
(2012) 09 KL CK 0063

In the High Court Of Kerala

Case No : Criminal A. No. 2657 of 2008 (B)

Haneefa Convict No. 6499 Central Prison Kannur

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 232, 313, 357(1), 428

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 201, 300, 302, 354, 364

Citation : (2012) 09 KL CK 0063

Hon'ble Judges : M. Sasidharan Nambiar, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : Manu Tom, for the Appellant; K.K. Rajeev, Public Prosecutor, for the Respondent

Judgement

Sasidharan Nambiar, J.—Accused in S.C. 108/2007 before Additional Sessions Court, Palakkad filed this appeal challenging his conviction and sentence for the offences under sections 302, 376, 404 and 201 of Indian Penal Code. Appellant is the husband of the sister of deceased Kaula alias Kaulath. PW18 Salim is the husband of Kaula and PW2 Jamsheera is their daughter. PW3 Fathima and PW5 Hajira are the sisters of Kaula. Prosecution case is that deceased Kaula along with her daughter PW2 were living in a separate house and Pws. 3, 5 and others are living in an adjacent house. Kaula used to earn money by selling milk and was maintaining cow. Deceased sought the help of the appellant to purchase a cow. Appellant along with the deceased approached PW15 Vasantha who was having a cow. PW15 agreed to sell the same for Rs. 9300/- to Kaula. Deceased paid Rs. 100/- as advance and agreed to pay the balance and take the cow after one week. On the morning of 8.10.2005 at about 9 a.m. appellant along with the deceased left the house to purchase the cow. Appellant was then wearing M05 lungi, M06 shirt and was having in his possession M07 towel. Deceased was wearing M02 saree, M03 blouse, M04 underskirt and M014 brassier. PW18 had given Rs. 5000/- to PW2 who in turn handed it over to the deceased earlier and

the deceased kept it with PW3 to be utilised for purchasing the cow. By sale of another cattle the balance amount was with the deceased. She entrusted it also to PW3. Before the deceased left the house, PW3 handed over the money to the deceased enclosed in M01 purse. PW5 Hajira had left the house to her work place, a tailoring unit at Sulthanpetta, immediately after the appellant and the deceased left the house. When PW5 reached the bus stop, she found the appellant and the deceased waiting for the bus. When PW5 got into the bus, she found the appellant and the deceased standing in the bus stand. PW6 Najmudheen the autorikshaw driver had taken the appellant and the deceased from near the house of the deceased in his autorikshaw KL9G 1618 upto the A1 Department Store, where PW4 Shabeer is working as an employee. PW4 sold M09 and 10 coir and wollen thread to the appellant and the deceased. They purchased them for taking the cow after purchase to the house of the deceased as by practise the owner of the cow will not part with the coir of the cow sold. The deceased was not seen alive after PW5 had seen her with the appellant in the bus stand. As the deceased did not return back to the house even by 6 p.m. PW1 Basha informed it to the Police Station. He furnished Ext. P1 First information. It was recorded by PW14, the Sub Inspector of Police, who prepared Ext. P1(a) F.I.R. and registered the case under the caption "man missing". Though PW14 and Crl. A. 2657/2008 4 the police men along with others searched for the deceased on that night, she could not be traced. On the morning of 9.10.2005 PW14 found the appellant and took him to the Police Station and questioned him. On the information furnished by the appellant and getting satisfied that the deceased was murdered after committing rape, PW14 furnished Ext. P18 report to the Magistrate incorporating the offences under sections 366, 364, 376, 201, 302, 404 and 354 of Indian Penal Code. PW14 reported the matter to PW16, the Circle Inspector of Police. Based on the information furnished by the appellant PW16 the body of deceased was found out inside the forest. She was found strangulated using M02 saree on her neck. PW16 prepared Ext. P19 Inquest report. At the time of inquest, M03 blouse M04 underskirt, M014 brassier, M012 ear studs and M013 ornaments were seized. Pw16 obtained cellophane prints from both the palms and chest of the deceased. He prepared Ext. P2 scene mahazar and seized M011 muftha and M09 series of wollen thread and M010 coir found at the scene of occurrence. PW16 on the information furnished by the appellant recovered M01 purse under Ext. P9 recovery mahazar from among the rocks near to the place where the body was found, when the accused took it and handed over to PW16. The body was sent for post mortem examination. PW9 Dr. Gujaral, District Police Surgeon conducted the autopsy and prepared Ext. P3 postmortem certificate. M02 saree which was found on the neck of the deceased and used as ligature was removed by PW9 and entrusted to the police man. It was later seized by PW16 under Ext. P21 mahazar. PW9 collected the pubic hair and nail cuttings of the deceased and handed over them to the police. The vaginal swab was also collected and sent for chemical analysis and obtained Ext. P5 and P6 reports of chemical analysis. Based on the findings recorded in Ext. P3, P5 and P6, PW9 furnished Ext. P4 final

report that the deceased was subjected to rape and her death was caused by strangulation and hanging. PW16 seized M05 to 7 dresses worn by the deceased at the time of the occurrence, from his house as pointed out by the appellant, under Ext. P10 mahazar. The material objects were produced before the court under Ext. P20 property list and were forwarded for chemical analysis by submitting Ext. P23 forwarding note and obtained Ext. P24 report. After completing the investigation PW16 submitted the final report.

2. Learned Magistrate committed to the Sessions Court u/s 209 of Code of Criminal Procedure who made it over to the Additional Sessions Court for trial. Appellant remained in custody and was defended by a counsel appointed by the court. When the learned Sessions Judge framed charges for the offences under sections 366, 364, 376, 302, 404 and 201 of Indian Penal Code and read over to the appellant, he pleaded not guilty. Prosecution then examined 18 witnesses and marked 28 exhibits and identified 15 material objects. After closing the prosecution evidence, appellant was questioned u/s 313 of the Code of Criminal Procedure. When questioned, apart from denying the incriminating evidence put to him appellant did not disclose any fact. As it is not a case for acquittal u/s 232 of Code of Criminal Procedure Addl. Sessions Judge called upon the appellant to enter on his defence and adduce evidence, if any. Appellant did not let in any defence evidence.

3. Learned Additional Sessions Judge on the evidence found the appellant not guilty of the offences under sections 364 and 366 of Indian Penal Code and acquitted him of the offences. But he was found guilty of the offences under sections 302, 376, 404 and 201 of Indian Penal Code and sentenced the appellant to imprisonment for life and a fine of Rs. 75,000/- and in default rigorous imprisonment for three years for the offence u/s 302 of Indian Penal Code, with a direction to pay the fine if realised, to the children of the deceased as compensation u/s 357(1) of the Code of Criminal Procedure. Appellant was also sentenced to rigorous imprisonment for seven years and a fine of Rs. 25,000/- and in default rigorous imprisonment for one year for the offence u/s 376 IPC, rigorous imprisonment for one year and a fine of Rs. 10,000/- and in default rigorous imprisonment for one month for the offence u/s 404 IPC and rigorous imprisonment for three years and a fine of Rs. 10,000/- and in default rigorous imprisonment for six months for the offence u/s 201 of Indian Penal Code. The conviction and sentence are challenged in the appeal preferred from jail. As the appellant did not engage a counsel, a counsel from the panel of Senior State brief, was appointed to appear for the appellant.

4. Learned Counsel appearing for the appellant and learned Public Prosecutor were heard.

5. The argument of the learned Counsel appearing for the appellant is that as the prosecution is relying on the circumstantial evidence, each and every link in the chain of circumstance is to be established and the facts so established must conclusively establish the guilt of the accused and shall be incompatible with the

theory of innocence of the accused. Learned Counsel argued that the prosecution evidence is insufficient to prove the guilt of the appellant. It was pointed out that though prosecution sought to prove that appellant committed rape and then murder, by strangulating and hanging the deceased, there is no material or evidence to establish the facts. Learned Counsel argued that though prosecution relied on the last seen theory, the dead body of deceased Kaula was found on the morning of 9.10.2005 and the evidence of Pws. 2, 3 and 5 would only show, even their evidence is accepted, that they found the deceased alive along with the appellant by about 9.30 a.m. on 8.10.2005 and as the dead body was found only on the next day, the presumption that appellant committed the murder cannot be drawn. Learned Counsel argued that as per the prosecution case, PW14 arrested the appellant on the morning of 9.10.2005 near his house, but the evidence of PW7 establish that he was informed by Kumaran, who was not examined, and other children that a person was found tied and lying in the forest and PW7 went there and informed the police and police took the appellant in custody and taken him to the Police Station on the night of 8.10.2005 itself and if that be so, the recovery of M05 to 7 dresses from the house of the appellant on the next day can never be accepted. Learned Counsel argued that if the appellant was taken into custody on the night of 8.10.2005, case of the alleged information furnished by the appellant, based on which recoveries under Ext. P9 and P10 mahazars were effected can only be disbelieved and if that be so, apart from the last seen theory, there is no evidence connecting the appellant with the murder and rape of the deceased. Learned Counsel also argued that evidence of PW2, the daughter and Pws. 3 and 5 the sisters of the deceased establish that though the relationship of the deceased with PW18 the husband was strained, appellant was attempting for a reconciliation and in such circumstances it cannot be believed that appellant would commit rape or murder of his sister-in-law and when the evidence adduced is insufficient to prove conclusively the guilt of the appellant, he is entitled to the benefit of reasonable doubt and therefore the conviction is not sustainable. Learned Counsel also argued that records of the trial court would establish that appellant was not afforded proper legal assistance and he was defended by a counsel appointed by the court and he did not cross examine the witnesses properly and hence the trial itself is vitiated and hence a de novo trial is to be ordered.

6. Learned Public Prosecutor argued that the evidence conclusively establish that appellant committed the rape and murder of deceased Kaula. It was pointed out that the evidence of PW2, PW3 and PW5 that deceased Kaula wanted to purchase a cow and for that purpose sought the assistance of the appellant and the appellant took the deceased to PW15, who agreed to sell the cow and received an advance and promised to hand over the cow on receipt of the balance and these facts are proved by the evidence of PW2, 3, 5 and 15 and the evidence of PW2, PW3 and PW5 establish that on the morning of 8.10.2005, appellant along with the deceased left the house by 9 a.m. and it was not disputed at the time of their cross examination. Learned Public Prosecutor also pointed out that the

evidence of PW6 the autorikshaw driver establish that appellant along with the deceased travelled in his autorikshaw and got down near A1 Department Store. It was pointed out that the evidence of PW4 establish that appellant along with the deceased came to the shop and purchased M09 wollen threads and M010 coir and it was revealed to PW4 that they purchased M0s 9 and 10 for the purpose of purchasing a cow and his evidence also prove that at that time appellant was wearing M06 shirt. It was also argued that the evidence of PW5 establish that appellant was found at the bus stop along with the deceased waiting for the bus at about 9.45 a.m. on that morning when PW5 got into the bus and nobody else had seen the deceased alive thereafter. It was argued that as provided u/s 106 of Indian Evidence Act, appellant has a duty to explain what happened to the deceased thereafter and it was a fact which was known exclusively to the appellant and as he did not offer any explanation, the only inference that could be drawn is that appellant took the deceased to the forest and at the scene of occurrence committed rape and caused her death by strangulating her. It was also argued that the evidence of PW9, the doctor with Ext. P3 post mortem certificates and Ext. P4 final report conclusively establish that the deceased was subjected to rape and was murdered by strangulating her using M02 saree worn by her and the injuries inflicted on the body of deceased were during the attempt to commit rape. Learned Public Prosecutor also pointed out that the evidence of PW16, the Investigating Officer establish that cellophane prints from both the palms and the chest of the deceased were taken at the time of inquest and sent for chemical examination and Ext. P24 certificate of chemical analysis establish that the fibres found in the said cellophane are identical to the fibres of the dresses worn by the appellant recovered by PW16 from the house of the appellant under Ext. P10 mahazar, based on the information furnished by the appellant. It is therefore argued that the evidence conclusively establish that it was the appellant who committed rape on the deceased and also caused her death by strangulation and therefore the conviction is perfectly legal and sustainable.

7. Though learned Counsel argued that the State brief appointed by the court did not properly conduct the case and hence de novo trial is to be ordered, on the materials, we find no ground to direct a de novo trial as claimed by the learned Counsel.

8. The fact that deceased Kaula is the sister of Balkese, the wife of the appellant, is admitted. Evidence of PW14 with Ext. P1 First Information Statement establish that Ext. P1 First Information furnished by PW1 at 7 p.m. on 8.10.2005 was recorded by PW14 and he registered the crime under the caption "man missing", as it was disclosed by PW1 that the deceased left along with the appellant at about 9 a.m. on that day and did not return back to the house. The fact that the body of Kaula was later found in the forest by PW14 and Pw16, on the morning of 9.10.2005 and the death of Kaula was about 24 hours earlier to the time of the autopsy due to the presence of maggots found by PW9, the doctor was also not disputed. Evidence of PW9 with Ext. P3 post mortem certificate establish that

M02 synthetic saree, which was used as the ligature was tightly tied around the upper part of the neck of the deceased with a slip knot on the left half of front of neck. PW9 noted fresh abrasion with pale, dry and parchmented base corresponding to the ligature on the neck. The relevant portion of Ext. P3 report reads:-

A fresh pressure abrasion with pale, dry and parchmented base and corresponding to the ligature on neck of size 27 x 3.5 to 5 cm was seen coursing upwards and backwards from at and above thyroid cartilage in midline front of neck 3.5 cm below chin (breadth 3.5cm) to its right end at hair margin 11 cm behind right ear lobule (breadth 4 cm) and to its left end at hair margin 6 cm behind left ear lobule (breadth 5cm). The highest point of the mark was at just below left angle of jaw (breadth 4.5cm) and corresponding to the knot of the ligature. This mark was oblique and non-continuous being absent on back of neck. Another fresh pressure abrasion with base and edges showing patchy areas of blood infiltration and size 31.5 x 2.5 to 4.5cm was seen transversely all around neck, placed 8 cm below chin in midline front of neck (breadth 4.5cm), 7cm below right ear lobule (breadth 3.5cm), 8cm below left ear lobule (breadth 4.5cm) 7cm below right ear lobule (breadth 3.5cm) 8cm below left ear lobule (breadth 2.5 cm) and 7 cm above root of neck in midline back of neck (breadth 3 cm). The mark was faint on back of neck. Flap dissection of neck in bloodless field showed firm and pale subcutaneous tissues underneath the non-continuous pressure abrasion corresponding to the ligature on neck. The subcutaneous tissues underneath the transverse pressure abrasion all around neck showed areas of thick blood infiltration, especially on front and sides of neck. The strap muscles of neck were contused underneath this transverse pressure abrasion. The thyroid cartilage showed midline fracture separation and also showed fracture separation of its right superior horn, with infiltration of blood around fracture sites. The cricoid cartilage showed midline fracture with blood infiltration around. They are multiple petechial and small ecthymotic hemorrhages in the mucosa of larynx and pharynx. Hyoid bone was intact. Cervical vertebral column was intact.

In addition the following Ante-mortem injuries were also noted.

1. Contused abrasion 1.5 x 1 c.m. on forehead in midline, 5 cm above root of nose.
2. Contused abrasion 1.4 x 0.4cm on front and left side of root of nose.
3. Contused abrasion 2x2cm on right side of face, 1 cm below outer angle of eye.
4. Crescentic abrasion 0.9x 0.2cm on right side of face, 1 cm below outer to nostril.
5. Contused abrasion 1.5x1cm on right side of face, 3cm outer to right nostril.
6. Crescentic abrasion 1.1x 0.3cm on right side of face, 1.5cm in front of ear lobule.

7. Crescentic abrasion 0.8x 0.1cm on right side of face, just above right angle of mouth.
8. Superficial lacerated wound 0.6x0.3cm on right half of inner aspect of upper lip, just outer to midline.
9. Contused abrasion 0.6x0.3cm on right half of lower lip 1cm outer to midline.
10. Superficial lacerated wound 1.2x0.4cm on inner aspect of left half of lower lip, 1.5 cm outer to midline.
11. Contused abrasion 1.5x1cm on left side of chin, 1cm above jaw margin and 4cm outer to midline.
12. Two crescentic abrasions, each of size 0.7x0.2cm, placed 1cm apart on left side of face 2cm outer to nostril and 1.5cm below eye.
13. Contused abrasion 2.5x1cm on left side of face, 3 cm outer to left angle of mouth.
14. Contused abrasion 2x1.5cm on left side of face, 2cm in front of tragus of ear.
15. Crescentic abrasion 0.9x0.2cm on left side of face, 1.5cm in front of ear lobule.
16. Contused abrasion 0.6x0.4 cm on left side of face, just outer to outer end of eyebrow.
17. Contusion 4x3x0.5cm on back of right upper arm, 14cm above elbow.
18. Multiple contused abrasions over an area of 5x4 cm on back of right elbow and upper arm, lower end at elbow.
19. Crescentic abrasion 1.2x0.5cm on back of right forearm, 1.5cm above wrist with contusion 3x2x0.5cm underneath.
20. Three crescentic abrasions in a row in a semicircle and over an area of 5x3cm each of size 0.9x0.1cm the ones on sides placed 2cm away from the one at centre on left half of front of abdomen 2 cm above top of hip bone and 12cm outer to midline front of abdomen. The convexity of the crescentic abrasions was directed upwards and to left.
21. Contusion 1.5x1cm, superficial on upper half of left labia majora, just outer to the vaginal outlet.
22. Superficial laceration 0.3x0.2cm on the inner aspect of vaginal, 0.5 cm beyond urethral orifice, with contused abrasion around. Vaginal mucosa congested.
23. Contusion 5x4x1cm on front and inner aspect of right thigh, 117 cm below groin.
24. Crescentic abrasion 0.8x0.1cm on inner aspect of right thigh ,15 cm above

knee with contusion 2x1x0.5cm underneath.

25. Contusion 4x3x0.5cm on inner aspect of right ankle, just above inner malleolus.

26. Contusion 3x2x0.5cm on upper aspect of right foot 5 cm away from ankle.

27. Contusion 4x3x0.5cm on front and inner aspect of left ankle.

28. Contusion 4.5x4x1cm on front and inner aspect of left knee.

29. Contusion 3x3x0.5cm on front of left thigh, 16 cm above knee.

30. Multiple contused abrasions over an area of 8x6cm on left side and left half of back of abdomen just above top of hip bone and 14cm outer to midline back of abdomen.

31. Contusion 3x2x0.5cm on back of left hand, 3cm below wrist.

32. Multiple contused abrasions over an area of 5x4cm on back of left elbow.

33. Contusion 4x4x1cm on back and outer aspect of left upper arm, 3cm above elbow.

34. Multiple contused abrasions over an area of 10x8cm on back of right buttock inner end 4cm outer to top of natal cleft.

35. Multiple contused abrasions over an area of 5x4cm on back of hip in midline, 3cm above top of natal cleft.

36. Multiple contused abrasions over an area of 5x4cm on back of left chest, 30cm below shoulder and 14cm outer to midline.

9. Based on Ext. P5 and P6 reports of chemical analysis, PW9 furnished Ext. P4 final report that the deceased died due to hanging and there is evidence of ligature strangulation on the body sufficient to incapacitate the victim and forceful sexual intercourse prior to her death. Evidence of PW9 with the injuries and the feature recorded in Ext. P3 conclusively establish that deceased Kaula was subjected to rape before her death and her death was caused due to hanging and earlier she was strangled, using M02 saree as the ligature. This aspect was not disputed at the time of trial or in the appeal.

10. The question then is who committed the rape and the murder. As stated earlier, appellant has no case that he had not been at the house of the deceased on the morning of 8.10.2005 or had not left the house along with the deceased to purchase a cow from PW15. Evidence of PW2 the daughter, PW3 and PW5 sisters of the deceased conclusively establish these facts. Their evidence also establish that the appellant was wearing M05 and 6 dresses and the deceased was wearing M02 to 4 dresses and was also having a muftha with her. Evidence of PW6 corroborates the evidence of PW5 that the deceased along with the appellant travelled in the autorikshaw of PW6 from near to the house of the

deceased on that morning. Evidence of PW6 further establish that he took the deceased and the appellant in his autorikshaw up to the shop of PW4. Though PW6 was cross examined on this aspect we find no reason to disbelieve the evidence of PW6. Evidence of PW4 establish that the appellant along with the deceased had been to the shop on the morning of 8.10.2005 and purchased M09 and 10 wollen threads and coir from the shop. Though PW4 did not identify M09 and 10, his evidence establish that appellant along with the deceased came to the shop and purchased wollen threads and coir for the purpose of purchasing a cow, to enable them to tie them on the cow and bring it back to the house of deceased. Though PW4 was cross examined at length we find no material or reason to disbelieve his evidence. PW5 has absolutely no reason whatsoever to falsely depose against the appellant. Evidence of PW5 establish that she found the appellant and the deceased waiting for the bus, when she got into the bus, from the bus stop at about 9.45 a.m. The prosecution case is that nobody else had seen the deceased alive thereafter.

11. As stated earlier when the appellant did not deny the fact that he along with the deceased left the house for purchasing the cow and nobody else had seen the deceased alive after PW5 had seen her along with the appellant at about 9-45 a.m. on the morning of 8.10.2005, and the evidence establish that Kaula was murdered after committing rape on her and the dead body of deceased Kaula was found in the forest on the next day morning, it is clear that appellant has definitely a duty to explain what transpired thereafter and how the deceased was subjected to rape and murder. Section 106 of Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Honourable Supreme Court analysing Section 106 of Evidence Act held that when the deceased was last seen alive with the accused, and when the deceased is found dead is so small, possibility of any person other than the accused being the author of the crime becomes impossible. In *Manivel and Others Vs. State of Tamil Nadu*, it was held:-

14. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this Court. In *State of U.P. v. Satish* [SCC p.123 para 22] it was noted as follows :

22. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.

15. In *Ramreddy Rajeshkhanna Reddy v. State of A.P.* it was noted as follows : (SCC P. 181, para 27)

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the Courts should look for some corroboration.

(See also *Bodhraj v. State of J&K*)

16. A similar view was also taken in *Jaswant Gir v. State of Punjab* and *Kusuma Ankama Rao* case.

When the evidence of Pws. 2, 3 and 5 were put to the appellant at the time of questioning u/s 313 of Code of Criminal Procedure, apart from denying the evidence, he did not offer any explanation as to what happened to the deceased after she was found along with the appellant by PW5 in the bus stand on the morning of 8.10.2005. When the evidence of PW9 establish that death of Kaula occurred 24 hours prior to the time of autopsy and she was subjected to rape before the murder, it is clear that she was subjected to rape and thereafter caused her death, soon after PW5 left the bus stop.

12. Added to this the evidence of PW16 establish that he had taken cellophane prints from the body of the deceased at the time of preparing the Inquest. Evidence of PW16 establish that cellophane tape prints were taken from both the palms and the chest of the deceased. Evidence of PW16 further establish that they were forwarded from court by submitting a forward note for chemical analysis. Ext. P24 certificate of chemical analysis conclusively establish that the fibres found in those cellophane tapes are similar to the fibres seen in M05 to 7 lungi, shirt and towel of the appellant which were seized under Ext. P10 mahazar. As stated earlier, the dresses, M06 shirt and M05 lungi, were identified by Pws. 2, 3 and 5 as found when appellant left with the deceased. Though learned Counsel appearing for the appellant argued that they did not furnish any material, for identifying M0s 5 to 7, it is clear that Pws2, 3 and 5 had sufficient opportunity to take note of the features of the dresses, worn by the appellant on the morning when he took the deceased along with him. Hence there is no reason to suspect or disbelieve the identification of the dresses worn by the appellant by Pws. 2, 3 and 5. Moreover, the capacity of those witnesses to identify the dresses was not all challenged at the time of cross examination. It is thus clear that the fibres found on the cellophane prints collected by PW16 from the body of deceased at the time of inquest are similar to the fibres of the dresses worn by the deceased at the time of the incident. It establishes that the appellant was the person who committed rape and thereafter caused the death of Kaula, by strangulation and hanging. The fact that appellant is potent and is capable of doing sexual acts was not disputed and is proved by the evidence of PW9 the doctor and Ext. P7 potency certificate. M01 purse was proved to be the purse, which was carried by

the deceased when she left along with the appellant, on the morning of 8.10.2005, by the evidence of Pws. 2, 3 and 5. Evidence of Pws. 3 and 5 also establish that Rs. 9400/- found in the purse belongs to the deceased and it was earlier handed over by the deceased to PW3, who in turn handed over the same to the appellant for the purpose of purchasing the cow, when she left along with the deceased on that fateful morning. The evidence of PW16 and PW14 and Ext. P9 recovery mahazar's contemporaneously, establish that M01 purse was recovered from among the rocks near to the scene of occurrence as pointed out by the appellant. It is proved that the recovery of M01 was based on the information furnished by the appellant. Though learned Counsel appearing for the appellant argued that the evidence of PW7 establish that appellant was taken into custody by the police on the night of 8.10.2005, the suggestion given to PW7 and PW14 and 16 establish that while the appellant and the deceased were proceeding, some persons forcibly took the deceased and tied the appellant with a rope, on the evidence we cannot accept the submission. True, PW7, who was not declared hostile, deposed that Kumaran and some other children informed him on the evening of 8.10.2005 that a person was found tied with a rope on his legs and lying in the forest. PW7 along with the others reached there and found the appellant. As the appellant did not offer any explanation, he informed the police and police came there and took the appellant into custody. When examined, PW14 Sub Inspector of Police, admitted that he has information that a person was found lying tied with a rope in the forest. The evidence of PW14 is that though he investigated that fact, it was found not correct. PW16 the Circle Inspector of Police deposed that on investigation he also found the story of the appellant that he was tied by some persons and took the deceased away, is not true. Even when the evidence of PW7 was put to the appellant, he denied that fact and had no case that he was tied by others and made to lie in the forest or was taken by the police into custody on the night of 8.10.2005. Therefore based on the evidence of PW7 that appellant was found lying, tied with a rope, it cannot be said that the prosecution case is not true. Moreover, if the evidence of PW7 is to be accepted as correct, it would establish that the appellant was found tied not by others but by himself. The evidence of PW7 is that when questioned, appellant did not offer any explanation as to how it happened. Therefore even if that evidence of PW7 is true, it could only be the handwork of the appellant and he tied himself to make it appear that he was tied by others so as to explain the murder and the rape of the deceased. Even when appellant was asked whether he has to offer anything more to say, appellant did not have a case that he was either tied by others and the deceased was taken away from him. When the entire evidence is appreciated in the proper perspective, we find that prosecution conclusively established that it was the appellant who took the deceased from her house on the morning of 8.10.2005 and committed rape on her and thereafter caused her death by strangulation and hanging. The evidence conclusively establish that appellant after committing rape on the deceased caused her death. None of the exceptions provided u/s 300 applies. Conviction of the appellant for the offences under sections 302 and 376 IPC is therefore

perfectly correct. The evidence also establish that the appellant committed the offences under sections 404 and 201 of Indian Penal Code. His conviction is therefore perfectly legal and correct. Then the only question is regarding the sentence. The learned Sessions Judge awarded only imprisonment for life apart from the fine for the offence u/s 302 of Indian Penal Code. Appellant was directed to pay a fine of Rs. 75,000/-and in default rigorous imprisonment for three years. But from the financial conditions of the appellant, it appears that the fine awarded is excessive. The fine is therefore reduced to Rs. 25,000/- and in default rigorous imprisonment for one year. Similarly the fine awarded for the offence under sections 376, 404 and 201 of Indian Penal Code is excessive. They are reduced to Rs. 5000/- each and in default rigorous imprisonment for six months each. We find no reason to interfere with the substantive sentence for the other offences.

Appeal is allowed in part. Conviction of the appellant for the offences under sections 302, 376, 404 and 201 of Indian Penal Code are confirmed. The substantive sentences awarded for the offences is also confirmed. The fine awarded for the offence u/s 302 of Indian Penal Code is reduced to Rs. 25,000/- and in default rigorous imprisonment for three years and for the offences under sections 376, 404 and 201 IPC the fine are reduced to Rs. 5000/- each and in default rigorous imprisonment for six months each. Appellant is entitled to set off for the period he has been in custody in this case as provided u/s 428 of Code of Criminal Procedure subject to the orders passed by the appropriate authority u/s 432 and 433 of Code of Criminal Procedure.