

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

CRL.A.No. 1188 of 2011 ()

AGAINST THE JUDGMENT IN S.C.NO.450/2009 of ADDL.SESIONS COURT, FAST TRACK
COURT NO.II, PALAKKAD, DATED 25-01-2011

APPELLANT(S)/ACCUSED:

CHANDRAN @ NANDAKUMAR, AGED 59 YEARS,
S/O. NARAYANAN EZHUTHASSAN, PUTHENTHODIYIL HOUSE,
MANISSERY, OTTAPALAM.
C.NO.9185, CENTRAL PRISON,
KANNUR,

BY ADV. SMT.LISSY JOSE. P (STATE BRIEF)

RESPONDENT(S):

STATE BY CIRCLE INSPECTOR OF POLICE,
OTTAPALAM POLICE STATION.

BY SMT. PRAICY JOSEPH, SPL. GOVERNMENT PLEADER

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Bb

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

Crl.Appeal.No.1188 of 2011

Dated this the 02nd day of June, 2015

J U D G M E N T

V.K.MOHANAN, J.

This Criminal Appeal is filed challenging the judgment dated 25.01.2011 in S.C.No.450/2009 on the files of Additional Sessions Judge, Fast Track Court No.II, Palakkad, by the sole accused in the above sessions case.

2. The case of the prosecution is that, the deceased Lakshmi Amma was residing in house No.X/298 of Vaniamkulam Panchayath, Vaniamkulam II village, along with her son-in-law (the accused) and his children. Her daughter Parukutty had expired 6 months back. The house and the property, wherein the house is situated, has already been assigned in favour of her daughter Parukutty and thus, while Lakshmi Amma was residing along with her son-in-law, on 15.10.2008, at about 3.30 p.m., the accused committed murder of the said Lakshmi Amma and thereby, he committed the offence punishable under Section 302 of Indian Penal Code.

3. One Chandran, neighbour of the said deceased and accused, went to the Ottapalam Police Station at about 8.00 p.m on 15.10.2008 and he gave an information about the death of the said Lakshmi Amma before the then Sub Inspector of Police, Ottapalam Police Station, on the basis of which First Information Report in Crime No.789/2008 of the Ottapalam Police Station, was drawn for the offence punishable under Section 302 of Indian Penal Code.

4. On the registration of the above First Information Report, the investigation was undertaken by the then Circle Inspector of Police, who is examined as PW12, pursuant to which, he proceeded to the place of occurrence and after examining the body of the deceased, he prepared an inquest report and during the inquest, they had seized a blouse and two dhothis and hairs seen in between the fingers of the hand of the deceased. Thereafter, PW12 sent the body of the deceased to Medical College Hospital, Thrissur, with a requisition for conducting postmortem examination of the said body. He had also questioned the witnesses and recorded their statements. PW12, on getting reliable information that the accused was available near the

Ottapalam railway station, proceeded to there and thereafter, in the presence of witnesses, the accused was placed under lawful arrest at about 4.15 p.m on 16.10.2008. He prepared the arrest memo. The intimation regarding the arrest was given to Santhosh Kumar, the son of the accused through an arrest intimation prepared by him. On the arrest of the accused, the shirt and dhoti worn by the accused, at the time of arrest, were seized as per mahazar and those properties were produced before the court as per the property list. While the accused was undergoing as a pre-trial prisoner in the Ottapalam Sub-Jail, his hair was taken by the Medical officer in the presence of the witnesses as ordered by the court and the same were seized and the same were produced before the court as per the property list prepared. The Sub Inspector of Police has also questioned the doctor, who conducted the autopsy and obtained the postmortem certificate and the same is produced before the court. He had also collected the document about the ownership of the property, where the crime had occurred, from the Secretary of the Panchayath. The scene plan was also got prepared

through the Vaniamkulam Village Officer and the same has also been produced before the court. He had also prepared mahazar of the scene of occurrence and the material objects were produced before the court and to get chemical examination report, he made a request before the court by preparing a forward note to send the same to Chemical Examination Lab and obtained Chemical Examination Report. PW12 has also questioned the witnesses and recorded their statements and finally, after verification, he himself laid the charge before the court.

5. On the basis of the police charge filed before the Judicial First Class Magistrate Court, Ottapalam, C.P.No.21/2009 was instituted therein and the learned Magistrate, by the proceedings dated 23.09.2009 in C.P.No.21/2009, committed the case to the Sessions Court wherein, S.C.No.450/2009 was instituted and the same was subsequently made over to the present trial court. When the accused appeared, after hearing to the prosecution as well as the defence, a formal charge was framed against the accused for the offence punishable under Section 302 of Indian Penal Code, which when read over and explained to

the accused, he denied the same and pleaded not guilty. Consequently, the trial was proceeded further during which PWs.1 to 13 were examined, Exts.P1 to P15 and MO1 to MO11 were marked on the side of the prosecution. On completing the prosecution evidence, the incriminating circumstances and evidence which brought out during the prosecution evidence, were put to the accused under Section 313 of Code of Criminal Procedure and he denied the same. As no acquittal was possible under Section 232 of Code of Criminal Procedure, the accused was asked to enter into his defence, during which, DW1 was examined on the side of the defence. The trial court, by the impugned judgment has found that the 12 circumstances enumerated in the impugned judgment have been proved, which are consistent only with the hypothesis of the guilt of the accused and inconsistent with his innocence and the proved circumstances are conclusive in nature and tendency. The chain of evidence is also complete. Consequently, it is further found that the prosecution has succeeded in establishing that the accused had committed the murder of Lakshmi Amma by throttling and smothering as alleged by

the prosecution. Thus, the accused was found guilty of the offence under Section 302 of Indian Penal Code and consequently he was convicted thereunder. After hearing the accused on the question of sentence, he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for 6 months. Set off was allowed under Section 428 of Code of Criminal Procedure.

6. It is the above finding and order of conviction and sentence are challenged by the accused by filing an appeal from the jail where he is undergoing the imprisonment. On receiving the above appeal, this Court, by order dated 03.11.2011 directed the Registry to appoint a State Brief to prosecute the appeal on behalf of the appellant. Thus, Advocate Smt.Lissy Jose P. is appointed to prosecute the appeal.

7. We have heard Smt.Lissy Jose P., learned counsel appearing for the appellant and Smt.Praicy Joseph, the learned Public Prosecutor.

8. Let us consider the evidence and materials on record, before considering the arguments advanced in this

case.

9. As we have already stated, the police machinery in this case was set in motion when one Chandran appeared in the Ottapalam Police Station and gave an information about the death of the deceased Lakshmi Amma. The First Information Statement given by the said Chandran is recorded by the then Sub Inspector of Police, Ottapalam Police Station, which is marked as Ext.P1. As we have already stated, the First Information Statement was given before the Sub Inspector of Police, namely., M.V.Manikandan, in the Ottapalam Police Station at about 8 p.m on 15.10.2008. In the said statement, it is stated that the informant is engaged in the agricultural operation. It is further stated that he came to the Police Station to report the fact that he had seen one Lakshmi Amma, wife of deceased Raman Ezhuthachan, lying dead and the said Laskhmi Amma was his neighbour and distant relative. It is stated that, on 15.10.2008, at about 4 p.m, when he was going to his property where the agricultural operations are going on, Bhaghyam and Radha were standing on the road in front of the house of the deceased Lakshmi Amma. When

they saw him, Bhagyam approached him and told him that she had heard a screaming of the Lakshmi Amma and there was quarrel with Chandran. At that time, no noise has been heard. According to the statement, himself, Bhagyam and Radha together went to the house of Lakshmi Amma, but, they could not open the door. On looking through the opened window panel, they have seen one hand alone. According to the statement, on doubt, they together went to the backside of the house and the closed door was pushed and opened and got inside the house and on search, Lakshmi Amma was found dead and lying on the corridor adjacent to the front door found in supinely position. It is also stated that they have seen reddish colour and blood mark on her neck. It is also stated that, after coming outside the house, and when enquired about Chandran, they were told by one Gopi Thazhathethil that he had seen Chandran going busily towards the Manthannur Railway Station side. The deponent has also stated that he knows that there was quarrel between Chandran (accused) and Lakshmi Amma (deceased) with respect to the property. According to the deponent, Lakshmi Amma is the

mother of Chandran's (accused) wife Parukutty, who is no more. It is also stated by the deponent that, Chandran (accused), Lakshmi Amma and Priya, daughter of Chandran were residing together in the said house. It is also recorded that Chandran has committed the murder somehow of Lakshmi Amma, when there occurred quarrel between Lakshmi Amma and the said Chandran. He had also deposed that the correct name of Chandran as Nandakumaran, son of Narayanan Ezhuthachan, Manisheri Puthan Thodiyil. He is at about 57 years old and after the marriage of Chandran, he is residing in the house of Lakshmi Amma. It is also stated that since he had gone to inform the matter to the near relatives and gone in search of Chandran, some delay occurred in giving the intimation. It is also stated that the dead body was lying in the house itself and the house in question situating about 8 kms towards South-West. The said statement was recorded by Mr.M.V.Manikandan, the then Sub Inspector of Police, Ottapalam. The signature of the Sub Inspector is identified by PW12, the then Sub Inspector of Police, who had recorded the statement.

10. The informant Mr.Chandran is examined as PW1 in the present case. When he is examined, it is stated that he is residing at Velliyad and he is an agriculturalist. He knows the accused who is residing at Velliyad. He had also stated that, he knows Lakshmi Amma, who is the mother of the wife of the accused and the incident occurred whereby Lakshmi Amma had died. The occurrence was on 15.10.2008. He had deposed that it was he, who had seen firstly the said Lakshmi Amma, as dead. It is also stated that himself and his wife were going to their property, at that time, Bhagyam and Radha were standing in front of the house of Lakshmi Amma and they told him that the the deceased woman and Chandran (accused) had some quarrel. It is also deposed that at that time, no sound has been heard. According to PW1, at that time, he along with the said Bhagyam and Radha had gone to the house of the deceased woman and by pushing, an attempt was made to open the front door which was bolted from inside, hence, it could not open. PW1 has also stated that on the eastern side, half of the window panel was seen opened. It is also stated that when he looked inside through the half opened

window panel, he had seen the hand of Lakshmi Amma on the side of the door. According to PW1, he called her several times and himself, Radha and Bhagyam went to the back side of the house. There they have seen the door bolted from outside. According to PW1, they entered into the house after opening the said door and at that time, Lakshmi Amma was found dead. There were marks on her neck and he had not noticed anything else. According to PW1, he enquired about the accused. It is also stated by PW1, one Gopi told him that he had seen the accused going hurriedly changing his shirt and dhoti. He had also deposed that there was a quarrel. Then the prosecutor put a question as to whether the said fact was stated by anybody and then the answer of PW1 was that, he knows that there were quarrel prior to that. The property was bequeathed by the deceased woman in favour of her daughter. The said daughter had expired 6 months back. It is also spoken to by PW1 that after the death of the daughter of the deceased woman, there were property disputes between the accused and the deceased. PW1 has also stated "connected with the property dispute, Chandran

(accused) might have done against the deceased Lakshmi Amma". PW1 has also stated that he had gone to the police station and gave a statement and he identified his signature in the statement shown to him. Thus, the First Information Statement is marked as Ext.P1. The accused was arrested by the police on the next day. He had also claimed that at the time of the arrest, he was also present. At that time, he was asked by the Ottapalam Police to reach in the Ottapalam Police Station. On reaching there, the police asked him, whether "that is the person". PW1 has further stated that "in the house of the accused, himself and the deceased woman alone were residing". The son of the accused had gone for work. The said son is not residing there. The daughter of the accused was given away in marriage and she is residing there. He had also deposed that the police had recorded his statement. When he is asked as to whether he is able to identify the dress of the accused at the time of the arrest, he told that he is not remembering. During the cross-examination, the defence has brought out that whenever there was work, he was going at 8.'0' clock in the morning and returned by 5.'0'

clock in the evening. He had also deposed before cross-examination that during month of October, there would not be any agricultural operations. It is also brought on record by the prosecution through the cross-examination of PW1 that, he doesn't know the subject matter of the quarrel. But he knows that it was with respect to the property. He had also stated that he is not examined the documents connected with the property of Lakshmi Amma. He had also deposed that he has not heard about the quarrel on the date of occurrence in the house of the deceased. He has also deposed before the court that he has no direct knowledge about the death of the deceased Lakshmi Amma. It is also deposed by PW1 that after the death of the daughter of Lakshmi Amma, her affairs was attended by the accused. Though, it is not marked during the cross-examination, the defence were succeeded in getting an admission from PW1 that the statement contained in Ext.P1 First Information Statement that Chandran (accused), Lakshmi Amma and Priya, daughter of Chandran are residing in the house, are incorrect. It is also stated by PW1 during the cross-examination that there is a public

road for vehicular purpose on the eastern side of the house and there are 9 houses and that inhabitants are the beneficiaries of the said road. He had also admitted that three sides of the house of Lakshmi Amma, there were dwelling houses. It is also stated that immediately after seeing the dead body of Lakshmi Amma, the neighbours were not called. But the persons, those who heard about the incident, were assembled.

11. PW2 is a child witness, who is the son of Bhagyam, who is the wife of the brother of one Radha and she is the wife of the nephew of deceased Lakshmi Amma. It appears that before the examination of the said witness, the court has put certain questions to arrive into a conclusion that the child is confident to give evidence. From the above facts, it is seen that, at the time of the examination of PW2, he was at the age of 12 and he was examined on 29.11.2010, after 2 years from the date of occurrence. Which shows that on the date of the alleged incident, PW2 was at the age of 10 years only. During the chief examination, PW2 has stated that his house is at Velliyad and in the house, he had his parents and sister and

he knows Chandran in the box. He had also stated that he knows Lakshmi Amma and he called Lakshmi Amma as 'Ammamma'. It is also stated, he used to go in their house. It is also stated that on the date on which Lakshmi Amma died, he had gone to the house of Lakshmi Amma. It is seen stated that on that day, there was examination and after the examination, when he reached in his house, he went to the house of the Lakshmi Amma to watch TV. After sometime, while watching the TV, the accused Chandran, he called 'Chandrettan', came to the house. He had also pointed out Chandrettan, as the person standing in the box. He had also stated that the Chandrettan gave him some tapioca chips and while he was eating the same, there occurred a quarrel between the Chandrettan and Ammamma. At that time, according to PW2, he ran away to his house and conveyed the information to his mother. At that time, a loud cry was heard from the house of Lakshmi Amma and then, his mother and aunty Radha had gone to the house of Lakshmi Amma. PW2 said that he had not gone along with his mother. Thereafter, mother returned and told him that Ammamma was lying dead. He

had identified the shirt as MO1 and dhothi as MO2 which were worn by Chandrettan (accused), when he was coming to the house. He had also stated that police had questioned him and he went to the house to watch the TV after taking lunch. It was also the contention of the counsel that PW2 is a child, who was residing along with PW3. So, his version cannot be believed. During the cross examination of PW2, he had deposed that he has no knowledge or awareness about the subject matter of the alleged quarrel and he had not noticed the same. He had also stated during the cross examination that he is unable to say about the programme telecasted in the TV on the date on which he had gone to watch the TV. He also stated that, he is unable to say about the programmes tele casted in the TV on the date on which he had eaten the tapioca chips. According to PW2, there are several houses adjacent and people are residing in the said houses. It is also answered by PW2 that he could not trace out the place from which the noise was heard.

12. PW3 is another witness and she is the mother of PW2 as pointed out earlier. She is the wife of the brother

of Radha and the deceased Lakshmi Amma was the wife of her father's brother. She had deposed that she is also a resident of Velliyad and her family consists of her husband and two children and she is the mother of Arun (PW2). She knows accused as he is residing near to her house. She knows Lakshmi Amma as well who is the mother of the deceased wife of the accused. According to PW3, in an incident, the said Lakshmi Amma died and the occurrence was on 15.10.2008. She had deposed that, at about 4'0' clock, the said Lakshmi Amma was found lying dead. According to her, on hearing the cry, herself and Radha went to there and though they have called her, the door was not opened. Thereafter, they came to the road lying in front of the house. At that time, Chandrettan, who examined as a witness earlier, came there, then, they told him that they had heard a cry. Thereafter, they three went to the house of Lakshmi Amma. The front door was closed and at that time, Chandrettan peeped into the house through the opened window panel and told them that he had seen the hand of Lakshmi Amma. Thereafter, they went to the back of the house which was seen bolted from

outside. According to PW3, after opening the said door, Chandrettan entered into the house followed by them. At that time, Chandrettan told them that Lakshmi Amma was lying dead near the front door and there were marks on the neck. At that point of time, they also looked at Lakshmi Amma and at that time, there were marks on the neck. PW3 has also stated that, on that day, her son went to the said house after lunch to watch the television. She had also deposed that her son had examination till noon on that day. It is also stated by PW3 that, her son told them that there was quarrel between Lakshmi Amma and the accused Chandran. Immediately, after 5 minutes, according to PW3, they heard a cry. She has also deposed that, occasionally, there occurred quarrel. So, the said quarrel was not noted as a serious one. PW3 had also deposed that the quarrel was with respect to the property. She has also deposed that her house is situated 5 meters away from the house of said Lakshmi Amma. According to PW3, on hearing the cry, herself and Radha hurried to the house. PW3 has also deposed, "when I was coming, I had seen the accused going to their house. The dress worn by the

accused at the time when he was going to the house can be identified” and thus, she identified MO1 shirt and MO2 dhothi as the dress worn by the accused. PW3 has also stated that the accused has got two children, one son and a daughter, who got married. PW3 has also stated that, after the death of the wife of the accused, the daughter occasionally came to the house and resided there. On the date of the incident, the daughter was in her husband's house. According to PW3, the son is engaged in the welding work and he is not regularly available in the house. It is also stated that, on that day, he was not in the house. On that day, according to PW3, Lakshmi Amma alone was there in the house during the day time. After arrival of accused Chandran, he was also there. She identified the said Chandran as the person standing in the box. She had also stated that police had questioned her and recorded her statement. During the cross examination, PW3 has admitted that the house of Lakshmi Amma is situated on the western side of the road and there is easy access to the house from the said road. PW3, during the cross examination deposed that, she is a teacher in an

Anganawadi and Wednesday is a working day for the Anganawadi. PW3 has stated that usually she reaches the house from the Anganawadi at about 3 - 3 ½ time. According to PW3, on that day, there was a meeting and therefore she reached the house earlier. According to the defence, the version of PW3 that she had reached the house on that day little earlier because of a meeting is an improvement made by her during the cross examination since no such fact has been disclosed to the police when she was questioned by them. She has also not produced any documents before the police to show that there was a meeting on that day. When it was put to her about the meeting and the fact that she had reached the house earlier was mentioned for the first time in the court and the same was not stated to the police, she said that, whatever police asked has been stated. PW3 has also stated that when herself and Radha went to the house, there was nobody. PW3 has also admitted that, after the death of Parukutty, wife of Chandran (accused), all the affairs of the said house was attended by Chandran. According to PW3, she was not aware about the details of the property. PW3

has also deposed that the house of Lakshmi Amma is situated on the road side. She has also deposed that she was unaware as to who are going inside the house or outside the house. PW3 has also stated that she can identify the shirt and dhoti which have been worn by the accused on the date of the incident. She has also admitted that PW1 Chandran was her relative. When it was suggested to PW3 that Chandran (PW1) was in inimical terms towards accused as there was altercation between them, her answer was that, there was no enmity. It was again suggested to her that, it was out of that enmity, PW1 made accusation against the accused, but, she repeated her answer that she was not aware about the animosity.

13. PW4 Dr.Manoj was examined by the police to show that he had collected hairs from the head, shoulder and armpit of the accused. When he was examined, he had deposed that during the year 2008, he was working in the Ottapalam Taluk Hospital and as requested by the Circle Inspector of Police, he had collected the hairs from the accused. Thus, he identified MO3 as the hair collected from the armpit of the accused, MO4 hair as collected from the

shoulder and MO5 from the groin and MO6 from the head. According to him, all these hairs were put in a cover and that cover is identified as MO7 and produced before the Circle Inspector of Police. He had also deposed that the hairs were taken from the accused who is standing in the box.

14. PW5 - Govindan is examined by the prosecution to show that the accused was seen going towards the western direction on the date of the incident. According to PW5, he knows accused Chandran as well as the deceased Lakshmi Amma and Lakshmi Amma is the mother of the wife of the accused. According to PW5, he had seen the accused going along the railway track towards the western side on the date on which Lakshmi Amma died. It was at Mannannoor and he did not call the accused. According to PW5, he can identify the dress worn by the accused at the time when he saw him. Thus, PW5 has identified MO1 shirt and MO2 dhoti. PW5 has also deposed that, there occurred quarrel between Chandran and Lakshmi Amma and when it was asked to him during the chief examination about the subject matter of the quarrel, he answered that,

that was with respect to the property. He had also deposed that, it was told by Lakshmi Amma that the property has been given to the daughter and according to him, the quarrel was with respect to the same. He had also deposed that, he had also disclosed to others about the fact that he had seen Chandran going towards the western side along the railway track. According to him, it was at about 4.30 p.m. that he had seen Chandran. During the cross examination, it is deposed by him that, he had not involved in any quarrel and he is not aware about the quarrel. It is also deposed by PW5 that the accused, his son Santhosh, daughter Priya and the deceased Lakshmi Amma were staying in the same house. He had also deposed that the house was constructed in the property of Lakshmi Amma which was given to Parukutty. When a question was put to the witness that while Parukutty was alive and after her death, whether the entire affairs were attended by the accused Chandran, he replied that he did not know about that. During re-examination, the prosecution has brought out the fact that, after the marriage of the daughter of Chandran, and after the death of the wife of Chandran, the

daughter stayed along with Chandran for some time and the son was not available in the house. During re-examination, it is also deposed by PW5 that, on the date of the incident, the daughter of the accused had gone from the said house.

15. PW6 is a witness to the Inquest prepared by the Circle Inspector of police. When PW6 is examined, he had deposed that, he knows Lakshmi Amma as well as the accused Chandran. He also deposed that he is aware of the incident by which Lakshmi Amma died. According to him, the Circle Inspector came to the place and prepared Inquest after inspecting the body of the deceased Lakshmi Amma and he had put his signature in the said Inquest. The said Inquest report is marked as Ext.P2. PW6 has also deposed that, during the preparation of Inquest, police had seized some hairs from the hands of the deceased and he had witnessed the seizure of the same. He has also deposed that the police had prepared scene mahazar and he had put his signature in the said scene mahazar and the same was identified as Ext.P3.

16. PW7 is a Police Constable then attached to the

office of the Ottapalam Circle Inspector and he is examined to prove the seizure of the dress worn by the accused at the time of his arrest. According to PW7, he had witnessed when the accused produced his shirt and dhoti before the police on his arrest at the office of the Circle Inspector of police. According to him, the said dress of the accused were seized after preparing the seizure mahazar and he had put his signature in the said mahazar. He identified the said signature in Ext.P4 seizure mahazar and the same is marked as PW7. PW7 has also identified MO1 shirt and MO2 dhoti of the accused and produced by him. During the cross examination, the attempt of the defence was to establish that the said MO1 and MO2 was that of the son of the accused and the accused produced the same out of compulsion.

17. PW8 was then working as the Superintendent of Sub Jail, Ottapalam. When he is examined, he deposed that, as per the order of the Judicial First Class Magistrate Court, Ottapalam, the accused was produced before the Circle Inspector of police and Dr.Manoj. He had also deposed that the said Doctor

collected hairs of the accused particularly from his head, armpit, chest and groin which were separately tied in four separated covers and the said four covers were put in a single cover and the same was sealed by the Doctor. He had deposed during the chief examination itself that, except obtaining his signature by the ASI in a paper, there were no other procedures. He identified his signature and the mahazar is marked as Ext.P5. During the cross examination, PW8 has admitted that the reports were not sent to the superior authorities and the contents of the mahazar were not read over to him. The name of the Assistant Sub Inspector, who recorded the mahazar, is also not mentioned in Ext.P5. He had also admitted that the Doctor, who had taken the hairs of the accused, is also not signed in Ext.P5.

18. PW9 was then working as Lecturer and Assistant Professor, Department in Forensic Medicine, Medical College, Thrissur. PW9 had conducted autopsy on the body of the deceased Lakshmi Amma in this case involved in Crime No.789/2008 and he issued the post mortem certificate. When PW9 is examined, he had

deposed that he had noticed the following ante mortem injuries:

"1. *Lacerated wound 1.5 x 0.5 x 0.5cm on right side of back of head oblique lower inner end 9cm above right ear with multiple abraded contusions over an area 5 x 4 cm. Underneath this scalp contusion 10x12cm on right side of head involving right parietal and temporal lobe with minimal separation of right temporo parietal suture. Brain oedematous.*

2. *Crescentic abrasion 0.5x0.1cm right side of neck oblique lower inner and 6.5cm outer to midline 5cm above collarbone.*

3. *Crescentic abrasion 0.5x0.1cm on right side of neck oblique 0.5cm below injury No.2.*

4. *Abrasion 1.2x0.3cm on the left side of neck oblique upper inner end 1cm outer to midline and 7.5cm above suprasternal notch.*

5. *Abrasion 1x0.2cm oblique on left side of neck upper inner end 1.5cm outer to midline and 6cm above suprasternal notch.*

6. *Abrasion 2.5x0.5cm on the front of neck across the midline left lower and 3cm above suprasternal notch and 1cm left to midline.*

7. *Multiple mucosal tears over an area 1x0.5cm on the inner aspect left side of upper lip 2.5cm outer to midline, which corresponds to upper left canine.*

8. *Mucosal tear 0.5x0.2cm on the inner aspect of left side of upper lip 0.5cm outer to midline corresponds to left lateral incisor.*

9. *Contusion subcutaneous deep 5x1 cm on the front of right shoulder.*

10. *Abraded contusion 1.5x0.5 cm at the root of nasal orifice across the midline, left end 0.5cm outer to midline and 1.5 cm above lip margin.*

Neck was dissected in a under bloodless filed showed infiltration of blood over an area of 5x2x0.5cm involving the soft tissues covering the Posteriolateral aspects of thyroid and

cricoid cartilages and posterior wall of oesophagus. There was inward compression fracture at the root of superior horn of thyroid cartilage on right side with infiltration of blood around. There were multiple bleeding spots in the inner part of larynx."

19. The post mortem certificate issued by him is marked as Ext.P6. During his examination, he had deposed that injury Nos.2 to 9 combinely are sufficient in the ordinary course to cause death. According to PW9, those are external injuries in case of throttling and smothering. He had also deposed that injury No.1 also might have contributed the cause of death.

20. PW10 was the then Secretary of Vaniamkulam Grama Panchayat. According to him, as requested by the Circle Inspector of Police, Ottapalam, he had issued the ownership certificate, in which, the address shown as Parukutty Amma, Oukkattil, Velliyadu, Mannannoor. The signature contained in Letter No.10/298 is identified and the same is marked as Ext.P7.

21. PW11 is the then Village Officer of Vaniamkulam Village. According to him, as directed by the Ottapalam police, he had prepared a sketch plan of the place of occurrence which contained his signature. Thus, Ext.P8 is marked through PW11.

22. PW12 is the then Circle Inspector of Police who had undertaken the investigation in Crime No.789/2008 of the Ottapalam police station. He had deposed that the above First Information Report was registered as per Ext.P1 First Information Statement and the First Information Report contained the signature of Mr.Manikandan and he identified the signature of said Manikandan as the said Manikandan had worked under him and he had witnessed the signature put by the said Manikandan. Thus, the First Information Report in the above crime is marked through PW12 as Ext.P1(a). He has also deposed that, on getting the information, he reached at the place of occurrence and the body of the deceased Lakshmi Amma was examined and prepared Inquest Report which he identified as Ext.P2. He had also deposed that, as per the said Inquest report, the blouse and 2 dhothis worn by the deceased were also seized and he identified MO8 blouse, MO10 dhoti having a light coloured border. According to PW12, the body was sent for post mortem report with a requisition to the Medical College Hospital, Thrissur. He has also deposed that, on getting reliable information that the accused was

available near the vicinity of Ottapalam railway station, he proceeded to the said place and on identifi of the accused, he was arrested in the presence of witness at about 4.15 p.m on 16.10.2008. According to him, he had prepared an arrest memo which is identified as Ext.P9. According to PW12, about the arrest, intimation was given to the son of the accused and the said arrest intimation is marked as Ext.P10. The accused was inspected before his arrest and the Inspection Memo is identified as Ext.P11. According to PW12, the dress worn by the accused at the time of the arrest was seized as per mahazar in the presence of witnesses. Thus, he identified MO1 shirt and MO2 dhothi as the dress worn by the accused at the time of the arrest. According to him, the material objects were produced before the court through a property list which is identified as Ext.P12. PW12 has also deposed that the covers containing hairs, which were taken by the Doctor from the body of the accused while he was in the Sub Jail, Ottapalam, are seized. Thus, he identified MOs. 3 to 7. He had also identified the property list Ext.P13 by which the said item of properties are produced before that court. He

had also identified his signature seen in the seizure mahazar for the seizure of the said hairs, as Ext.P5. According to him, he had questioned the Doctor, who conducted the post mortem over the body of the deceased Lakshmi Amma and obtained the post mortem certificate and he identified the same as Ext.P6. According to him, he had obtained the certificate showing the ownership over the property where the incident had occurred and the said ownership certificate is identified as Ext.P7. According to PW12, he got the scene plan with respect to the scene of occurrence through the Vaniamkulam Village Office and he identified the same as Ext.P8. He had also deposed that, after inspection of the place of occurrence, he had prepared mahazar with respect to the scene of crime and the said mahazar is identified as Ext.P3. He had also deposed that, for sending the properties for a chemical examination, he had prepared a forwarding note and produced before the court. The said forwarding note is identified as Ext.P14. He had also deposed that, after examination of the properties, chemical examination report was obtained and produced before the court as Ext.P15. PW12 has also

deposed that the hairs seen in the hands of deceased Lakshmi Amma were seized as per the Inquest report and the said hairs are identified as MO11. According to PW12, on completing the investigation, he had submitted the charge before the court. During the cross-examination of PW12, it is brought out by the defence that no hairs from the body of the deceased woman other than the hairs from her hands were collected. It is also admitted by PW12 that the hairs collected as per the inquest report have not been sent for examination by the Forensic and Science Laboratory. It is also brought out through PW12 that the nail clippings were not sent to chemical examination and no scientific opinion was obtained with respect to the nail clippings. It is also brought out in evidence of PW12 that when PW3 Bhagya Lakshmi was questioned, she has not stated about the meeting on 15.10.2008. It is also brought out on record through the evidence of PW12, at the instance of the defence that PW12 has not conducted any investigation to ascertain after inspecting the school of Arun(PW2) as to whether there was any examination in the said school on the date of the occurrence. It is also brought

out in evidence that no foot print or finger print was taken from the place of occurrence. PW12 has also admitted during his cross-examination that though cellophane tape was used on the body of the deceased woman but no such cellophane tape marks were send for scientific analysis. He had also admitted that no blood stain was obtained or collected from the place of occurrence.

23. PW13 is M.V.Manikandan, the then Sub Inspector of Police, Ottapalam Police Station. He was examined to show that it was he who recorded the First Information Statement that Ext.P1 given by PW1. When PW13 is examined, he had deposed that on 15.10.2008, at about 8 p.m, CW1(PW1) appeared the station and gave statement which was recorded by him and on the basis of the same, he registered the crime in Crime.No.789/2008 for the offence punishable under Section 302 of IPC. He identified the First Information Statement as Ext.P1 which contained his signature. The First Information Report drawn by him is identified and marked as Ext.P1(a). During the cross-examination, PW13 has admitted that after registration of Ext.P1(a) First Information Report, he went

to the place of occurrence along with other police constables.

24. As we have indicated earlier, during the defence evidence, DW1 was examined from the side of the defence. DW1 Santhosh Kumar is none other than the son of the accused. During the chief examination of DW1, he submitted that his house name is 'Oukkattil' and the accused is his father. He had deposed that in the said Oukkattil house, himself, his father, grand mother and sister Priya are the persons residing there. He is a painter by profession and his father is a coolie worker. According to him, he used to go by 8 a.m for his work and after the work, returned by 6 p.m. The grand mother Lakshmi Amma died on 15.10.2008 and on that day, he had painting works. His father had coolie work in a property namely., 'Puthanpurakkal house' near to Mannannur railway station. He had also deposed that on the date on which the grand mother died, himself and his father have gone for work at 8 'O' clock in the morning and done the job together till the evening. DW1 further said that, on that day, at about 5.00 - 5.30, one person namely., Babu came

and said that grand mother is sick and requested to come urgently to his house and accordingly, after stopping the work, they together went to the house. When reached the home, according to DW1, 5 to 6 persons were there and on looking, he saw the grand mother lying on the corridor and he went and called her but, she was not alive. Thereafter, according to DW1, he came out and at that time, the police arrived along with PW1 Chandran and Sub Inspector was also arrived. The police examined the body and after posting a police constable, they went back.

25. According to DW1, during the night, he went to the house of Unnikrishnan uncle for sleeping. In the morning, police came and inspected the body and arranged to take the body for postmortem examination. It was taken to Thrissur Medical College Hospital. According to DW1, he had also accompanied the body and the body was received back at about 3.45 p.m after the postmortem. Thereafter, the body was brought to the house and buried in their property. When asked him as where was his father, at that point of time, his answer was that when he enquired about his father, the police taken him to Ottapalam Police Station.

According to DW1, on completing the rituals, he went to Ottapalam police station and met his father and he was told by father that food was given to him by the police. Thereafter, he returned to the house. At about 9 'O' clock, the police came and demanded the dress of his father. Then, he replied that there was no such dress and asked the police whether the dress worn by himself is sufficient. The police agreed the same and he identified that it was the said shirt and dhoti which shown to him. According to him, the same had used for one year. The label of the stitching shows that the shirt was stitched at Vaniyoor and purchased from KKM Textiles. He had also deposed that, in their house, there is no dispute or quarrel with respect to the property. Himself, his father and sister were residing happily in the house. It is also stated by him that before the death of his grandmother, she transferred the properties in favour of his mother. It is also stated by him that PW1 is not in good terms with the family members of DW1.

26. As there was no direct evidence, the prosecution has pressed into service the above evidence and materials

to establish certain circumstances so as to prove the guilty of the accused and it appears that the learned Judge of the trial court, after accepting the above evidence, came to the conclusion that the circumstances so proved are consistent with the hypothesis of the guilt of the accused and inconsistent with the innocence of the accused and the said circumstances are conclusive in nature and chain of evidence is also completed, consequently it was found that the prosecution has succeeded in establishing that the accused had committed the murder of Lakshmi Amma by throttling and smothering as alleged.

27. Smt.Lissy Jose P., the learned counsel appearing for the appellant, advanced several arguments to challenge the judgment of the trial court. According to the learned counsel, the prosecution witnesses, who are examined to establish the circumstances relied on by the prosecution, are unreliable especially, when they are close relative and interested witnesses. According to the learned counsel, merely because the accused was residing along with the deceased is not a ground to fix the criminal liability upon the accused and the prosecution has miserably failed to

rule out any possibility of the involvement of any other person other than the accused with the commission of the offence. According to the learned counsel, to prove the presence of the accused in the house on the day, the prosecution has very much relied upon the evidence of PWs.2 and 3 but, their evidence cannot be believed. In order to disbelieve or reject the evidence of PW2, the learned counsel has pointed that there are no supporting or corroborating evidence to the versions of PW2, the child witness that he was present in the house and he had an occasion to see the accused. It is also pointed out that the police did not conduct any investigation in the school of PW2 to ascertain whether there was examination till the noon time and there was class for the students of that school on that day. It is also submitted that regarding the quarrel or dispute between the accused and the deceased that claimed to have occurred in the presence of PW2, PW2 failed to reproduce the words of the quarrel or the subject matter of the dispute. So, according to the learned counsel, PW2 cannot be believed. It is also the contention of the learned counsel that PW3 is also a related and interested

witness and her presence is also doubtful, on the alleged time, since she is an Anganawadi teacher. According to the learned counsel, PW3 has stated before the court that, she happened to reach in her house at the relevant point of time as there was a meeting in the Anganawadi but the said statement of PW3, according to the learned counsel is an improvement since she has no such version before the police. So, according to the learned counsel, if evidence of PW 2 and 3 are excluded, there is no concrete evidence to prove the presence of the accused in or around the place of occurrence on the fatal day. Another important contention advanced by the learned counsel for the accused is that, the investigating agency has not taken steps to conduct the Neutron Activation Analysis with respect to the hairs allegedly seized from the hand of the deceased during the inquest and what the prosecution has obtained is only a report on the basis of the microscopic examination which according to the learned counsel for the appellant is not acceptable in the present case in view of the decision reported in **Sudheer Babu Vs. State of Kerala [2013 (2) KLT 168]**. So, according to the learned counsel, the

prosecution has miserably failed to establish positively that the accused alone has committed the murder of Lakshmi Amma, particularly, in view of the settled principles of law governing the cases depending upon circumstantial evidence. So, the trial court, according to the learned counsel, committed wrong in accepting the case of the prosecution and convicting the appellant.

28. Per contra, Smt.Praicy Joseph, the learned Public Prosecutor, after taking us the evidence of PWs.1,2 and 3, submitted that, though these witnesses are relatives, there is no contradiction in their evidence or infirmative in their version to discard their evidence. According to the learned Public Prosecutor, though these witnesses were subjected to thorough cross-examination, nothing brought on record to shake the substratum of the prosecution allegation against the accused. The learned Judge of the trial court, after having examined the minute details including the evidence of the prosecution witnesses, have formulated certain circumstances which are finally found as established by the prosecution by adducing cogent evidence. Thereafter, according to the learned Public Prosecutor, no

interference is warranted.

29. We have carefully considered the rival contentions adduced by the learned counsel for the appellant as well as the learned Public Prosecutor. We have perused the evidence on record and materials and carefully gone through the judgment of the trial court.

30. In the light of the rival contentions and the evidence and materials on record, the question to be considered is whether the trial court is justified in its findings and convicting the appellant for the offence under Section 302 of Indian Penal Code, especially when the entire prosecution case purely depends upon the circumstantial evidence.

31. The crux of the prosecution allegation is that the deceased and the accused were residing under the same roof namely 'Oukattil house' and the accused is none other than the son-in-law of the deceased and the daughter of the deceased expired 6 months back to the death of the deceased and according to the prosecution, there were frequent quarrels between the accused and the deceased Lakshmi Amma with respect to the property and out of that

animosity, the accused committed murder of his own mother-in-law prior to 8 p.m on 15.10.2008. It is the above case sought to be established by the prosecution with the help of certain circumstances sought to be established. In this juncture, it is relevant to note that the learned Judge of the trial court particularly, in paragraph 18 had pointed out 12 circumstances which, according to the learned Judge, had been established by the prosecution. For the convenience, we will reproduce the circumstances referred to by the learned Judge in paragraph 18 of the judgment.

"To sum-up the following circumstances have been brought out in evidence against the accused.

(i) The occurrence took place in the house in which the accused and the deceased were residing.

(ii) PW3 saw the accused going to the said house prior to the incident on the relevant day.

(iii) PW2 deposed that the accused came to that house while he was watching television in that house.

(iv) Thereafter there occurred a quarrel between the deceased and the accused at which time PW2 left the house.

(v) At that time the accused and deceased alone were there in that house.

(vi) Thereafter the cry of the deceased was heard from that house by PW3 after 5 minutes when PW2 told about the quarrel to PW3.

(vii) Immediately thereafter PWs 1 and 3 rushed to that house and saw the dead body of Lakshmi Amma.

(viii) At that time the accused and no one else was found there.

(ix) Thereafter the accused was found walking along the railway track by PW5.

(x) The hairs obtained from the inter space between the fingers of the right palm of the deceased were found similar to the scalp hair of the accused.

(xi) The accused had property dispute with the deceased.

(xii) During cross examination DW1 deposed that the accused was not present in the house when the body of the deceased was taken for postmortem and that his whereabouts were unknown to DW1 who is his only son".

32. Going by the case of the prosecution as well as the defence, it could be seen that there is no dispute that both the accused as well as the deceased Lakshmi Amma were residing in the same house, for the sole reason that the accused is the son-in-law of the deceased and even before the death of the wife of the accused he along with his family were residing in the house of the deceased Lakshmi Amma. So, the first circumstance formulated by the learned Judge can be accepted as correct and proved, particularly both the side accept the said fact.

33. In order to prove the presence of the accused in the said house in and around the time in which the deceased was murdered, two circumstances are heavily relied upon by the prosecution, as enumerated by the learned Judge as circumstance number 1 and 2. According to the accused, he is a coolie and he used to go for his work at every day and DW1 has deposed before the court that he is a painter by profession and on that particular day himself and the father (accused) went for their job and the father was engaged in the work in the property belonging to Puthanpurakkal. However, PW3, on her chief examination, stated before the court that while she was coming from the Anganawadi, she had seen the accused going to the house and she had identified also the shirt as MO1 and dhoti as MO2 as the dress worn by the accused when he had entered into the said house. Though, PW3 is an Anganawadi teacher, she had stated before the court that on that day she had come back to her house little earlier as there was a meeting and such an occasion enables her to notice the presence of the accused, who allegedly entered into the house. In a case like the present

one, according to us, the mere claim of PW3 - who is relative of the deceased, cannot be accepted about her presence at that point of time especially when she is an Anganawadi teacher, unless there are corroborating or supporting evidence. In this case, we cannot ignore the fact that PW3 is a relative of the deceased Lakshmi Amma. Even though, there were several houses and inmates, the police has not questioned any person residing in that locality and adjacent to the house, where the deceased Lakshmi Amma and the accused were residing. During the cross examination, the defence were succeeded in bringing out the fact that she has not deposed before the police, when the police questioned her that she reached in the house little earlier as there was a meeting. So, the above substantial improvement is made by PW3 deliberately to show that she was present at the relevant point of time. The police has not conducted any further investigation in this regard to ascertain whether there was any meeting as claimed by PW3, so as to come earlier to her house. So the evidence of PW3 cannot be believed and accepted to prove her presence near the house of the deceased

Lakshmi Amma and notice the presence of the accused or her entrance into the house. It is our considered opinion that the evidence of PW3 cannot be believed that she had noticed the accused at the relevant point of time and his entry into the house of the deceased.

34. Similarly, another witness examined by the prosecution to prove the presence of the accused in the said house is none other than the son of PW3, who is residing along with PW3 at the relevant point of time as well as during his examination as PW2 in the court. The third circumstance relied upon the court below is about the presence of PW2, as he was watching TV in that house. We have already referred to the deposition of PW2. According to PW2, as there was examination on that particular day, on completing the examination, he came back to his house by the noon and after taking the meals, he went to the house of the deceased to watch the TV programme, and while he was watching the TV programme the accused came there and gave him tapioca chips. We are unable to accept the case of prosecution that the accused has chosen to commit the murder of his mother-in-law even after

noticing the presence of PW2, who is his relative. PW2 has stated all such details about the presence of the accused etc., but he could not withstand the cross-examination and failed to say anything about the programme which he watched in the TV at that point of time. He could not reproduce the words or the subject matter of the dispute allegedly occurred between the deceased and the accused. The investigating agency has not adduced any evidence in support of the claim of PW2 that he happened to go to the house of the deceased to watch the TV programme, after his examination on that day. No evidence, with respect to the school records to show the examination, are produced or no witness was examined from the school to show there was any examination conducted on 15.10.2008 and afternoon no class or examination for PW2. Thus, it can be seen that the prosecution has miserably failed to produce any corroboration or supporting evidence to prove the claim of PW2 that he was present in the house of the deceased Lakshmi Amma, during the relevant time and at that time the accused had arrived in the said house. In the matter of appreciation of evidence of a child witness, we

are guided by the principles laid down by the Hon'ble Apex Court in the decision in **K. Venkateshwarlu Vs. State of Andhra Pradesh [(2012) 8 Supreme Court Cases 73]** which is held as follows:

"He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court."

So, the circumstance relied on by the learned Judge as item No.2 and 3 cannot be said to be proved and established.

35. The circumstance No.4 - 6 stated by the court below can be considered together. As we have already noticed that PW2 has stated that there was a quarrel between the deceased and the accused, but he failed to reproduce the words exchanged between the deceased and the accused and he has no idea about the subject matter of the dispute. In the present case, it is relevant to note that

the deceased Lakshmi Amma was at the age of 80 years at that time and there is no evidence or circumstances available on record to show the intensity of the quarrel which lead to the murder of the deceased Lakshmi Amma. It is also the case of the prosecution that there were frequent quarrels between the deceased Lakshmi Amma and the accused. If that be so, we are of the view that unless the prosecution established the gravity of the quarrel, so as to lead the same to commit the murder of Lakshmi Amma, mere claim of PW2 that there was quarrel between the deceased and the accused is not sufficient to take such a situation adversely against the accused and in favour of the prosecution.

36. The 5th circumstance stated by the court below is that at that time the accused and deceased alone were in that house. It is true, PW2 has stated that while he was watching the TV, accused came in that house and gave him some tapioca chips. PW2 has no claim that he had watched the entire building before sitting in front of the TV to watch the programme. What he had deposed before the court is that, after taking lunch, he went to the house in question

for watching TV and while he was watching TV, the accused came there. He doesn't know any other person available in the house. In this juncture, it is also relevant to note that as per the claim of PW2, while he was watching the TV, there occurred a quarrel between the deceased and the accused and therefore, he left the house and went to his house and he conveyed to his mother about the quarrel. In such a situation, we cannot draw a conclusion that it was the accused alone and no other person had committed the offence particularly when the prosecution has no clear idea about the time at which the accused was seen near the premises of the house. As per the 6th circumstance, according to the learned Sessions Judge, PWs.2 and 3 heard the cry of the deceased after 5 minutes immediately after PW2 came from the house. Neither PW2 nor PW3 has got a case that immediately after hearing the cry, the accused was seen coming out of the house. As we have already pointed out that the prosecution has no clear case with regard to the exact time by which the prosecution witness had seen the accused near the house. In this juncture, It is relevant to note that PW1, during his

examination particularly, during his chief examination, it is seen stated that when PW1 enquired about the accused, one Gopi told him that the accused was found going speedily, changing his shirt and dhoti. Till then, PW1 has no case that the said Gopi told him about the time at which he had seen the accused. In this juncture, it is also relevant to note that the prosecution has not questioned or examined the said Gopi. So, in order to corroborate the evidence of PW1, there is no supporting evidence. We are unable to act upon the evidence of PW1 and to hold that the accused was found in and around the relevant time and place based upon such evidence of PW1. Though the prosecution has not examined the said Gopi referred to by PW1 in deposition, they have examined one Govindan as PW5. But, PW5 has not deposed about the time at which he had seen the accused, except his daily time schedule for his job. So, the evidence of PW1, according to us, is not helpful for the prosecution to show that the accused was seen going from the house immediately after the incident. The net result of the above discussion is that the prosecution has miserably failed to prove the presence of

the accused in and around the place of occurrence and within the alleged time.

37. Another important circumstance relied upon by the prosecution as well as the court below against the accused is that, hairs obtained from the inner space between the fingers of the right palm of the deceased were found similar to the scanned hair of the accused. Such nature of evidence, according to us, is only to corroborate the other evidence about the presence of the accused in a scene of crime. In the present case, we have already found that the evidence of PWs.2 and 3 are not sufficient to establish the presence of the accused immediately prior to the incident. According to the prosecution, during the examination of the body of the deceased and while preparing Ext.P6 inquest report, they detected some hairs in between the fingers of the right hand of the deceased and the same were seized as per Ext.P6 inquest report. It is also the case of the prosecution that after obtaining the order from the committal court, hairs of the accused were collected from his head, on his shoulder, from his armpit and from his groin through PW4, the Doctor. It is the

further claim of the prosecution that the hairs collected from the accused as well as from the body of the deceased, were sent for chemical analysis. Ext.P15 is the chemical report. This report shows that the hairs received as item Number 1, were found similar to the hairs received under item Number 7. The said report further revealed that the findings are arrived at on the basis of the microscopic examination of the hairs. In this juncture, it is relevant to note that the investigating agency has not collected the hairs of the deceased Lakshmi Amma at the time when they seized the hairs found in between the fingers of the right palm of the deceased Lakshmi Amma. The question that arises for consideration is, how far Ext.P15 report can be accepted to show that the accused was present at the relevant point of time or it was the accused who was committed the murder of Lakshmi Amma.

38. The learned Judge of the trial court to hold the guilty of the accused as well as to found that the 10th circumstance, which is proved, repelling the contention of the defence, heavily relied upon upon the decision reported in **Fr.George Cherian and others Vs. State of Kerala**

[1989 (2) ILR 95], it differ from the facts involved in the case on hand. In the present case, the evidence shows that the accused and the deceased alone were present in the house at the relevant time and that Item No.1 mentioned in the report was found in the palm of the deceased between the fingers, which is found similar to the scalp hair of the accused. We are unable to uphold the above finding and observation. In the above referred decision, particularly in Para.No.54, it is held:

"P.W.37 at page 13 of his deposition has stated that in vast majority of cases it is not possible to fix the identity of the individual after examining the hair. The only peculiarity noticed by P.W.37 is what he has stated at page 17 of his deposition which reads:

"I found a peculiarity in the medulla. I found oval fragments towards the tips, narrow and interrupted in the middle and totally absent towards the root."

This, according to the expert, is a peculiar formulation which he had not come across before and it is in that context that he gave the opinion that it is highly improbable that the three specimens of hair examined by him would have come from different individuals. He was not sure whether the brother, sister or any other blood relation of the individual will have the same type of hairs. P.W.37 has admitted that he had used only instrumental method and that he had not adopted the microchemical method. He has also admitted that he had not conducted the neutrons activation analysis referred to in the textbooks quoted above. In the light of the uncertainty of the method and in view of the imperfection of the science itself, it is unsafe to rely on Ext.P-47 to connect the accused with the offence in the light of the evidence of P.W.37 referred to above. "

39. In this judgment, it is relevant to note that the

police, while seizing the hairs, found on the right hand of the deceased, as per Ext.P6 Inquest Report, no hairs, no blood from the head of the deceased was obtained or taken and the same were not subject to scientific analysis to rule out that the hair found on the fingers of the deceased, is that of any other person. In view of the decision referred above, we are of the view that, it is unsafe to convict an accused on the basis of similarity reported by the Chemical Examiner with respect to the hairs of the deceased as well as the accused.

40. In a recent decision in **Sudheer Babu Vs. State of Kerala** reported in **[2013 (2) KLT 168]**, a Division Bench of this Court has held:

"Therefore, it may not be proper to find an accused guilty on the sole basis of a report that the hair samples collected from the scene of the crime have resemblance with the hair samples collected from him, though the same may have relevance for consideration along with the other incriminating circumstances against the accused."

41. It is also relevant to note that Dr.Umadethan in his text, Principles and Practice of Forensic Medicine, particularly in page No.28 has stated:

"Hair
Detailed description of scalp hair, moustache, beard, axillary hair, chest hair, and public hair should be recorded; length, colour and texture are to be noted. Microscopical

comparison of the morphology of the hair samples is possible. In the Neutron Activation Analysis method (NAA) hairs are made radio active and quantitative analysis of the elements contained in the hairs is done for comparison and identification of the samples. The unique method of DNA typing is possible from the cells attached to the hair roots. For this, entire hairs with roots are necessary. DNA typing provides absolute proof of identity.

Chemical examination of the hair samples can reveal the presence of hair dyes or bleaching agents applied to the hair for cosmetic purpose. Poisoning with heavy metals like arsenic can also be detected by chemical analysis. Samples may be collected."

42. So, by Chemical examination of the hair samples, the only inference that could be drawn in the presence of hair dyes or bleaching agents applied to the hair for a cosmetic purpose. According to Dr.Umadethan, in the Neutron Activation Analysis method (N.A.A.), hairs are made radio active and in quantitative analysis of the elements contained in the hairs is done for comparison and identification of the samples. Similarly, in the decision (cited supra) reported in **1989 (2) ILR 95**, their Lordships have referred to the text of Dr.B.R.Sharma in his text book on Forensic Science in Criminal Investigation and Trials, 2nd Edn. and quoted the following from page 663 of the said text.

"Identification of hairs is not an easy task. It requires extensive experience in the field, because there are variations in the hairs of the same person at the same time and at

different times. Further, there are similarities in the hairs of different persons. However, recent advances, especially neutron activation analysis (N.A.A.) and blood typing of hair hold promise for more definite and acceptable identifications."

Admittedly, in the present case, the hairs collected in the above case were not subjected to Neutron Activation Analysis or blood typing of hair. So, the conclusion contained in Ext.P15 report cannot be taken to conclude that the hairs found between the fingers of the right hand of the deceased is that of the accused alone and not that of any other person. The prosecution had sent the hairs so collected for the Neutron Activation Analysis and blood typing of hair, the possibility of presence of any other person could have been ruled out. In the absence of any such scientific evidence collected and the fact that the prosecution has not collected any finger print or foot print from the scene of crime shows that, the prosecution has miserably failed to connect the accused with the crime and ruled out the possibility of the presence of any other person.

43. The 11th circumstance relied on by the prosecution and the court below is that the accused had property dispute with the deceased. No acceptable

evidence is adduced in this regard in support of the above circumstances. The admitted case of both the prosecution as well as the defence is that the accused was residing with his family along with the deceased Lakshmi Amma in her house and the property, where the house is situating, has already been given in favour of Parukutty by the deceased Lakshmi Amma. If that be so, in the absence of any other evidence, we are unable to approve the conclusion of the learned Judge about the property dispute. PWs 2 and 3 during the deposition, have also failed to give any account regarding the property dispute. PW2 miserably failed to say anything about the quarrel allegedly occurred on the date of the incident and the subject matter of such a quarrel. There is no evidence regarding the nature of the alleged property dispute and dearth of evidence connected with the same is against the prosecution, when the admitted facts are that Lakshmi Amma has already assigned her property in the name of her daughter who is the wife of the accused and the accused and his family were residing along with the deceased in the said property. So, the 11th circumstance is also not proved by the

prosecution.

44. The 12th circumstance stated by the learned Judge in the impugned judgment is not completely correct in view of the prosecution inputs and therefore, the same cannot be accepted. The non explanation of DW1 about the presence of the accused - his father when the body of the deceased was taken for post mortem, according to us, is not helpful for the prosecution to draw any presumption or to hold the guilt of the accused. In the present case, we have seen from the evidence of the prosecution witness that, even when PW1 gave the First Information Statement, he expressed his doubt over the involvement of the accused in the commission of the crime. PW3 and the said Radha have also attempted to implicate accused in the above crime. If that be so, it is quite natural from the part of a person against whom some doubt is expressed by the in-laws, to keep away from the house in question or at the time when the body was taken for post mortem. In this circumstance, it is relevant to note that DW1, during his chief examination itself, has stated that, after the burial of the body of the deceased, when he enquired about his

father, he realised that his father was taken to the Ottapalam police station. Thereafter, he went to the police station and met his father. Under the above circumstances, according to us, the absence of the accused during the funeral of the deceased Lakshmi Amma have no much relevance.

45. The examination of the entire facts and circumstances about the case and the evidence, we cannot approve the conclusion and finding of the learned Sessions Judge. The legal position, in a case where the prosecution case rest upon circumstantial evidence, is now well settled. In the decision in **Sharad Birdhichand Sarda Vs. State of Maharashtra [AIR 1984 SUPREME COURT 1622]**, the Hon'ble Supreme Court has held:

"A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793: (AIR 1973 SC 2622) where the following observations were made:

"certainly, it is a primary principle that the accused must

be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be 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 in all human probability the act must have been done by the accused."

Similarly, in Para No.9 of the decision in **State of U.P.**

Vs. Ashok Kumar Srivastava [AIR 1992 SUPREME COURT 840], the Hon'ble Apex Court has held:

"This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise. We are also conscious of the fact that the presumption of innocence is strengthened, certainly not weakened, by their acquittal by the High Court and ordinarily this Court is slow to interfere with an

order of acquittal in exercise of its extraordinary powers under S.136 of the Constitution. However, in the present case the facts found proved as discussed earlier are (i) the accused were unhappy about the cash and articles given by way of dowry at the time of the 'tilak' ceremony, (ii) the accused taunted, tormented and tortured Meera for the insufficiency of the dowry amount, (iii) a few days before the incident while at Banaras there was a heated argument and then Ashok returned to Lucknow without Meera, (iv) Meera entreated her father-in-law to permit her to join Ashok but the latter refused saying she will have to rot at Bararas alone unless the dowry amount was made good, (v) ignoring her father-in-law's refusal Meera went to Lucknow, (vi) the two accused Rajendra Lal and Sudha followed her to Lucknow, (vii) while at Lucknow all the three illtreated her, (viii) Meera was found on fire at about 2.30 or 2.45 a.m., (ix) while she was burning the three accused who alone were inside came out of the room and stood in the verandah chit-chatting unconcerned about her plight, (x) none of them tried to help Meera, (xi) soon after that the house was locked and the accused could not be found, (xii) while the two accused were apprehended on the 23rd Ashok could not be traced till he surrendered on 5th September, 1974, and (xiii) false explanation or statements were made to explain away their conduct."

On the scrutiny of the evidence and the materials on record in the light of the above authorities, it can be seen that the prosecution has miserably failed to prove the presence of the accused - appellant in the house where the occurrence had taken place, either at the time of the incident or immediately after the incident, for the reasons, we have already rendered, the evidence of PWs 2 and 3 cannot be believed. The evidence of PW1 and PW5 also cannot be believed to establish the presence of the accused immediately after the incident. The prosecution has failed

to examine one Gopi said to have told to PW1 that the said Gopi had seen the accused immediately after the incident. So the hearsay evidence of PW1 cannot be accepted to convict the appellant - accused. Thus, if the evidence of PWs 1, 2, 3 & 5 are excluded, the circumstance Nos.2, 3, 4, 5, 6 7, 8 & 9 cannot be held as proved and consequently, the chain of circumstances relied on by the prosecution has been broken. As the prosecution has failed to collect any evidence with respect to the foot print or finger print from the place of occurrence and the prosecution has failed to obtain scientific and expert evidence after subjecting the hairs for Neutron Activation Analysis, we cannot say that the prosecution has positively proved the presence of the accused at the time of crime and thus there is no link evidence to connect the accused with the crime. The motive suggested by the prosecution has also not been proved with a cogent evidence, to the satisfaction of this court.

Under the above circumstances, we are of the opinion that the prosecution has miserably failed to establish the circumstances relied on by them and also failed to prove

the chain of circumstances pointing towards the guilt of the accused and ruling out any hypothesis with the innocence of the accused.

In the result, this appeal is allowed setting aside the judgment dated 25.01.2011 in S.C.No.450/2009 of the court of Additional Sessions Judge, Fast Track Court No.II, Palakkad and the appellant - accused is acquitted of all the charges levelled against him.

As this court has already set aside the judgment by which the appellant is convicted and has acquitted him, he is entitled to get released from the jail forthwith if he is not required for any other case. Therefore, the Registry is directed to forward the gist of this judgment to the Superintendent, Central Prison, Kannur, forthwith for appropriate action.

Sd/-
V.K.MOHANAN, JUDGE

Sd/-
RAJA VIJAYARAGHAVAN V, JUDGE

Bb

[True copy]

P.A to Judge