

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

CRL.A.No. 830 of 2010

JUDGMENT IN S.C 78/2009 of I ADDITIONAL SESSIONS COURT, KOLLAM DATED 22-02-2010

APPELLANT(S):

SHENUKUMAR, C.NO.4775, CENTRAL PRISON, TVM.
CENTRAL PRISON, THIRUVANANTHAPURAM-12

BY ADV. LAKSHMI NARAYANAN K (STATE BRIEF)

RESPONDENT(S):

STATE OF KERALA, RP. BY A
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SMT. PRAICY JOSEPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T.SANKARAN & RAJA VIJAYARAGHAVAN V., J

Crl.A. No.830 of 2010 (C)

Dated this the 2nd day of September, 2015

JUDGMENT

"CR"

Raja Vijayaraghavan, J.

1. Charged with filicide, an unfathomable crime, the appellant was tried by the I Additional Sessions Judge, Kollam, in S.C.No.78 of 2009 for an offence u/s 302 of the IPC. Allegation was that he smothered and thereafter forcibly drowned his two sons, Sheffin and Sherrin, aged 1½ and 4 years respectively. As per judgment dated 22.2.2010, the learned Additional Sessions Judge, Kollam, has sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months.

2. The prosecution case, unravels in the following manner :-

The appellant, fell in love with PW1 Haseena, a Muslim girl, and they got married on 27.10.1998. In due course two sons were born in the wedlock who were aged 4.5 years and 1.5 years respectively during the relevant period. Initial happiness gave way to discordant notes in the family life. After initially staying at the family house of the wife , they shifted to a rental house at Karavaloor. On 10.9.2003, PW1 Haseena had taken the two minor children to the hospital and while she was returning back, she found the appellant in the house of PW5, Anilkumar. There arose a quarrel between PW1 and the accused and during noon, appellant brutally manhandled Haseena in the presence of her mother and sister who had come visiting. Fed up with the

antics of the appellant , the landlord asked the family to vacate his premises. Immediately thereafter, the appellant left the house with his elder son, Sherrin. After the appellant had left, Hassena's mother, who was present there, took Haseena to her house and her personal belongings were shifted to a neighboring house. It is the case of the prosecution that the appellant returned in the evening with his elder son. He changed his dress and left after leaving Sherrin at Home. At about 9 PM, he returned back with one Asokan, who is the father in law of one of the sons of PW2. He demanded PW1 to go with him. When she refused, the appellant took both his children, who were sleeping then, and left the house. He was carrying the younger child and was holding the elder child on his hand . On the same day , when the clock struck 12 am, the appellant himself went to

Anchal Police Station and is said to have confessed to the murder of his two children to PW10, the Head Constable, based on which Ext.P6 FIR was registered. This fact was communicated by PW10 to PW12, the Circle Inspector of Police, who in turn arrested the appellant/ accused at 1.30 a.m. Based on the disclosure made by the appellant and as led by him, PW12, the Circle Inspector of Police, went to the place of occurrence and found the body of the minor children lying in the Komalam canal. On 11.9.2003, inquest over the dead bodies of the minor children were conducted and the bodies were handed over to PW11, the forensic surgeon for conduct of postmortem. The appellant after arrest was produced before the jurisdictional Magistrate and was remanded. Thereafter, witnesses were questioned and the investigation was carried out by PW12, the

Circle Inspector of Police. PW13, Circle Inspector of Police, verified the investigation and laid the charge before the jurisdictional Magistrate.

3. The learned Magistrate initiated committal proceedings as C.P.No.99 of 2006. During the committal proceedings, the appellant absconded and the case had to be transferred to the list of long pending cases. Later, the appellant was arrested and the case was re-filed as C.P.No.205 of 2008. After complying with all the formalities, the case was made over to the learned Sessions Judge, Kollam for trial. The learned Sessions Judge made over the case to the First Additional Sessions Judge, Kollam for trial and disposal. The learned Additional Sessions Judge, after hearing the prosecution and the accused, framed charge against the accused for

offence u/s 302 IPC. When the charge was read over and explained to the accused, he abjured the guilt.

4. In order to prove the case of the prosecution, the prosecution examined as many as 13 witnesses, Exts.P1 to P17 were marked and MO1 to MO6 were produced and identified. After the close of the prosecution evidence, the incriminating materials arising out of the prosecution evidence were put to the accused under Section 313 of the Code of Criminal Procedure. The accused denied the circumstances that arose as against him and in a detailed statement, stated that he along with his wife had stayed in the house of PW2 after marriage. One Ashokan was having illicit relationship with PW2, the mother of PW1, and hence he was forced to leave the house with his wife. He was very fond of his

children. His elder son used to wait for his return from work. He gave dresses and other presents to his wife's relatives during the Onam of 2003 and on the fateful day, he was watching the festival in the nearby temple. While so, the aforesaid Ashokan and certain others had come in an autorickshaw and had taken the appellant to the police station. According to him, he came to know about the incident only on the next day morning.

5. The learned Sessions Judge, on appraisal of the evidence which was purely circumstantial in nature, relied on the various proven circumstances and came to the conclusion that the chain of circumstances have been fully established and they were of a conclusive nature, which was only consistent with the hypothesis of guilt of the appellant. It was held

that the prosecution had successfully proved that the appellant had committed the murder of both his minor children in the manner as alleged and the appellant was convicted accordingly. The above conviction and sentence are under challenge in this appeal.

6. We have heard, Sri. Lakshmi Narayanan, the learned counsel appearing for the appellant, as well as Smt. Praicy Joseph, the Special Government pleader.

7. Sri. Lakshmi Narayanan, learned counsel appearing on behalf of the appellant, submitted that in a case which squarely rests on circumstantial evidence, the circumstances taken cumulatively should form a chain so complete that there is no

escape from the conclusion that, within all human probability, the crime was committed by the accused and none else. Circumstances pointed out by the prosecution, in this case, according to the counsel, are inconclusive and inconsistent and no reliance could be placed on those circumstances so as to draw a conclusion that the accused had committed the crime. Learned counsel appearing for the appellant has exhaustively taken us through the materials on record and argued that conviction and sentence arrived at against the appellant could not be sustained. According to the learned counsel, the evidence of the witnesses does not conclusively prove that the accused was last seen together with the deceased minor children and there was no reason for him to put an end to their life. He reiterated the defense version that the minor

children had met with their unfortunate death when PW 1 had attempted to commit suicide along with the minor children by jumping into the canal. PW1 survived with minor injuries but the children did not . The version of PW1 to PW4 were attacked on the ground that their version that they had seen the appellant along with the minor children late in the night on the fateful day could not be believed.

8. On the other hand, the learned Public Prosecutor submitted that the case rests upon circumstantial evidence and the trial Court was justified in drawing the inference of guilt, since all incriminating circumstances are found to be incompatible with the innocence of the accused. Reliance was placed on the evidence of PW 1 to 5 by the learned special government pleader to support

the trial court judgment .According to the learned counsel , the stand taken by the defence of total denial of the incident was found to be false by the learned Sessions Judge. No explanation was also offered by the appellant as regards the theory of last seen. The conduct of the appellant in surrendering before the station and disclosing the place where the bodies of the minor children were lying would seal the fate according to the learned special Government pleader.

9. We have evaluated the rival contentions. As already noticed, there was no direct evidence of eye witness in this case and the case is based on circumstantial evidence. The law regarding circumstantial evidence is well settled. Circumstantial evidence is evidence of relevant facts

from which, one can, by process of reasoning, infer about the existence of facts in issue or *factum probandum*.

10. In **Hanumant, son of Govind Nargundkar v. State of Madhya Pradesh, AIR 1952 SC 343**, the Apex Court has laid down the basic principles with regard to appreciation of evidence in cases in which the prosecution rely on circumstances and inferential facts instead of direct eye witness testimony. It was laid down as follows:-

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance, be fully established and all the facts so established should be consistent only with the hypotheses of the guilt of the accused. Again, the circumstances would be of a conclusive nature and tendency and they should be such as to exclude but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent

with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused." Each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. Even when there is no eye - witness to support the criminal charge, but prosecution has been able to establish the chain of circumstances which is complete leading to inference of guilt of accused and circumstances taken collectively are incapable of explanation on any reasonable hypothesis save of guilt sought to be proved, accused may be convicted on the basis of such circumstantial evidence.

11. After reminding ourselves of the legal position we shall examine whether the evidence let in by the prosecution satisfies the requirement of law. The learned Sessions Judge has mainly relied on the following circumstances to prove the guilt of the accused .

(i). Homicidal death of Sherrin and

Sheffin as a result of smothering and drowning.

(ii). On the fateful day the appellant had taken his minor children, Sherrin and Sheffin, from the house of PW 2, in the presence of PW1 and PW2 just after 9- 9.30 P.M. and he was seen together with the children by PW 4.

(iii). Immediately after the occurrence the appellant went to the house of PW5 Anil Kumar and confessed to the crime .

(iv). Conduct of the appellant in surrendering before PW10 , the Sub Inspector of Police, Anchal Police Station and disclosing about the commission of the crime .

(v). Based on the disclosure made by the appellant, the bodies of the minor children were found lying in the Komalam Canal by PW 12 and PW 10.

(vi). Motive

12. In so far circumstance No. (i) is concerned, PW 11, the Professor of Forensic Medicine, Medical College Hospital, had conducted the postmortem over the bodies of the minor children and had issued Ext.P7 and Ext.P8 post mortem certificates. PW11 noted the following ante mortem injuries in the body of Sheffin.

(i) Cresentic abrasion 0.5 x 0.2 cm on the right side of face 1 cm below eye.

(ii) Abrasion 0.3 x 0.2 cm on the left ala of nose

- (iii) Abrasion 1 x 0.5 cm on the outer aspect of upper lip in the middle.
- (iv) Abrasion 1 x 0.5 cm on the outer aspect of upper lip 0.5 cm inner to left angle of mouth.
- (v) Contusion 1x 1x0.3 cm on the inner aspect of upper lip just to the left of midline.
- (vi) Abrasion 1x0.5 cm on left angle of mouth

- (vii) Abrasion 0.5 x 0.5 cm on the outer aspect of lower lip 1 cm inner to left angle of mouth

- (viii) Contusion 1x1x0.5 cm on the inner aspect of lower lip close to its attachment to jaw bone just to the left of midline.

- (ix) Multiple spotted abrasions over an area 4x1 cm on the back of left leg 12 cm below knee.

13. In Ext. P8 post mortem conducted over the body of Sheffin aged 1.5 years, PW11 had noted as follows :-

- (i) Abrasion 0.3 x 0.2 cm, on the right upper eyelid 0.5 cm below the tip of eyebrow.
- (ii) Abrasion 3 x 2.5 cm, vertical on the right side of face 2.5 cm in front of the upper part of

ear

(iii) Crescentic abrasion 0.8 x 0.2 cm on the right side of face 1 cm below the outer angle of eye.

(iv) Abrasion 0.2 x 0.2 cm on the right side of face 2.5 cm outer to ala of nose.

(v) Crescentic abrasion .5 x .3 cm on the right side of face 1.5 cm outer to angle of mouth.

(vi) Abrasion 0.3 x 0.3 cm on the outer aspect of upper lip 1 cm to right of midline.

14. Doctor opined that the death was due to drowning and there was evidence of application of force around nose and mouth. According to her the death must have been occurred approximately 6 hours prior and within 18 hours before the time of postmortem examination.

15. The evidence tendered by the prosecution through PW1, PW2, PW10, PW11 and PW12, along with Ext.P1 and P2 inquest reports would unmistakably show that it was Sherrin and Sheffin

who had met with the homicidal death. While cross-examining PW1 and PW2, it was suggested that the children had sustained the above injuries when PW1 attempted to commit suicide by jumping into the canal. They emphatically denied the said suggestion. When PW11- the forensic surgeon, was cross-examined she was asked whether all the injuries noted in Exts. P7 and P8 could be caused if the minor children had fallen on to a rough surface from a height which the forensic surgeon had denied. It was deposed by the doctor that the peculiar appearance in both the cases of froth was typical of antemortem drowning. Further PW11, the forensic surgeon has testified that the death might have occurred six hours prior to and within 18 hours before she had seen the dead bodies. The above evidence tallies with the case of the prosecution that the minor

children would have been smothered and drowned after 9.30 pm on 10.9.2003 and prior to registration of Ext.P6 FIR by PW10. The challenge raised by the defence to the opinion by PW11 can only be rejected. Along with other materials which will be adverted to later, we are of the considered view that the prosecution has successfully proved that minor children had met with a homicidal death and that the cause was drowning. The prosecution has also proved that there was evidence of application of force around nose and mouth. The evidence let in by the prosecution by proving P1 and P 2 inquest reports , Ext.P4 plan and by examining PWs 1 , 2 , 6 , 7 , 9 , 10 and 12 would prove in cogent and convincing terms that the minor children were found dead in the Komalam Canal , early in the morning on 11.9.2003.

16. To evaluate circumstance No. (ii), the evidence of PW1, PW2 , PW 3 and PW4 will have to be considered . PW 1 is the wife of the accused. She deposed before Court that she belongs to Muslim community and her husband/the accused is a Hindu. They had fallen in love and their marriage was solemnized at the Sub Registrar's Office, Anchal, about 10 years back. Two sons were born in the said wedlock. The incident was on 10.9.2003. PW1 was residing along with the accused in a rented house belonged to one John at Karavalloor. Both the children were sick and they had to be taken to the hospital. While she was returning from the hospital, she saw the appellant sitting in the house of PW5. On seeing PW1, the appellant went inside the house and hid himself. When PW1 called her husband, the

wife of PW5, Aji, came out and there arose an altercation between PW1 and Aji. After reaching home, the accused brutally assaulted her and her son was also beaten. The landlord asked them to vacate the house pursuant to the incident. The accused took the elder son and went out of the house. PW1 and her mother, who was examined as PW2, along with her younger sister shifted the household articles to a nearby house and went to the house of PW2 at Komalam. At about 6.30 PM on the same day , the appellant came there along with the elder son and left the house alone after changing his clothes. He reappeared later in the evening with a person by name Asokan who was cited as CW 4. The appellant wanted PW1 to go with him but she refused. After threatening her the appellant took away both the children, who had slept by then. At

about 3 a.m. on the next day, police came to her house and told her that two children were found lying dead in the nearby canal and wanted her to ascertain whether they are her children. She went along with the police and identified her children who were lying in the canal. PW1, while examined, identified the clothes worn by the minor children on the date of incident. In cross examination, PW1 has asserted that she used to be brutally assaulted by her husband while they were residing together. She stated that her mother and sister were present at home when the accused had taken away the minor children. When PW1 was cross examined, it was suggested that after the fight in the morning between PW1 and the accused, she along with her children had jumped into the nearby canal as a result of which the minor children had sustained injuries

resulting in their death. She emphatically denied the said suggestion.

17. PW2 is the mother of PW1, who gave evidence in tune with the evidence of PW1. She also stated about the incident which took place at noon at the rented house. She was there when the accused had come late in the evening and had taken away the minor children. PW2 had stated that when she inquired with the appellant as to where he was taking the minor children, he had responded by saying that she had no business in asking such a question. According to PW2, the distance from her house to the canal was 2 kms. She also stated that when the appellant had taken the minor children, they were asleep.

18. The defence were able to bring out minor contradictions in the evidence of PW1 and 2 with regard to time and sequence of events. The learned sessions Judge on an evaluation of the evidence held that those inconsistencies are bound to occur due to long lapse of time and it was not a ground to discard their otherwise convincing evidence.

19. PW3 is a neighbor and he has testified before court that at about 9.00 pm. on the same day, he heard the sound of fight from the house of PW2. He also had occasion to see the appellant going out with his children. He also testified that the appellant had requested PW1 to go along with him and she refused. In cross examination, PW3 had stated that it was usual for the appellant and PW1 to have fight and that it is an ordinary occurrence in their house.

20. PW4 is the ace witness of the prosecution to prove the last seen together theory. PW 4 testified that on the fateful day, while he was returning to Komalam, he saw the appellant along with his children going in the opposite direction. The appellant was carrying the younger child and he was holding the hands of the elder child. He inquired with the appellant as to where he was going with the children and he responded by saying: "I will come back soon , uncle". He had come across the appellant at or about 9.15 pm. on the fateful day. He asserted in evidence that he had acquaintance with the appellant for the past four years and that the appellant calls him uncle. In cross examination, he stated that he had seen the accused in close proximity and that he is aware that the children who

were with him were his children. The house of PW4 is situated about one kilometer towards west from the place where the minor children were found dead. There is no challenge from the side of the appellant with regard to the evidence tendered by PW4.

21. The prosecution relies on the evidence of PWs 1 to 4 to prove that it was the accused who had taken away the children from the house of PW2 in the presence of PW 1 and 2. They also seeks to rely on the theory of last seen together to bring on record a cogent circumstance in the chain of circumstances with a view to connect the accused with the crime . It is by now settled that the last seen theory will not come to the aid of the prosecution unless there is proximity of time and place between the event of the accused last seen with the children and the factum of

death of the children. It has come out from the evidence of PW1 and 2 that the appellant had taken the minor children after 9.00 pm on the fateful day. PW4 had seen the appellant with the children at or about 9.15 PM. It has come out from the evidence of PW 5 that he had gone to his house at or about 11.00 pm in an autorickshaw. PW 2 has stated in clear terms that the canal where the children were found dead was approximately 2 km away from her house. PW 10 has registered the crime at 12 AM based on the statement given by the appellant himself. As regards proximity of time and place there cannot be any doubt and it falls into a definite sequence .

22. The Apex Court in **Vasant Sampat Dupare V State of Maharashtra (2015 KHC 1193)**, has

laid down the guiding principles.

"It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and the fact of last seen together plus other circumstances have to be looked into. Normally, last seen theory comes into play when the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. It will be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. However, if the prosecution, on the basis of reliable evidence, establishes that the missing person was seen in the company of the accused and was never seen thereafter, it is obligatory on the part of the accused to explain

*the circumstances in which the missing person and the accused parted company. Reference may be made to the judgment of this Court in **Sahadevan Alias Sagadeven v. State represented by Inspector of Police, Chennai (2003) 1 SCC 534.**"*

23. It was held by the Supreme Court in **Amit @ Ammu v. State of Maharashtra (2003 (8) SCC 93)**as follows:-

".....It depends upon the facts of each case. In the decision relied upon it has been observed that there may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. The present is a case to which observation as aforesaid and principle laid squarely applies and the circumstances

of the case cast a heavy responsibility on the appellant to explain and in absence thereof suffer the conviction. Those circumstances have already been noticed. In which case such an irresistible conclusion can be reached will depend on the facts of each case.

24. In **Ram Gulab Chaoudhary v. State of Bihar (2001 (8) SCC 311)**, the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that he had murdered the boy.

25. The evidence let in by the prosecution by

examining PW's 1 to 4 cannot but lead to the unmistakable conclusion that the appellant was last seen with the deceased minor children a short while before their unfortunate death as a result of smothering and drowning. The evidence of the witnesses are cogent, convincing and reliable and nothing was brought out by the defence to doubt their version. Minor discrepancies brought out in their oral testimony will pale into insignificance when their overall evidence is considered with the available materials. Omission on the part of the appellant to offer a proper explanation will have to be taken as an additional circumstance against the appellant. The seizure of the identity card belonging to the appellant found in the trouser pocket of deceased Sheffin at the time of preparation of Ext.P1 inquest will serve as an additional circumstance to

corroborate this evidence. In view of the above, we are of the considered view that the prosecution has successfully established circumstance No. (ii) against the appellant .

26. The next circumstance relied on by the prosecution is the alleged extra judicial confession of the appellant made to PW5 Anil Kumar .

27. Before advertng to the evidence of PW5 we shall take note of the settled precedents. In **Gura Singh v. State of Rajasthan (2001 (2) SCC 205)** the Apex Court had reiterated the law and laid down as follows :

It is settled position of law that extra judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of

the crime alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [1954 SCR 1098], this Court again in Maghar Singh v. State of Punjab [AIR 1975 SC 1320] held that the evidence in the form of extra judicial confession made by the accused to witnesses cannot always be termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In Narayan Singh v. State of M.P. [AIR 1985 SC 1678] this Court cautioned that it is not open to the court trying the criminal case to start with presumption that extra judicial confession is always a weak type of

evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In Kishore Chand v. State of H.P. [AIR 1990 SC 2140] this Court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under S.24 of the Evidence Act or was brought about in suspicious circumstances to circumvent S.25 and 26. The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it

may not be true. ,All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in Baldev Raj v. State of Haryana [AIR 1991 SC 37]. After referring to the judgment in Piara Singh v. State of Punjab [AIR 1977 SC 2274] this Court in Madan Gopal Kakkad v. Naval Dubey & Anr. [JT 1992 (3) SC 270] held that the extra judicial confession which is not obtained by coercion, promise of favour of false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.

28. The same principles were reiterated by the Apex Court in **Jagroop Singh V State of Punjab (2012 KHC 4383)** wherein it was held as follows:-

The issue that emanates for appreciation is whether such confessional statement should be given any credence or thrown overboard. In this context, we may refer with profit to the authority in

Gura Singh v. State of Rajasthan, 2001 (2) SCC 205 wherein, after referring to the decisions in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322, Maghar Singh v. State of Punjab, AIR 1975 SC 1320, Narayan Siingh V. State of M.P., AIR 1985 SC 1678, Kishore Chand v. State of H.P., AIR 1990 SC 2140 and Baldev Raj v. State of Haryana, AIR 1991 SC 37, it has been opined that it is the settled position of law that extra judicial confession, if true and voluntary, can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra - judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and his evidence is credible. The evidence in the form of extra - judicial confession made by the accused before the witness cannot be always termed to be tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that it was true and voluntarily made, then the conviction can be founded on such evidence alone. The aspects which have to be taken care of are the nature of the circumstances, the time when

the confession is made and the credibility of the witnesses who speak for such a confession. That apart, before relying on the confession, the court has to be satisfied that it is voluntary and it is not the result of inducement, threat or promise as envisaged under S.24 of the Act or brought about in suspicious circumstances to circumvent S.25 and S.26.

Recently, in Sahadevan & Another v. State of Tamil Nadu, 2012 AIR SCW 3206, after referring to the rulings in Sk. Yusuf v. State of W.B., 2011 (11) SCC 754 and Pancho v. State of Haryana, 2011 (10) SCC 165 : AIR 2012 SC 523, a two - Judge Bench has laid down that the extra - judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution; that it should be made voluntarily and should be truthful; that it should inspire confidence; that an extra - judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence; that for an extra - judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and that such statement essentially has to be proved

like any other fact and in accordance with law.

29. The evidence of PW5 will have to be scrutinized on the anvil on the above enunciation of law on the subject. PW5 testified that he is acquainted with the appellant as they had worked together. He deposed before Court that the appellant used to reside in a rented house belonging to one John, which was near to his residence. On the fateful day, he returned home after work and when he came out to take the clothes which were laid outside for drying, appellant came home in an autorickshaw. The appellant called PW5 by his name. When he inquired, the appellant told him that he had something to say. When he asked the appellant to disclose what he had to say, the appellant told him that he has made sure that PW1 will not have a cosy life anymore. When PW5 inquired as to the reason,

the appellant responded by saying that he has done away with both his children. PW5 did not believe him when he stated so. Only on the next day he came to know about the death of the minor children. In cross examination, PW5 denied the suggestion that his wife was having illicit relationship with the appellant. He also denied the suggestion that he was deposing falsehood. Minor contradictions were also brought out in cross examination with regard to whether he was sitting in the Verandah and as regards the presence of his wife in the vicinity. We concur with the learned Sessions Judge that the omissions and contradictions brought out are not material. The learned Sessions Judge after evaluating the evidence of PW5 has held that his evidence is reliable and there was nothing to doubt his version. We note that sequence of events will reveal that the extra judicial

confession was made by the appellant to PW5 immediately after the occurrence and before he had surrendered before the Police. The appellant has no case that the confession was procured under any undue influence, coercion or pressure. The appellant has no case that PW5 is a stranger, but on the other hand, it has come out that he is a neighbor with whom, appellant was having acquaintance. There is no other suggestion which would tend to show that the evidence of PW5 is tainted and that the extra judicial confession was not voluntarily made by the appellant. We hold that PW5 is a trust worthy witness and his evidence inspires our confidence and the same can be made the basis for conviction. Further, the extra judicial confession is also supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence

that we have adverted to. We hold that the prosecution has succeeded in proving circumstance No (iii) as well.

30. Circumstances Nos. (iv) and (v) shall now be considered together by us. PW9 is the Head Constable of Anchal Police Station before whom the appellant surrendered in the dead of night. According to the said witness, the appellant confessed about the crime and based on the statement given by the accused Ext.P6 FIR was registered. He communicated this fact to PW12, the Circle Inspector of Police. Obviously, the confession made to the police officer is not admissible in evidence. PW12, the Circle Inspector of police testified that on receiving information about the murder of the minor children and registration of the

crime he came to the police station and took over the investigation. He arrested the accused at 1.30 a.m. He deposed before Court that the accused confessed that he would point out the place where the dead bodies of the minor children were lying and also the dead bodies. As led by the accused PW12 went to the place of occurrence and found the dead bodies of the minor children lying in the Komalam Canal. The dead bodies were identified by PW1, the mother of the children. He conducted Ext.P1 and P2 inquest over the dead bodies. The learned Sessions Judge has held that the conduct of the accused in surrendering before the police and giving a statement based on which Ext.P6 was registered is a relevant fact and the same can be relied upon.

31. The learned Sessions Judge after evaluating

the evidence of PW12 came to the conclusion that in the facts and circumstances the version of PW12 was reliable to the effect that the accused had given Ext.P1(a) information which led to the place of occurrence and ultimately the discovery of the dead bodies. It can be seen that at about 9.00 p.m, the accused left the house of PW2 along with the minor children and on his way he met PW4 who was returning back from work. At or about 11.00 pm, the accused had given an extra judicial confession to PW5 and at 12.00 am he had surrendered before the police and had confessed to the crime based on which Ext.P6 was registered and thereafter, he had taken PW12 to the place of occurrence at 2.00 am leading to the discovery of the dead bodies.

32. It is to be noted that the information divulged

by the accused was recorded by the Investigating officer in Ext.P1 inquest report much after the bodies had been recovered. No separate mahazer was drawn up containing the exact words of the appellant in first person. The above aspects along with the fact that PW5 and PW10 were also privy to the information prior to the disclosure were taken to be a stumbling block in placing reliance upon the alleged disclosure statement as one u/s 27 of the Indian Evidence Act. Instead the learned Sessions Judge has considered the conduct of the appellant relevant u/s 8 of the Indian Evidence Act .

33. A three Judge Bench of the Apex Court in **Vasant Sampat Dupare V State of Maharashtra (2015 (1) SCC 253)** has endorsed the view of an earlier Division Bench decision of the Apex Court in

A.N. Vekatesh and Anr. v. State of Karnataka :**[(2005) 7 SCC 714]** where it was held as follows:-

By virtue of S. 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct u/s 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of S. 27 or not as held by this Court in Prakash Chand v. State (Delhi Admn.). Even if we hold that the disclosure statement made by the accused-Appellants (Exts. P-15 and P-16) is not admissible u/s 27 of the Evidence Act, still it is relevant u/s 8.

34. The above relevant circumstance of the

conduct of the appellant in pointing out the dead bodies of his minor sons along with the last seen evidence, the extra judicial confession and the medical evidence would go a long way in coming to the conclusion that it is the appellant and none other who had committed the murder of his two sons.

35. As regards circumstance No.(vi), the evidence of PW1 and 2 are reliable enough to conclude that there was a quarrel on the date of occurrence and that he had threatened that if PW1 did not go with him, he would do some drastic act. Though there is some inconsistency between the testimony of PW1 and PW2 with regard to the exact words uttered by the accused, the unmistakable fact is that there was a fight and that he had threatened that he would not shirk, even if it went to the extent of murdering

his own children. Coupled with the above evidence, when the evidence of PW5 and PW10 are analyzed closely, we are of the view that the appellant was acting in a weird manner and there cannot be any doubt about his devious motive as alleged by the prosecution. This circumstance is also found in favor of the prosecution.

36. When all these relevant circumstances pointed the finger at the appellant, instead of explaining the various circumstances, he has taken a false plea that his wife and the mother of the two unfortunate children had attempted to commit suicide by jumping into the canal and it was under such circumstances that the children had met with their dismal end. The circumstances brought in evidence by the prosecution coupled with the medical evidence

falsifies the contentions of the appellant . At this juncture it will be apposite to take note of the Judgement of the Apex Court in (**State of Rajasthan v. Kashi Ram (2007 (1) SCC (Cri.) 688**) wherein it was held as follows:

"The provisions of S.106 of the Evidence Act itself are unambiguous and categoric 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 S.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. S.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."

37. There is yet another facet of the matter. Though all the incriminating circumstances which unerringly pointed to the guilt of the accused was put to him, yet he chose not to give any explanation u/s 313 Cr.P.C except choosing to deny the same outright. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculcated him in the crime and

he fails to offer appropriate explanation or give false answer, the same can be counted as providing a missing link for building the chain of circumstance. In the case of hand, though a number of very incriminating circumstances were put to the accused, yet he has chosen to deny the same and failed to offer any reasonable explanation. This is yet another circumstance that will go against him. **(See State of Maharashtra v. Suresh (2000 (1) SCC 471).**

38. In **State of Karnataka v. Suvarnamma and Another (2015 (1) SCC 323)** the Apex Court had occasion to consider the consequence of the accused taking a false plea when the prosecution probabilises the involvement of the accused in a criminal trial on the basis of circumstantial evidence. In para 10 of the said judgment, the Apex Court has observed as

follows:-

..... In the absence of direct evidence, the circumstantial evidence can be the basis of conviction. If the circumstances are of a conclusive nature and rule out all reasonable possibilities of the accused being innocent. Once the prosecution probalises the involvement of the accused but the accused takes a false plea such false plea can be taken as an additional circumstance against the accused. Though Article 20(3) of the Constitution incorporates the rule against self incrimination, the scope and the content of the said rule does not require the Court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused.

39. We take note that the prosecution was able to

establish on the strength of reliable evidence that the missing children were last seen in the company of their father, the appellant. The defence taken by the appellant is that the injuries were sustained by the children resulting in their death when PW1 had jumped into the canal with the children. The evidence let in by the prosecution through PW11 thoroughly falsified the above version. It was obligatory on the part of the appellant to explain the circumstances in which the children who were aged 1.5 years and 4 years had parted from his company after they were seen with him by reliable witnesses which included the mother and grandmother of the children. Astonishingly no explanation is offered by the appellant. It is only the appellant who knew what had happened to the unfortunate children. As held above the false plea taken by the appellant will be an

additional circumstance against him.

40. We, therefore, have no hesitation to hold that the prosecution could prove beyond reasonable doubt that it was the appellant who had intentionally caused the death of his minor children Sheffin and Sherrin and the findings rendered by the learned Sessions Judge is liable to be upheld. None of the contentions raised by the appellant deserves any merit. In such circumstances, the conviction of the appellant for the offence u/s 302 is confirmed. The learned Sessions Judge has awarded imprisonment for life in addition to fine of Rs 10,000/- for the offence u/s 302 of the I.P.C. In such circumstances, the sentence imposed also do not warrant any interference.

41. Appeal is dismissed. The conviction and sentence are confirmed. The appellant shall be entitled to set off as provided u/s 428 of the Code of Criminal Procedure for the period he has been in custody in this case, subject to the orders passed by the authority u/s 432/ 433 of the Code of Criminal Procedure.

Sd/-

K.T.SANKARAN
Judge

Sd/-

RAJA VIJAYARAGHAVAN V.
Judge

Mrcs

//True copy//

P.S. To Judge