

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 22ND DAY OF JULY 2021 / 31ST ASHADHA, 1943

CRL.A NO. 1078 OF 2017

[CRIME NO.1710/2014 OF Perinthalmanna Police Station,

Malappuram]

[AGAINST THE JUDGMENT IN SESSIONS CASE No. 287/2015 ON THE

FILE OF THE ADDITIONAL SESSIONS JUDGE-II, MANJERI]

APPELLANT/ACCUSED:

KUMARAN (C NO. 691/2017), S/O. KURUMBAN,
CENTRAL PRISON, KANNUR

BY ADV SRI. P.P. PADMALAYAN (STATE BRIEF)

RESPONDENT/STATE:

STATE OF KERALA REP.BY THE PUBLIC PROSECUTOR
SRI. ALEX THOMBRA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
05-07-2021, THE COURT ON 22.07.2021 DELIVERED THE FOLLOWING:

K.VINOD CHANDRAN & ZIYAD RAHMAN A.A., JJ.

CRL. APPEAL No.1078 of 2017

Dated this the 22nd day of July, 2021

JUDGMENT

Ziyad Rahman A.A., J.

1. This appeal is filed by the accused in S.C.No 287/2015 on the file of the Additional Sessions Judge-II, Manjeri, wherein he was tried for the offences punishable under Sections 450, 302 and 201 of the Indian Penal Code. As per the judgment passed by the Sessions Court, he was convicted and sentenced for imprisonment for life and to pay fine of ₹25,000, with a default sentence of rigorous imprisonment for 6 months.

2. The prosecution case is as follows: On 28-12-2014 at 4 AM, the accused committed trespass into the house of the victim by climbing over the concrete roof thereof, where the deceased and PW1 were sleeping, inflicted multiple blows on his head and body with a heavy hammer, causing fracture of skull bone, ribs, thoracic vertebrae and fled from the spot immediately thereafter. The accused

succumbed to the injuries instantaneously and the Inspector of Police, Perinthalmanna registered Crime no 1710/2014 in respect of the said incident, chargesheet was filed after investigation, and the accused was tried. The prosecution examined PWs 1 to 12, marked Exhibits P1 to P23, and identified Mos 1 to 11. Contradiction in the deposition of PW4, with his statement recorded under S.161 of Cr.PC, was marked as Exhibit D1. After prosecution evidence, all the incriminating evidence were put to the accused under Section 313 of Cr.P.C and he denied the same. On analysis of the entire materials, the Tribunal found the accused guilty and accordingly he was sentenced in the manner mentioned above.

3. We heard Mr. P.P. Padmalayan, the learned counsel for the Appellant/accused and the learned Public Prosecutor Mr. Alex Thombra. The learned counsel for the accused contented that the prosecution miserably failed in establishing the guilt of the accused and the judgment passed by the Sessions Court is not legally sustainable. The learned counsel points out that there are several discrepancies in the evidence. He disputes the prosecution case as to the time of death by placing reliance upon the postmortem certificate. The place of occurrence is also disputed, as according to him, the offence was allegedly committed on the roof of a building, which is built in a slanting position towards both sides from the middle and as

per prosecution case, at the relevant time, the victim along with PW1 was sleeping on the roof. According to him, it is impossible to sleep on the slanting roof. He also raises serious disputes as to the veracity of prosecution version, by pointing out that taking into consideration the total space available on the roof, it is impossible to commit the act alleged by the prosecution. The evidence of PW2 is highly suspicious. PWs 1 to 3 are planted witnesses, whose presence was highly unlikely. The son of the deceased who was available in the house was not examined. The version of PW2 that in the early morning the accused trespassed into the house armed with the hammer is very improbable given the circumstance that she did not alert the other persons residing therein. Similarly, he disputes the motive alleged against the accused. The evidence projected by the prosecution for showing the way the accused fled from the scene of occurrence, is not believable. The recovery of weapon is also seriously disputed by highlighting certain discrepancies in the evidence of PW4, the attestor of the seizure mahazar of MO10 weapon. We shall deal with all those contentions in due course, one by one.

4. On the other hand, the learned Public Prosecutor objects to the contentions of the learned counsel for the accused and asserted that the prosecution has established the guilt of the accused without any reasonable doubt. The discrepancies highlighted by the learned

counsel for the accused are not at all material and not sufficient to discard the case of the prosecution. Accordingly, he prays for dismissal of the appeal.

5. Ext P22 FIR was registered on the basis of the information furnished by PW1, vide Ext P1 First Information Statement. The contents of FIS, which was recorded at 8 AM on 28-12-2014 are as follows: PW1 is the wife of the accused, whose marriage was solemnised four years prior to the date of occurrence. The marital life of PW1 with the accused was not at all happy, as he was in the habit of ill-treating her after consuming alcohol. As the ill-treatment became unbearable, she left him and started living with the deceased who was one of her relatives. Thereafter both lived as husband-and-wife for 6 days, until his death on 28.12.2014 at the hands of accused. Being enraged by the relationship between PW1 and the deceased, the accused used to threaten both, stating that they would be killed. Previous night of the date of occurrence, both PW1 and the deceased, after having food, climbed on to the roof of the house of the deceased and slept. By about 4 AM on 28.12.2014, she heard the deceased crying loudly and she woke up to see the accused beating the deceased with a hammer. Even though she tried to interfere, she was pushed aside by the accused. Hearing her outcry, the mother of the deceased (PW2), who was sleeping inside the house, so also his uncle

(PW3) who is residing nearby, reached the spot. In the meanwhile, accused ran over the roof of the adjacent houses and escaped from the scene by getting down through a tree hanging over to the roof of the house of Smt. Usha, which is in the near vicinity. On close scrutiny of the deceased they realised that he is no more. She further stated that the accused had married earlier and his 1st wife Lakshmi eloped with some other person. He is having a son in that relationship. She stated that, the accused in this case, was also involved in another murder case. According to her, the reason for committing murder of the deceased is the grudge nursed by the accused against the victim, as PW1 started living with the deceased.

6. Ext. P10 is the Post-mortem Certificate, which was proved through PW11 doctor, who noted following injuries on the body of the deceased;

" 1. Lacerated wound avulsed downwards and backward seen on the Rt side Lead. 0.1 cm, 8.5 cm above, Rt ear, exposing bone underneath which showed a rather Semi-lunar depressed fracture. 2.5 X 2 cm on the outer table (more depress on the upper arm) and a circular depressed fracture 3 X 3 cm the inner table.

2. Contused abrasion 8 X 6 cm on the Rt side face, ear below and in front year lobe, with multiple fracture jaw bone underneath with the contusion on and around.

3. Contused abrasion 6 X 5 cm on the Rt side neck, 3 cm behind the ear. Lower part 16 cm Rt to middle front, with contusion of muscle underneath and fracture of the transverse

process. 1st and 2nd cervical vertebra, Rt side with rupture of right vertebral artery. Spinal-cord was covered with blood.

4. Lacerated wound 3.5 X 2 cm on the left side head tissue deep 8 cm above ear.

5. Abrasion 7 X 3 CM, on the left the forehead, from outer half of left eyebrow and 1X1 cm below eyebrow.

6. Contused abrasion, 6 X 2 cm on the left side of chest just outer to root of neck.

7. Abrasion, 1.8 X 1.5 cm on the left side face just below eye.

8. Thick subarachnoid haemorrhage on the base of brain with extension towards upper the haemorrhage was thin. Ventricles contained blood with dust clots. Blood was coming from the spinal column, on removal of brain."

As per the opinion of PW11, death was due to subarachnoid haemorrhage due to blunt injuries to neck and head. Injury No. 3 was the major injury which resulted in injury No. 8. Injury No. 1 was also a fatal injury. PW11 further opined that, injuries 1 to 4, 6 and 8 could be inflicted with the MO10 weapon. The said opinion was expressed by him after the weapon was shown to him. From the evidence of PW11 coupled with the contents of Ext P10 Postmortem Certificate, it can be safely concluded that the death of the deceased was a homicide and it was due to the injuries, possibly caused with MO10 weapon. That conclusion takes us to the next question as to whether it was the accused, who committed the said homicide as alleged by the prosecution.

7. The crucial evidence relied on by the prosecution is that of PW1, who is an eyewitness to the incident, and on whose first information statement, the proceedings had commenced. She spoke of the incident specifically in tune with what she had stated in Ext P1 FIS. She states that, for 6 days preceding to the date of occurrence, she was residing along with the deceased in his house and the other inmates were the mother and son of the deceased. She was forced to leave the accused, who was her husband for the last four years, to join the deceased, as the accused used to illtreat and assault her under the influence of alcohol. After she started residing with the deceased, on two occasions the accused approached them for taking PW1 along with him, which she refused. Previous night of the date of occurrence, they went on to the terrace of the house of the deceased and slept there. By about 4 AM, she heard the outcry of the deceased and the sound of hitting with hammer. When she woke up she saw the accused beating the deceased with a hammer two or three times. She cried loudly and hearing this the mother of the deceased and her uncle Kumaran (PW 3) rushed to the spot. PW3 reached the place of occurrence after switching on the lights of his house which is in the neighbourhood itself. Immediately the accused took to his heels over the terrace of the adjacent houses and slithered down through a tree hanging towards the roof of the house of one Usha, a neighbour. She

further stated that, while inflicting blows, the accused was shouting : "give my woman to me". The deceased died on the spot. She clearly identified the accused in the moonlight. The motive for committing the crime was stated to be that of PW1 having left her marital home to live along with the deceased. The accused was earlier involved in another case wherein he committed the murder of his uncle and he was imprisoned in Central jail. She also identified MO10 weapon and the other articles such as, shirts, undergarments, chappals etc. recovered from the scene of occurrence. Even though she was subjected to thorough and detailed cross examination, the defence could not elicit any material to shake her credibility. She has given a graphic description of the incidents occurred at the time of occurrence, which was perfectly in tune with the FIS made by her immediately after the incident.

8. The specific case of the learned counsel for the accused is that, the presence of PW1 at the time of occurrence is highly suspicious and she is a planted witness. However, on considering the evidence available, we do not think that the said contention is legally sustainable. Her presence at the place of occurrence at the relevant time, is clear from the deposition of PW2 and PW3. As mentioned above, PW2 is the mother of the deceased who was residing along with the deceased and on the date of occurrence she was sleeping

inside the house. The evidence of PW2 is clearly in tandem with the evidence of PW1 in all respects. According to her, at about 4 AM, she heard an outcry of PW1 from the terrace and immediately she came outside and from the road lying in front of the house, she had seen the accused leaving the place of occurrence holding a hammer. He ran over the roof of the adjacent houses and climbed down the roof of the house of Usha, through a tree hanging towards the said roof. She also narrates the history of the relationship of PW1 with the accused as well as the deceased, just as mentioned by PW1. The motive suggested by her was also in tune with what was stated by PW1. However the learned counsel for the accused seriously disputes the veracity of the evidence of PW2. One of main circumstances from which he draws suspicion is the incident narrated by her, which according to PW2, occurred just before the commission of offence. She states that the accused came inside the house of the deceased and opened the front door in search of deceased. As he could not find the deceased, he left and she heard the outcry of PW1 sometime thereafter. The learned counsel points out that this is something which was not revealed to the Police when her statement was recorded under Section 161 Cr.P.C. Apart from the above, the learned counsel for the accused also brought our attention to the statement which she made during cross examination wherein she stated that after the

accused left the house of the deceased, she slept and she came to know about the death only in the morning. By highlighting the above discrepancies, the learned counsel for the accused contents that the evidence of PW2 is not at all relevant and must be discarded completely.

9. It is true that the statement made by PW2 contain certain material improvements from her statement under Section 161 of Cr.P.C. At some point, she also makes a statement contradictory to her main case, during the course of cross examination. But the question that emerges is whether such exaggeration or embellishment (if it is treated so) makes the evidence of PW2 unreliable. In our view, merely because of the reason that there is some exaggeration or embellishment in the deposition of the witness, from that stated to the police, cannot be a reason to discard the entire evidence unless it is so contradictory as to disprove the material aspects spoken of by the witness. The attempt of the court should always be to find out the grains of truth from such evidence, by carefully scrutinizing the evidence as a whole. This is particularly so, when dealing with the evidence of uneducated people with rustic background. It is evident that crucial witnesses i.e PW1 to 3, in this case belong to a scheduled tribe and are socially and economically backward. We cannot rule out such witnesses attempting certain exaggerations and embellishments,

which presumably are made by them to project their version as more truthful. Our view is fortified from the observations of the Hon'ble Supreme Court in the decision rendered in **Shivaji Sahab Rao Bobade and Another Vs State of Maharashtra (1973 (2) SCC 793)**. At para 8 of the said judgment it is observed as follows:

"Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioral pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post mortem certificate. Certainly, the Court which has seen the witnesses depose, has a great advantages over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious unveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the Court of appeal is in as good a position to assess or arrive at legitimate conclusions as the Court of first instance. Nor can we make a fetish of the trial Judge's psychic insight."

In the decision in **State of U.P Vs Anil Singh (AIR 1988 SC 1998)**, the Honourable Supreme Court observed as follows:

"It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

When we consider the evidence of PW2 as a whole, by keeping the above principles in mind, the only conclusion possible is that the improvements made by her would not affect the veracity of her version of the incident. The fact that she had not mentioned about the act of the accused in entering the house of the deceased before committing his murder, cannot be a reason to disbelieve her entire testimony. There are several reasons for this. At first , the version of PW2 regarding the manner in which the incident occurred is tallying with the deposition of PW1 in all respects; except the minor exaggeration. Further, the evidence of PW1 and PW2 were also corroborated by the version of PW3 who came to the place of occurrence immediately after the incident. According to PW3, he heard the outcry of PW1, while he was sleeping on the sit-out of his

house, which is in the neighbourhood itself (about 30 mtrs away from the house of deceased). Immediately he switched on the lights of his house, and he could see the accused leaving the place of occurrence holding a hammer. He identified the said hammer as MO10. Immediately, he called his son and both together rushed to the house of deceased. Thereupon he found the body of the accused and PW1 along with PW2 on the terrace. When the evidence of PWs 1, 2 and 3 are taken together, it provides mutual corroboration on all relevant aspects. Even though the incident of the accused inflicting blows on the body of the deceased with the hammer, was witnessed by PW1 only, all the incidents which occurred before and immediately after the incident were clearly spoken of by PW2 and PW3, which are without any inconsistencies/discrepancies other than some minor insignificant variations. In short, when we are taking into consideration the entire evidence of these three witnesses, it clearly goes along with the prosecution case as to the manner in which the offence was committed by the accused and the means which he had opted for committing the same.

10. Even though the learned counsel for the accused strenuously argues that the said witnesses are planted witnesses whose presence at the relevant time at the place of occurrence were doubtful, no materials are available to accept the same. He attempted

to project a case that, on the date of incident, PW2 along with the son of the deceased, were at the residence of her daughter at Pattambi. However no materials are available indicating the same and no such case was put to any of the witnesses, despite the fact that, all the said witnesses were cross-examined at length by the learned counsel for the accused. It also has to be noticed that this very case set up by the defence cuts at the root of the ground raised of the son of the deceased having not been examined. Even otherwise there is no mandate that every witness present at the scene of occurrence has to be examined. When three very credible witnesses are available it is not necessary that the son of the deceased, who too was present in the house, had to be necessarily examined.

11. The learned counsel for the accused further contends that, PWs 1 to 3 are close relatives of the victim and they are highly interested. Similarly, he also contends that, the said witnesses, particularly PW1 nursed an enmity with the accused and hence it is not safe to base a conviction on such evidence. It is a well settled position of law that, merely because, the witness is a close relative to the victim, evidence of such witness cannot be discarded, treating it as an interested version. Unless otherwise established, it cannot be concluded that a person who is closely related to the victim, would make any statement for falsely implicating any person, so as to

permit the real culprit to escape from the clutches of law. In the judgment reported in **2009 (13) SCC 630 (Mohabbat and others Vs State of M.P)**, it was held by the Honourable Supreme Court as follows:

"Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

Regarding the suspicion thrown on the evidence of witness due to enmity, we are of the view that, mere enmity, even if it is proved cannot be a ground to discard the evidence, if the such evidence is found to be reliable. In the judgment reported in **2001 (1) SCC 318 (Anil Rai Vs State of Bihar)** this question was specifically considered. At paragraph 18 of the said judgment, it is observed as follows:

".....The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However,

the mere existence of enmity in this case, particularly when it is alleged as a motive for commission of crime cannot be a basis to discard or reject the testimony of the eyewitnesses, the deposition of whom is otherwise consistent and convincing."

12. In this case, we have found the evidence of PWs 1 to 3 as convincing, reliable, and consistent. We have no reason to believe that their depositions were influenced by enmity. The contentions of the learned counsel in this regard are only to be rejected.

13. Another major contention raised by the learned counsel for the accused is regarding the improbability of committing the alleged crime at the place of occurrence or rather the impossibility of the prosecution version of the couple having slept on the slanting roof. He points out that the body of the deceased was found on the terrace of a building and nowhere in the records produced by the prosecution it is mentioned about any staircase or any other means to climb over the terrace. In such circumstances, the learned counsel for accused contends that, the prosecution story that the deceased along with PW1 were sleeping on the terrace at the time of incident cannot be believed. To substantiate the said contention, he also relies on the nature of the roof, which is slanting downwards from the middle, and normally it may not be possible to sleep on such a surface. Similarly, he further points out that the deceased and PW 1, started their marital life (even if there was no proper marriage) very recently and

no prudent couple would chose to spend their initial days of a conjugal relationship in such an open space.

14. When we consider the probabilities/improbabilities suggested by the learned counsel for the accused, it can be seen that all those contentions are unsustainable. Regarding the lack of evidence of existence of staircase or other means to climb over the roof, we are of the view that, the same is not very crucial in the peculiar facts and circumstances of this case. We have gone through Ext P4 scene mahaser wherein, no description of the building is specified and the scene of occurrence, the terrace of the building and that of the neighbouring buildings through which the accused fled alone are mentioned. It is hence, nothing is mentioned in Ext P4 Scene mahazer about the existence of any staircase. We also see that the road proceeds on an incline and the terrace in which the murder was committed was at just a height of 2.35 meteres from the mud road and the terrace of the house of Usha is just at a height of 90 cm from the mud road. The houses were hence situated at a lower level than the road, with its terrace just above the road. It is hence the accused is said to have ran down from the terrace of the deceased to the adjacent house of Usha, the terrace of which was closer to the road. The death occurred on the terrace and the body was lying on the concrete slab on a mat as seen from Ext.P3 inquest report. Pws 1

to 3 clearly mentioned that at the relevant time PW1 and the deceased were on the terrace at the relevant time. Neither the police officers who prepared Ext P3 inquest report as well as Ext P4 scene mahazer, nor the witnesses who attested the said documents, have stated anything about placing or making any additional means to climb over the roof of the building. It is also evident from the above evidence as well as the contents of Ext P3 that, several articles were found along with the dead body and were taken into custody as per Ext P2 seizure mahasar, which were identified as a MOs 1 to 9. The said articles were the dresses and sandal clearly leading to the inference that the said place was being used for normal human habitation indicating frequent ingress and egress. The presence of PW1 with the deceased on the terrace was clearly spoken of by her and the same was corroborated by the evidence of PW 2. From the reading of Ext P3 inquest report, there is no indication that the body was placed on the terrace after committing the murder of the deceased. In such circumstances, non-mentioning of existence of any means to climb over the roof cannot be treated as a discrepancy, so as to create a shadow of doubt on the prosecution case. That, the body of the deceased was found on the terrace, the accused's presence in the place of occurrence as proved by the evidence of PWs 1 to 3, the presence of PW1 on the terrace as proved by the evidence

of PWs 2 and 3 etc. are crucial pieces of evidence which rule out the necessity to give any significance to the non-mentioning of existence of means to climb on to the roof. This is more so, as there are no materials to arrive at any other theory regarding the place of occurrence or commission thereof, in any manner other than that described by the prosecution.

15. Regarding the improbability of sleeping on a slanting surface, we are of the view that the same also cannot be sustained. The incline of the roof is mentioned in Exts. P3 & P4 to be very slight. PW2 in her evidence has clearly stated that it is possible to lay on the terrace just as laying on a cot. From Ext P4 scene mahazar also, we are unable to find anything to conclude that the slanting of the terrace makes it impossible for a person to lie there and sleep. Next improbability highlighted by the learned counsel for the accused is relating to the chances of a newly married couple opting to sleep on an open space. According to the learned counsel for the Appellant during the initial days of marriage the couple would be more concerned about their privacy and under no circumstances they would choose an open space. This cannot be treated as a ground at all. Privacy is something very subjective and person centric. It varies from person to person. Moreover, it is evident from Ext P4 that, just in front of the house of the deceased there is a road and there is rubber

plantation beyond that. Apparently the road in front of their house is not a busy street being a village road, and the population density in the area is not so high. Further, they used to sleep there during night. For these reasons, it cannot be treated as a crucial matter sufficient enough to throw suspicion on the prosecution case. Another instance pointed out by him is that, the deceased was found wearing undergarments when he was attacked and this is also not probable particularly as the deceased and PW1 were a new couple. Here again, it depends upon the individual habits and nature, and it varies from person to person. Those aspects are not sufficient to draw any adverse inference against the case advanced by the prosecution.

16. Another aspect highlighted by the learned counsel for the accused is the case of the prosecution to the effect that, immediately after the incident he ran over the roof of the adjacent houses and got down through a tree hanging towards the roof of the house of one Usha. According to the learned counsel, there are no materials to conclude that the roof of the buildings are close enough to run over from one to another. However, Ext P4 scene mahazar shows otherwise. Ext P4 was proved by PW6, the attestor of the same. In the said document, the distance mentioned between the roof of the building where the incident took place and the roof of the adjacent house is only 5 cms and the height difference is only 30 cms. All the

three houses including the 3rd house, from the roof of which the accused got down through a tree hanging over to the same, are identical in size and close to each other. Further, Ext P4 clearly mentions the existence of a tree close to the 3rd house, which can be used climbing down from the terrace on to the mud road. So, when all these materials are taken together, it is evident that there cannot be any improbability as projected by the learned counsel for the accused, but on the other hand, it makes the case of the prosecution more probable.

17. Apart from the above aspects, the learned counsel points out several aspects such as, going by the size of the terrace, it is impossible to commit such a crime thereon and that if the PW1 was pushed away by the accused, as stated by her, she would have fallen down and sustained injuries. We are of the view that, those aspects cannot create any shadow of doubt over the prosecution case for in any situation there could be probabilities otherwise. Considering the nature of weapon used, which is a heavy one normally used for breaking granites, the fact that the victim and PW1 were sleeping at the relevant time, the manner in which the gruesome act was committed of striking the head of a supine person and the immediate fleeing of the accused, it can be held that the prosecution case is proved beyond reasonable doubt. PW1 did not say that she intervened

or was pushed away by the accused. The prosecution case cannot be disbelieved on the various contingencies which could have arisen, which from the narration is not inevitable of having occurred.

18. The learned counsel also attacks the prosecution case on the ground that, as per the probable time of death as mentioned in Ext P10 postmortem certificate, the time of incident as per the prosecution case cannot be correct. He points out that, as per Ext P10 postmortem certificate, the death might have occurred between 6 -19 hours prior to the postmortem. The postmortem was conducted at 1.30 PM, whereas the prosecution case is that the incident occurred at 4 a.m. Relying upon this, the learned counsel contends that, the death might have occurred much earlier. We are of the view that, time mentioned in Ext P10 is not specific and it only indicates a span of time during which the death might have occurred. The time of death as per the prosecution case falls within the said span. So, there is no significance in the contention of the accused in this regard.

19. Next is regarding the recovery of MO10 weapon. The weapon was recovered based on the confession statement given by the accused and the seizure was affected as per Ext P2, which was proved by PW4. Serious disputes are raised by the learned counsel for the accused regarding the presence of PW4 at time of seizure. A contradiction of the said witness, with reference to his statement

recorded under Section 161 of Cr.P.C was also marked as Ext D1. The recovery was affected based on Ext P11 confession statement in which, the accused stated that, he had concealed the hammer in a firewood shed near a place where the labourers were residing. The said recovery was proved by the evidence of PW12 investigating officer as well. On scanning the entire evidence, we are unable to find any material to suspect the recovery as having not been properly made on the confession of the accused. The contradiction marked is of the witness having told the police that he came there on getting prior information that the accused is being brought to the spot by the police. In court he said that on seeing the police vehicle he followed it. The contradiction is not material enough to eschew the recovery . The confession statement of the accused is proved through the evidence of PW12 as well. It is a valid and admissible piece of evidence under Section 27 of the Indian Evidence Act and the contention of the accused is only to be rejected.

20. The learned counsel for the accused attacks the prosecution case for not explaining the relevance of several dress materials recovered from the scene of occurrence and identified as MOs 1 to 9 and it includes dress materials other than those worn by the deceased at the time of death. According to him all those dresses were menswear and it suggests the probability of the presence of

another male at the place of occurrence. However, detection of such materials from the place of occurrence cannot lead to any such inference, unless there are supporting materials. There are sufficient materials to rule out all hypothesis supporting the innocence of accused. Hence that contention of the learned counsel for the accused is only to be rejected.

21. When moving on to scientific evidence, the relevance is on the blood stains on MO10 weapon. The specific case of the prosecution is that, after committing the crime, the accused washed MO10, for removing the bloodstains therein and for this he was also charged with offence punishable under Section 201 of the Indian Penal Code. Even though MO10 weapon was subjected to chemical analysis, only result was that there were bloodstains found on the same, but it was not sufficient enough to identify the characteristics of the blood. In our view, the presence of blood itself is a crucial factor which provides a link to the crime. PWs 2 and 3 have mentioned that the said hammer is usually used for breaking granites and its characteristics as mentioned in Ext P2 makes the said assumption probable. Normally it would be impossible to find blood stains on such a hammer, unless the same is used for any purpose as alleged by the prosecution. The fact that the bloodstain could be detected only during scientific analysis is also an aspect leading to the sustainability

of the prosecution case that the accused washed MO10 after commission of the crime, to destroy the evidence and thereby committed the offence under Section 201 of I.P.C.

22. The evidence of the Doctor who was examined as PW11, coupled with the injuries noted in Ext P10 Postmortem Certificate clearly lends support to the prosecution case that it was with MO 10, the offence was committed. The nature of injuries clearly suggest that those were inflicted with a hard/heavy object and after examining MO10, PW 11 clearly opined that the injuries mentioned in the Postmortem Certificate could be inflicted with that. We have no reason to disbelieve or discard the expert evidence of PW11 and the contents of Ext P10.

23. Similarly, the contention of the learned counsel for the accused that the prosecution failed to examine the fingerprints of the accused on MO10 and this creates a shadow of doubt on the prosecution case, is also not sustainable. It is true that no such exercise has been done by the prosecution. However the lapses of the prosecution on this aspect cannot lead to the finding that the accused is not guilty, particularly when there is ample evidence available to arrive at the conclusion of guilt of the accused. In this case, there is evidence of PW1, who is an eyewitness and her evidence is clearly corroborated by the evidence of PWs 1 and 3. The finding on the

question of guilty or not guilty is to be based on quality of evidence and not on the quantity thereof. It is a well settled position of law that even if there is only a single piece of evidence which is reliable and valuable, it could be the basis of a conviction.

24. The learned counsel for the accused throws suspicion on the motive suggested by the prosecution as well. According to the learned counsel, the fact that PW1 was not assaulted by the accused, even while attacking the deceased brutally, creates a suspicion. However, in our view, the materials available and also the words spoken of by the accused while committing the crime that "give me my woman" clearly indicate the grievance of the accused, against the deceased and not towards PW1. The said words make the motive suggested by the prosecution to be reasonable and in any event motive is not an imperative requirement where there is direct evidence, as is the case here of the eye-witness testimony of PW1.

25. Thus, from overall analysis of entire materials, our findings can be summed up in the manner as follows: The prosecution case is clearly spoken of by PW1, an eye witness, in very clear terms and it leaves no room for any other possibilities. The evidence of PW2, though contain certain exaggerations are embellishments, cannot be discarded as unreliable. It corroborates the version of PW1, in the matter of commission of crime and also the motive behind the same.

The evidence of the said witnesses are fortified by the evidence of PW3 as well. In short, the evidence of PWs 1 to 3 is mutually supportive and lends credence to each other. The said evidence, coupled with the recovery of MO10, as proved by PW4, PW12 and Ext P2, points to the use of the said weapon in the commission of the offence. Evidence of PW11 and Ext P10 Postmortem Certificate, clearly establishes the fact that, death was due to the injuries sustained by the deceased, which could in all likelihood have been inflicted by MO10. PWs 1 to 3 have clearly spoken of the presence of the accused at the place of occurrence at the relevant time and immediately thereafter, with MO10 weapon and the said witness have identified the said weapon as well. The fact that PW1 is the wife of accused who deserted him some days before the incident to live with the deceased, clearly indicate the grudge of the accused against the victim and thus establishes the motive for crime. The past of the accused, which is tainted with criminal antecedents, i.e his involvement in another murder case, makes the prosecution case stronger. From all the above crucial evidence, no conclusion, other than the guilt of the accused is possible and accordingly we hold him guilty as has been done by the trial Court.

In such circumstances, we find no infirmity in the findings of the Sessions Court, holding the accused guilty and the imposition of

sentence for the offences charged against him. Accordingly, this appeal is dismissed, being devoid of any merit.

Sd/-

**K. VINOD CHANDRAN
JUDGE**

Sd/-

**ZIYAD RAHMAN A.A.
JUDGE**

pkk