

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

CRL.A.No. 2109 of 2010 (G)

JUDGMENT IN SC 94/2007 of ADDITIONAL SESSIONS JUDGE (AD HOC-I), ERNAKULAM
DATED 03.05.2010

APPELLANT(S):

BABU, S/O.KANDARI, C.NO.8291, C.PRISON
C.NO.8292, CENTRAL PRISON, VIYYUR
THRISSUR.

BY ADVS.SRI.SHABU SREEDHARAN
SRI.TONY THOMAS (INCHIPARAMBIL)
SRI.UDAYAKUMAR SREEDHARAN
SMT.RESHMA ABDUL RASHEED

RESPONDENT(S):

STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SMT.PRAICY JOSEPH, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

Crl.A. No.2109 of 2010

Dated this 13th November, 2015

JUDGMENT

"CR"

Raja Vijayaraghavan.V. (J).

1. This case arises from a gruesome act of filicide. Not one, but two acts, in which two minor girls, who were being taken back home from school, with all the trust and love they usually expect, ended up in the murky waters of a well, at the hands of their own father, the appellant herein.

2. The appellant was tried by the Additional Sessions Judge (Ad Hoc -I), Ernakulam, for having committed offence u/s 302 and 309 of the IPC, in S.C. No.94 of 2007. He was found guilty on both counts and was convicted and sentenced *inter alia*

to undergo imprisonment for life.

3. The prosecution case, which hinged on circumstances, unfurled in the following manner:-

(a). The appellant married PW5 - Ambika in the year 1995 and had two children in the connubial relationship; they being Anjitha aged 9 years and Anjana aged 4 years. Anjitha was studying in the 3rd standard and Anjana was in the anganvadi. The appellant, who was employed as a temporary employee with the Cochin corporation, suspected the fidelity of Ambika. He believed that she was having an affair with CW13 - Ajayan, a toddy tapper, who frequents their house for the purpose of tapping toddy. The tapper's service was terminated but as his doubts persisted, he decided to dispose of the house and property and to shift residence to some

other place. This was staunchly opposed by Ambika as according to her, the doubts entertained by the appellant were baseless. The appellant's insistence to dispose of the house led to the involvement of PW1 - Supran and PW9 - Velayudhan, who are the brothers of Ambika. PW1, with a view to settle the disputes, called the near relatives of the appellant for a settlement talk at the appellant's residence.

(b). On 9.11.2014, the sisters of the accused, Sheela and PW11 - Prabhavathi, his brother-in-law Prakasan , and his elder sister's son Santhosh came down to the house of PW1 at noon. They planned to visit the house of the appellant together so as to settle the disputes between the spouses. In view of the visit of the near relatives of the appellant, he went to the schools of his daughters to bring them home. He initially went to the anganvadi where his younger daughter Anjana was studying and

requested permission from PW3 – Cicily, helper at the anganvady, to take the child back home. Thereafter, the appellant along with the younger daughter went to the stationery shop of PW4 – Mathew and purchased two lollipops. The appellant along with the younger daughter, then went to St.Francis School, Kuthiathode where the elder daughter Anjitha was studying and after seeking permission from PW2 – Saleena, the Headmistress, took the child.

(c). The prosecution alleges that the appellant took the minor girls who were carrying school bags and were enjoying the lollipops to the isolated garden land of PW10 which is situated on the western side of the road leading to the paddy land. There is a deep well situated on the southern side of the property and also a pump house. The books, slate, plastic kits, lunch boxes and school bags of

the minor daughters were placed on the side of the well. Thereafter ,in a ghastly act, the children were thrown into the well.

(d). In the meantime, since the appellant along with the children did not return back home, PW1 asked PW9 - Velayudhan to go in search. PW9 - Velayudhan went to the anganvadi and also the L.P School and he was told that the appellant had taken the minor children. This was conveyed by PW9 to PW1 who had also gone in search. While PW1 and PW9 were returning in vain, they were told by PW7 - Thilakan, another toddy tapper that he had seen the appellant but the children were not with him. Thereafter, while they were searching for the appellant and the children they had occasion to see the appellant running towards south towards the paddy land. PW1 and PW9 gave him hot chase but the appellant could not be found. While they were

returning back home, they heard some unusual noises from the property of Anto lying on the western side of the road leading to the paddy field. The property of Anto was lying further to the south of the property of PW10 - Baby. On further search, in the property of Anto, they found the appellant standing there with a bath towel tied around his neck. There was also an injury to the neck and he was bleeding. On questioning about the whereabouts of the children, the appellant by signs and gestures conveyed to them that the children were in the well in the property of Anto. Immediate steps were taken to summon the fire force personnel to save the minor daughters. The minor children were taken out from the well and they were shifted to the Government hospital, Angamaly where they were pronounced dead.

(e). The appellant went back to his house with

the injuries and when his sister, PW11 - Prabhavathi inquired about his daughters, he scribbled on the back side of a document that the children were in the well of Ambat Baby. The appellant was shifted to the Little Flower hospital, Angamaly, from where he was referred to the Government hospital, Ernakulam. He later was subjected to surgery at the Medical College hospital, Kottayam.

(f). On the basis of the statement given by PW1 - Supran at 5.00 p.m on 9.11.2004 Ext.P14 crime was registered by PW22, the Sub Inspector of Police, Chengamanad. PW22 conducted inquest over the dead body of Anjitha. Thereafter, investigation was taken over by PW24, the Circle Inspector of Police, Chengamanad. He conducted inquest over the body of Anjana and later, prepared Ext.P10 scene mahazar. The personal belongings of the children found near the well were seized. MO1 and MO2, knife

and spectacles respectively, of the appellant were seized from the property of Anto as per Ext.P2 mahazar. The scribbling made by the accused on the back side of a document was seized from the possession of PW11 - Prabhavathi, the sister of the appellant. PW23, the Circle Inspector of Police in charge, arrested the accused on 18.11.2004 on his discharge from the hospital. It was PW25 who completed the investigation and laid the charge before the learned Magistrate.

4. The learned Magistrate initiated committal proceedings as C.P.No.34 of 2006. After complying with all the formalities, the case was made over to the Principal Sessions Court, Ernakulam. The learned Sessions Judge made over the case to the trial Court for trial and disposal. The learned Additional Sessions Judge, after hearing the prosecution and

the accused, framed charge against the appellant for offence u/s 302 and 309 of the IPC. When the charge was read over and explained to the accused, he abjured the guilt.

5. In order to prove the case of the prosecution, the prosecution examined as many as 25 witnesses as PWs 1 to 25. Exts.P1 to P22 were marked and MO1 to MO23 were produced, identified and proved. After the close of the prosecution evidence, the incriminating materials arising out of the prosecution evidence were put to the accused u/s 313 of the Code of Criminal Procedure.

6. The accused, after denying the incriminating materials, stated his version of the incident. According to him, he was employed at the Corporation office, Ernakulam. He used to go back

home only once in a week. On one occasion, he had seen his wife and the toddy tapper behaving in an inappropriate manner. He informed this matter to the brothers of his wife and later took his wife to her parental home and left her there. Later, his wife came down and apologized. They started living together. When Ambika repeated the aforesaid objectionable acts, the appellant left the house and started residing in the house of his sister at Kadavanthra, Ernakulam, for about two months. Later, after much persuasion from his family members, he shifted back to the matrimonial home. The aforesaid Ajithan used to tease him often when they had occasion to meet. Finally, the appellant decided to dispose of the house and property so that he could shift to some other place. His wife was totally opposed to this idea. On the fateful day, the appellant was returning back from school with his

children. At that time, Ajithan came on a bicycle and after obstructing him with the cycle inquired whether he was planning to sell his house. The appellant thwarted his advances and told him that it was none of his business and tried to move off. At that time, the appellant was inflicted an injury on the neck portion by the aforesaid Ajithan. The appellant was shocked on sustaining the injuries and the aforesaid Ajithan took away the children. The appellant at that time, saw PW1 and 9 and according to him, he informed them that the children were in the well and that he was assaulted. This was done by him by gestures and by writing with his fingers on the ground. Thereafter, the appellant went to his house and his sister was informed in writing on a piece of paper that his children were in the well. According to the appellant, he is innocent and he has not committed any offence.

7. The learned Sessions Judge after elaborately dealing with the evidence concluded that the prosecution had successfully established the chain of circumstances and they were of a conclusive nature, which were only consistent with the hypothesis of guilt of the appellant. Holding so, the appellant was convicted on both the counts and was sentenced accordingly. The above conviction and sentence are under challenge in this appeal.

8. We have heard Sri.Shabu Sreedharan, the learned counsel appearing for the appellant and also Smt.Praicy Joseph the learned Public Prosecutor.

9. The learned counsel appearing for the appellant attacked the various facets of the prosecution case and contended that the circumstances on the basis of

which the appellant was convicted was so frail and weak and the chain of links were so unconnected that it could not be said for certain that the appellant had committed the crime. It was contended that the defence version was more probable. According to the learned counsel, the villain of the piece was Ajithan who had thrown the children into the well after inflicting an injury on the neck of the appellant. It was pointed out that even PW5 - Ambika had stated before Court that the appellant was a loving father. According to the learned counsel, the appellant had no reason to snuff out the lives of his daughters. The reliance placed by the learned trial Judge on the last seen together theory, according to the learned counsel, was misconceived in the facts and circumstances. According to the learned counsel, the witnesses have given an embellished version of the occurrence and

none of them could be believed. Ext.P3 note in respect of which strong reliance was placed by the learned trial Judge was belittled and it was contended that the said note only revealed that the children were in the well and nothing else. According to the learned counsel, several discrepancies were brought out in the prosecution evidence so as to cast serious doubts as regards the prosecution version. The learned counsel also targeted the contemporaneous documents prepared by the Investigating Officer and the plan prepared by the Village Officer and lamented that none of these records contain relevant details of the scene of occurrence or the surroundings. In other words, evidence is totally lacking to conclusively find the appellant guilty of the offence, is the submission of the learned counsel. It was further contended that the prosecution had miserably failed to prove any

cogent motive on the part of the appellant to commit the murder of his minor children.

10. *Au Contraire*, 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. The prosecution by examining PW2, 3 and 4 had proved that the minor children were in the company of the accused and it was for him to convincingly show as to how his minor daughters had ended up in the well. According to the learned Public Prosecutor, the appellant in his version, has himself substantiated the prosecution version till the point where the appellant reached the school of the children and took them with him. His version takes a different turn only thereafter. The

version of the appellant in respect of the advent of Ajithan and the mode in which the incident had taken place is so unbelievable that the learned Sessions Judge was justified in holding that the false explanation given by the appellant in respect of the occurrence could be taken as an additional link in the chain of circumstances. Strong reliance was placed on Ext.P3 by the learned Public Prosecutor to support the findings of the learned Sessions Judge.

11. After having gone through the evidence let in by the prosecution, we note that the learned Sessions Judge had relied on the following circumstances to hold that the authorship of the crime be placed on the appellant.

(a). Appellant was deeply perturbed as he was under the belief that PW5 was having an affair with one Ajithan, a toddy tapper. Appellant wanted to

dispose of the house and shift their residence which was opposed by PW5. The near relatives of the appellant and PW5 had fixed up a mediation talk at the house of the appellant on the date of incident to settle the disputes.

(b). As his near relatives were visiting, the appellant had gone to the respective schools of the children and sought for permission from PW2 and PW3 to take the children home early and the appellant had left with the children.

(c). The appellant had gone to the shop of PW4 with Anjana, the younger child, and had purchased two lollipops, the sticks of which were found in the well.

(d). PW7 - Thilakan found the accused in a bewildered state at the road lying on the eastern side of the property of PW10.

(e). PW1 and 9 saw the appellant running

towards the south which led them to follow him. Later, PW1 and 9 saw the appellant standing in the property of Anto with a bath towel tied around his neck to stem the flow of blood from an injury.

(f). The appellant had gesticulated to PW1 and PW9 to convey the fact that the children were in the well in the property of PW10 - Ambat Baby.

(g) The appellant had scribbled on the back side of a document and had handed over the same to PW11, his sister when she asked him about the whereabouts of the children. In the said note, the appellant had written that the children were in the well in the property of PW10.

(h). Alleged statement given by the appellant to PW6 - Sheeba two days prior to the occurrence that if Ambika was not amenable to selling off the property he would do away with his children and thereafter, end his life.

(i). The children were found in the well in the property of PW10 - Baby. The postmortem revealed that they had drowned to death.

(j) The school bag, slates, tiffin box, books, pencil box, and other personal belongings of the children were placed on the side of the well. The lollipop sticks were also found inside the well revealing that the unsuspecting children were unaware as to what was in store till they were thrown into the well .

(k) The single injury sustained to the appellant on his neck was a hesitating lacerated wound having the characteristics of a suicidal cut injury .

(l) MO1 weapon and MO2 spectacles of the appellant were found in the property of Anto and MO 1 contained human blood.

(m) The refusal of the appellant to submit himself for treatment when he was taken to the

hospital.

12. We shall evaluate the evidence adduced by the prosecution to ascertain whether the conviction and sentence passed against the appellant on the above circumstances are sustainable under law.

13. Nobody had seen the appellant throwing his minor daughters into the well and thereafter attempting to commit suicide by inflicting a suicidal cut injury on his neck. The evidence led by the prosecution by examining PW14, the Forensic Surgeon and Ext.P7 and Ext.P8, postmortem certificates reveals in unmistakable terms that the death of the minor girls was as a result of asphyxia during drowning.

14. The prosecution relies on the evidence of PWs

1,2,3,5,9 and 11 to speak about the incidents which took place immediately prior to the crime and also the probable motive.

15. PW1, the brother-in-law of the appellant, is the first informant based on whose statement Ext.P14 FIR was registered by PW22, the Sub Inspector of Police, Chengamanadu. He stated that he is the brother-in-law of the appellant and the appellant along with PW5 and their two minor daughters stayed at the house belonging to the appellant at Kuthiyathodu Colony. He spoke about the dispute between the appellant and PW5 with regard to sale of property. To somehow settle the dispute, he invited the near relatives of the appellant. At the request of PW1, the sisters of the appellant/accused, his brother-in-law, and the son of elder sister had come down to the house of the

accused. Just before their arrival, the appellant went to the respective schools to bring his daughters home. The schools were situated in the near vicinity and when the appellant was not seen even after passage of a considerable time, he asked PW9, his own brother, to enquire. Later, he also went in search of the appellant and children as PW9 was nowhere to be seen. When PW1 reached near the St. Xaviers Church, he came across PW9, who told him that the accused had taken the children from school. Under the impression that the appellant might have reached home, he started to return. While so, he happened to see PW7 - Thilakan, a toddy tapper who, on inquiry, informed him that he had seen the appellant but the children were not with him. At that time, the appellant was seen running through the way leading to the paddy field. PW1 and 9 went after him but the appellant could not be found. While they

were returning back, they heard some unusual sounds emanating from the compound of one Anto, which was situated on the western side of the pathway leading to the paddy field. The appellant was seen standing amidst the shrubs and thickets and a bath towel was seen tied around his neck. The witness also found that the appellant was bleeding from an injury on his neck. When the appellant was asked as regards the whereabouts of the children, he is stated to have responded by saying that the children were in the well of Ambat Baby. PW9 felt uneasiness and PW1 rushed to the well and found the bags and other belongings of the children by the side of the well. Shocked at the turn of events, he alerted the neighbors. A member of the panchayat alerted the fire force and the fire force personnel under the supervision of PW18 retrieved the children from the well. The children were taken to the

Government hospital Angamaly, but their life could not be saved. He withstood the test of cross examination and the defence was not able to make any dent with regard to the material parts of his evidence. The cross examination mainly veered around uncharitable questions to the effect that the witness was trying to protect the paramour of his sister. He denied the same with disdain.

16. The version of PW9 - Velayudhan, who is also one of the brothers of PW5 and who was with PW1, would substantially corroborate the version of PW1. He testified that he was the person who had gone in search of the appellant and children and he was informed by the teacher and helper at the respective schools that the appellant had left with the children. He supported the version of PW1 in all material particulars. He was with PW1 when they spotted the

accused running away towards the south in the direction of the paddy field and they followed him. The accused disappeared and it was on their way back that they found the accused standing in the property of Anto with injury on his neck. On hearing about the children's fate, PW9 felt uneasy and he started to faint and so he was taken back home. PW9, in his evidence, further stated that he was told by PW6, Sheeba, that two days prior to the occurrence, the appellant had informed her that if he was not permitted to sell the property he would kill his children and commit suicide. PW9 also deposed before Court that the appellant suspected the chastity of PW5 as he was under the belief that his wife was having an illicit affair with a toddy tapper.

17. PW2, Saleena, the Head mistress of the St.

Francis School and PW3 - Cicily, the helper at the Anganvadi corroborated the version of PW9. PW2 deposed that the appellant had come to the school at or around 2.00 p.m., and had taken the children with him. In the same manner, PW3 also deposed about the appellant taking his child from the anganvadi. This fact is admitted by the appellant as well. These witnesses also deposed that after the appellant had left the schools, PW9 - Velayudhan had come to the school and inquired about the children. PW4, the owner of the stationary shop, who is a neighbor of the appellant deposed that the appellant had come to his shop on the fateful day with the younger child and had purchased two lollipops for Rs.2.

18. The evidence of PW5, the wife of the appellant, shows, that the appellant had suspected her chastity and when he insisted that the house be

sold away, she informed her brothers at whose behest, the near relatives of the appellant were summoned for a settlement talk. She testified that on 9.11.2004 at 12.00 p.m., the sisters of the appellant, his brother in law and the son of his elder sister had come to their house. As the appellant had gone to the school to pick up the children, the relatives went to the house of PW1. After some time, relatives of the appellant came back with PW1 and PW9. As the appellant did not return with the children, PW1 asked PW9 - Velayudhan to go in search. Later, she came to know about the fact that her children were no more. She testified that she was admitted for psychiatric treatment at the Kusumagiri Hospital. She also stated that she never set foot in the house thereafter. When PW5 was in the box, the tenor of cross examination was that she was having an illicit affair with one Ajayan, a toddy

tapper, and it was the said person who had inflicted injury on the appellant and thereafter, took the children and threw them into the well so that he could live a happy life with PW5 after usurping the property. This was, of course, denied by PW5 with absolute impunity. She also emphatically denied that she was having some relationship with the toddy tapper but admitted that the appellant was suspicious of her chastity.

19. Prosecution also examined the sister of the appellant, Prabhavathy as PW11. She testified before Court that on the fateful day herself and her sister were called to the house of the appellant. She along with her husband , sister and sister's son came down and when they reached the house of the appellant, PW5 and the appellant were there in the house. She stated that for a brief while they had gone to the

house of PW1 during which period, the appellant had gone to bring the children from their respective schools. According to PW11, the accused did come to the house with a bleeding wound on his throat. When asked about the children, the accused wrote Ext.P3 note conveying the fact that the children were in the well in the property of PW10. She also stated that she had seen the accused writing Ext.P3 note and she had read the same. She also deposed that she had produced Ext.P3 note and handed over the same to the Investigating Officer. The witness denied her earlier statement that the appellant had purchased the house utilizing the sale proceeds of himself, his mother and sister.

20. From the above evidence, the prosecution has succeeded in establishing by unimpeachable evidence that the accused had taken his children

from the respective schools at or around 2.00 p.m. He was seen by PW4 with the younger child. The property where the well is situated and in which the children were found lies towards the south. PW7 - Thilakan has seen the appellant in a bewildered state and at that time, he had not sustained any injury. It was PW7 who had informed PW1 and PW9 that he had seen the accused and on seeing him, the accused turned around and left. PW1 and 9 also had occasion to see the appellant moving in the direction of the paddy field. It was PW1 and 7 who had found the appellant in the property of Anto with an injury on his neck. PW1 and 9 has also stated that the appellant informed them that the children were lying in the property of Anto. Though there is some dispute with regard to the mode in which the said information was conveyed, there is nothing to disbelieve the evidence of PW1 and 9. The fact that

the personal belongings of the children were found by the side of the well and the lollipop sticks were found inside the well will go a long way in concluding that the children were persuaded to come to the well in a loving manner and it was after that they were thrown into the well.

21. As is seen from Ext.P11 site plan and the evidence of witnesses, it has come out that the pathway towards the paddy land was lying in the north-south direction and on the eastern side of the property of Ambat Baby and Anto. It has also come out that there are shops nearby and houses on the eastern side of the pathway. The distance to the St.Xaviers Church and Chappel is also less than 100 metres. There are the shops of PW4 and others nearby. If the version of the appellant is believed, Ajithan had come on a bicycle, obstructed the

appellant using the same and thereafter questioned him with the sale of the property. Immediately thereafter, Ajithan inflicted a cut injury on the neck of the appellant and thereafter, forcefully took the children and had thrown them into the well in the property of PW10 further to the south. The above version of the appellant is unbelievable to say the least. The incident would have attracted the attention of the neighbors and the appellant does not explain how the aforesaid Ajithan would have taken the two children along with his bicycle to the property of PW10. To believe that Ajithan would inflict a hesitating cut, as characterized by the doctor, after obstructing the appellant with a bicycle in the middle of the road and after that, the two girls would go without any demur or without screaming in the top of their voice, with Ajithan all the way towards the well in the property of PW10 carrying

their bags, slate, books, plastic kit, water bottle, pencil box and other belongings produced and marked as MO3 to MO11, is downright nonsensical and thoroughly improbable. Appellant himself admits that he had occasion to meet PW1 and PW9 immediately after the incident just to the south of the well where the children were found. The lollipop sticks were found in the well, which indicates the fact that the children were still enjoying the sweets when they were thrown into the well. The conclusion is inescapable that the appellant had lured the unsuspecting children to the well in a fatherly manner and after placing all their belongings by the side of the well, had pushed them inside. It has come out from the evidence of PW10 and Ext.P10 scene mahazar that on the eastern side and western side of the property of PW10 there are thicket fences. These aspects would falsify the version of the

appellant that Ajithan had forcefully taken the children from his possession after inflicting an injury on him and had thrown them into the well. It is further to be noted that it was the appellant who had pointed out that the children were in the well to PW1 and 9. It is incredulous to believe that the appellant stood ground after seeing the aforesaid Ajithan on a bicycle taking away the children and followed him towards south to witness Ajithan throwing the children into the well and thereafter, the appellant went back to his house and wrote Ext.P3 when he was inquired about the whereabouts of his children. The appellant admits the authorship of Ext.P3 and PW11, the sister of the appellant also testified that it was the appellant who had written Ext.P3.

22. There is another aspect of the matter which would point the finger of suspicion at the appellant.

The appellant after the incident was taken to the Little Flower hospital, Angamaly, where he was examined by Dr.Basil Fernandes at 3.50 p.m on 9.11.2004. Since Dr.Basil Fernandes was not available for examination, PW21 - the Chief Medical Officer of the said hospital was examined to prove Ext.P13, the wound certificate. In the column meant for stating the history and alleged cause of injury what is entered is attempted suicide by cutting his throat. Further it is evident from the said certificate that the appellant had refused treatment. In view of the above, the doctor has written in Ext.P13 that the appellant requires close watch in psychiatric ward and was therefore, referred to the Medical College hospital. It was PW15, the Assistant Professor, ENT, Medical College hospital, Kottayam, who was examined to prove the treatment imparted to the appellant. He had issued Ext.P9 discharge certificate

which reveals that the appellant was admitted in the hospital on 9.11.2004 and discharged on 28.11.2004. It is noted in the discharge certificate that the appellant had sustained a lacerated injury on hyoid bone and thyroid cartilage exposing hypopharynx. The injury was repaired after tracheotomy under general anesthesia. After perusing MO1 weapon, PW15 testified that the injury sustained by the appellant could be caused by the said weapon. Despite incisive cross examination, the doctor had deposed that the particular features of the injury noted on the person of the accused reveals that the injury is most likely to be a suicidal injury. He has asserted after denying the suggestion of the defence that the injury could be caused by a third person and stated that the injury noted in Ext.P9 is most likely to be a self inflicted cut or otherwise a suicidal cut. After inspecting MO1 weapon and noting its lack of

sharpness on the middle portion, PW15 deposed that the lacerated injury found on the neck was due to the use of the said weapon for inflicting the suicidal cut. The injury is horizontally placed under the hyoid portion and the learned Sessions Judge also observed that a single injury of such a nature cannot be expected to be inflicted by a third person. The defence raised by the appellant is fraught with inconsistencies, improbabilities and is inherently false.

23. Another aspect which assumes immense relevance is that, PW24, the Circle Inspector of police Chengamanad who conducted investigation had seized MO1 chopper and MO2 spectacles from Anto's property as per Ext.P2 seizure mahazar. Though it was argued that the seizure of MO1 and MO20 cannot be placed reliance of on the basis of

some discrepancies with regard to date of seizure, we do not think that the same is material. PW24 had sent MO1 chopper and MO20 bath towel and also the blood sample of the accused for chemical analysis as per Ext.P21 forwarding note. Ext.P22 is the report of the Forensic Science Laboratory which reveals that human blood was detected on MO1 and MO20. This is an additional circumstance to conclude that MO1 weapon was in fact used for causing the suicidal cut injury. At this juncture, it is relevant to note that the case of the defence is that Ajithan had used a different weapon. The presence of human blood in MO1 will falsify the said defence as well.

24. Ext.P3 note and the evidence of PW1 and 9 gives a true and correct version of the incident and would go a long way in fixing the culpability on the accused. Failure to mention the name of Ajithan, if in

fact such an incident had occurred, would reveal that the defence raised by the appellant is just an afterthought.

25. The learned counsel argued that the links in the chain of circumstantial evidence are not complete and that several circumstances have been brought out by the defence which are inconsistent with the guilt of the accused. We cannot agree. The principles of appreciation of a case which is exclusively based on circumstantial evidence are by now considered to be well settled. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" established. The facts so established should be consistent only with the hypothesis of guilt of the accused and they should never be explainable on any

other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved. The circumstances by themselves should form a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that all human probability the act must have been done by the accused. A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on purely moral grounds. (see **Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1964 SC 1622)**).

26. The learned counsel argues that the vague nature of the plan prepared and also the scene mahazar will conflict with the prosecution version. It

was further pointed out that several aspects have been brought out which would cast serious doubts and break the chain. These contentions are based on a wrong premise. The chain of circumstances is a flexible and elastic one and can never be mechanically rigid. There is no criteria that the chain of circumstances should be of a definite length and that it should contain any particular number of links. The conclusiveness of the circumstances is what that matters and not the number of links. There can be cases where the chain of circumstances may be complete with two or three links. Due to its inherent elasticity, the chain may be capable of accommodating additional links which would only serve the purpose of added assurance. Even without these additional links, the chain of circumstances can be complete and conclusive. In the same manner, the prosecuting agency may not be successful

enough in certain cases to present before Court all the available links and in those cases if the available links in the chain of circumstances are complete and conclusive, the omission can be treated as immaterial. The mere presence of a link or two in the chain of circumstantial evidence adduced by the prosecution or the mere existence of some circumstances brought out by the prosecution evidence or defence evidence apparently inconsistent with guilt or apparently consistent with innocence, may not be material if its or their apparent effect is sufficiently dispelled by the other links in the chain of evidence adduced by the prosecution. For instance, the defence may rely on the absence of finger prints at the scene of crime or the absence of a particular group of blood on the murder weapon to contend that the said circumstance is inconsistent with the guilt of the accused and will break the chain. If the

exclusion of that circumstance would not affect the strength or sturdiness of the chain found through the other circumstances, which have been established, the Court would be justified in recording conviction. The real question for consideration is whether after evaluating all the circumstances, the Court is free from doubt in its mind regarding culpability, or whether some reasonable doubt still remains. If such doubts still remain, the conviction may not be justified. If there is at least one link inconsistent with guilt or consistent with innocence and effect and the consequent doubt in the mind of the Court is not completely removed by the other links forming the complete chain, conviction should never be resorted to on the basis of circumstantial evidence. Individual circumstances considered in isolation and divorced of the over all picture emerging from a consideration of the diverse circumstances and their conjoined effect

may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it become possible to understand and appreciate their true effect. (see **Naseem Ahammed v. Delhi Administration (1974 SCC (Crl) 198)**, **Gade lakshmi v. State of A.P.(2001 (6) SCC 205)** and **Mangaraju V State of Andhrapradesh (2001 (6) SCC 205)**)

27. We are also not impressed with the contention raised by the learned counsel that the appellant had absolutely no motive to put an end to the life of his own children. According to the learned counsel, motive assumes a significant role while assessing a case hinging on circumstantial evidence. It is of course true that in cases depending purely on circumstantial evidence motive could be treated as one of the links in the chain or an additional link

giving added assurance to the Court in accepting the chain which is even otherwise complete. But then, it cannot be said to be an unyielding principle that motive is an integral part of the crime. It is a sound principle to remember that every criminal act is done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused, the inability to further put on record the manner in which such ire would have swelled up in the mind of the accused to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. (see **State of**

H.P. v. Jeet Singh (1999 (4) SCC 370). It is only common knowledge that depending on the psychology of individuals, many crimes are committed without motive or for insufficient motives. It is also settled that prosecution is not bound to prove motive of any offence in a criminal case in as much as motive is known only to the perpetrator of the crime and may not be known to others. Furthermore, in a given case, the police may not be able to unearth the motive or translate it into a language to be placed before Court as an item of evidence. If even without proof of motive or insufficient motive, the circumstances are clinching, conviction is not bad.

28. In the instant case, after having gone through the evidence and also the circumstances marshalled by the learned Sessions Judge, we are of the view

that the links in the chain of circumstantial evidence have been forged firmly with the credible testimony of PW1, 5 and 9. Their evidence is amply supported by PW2, 3, 4 and 11 to a great extent. Ext.P3 note, Ext.P9 discharge certificate, Ext.P13 wound certificate and the evidence of PW14 and PW21 doctors would further lend support to the conclusions arrived at by the learned Sessions Judge.

29. After having tested the evidence on the touchstone of law relating to circumstantial evidence laid down by the apex Court, we are of the view that the learned Sessions Judge has not erred in coming to the finding of guilt. We totally agree with the conclusions arrived at by the learned Sessions Judge with regard to the sustainability and the believability of the version of the appellant. Reading the evidence as an integral whole, the inescapable

conclusion is that, excepting the appellant, nobody else could have perpetrated the gruesome crime.

30. We, therefore, have no hesitation to hold that the prosecution has placed reliable and formidable circumstances which forms a complete chain and which points unerringly to the irresistible conclusion that the appellant had intentionally caused the death of his minor children Anjitha and Anjana 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 is confirmed. The sentence imposed also does not warrant any interference.

31. Accordingly, the 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/28/10/2015

//True copy//

P.S. To Judge