

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.01.2020  
Pronounced on : 07.02.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH  
AND  
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.369 of 2018

1. Lalitha  
2. Gopalakrishnan  
3. Yasotha ... Appellants/Accused

-vs-

State rep. By  
The Inspector of Police,  
Erode Taluk Police Station,  
Erode. ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned II Additional Sessions Judge, Erode, dated 05.12.2017 in S.C.No.96 of 2015.

For Appellants : Mr.B.M.Subash  
for Mr.B.Mohan

For Respondent : Mrs.M.Prabhavathi,  
Additional Public Prosecutor.

J U D G M E N T

[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

The present appeal has been filed by the appellants/accused against the judgment and conviction passed in S.C.No.96 of 2015 dated 05.12.2017 on the file of the learned II Additional Sessions Judge, Erode. The appellants are arrayed as A1 to A3 in the abovesaid case. They stood charged for the offence under Sections 302, 380, 302 r/w 201 and 302 r/w 34 IPC. All the accused denied the charges and opted for trial. Therefore, they were put on trial of the charges. After full fledged trial, the learned II Additional Sessions Judge, Erode, found the accused guilty of the following offences and sentenced as hereunder.

| Offence               | Sentence                                                                                                                                                                |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Under Section 302 IPC | A1 and A2 were sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, and in default to pay the fine amount, to undergo one year simple imprisonment. |

| Offence                       | Sentence                                                                                                                                                                             |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Under Section 380 IPC         | A1 and A3 were sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, and in default to pay the fine amount, to undergo one month simple imprisonment. |
| Under Section 302 r/w 201 IPC | A1 was sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, and in default to pay the fine amount, to undergo one month simple imprisonment.      |
| Under Section 302 r/w 34 IPC  | A3 was sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, and in default to pay the fine amount, to undergo one year simple imprisonment.                      |

The trial Court also ordered the sentences to run concurrently.

2. Challenging the conviction and sentence, the accused are before this Court, by way of filing the present criminal appeal.

3. The case of the prosecution, in brief, is as follows:

(i) PW1-Thangavel and PW5-Jeeva are the parents of the deceased Srinivasan. On the fateful day on 17.11.2012 at about 10.00am alongwith PW5 and with his grandchild Shalini, PW1 went to Thiruchengode for attending the marriage. On the same day at about 6.45pm, when PW1 was in the marriage function, PW4-Venkatesan, who is the brother-in-law of PW1 contacted him through Cell phone and told that four unknown hindi speaking persons, after assaulting the deceased Srinivasan, had stolen away the gold jewels, from the house of the deceased. Immediately, after hearing the same, alongwith PW5, PW1 rushed to the house of the deceased and found that the dead body of the deceased Srinivasan, was lying in the hall in a pool of blood. He has sustained head injury.

(ii) On enquiry, PW1 came to know that when at the time of occurrence, the 1<sup>st</sup> accused was preparing the dinner and at the same time, the deceased was watching TV. After hearing the hue and cry of the deceased, the 1<sup>st</sup> accused rushed to the hall and found four unknown hindi speaking persons assaulting the deceased and after pouring chilli powder on her, opened the bureau and stolen away the M.O.3, M.O.4 and M.O.6. The said story was told by 1<sup>st</sup> accused / 1<sup>st</sup> appellant herein. Immediately, after hearing the same, PW1 rushed to the police station and lodged a complaint under Ex.P1.

(iii) On receipt of the complaint from PW1, on 17.11.2012 at about 11.00pm, PW13-Mr.Senthil Kumar, the then Sub Inspector of Police, Erode Taluk Police Station, registered a case in Cr.No.692 of 2012 under Sections 302 and 380 IPC. After the registration of the case, he handed over the case records to PW14-Mr.S.Ramesh for investigation. Ex.P24 is the printed FIR.

(iv) PW14, the then Inspector of Police, Erode Town Police Station, received the case records from PW13 and took up the same for investigation. He made arrangements for taking photographs in the scene of occurrence. On 18.11.2012 at about 00.30 hours, in the presence of PW8-Mani and one Kesavan, he prepared the Observation Mahazar, under Ex.P2. He drawn the Rough Sketch under Ex.P25. On the same day, in between 01.30 and 04.30 hours, in the presence of panchayatars and witnesses, he conducted enquiry and prepared the inquest report under Ex.P26. He recorded the 161 Cr.P.C. Statements from the witnesses, who were present there.

(v) After preparation of the inquest report, he entrusted the dead body to PW12-Mr.Palanisamy, with direction to produce the same before the Doctor, for conducting autopsy. He has also, sent a requisition to the Doctor, attached with Government Medical College Hospital, Coimbatore, for conducting autopsy. The requisition letter sent by PW14 was marked as Ex.P27.

(vi) On receipt of requisition given by PW14, Dr.Jayasingh, attached with Government Medical College Hospital, Coimbatore, conducted autopsy over the dead body of the deceased Srinivasan and found the following external and internal injuries:

External Injuries:

- 1) Laceration 2x0.5cm x scalp deep noted over right posterior occipital region. The medial end is 2 cm right to midline. On dissection the underlying tissue found contused reddish in colour.
- 2) Laceration 3x0.5cm x scalp deep noted over right postero parietal region. On dissection the underlying scalp tissue found contused reddish in colour.
- 3) Laceration 1.5x1cm x scalp deep noted over right forehead. On dissection of scalp the underlying muscle found contused reddish in colour.
- 4) Laceration 3 x1cm x muscle deep noted over right mid auricular and anterior tragus.
- 5) Laceration 1.5x1 cm x skin deep noted over top of right shoulder.
- 6) Reddish contusion 4x2x0.5 cm noted over antero aspect of right arm, 3x2x0.5cm noted over front of right shoulder, 4x2x0.5cm noted over inner aspect of lower lip and 2x1x0.25cm noted over centre of upper lip.

Internal Injuries:

On dissection Scalp, Skull and Dura: Sub dural clot weighing about 10 grams of left posterior parietal lobe. Right side posterior cerebellum found contused. Diffuse sub dural hemorrhage noted over the both anterior temporal lobes. Diffuse sub arachnoid hemorrhage noted over both cerebral hemisphere.

On dissection of Neck: Reddish contusion 3x2 cm

noted over right side upper neck at the level of sterno mastoid muscle and 4x3 cm noted over right side neck muscle at the level of right greater cornu. Hyoid bone found fractured in its right side upper 1/3<sup>rd</sup> with surrounding tissue contused reddish in colour.

OTHER FINDINGS:

- Peritoneal & Pleural cavities - empty.
- Heart - all chambers contains about few cc of fluid blood, coronaries patent.
- Stomach contains about 200 grams of partially digested food particles, no specific smell, mucosa congested.
- Small Intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa congested.
- Spleen, Kidneys, Lungs, Liver and Brain - Cut section congested.
- Urinary bladder- empty.

The hyoid bone of the deceased was found fractured. He has preserved the viscera and blood, for chemical examination.

(vii) After the completion of postmortem, PW12-Palanisamy, alongwith Ex.P23, Special Report, handed over the dresses to PW14, which were removed from the dead body. In turn, the same was sent to the Court of Judicial Magistrate-1, Erode, for further proceedings. After sending all the material objects collected during the time of investigation, PW14 submitted an application before the learned Judicial Magistrate-1, Erode, under Ex.P6, for sending the material objects for chemical examination.

(viii) On receipt of the same, the learned Judicial Magistrate-1, Erode, sent a letter dated 15.04.2013, to Forensic Science Department, with the request to conduct the chemical examination. The letter sent by the learned Judicial Magistrate-1, Erode, was exhibited as Exs.P5 and P7. On receipt of the letter sent by the learned Judicial Magistrate, the Scientific Assistant attached with Forensic Science Department, Coimbatore, conducted examination and issued a report under Ex.P8 to P12.

(ix) According to the report given by the Forensic Science Department, Coimbatore, blood found in the scene of occurrence and the blood stains found in the dresses collected from the dead body are human blood. Further, the hyoid bone of the deceased was fractured. After seeing the report, PW11-Dr.Jayasingh issued a postmortem report and the final opinion, under Exs.P20 and 21 respectively. As per the opinion given by the Doctor, the deceased would appear to have died of Asphyxia due to violent compression of neck by throttling and associated with head injury.

(x) In continuation of the investigation on 18.11.2012 at about 17 hours in presence of PW10-Mr.Manikasundaram, who is the Village Administrative Officer, Melthindal and his assistant one Ashok Raj, PW14, arrested the 1<sup>st</sup> accused-Lalitha and recorded her confession. In the confession statement, 1<sup>st</sup> accused admitted the offence and brought the witnesses and investigation officer to her house and thereafter, she identified the hidden blood stained pillow cover. The same was recovered by the PW14 under the cover of Mahazar Ex.P14. Admitted portion of the confession statement given by the 1<sup>st</sup> accused was exhibited as Ex.P28. The pillow cover recovered was marked as M.O.5.

(xi) On the same day, the 2<sup>nd</sup> and 3<sup>rd</sup> accused viz., Gopalakrishnan and Yasotha, respectively were arrested by PW14 in the place near to Chithode Milk Farm and thereafter at about 20.30 hours, he examined the 2<sup>nd</sup> accused and recorded his confession statement. Based on the confession statement given by 2<sup>nd</sup> accused, the two wheeler bearing Regn.No.TN34 L 0092 (TVS Apache) was recovered under the cover of Mahazar Ex.P16. The admitted portion of the confession statement given by 2<sup>nd</sup> accused was marked as Ex.P29. The recovered bike is M.O.2. After recovering the same, the said accused brought the police team near to Thindal-Villarasampet Road and identified the steel spanner which was hidden in the thorny bush. The said spanner was recovered under the cover of Mahazar, Ex.P19. Spanner is marked as M.O.1.

(xii) Similarly, the 3<sup>rd</sup> accused-Yasotha, at about 23.15 hours gave a confession statement in which she admitted the offence. She identified the gold jewels, 10 gold coins, gold bar and one yellow colour bag, which was hidden in the place, in which the power loom wastes are stored. The said material objects are recovered under the cover of Mahazar Ex.P18. The admitted portion of the confession statement given by 3<sup>rd</sup> accused was marked as Ex.P13. The gold chain, 10 gold coins, gold bar and the yellow bag were marked as M.Os.3, 4, 6 and 7, respectively. Thereafter, PW14 recorded the statements from the witnesses, who attested the confession statement and recovery mahazar.

(xiii) In the police station, PW1 and PW5 identified the said stolen properties and stated that the same belong to their deceased son. In turn PW14 sent the accused, for judicial custody, further he sent the material objects recovered during the time of investigation to the Judicial Magistrate Court for further investigation.

(xiv) In continuation of the investigation, PW15-Mr.Aruchamy, the then Inspector of Police, Erode Town Police Station took up the case for further investigation. After receiving the reports, from Forensic Science Department, he completed the investigation and laid charges against all the

accused under Sections 302, 380, 302 r/w 201 and 302 r/w 34 IPC.

4. Based on the materials available, the trial Court framed the charges under Sections 302, 380, 302 r/w 201 and 302 r/w 34 IPC. The accused denied all the charges and opted for trial. Therefore, the accused were put on trial.

5. During the course of trial proceedings, in order to prove the case of the prosecution, as many as 15 witnesses have been examined as PW1 to PW15, on the side of the prosecution and 29 documents were exhibited as Ex.P1 to Ex.P29. Besides, 7 Material objects were marked as M.O.1 to M.O.7.

6. Out of the said witnesses, PW1, is the father of the deceased. He has spoken about the relationship between the deceased and the accused. According to him on 17.11.2012 at about 6.45pm when he was at Thiruchengode, along with his wife and grand child, one Venkatesan, telephonically called and informed that four unknown hindi speaking persons assaulted the deceased Srinivasan and stolen away the jewels, which were kept in the house of the deceased. Immediately, after hearing the news, he has rushed to the scene of occurrence and on enquiry, 1<sup>st</sup> accused has told the abovesaid story to PW1. PW1 has further stated about the lodging of the complaint and about the previous enmity of A2 and A3 with the deceased Srinivasan.

7. PW2- Kathirvel, was working as Pharmacist in ESI Hospital, Erode. He has deposed that on 17.11.2012 at about 6.30pm, 1<sup>st</sup> accused herein called through mobile phone and informed that four unknown hindi speaking persons, after pouring the chilli powder on her face, assaulted the deceased and stolen away the gold jewels which were kept in the bureau. He has stated in his evidence that after hearing the news from the 1<sup>st</sup> accused, he informed the same to Dr.Ponmalar and thereafter, alongwith the said Dr.Ponmalar, he rushed to the scene of occurrence and found the dead body of Srinivasan, which was lying in the hall, in a pool of blood.

8. PW3-Dr.Ponmalar, who is the Doctor practising in ESI Hospital, Erode, gave evidence that on the fateful day at about 6.30.pm 1<sup>st</sup> accused-Lalitha, telephonically called and informed the story as already told to PW2. She has also rushed to the scene of occurrence alongwith PW2 and found the dead body of Srinivasan, lying in the hall, in a pool of blood.

9. PW4-Venkatesan, is the then Deputy Elementary Educational Officer. He has spoken about the details of marriage solemnized between the deceased and 1<sup>st</sup> accused. He has further stated before the trial Court that after giving birth to two children, the 1<sup>st</sup> accused - Lalitha, after making quarrel with the deceased went to her parent's house. Due to which, he and some of the elderly persons made a compromise among the

deceased Srinivasan and the 1<sup>st</sup> accused. He has also rushed to the scene of occurrence and found the dead body of the deceased Srinivasan, only after the occurrence. According to him, when at the time he reached the occurrence place, the gold thali was found with 1<sup>st</sup> accused. Only thereafter, PW1, came and lodged the complaint.

10. PW5-Jeeva is the mother of the deceased Srinivasan. She has spoken about the enmity and the quarrel made between the 1<sup>st</sup> accused and the deceased and about the compromise. She has specifically spoken that during the time of compromise, the deceased Srinivasan insisted the 2<sup>nd</sup> and 3<sup>rd</sup> accused to seek apology by falling on her feet. She has also reached the scene of occurrence alongwith PW1, only after hearing the news.

11. PW6-Mani, is the retired Sub Inspector of Police. PW7-Rajendran, is the retired employee of Sankagiri Cement Factory. Both of them have deposed before the trial Court that on 17.11.2012, in the evening hours, after finishing their regular work in Erode, they prepared to go to the house of the deceased to meet PW1. Inturn, when at the time they were nearing the house of PW1, they saw a motor bike bearing Regn.No.TN34 L 0092, which was parked in front of the house of the deceased. Near to the bike, the 3<sup>rd</sup> accused-Yasotha was standing. At that time, the 2<sup>nd</sup> accused came from the house of the deceased and gave a yellow bag to the 3<sup>rd</sup> accused. Thereafter, with some fear mood, he went away alongwith the 3<sup>rd</sup> accused. After seeing the same, PW6 telephonically contacted PW1. In turn, PW1 informed that he is in Thiruchengode, for attending a marriage function. Therefore, both PW6 & PW7 went to Sankagiri and at the same day at about 8.00PM they came to know the occurrence.

12. PW8-Mani, has spoken about the preparation of Observation Mahazar and about the recovery of blood stained floor tiles and chilli powder, from the occurrence place, by the investigation officer. PW9-Senthil Kumar, the then Head Clerk attached with the learned Judicial Magistrate-1, Erode, has spoken about the receiving of requisition letter given by the Investigation Officer and about the sending of material objects for chemical examination. PW10, Manikasundaram, the then Village Administrative Officer, has spoken about the confession statement given by all the accused and about the recovery made by the investigation officer.

13. PW11, Dr.Jayasingh attached with Government Medical College Hospital, Coimbatore, has stated about the postmortem and the details of injuries sustained by the deceased Srinivasan and about the giving of opinion in respect to the death of deceased Srinivasan.

14. PWs.12 to 15 are the police officers, they have stated

about the registration of the case, manner of investigation conducted and about the laying of charge sheet.

15. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not chose to examine any witness or mark any documents on their side.

16. Having considered all the above, the learned II Additional Sessions Judge, Erode, found the appellants guilty for the homicidal death. Accordingly, all the accused were convicted for the offences under Sections 302, 380, 302 r/w 201 and 302 r/w 34 IPC and sentenced, as stated in the 1<sup>st</sup> paragraph of this judgment.

17. Aggrieved over the conviction and sentence, the appellants are before this Court with the present Criminal Appeal.

18. We have heard Mr.B.M.Subash, learned counsel appearing for the appellants/accused and Ms.M.Prabhavathi, learned Additional Public Prosecutor. We have also perused the records carefully.

19. The learned counsel appearing on behalf of the appellants/accused would contend that the genesis of occurrence, in this case is suppressed by the prosecution and hence the same itself is a best ground for allowing the appeal. He would further contend that the evidence of PW1 is liable to be eschewed as he is a liar witness and his evidence is unworthy for consideration.

20. The further contention of the learned counsel appearing for the appellants/accused is that the prosecution failed to prove the motive as projected and also the evidence given by PW6 and PW7, is not up to the level to prove the factum of last seen theory. According to him, the evidence given by PW6 and PW7, is self contradictory and their witness did not inspire confidence. At the outset, he would submit that the witnesses examined on the side of prosecution, are stock witnesses. Further submission is that the factum of recovery under Section 27 of the Indian Evidence Act, is not proved.

21. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent/State would contend that it is a pitiable case in which the wife has murdered her husband for filmsy reasons. She would contend that the minor discrepancies found in the evidence given by the prosecution witnesses are all not in the form of affecting the case of the prosecution. Therefore, she prayed to dismiss the appeal filed by the appellants/accused.

22. Upon considering the arguments advanced by the learned counsel appearing on either side, initially, we have to decide whether the alleged motive projected by the prosecution, is proved or not.

23. In this regard, PW4-Venkatesan, who is the uncle of the deceased and PW5-Jeeva who is the mother of the deceased, both have stated that after giving birth to two children, dispute had arisen between the 1<sup>st</sup> accused and the deceased, resultantly, 1<sup>st</sup> accused herein left the matrimonial home and returned to her parent's house. Further, she has requested the PW4, for making arrangements for separation from the deceased. Thereafter, the mother of the 1<sup>st</sup> accused, brought some mediators to PW1's house for settling the dispute, and all of them, advised 1<sup>st</sup> accused for leading a peaceful matrimonial life.

24. In this connection, the evidence given by PW1 is very clear that at the time of entering into the compromise, the deceased Srinivasan pressurised 1<sup>st</sup> accused to seek apology by prostrating before PW5, for which the 1<sup>st</sup> accused refused to tender apology and also refused to prostrate before PW5. However, 2<sup>nd</sup> accused-Gopalakrishnan who is the sister's husband of 1<sup>st</sup> accused tendered apology on behalf of 1<sup>st</sup> accused. As a result of which all the accused got angry against the deceased Srinivasan.

25. On the other hand, it is the case of the appellants/accused before the trial Court that after the occurrence, case has been registered against some unknown person, but without any reason, particularly, without examining the PW1 and for the unknown reason investigation was focussed on the appellants. Only in order to receive the death benefits of deceased Srinivasan, PW1 has projected a different case against the accused.

26. Now, on considering the either side submission, it is true, after the occurrence, both PW1 and PW5 filed GWOP No.12 of 2013, on the file of the Principal District Court, Coimbatore, for the custody of minor grandchildren. In the affidavit filed before the said Court, PW1 has categorically mentioned that he has not been examined by the police, in connection with the death of Srinivasan. Ofcourse, as per Ex.C1, PW1 has filed a complaint before the trial Court that during the time of investigation, he has not been examined by the police. Except that on the side of prosecution, to prove the alleged motive, the panchayatar who are all present at the time of occurrence are not examined to prove the enmity. More than that in the ordinary sense, seeking apology before the elderly people is an ordinary one and the same cannot create any motive. Other than that in order to prove the illegal conduct of 1<sup>st</sup> accused with 2<sup>nd</sup> accused, no evidence is adduced on the side of the prosecution. So the reasons stated by the prosecution did not

create a strong circumstance to show that the accused having the enmity with deceased to the level of murdering him.

27. Secondly, in order to prove the last seen theory, the prosecution has examined two witnesses on the side of the prosecution viz., PW6, who is the then retired Sub Inspector of Police and PW7, who is a retired employee in Sankagiri Cement Factory. Both of them are relatives of PW1. As already observed, as per their evidence, on the day of occurrence at about 6.30pm, they saw the 2<sup>nd</sup> and 3<sup>rd</sup> accused in front of the house of PW1. On going through the entire evidence given by PW6 & PW7, they have deposed that on the day of occurrence, in the evening hours, both of them wanted to see PW1, in his house. If the said evidence is a true one, definitely, they would have entered into the house of PW1, particularly, after seeing 2<sup>nd</sup> and 3<sup>rd</sup> accused, since they are also related to PW1. But, they have stated that after seeing 2<sup>nd</sup> and 3<sup>rd</sup> accused, they returned to Sankagiri, without going to the house of PW1. In fact the said attitude committed by PW6 & PW7 is nothing but unnatural. They themselves have admitted that PW1 is their relative. Hence, naturally 2<sup>nd</sup> and 3<sup>rd</sup> accused are also their relative, through the son of PW1. Therefore, non-entering the house of PW1 on the day of occurrence by PW6 and 7 creates a strong doubt whether they saw the 2<sup>nd</sup> and 3<sup>rd</sup> accused in front of the house of PW1, or not. So, we are of the considered opinion that the theory of last seen, in respect to the 2<sup>nd</sup> and 3<sup>rd</sup> accused, has also not been proved by the prosecution.

28. In respect to the recovery, PW14, the investigation officer has clearly stated about the arrest of accused and about the recovery of gold articles from various places. The said evidence given by PW14 was corroborated through the evidence of PW10-Manikasundaram, Village Administrative Officer. As per their evidence, the blood stained pillow with cover was recovered from the house of the deceased. In this regard, during the time of cross examination, PW10 has categorically stated that he has not seen the blood stained pillow cover in the occurrence place. Apart from that during the time of cross examination of investigation officer [PW14], he has deposed that at the time of preparing the observation mahazar, the blood stained pillow cover was also seen near to be sofa. If really the same was true one, it is his duty to recover the same at the time, when he was preparing the observation mahazar. But here it is the case of prosecution that the above mentioned pillow cover was recovered after recording confession statement from 1<sup>st</sup> accused. So, it cannot be held that recovery made by the investigation officer, through 1<sup>st</sup> accused does not come into the ambit of Section 27 of Indian Evidence Act. More than that, in the recovery mahazar prepared for the recovery of gold jewels, without weighing the same, the weight of the jewels were entered by the investigation officer. The said circumstances creates a doubt, as to how without weighing the recovered articles, the

investigation officer could write the weight of recovered gold jewels in the recovery mahazar.

29. Moreover, as per the evidence of PW10, the gold ornaments are recovered from the power loom godown. But in respect to the said recovery, PW14-investigation officer has stated that the said gold ornaments were recovered from one power loom workshop situated opposite to B.Ed. College, Kumarapalayam. So, the said contradiction in respect to the place of recovery would also create a doubt whether PW10, was present at the time of arresting the accused and at the time of recovering the stolen properties.

30. Therefore, we are of the considered opinion that the evidence given by PW10 in respect to the recovery is not having much reliability and it does not inspire confidence. Therefore, the factum of recovery also has not been proved by the prosecution.

31. In this connection, the learned Additional Public Prosecutor would contend that during the time of occurrence, alongwith the deceased, wife/1<sup>st</sup> accused alone was present in the house of PW1. The said factum was not disputed on the side of the defence. Therefore, according to Section 106 of Indian Evidence Act, the 1<sup>st</sup> accused has to explain as what had happened at the time of occurrence. The non explanation offered by the 1<sup>st</sup> accused in respect to the occurrence, immediately to others, amounts to admitting the guilt and accordingly, she prayed to dismiss the appeal in respect to the 1<sup>st</sup> accused.

32. Now, on considering the said submission with the case of prosecution, it is not in dispute that at the time of occurrence, alongwith the deceased, 1<sup>st</sup> accused alone was present. So it was her duty to explain the circumstance on which the alleged occurrence had happened. In this connection, it is relevant and useful to see the judgment of Trimukh Maroti Kirkan Vs. State of Maharashtra, reported in 2006 (10) SCC 681, wherein our Hon'ble apex Court has held at Paragraph Nos.14 and 15 as follows:

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty

on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

33. Accordingly, applying the principles set out already by our Hon'ble Apex Court, in this case also, we are in the situation to find out whether the 1<sup>st</sup> accused, who is the inmate alongwith the deceased at the time of occurrence gave reasonable explanation about what had happened at the time of occurrence.

34. In this aspect, it is necessary to see the evidence given by PW2 and PW3, who are working along with the deceased in the ESI Hospital, Erode, alongwith the deceased. Both of them, have categorically stated before the trial Court that immediately after the occurrence, 1<sup>st</sup> accused in this case, contacted them through telephone and informed that four unknown hindi speaking persons entered into her house and committed the offence. So the information given to PW2 and PW3 by PW1 is nothing but an explanation offered by her in respect to the occurrence.

35. In the said circumstances, the investigation officer in this case has not given any evidence as under what circumstances suspicion arose against the accused.

36. As rightly pointed out by the learned counsel appearing on behalf of the appellants/accused, it is not necessary for the

investigation officer to recover the same from the occurrence place, after recording the confession statement from the 1<sup>st</sup> accused, since, the blood stained pillow cover was available at the occurrence place even during the time of preparation of observation mahazar. The said aspect is nothing but clinching circumstances and it will create a doubt whether the investigation officer reached the scene of occurrence immediately after the registration of the case.

37. Before we proceed with the matter, it is to be borne in mind, this case depends upon the circumstantial evidence and as such as per the settled law, other circumstances have to be proved beyond reasonable doubt and further the chain of circumstances should be so complete and provided that the only inference of the guilt of the accused should emanate therefor.

38. As already observed, it is not disputed that the witnesses examined on the side of the prosecution as PW6 and PW7 are related to deceased. Though they were related with the deceased and the 2<sup>nd</sup> and 3<sup>rd</sup> accused, they have not entered into the scene of occurrence when at the time of the offence was committed. According to prosecution, PW6 and PW7 are the witnesses present immediately after the occurrence and saw the 2<sup>nd</sup> and 3<sup>rd</sup> accused. This will create one of the circumstances which is against the case of the prosecution.

39. The other circumstance is in respect to the recovery of gold jewels, the recovery of blood stained pillow cover and the recovery of spanner. The evidence given by the investigation officer has not been corroborated through PW10, who has attested in the confession statement given by the accused 1 to 3.

40. Absolutely, there was no reason as to why the investigation officer suspected the 1<sup>st</sup> accused. Further in respect to the motive attributed, the reason stated by the prosecution is nothing but filmy. We are unable to understand that after giving birth to two children, whether 1<sup>st</sup> accused would go the level of murdering her husband. Though it was stated on the side of the prosecution that 2<sup>nd</sup> accused and 1<sup>st</sup> accused are having illegal intimacy, the said conduct has not been proved on the side of the prosecution, by producing the relevant materials. The material evidences produced on the side of the prosecution is not in the form to connect the chain of circumstances.

41. Therefore, in the light of the above discussion and decision, we are of the considered opinion that the prosecution has not proved their case beyond reasonable doubt. Hence, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants/accused, by the learned II Additional Sessions Judge, Erode, in S.C.No.96 of 2015 dated 05.12.2017 is set aside. The accused are acquitted of the charges. Bail

bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants/accused.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional Sessions Judge, Erode.
2. Do Thro The Principal Sessions Judge, Erode.
- 3.The Judicial Magistrate I, Erode.
- 4.Do Thro The Chief Judicial Magistrate, Erode.
- 5.The District Collector, Erode.
- 6.The Director General of Police, Mylapore, Chennai - 4.
- 7.The Superintendent, Central Prison, Coimbatore.
- 8.The Inspector of Police, Erode Taluk Police Station, Erode.
- 9.The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to Mr.B.Mohan, Advocate, S.R.No. 9958

Criminal Appeal No.369 of 2018

NR(CO)  
GN(18/03/2020)