

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

CRL.A.No. 1187 of 2011

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[AGAINST THE JUDGMENT IN SC 688/2007 of ADDL.SESSN.COURT (ADHOC-II)  
KASARAGODE DATED 20-11-2009]

APPELLANT(S)/PETITIONER:

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GANAPPA,C.NO.7918,CENTRAL JAIL,KANNUR.

BY ADV. SRI.I.V.PRAMOD

RESPONDENT(S):

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STATE OF KERALA,  
STATION HOUSE OFFICER,  
ADHUR POLICE STATION.

BY ADV. SMT.PRAICY JOSEPH, SPL. GOVERNMENT PLEADER

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
12-06-2015, THE COURT ON 25-06-2015 DELIVERED THE FOLLOWING:

**V.K.MOHANAN & RAJA VIJAYARAGHAVAN V., JJ.**

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**Crl.Appeal.No.1187 of 2011**

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**(C.R.)**

**Dated this the 25th day of June, 2015**

**J U D G M E N T**

**MOHANAN, J.**

The appellant, who is undergoing imprisonment in pursuance of the conviction and sentence imposed on him vide Judgment dated 20.11.2009 in S.C.No.688/2007 on the court of the Additional Sessions Judge, (Adhoc-II) Kasaragod, has preferred the above appeal from the jail.

2. The prosecution case in brief is that, the accused was in inimical terms with the deceased Girija, who is none other than the wife of the brother of the father of the accused. The accused was residing in the house of one Narayana Naik, another brother of his father, as Narayana Naik had no issues. As per the case of the prosecution, the accused had plucked arecanuts from the properties of Girija , and there was some quarrel between them. The accused questioned the deceased while she used the pathway through the property of the said Narayana Naik. Thus,

according to the prosecution, out of the said rivalry, while the deceased was going to her house between 5.45 - 6.30 p.m. on 11.1.2007, the accused assaulted her and inflicted injury on her using a knife and also inflicted injuries using a stone and the deceased sustained serious injuries and she succumbed to the injuries at the spot itself . According to the prosecution, the accused has committed the murder of said Girija, the deceased, punishable for the offence under Section 302 of Indian Penal Code.

3. The above incident was informed to the Adhur Police Station by one Vasu Naik and the statement given by said Vasu Naik was recorded by the then Sub Inspector of Police, Adhur Police Station. In the said statement, it is seen recorded that, the informant reached the police station to inform them about the death of his relative one Girija occurred in the evening of that day at Mavinady. According to the informant, he was residing with his family at the place viz., Mavinady and he is a neighbor of the deceased. He has 25 cents of property, which is situated

two furlongs away from the house towards the east. According to the informant, at about 3 'O' clock on 11.1.2007, after the lunch, he had gone for watering the arecanut plant and thereafter, while returning to the house and at about 5.45 p.m., when he reached near the house of Akkamma, sister of one Gopalan - his relative told that Ganappa (accused) assaulted Girija and she was lying on the pathway. According to the informant, when he reached near the house of his brother Narayana Naik, he saw a pool of blood and from the courtyard of the house of brother Narayana Naik, he heard the accused exhorting as "I will not leave" and also uttered some words. According to the informant, when he asked him as to what problem he was creating there, he replied and told him that "I finished her". Besides the same, he had also uttered something. According to the informant, as there occurred quarrel between the deceased and the accused on previous occasions, he did not take it seriously. According to the informant, when he proceeded about 10 metres further, his sister Girija was seen

lying in the pathway with severe bleeding injury on her head. An aluminum pot was also lying adjacent to her. He had also noticed the attempt of Girija to reach the pot. But, the attempts did not materialise. Since he was alone, he thought of bringing some other persons from the neighboring houses and though he went with such an intention, nobody was available in the said houses. According to the informant, after some time, on knowing about the incident, the neighbours and the relatives namely, Gopalan, Venkatramana Naik etc., arrived and thereafter, at about 6.30 p.m. in the evening, all of them together went to the place where sister Girija was lying and they noticed that sister Girija was no more. At that time, there was day light. It is also stated by the informant that, himself and others together searched for Ganappa, but, they could not trace him out. It is also informed that, for the last few years, Ganappa was residing in the house of Narayana Naik, who is the brother of Ganappa's father. He also informed that, sister Girija was also residing very adjacent to them. It is also informed to the police

that, there were quarrels between the deceased and Ganappa, during the previous day with respect to the pathway. The informant further stated before the police that, out of the said animosity, while sister Girija was returning after taking water, Ganappa (accused) by using some weapon, assaulted and killed her. According to the informant, the deceased Girija was aged 45 years and her family consists of her husband and a daughter. He further informed that the dead body of sister Girija was lying in the pathway itself. He also stated that, the delay had occurred in giving the information as no vehicle was available to reach the station. On the basis of the above statement recorded by the Sub Inspector of Police, Adhur police station, Crime No.5/2007 was registered in the Adhur police station for the offence punishable under Section 302 of Indian Penal Code.

4. The investigation in the above crime was undertaken by the then Circle Inspector of Police, Adhur. As part of the investigation, at about 8.00 a.m on 12.01.2007, he reached at the place of occurrence and conducted inquest over the body of the

deceased Girija and seized certain articles found at the place of occurrence. On completing the inquest proceedings, the body was sent for postmortem examination to the Medical College Hospital, Pariyaram and he questioned the witnesses as well. After the postmortem proceedings, the material objects seen on the body of the deceased were also taken into custody. Thereafter, in the night of 12.01.2007, at about 10.10 p.m., he arrested the accused in accordance with the procedure and during the questioning of the accused, he revealed about the concealment of the weapon used for committing the offence and on the basis of the said revelation, the weapon was recovered. As per the disclosure statement made by the accused, the investigating officer has recovered the dress worn by the accused at the time of the incident. He also effected the recovery of MO namely, a stone on the basis of the confession statement of the accused. All the MOs were produced before the court after preparing a property list and the materials were requested to be sent for chemical analysis by preparing a

forwarding note and thus obtained chemical analysis report. He also questioned the witnesses and recorded their statement. He also made arrangements to take the photographs of the place of occurrence and the body of the deceased. Finally, on completing the investigation, he laid the charge.

5. When the accused entered appearance, after hearing the prosecution as well as the defence, a formal charge was framed by the court below, which, when read over and explained to the accused, he denied the same and pleaded not guilty. Consequently, the prosecution adduced the evidence by examining PWs. 1 to 15 and producing Exts.P1 to P17 documents. Prosecution has also produced MOs 1 to 13. No evidence either oral or documentary were adduced from the side of the defence. After the closure of prosecution evidence, the accused was examined under Section 313 of Code of Criminal Procedure and when the incriminating circumstances and evidences brought out during the prosecution evidence were put to him, he denied the same. As there was no scope for an

acquittal under Section 232 of Code of Criminal Procedure, the court below directed the accused to enter into his defence, but, no such evidence is adduced. The trial court finally held that the only conclusion which can be arrived at under the circumstances referred to in the judgment is that the deceased was murdered by the accused alone and no explanation leading to any other inferences regarding the murder of the deceased is brought out in evidence, but on the other hand, the entire evidence in this case lead to an irresistible conclusion as to the guilt of the accused and that to the accused alone. Nothing is evolved from the evidence to bring the act of the accused in the ambit of exception provided under Section 300 of Indian Penal Code. Thus, the accused was found guilty of the offence punishable under Section 302 of Indian Penal Code. On such finding, after hearing the accused on the question of sentence, the court below sentenced the accused to undergo imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year. Set off was

allowed under Section 428 of Code of Criminal Procedure in favour of the accused and it is also ordered that, on payment of the fine amount, the same shall be paid to the legal heirs of the deceased.

6. It is the above finding and order of conviction and sentence that are challenged in this jail appeal. On receipt of the jail appeal, by order dated 3.11.2012, this Court directed the Registry to appoint an Advocate as State Brief to defend the undefended appellant, who is undergoing custody. Thus, initially, Adv.Shri.M.Dinesh was appointed as State Brief but subsequently, Adv.Shri.I.V.Pramod entered appearance by filing Vakalath.

7. Thus, we have heard Adv.Shri.I.V.Pramod, learned Counsel appearing for the appellant and Smt.Praicy Joseph, learned Public Prosecutor for the State.

8. The learned counsel appearing for the appellant and the learned Public Prosecutor have advanced several arguments, but, we are of the view that, before considering the merits of the

rival contentions, it is just and proper to refer to the evidence and materials on record.

9. We have already referred that the machinery was set in motion by giving information to the Adhur police station by one Vasu Naik, who is examined as PW1. In his chief examination, he deposed that, he is residing at a place known as Mavinady and the deceased Girija is his sister. He knows the accused, who is a neighbour. According to him, at about 5 'O' clock on 11.01.2007, while he was coming after watering the plants in his property, and when reached near the house of Akkamma, he was told that, Girija was assaulted in the road. According to PW1, when he reached the spot and after finding blood on the road, according to him, he saw the accused in the courtyard of the house of Narayana Naik, which is situated adjacent. According to PW1, when he questioned the accused as to why he created the problem, the accused replied and told him that he had finished Girija. PW1 further stated that, when he walked 10 meters towards the direction of his house, he saw

Girija lying on the pathway and he noticed the attempt of Girija to take water from the aluminium pot, lying adjacent to her. PW1 said that the above incident had occurred when Girija was coming after taking water from the house of Vitla Naik. The pathway has a width of 5 feet. There was an open injury on the head of Girija and blood was oozing out. According to PW1, immediately thereafter, he went to his house and when he returned to the place of occurrence after gathering his adjacent relatives namely, Venkatramana Naik and Gopala Naik, Girija had died. According to PW1, thereafter, he went to his house and when the police arrived at the place of occurrence after 2 hours, he also reached there and thus, the police took him to the police station. The father of the accused was also taken with them. According to PW1, when the police arrested him, he had deposed about the matter to the police. According to PW1, the accused is the son of the brother of the husband of the deceased Girija. According to PW1, there was a dispute regarding the pathway and also a property dispute between the husband of the

deceased and the father of the accused and his brother. According to PW1, that pathway was used by the inmates of 4 - 5 houses. It is also deposed by PW1 that there was a further quarrel between Girija and the accused and the allegation was that, the accused had plucked the arecanuts from the property of Girija. In the chief examination itself, PW1 categorically deposed that, he does not know as to who attacked Girija. He also deposed that when he gave the statement before the police, he had put his signature and thus, the said statement is marked as Ext.P1. He also stated that he went to the police station in the police jeep. According to PW1, in his house, he is residing along with his wife and three children in his house and Girija was residing 25 metres away from his house in the eastern direction. According to PW1, only Girija and her husband were residing in that house. Her only daughter was residing at Sullia. He also stated that the husband of Girija viz., Muthu Naik had gone to attend the temple festival at Sullia and he has also stated that, when the police conducted the inquest, he was present and

at that time, he had deposed before the police about the matters involved. When PW1 was examined, he identified the aluminium pot, which was lying adjacent to the body of the deceased, as MO1. He has also stated that, he had not deposed as to who killed Girija and also stated that there was quarrel between them for some time about the usage of pathway. When he was asked as to whether he had given statement to the police to the effect that, because of the said animosity, the accused, by using some weapon, assaulted Girija, and killed her when she was coming after drawing water, he said that, no such statement was given by him and that he has nothing to say if it is so written. It is recorded by the learned Sessions judge in the deposition that the said witness confessed (shows) uneasiness, but the examination continued. PW1 denied the suggestion that, he was deviating from his earlier statement, for the purpose of helping the accused. PW1 admitted that, while giving Ext.P1 statement, he had stated that Girija had attempted to stand up 1 or 2 times and attempted to catch hold of the pot, but, without

grabbing the same, she had fallen down. As he was alone, with the intention of bringing some more persons, he went to his house and the neighbouring houses, but he could not see any male members in those houses. After some time, himself and the neighbours/relatives namely, Gopala Naik and Venkatramana Naik, reached there at about 6.30 p.m. By that time, sister Girija had expired. There was day light at that time and himself and others conducted search to find out Ganappa. He also admitted that, while giving Ext.P1 statement, he had stated that, he had come to report that his sister Girija had been killed on that evening at Mavinady. During chief examination, when questioned about the delay in informing the police, his answer was that, they were awaiting for the arrival of their family head namely., Vasu Naik and thus, occurred the delay.

10. During the cross examination of PW1, he deposed that the deceased Girija and her husband were not in good terms. He rarely visited the house. He was present in that house ten days prior to the incident. It is also brought out in the evidence

that, neither PW1 nor any other relative had attempted to settle the issue among the deceased Girija and her husband. One Venkatramana Naik, who is residing 100 metres away from the place of occurrence, had a Jeep. It is also deposed by PW1 that he had not gone to bring the husband of the deceased Girija. The house of Narayana Naik is facing towards north and the said house is situating 8 feet below to the pathway. Girija was found lying on the western side of the path way. He also deposed that Girija was found lying 15 meters away from the place where the blood was seen. He also deposed that, he cannot say exactly at what time he reached at the place of occurrence after watering the plants in his property. He denied the suggestion that, he had reached there only at 6.30 p.m, after the arrival of others at the place of occurrence. He also deposed that he is not aware as to whether it was the Sub Inspector of Police or the Police Constables, who had arrived at the place of occurrence firstly. He further deposed that, from the place of occurrence, he straight away went to his house and after taking tea, he went to

the others to inform about the incident. He also deposed that though he had met Girija, he did not ask anything to her or give water to her.

11. PW2 is an attestor to the inquest prepared with respect to the body of the deceased Girija. When examined, he deposed that he knew the deceased Girija as well as the accused and he is residing two kms. away from the house of the said Girija. According to him, he had heard that the accused had committed murder of the said Girija. It is further stated that on 11.1.2007, at the time of the inquest, he was present there and CWs.3,4 and 6 were also present and all of them put the signature and he identified his signature in the inquest and the inquest report is marked as Ext.P2. According to him, the reason for committing murder of the deceased Girija was connected with the dispute between the accused and Girija with regard to the pathway and there was also an allegation that the accused had stolen arecanuts from her house. He identified the pot found near to the dead body, which is marked as MO1, and a cap made of

areca palm spathe, which is marked as MOII. According to PW2, the Police had also taken blood stained soil and the same is identified as MOIII. During the chief examination itself, when he was questioned as to whether he is aware of the dispute, he replied that he is not aware of that. Consequently, as requested by the learned Public Prosecutor, the said witness was declared as hostile. A portion of his 161 statement was put to him and when he was asked whether such a statement was given, he denied the same and stated that no such statement was given to the Police. When a suggestion was put to him as to whether he was purposefully deposing to save the accused, he answered negatively. During the cross-examination, he admitted that the deceased as well as the accused and himself belong to same caste and he had gone to the place of occurrence for the first time.

12. PW3 is another witness to the inquest report and during his chief examination, he identified the report, which contained his signature. He also stated that during the inquest,

the Police had seized MOIII hair and MOIV stone at the time of preparation of Ext.P2 inquest. According to him, the accused and Girija were in inimical terms connected with the property dispute and that was the reason for the incident.

13. PW4 is a person residing within the vicinity of the place of occurrence and he is examined to prove that he had seen the accused immediately after the occurrence near the place of occurrence. When PW4 is examined, he deposed that he is residing at Mavinadi and he was working as an employee of the bank and he knew both the deceased Girija and the accused. The deceased Girija used to work in his house as a maid servant. On the date of incident, she left his house, on completing her work after 5 o' clock in the evening. It is further deposed that some time after the departure of Girija, one Akkamma (CW11) came to his house and told him that she had witnessed Ganappa (accused) inflicting cut injuries on Girija. Immediately thereafter he went to the place of occurrence, which was about 100-150 metres away from his house. According to PW4, when he

reached there, he saw Girija lying on the pathway with bleeding injury on her head. She had already died. It is also stated that when he reached the place of occurrence, he saw Ganappa (accused) going in the direction of the house of Narayana Naik (CW12) with the knife. According to him, immediately thereafter, he returned to the house and informed the matter to Adhur Police Station over phone. Ganappa was residing in the house of Narayana Naik. He also deposed that Ganappa and Girija were on inimical terms. She used to take water from the well situated in the property of Narayana Naik and the accused had objected to the same. Thereafter, Girija was taking drinking water from the house of Vitla Naik passing through the property of Narayana Naik. That was also questioned by the accused Ganappa. There was also quarrel between the accused and the deceased with respect to the allegation that the accused had stolen arecanuts from the arecanut garden of Girija. On the basis of the property dispute also, they were in inimical terms. Narayana Naik is the brother of the father of the accused.

Though the father and other family members of the accused were residing nearby, the accused never used to go there. As there was no issue for Narayana Naik, the accused was residing with him. PW4 has also stated that out of the animosity of the accused towards Girija, he had committed the murder of Girija. He had also stated that he had given a statement before the Police. It is also deposed by PW4 that before noon on 13.1.2007, the Police brought Ganappa to the house of Narayana Naik. According to him, he had seen the accused producing a big knife, which was taken from the ceiling of the house. He identified the said knife and the same was marked as MOV. He also stated that on the date of the incident, that knife was seen in the hands of the accused (Ganappa). He put his signature in the mahazar prepared for the seizure of the knife. He identified his signature and the mahazar is marked as Ext.P3.

14. During the cross-examination, PW4 stated that he does not remember as to how many times the Police had questioned him. His house is in the southern direction from the place of

occurrence. The house of Narayana Naik is adjacent to the place of occurrence. The house of CW9 is situated on the the northern side. According to PW4, when he reached at the place of occurrence, no one was present. He also deposed that his house is situated in a lower level when compared to the place of occurrence. During the cross-examination, the defence succeeded in bringing the fact that on the date of the incident, he reached his house at about 6 p.m. after attending the party fund collection and it was at that point of time that Akkamma came and passed the information. He deposed that his family consists of his wife and children. It is also deposed that any cry from the place of occurrence can be heard in his house. He also deposed that the Police brought the accused before noon and he is not remembering the exact time. It was approximately at about 10 to 11 a.m. PW4 has also deposed that as he was alone and he had seen knife in the hands of the accused and had seen the accused going with a knife, he did not catch hold of the accused. It was on the next date of the incident, during the night time that

the accused was caught by PW4, CW9 and other local people and was entrusted to the Police. He deposed that in the statement given to the Police, he had stated to them that he too was present along with CW9 and local people. But, he has no explanation with respect to the non-recording of the same. According to PW4, the accused has taken the knife from the roof of the room situated on the western side of the house of Narayana Naik and produced before the Police. He denied the suggestion that MO1 has no connection with the incident. According to him, there was blood stain on MO1. It was Akkamma, who told him about the occurrence. But, when questioned by the Police, the said fact was not enquired and therefore, he had not deposed. He also deposed that the fact that deceased Girija left his house at 5 p.m. was not put to him by the Police and therefore, he did not mention the same. PW4 further stated that Girija used to take lunch from his house and on that day at about 1.30 p.m. Girija had taken her food. He also stated that he does not remember as to whether he had stated before the

Police that when he reached at the place of occurrence, he saw Girija lying injured and he further stated that he has to say nothing if the same is not recorded. According to PW4, when the accused was found going with the knife, he was wearing a blue shirt and saffron dhoti and according to him, the distance from the place at which the dead body was found and the house of Narayana Naik would be 30 metres. He also deposed that it was not specifically stated before the Police that he had telephoned to the Police. PW4 has also stated that when he telephoned the Police at about 7 to 7.30 p.m., the Police arrived at the scene of crime. He doubted that it was the A.S.I., who came there. PW4 also deposed that deceased Girija and Narayana Naik were in inimical terms. He denied the suggestion that the accused has no connection with the incident and the accused was not seen at the place of occurrence after the incident. He also deposed that the property of Akkamma is situated at about 80 metres away from the place of occurrence. During the re-examination, he stated that he is not remembering

the exact colour of the shirt, which was worn by the accused after the incident, but it was a shirt with checks.

15. PW5 is one Narayana Naik and it was in his house as per the version of the prosecution that the accused was residing at the relevant time. On his examination, he deposed that he is residing in Mavinadi and the deceased Girija is the wife of his younger brother and the accused is the son of another younger brother. For the last two years, Ganappa was residing in his house. According to him, the house of Girija is situated near to his house. Girija was taking water from the house of Thimma Naik. Prior to that, it was from his well that he used to draw water. Vitla Naik is the son of Thimma Naik and they were residing in the same house. Girija used to take water from the house of Vitla Naik passing through his property. Ganappa was against the same. On the date of the incident also, Ganappa questioned Girija about taking water through the property. The accused murdered Girija by using a knife. On hearing the cry of Girija from the pathway, according to PW5, he went there and

found that Girija was lying dead. He also deposed that at that time, Ganappa (accused ) was there with the knife. When MO5 is shown to him, he identified that it was the same knife which was found in the hands of Ganappa. According to PW5, he does not know whether the accused had gone. According to PW5, immediately before the incident, there was a quarrel between Girija and the accused. He also stated that he had given a statement before the Police. On the next date of the incident, the Police came in his house with Ganappa and the Police recovered knife from the house.

16. PW5, during the cross-examination, deposed that the reserve forest is on the eastern side of the place of occurrence and his house is situated on the eastern side of the place at which Girija was found lying. According to PW5, when he reached, on hearing the sound, Girija was lying there and she was not alive. According to PW5, on seeing the incident, he felt some uneasiness and he does not know, who had come thereafter. According to PW5, after seeing the incident, he went

to the house of Vasu Naik(PW4). At that time, PW4 was in his house and he informed PW4 about the incident. According to PW5, thereafter, he along with others went to the place of occurrence. He also deposed that when the Police brought Ganappa, the knife was in the attic. He denied the suggestion that false deposition was given against the accused and that the accused has no connection with the incident.

17. PW6 is an attestor to the recovery effected by the Police. According to PW6, he is residing at Mavinadi and he knows about the death of Girija. According to him, he heard that Girija was assaulted and killed. That was on 11.1.2007 and the place of occurrence was near to his house. He deposed that when he returned after his work in his property, Vasu Naik told him about the incident and accordingly, himself and Gopala Naik went to the place of occurrence and at that time, he saw Girija lying dead. There was a cut injury to the head and blood was oozing. He knows Ganappa. He also deposed that when himself and others were coming to the place of occurrence, the

accused was seen going to the house of Narayana Naik. According to PW6, when himself and others reached at the place of occurrence, Vasu Naik was present there. He also deposed that Girija and the accused were in inimical terms. He further deposed that he does not know whether there was any quarrel between them on the date of the incident. On 13<sup>th</sup> noon, the Police came at the place of occurrence with the accused. According to PW6, he had seen the accused, producing his dress, which was worn by him at the time of the incident, after taking the same from beneath the stone on the bank of the canal. He identified the shirt seized by the Police and the same is marked as MOVI. The dhoti is marked as MOVII, which is saffron in color. According to him, he had put his signature in the mahazar prepared for the seizure of the said dress and thus, he identified his signature contained in the mahazar and the same is marked as Ext.P4. He also deposed that he had also witnessed the accused taking up a stone from a place near to the dead body and producing the same before the Police. He

identified the said stone. Any how, in the deposition of PW6, the learned Judge has recorded as follows:-”(Large stone is seen marked through PW3. Now P.P. submitted that stone marked through PW3 was small stone – Till clarification is given large stone is to be identified as MOIV)” He also deposed that he had put his signature in the mahazar drawn by the Police for seizure of big stone and he identified the said signature in the mahazar and the mahazar is marked as Ext.P5. He deposed that Gopala Naik has also put his signature.

18. During the cross-examination, PW6 admitted that he came to know about the incident as told by PW1 and it was about 30 minutes prior to his arrival at the place of occurrence. According to him, he had not disclosed to the Police that he came to know about the incident as told by PW1. He has not stated before the Police that he reached at the place of occurrence on hearing the sound and he has no explanation to offer if it is recorded as stated above. He also deposed that beyond the pathway and their property, there is forest on the

eastern side as well as on the western side. He denied the suggestion that MOs.VI and VII were not worn by the accused and also the suggestion that he was not available at the place of occurrence when the Police arrived and that he was giving false evidence against the accused as he was inimical towards the accused. He also deposed that what he had seen was the production of big stone (MOIV).

19. PW7 is a lady. She was cited and examined by the prosecution as an eye witness to the incident. However, during her examination, she had resiled from the material part of her 161 statement. During the chief examination, she deposed that she is residing at Mavinadi and she knew the deceased Girija as well as the accused. Ganappa killed Girija by inflicting cut injuries. The incident was at about 5 ½ hours in the evening. According to PW7, when she was sweeping the courtyard of her house, she heard a cry and when she turned and looked there, she saw the accused inflicting cut injury on Girija. According to PW7, no one else was present at the place of occurrence. She

also deposed that she saw Narayana Naik, catching hold of and pulling Ganappa and at that time, the knife fell down from the hands of Ganappa. She saw Girija falling down and lying there. She was not aware where the accused had gone. According to PW7, on seeing the incident, she went to the house of Venkataramana Naik, for taking Gopala Naik (CW10) and Vitla Naik (CW14), where they were working. During the chief examination, the learned Public Prosecutor put a leading question as to whether she had seen the accused going to the house of Narayana Naik and she answered positively. She also added that she had heard the exhortation of the accused "I will not leave her without killing." PW7 further deposed that the accused and the deceased Girija were inimical and the reason for the quarrel was that Ganappa had stolen the arecanuts of Girija. She had also deposed that at the time of occurrence, Girija was carrying drinking water drawn from the house of Vitla Naik. During the cross examination of PW7, she deposed that in the house of Venketaramana, his parents, his younger brother and

his younger sister were there. PW7 has also admitted that her house is situated about 100-150 meters away from the place at which Girija was lying dead. According to her, there are several other houses near to the place of occurrence besides her house and in those houses, there were aged people and women. She also admitted that her house is situated at a higher level of four meters from the place of occurrence. According to her, there are plantains, coconut trees and arecanut trees etc. in her property. She stated that from her courtyard, the incidents taking place at the place of occurrence can be seen. According to her, after hearing the cry when she looked, Girija had fallen down and was lying there. According to her, Vitla Naik and Gopala Naik came to know about the incident only when she told them and thereafter, she returned to her house. According to her, she does not remember as to whether she had stated before the Police about the fact that she had gone to bring Gopala Naik and Vitla Naik. She denied the suggestion that she had not seen anything and she was giving false evidence against the accused because

of her animosity towards the accused. She deposed that she has not gone to the place of occurrence due to fear. During the re-examination, it was put to her “How did Girija fall?” (Q) “Ganappa cut her” (A). Again, PW7 was cross-examined with the permission of the court. The question was “Did you see Ganappa cutting”. The answer was “Did not see him cutting, Ganappa was having a knife in his hand”.

20. PW8 is the wife of Narayana Naik, who is examined as PW5. When she was examined, she deposed that Ganappa was residing in her house. On the date of the incident, she had gone to the adjacent property for plucking green leaves. When she came back to the house, Ganappa was found in her courtyard. According to PW8, the accused was saying himself that he had corrected everything. She also deposed that there was blood stain on the shirt and the dhothi of the accused. On seeing her, the accused left the place. After some time, when she saw him again, he was wearing only a towel. According to her, the Police brought Ganappa to her house on 13th and she

witnessed the production of the knife by Ganappa before the Police. She identified the knife as MOV. According to her, what she had seen is bringing of knife from inside the house to the outside. She also deposed that Ganappa and Girija were inimical towards each other and Girija was killed by Ganappa by inflicting cut injury on her. During the cross-examination, she stated that she went for plucking green leaves at 4 p.m. and it was at about 6 p.m., that she returned. According to her, when she reached the house, her husband was available in the house. She does not remember as to whether it was pants or dhothi that Ganappa was wearing at that time. She also deposed that Ganappa had worn a banyan. In the morning of the date of occurrence, Ganappa was in the house and she had not entrusted any work to Ganappa. She also stated that Ganappa came to their house two days prior to the incident. During re-examination, the prosecutor was allowed to put a leading question as to whether she had seen blood stains in the shirt and dhothi of Ganappa, when she returned after plucking the green

leaves, and she answered positively.

21. PW9 is Dr.S.Gopalakrishna Pillai, who is working as Professor of Forensic Medicine in M.C.Hospital, Pariyaram, who conducted autopsy on the body of the deceased Girija. He deposed that he had conducted the postmortem examination on the body of a female, named Girija aged about 45 years involved in Crime No.5 of 2007 of Adhur Police Station between 2.30 p.m and 3.30 p.m. on 12.1.2007 at Academy of Medical Science, Pariyaram and he issued a postmortem certificate, which bears his signature and he identified the same. Accordingly, the postmortem certificate is marked as Ext.P6. During the examination of PW9, he deposed that he had noticed the following antemortem injuries.

*“1. Incised wound, 7.5x2 cm, vertically placed on the front of head, the front end being 3.5 cm, above the middle of left eyebrow. The frontal bone was found out into two, underneath. There was another incised wound, 8.5 x 1cm, running backwards in the same plain, with an intervening bridge of tissue, 2 cm. long, showing a skin cut alone. Skull underneath showed a superficial cut.*

2. *Incised wound, 7.5 x 2.5 cm., horizontal, on the right side of top of head. The wound extended downwards (7.5 x 1.5 cm) to a point, 5 cm. behind the right ear. There was an intact skin tag between the two injuries. The bone underneath was found cut into two. A piece of parietal bone was separated from the skull and hanging loosely; brain matter was bulging out through the torn dura.*

3. *Incised wound 10.5 x 1.5 cm, on the top of head parallel to injury No.2 and separated from it by intact scalp tissues, 2.5 cm. in width.*

4. *Split lacerated wound, 6x1 cm. vertical, on the center of forehead, the lower end being just below the inner end of left eyebrow underneath the frontal bone was fractured and fragmented. The fracture extended down to the floor of anterior cranial fossa, which was fragmented.*

*Underneath injuries 1 to 4, the brain showed bilateral subdural and subarachnoid bleeding. Laceration of right parietal lobe (7x6 cm) contusion of under surface of frontal lobes and features of increased intracranial tension.*

5. *Lacerated wound, 1.5x0.5 cm at the middle of upper lip. The wound was opening into the oral cavity. The central incisor teeth of upper jaw were found dislocated.*

6. *Multiple small abrasions and lacerations on the inner aspect of lower lip.*

7. *Lacerated wound, 1.5x0.5 cm., on the chin, opening into the oral cavity, 1.5 cm below the*

*right corner of mouth.*

*8. Superficial lacerated wound, 1.5x0.5 cm., on the right jaw margin 2 cm to the right of middle of chin.*

*9. Lacerated wound, 2.5x 0.5 cm. on the left side of chin.*

*10. Superficial cut, 3x0.5cm. on the right side of neck, 4 cm below the ear.*

*11. Muscle deep incised wound, 5.5x1 cm., on the front and inner aspect of left wrist. Two tendons were found cut, and the bone was cut superficially.*

*C. **Other findings**:- Stomach was full within rice and other vegetable food particles; no unusual smell; mucosa normal. Heart and coronary arteries were normal. Lungs were pale. Uterus was normal in size, with its cavity empty; All other internal organs were pale, otherwise normal. (A blood swab was preserved)."*

According to him, the opinion as to the cause of death is "died of blunt and sharp violence sustained to the head". He also deposed that injuries 1 to 3,10 ,11 were caused by sharp edged weapon. Injury Nos.4 to 9 were caused by blunt weapon. Injury Nos.1 to 3,10 and 11 can be caused by a weapon like MOV. He also deposed that injury Nos.1 and 2 have special characteristics and they were caused by a curved weapon. Injury Nos.1 to 3

together are sufficient to cause death and according to him, injury No.4 alone is also sufficient to cause death. There was no serious cross-examination from the side of the defence. Denying the suggestion put forward by the defence, PW9 deposed that injury Nos.1 to 3 and 10 and 11 could not be caused by weapon like MOV.

22. PW10 was then working as Police Constable in the Adhur Police Station and he is a person, who had taken the body of the deceased to the Medical College Hospital, Pariyaram for postmortem. Thus, when he was examined, he deposed that the dress and ornaments found on the dead body were removed and entrusted with CW23. Thus, he identified the following items. MOVIII saree, MOIX blouse, MOX skirt and MOXI chain with locket and MOXII studs. He also identified a string with amulet MOXIII. According to him, he had put his signature in a mahazar prepared for the said purpose and the said mahazar is marked as Ext.P7.

23. PW11 is another witness, who was present along with

PW10, when the body was removed to the Pariyaram Medical College Hospital and he also deposed in terms of deposition of PW10 and identified MOs.VIII to XIII.

24. PW12 is a photographer, who took the photographs of the dead body and the scene of crime. Thus, when examined, he deposed that he had taken the photographs of the dead body of deceased Girija and the place of occurrence and he identified the same as Ext.P8 series and the negatives of the same as Ext.P8(a).

25. PW13 is the then Village Assistant of Adhur Village, who prepared a site plan with respect of the scene of crime. He deposed that he had prepared a site plan with respect to the place of occurrence after inspecting the place and as requested by the Police and the site plan is marked as Ext.P9.

26. PW14 is the then Sub Inspector of Police, Adhur Police Station. He deposed that PW1 appeared before him and gave a statement at about 11 p.m. on 11.1.2007. He identified the statement as Ext.P1, which is already marked. According to

PW14, on the basis of Ext.P1 information submitted by PW1, he registered an F.I.R. and the same is marked as Ext.P1(a). During the cross-examination, he deposed that while he was on duty in Kanhangad Police Station, he received information that in the evening at 10.30 p.m., on the date of occurrence, there was some scuffle at Mavinadi and the Police had gone to that place. According to him, on getting such information, he reached in the Adhur Police Station and thereafter, CW1 came and gave Ext.P1. According to him, as informed by CW1(PW1), the time of occurrence is recorded in the FIR as between 17.45 to 18.30.

27. PW15 is the then C.I. of Police, Adhur Police Station. According to him, on 12.1.2007 at about 8 a.m., he undertook the investigation in the above crime and accordingly, he went to the place of occurrence and prepared the inquest report with respect to the body of the deceased Girija. He identified Ext.P2 inquest report, which is already marked. According to him, while preparing Ext.P2 inquest report, the broken Aluminium pot, a cap made of areca palm spathe, which was found within

25 metres from the place at which the dead body was lying, the blood stained soil seen on the pathway and stones were collected in a polythene cover and seized for the investigation purpose. Thus, he identified MOI pot, MOII cap made of areca palm spathe and MOIII blood stained soil and stone. According to him, apart from MOIII small stone, no other stones were seen at the place of occurrence. He also deposed that MOs.1 to III were seized in the presence of the witnesses, who have signed in Ext.P2. According to PW15, on completing the inquest, the body of the deceased was sent for conducting postmortem in the Pariyaram Medical College Hospital and he also questioned the witnesses and recorded their statement. He had also deposed that by preparing Ext.P7 mahazar, the dress and the ornaments found on the body were seized and produced by CW15. Thus, he identified Mos.VIII to MOXIII. According to him, he arrested the accused at about 10.10 p.m. in the night on 12.1.2007 after preparing arrest memo and inspection memo, which are respectively identified and marked as Exts.P10 and

P11. According to him, after the arrest of the accused, on questioning, he had given a confession statement and the same is marked as Ext.P12. Thus, according to PW15, on getting Ext.P12 confession statement and as led by him, himself and party went to the house of CW12 (PW5) and the accused took out a knife from the ceiling of the house and the same was taken into custody. He identified MOV. He also identified Ext.P3 mahazar for seizure of the knife. He further deposed that the accused gave another confession statement and extract of the same is marked as Ext.P13. According to him, in terms of Ext.P13 confession statement and as led by the accused, himself and party along with the accused went near to the house and shirt and dhothy worn by the accused at the time of occurrence, which were concealed beneath the stone on the bank of the canal, were taken out and produced by the accused and the same were taken into custody. He identified the same as MOVI and MOVII. The mahazar prepared for the seizure of the same is identified as Ext.P4. It is also deposed by PW15 that the

accused had given another confession statement, which is marked as Ext.P14. Accordingly, himself and the police party along with the accused went to the place as led by the accused and the accused has taken a stone from a property lying on the southern side of the place at which the dead body was found and the same was seized by preparing a mahazar. Thus, the stone produced by the accused is identified as MOIV and the mahazar prepared for the seizure of the same is identified as Ext.P5. According to him, at that point of time, CW3 was not present. He also deposed that subsequently, the accused was produced before the Court and the material objects were also produced before the court by preparing a property list and the same is marked as Ext.P15. According to PW15, by preparing a forwarding note, a request was made before the court to send the material objects for chemical examination. The forwarding note is marked as Ext.P16 and the chemical analyst report thus obtained is marked as Ext.P17. He continued the investigation and the witnesses were examined and their statements were

recorded. As part of the investigation, he had caused to take photographs of the dead body of the deceased Girija and the place of occurrence and he identified the same as Exts.P8 and P8(a) series. He submitted that on completing the investigation and after verifying the records, he filed the final report.

28. During the cross-examination, PW15 deposed that MOs.VI and VII were taken from the bank of the canal through the property of one Babu Naiker and at that point of time, the same were wet. He had not noticed blood stain in those material objects. According to him, he came to know that the accused was engaged in the job of plucking arecanuts. He further deposed that MOIV was recovered from the property and it was not taken at the time of preparing the inquest. He denied the suggestion that the confession statement was created artificially. According to him, the incident had started at a point thirty metres away in the pathway where the dead body was lying and MOIII was seized from there. He categorically stated that it is not correct to say that MOIII was seized from nearby the dead

body. According to him, the accused was arrested as he was found restrained by the local people near the house of Narayana Naik. The accused was not tortured by anybody. He denied the suggestion to that effect. In the re-examination, he stated that no blood stain was found on MOs.VI and VII as the same were found wet at the time of seizure.

29. Sri.I.V.Pramod, learned counsel for the appellant vehemently submitted that due to the failure on the part of the investigating agency to find out the real culprit, who is responsible for the murder of deceased Girija, they picked up the accused, who is an innocent person and fixed the responsibility and criminal liability upon the shoulders of the appellant. So, according to the learned counsel, it is a false case foisted by the prosecution against the appellant. It is also submitted that the incriminating circumstances relied on by the prosecution and attempted to prove during the trial, have not been proved supported by sufficient evidence and therefore, the findings of the court below are liable to be set aside.

30. In order to substantiate the above contention, the learned counsel invited our attention to the depositions of the witnesses and submitted that the evidence of these witnesses particularly, PWs.1,4,5,7 and 8 are not corroborating each other, but are contradicting on material points. In short, the submission of the counsel is that to prove the presence of the accused in and around the place of occurrence, there is no convincing evidence. It is the further submission of the learned counsel that no evidentiary value can be attached to the alleged recovery effected by the investigating officer under Section 27 of the Indian Evidence Act. According to the counsel, an improper investigation was conducted, as reflected from the judgment of the trial court. Thus, it is pointed out that there is no proper explanation as to how two stones happened to be produced before the court, which were recovered on the basis of the disclosure statement made by the accused. So, according to the learned counsel, the findings arrived at by the court below are highly arbitrary and illegal and therefore, the conviction

recorded against the appellant is liable to be set aside.

31. Per contra, Smt.Praicy Joseph, the learned Public Prosecutor submitted that PWs.1,4,5,7 and 8 are crucial witnesses and their evidence cannot be ignored on flimsy grounds. The presence of the accused with the weapon near the place in and around the time of occurrence is established through the evidence of those witnesses. It is also the contention of the learned Public Prosecutor that the accused immediately after committing the murder of deceased Girija made extra judicial confession before the prosecution witnesses and the same can be accepted as evidence in the light of the decision reported in **Aloke Nath Dutta and Ors. v. State of West Bengal** [(2007) 12 SCC 230]. It is also contended that besides the clinching evidence of PWs.1,4,5,7 and 8 and the extra judicial confession made by the accused, the weapon and stone used by the accused for inflicting injuries on the deceased were recovered on the basis of the disclosure statement made by the accused while he was questioned under Police custody and

the said valuable evidence are admissible under Section 27 of the Evidence Act. Thus, according to the learned Public Prosecutor, the trial court has found in favour of the prosecution and the accused was found guilty on the basis of the above referred materials and such a finding cannot be set aside unless there are sufficient grounds for the same.

32. We have carefully considered the arguments advanced from the side of the appellant and from the side of the prosecution. We have carefully perused the evidence and materials on record.

33. At the outset, it is to be noted that the investigating officer launched the prosecution against the accused on the basis of the materials and the direct evidence claimed to have been collected by him. According to the police charge, PW7 was an eye witness to the incident. So, the prosecution proceeded with the trial to prove its case against the accused on the basis of direct evidence. However, during the trial, PW7 deposed that she had not seen the accused inflicting injury on the deceased.

Thus, in fact, there is no direct evidence on the records to connect the accused with the crime. In this juncture, it is relevant to note that the learned Judge of the trial court held in paragraph 12 as follows:-

*“12. PW7 is an actual eye witness to the incident. According to her, while she was sweeping the courtyard she heard a screaming sound and when she looked out found the accused chopping the deceased and she also found PW5 pulling the accused. This evidence shows direct involvement of the accused in the incident. It is true that in the last part of the cross-examination, she deviated from her stand deposing that she did not see the actual chopping by the accused. Even if her deviated version is accepted, the other circumstances revealed by other witnesses lead to the guilt of the accused.”*

So, the net result is that there is no direct evidence from the side of the prosecution to substantiate its allegation against the accused. If that be so, the question to be considered is whether the trial court is justified in its finding of guilt of the accused and convicting him for the offence under Section 302 of I.P.C. on the basis of the available evidence on record.

34. On approaching the case in hand in such a manner, it can be seen that the following incriminating circumstances are

sought to be established by the prosecution viz.,

- (1) *the accused and the deceased Girija were on inimical terms and there were frequent quarrels between them with respect to the property and the allegation against the accused that he had stolen the arecanuts from the property of Girija;*
- (2) *The accused was found near to the body of the deceased immediately after the incident;*
- (3) *The accused was found in possession of a knife with blood stain immediately after the incident and near to the body of the deceased and also found going to his residential house.*
- (4) *Recovery of the shirt and dhoti worn by the accused, recovery of stone and knife under Section 27 of the Indian Evidence Act; and*
- (5) *finally motive.*

35. Now let us examine the evidence and materials on record to find out whether the above referred circumstances are proved by the prosecution and whether the trial court is justified in convicting the appellant for the offence under Section 302 of I.P.C. even if it is found that the prosecution has proved the

above circumstances.

36. The first circumstance mentioned above is the quarrel between the accused and the deceased. It is true, PWs.1,4,5,6,7 and 8 have mentioned that the accused and the deceased were in inimical terms and there was quarrel connected with the allegation raised by the deceased against the accused that the accused had stolen arecanuts from her arecanut garden. However, no witness has given any account of the nature of the property dispute and what was the actual property dispute. The details regarding the allegation said to have been made by the deceased against the accused about the theft of arecanut from the property of Girija, also are absent. Admittedly, the accused is engaged in arecanut plucking. As per the prosecution allegation, the present incident had occurred between 5.45 p.m. to 6.30 p.m. on 11.1.2007. None of the witnesses had spoken to about the date on which the alleged theft was committed by the accused and the number of arecanuts said to have been stolen by the accused and there is no case for the witnesses that Girija had

made any complaint before any competent authority about the alleged theft of arecanuts. In the present case, the allegation of the prosecution is that the accused had inflicted injuries on the deceased by using a knife and stone at the time and on the date alleged by the prosecution. In order to find out, as to whether the accused was provoked enough to inflict injuries on the deceased on the basis of the said rivalry, the prosecution has to give the aforesaid details connected with the quarrel. The prosecution has miserably failed to adduce any evidence to bring to light the facts immediately prior to the incident, which provoked the accused to inflict such injuries. Even if the versions of these witnesses are admitted, for the sake of argument, the only inference that can be drawn, is that there was some quarrel between the deceased and the accused. But the same is not sufficient to fix immediate provocation on the accused to commit such overt act unless the prosecution has shown that out of such rivalry, the accused had pre-planned to commit murder of deceased Girija. The prosecution has no such

case and no evidence is adduced in this regard. Admittedly, the accused is an arecanut plucker by profession and there is nothing unusual in the possession of the knife in his hand. So, the conclusion is that though the prosecution has alleged that there was quarrel between the accused and the deceased, no acceptable evidence is adduced and thus, the first circumstance relied on by the prosecution is not established with cogent evidence.

37. The second circumstance, which is shown as the incriminating circumstance against the accused referred above, is that he was found immediately after the incident and near to the body of the deceased Girija. Admittedly, the deceased Girija and accused and the prosecution witnesses particularly, PWs.1,4,5,7 and 8 are residing in the same vicinity. So, the presence of the accused, at that time, as alleged by the prosecution is quite natural and the prosecution has to specifically prove that immediately before and after the occurrence, the accused was present with the preparation to

commit murder of the deceased with incriminating evidence. The first witness examined by the prosecution is PW1, who is none other than the brother of the deceased. He is the person, who lodged Ext.P1 F.I.statement on the basis of which the Police registered Ext.P1(a) FIR. The F.I.statement is seen recorded at 11 p.m. on 11.1.2007. The version of PW1 is that when he was coming after 5 o' clock on 11.1.2007, after watering in his arecanut garden and when he reached near the house of Akkamma, he was told that the accused assaulted Girija at the road. It is his further case that when he reached at that point, he saw some blood stains on the road and he saw the accused at the courtyard of the house of PW5. At that point of time, according to PW1, he asked the accused as to why he created the problem and the accused replied that he had finished Girija. It is the further case of PW1 that when he was proceeding towards his house, ten metres away from the pathway, he saw Girija lying and also watched her attempt to take water from the nearby aluminium pot. The occurrence has

taken place when Girija was bringing water from the house of Vitla Naik. He says that the pathway was a public pathway having five feet width. The head of Girija was cut open and blood was oozing. It is his further case that after seeing this, he went to his house and thereafter, went to the nearby houses where his relatives viz, Venkitaramana Naik and Gopala Naik are residing. When he returned to the place of occurrence along with them, Girija had died. The question is whether the above version of PW1 can be believed. The normal human conduct of a person, who has seen another person, lying with severe injuries and attempting to take water, is to render assistance to such injured and at least, to give water to the injured. In the present case, PW1 is not a stranger. He is none other than the brother of the deceased Girija. His version is that though he had seen his sister lying injured and attempting to take water, he without rendering any assistance to her, went to his house and when came back with the other relatives, the injured was found dead. The above version cannot be believed since it is against

the normal human conduct. We are of the definite view that the evidence of PW1 cannot be accepted for other reasons also. The prosecution projected PW1 as the person, from whom the Police got information about the incident, when he appeared before the Police station and launched the first information. Consequently, the F.I.R. was registered. But, the evidence of PW1 itself shows that no sanctity can be attached to Ext.P1 F.I.statement and Ext.P1(a) FIR. In the chief examination itself, PW1 has stated that after realising that Girija had died, when he came along with his relatives, according to PW1, he again went to his house, came back after two hours, when the Police reached there. Thereafter, the Police, according to him, took him to the Police Station, along with the father of the accused and on reaching the Police Station, the Police questioned him and he stated about the incident. The said fact itself shows that prior to the information given by PW1, the Police had got information about the incident and they had arrived at the spot. If that be so, what is the legal validity of Ext.P1 F.I.statement and the F.I.R.?

In this juncture, it is pertinent to refer to the evidence of PW1 about the presence of the accused. He deposed that the accused was seen standing in the front portion of the courtyard of the house of Narayana Naik. PW1 has no case that the accused was found in the pathway near to the dead body of the deceased Girija. He has also no case that the accused was possessing any weapon when he had seen the accused. In this juncture, it is relevant to note that even as per the case of the prosecution, the accused is residing in the said house which belongs to Narayana Naik, who is none other than his father's brother. So, the presence of the accused there in the courtyard of his residential house is quite natural. As per the evidence of PW1, except the exhortation said to have made by the accused, he had not seen or observed any other incriminating circumstances about the appearance of the accused. During the chief examination itself, he deposed that he did not give a statement as to who committed the murder of Girija. He categorically deposed before the court during his chief examination itself that he has not given

statement to the Police that Ganappa has assaulted the deceased Girija with some weapon due to his previous animosity, while she was bringing water. So, the evidence of PW1 shows that the accused has not confessed anything before PW1. However, the learned Public Prosecutor, on the strength of the decision in **Aloka Nath Dutta's case** (supra), argued that the extra judicial confession made by the accused before PW1 can be accepted as a valuable piece of evidence. We have no doubt about the legal position laid down by the Apex Court in the above decision, but the question is whether such dictum is attracted in the present case in view of the facts and circumstances mentioned above. PW1 himself submitted before the court that he has not stated before the Police that the accused had committed the murder of the deceased Girija, out of his animosity towards her when she was bringing water. So, the extra judicial confession goes. It is also relevant to note that PW1 has no case that when he arrived at the spot, he had noticed the presence of any other person. According to him, on seeing the injured, he went to his house

and thereafter came along with the above referred relatives. The absence of any positive evidence in the deposition of PW1 about the presence of any other persons particularly, PWs.4,5,7 and 8 will go against the prosecution. Thus, for the aforesaid reasons and on an analysis of the evidence of PW1, who is none other than the brother of the deceased, it can be seen that his evidence cannot be believed, particularly as his conduct after seeing his injured sister is not at par with normal human conduct. So, the evidence of PW1 is liable to be rejected.

38. The other witness examined by the prosecution to prove the presence of the accused is PW4. We have already referred to the evidence of PW4. In the chief examination, he had stated that on the date of occurrence, the deceased left his house after 5 o' clock on completing her work in his house. According to PW4, immediately after Girija left her house, Akkamma came to his house and told him that she had seen the accused Ganappa chopping Girija and he rushed towards the place of occurrence which was situated about 100-150 metres

away from his house. He deposed that when he reached there, he saw Girija lying in the pathway with oozing of blood from the injury on her head. He also deposed that Girija had died, by the time when he reached there. It is further deposed as “when I reached at the spot, I saw Ganappa going to the house of Narayana Naik with a knife.” Thus, he came back to his house and informed the matter over phone to the Adhur Police Station. The prosecution has no definite case as to who came to the spot firstly, whether it was PW1 or PW4. We have already referred to the evidence of PW1 and according to him, he had seen the accused standing in the courtyard of the house of PW5. According to him, he reached the spot immediately after 5 o' clock. He has not mentioned the presence of any other person. PW4 is also not referring about the presence of any other person including PW1. PW1 has also no case that he had seen any knife or weapon in the hands of the accused when he saw the accused in the courtyard of the house of PW5. So about the presence of PWs. 1 and 4, their evidence are not corroborating

each other, but there are inconsistencies in their evidence about their presence. When PW4 was subjected to cross-examination, the defence succeeded in bringing out the fact that when he reached at the place of occurrence, no others were present. In this juncture, it is relevant to note that his version during the chief examination was that by 5 o' clock, the deceased left his house and immediately thereafter, on the basis of the information furnished by Akkamma, he went to the place. The above version is further shown as incorrect through the answers elicited by the defence through his cross-examination. He deposed during the cross-examination that on the date of occurrence, he reached his house in the evening after 6 p.m. after attending the party fund collection for raising fund. If that be so and if the said version is correct, we have to hold that the accused remained in the courtyard of the house of PW5 with the weapon for more than one hour after the occurrence. We are not prepared to arrive at such an unfounded and unwarranted conclusion. The defence has also succeeded in bringing out the

improvement made by PW4 during his chief examination and he had stated that he is not remembering as to whether he had given any statement before the Police to the effect that he had seen Girija lying injured. In view of the above contradictions and lapses in the evidence of PW4, we refuse to hold that PW4 was present on the scene of crime before the Police arrived there. The version given by PW4 that he had seen the accused with a weapon in the courtyard of the house of PW5 also cannot be taken without a pinch of salt. So, the evidence of PW4 is not helpful for the prosecution to show that the accused was found near to the body of the deceased on the date of the incident under any incriminating circumstance.

39. PW5 is another witness examined by the prosecution to prove the above circumstances. During the chief examination, he deposed that on hearing the cry of Girija, he proceeded to the place of occurrence and found Girija lying dead and Ganappa was there with a knife. He identified the knife. In the evidence of PW5, he has not mentioned the time at

which he heard the cry of Girija. When PW5 says that he had seen Ganappa there with a knife, he has no further case that he asked anything to Ganappa about the incident or that he tried to salvage the injured or whether there was any altercation between himself and the accused. In this juncture, it is relevant to note that PW7/Akkamma- a lady, who is said to have witnessed the incident, deposed before the court that she had seen Narayana Naik (PW5) pulling the accused after catching hold of him and at that point of time, the knife fell down from the hands of the accused. But, in the evidence of PW5, he has no such case. Neither PW4 nor PW5 has been declared as hostile by the prosecution. So, the above evidence of PWs.4,5 and 7 cannot go together. If that be so, the claim of PW4 that he had seen the accused with the knife going to the courtyard of the house cannot be believed, particularly in the absence of the explanation as to how the knife again reached the hands of the accused after it had fallen down as spoken to by PW7. It is also relevant to note that as stated earlier, neither PW1 nor PW4 has

a case that PW5 was present at the spot. So, the above evidence of PW5 cannot be believed to hold that the accused was present at the spot particularly, when he does not say anything about the conduct of the accused when he saw him and he has also not deposed about the act of the accused as spoken to by PW7.

40. PW7 is a neighboring lady examined by the prosecution to give an account of the role of the accused in committing murder of deceased Girija. It is true that she had deposed in the chief examination that at about 5½ hours, while she was sweeping the courtyard, she heard a scream and when she looked over there, she saw the accused chopping Girija. But, no others were present. As referred above, she has also deposed that except the accused and Narayana Naik(PW5), no others were present there. According to her, she saw PW5 pulling back the accused by catching hold of him and at that point of time, the knife fell down from the hands of the accused. But, she had no case as to what happened to the accused thereafter. She had not witnessed the further movement of the

accused. During the cross-examination, she stated that when she looked over on hearing the scream, Girija was lying. Probably, in order to clear the above situation, during re-examination, the learned Public Prosecutor in the trial court has asked her “how Girija had fallen”. Then PW7 answered as “Ganappa chopped”. Then with the permission of the court, the defence again cross-examined PW7 by putting the question, “have you seen Ganappa chopping”. The answer was “not seen the chopping. There was a knife in the hands of Ganappa.” As we have already indicated, initially the prosecution sought to prove its allegation against the accused on the basis of direct evidence particularly on the basis of statement of PW7. But, she did not stick on to her 161 statement and even the trial court tried to find out whether the prosecution has succeeded in establishing its case on the basis of other evidence as the evidence of PW7 was not sufficient. The defence has succeeded in bringing out the fact that the house of PW7 is situated at about 100-150 metres away from the place of occurrence and her property is lying at a

level four metres high from the actual place of occurrence. She also admitted that in her property, there are plantains, coconut trees and arecanut trees. If the said facts are correct, in the absence of any clarification brought in by the prosecution, we have no hesitation to hold that there is no possibility for PW7 to see the incident or the persons present at the spot particularly, when PW7 was standing in the courtyard of their house, situating 100-150 metres away from the place of occurrence and from where, there is a difference in height of four metres between the property and the actual scene of crime. This witness has also no claim that she had watched the presence of PW1 or PW4. While PW7 has got a case that PW5 had pulled the accused back by catching hold of him, PW5 has no such case. PW5 has also no case that the knife had fallen on the ground from the hands of the accused. So, the evidence of PWs.5 and 7 militates with each other and is at variance with the evidence of PWs.1 and 4. Therefore, the evidence of PW7 also cannot be believed to hold that the accused was present at the

place of occurrence.

41. The other witness examined by the prosecution is PW8, who is the wife of PW5. According to her, when she was returning after plucking green leaves, the accused was available at the courtyard of her house. According to her, the accused uttered that he had corrected everything. It is also the version of PW5 that there was bloodstain on the shirt and dhoti of the accused. According to her, on seeing her, the accused left the place and after some time, when he came back, he was wearing only a towel. During the cross-examination, she admitted that when she came back after plucking green leaves, it was about 6 o' clock and when she arrived in the house, her husband was present there. In this juncture, it is relevant to note that PW5, the husband of PW8 has no such case that himself and the accused were available in the house when his wife PW8 came to the house. PW7 says that she has not seen the accused going anywhere. PW5 also has not stated about the further movement of the accused after his arrival at the spot. If the version of PW8

is correct, we have to presume that after the incident, both the accused as well as PW5 came to their house.

42. PW5 has no case that after his arrival at the place of occurrence, he had returned to his house. But, during the course of examination of PW5, the defence has succeeded in bringing out the fact during the course of examination of PW5 that after watching the occurrence, he had gone to the house of PW4 and told him about the incident. Thereafter, he came back to the place of occurrence along with others. Therefore, the evidence of PW8 that her husband PW5 was available in the house at the time of her arrival cannot be believed. PW8 has also no case that the accused was holding any knife or weapon when she saw him in her courtyard. As the evidence of PW8 is not corroborated by the evidence of other prosecution witnesses, it is not safe to believe PW8 to hold that the accused was present in her house after the incident.

43. Thus, on scrutiny and analysis of the evidence of PWs.1,4,5 and 8, it can be seen that they are not supporting each

other and there is inconsistency in their evidence about the presence of the accused at the place of occurrence immediately before or after the incident. Hence, according to us, the prosecution has miserably failed to establish the second circumstance.

44. In this juncture, it is relevant to note that to our utter dismay, the learned Judge of the trial court had entered into a discussion and observation as seen from paragraph 10 of the impugned judgment. Paragraph 10 is quoted herein for convenience.

*“10. At the time of argument counsel appearing for the accused tried to bring out a contradiction between the evidence of PW1 and PW4. It is true that the first person, who found the deceased immediately after the incident was PW1, as per the evidence. At the time of seeing the deceased by PW1, she was alive and was struggling for water. It is disclosed by him that before he reached that place, he found the accused in the courtyard of PW5. When PW4 reached the place of occurrence, the deceased has succumbed to her injuries. So his arrival at the place of occurrence must be after the departure of PW1 there from. Even at that time PW4 found the accused going to the house of PW5 with the knife. According to counsel for accused that is*

*impossible. At a glance, we may feel some ambiguities in that evidence. But, it is to be noted that there is nothing on record to hold that when PW4 found the accused going with MO5 that was his return after committing the offence. On the other hand after the departure of PW1, the accused might have come to spot again for ascertaining the death of accused and left the place. And that departure might have been noticed by PW4 and others. Though there was no direct evidence to prove the arrival of the accused at the place of occurrence again that much be only the reason for being noticed by PW4. Here the fact that PW4 noticed the accused going back from the place with MO5 is not specifically challenged in the evidence. A bald denial of his by putting the suggestive question which was answered in negative cannot be taken as evidence. So the unchallenged evidence of PW4 and PW1 cannot be discarded only on the basis of the above so called infirmities."*

The above observation and finding of the learned Judge is absolutely unwarranted and the same is without any material or evidence. In the light of the evidence, which we have already referred, it can be seen that the evidence of the above referred witnesses are not referring to the presence of either of these witnesses. For that reason alone, we have already held that the evidence of these witnesses cannot be believed. As PW7 has not stuck on to her 161 statement and as she is not an eye witness,

the prosecution as well as the court below treated the available evidence to prove the circumstances referred above. At a stage, when the said evidence are not sufficient to constitute the circumstances referred above, the said fact created serious lacuna and vacuum in the prosecution case and now the attempt of the learned Judge appears to us to make up such lacuna and to fix the criminal liability upon the accused. None of the witnesses has spoken to or any other witnesses or materials produced by the prosecution would show that after the departure of PW1, the accused had arrived at the spot again for ascertaining the death of the accused and left the place after taking the knife and the above departure might have been noticed by PW4 and others. But, the evidence of PW5 and PW7 are not lending support to the above finding of the learned Judge. Even PW4 has no such case. Under the above circumstances, it is a futile attempt made by the learned Sessions Judge, which is not warranted in a trial of the sessions case, to restructure the prosecution case on the basis of the surmises,

conjectures and unfounded presumption. The approach like the above one shall be depreciated and discouraged. In order to ensure a fair and proper trial, the court with which the administration of criminal justice is entrusted with should restrain itself from restructuring the prosecution case so as to make up the lacuna and to correct or cure the defect of the prosecution so as to warrant conviction of the accused, who faced the trial anticipating impartial and fair justice from the court.

45. The third circumstance relied on by the prosecution is the presence of the accused with the blood stained knife immediately after the occurrence and near to the body of the deceased and also that he was found going to his residential house. We have already referred to the evidence of PWs.1,4,5,7 and 8 while considering the second circumstance relied on by the prosecution and concluded that their evidence cannot be believed to prove the presence of the accused immediately before or after the incident. The presence of the accused with

the weapon, is deposed by PWs.4,5,7 and 8. For the reasons stated earlier, we have already held that their evidence cannot be believed. The same is the position when considering the third circumstance sought to be relied on by the prosecution. As per the prosecution case, it was PW1, who had come to the place of occurrence and had seen the accused. But, PW1 has no case that when he had seen the accused, the accused was possessing any weapon. The next witness examined by the prosecution to prove the presence of the accused with the weapon is PW4. We have already found that to prove the presence of the accused, his evidence is not helpful. According to him, when he arrived at the place of occurrence, he saw the accused going towards the house of Narayana Naik with the knife. As we have already observed, if we believe PW4, we have to hold that the accused had remained in and around the place of occurrence holding the knife, for nearly one hour. Because, according to PW4, he came to the place of occurrence only after 6 o' clock in the evening and when he arrived, he saw the accused going to the house of

PW5 and PW8 where the accused is ordinarily residing whereas PW1 says, he had seen the accused at about 5 o' clock. So, the above version of PW4 cannot be believed. It is also relevant to note that PW7 has categorically stated that when PW5 approached the accused, he pulled back the accused by catching hold of him and the knife fell down from the hands of the accused. If that is correct, in the absence of any explanation as to how the knife again came into the possession of the accused, we cannot believe PW4 to hold that when he met the accused, he was having the knife. In the evidence of PW5, though he has stated that the accused was in possession of a knife, he has no further case as to what happened to the knife and the accused. So, the evidence of PW5 is in darkness about the weapon and the accused. As per the evidence of PW8, when she reached her house and saw the accused, she has no claim that she had seen any knife in the hands of the accused. So, the third circumstance relied on by the prosecution is also not established with cogent and satisfactory evidence.

46. The fourth circumstance sought to be established by the prosecution is about the recovery of shirt and dhoti of the accused allegedly worn at the time of occurrence and also the recovery of stone and knife under Section 27 of the Indian Evidence Act pursuant to the confession statements made by the accused. Since the three recoveries are effected, normally the above three recoveries can be treated as three separate circumstances. But, in the present case, the evidence adduced under Section 27 by the prosecution with respect to the recovery of these three items, there is a fundamental defect and legal flaw and for that reason, we have decided to consider all the above three recoveries together. The first fundamental legal flaw is that during the examination of PW14, the investigating officer has not reproduced the alleged confession statement made by the accused during his arrest and questioning. In the present case, what PW15 has deposed is that when the accused was arrested and questioned, he had made confession statement as stated in Ext.P12 with respect to the recovery of knife and in Ext.P13

with respect to the recovery of shirt and dhoti and in Ext.P14 confession statement with respect to the recovery of stone. It is true, MO5 knife was recovered as per Ext.P5 mahazar on the basis of Ext.P12 confession statement. MO6 shirt and MO7 dhothi allegedly worn by the accused at the time of occurrence were seized as per Ext.P4 mahazar on the basis of Ext.P13 confession statement of the accused and according to PW15, as per Ext.P4 confession statement of the accused, MO4 stone was recovered as per Ext.P5 mahazar. However, in the evidence of PW15, he has not reproduced the confession statement allegedly made by the accused as per Exts.P12 and P13. In view of the decision reported in **State of Karnataka v. David Rozario & another** [(2002) 7 SCC 728], unless it is specifically deposed by the investigating officer, before whom the confession statement is made by the accused, the exact words claimed to have stated by the accused, no evidentiary value can be attached to the mahazar wherein the alleged disclosure statement is recorded and the alleged recovery is effected.

A learned single Judge of this Court, in the decision reported in Krishnan Kutty v. State of Kerala [2015(2) KLJ 650], has held that unless oral evidence as to the information is given by the witness and recorded by the court, marking of the document containing the information is illegal and it is further held that discovery of a fact can be said to have been proved only when the investigating officer has deposed to the information obtained by him from the accused and to the subsequent seizure of the object pursuant to it. So, the contents of Exts.P12 to P14 are not proved. For the above sole reason, the entire confession statements produced by the prosecution and relied on by the court below are liable to be rejected.

47. Now we will separately consider the alleged recovery made by the investigating agency. To prove the recovery of MOV weapon, the prosecution mainly relied on the evidence of PWs.4,5 and 8. With respect to the knife, we have already observed and found that as per the evidence of PW7, the knife

had fallen from the hands of the accused at the place of occurrence when PW5 pulled the accused back. The prosecution has no explanation as to how the knife reached at the hands of the accused thereafter so as to conceal the same. Therefore, the recovery of MOV knife cannot be believed. On a scrutiny of the evidence of PWs.4,5 and 8, they have no case that they have seen the accused taking out the knife from the ceiling of the house of PWs.5 and 8, since, according to them, all of them were standing outside the house, when the accused was taking out the knife from inside the house. It is an admitted case of the prosecution that besides the accused, PWs.5 and 8 were also residing in the said house. So, the prosecution has miserably failed to prove the authorship of the alleged concealment of MOV. So no legal sanctity can be attached to the recovery of MOV knife as claimed by the prosecution.

48. MOVI shirt and MOVIII dhoti are seized as per Ext.P4 mahazar based upon Ext.P13 confession statement. Even if the same is admitted as correct, it cannot be treated as an

incriminating material to connect the accused with the crime. Even, according to PW15, the investigating Officer, no blood stain is noted in the said cloths since the same were wet when seizure was effected. When the defence cross-examined PW8, she deposed that she does not know the actual dress worn by the accused at that time, as to whether it was pants or dhoti. However, she is specific in her deposition that the accused was wearing a banyan at that time. So, the case of the prosecution that the accused was wearing shirt and dhoti at the time of the alleged incident and that it contained blood stain, is disproved by the evidence of PW8. In such circumstances, no evidentiary value can be attached to the recovery of MOs.VI and VII.

49. Another recovery is with respect to MOIV stone. With respect to this recovery also, the prosecution has miserably failed in adducing any cogent evidence. When PW3 a local witness, who is an attestor to Ext.P2 inquest report, was examined, he stated that besides MOs.1 to III, the Police had also seized a stone from the place where the dead body of the

deceased was lying and accordingly, the said stone is identified and marked as MOIV through PW3. However, when PW6 was examined, he also deposed that a stone was taken from the place where the dead body was lying and that was the stone shown to him during his chief examination. However, as we have already referred to, while recording the evidence of PW6, the court below has made the following endorsement in the deposition of PW6. Large stone is seen marked through PW3. Public Prosecutor submitted that stone marked through PW3 was a small stone. Till clarification is given, large stone is to be identified as MOIV. During the examination of PW6, Ext.P5 is marked through him. In this juncture, it is relevant to note that in Ext.P14 confession statement, it is seen recorded as “the stone was thrown to the forest. If I am taken there, the stone shall be shown.” However, in Ext.P5 mahazar prepared for the seizure of the stone, the place from where the stone was recovered is described as “the stone was recovered from an open area lying in the southern side of the stone wall built on the southern side

of the place where the dead body was lying.” So the stone was not recovered from the forest areas as seen recorded in the disclosure statement made by the accused. So, the statement with respect to the recovery of the stone, because of the above infirmities and contradictions also cannot be believed. In the light of the above discussions and the legal defect and the contradictions pointed out, we are of the view that the prosecution has miserably failed to establish the fourth circumstance.

50. Fifth circumstance is the motive. No evidence is adduced by the prosecution to prove the motive. We have already seen while discussing the first circumstance that the prosecution has miserably failed to prove the alleged dispute with respect to the property and also failed to furnish the details with respect to the allegation raised by the deceased against the accused that he had stolen the arecanuts of the deceased Girija. In the absence of any allegation that the accused had committed the murder of deceased Girija, with prior planning, and

particularly when the prosecution failed to establish the attendant facts and circumstances immediately prior to the death of the deceased, we are unable to hold that the prosecution has succeeded in proving the motive of the accused to commit the murder of the deceased Girija.

51. In the light of the above discussion and the evidence and materials referred above, the only conclusion that can be arrived is that there is no sufficient evidence to connect the accused with the crime. The concerned Police Officer, who conducted the investigation has miserably failed in collecting the evidence through a thorough and scientific investigation. It appears to us that the Police has shown hasty interest in booking the appellant as the accused responsible for the commission of murder of deceased Girija. Though the Police had arrived at the place of occurrence at about 7.30 as spoken to by PW1, Ext.P1 F.I.statement is seen recorded only when PW1 appeared before the Police Station and gave the statement. In fact, in view of the evidence of PW1 and PW14, it is crystal clear that the Police

had got information about the incident even prior to the launching of Ext.P1 F.I.statement. Still then, the Police created Ext.P1, for the reason best known to them, as given by PW1, after appearing before the station. The said fact itself shows that there was a trend on the part of the prosecution to create false evidence in this case.

52. Having regard to the above facts and circumstances and in view of the discussion, we are of the definite view that there is no sufficient evidence and materials to connect the appellant/accused with the crime by which the deceased Girija was murdered. Therefore, we are unable to approve the finding and conviction recorded by the learned Judge of the trial court. Consequently, the conviction recorded as per the impugned judgment stands set aside.

53. In the result, this appeal is allowed setting aside the judgment dated 20.11.2009 in S.C.No.688 of 2007 of the court of the Additional Sessions Judge (Adhoc-II), Kasaragod and the appellant/accused is acquitted of all the charges levelled

against him.

As we have already acquitted the appellant/accused, after setting aside the impugned judgment, the appellant is entitled to get released from the jail forthwith, if he is not required in any other case. Therefore, the Registry is directed to forward a gist of this judgment to the Superintendent of Central Prison, Kannur immediately for his appropriate action.

**V.K.MOHANAN,**  
**Judge**

**RAJA VIJAYARAGHAVAN.V.,**  
**Judge**

MBS/-

