



2025:KER:20537

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 12TH DAY OF MARCH 2025 / 21ST PHALGUNA,
1946

CRL.A NO. 1119 OF 2019

AGAINST THE JUDGMENT DATED 21.08.2015 IN SC NO.367 OF
2009 OF ADDITIONAL SESSIONS COURT - III, MAVELIKKARA

APPELLANT/ACCUSED:

VISWANATHAN, AGED 62 YEARS,
S/O. KUNJU NAIR, VARUN NIVAS,
THRIPPERUMTHURA, ORIPRAM MURI, CHENNITHALA,
ALAPPUZHA DISTRICT.

BY ADVS.
SRI.C.RAJENDRAN
SMT.R.S.SREEVIDYA

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM PIN 682031.

BY SMT.AMBIKA DEVI S, SPL.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
24.02.2025, THE COURT ON 12.03.2025 DELIVERED THE
FOLLOWING:



C.R.

P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

Crl.Appeal No.1119 of 2019

Dated this the 12th day of March, 2025

JUDGMENT

P.B.Suresh Kumar, J.

The sole accused in S.C.No.367 of 2009 on the files of the Court of the Additional Sessions Judge-III, Mavelikara is the appellant in the appeal. He stands convicted and sentenced for having committed the murder of his wife, Remadevi.

2. The accused was a tailor by profession. He was residing with his wife and younger son, Varun. The elder son of the appellant, Vipin was residing with one of his maternal aunts for the convenience of his education. Remadevi was not present in the house when Varun woke up on 10.09.2005. When Varun enquired with the accused, the latter informed



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him that she had gone for a wedding. Remadevi did not return home on 10.09.2005. The accused also did not return home after his work on the said day. The disappearance of Remadevi raised suspicion among her relatives, and on a search made by them, her body was found in an unused septic tank in the courtyard of her house itself.

3. On the basis of the information furnished by the brother of the deceased, Rajeev Kumar, Mannar Police registered a crime on 11.09.2005 in connection with the death of Remadevi. The investigation in the case revealed that the accused, on account of his suspicion on the chastity of Remadevi, struck on the back of her head with an iron rod while she was sitting on a chair and thereupon pushed her body into an unused septic tank in their house which is filled with water and thereby caused her death. The final report was accordingly filed in the case against the accused alleging commission of the offences punishable under Sections 302 and 201 of the Indian Penal Code (IPC).



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4. On the appellant being committed to trial, the Court of Session framed charges against him in terms of the final report to which he pleaded not guilty. The evidence in the case consists of the oral evidence of PWs 1 to 28 and Exts.P1 to P22 proved through them. MO1 to MO12 are the material objects identified by the witnesses. Exts.D1 to D6 series are the case diary statements of some of the witnesses examined on the side of the prosecution. The accused was thereupon questioned under Section 313 of the Code of Criminal Procedure (the Code) as regards the incriminating evidence brought out by the prosecution. The accused denied the same. The explanation offered by him at that stage was that Remadevi left for attending a wedding at Kayamkulam on 10.09.2005 and that he has not seen her thereafter. It was also his explanation that he was arrested by the police when he went to his house on coming to know of the death of his wife. As the Court of Session did not find the case to be one fit for acquittal under Section 232 of the Code, the accused was called upon to enter on his defence. The accused examined a



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witness on his side at that stage as DW1. Thereafter, on an appreciation of the evidence, the Court of Session found the accused guilty of the charges and sentenced him, among others, to imprisonment for life. The accused is aggrieved by his conviction and sentence, hence this appeal.

5. Heard the learned counsel for the appellant as also the learned Special Public Prosecutor.

6. The issue that arises for consideration in the appeal is whether the conviction and sentence passed against the appellant, are sustainable in law.

7. As there is no direct evidence to the occurrence alleged by the prosecution, the attempt of the prosecution was to prove the same through circumstantial evidence. One of the contentions seriously pressed into service by the learned counsel for the appellant at the time of hearing was that the circumstances proved in the case do not establish the guilt of the accused beyond reasonable doubt. In the light of the said contention, it is necessary to delve deep into the evidence let in by the prosecution.



8. PW1 is the brother of Remadevi who lodged the First Information Statement. PW1 was a Police Constable at the relevant time. According to PW1, at about 10.30 a.m. on 11.09.2005, he was informed by his elder brother, Surendran that Remadevi who left for a wedding on 10.09.2005 had not returned home and when he went to her house on the basis of the said information, the house was seen locked. It was deposed by PW1 that when he made enquiries with Latha, a neighbour of Remadevi, in whose house Varun was present, Latha informed PW1 that at about 5.00 p.m. on 10.09.2005, the appellant called her over telephone and informed her that he is going to Coimbatore with Remadevi to arrange a job for her. It was deposed by PW1 that he then left the house of Remadevi along with Varun and went to the shop of the appellant at Thriperunthura and he was informed by a person who was found near the shop then that the appellant had closed the shop and left the place at about 3.00 p.m. on 10.09.2005. PW1 deposed that thereupon, he went to the house of Remadevi again with some of his relatives and on a



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search, they found her body in the septic tank. It was his version that the body was removed from the septic tank on 12.09.2005 at about 9.00 a.m. and the funeral was conducted in his house at Kayamkulam after the inquest and postmortem examination on the said day. It was specifically deposed by PW1 that the appellant did not attend the funeral. PW1 acknowledged the fact that it was he who lodged Ext.P1 First Information Statement and identified MO1 as the dress worn by Remadevi at the time when her body was found in the septic tank.

9. PW2 is Varun. PW2 gave evidence consistent with the evidence given by PW1. In addition, it was deposed by PW2 that he heard a sound on the night of 09.09.2005 and when he switched on the light on hearing the same, the appellant came there and required him to sleep and lay with him on the bed. It was deposed by PW2 that when he enquired with the appellant about his mother on the morning of the following day, the appellant informed him that she had gone for a wedding in Thiruvalla. It was deposed by PW2 that after



returning home from a movie in the afternoon, he went to the house of Latha to watch television and she informed him that his father had called and informed her that he is going to Coimbatore with his mother to arrange a job for the latter. It was the version of PW2 that after watching television for sometime, he came back to his house and slept. It was deposed by PW2 that when he woke up on the following day, it was found that the ornaments and clothes usually worn by his mother were still at home. In the evidence tendered by PW2, it was mentioned by him that there were frequent quarrels between his parents and that the appellant used to beat her also at times. PW2 identified MO1 as the dress of Remadevi and MO7 as the iron rod retained in their house. PW9 is the elder son. PW9 also deposed that there used to be frequent quarrels in his house between his parents and that the appellant did not like his mother talking to others or going to houses in the neighbourhood. PW9 also deposed that the appellant used to assault his mother on account of his suspicion on her.



10. PW4 is Latha referred to by PWs 1 and 2 in their evidence. PW4 gave evidence consistent with the evidence tendered by PWs 1 and 2. In addition, she deposed that she saw Remadevi at about 6 p.m. on 09.09.2005; that Remadevi informed her then that she would be attending a marriage on 10.09.2005; that she would come back before the meeting of the “Kudumbasree Unit” scheduled on that day and that Remadevi did not turn up for the said meeting. It was the version of PW4 that by about 5 p.m. on 10.09.2005, she received a call on her number 0479-2311118 from the appellant informing her that he is calling from Thiruvalla; that Remadevi is with him and that they are going to Coimbatore to arrange a job for Remadevi. In cross-examination, when PW4 was questioned as to how she realised that the person who telephoned her was the appellant, her answer was that she is well-acquainted with his sound.

11. PW5 is another neighbour of Remadevi. PW5 deposed that she used to occasionally hear the quarrels between the appellant and Remadevi. PW6 is also another



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neighbour. PW6 deposed that Remadevi came to her house at about 6.30 p.m. on 09.09.2005 and in the conversation they had on that day, Remadevi informed her that she would be attending a wedding on the following day. PW6 also deposed that the appellant used to suspect Remadevi whenever she spoke to anyone. PW7 is another neighbour. The version of PW7 was that Remadevi used to tell her about the quarrels that occur in their house on account of the suspicion the appellant had on her. PW10 is the husband of one of the elder sisters of Remadevi. It was with PW10 that PW9, the elder son of Remadevi was residing. PW10 also deposed that the appellant used to assault Remadevi often and that PW10 and his wife had to intervene on several such occasions to resolve the issues between them. PW21 is the wife of PW10. She gave evidence more or less on similar lines as the evidence tendered by PW10.

12. PW11 was a lady who was engaged in the operation of a telephone booth at Thiruvalla during 2005. PW11 identified Ext.P3 as the book maintained by her in her



handwriting at the said booth to record calls. It was deposed by PW11 that an entry was made by her in Ext.P3 in relation to a call made to the number - 0479-2311118 and she collected a sum of Rs.3.50 from the caller towards the charges. In cross-examination, it was however admitted by PW11 that the date on which the call was made is not recorded in Ext.P3. Similarly it was admitted by PW11 that the time at which the call was made is also not recorded in Ext.P3. Likewise, it was admitted by PW11 in her evidence that even though police had shown to her a person, to ascertain whether he was the one who made the above call, she informed the police that she could not recognise him. PW19 was the Assistant Director of the Forensic Science Laboratory, Thiruvananthapuram who issued Ext.P10 report. It was deposed by PW19 that item No.1 in Ext.P10 report is one metallic rod with a ring at one end having a maximum length of 65.5 cms and that it contained blood, although its origin could not be determined.

13. PW23 was the doctor who conducted the postmortem examination on the body of the deceased on



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12.09.2005 and issued Exts.P14 and P15 postmortem certificates. The ante-mortem injuries noted by PW23 at the time of post-mortem examination as deposed by PW23 are the following :

1. Lacerated wound 6x2cm bone deep on the left side of the back of head 4cm behind upper border of the left ear. Underneath depressed fracture of skull 4.5x3cm on the occipital bone. Brain showed subdural haemorrhage bilaterally and decomposition changes.

2. Contused abrasion 7x2.5cm oblique on the upper part of back of neck 7cm below external occipital protuberance.

It was opined by PW23 that the time of death at any rate was 2 to 3 days prior to the post-mortem examination. It was also opined by PW23 that injury No.1 is one that could be caused with MO7 iron rod and that the death was due to the combined effect of the head injury and drowning.

14. PW22 was the police officer who recorded Ext.P1 First Information Statement from PW1 and registered the case. PW22 deposed that it was he who arrested the appellant at about 12 p.m. on 12.09.2005. In cross-examination, PW22 clarified that he went to the scene of occurrence within half an hour on receipt of the information regarding the commission of the crime and he remained there



till 9.00 p.m. on that day. It was also stated by him in cross-examination that he deputed a police constable named Shaji to guard the scene. PW25 was the police officer who conducted the initial investigation in the case. Among others, it was deposed by him that it was he who held the inquest and issued Ext.P2 inquest report. It was also deposed by PW25 that during interrogation, it was disclosed to him by the appellant that he has kept an iron rod, iron bar and a torch, in the iron shelf kept in one of the bedrooms of his house and when the appellant was taken to that place as guided by him, he took out those articles and the same were seized as per Ext.P8 mahazar. PW25 identified those articles as MO7, MO8 and MO9 respectively. Ext.P8(a), according to PW25 is the relevant portion of the disclosure which led to the recovery of MO7, MO8 and MO9.

15. PW16 is one of the neighbours of the deceased. PW16 was a witness to Ext.P8 mahazar. It was deposed by PW16 that the appellant was present in the house at the time of preparation of Ext.P8 mahazar and he saw the



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police seizing MO7 iron rod, MO8 iron bar and MO9 torch from the house of the appellant. In cross-examination, PW16 admitted that when he arrived at the house of the appellant on the relevant day, there was police both inside and outside; that PW16 remained outside the house and that he affixed his signature in Ext.P8 mahazar while remaining outside the house.

16. DW1 is the witness examined by the appellant on his side. The evidence of DW1 was that he had acquaintance with the appellant and the deceased; that he saw the deceased at about 6.30 a.m. on 10.9.2005 at the place called Puthuvilapadi junction; that when he enquired with her where she was proceeding then, the deceased informed him that she was going to attend a wedding at Kayamkulam and that after sometime, he saw her boarding a bus which was proceeding towards south.

17. It is based on the evidence discussed in the preceding paragraphs that the Court of Session came to the conclusion that the prosecution has proved the guilt of the



accused, beyond reasonable doubt. The first and foremost contention raised by the learned counsel for the appellant is that it is a case where *corpus delicti* has not been established by the prosecution and the appellant is entitled to acquittal on that sole ground. Alternatively, it was also contended by the learned counsel that no circumstances pointing towards the guilt of the appellant has been proved in the case. It was argued, even assuming that any circumstances have been proved in the case, the same are not sufficient to establish the guilt of the accused beyond reasonable doubt. It was also argued by the learned counsel that at any rate, inasmuch as the cause of death was not solely on account of the injury suffered by the deceased on her head, the appellant cannot be convicted for the offence punishable under Section 302 of the IPC and that at the most, the appellant could be convicted only for the offence punishable under Section 307 IPC.

18. Let us first deal with the contention of the appellant that the prosecution failed to establish the *corpus delicti*. Before doing so, it is worth referring to the



observations made by the Apex Court in **Sevaka Perumal v. State of Tamil Nadu**, (1991) 3 SCC 471 in the context of the question whether it is necessary at all in every case to establish *corpus delicti*. The observations read thus:

“5. Sri Raju Ramachandran contended that the dead body was admittedly found in a highly decomposed condition. There is no proper identification of the dead body to be of the deceased. The mother PW 2 identified only with reference to the photograph taken of the dead body. There is evidence that the deceased wrote a letter of leaving for unknown destination. Unless there is proof that the dead body belongs to Hariramachandran, it is not safe to convict A-1 to a capital punishment of death sentence. We find no force in the contention. In a trial for murder it is not an absolute necessity or an essential ingredient to establish corpus delicti. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced. In this case the evidence of PWs 7 to 10 would establish that they have seen the dead body of the deceased Hariramachandran in the well and brought it out and the photograph was taken at the time of inquest. It was identified to be that of the deceased by no other than his mother, PW 2. Thus we have no hesitation to hold that there is no doubt as regards the identity of the dead body and that the medical evidence establishes that the deceased died due to stabbing with sharp edged weapon like knife.”
(Underline supplied)



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As noted, the deceased was found missing from her house from the morning hours of 10.09.2005. The body of the deceased was found on 11.09.2005 in the septic tank in the courtyard of her house. The body was identified by her own brothers as also neighbours based on the features of her lower limbs and the dress worn by her at the relevant time, as the body was in an upside-down position in the septic tank then. The body was taken out from the septic tank on the morning of 12.09.2005 at the time of holding the inquest. As noted, Ext.P2 is the inquest report. The materials on record indicate that at the time of holding the inquest, the body was recognised by one of the younger brothers of the deceased namely, Suresh Kumar. No doubt, it was deposed by PW23, that at the time of postmortem examination, the face of the deceased was bloated, eyes bulged and tongue protruded and to that extent, the body was decomposed. Inasmuch as the body was found within two days of the death, it cannot be said that on account of the said changes, the close relatives would not be in a position to recognise the body based on visible features. True,



the brother of the deceased who recognised the body at the time of holding the inquest was not examined in the case, but, PW25, the police officer who held the inquest gave evidence that the inquest was held on the body of the deceased and the said part of the evidence was not challenged by the appellant in cross-examination. That apart, PW1 deposed that he was also present when the lid of the septic tank was removed and whilst so, he saw the body of the deceased in an upside-down position. The relevant evidence of PW1 reads thus:

"ഞങ്ങൾ എല്ലാവരും കൂടി ആ tank ന്റെ മേൽമുടി മാറ്റി. അപ്പോൾ എന്റെ സഹോദരിയുടെ കാലുകൾ മുകളിലേക്കും തലകുത്തനെ ഞാൻ കണ്ടു. അതു എന്റെ സഹോദരി ആണ് എന്നു എനിക്കു ബോദ്ധ്യം ആയി."

This part of the evidence tendered by PW1 has also not been cross-examined by the counsel for the appellant. In the above circumstances, we do not find any substance in the argument that the prosecution failed to establish the *corpus delicti* in the case.

19. Let us now consider the arguments advanced by the learned counsel for the appellant as regards the circumstances relied on by the prosecution. It is necessary in



this context to keep in mind the principles governing acceptance of evidence in a case of this nature. The principles are:

- (1) that the circumstances from which the conclusion of guilt is drawn are fully established,
- (2) that the facts so established are 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) that the circumstances are of a conclusive nature and tendency,
- (4) that they should exclude every possible hypothesis except that the accused is guilty, and
- (5) that 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.

There cannot be any doubt that the circumstances to be proved to establish the guilt of the accused in a given case, shall be *of a conclusive nature and tendency* and the same shall be fully established, which means that the circumstances shall unequivocally establish the truth of the facts, leaving no reasonable doubt, or alternative explanation and the same



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should have a definite tendency of implicating the accused in the crime.

20. One of the circumstances relied on by the prosecution is the recovery of MO7 iron rod allegedly based on the information furnished by the appellant. No doubt, it is proved that MO7 is an iron rod that was retained in the house of the appellant. It has come out from the evidence of PW22, the police officer who registered the crime that he went to the scene of occurrence within half an hour on receipt of the information regarding the commission of the crime and that he also deputed a police constable to guard the scene of occurrence on the same day. In other words, the scene of occurrence which is the house of the appellant was very much under the control of the police from the evening hours of 11.09.2005. As already noticed, the inquest was held by PW25 on 12.09.2005 at about 9.00 a.m. in the courtyard of the house of the appellant itself. Going by the evidence tendered by PW22, it was thereafter at about 12.00 p.m. that the appellant was arrested from a place called Koyikkal Junction. What was



deposed by PW25 is that it is in the interrogation conducted thereupon, that the appellant made Ext.P8(a) disclosure and MO7 was recovered based on the said disclosure. Ext.P8(a) disclosure reads thus:

"കമ്പിവടിയും എലവങ്കം ടോർച്ചും ഞാൻ എന്റെ വീടിന്റെ വടക്ക് പടിഞ്ഞാറേ കിടപ്പുമുറിയിൽ തെക്കുവശം ഭിത്തിയോട് ചേർന്ന് 5 തട്ടുകളോടു കൂടിയതും, ഉദ്ദേശം 6 അടിയോളം പൊക്കം വരുന്നതുമായ ഇരുമ്പ് ഷെൽഫിന്റെ മുകളിലത്തെ തട്ടിൽ ഒളിച്ചു വെച്ചിട്ടുണ്ട്. ഞാൻ അതെടുത്ത് ഹാജരാക്കും."

As noted, the disclosure is that the articles referred to therein are kept by the appellant in one of the iron shelves in the almirah placed in one of the rooms in his house. The evidence tendered by PW25 is that the appellant took out MO7 and other articles when he was taken to his house which was under the control of the police from the previous evening. Inasmuch as the said material object is stated to have been recovered from the house which was under the control of the police, according to us, it may not be safe to place reliance on the evidence tendered by PW25 in this regard. Another reason for us to think on the said lines is that even though PW16, one of the witnesses to the recovery mahazar namely, Ext.P8 admitted his signature in the mahazar, what was deposed by him was



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only that the appellant was present when MO7 and other articles were recovered by the police. PW16 has not stated in his evidence that he saw the appellant taking out or handing over MO7 to the police. That apart, the prosecution connects MO7 with the crime by reason of the presence of blood therein though its origin could not be determined. MO7 is described in Ext.P8 mahazar thus:

"കമ്പി വടി നോക്കിയതിൽ ഇതിന് 96 cm മൊത്തത്തിൽ നീളം കാണുന്നു. ഇതിന്റെ ഒരു വശം ഹുക്ക് ആകൃതിയിലും, മറുവശം റൗണ്ടിലുമായി കാണുന്നു. ഇതിന് 4.2 cm ചുറ്റളവ് കാണുന്നു."

Ext.P16 is the forwarding note in terms of which MO7 was forwarded by the Jurisdictional Magistrate to the Forensic Science Laboratory, Thiruvananthapuram for examination. The description of MO7 in Ext.P16 is as follows:

"ഉദ്ദേശം 96cm (ഹുക്ക് വളയവും ഉൾപ്പെടെ) നീളം ഉള്ളതും 4.2cm ചുറ്റളവുള്ളതും ഒരു വശം, ഹുക്ക് ആകൃതിയിലും മറുവശം റൗണ്ട് ആകൃതിയിലുമുള്ള കമ്പി വടി ഒന്ന്."

But the description of MO7 which is item No.1 in Ext.P10 report is not consistent with its description in Ext.P8 mahazar and Ext.P16 forwarding note. MO7 is described in Ext.P10 thus:

"One metallic rod with a ring at one end and had a maximum length of 65.5 cms. The other end was found bent. The bent portion had a maximum length of 16.5 cm. Rust was found on it."



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Even though PW19 who issued Ext.P10 was examined in the case, MO7 was not shown to him, nor was the discrepancy clarified. As such, even assuming that the prosecution has established that the recovery of MO7 is one that would fall within the ambit of Section 27 of the Indian Evidence Act, the same may not connect the accused with the crime. Needless to say, the evidence tendered by PW25 as regards the recovery of MO7, cannot be accepted as a circumstance connecting the accused with the crime.

21. Another circumstance relied on by the prosecution is the evidence tendered by PW4 that the appellant had telephoned her at about 5.00 p.m. on 10.09.2005 and informed her that he is going to Coimbatore along with the deceased to arrange a job for her. It was contended that call records have not been made available to corroborate the evidence tendered by PW4. Instead, the prosecution examined PW11, the person who was operating the telephone booth from which the call was allegedly made. PW11 has only deposed that someone made a call to the



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number of PW4 between 09.09.2005 and 12.09.2005. She has not deposed that it was the appellant who made the said call. There is no dispute to all these facts. But, at the same time, on a close reading of the evidence of PW4, we do not find any reason to disbelieve the evidence tendered by PW4 in this regard. The reason is that the said part of the evidence tendered by PW4 is consistent with the evidence tendered by PW1 that even before the death of Remadevi came to light, PW4 informed Surendran, his elder brother that the appellant had made a call to her at about 5 p.m. on 10.09.2005 and informed her that he is going to Coimbatore along with the deceased to arrange a job for her, which is consistent with Ext.P1 First Information Statement given by him also.

22. As noted, there is no dispute to the fact that the appellant and the deceased were residing in the same house and the evidence of PW2 would indicate that they were together in the house on the night of 09.09.2005 when PW2 went to sleep. It has come out from the evidence of PW2 that he heard a sound on the night of 09.09.2005 and when he



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woke up and switched on the light hearing the sound, the appellant came to his room, asked him to sleep and lay with him on the bed. It has also come out from the evidence of PW2 that the deceased was not present in the house on the following morning. As noted, the body of the deceased was found in the unused septic tank in the courtyard of the house of the appellant itself and when the body was recovered, she was wearing her night dress. In the light of the evidence tendered by PW23, the doctor who conducted the post-mortem examination that the death must have occurred 2 to 3 days prior to the postmortem examination, it could certainly be inferred that the death occurred on the night of 09.09.2005 itself. If that be so, the evidence let in on behalf of the appellant is also one to be rejected. Since the appellant and the deceased were last seen together by PW2 and since the death occurred on the same day night itself, it is for the appellant to explain as to how the death occurred for, no one under the said circumstances could inflict an injury on the deceased and put her body into the septic tank without the



knowledge of the appellant. The appellant has no explanation as to how the death occurred on the night of 09.09.2005. Instead, when PW2 enquired with the appellant about the deceased on the morning of 10.09.2005, the appellant made a false representation to PW2 that the deceased had left for Thiruvalla to attend a wedding. It has come out from the evidence of PW1 that the appellant who left the house in the morning of 10.09.2005 to his shop, had closed the shop and left the place at 3.00 p.m. on the same day. There is no dispute to the fact that the appellant who left the house as usual in the morning hours of 10.09.2005 did not return home on that day. Instead, in order to justify his absence from the house, he informed PW4 falsely that the deceased is with him and that they are going to Coimbatore to arrange a job for her. The said circumstances together with the circumstances that the relationship with the appellant and the deceased was not cordial; that the appellant used to suspect the chastity of the deceased; that there used to be frequent quarrels between them and that the appellant used to assault the deceased at



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times, according to us, would form a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and would show that in all human probability it was the appellant who caused the head injury on the deceased and thereafter pushed her body into the unused septic tank in their house.

23. What crimes could be attributed to the appellant, on the proved facts, is the next question. As noted, even though the case of the prosecution is that the appellant struck on the back of the head of the deceased with an iron rod and thereupon pushed her body into an unused septic tank filled with water and thereby caused her death, in the absence of any direct evidence, what was established in the case is only that it was the appellant who caused the head injury on the deceased and thereafter pushed her into the unused septic tank. It is relevant in this context to mention here that in the absence of any direct evidence, we are unable to hold, conclusively, that the weapon used by the appellant to inflict the head injury on the deceased is MO7, even though PW23



opined that the said injury is one possible with MO7, especially since the origin of the blood found on MO7 could not be determined. Be that as it may, there is no sufficient evidence in the case to hold that the appellant intended to cause the death of Remadevi. Merely for the reason that the relationship between the appellant and the deceased were not cordial, it cannot straight-away be inferred that the appellant intended to cause her death. There are indications in the evidence that there was some difference of opinion between the appellant and the deceased over the decision of the latter in attending a wedding scheduled at Thiruvalla on the following day. Viewed in this background, especially in the light of the evidence in the case that the appellant was a hard-working person who did not have any vices, in all probability, the injury found on the body of the deceased must have been one inflicted by the appellant in the course of their conversation over the decision of the deceased in attending a wedding at Thiruvalla. Unusually, PW23 did not state in his evidence that injury 1 is either sufficient in the ordinary course of nature to cause death or at



least likely to cause death. What could be inferred from the proved facts is only that the appellant intended to cause a bodily injury to the deceased and inflicted the intended bodily injury.

24. In the light of the evidence tendered by PW23 that the cause of death was due to the combined effect of injury 1 and drowning, it is established that the bodily injury inflicted on the deceased by the appellant did not result in her death and the same occurred when the appellant pushed down the deceased into the septic tank. Inasmuch as it was found that the appellant is the person who put the body of the deceased in the septic tank, it can certainly be inferred that the deceased fell unconscious on account of the head injury, or otherwise, it would be impossible, under normal circumstances, for anyone to put the body of a grown up adult into a septic tank, that too, after removing its concrete lid without other residents or neighbours noticing the same. We take this view in the light of the evidence tendered by PW2 that he heard a sound in the night and immediately thereupon,



the appellant came to his room and lay down in the bed with him. Two hypotheses can be drawn on the above facts. Either this must be a case where the appellant was under the impression when he put the body of the deceased into the septic tank that she was lifeless and he did so to cause disappearance of the evidence of the crime, or this must be a case where the appellant was aware that she was alive and put her body into the septic tank to cause her death. Unfortunately, we do not have any evidence to show that the appellant had knowledge that Remadevi was alive at the time when he put her body into the septic tank and in the absence of any conclusive evidence to show that the appellant had knowledge that Remadevi was alive at the time when he put her body into the septic tank, the possibility of the appellant putting the body of the deceased in the septic tank for the purpose of causing disappearance of the evidence, cannot be ruled out. As is well settled, the benefit of every doubt in criminal adjudication shall go in favour of the accused. Needless to say, we are constrained to hold that when the



body of the deceased was put in the septic tank by the appellant, he was under the impression that the body was lifeless and he did so for the purpose of causing disappearance of the evidence.

25. This takes us to the question whether, on the specific facts and circumstances of the case, the act performed by the appellant in putting the body of the deceased which he believed to be lifeless, in the septic tank for the purpose of causing disappearance of the evidence of the crime, would attract the offence punishable under Section 299 IPC. Section 299 reads thus:

“299. Culpable homicide. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

As evident from the extracted definition, the offence punishable under Section 299 IPC is attracted only when a person does an act which causes death of another, either with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the



knowledge that he is likely by such act to cause death. These three are the species of *mens rea* as contemplated in the provision, and unless it is conclusively established that the act of the accused would fall under any of these three limbs, it would not amount to an offence of culpable homicide punishable under Section 299 IPC. Needless to say, if an act is committed on a body which a person believed to be lifeless at the time of commission of such act, the offence is not attracted for, when the act was performed, the person concerned could have neither had the intention of putting an end to the human life nor had the intention of causing a bodily injury as is likely to cause death nor had the knowledge that he is likely by such act to cause death. In fact, the said proposition has been clarified by a Full Bench of the Madras High Court in **Palani Goundan v. Emperor**, 1919 SCC OnLine Mad 67. The facts as found by the court in that case were that the accused struck his wife with a blow on her head with a ploughshare, which rendered her unconscious. He believed her to be dead and in order to lay the foundation of a false defence of suicide by



hanging, proceeded to hang her on a beam by a rope. The blow was, however, not fatal and in fact she died as a result of strangulation, which was also an act of the accused. It is in the context of the said factual background, the proposition aforesaid has been laid down. The relevant portion of the judgment reads thus:

“It is not necessary that any intention should exist with regard to the particular person whose death is caused, as in the familiar example of a shot aimed at one person killing another, or poison intended for one being taken by another. “Causing death” may be paraphrased as putting an end to human life; and thus all three intentions must be directed either deliberately to putting an end to a human life or to some act which to the knowledge of the accused is likely to eventuate in the putting an end to human life. The knowledge must have reference to the particular circumstances in which the accused is placed. No doubt if a man cuts the head off from a human body, he does an act which he knows will put an end to life, if it exists. But we think that, the intention demanded by the section must stand in some relation to a person who either is alive, or who is believed by the accused to be alive. If a man kills another by shooting at what he believes to be a third person whom he intends to kill, but which is in fact the stump of a tree, it is clear that he would be guilty of culpable homicide. This is because though he had no criminal intention towards any human being actually in existence, he had such an intention towards what he believed



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to be a living human being. The conclusion is irresistible that the intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances. It follows that a man is not guilty of culpable homicide if his intention was directed only to what he believed to be a lifeless body. Complications may arise when it is arguable that the two acts of the accused should be treated as being really one transaction as in Queen-Empress v. Khandu [(1891) I.L.R., 15 Bom., 194.] or when the facts suggest a doubt whether there may not be imputed to the accused a reckless indifference and ignorance as to whether the body he handled was alive or dead, as in Gour Gobindo's Case [(1866) 6 W.R. (Cr. R.), 55.]. The facts as found here eliminate both these possibilities, and are practically the same as those found in The Emperor v. Dalu Sardar [(1914) 18 C.W.N. 1279.]. We agree with the decision of the learned Judges in that case and with clear intimation of opinion by SERGEANT, C.J., in Queen-Empress v. Khandu.

Though in our opinion, on the facts as found, the accused cannot be convicted either of murder or culpable homicide, he can of course be punished both for his original assault on his wife and for his attempt to create false evidence by hanging her. These, however, are matters for the consideration and determination of the referring Bench."

(underline supplied)

As evident from the extracted passage, the view taken is that the intention of the accused must be judged not in the light of the factual circumstances, but in the light of what he supposed to be the circumstances and that therefore, the accused



cannot be found guilty of culpable homicide, if his intention was directed only to what he believed to be a lifeless body. We respectfully agree with the view taken by the Madras High Court in the said case.

26. The learned Special Public Prosecutor submitted that the decision in **Palani Goundan** has not been followed by the Madras High Court in **Kaliappa Goundan and another**, 1933 SCC OnLine Mad 138 and contended that on identical facts, it was held in that case that the accused can be convicted for the offence of murder in the case on hand. According to the learned Special Public Prosecutor, the acts committed by the appellant namely the act of inflicting injury on the head of the deceased and the act of putting her body into the septic tank should be treated as one transaction and if the acts are treated as one transaction, it could certainly be inferred that the accused intended to cause the death of Remadevi and in that event, there is absolutely no scope for the argument that the said acts would not amount to murder.



27. In **Queen-Empress v. Khandu**, (1892) ILR 15 Bom 194], under a similar circumstance, it was held by the Bombay High Court that the acts of the accused would amount to murder. In that case, it was found that the accused struck the deceased with three blows on the head using a stick with the intention of killing him. Thereupon, believing that he was no more, he set fire to the hut in which the victim was lying with a view to remove all evidence of the crime. As in the case of **Palani Goundan**, the blows were not fatal and the person died on account of burn injuries. On the said facts, one of the learned Judges who constituted the Bench in **Khandu**, took the view that the whole transaction, the blow and the burning, must be treated as one and that therefore, the original intention to cause death must be applied to the act of burning which did cause the death. In **Kaliappa Goundan**, the case of the prosecution was that the accused persons, two in number, decoyed the wife of the first accused under the pretence of taking her to see a sick relation, strangled her on the way and put her dead body on the railway line so that the train



might run over the body and obliterate all the traces of the crime. The train ran over the body resulting in decapitation. The Court found that the accused made an attempt to strangle the deceased; that she was thereupon dragged either in an unconscious or semi-conscious condition on to the railway line and placed her in front of the train and that the intention of the accused, throughout, was to cause her death. It was also found by the court that the intention with which the accused strangled the deceased cannot be separated from the intention with which they put her body across the railway line; that the two acts were intimately connected with each other and that the latter one followed immediately upon the former and that both the acts of the accused must be treated as being only one transaction, the transaction being to kill the deceased. In **Palani Goundan**, the Court observed that complications may arise when it is arguable that two acts of the accused should be treated as being really one transaction as in **Khandu** and proceeded to lay down the proposition on the ground that the facts of **Palani Goundan** as found,



eliminate the said possibility. It is seen that in the light of the said observation, the learned Judges who decided **Kaliappa Goundan**, took the view that if the facts of the case are as in **Khandu**, the dictum in **Palani Goundan** does not apply and decided the case on the facts found therein. It is incorrect, therefore, to contend that the learned Judges in **Kaliappa Goundan** did not follow the decision of the full bench in **Palani Goundan**. The premise on which **Kaliappa Goundan** was decided is that the dictum in **Palani Goundan** does not apply to the facts of that case.

28. Reverting to the case on hand, we do not think that it is possible to argue that the two acts of the appellant could be treated as being parts of one transaction as in the case of **Khandu** for, it is found that the appellant had not intended to cause the death of Remadevi. Needless to say, the argument advanced by the learned Special Public Prosecutor based on the decision of the Madras High Court in **Kaliappa Goundan** is only to be rejected and we do so.



29. The finding that the appellant cannot be convicted for culpable homicide not amounting to murder under Section 299 or murder under Section 300, does not lead to the inference that the appellant is entitled to be acquitted on the facts of the case. As clarified by the Madras High Court in **Palani Goundan** itself, in a case of this nature, the appellant can certainly be convicted for the original act which rendered Remadevi to an unconscious state and also for his attempt to cause disappearance of the evidence. Inasmuch as it is found that what could be inferred from the proved facts is that the appellant intended only to cause a bodily injury to the deceased and inflicted the intended bodily injury on her, the appellant is liable to be convicted for grievous hurt under Section 326 of IPC. Similarly, he is liable to be convicted for the offence punishable under Section 201 IPC for causing disappearance of the evidence.

30. Coming to the sentence, having regard to the totality of the facts and circumstances of the case, especially the nature of injury inflicted by the appellant on the deceased,



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we are of the view that ten years rigorous imprisonment would be the appropriate sentence to be imposed on him for the offence punishable under Section 326 IPC.

In the result, the appeal is allowed in part, the conviction of the appellant is altered to Section 326 IPC and he is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of six months. The sentences shall run concurrently as ordered by the Court of Session. The conviction and sentence of the appellant for the offence punishable under Section 201 IPC will stand confirmed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOBIN SEBASTIAN, JUDGE.