conducting Post Mortem were forwarded to the FSL and Exts.P15 and P16 reports would go to show that all of them contained the blood of the deceased. Further, it is to be taken note that PW17, after seeing MO4, also



has categorically stated that the injuries sustained by Esther can be inflicted by that weapon.

30. The upshot of the afore discussions on evidence, is that the prosecution has proved beyond reasonable doubt all the circumstances in the chain leading this Court to safely infer the guilt of the accused. The prosecution has clearly established the following incriminating circumstances against the accused, which enables the inference:

- a) The accused had a fight with his wife Esther at about 8.00-8.30 am on 4/11/2011.
- b) The accused was the only person who was present in the house with his wife at the relevant time.
- c) The accused was seen leaving his house at about 11am on 4/11/2011, shortly before Esther was found lying in a pool of blood.
- d) MO3 lungi worn by the accused at that time was found containing the blood of Esther.
- e) No exculpatory explanation to discharge burden cast under Section 106 of the Evidence Act has been offered by the accused.



The complete chain thus proved by the prosecution, is consistent with no other hypothesis, except the guilt of the accused. The trial court has properly appreciated the evidence on record and has arrived at a correct conclusion of guilt against the accused. The appellant could not bring out any material which would enable this Court to interfere with the said conclusion. Ergo, we find no merit in this appeal and the same is only to be dismissed.

Resultantly, this appeal is dismissed.

Sd/-

RAJA VIJAYARAGHAVAN V
Judge

Sd/-

P.V.BALAKRISHNAN
Judge

dpk