

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

CRL.A.No. 263 of 2010 ()

AGAINST THE JUDGMENT DATED 6-10-2009 IN SC 28/2004 of
ADDITIONAL SESSIONS JUDGE, NORTH PARAVUR, ERNAKULAM DISTRICT

APPELLANT(S)/ACCUSED:

PRADEEP
MANGALATH VEEDU, KIDANGOOR KARA, THURAVOOR VILLAGE
ERNAKULAM DISTRICT.

BY ADVS.SRI.B.RAMAN PILLAI (SR.), SRI.R.ANIL,
SRI.ANIL K.MOHAMMED, SRI.SUJESH MENON V.B.
SRI.JOSEPH P.ALEX
SRI.SHYAM ARAVIND & SRI.T.ANIL KUMAR

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
PROSECUTOR, HIGH COURT OF KERALA.

R1 BY PUBLIC PROSECUTOR SRI. K.K. RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**K.T.SANKARAN
&
B. SUDHEENDRA KUMAR, JJ.**

.....
Crl.Appeal No. 263 of 2010
.....

Dated this the 5th day of August, 2015

JUDGMENT

Sudheendra Kumar, J.

The appellant is the accused in S.C. 28 of 2004 on the files of the Additional Sessions Court, North Paravur, who in this appeal challenges the judgment of conviction and sentence passed by the trial court under Section 302 IPC.

2. The prosecution case can be briefly stated thus:-

On 2-2-2001, in connection with the festival of Kothakulangara Bhagavathi Temple, there was a Ganamela. The Ganamela started after 1 a.m. on 2-2-2001. PW1 and PW2 were listening the Ganamela by sitting on the Aalthara situated on the

eastern side of the said temple. While so, deceased Gopakumar came out from the temple. When the deceased reached on the northern side of the Aalthara, the appellant came there. There was some conversation between the appellant and the deceased. Thereafter, the appellant stabbed on the right and left shoulders, forehead, left forearm and on the left side of the chest of the deceased with MO5 knife. Gopakumar collapsed. He was taken to the Little Flower Hospital, Angamaly by PW1, PW2 and others. Gopakumar succumbed to the injuries at about 3.30 a.m. on that day at the Little Flower Hospital, Angamaly.

3. On the basis of Ext. P1 F.I. statement given by PW1, PW10 registered Ext. P8 FIR. Investigation was taken over by PW11, the Circle Inspector of Police, Angamaly on 2-2-2001 itself. He conducted inquest on the body of the deceased at the

Little Flower Hospital, Angamaly and prepared Ext. P2 inquest report. He visited the place of occurrence at 11.30 a.m. on that day and prepared Ext. P3 scene mahazar. PW11 arrested the appellant on 5-2-2001 at 11 p.m. Thereafter, the recovery of MO5 was effected by PW11 at the instance of the appellant as per Ext. P4 mahazar. After completing the investigation, PW11 laid the charge before the Magistrate Court concerned.

4. Before the Court below, PW1 to PW11 were examined and Exts. P1 to P17 were marked for the prosecution, besides identifying MO1 to MO13. During the cross-examination of PW2, Ext.D1 contradiction in the CD statement of PW2 was marked for the defence. No evidence was adduced on the side of the appellant. After evaluating the relevant inputs, the court below found the appellant guilty under Sec. 302 IPC and convicted him thereunder and sentenced him to imprisonment for life under Sec. 302 IPC.

5. We have heard the learned Sr. Counsel for the

appellant Sri. B.Raman Pillai, and the learned Public Prosecutor Sri. K.K.Rajeev.

6. PW7 was the doctor who conducted postmortem examination on the body of deceased Gopakumar and issued Ext. P5 postmortem certificate. PW7 noticed the following ante-mortem injuries on the body of the deceased as per Ext. P5 postmortem certificate:-

Injuries - (ante mortem):

- 1) Linear abrasion 2 cm long 9 cm below left elbow on the front aspect.
- 2) Linear abrasion 1cm long on the front of left forearm 6cm below the elbow.
- 3) Stab wound 6.5x 3cm on the left side of chest upper end 8cm left to nipple at 3 O' clock position/lower end 7 cm away from the left nipple at 4O' clock position. Margin of the wound was regular and clearly cut, lower and sharply cut upper part showed sharply cut two notches. The wound track was directed downwards forwards piercing through the 4th left intercostal space in the anterior axillary line piercing the lower lob of left lung and the right ventricle along

anterior descending branch of left coronary. The total depth of the wound was 11 cm. The wound on the lung was 4 cm. long and showed notching. The wound on the heart was 3 cm. long with notching. The pericardial cavity and left chest cavity contained 1500 ml. of fluid blood with clots.

4. Incised wound 2.5 x 1 cm on the back of left side along the muscle place for a depth of 2 cm near axillary line.
5. Incised wound 2.5x0.2cm skull deep 5 cm above left eyebrow.
6. Muscle deep incised wound 4x1.5 cm over the outer end of spine of scapula with tailing inwards.

7. PW7 opined that the deceased died due to injury No. 3 sustained to the chest of the deceased. PW7 further stated that due to injury No.3, the vital internal organs of the deceased were extensively damaged. The further evidence of PW7 is that injury No.3 is independently sufficient to cause death in the ordinary course of nature. PW7 further stated that all the injuries on the body of the deceased could be caused with MO5 weapon. PW7 noted notches in injury No.3. PW7 stated that the said notches

are possible if the weapon is twisted while stabbing or withdrawing. There is no material before the Court inconsistent with the finding of PW7 that the deceased died due to injury No. 3 sustained on the chest of the deceased.

8. PW1 was a Poojari in the temple. He witnessed the incident leading to the death of deceased Gopakumar. On 2-2-2001, there was festival of Kothakulangara temple. In connection with the festival, there was 'Ganamela'. While the Ganamela was going on, the deceased came out from the temple towards the Aalthara where PW1 and others were sitting. At that time, the appellant came near to the deceased and stabbed on his shoulders. When the deceased warded off a stab on the left shoulder, it hit on the forehead of the deceased. Thereafter, the appellant inflicted a stab injury on the left side of the chest of the deceased. The deceased collapsed. The accused ran away from there. The deceased was taken to the Little Flower Hospital, Angamaly, where he succumbed to the injuries at about 3.30 a.m.

He identified MO5 knife used by the appellant to inflict stab injuries on the deceased.

9. PW2 also witnessed the incident. PW2 stated that while Ganamela was going on in Kothakulangara temple, the deceased Gopakumar came out of the temple towards the Aalthara where PW2 and others were sitting. At that time, the appellant reached near to the Aalthara. The deceased and the appellant had talked about something. While so, the appellant took out a knife from his waist and stabbed on the right shoulder of deceased Gopakumar. When the deceased attempted to run, the appellant inflicted a stab injury on the left shoulder of the deceased. The appellant also inflicted an injury on the forehead of the deceased, brandishing the knife. Thereafter, the appellant stabbed on the left chest of the deceased and consequently, the deceased collapsed. The appellant ran away from the place. The deceased was immediately taken to Little Flower Hospital, Angamaly by PW2 and others. After reaching the Hospital, the deceased died.

He identified MO5 knife used by the appellant to inflict stab injuries on the deceased.

10. It has been argued by the learned counsel for the appellant that the circumstances available in this case would show that the First Information Report is ante-timed and in the said circumstances, the appellant is entitled to be granted the benefit of doubt. The learned counsel has pointed out three circumstances to support his argument, which are (1) no statement of eye witness was recorded in Ext.P2 inquest report, which would show that even at the time of conducting the inquest on the body of the deceased, the Investigating Officer was not aware of the involvement of the appellant in the commission of the offence, (2) PW2 stated that he had given statement to PW10 at about 4.30 a.m. on the fateful day and (3) PW1 stated that he had put only three signatures before the police and the said signatures were put by him at about 11.30 a.m. on 2.2.2001. Therefore, PW1 put his signature in Ext. P1 First Information

Statement only at 11.30 a.m.

11. We have considered the above said argument of the learned counsel for the appellant carefully. The inquest was conducted at 8 a.m. on 2.2.2001 by PW11. Ext.P2 inquest report contains the crime number of the case, which itself would show that inquest was conducted and Ext.P2 inquest report was prepared only after registering Ext.P8 First Information Report. It is true that the statement of no eye witness was recorded in Ext.P2 inquest report. However, it is clearly stated in Ext.P2 inquest report about the cause of death of the deceased. The involvement of the appellant in the commission of the offence had been clearly mentioned in Ext.P2 inquest report. PW11 stated that the statement of PW1 and PW2 was not recorded at the time of inquest for the reason that their statement had been already recorded by the police. The evidence of PW10, the Sub Inspector of Police, would show that he recorded Ext. P1 statement of PW1 at 5.a.m. on 2-2-2001, before he accompanied PW11 to the

place of occurrence. PW11, the Circle Inspector of Police, stated that he took over the investigation at 6 a.m. on 2-2-2001. The evidence of PW11 is that he recorded the statement of PW2 before he proceeded for the inquest. Since the statement of eye witnesses namely, PW1 and PW2 had been already recorded by the police before conducting the inquest, the non-recording of the statement of eye witnesses again at the time of inquest is not at all material or relevant. PW10 clearly stated that he recorded only the statement of PW1. The evidence discussed above would show that the statement of PW2 was recorded by PW11 and not by PW10. In view of the evidence of PW10 and PW11 discussed above, the evidence of PW2 that he had given statement to PW10 at 4.30 am. can only be a mistake, particularly when it is borne out from the records that PW2 was examined before the Court only after a period of more than 8 years from the date of occurrence.

12. PW1 clearly stated that he went to the police station

from the hospital. PW1 further stated that immediately when he reached the police station, he had given statement to the police. The statement of PW1 was recorded by PW10. PW1 further stated that after recording the statement, he put his signature therein. PW1 also admitted his signature in Ext. P1 First Information Statement. His further evidence is that he had gone to the place of occurrence at about 11 a.m., and showed the place of occurrence to the police. During cross-examination, PW1 stated that he was there in the police station till 11 a.m. In further cross-examination, he stated that he put his signature on two written papers at about 11.30 a.m. It is seen from Ext. P3 scene mahazar prepared at 11.30 a.m. on 2-2-2001 that the place of occurrence was shown to PW11 by PW1. The incident in this case was on 2-2-2001. PW1 was examined before the Court on 15-7-2009, which was after a period of more than 8 years from the date of occurrence. In the said circumstances, much significance cannot be given to the evidence of PW1 that he put

three signatures at about 11.30 a.m. on 2-2-2001, particularly, when PW1 clearly stated that F.I. statement was recorded by the police immediately when he reached the police station from the hospital and thereafter, he put his signature therein. For the said reasons, the argument of the learned counsel for the appellant that the FIR was ante-timed lacks merit.

13. The learned counsel for the appellant has further argued that there is delay in registering the FIR and also in reaching the same in Court and in the said circumstances, the accused is entitled to benefit of doubt. The learned counsel relied on the decision of the Apex Court in *Tara Chand and Another v. State of Haryana* (AIR 1971 SC 1891); *Thulia Kali v. The State of Tamil Nadu* (AIR 1973 SC 501); *Ishwar Singh v. State of U.P.* (1976 SCC (Cri.) 629); *Marudanal August v. State of Kerala* (AIR 1980 SC 638); *Arjun Marik and Others v. State of Bihar* (1994 SCC (Cri.) 1551); *State of A.P. v. Punati Ramulu and Others* (1994 SCC (Cri.) 734); *Kailash Gour & Ors. v. State*

of Assam (AIR 2012 SC 786); and also the decision of this Court in Kunjumammed & Ors. v. State of Kerala (2014 (2) KLJ 860) to buttress his argument.

14. The Apex Court in Tara Chand v. State of Haryana (supra) held that the object of Section 154 Cr.P.C. is to obtain early information of alleged criminal activity to record the substances before there is time for embellishment.

15. In Thulia Kali v State of Tamil Nadu (supra) the Apex Court held thus:-

“Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained”.

16. In Thulia Kali's case, the villagers witnessed the incident. However, they did not report the matter to the police for more than 20 hours after the occurrence, even though the police station was only 2 miles away from the place of occurrence. In the said circumstances, the Apex Court held that the above delay in reporting the matter to the police would give considerable doubt regarding the veracity of the evidence of the witnesses and hence was unsafe to base the conviction of the accused on the said evidence.

17. In Ishwar Singh v. State of U.P. (supra) the FIR was lodged at 9 a.m. on 14-2-1973. However, the said FIR was sent from the police station only on 15-2-1973. The time when it was despatched was not stated. However, it appeared from the records that the Magistrate received it only in the morning of 16-2-1973. In the said circumstances, the Apex Court held that the circumstances available in that case would provide a legitimate basis for suspecting that the first information report

was recorded much later than the stated date and hour, affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence.

18. In *Marudanal Augusti v. State of Kerala* (supra), there was a delay of 29 hours in receipt of the FIR by the Sub Divisional Magistrate. The Investigating Officer, inspite of being questioned on this matter, did not appear to have given any explanation whatsoever for this delay. On the other hand, the Investigating Officer stated that the FIR was despatched through express delivery. In that event, the FIR would have reached the Magistrate much earlier. There were also other intrinsic circumstances throwing serious doubt on the prosecution case. In the said circumstances, the Apex Court held that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated and brought into existence long after the occurrence.

19. In *Arjun Marik v. State of Bihar (supra)*, the incident occurred in the intervening night of 19/20-7-1985. The FIR was recorded in the morning of 20-7-1985. However, the FIR was despatched to the Magistrate concerned only on 22-7-1985. It was observed by the Apex Court that if in fact the FIR was already registered in the morning of 20-7-1985, there was no reason not to despatch the same to the Magistrate concerned till 22-7-1985. The Apex Court in *Arjun Marik's case (supra)* observed thus:-

“It is true that quite often there are valid reasons for the delay in the despatch of the first information report and it is not always a circumstance on the basis of which the entire prosecution case may be said to be fabricated, but it all depends on the facts and circumstances of each case where the circumstance of delay may lead to serious consequences”.

20. In ***State of A.P. v. Punati Ramulu*** (Supra), the Apex

Court observed thus:-

“Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues”.

21. In **Kailash Gour v. State of Assam** (supra), the Investigating Officer had the opportunity of getting first hand information of the incident of the eye-witness within minutes of the commission of the crime. Therefore, the Investigating Officer should have immediately recorded the first information report

based on the statement of the eye-witness and started investigation. However, that was not, what happened. No effort was made by the Investigating Officer nor was there any explanation for his failure to ascertain from the alleged eye-witness regarding the sequence of events and the names and particulars of those who were responsible for the crime. Instead, without registration of the First Information Report, the Investigating Officer completed the inquest, prepared a site plan and got the post-mortem of the dead body conducted long before registration of the first information report. In the said circumstances, the Apex Court in **Kailash Gour's Case (supra)** observed thus:-

“There can be only two explanations for this kind of a situation. One could be, that the Investigating Officer was so stupid, ill-trained, ignorant of the law and procedure that he did not realise the importance of getting a crime registered in the police station concerned before

undertaking any investigation including conduct of an inquest, post-mortem etc. The other explanation could be that since neither the Investigating Officer had any clue as to who the perpetrators of the crime were nor did the witnesses now shown as witnesses of the occurrence had any idea, the investigations started without any First Information Report being recorded till late at night on 15th December, 1992. We are inclined to believe that the second explanation is more probable of the two”.

22. In *Kunjumammed v. State of Kerala* (supra), this Court held that if the crime is not properly registered, the entire proceedings of investigation would be illegal and the entire edifice of the prosecution case built up on it would crumble down.

23. In the present case, the incident occurred on 2-2-2001 at 3.15 a.m. and the deceased died at 3.30 a.m. on the same day. The FIR was registered at 5 a.m. on 2-2-2001. PW1 stated that

immediately when the deceased was taken to the hospital, the doctor examined the deceased and declared him dead. PW1 clearly stated that he directly went to the Police Station from the Hospital when the doctor declared that the deceased was dead. Thereafter, he had given Ext. P1 statement to the police and pursuant to the said statement, Ext. P8 FIR was registered by PW10. It is borne out from the records that Ext.P8 was received by the Court at 3.45 p.m. on the same day. No material or circumstance is available on record indicating fabrication of the FIR. The inquest on the body of the deceased was conducted at 8 a.m. by PW11. Ext. P2 inquest report mentions about the crime number and the name of the appellant. Thus, the above discussion would show that the facts of this case are different from the facts of the decisions of the Apex Court discussed above and hence, the above decisions are not applicable to the case on hand. Having gone through the relevant inputs, we are satisfied that the FIR in the case on hand was registered by the police at

the earliest opportunity and the same was received in the court also without much delay. In the said circumstances, the argument advanced by the learned counsel for the appellant in this regard is devoid of merits.

24. It has been argued by the learned counsel for the appellant that since PW1 stated that he did not see the Circle Inspector of Police, Ankamaly on 2.2.2001 and that he had seen the Circle Inspector of Police only after 7-8 months from the date of incident, his evidence cannot be relied upon. It is true that PW1 stated in cross-examination that he did not see the Circle Inspector of Police on 2-2-2001 and that he had seen the Circle Inspector of Police only after 7-8 months from the date of occurrence. PW1 also stated that the name of the Circle Inspector of Police was Xavier Sebastian. No police officer as Xavier Sebastian was involved in the investigation of this case. PW1 himself would admit that he had gone to the place of occurrence and showed the place of occurrence to the police.

PW11 stated that PW1 had shown the place of occurrence to him. This would show that PW1 was not aware of the rank or name of PW11 and it was only because of that reason that PW1 stated that he did not see the Circle Inspector of Police on the fateful day. In the said circumstances, the evidence of PW1 that he did not see the Circle Inspector of Police on the fateful day cannot be given much significance. For the said reason, the argument in this regard is devoid of merits.

25. It has been further argued by the learned counsel for the appellant that even though MO5 is a double-edged weapon, PW1 clearly stated in Ext.P1 F.I.Statement as well as in his evidence before the court that MO5 is a single edged weapon and in the said circumstances, the prosecution case with regard to the recovery of MO5 cannot be accepted. It is not disputed that MO5 is a double edged weapon. It is in the evidence that the incident was at night at about 1.30 a.m. There was fluorescent light at the place of occurrence in connection with the Ganamela and in that

light only PW1 could witness the incident. The incident was at a place nearly 7 to 10 Metres away from the place, where PW1 was sitting. In the said circumstances, no accuracy with regard to the description of weapon could be expected from a rustic witness like PW1. However, PW1 identified MO5 and stated that MO5 was the knife used by the appellant to inflict injuries on the deceased. PW2 also identified MO5 knife. In the said circumstances, the mere description of MO5 as a single edged weapon by PW1 in Ext.P1 F.I. Statement and also in his evidence cannot be given much significance.

26. It has been further argued by the learned counsel for the appellant that the evidence of PW1 is not tallying with the prosecution version in Ext.P1 F.I. Statement and in the said circumstances, the evidence of PW1 cannot be accepted. It has been further argued by the learned counsel for the appellant that the evidence of PW2 is not in consonance with the evidence of PW1 and Ext.P1 F.I.Statement, and in the said circumstances, the

evidence of PW2 also cannot be accepted. The learned counsel for the appellant relied on the decisions of the Apex Court in Nallabothu Ramulu @ Seetharamaiah and Others v. State of Andhra Pradesh [(2014) 6 SCC (Cri) 673] = [(2014) 12 SCC 261], Suraj Mal v. The State (Delhi Administration) (AIR 1979 SC 1408), Chandmal and Another v. State of Rajasthan [1976 SCC (Cri) 120], to support his argument.

27. As per Ext. P1 F.I. statement, the appellant inflicted stab injuries on the right shoulder near to left arm pit, forehead and the left chest of the deceased with a knife. The evidence of PW1 is that the appellant stabbed on the right and left shoulders with MO5 knife. Stab injury was also inflicted on the forehead and on the left side of the chest with MO5 knife. The evidence of PW2 would show that the appellant inflicted injuries on the right and left shoulders, forehead and the left chest of the deceased with MO5 knife. Ext.P5 postmortem certificate would show that it contains injuries corresponding to the inflictions noted in

Ext. P1 statement and in the evidence of PW1 and PW2. Thus, it is clear that the evidence of PW2 with regard to the inflictions made on the deceased is fully in consonance with the evidence of PW1 and Ext. P1. It is true that in Ext. P1, it was stated that the appellant inflicted injuries on the shoulders while the deceased was running. However, the evidence of PW1 would show that the deceased did not run before sustaining injuries. PW2 stated that the deceased attempted to run. PW11 stated that the accused could run only two or three steps before sustaining the injury, as the place of occurrence was confined to a small area even though the ground in the temple premises was having large extent. In view of the above evidence of PW11, the statement in Ext. P1 that the deceased sustained injuries on his shoulder while the deceased was running, can be only a figurative expression. In view of the above reasons, the argument advanced by the learned counsel for the appellant in this regard fails.

28. In Nallabothu Ramulu @ Seetharamaiah and Others v.

State of Andhra Pradesh [(2014) 6 SCC (Cri) 673] = [(2014) 12 SCC 261], there were so many omissions and contradictions in the evidence of prosecution witnesses affecting the entire fabric of the prosecution case. There were altogether 30 assailants in the said case. However, the names of only a few could be figured. The names of other assailants were not stated by the witnesses. Eventhough, the witnesses stated that they would be able to identify the assailants, no identification parade was also held. The Apex court in that case did not accept the contention of the prosecution that the discrepancies in the evidence of witnesses were natural as the witnesses were examined before the trial court after five years of the incident. However, in the present case, the evidence of PW2 is fully in corroboration with the evidence of PW1 and Ext. P1 statement in all material aspects. Their evidence is free from any material omission or contradictions eventhough they were examined before the Court after a period of more than eight years from the

date of incident. The evidence of PW1 and PW2 is also corroborated by the medical evidence of PW7 and Ext. P5 postmortem certificate in all material aspects. In the said circumstances, the decision in Nallabothu Ramulu's case (supra) is not applicable to the facts of this case.

29. In *Suraj Mal v. The State (Delhi Administration)* (AIR 1979 SC 1408) the Apex Court held that where witnesses make two statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. In *Suraj Mal Case* (supra), the defence case was that the appellant did not make any demand for bribe and nothing was recovered from him and that he was falsely implicated in the case. The Special Judge on the basis of the evidence held that the evidence was extremely shaky and unconvincing and was not sufficient to convict the accused namely, Ram Narain but

nevertheless the trial court convicted the appellant therein on that very evidence. In the said circumstances, the Apex Court held that the High Court in upholding the conviction completely overlooked the fact that the very evidence on which the conviction of the appellant was based, had been rejected with respect to the main transaction and thus if the one integral part of the story was not believable, then the entire case failed. However, the facts of the case on hand are entirely different from the facts in Suraj Mal's case (supra). PW1 had given Ext. P1 F.I. statement. PW1 had also given evidence before the Court. Having meticulously gone through the evidence of PW1 in the light of Ext.P1, we do not find anything to hold that the version given by PW1 in Ext. P1 statement is materially different from the evidence given by PW1 before the Court. PW1 had given consistent version before the Court as well as in Ext. P1 F.I. statement. The evidence of PW1 is free from any material contradiction or omission. In the said circumstances, the

decision in Suraj Mal's case (supra) has no application to the facts of this case.

30. In Chandmal and Another v. State of Rajasthan [1976 SCC (Cri) 120], the FIR was lodged by Smt. Nazar Bai's son Shankar Lal, about seven days after the disappearance of Smt. Nazar Bai, and after making inquiries, from others including Madan Bai (PW2). In the FIR, there was no mention of the name of the appellant Chandmal at all. Madan Bai in the statement given to the police did not mention that the appellant Chandmal was seen following Smt. Nazar Bai. However, when Madan Bai was examined as PW2, her evidence before the Court was different from what she stated before the police. In the said circumstances, the Apex Court held that there was a witness who had spoken with different voices at different times and hence, her evidence did not inspire confidence. However, in this case, PW1 or PW2 did not give different voice at different times. In the said circumstances, the facts in Chandmal's Case (supra) are not

applicable to the facts of this case.

31. The learned counsel for the appellant relying on the decision of the Apex Court in *Meharaj Singh v. State of U.P.* [1994 SCC (Cri) 1390] argued that the absence of blood stains at the place of occurrence would show that the genesis of the prosecution case was suppressed by the prosecution and consequently, the appellant is entitled to the benefit of doubt. The occurrence in this case took place on a sandy ground in the temple premises. The date of occurrence was a day when “ganamela” was going on. There was huge crowd at the place of occurrence at that time. It would naturally cause disorder of the soil. Therefore, it was only natural that the blood stains could not be found at the place of occurrence when the police reached there. In the said circumstances, the argument advanced by the learned counsel for the appellant in this regard does not hold good.

32. The learned counsel for the appellant has argued that

the prosecution has failed to prove the motive for the occurrence and in the said circumstances, the prosecution case cannot be believed. It is true that the prosecution could not establish the motive in this case. However, this is a case where there is ocular testimony to prove the occurrence. Since direct evidence is available to prove the occurrence in this case, the failure on the part of the prosecution to establish the motive is not fatal to the prosecution case.

33. The evidence of PW1 and PW2 would show that the deceased inflicted injuries including a stab injury on the left chest of the deceased and as a consequence, the deceased died. We have anxiously gone through the evidence of PW1 and PW2 and we are satisfied that their evidence is natural, reliable and hence acceptable. There is no reason for PW1 and PW2 to falsely indict the appellant in a case like this. The evidence of PW1 and PW2 with regard to the occurrence is fully corroborated by the medical evidence of PW7 and Ext. P5 postmortem certificate.

The evidence of PW11 is that he arrested the appellant on 5-2-2001 at 11 p.m. When questioned, the appellant had given Ext. P4 (a) disclosure statement and pursuant to Ext. P4 (a) disclosure statement and as led by the appellant, MO5 knife was discovered by PW11 at the instance of the appellant as per Ext. P4 mahazar. The discovery of MO5 knife at the instance of the appellant pursuant to the disclosure statement given by the appellant is a strong piece of evidence connecting the appellant with the commission of the offence. The evidence of PW1 regarding the discovery of MO5 knife, pursuant to Ext. P4 (a) disclosure statement made by the appellant in police custody, is not doubt, admissible under Section 27 of the Evidence Act. Ext. P17 report of the chemical analysis would show that MO5 knife contained human blood. The detection of human blood on MO5 knife along with the discovery fastens the culpability on the appellant.

34. Having meticulously gone through the evidence on

Crl.Appeal No. 263 of 2010

record, we are satisfied that the prosecution succeeded in establishing that the appellant committed the murder of the deceased as alleged by the prosecution. In the said circumstances, the court below rightly convicted and sentenced the appellant under Section 302 IPC. Consequently, we find no reason to interfere with the verdict of guilty, conviction and sentence passed by the trial court under Section 302 IPC.

In the result, this appeal stands dismissed.

Dated this the 5th day of August, 2015.

Sd/-K.T. SANKARAN,
JUDGE.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge