
(2012) 12 KL CK 0039

In the High Court Of Kerala

Case No : Criminal Appeal No. 2271 of 2008 (M)

Philip, C. No. 3166, Central Prison, Trivandrum

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 232, 300, 313, 428

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 106, 302

Citation : (2012) 12 KL CK 0039

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

Bench : Division Bench

Advocate : Biju T.K. [State Brief], for the Appellant; K.K. Rajeev Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ravikumar, J.—This appeal is sent from prison challenging the conviction and sentence imposed on the appellant, the sole accused in S.C.No. 1162 of 2007 by the Court of Sessions, Thiruvananthapuram, u/s 302 of the Indian Penal Code for committing the murder of his wife Jaspin. The appellant was sentenced to undergo imprisonment for life and also to pay a fine of Rs. 10,000/- and in default to undergo rigorous imprisonment for two years. The case of the prosecution is as follows:-

The deceased and the appellant were residing in "Sanjay Bhavan" with door No. TC 81/88 of Attipra Village and PWs 2 and 1, who are respectively their daughter and son-in-law, were residing in another house on its eastern side. The other issues of the said couple were also given in marriage and they are residing separately. On 9.5.2007 at about 1 p.m. the appellant who is a dipsomaniac, due to his animosity towards the deceased either on account of the refusal to give him money for potation or of the refusal to yield to his demand for having sexual intercourse, stabbed her with a knife on various parts of the body with the

intention to commit murder. Jaspin died before she could receive any medical help. PW1, the husband of PW2, went to the police station and lodged Ext.P1 F.I. Statement which was recorded by PW8, the then Sub Inspector of Police, Thumba Police Station. On its basis he registered Ext.P7 first information report as Crime No. 78 of 2007 u/s 302 IPC against the accused. PW9, took over the investigation and instructed PW8 to make arrangements to guard the scene of occurrence and then, he went to KIMS hospital and conducted inquest on the body of the deceased and prepared Ext.P8 inquest report. PW9 seized MO5 series of ear stud, MO6 chain, MO7 another blue stoned chain, MO8 blouse, MO9 brassier, MO10 lunki, MO11 underskirt, MO12 strip of string (nada) MO13 cloth bag with MO15 500 rupee note, MO16 20 rupee note, MO17 series - two 10 rupee notes, MO19 series - three one rupee coins and MO19 - two 25 paise coins and MO14 sand particles collected from the body of the deceased after describing them in Ext.P8 inquest report. He made the requisition to conduct postmortem and sent the body to Medical College Hospital, Thiruvananthapuram. PW6, the then Assistant Professor of Forensic Medicine, Medical College, Thiruvananthapuram conducted autopsy and prepared Ext.P3 postmortem certificate opining that the death of Jaspin was due to injury Nos. 1 to 5 caused to the chest. On getting information that the accused was in Valia Veli Railway Station PW9 went there and arrested him on 10.5.2007. MO2 lunki, MO3 shirt and MO4 thorthu worn by the accused at the time of the incident were seized as per Ext.P12 recovery mahazar. On 11.5.2007 PW9 went to the place of occurrence and prepared Ext.P2 scene mahazar in the presence of PW5 and another and collected blood seen in the place of occurrence in a cotton gauze and also MO21 sand particles seen there. A watch with broken leather strap was also seized from the place of occurrence. MO1 knife seen lying beneath a coconut tree on the north-eastern portion of the kitchen of "Sanjay Bhavan" was also seized after describing the same in the scene mahazar. On getting convinced that the watch taken from the place of occurrence belongs to PW1 and that he did not have any involvement whatsoever in the incident PW9 handed it over to PW1 after obtaining Ext.P9 kaichit. The seized articles were sent to the court along with Exts. P16 and P17 property lists and those material objects which were sent for analysis through court to the Forensic Science Laboratory were subjected to analysis and Ext.P18 is the FSL report. On completion of the investigation, PW9 laid the final report before the Judicial First Class Magistrate Court-II, Thiruvananthapuram. The learned Magistrate committed the case to the Sessions Court, Thiruvananthapuram.

Since the appellant could not engage a lawyer of his choice a counsel was appointed by the court to defend him and after preliminary hearing the learned Sessions Judge framed charge u/s 302 IPC against the accused. It was read over and explained to him in Malayalam and he pleaded not guilty.

To prove the charge against the appellant herein prosecution examined PWs 1 to 9, got marked Exts. P1 to P18 and identified material objects 1 to 21. After closing the prosecution evidence the accused was questioned u/s 313 Cr.P.C. All

the incriminating circumstances were put to him and the appellant denied all such incriminating circumstances. Additionally he stated to the effect that he had not committed the offence and that on the date of occurrence he was in the house. Further, he stated that his son John Bosco who married from Kambikkakam, Valia Veli often insisted him to vacate the house and at times, assaulted him and even attempted to kill him in order to make him yield to that request. He had also stated that on the date of incident when he was coming from the western side of the house John Bosco came there and picked up quarrel with him re-iterating the demand to vacate the house. Further, it was stated thus:- John Bosco strangulated him with a thorthu with a view to kill him and he became unconscious and fell down in front of the house. When he regained his consciousness he was lying on a cot inside the house and then he got up and went outside and saw police personnel coming to his house. They asked to get into the jeep and on account of fear he got into the jeep and they took him to police station and falsely implicated him in the case. On finding that it is not a fit case for acquittal u/s 232 Cr.P.C. the appellant was asked to enter on his defence. However, he has not adduced any evidence on his side except marking Exts. D1 to D6, the portions of statements of PWs 3 and 4 recorded u/s 161 Cr.P.C., at the time of their examination. Relying on the oral evidence of PWs 1 to 4 and also the extra-judicial confession made by the appellant to PWs 2 to 4 the learned Sessions Judge found that the prosecution has succeeded in establishing a complete chain of circumstances leading to the irresistible conclusion of guilt of the accused/appellant and accordingly convicted him for committing the murder of his wife Jaspin u/s 302 IPC and sentenced him as aforesaid. This appeal is filed against the said conviction and the sentence.

2. As stated earlier, the appeal was sent from the prison and a counsel from the panel of senior state brief was appointed to appear for the appellant. We have heard the learned counsel appearing for the appellant and also the learned Public Prosecutor.

3. There was no eye witness in this case. extra-judicial confession by the appellant was also relied on in this case based on circumstantial evidence. The learned counsel appearing for the appellant contended that the evidence relied on by the prosecution was not conclusive enough to convict the appellant u/s 302 IPC. It is contended that the evidence of PWs 1 to 4 were not credible or trustworthy as their evidence suffer from material contradictions. That apart, the extra-judicial confessions of the appellant claimed to have been made to PWs 2 to 4 also suffer from inherent improbabilities and were wholly inadmissible. The learned Public Prosecutor, on the other hand, contended that the material witnesses viz., PWs 1 to 4 were able to withstand the vigour of cross examination and though they were cross examined at length the defence could not elicit anything to make their oral testimonies unreliable and untrustworthy and therefore, their oral testimonies were rightly relied on by the learned Sessions Judge. It is also contended that the extra-judicial confession made by the appellant to PWs 2 to 4 gain support from a chain of cogent circumstances. It is

further contended that the chain of circumstances against the accused is so complete and conclusive to unerringly point to the guilt of the accused. In short, it is contended by the learned Public Prosecutor that the appellant was rightly found guilty and convicted u/s 302 IPC by the learned Sessions Judge and the conviction and the sentence call for no appellate interference.

4. The first question to be considered is whether the death of Jaspin was homicidal or suicidal ? Autopsy was conducted on the body of Jaspin on 10.5.2007 by PW6, the then Assistant Professor of Forensic Medicine, Medical College Hospital, Thiruvananthapuram and she issued Ext.P3 postmortem certificate noting the following ante-mortem injuries:-

1. Incised penetrating wound 4.3 x 0.8 cm horizontal on the right side of front of chest, with both ends cleanly cut, its inner end 12 cm below collarbone and 12 cm outer to midline. The 3rd intercostal muscle was seen cut and perforated the upper and middle lobes of right lung and terminated in the chest cavity. The wound was directed downwards and backwards and to the left and had a total minimum depth of 8.4 cm.

2. Incised penetrating wound 6 x 0.3 cm, horizontal on the right side of trunk, with both ends cleanly cut, its front end 10 cm below the front fold of armpit. The 4th intercostal muscle was seen cut and entered the chest cavity, cut the front border of middle lobe of right lung and terminated by cutting the right side of body of second thoracic vertebrae (3x0.3x0.3 cm). The wound was directed upwards and backwards and to the left for a minimum depth of 18 cm.

3. Incised penetrating wound 4.2 x 1 cm horizontal on the right side of front of trunk, with both ends cleanly cut, its inner end 15 cm outer to midline and 25.5cm below collarbone. The wound entered the right chest cavity by cutting the 8th intercostal muscle and entered the abdominal cavity by perforating the right dome of diaphragm and terminated by perforating the right lobe of liver. The wound was directed downwards and backwards and to the left for a minimum depth of 6.5 cm.

Right chest cavity contained 200 ml of fluid blood and 400 grams of blood clot. Peritoneal cavity contained 200 ml of fluid blood. Right lung was partially collapsed.

4. Incised penetrating wound 4.3 x 0.3 cm. oblique, on the left side of trunk with both ends cleanly cut its upper front end 13 cm below tip of shoulder. The wound entered the left chest cavity by cutting the 2nd intercostal muscle, lower half of 1st rib and upper half of 2nd rib. The wound terminated by perforating the upper lobe of left lung. The wound was directed forwards and downwards and to the right for a minimum depth of 12 cm.

5. Incised penetrating wound 3.2 x 1 cm, oblique on the left side of front of trunk, with both ends cleanly cut, its upper inner end 14 cm outer to midline and 27 cm below collarbone. The wound entered the chest cavity by cutting the 6th

intercostal muscle and lower half of 6th rib and terminated by producing a superficial cut in the lower lobe of left lung. The wound was directed upwards and backwards and to the right for a minimum depth of 3.9 cm.

Left chest cavity contained 20 gm of blood clot and 100ml of fluid blood.

6. Incised wound 2.0x1x1 cm, on the right side of face, curved with convexity directed inwards, its lower outer end 2.5 cm inner to and 0.5 cm above the level of right angle of jaw.

7. Incised wound 2.2x1.7x0.2 cm, on the right side of under chin ,2 cm outer to midline and 1 cm below jaw margin (skin flap seen reflected outwards and downwards).

8. Superficial incised wound 1x0.3 cm on the right side of front of neck, 5.7 cm outer to midline and 2 cm below jaw margin.

9. Superficial incised wound 1.7x0.1 cm, oblique, on the right side of front of neck, its lower inner end 6 cm outer to midline and 4 cm below jaw margin.

10. Incised wound 5.5x0.3x0.3 cm, oblique, on the right side of front of neck, its upper inner end 2.5 cm outer to midline and .7 cm below jaw margin.

11. Superficial incised wound 1.2x0.2 cm and 1x0.1 cm, 0.5 cm apart and one above the other, on the front of neck, 6 cm above top of breast bone.

12. Superficial incised wound 0.5x0.1 cm on the left side of front of neck, 2 cm above collarbone and 3.5 cm outer to midline.

13. Contusion 6x2.8x0.5 cm, oblique, on the right side of face and adjacent part of subcutaneous tissue of neck, its upper inner extent 4 cm outer to midline and overlying the jaw bone.

(seen on flap dissection of neck under bloodless field. Other neck structures including muscles, vessels, cartilages and bones of neck were normal and intact).

14. Superficial incised wound 2.5x1 cm, on the right side of front of trunk, horizontal, its inner end 19 cm outer to midline and 23 cm below collarbone. (Skin flap seen reflected upwards and inwards).

15. Incised wound 2.6x0.6x2 cm, horizontal on the front of trunk across midline 25 cm below top of breast bone with infiltration of blood 2x0.5x0.2 cm at its outer end.

16. Superficial incised wound 1x0.5 cm, on the left side of front of chest, 22 cm below collarbone and 18 cm outer to midline.

17. Incised wound 4.2x1x2.6 cm, oblique, on the left side of front of trunk, its upper inner end 29 cm below collarbone and 4.5 cm outer to midline.

18. Superficial incised wound 0.5x0.3 cm, on the outer aspect of right arm, 15 cm below top of shoulder.

19. Incised wound 2.7x0.3x0.3 cm, oblique, on the right palm, its lower outer end 5 cm below wrist.
20. Superficial incised wound 1x0.1 cm, oblique, on the back of right hand, 3.7 cm below wrist.
21. Superficial incised wound 1.4x0.3 cm on the inner aspect of left forearm, 4 cm below elbow.
22. Incised wound 2x0.3x0.3 cm, oblique, on the front of left middle finger, with convexity directed upwards, 3 cm below the root.
23. Superficial incised wound 3.5x0.2 cm, oblique, on the front of right thigh, its upper inner end 10 cm above knee.
24. Incised wound 2.2x0.6x1.5 cm oblique on the inner aspect of left thigh, its upper inner end, 3.2 cm below the fold between the upper end of thigh and perineum.

Air passages contained fluid blood and blood clots. Lungs were pale. Subendocardial bleeding seen in the left ventricle. Stomach was half full with soft rice and pieces of green chillies in yellowish fluid medium having no unusual smell, mucosa normal. Liver was pale and fatty. Spleen was pale and shrunken. Urinary bladder was empty. Uterus measured 6.5x4.5x1 cm, cavity empty, endometrium, tubes and ovaries atrophic. All other internal organs were pale, otherwise normal.

Viscera, sample of blood, vaginal swab and smear were preserved and sent for chemical analysis.

Blood grouping and Rh typing done at Blood Bank attached to Medical College Hospital, Thiruvananthapuram revealed it to be "A" Rh positive.

5. According to PW6, the cause of death of Jaspin was the incised penetrating injuries sustained on the chest and abdomen viz., injury Nos. 1 to 5, noted as such in Ext.P3 postmortem certificate. PW6 has also deposed that those injuries are independently sufficient in the ordinary course of nature to cause death and that those injuries could be possible by using a weapon like MO1 knife. Ext.P4 report would reveal that there was no poisonous substance detected in the viscera and blood and Ext.P5 report would reveal that the vaginal swab and smear did not contain any spermatozoa. One of the alleged motives that the appellant used to compel the deceased to have sexual intercourse at odd hours and she used to resist the same would not thus gain support from Ext.P5 report. But, the evidence of PW6 with Ext.P3 postmortem certificate would reveal that Jaspin died due to the incised penetrating injuries sustained by her on her chest and abdomen and that such injuries could be possible with a weapon like MO1. There was no serious challenge against the evidence of PW6 that was corroborated by Ext.P3. It is to be noted that the defence had no case that Jaspin died due to any other reason. In the circumstances, it can only be found that

Jaspin died due to the injuries sustained by her on her chest and abdomen viz., injury Nos. 1 to 5 noted as such in Ext.P3 postmortem certificate with a weapon like MO1 and they were sufficient in the ordinary course of nature to cause death and as such it is a case of homicidal death.

6. The question now to be decided is whether appellant was responsible for the homicidal death of Jaspin, his wife. There is no eye witness in this case. The prosecution sought to prove the charge against the appellant relying on circumstantial evidence. PW1 is the son-in-law of the deceased and the appellant and he is the husband of PW2. He deposed that the appellant used to quarrel with the deceased whenever she refused to give him money for potation. PW1 who was residing along with PW2 in a house nearby "Sanjay Bhavan" further deposed that on the date of occurrence at about 1 p.m. while he was watching television he heard a scream of the deceased from their house and immediately he rushed to the spot. When he reached there he found Jaspin lying in a pool of blood and the appellant standing there holding MO1 knife in his hand and that the appellant and the deceased alone were there in the house. Immediately, he rushed to the nearby house of his brother-in-law and divulged the incident to Medona, the wife of his brother-in-law as she alone was there and by the time they came to the house of the appellant some neighbours thronged there. He would also depose that with the help of PWs 3 and 4 and the said Medona he took the body of Jaspin to the road and then took her to KIMS hospital where the doctor on examination declared her death. He admitted that he left his watch near the wash basin of the kitchen while attempting to take Jaspin to the road and that subsequently it was handed over to him by PW9 on Ext.P9 kaichit. PW2 would depose that on the morning of 9.5.2007 she along with her mother Jaspin went to the sea shore and collected fish and then went to the market for selling them. She would further depose that her mother returned home earlier and that she came back home only at about 2 p.m. When she reached home she saw people gathered in front of her house as also before her family house and on query, she came to know about the stabbing of her mother by her father and also the fact that the mother was taken to hospital. While she was proceeding to the family house the appellant came against her and he told her "I stabbed your mother to death" (

). She deposed that on hearing the same she lost her consciousness and when she regained it she came to know about the demise of her mother. She would further depose that the appellant used to pick up quarrel with the deceased whenever she refused to give him money for consuming alcohol and that the deceased and the appellant alone were residing in "Sanjay Bhavan". PW3 Alexander was one of the neighbours of the appellant and the deceased and he would depose that he came his house at about 1 p.m. and Medona, the daughter-in-law of the appellant informed him about the incident. Immediately, he rushed to the scene of occurrence and found Jaspin lying like a corpse and the appellant sitting outside the room on a chair. On his query the appellant replied "I stabbed to death. Take away the corpse from here" (.

). Exts.D1 to D5 were the contradictions brought out by the defence during his cross examination which would reveal that PW3 had not accompanied Jaspin to the hospital and also the discrepancy in his statement regarding the place where he had seen the accused on his arrival to the appellant's house. PW4 Manglin Peter, another neighbour, would depose that yet another neighbour by name Leela told her that the appellant had stabbed the deceased Jaspin and thereupon she along with the said Leela went to the house of the appellant. Further she deposed that she saw the appellant sitting there on a chair in front of the house and she went to the kitchen and saw the deceased lying there in a pool of blood. She also deposed that in response to her query as to why did he do so the appellant replied "take away the dead corpse if you want, get away" (). She deposed that she was an office bearer of the State Committee of Fishermen Federation. The trial court relied on the evidence of PWs 1 to 4, the extra-judicial confession of the appellant to PWs 2 to 4 and Ext.P18 FSL report to find guilt of the appellant.

7. We will consider the admissibility of the extra-judicial confession made by the appellant to PWs 2 to 4, a little later. Certain undisputed and indisputable facts emerged in this case assume relevance in the context of considering the culpability or otherwise of the appellant. The evidence of PWs 1 and 2 would reveal that the deceased and the appellant alone were residing in "Sanjay Bhavan", the house in which the homicidal death of Jaspin had occurred. In fact, there was no case for the appellant that apart from him and the deceased someone else was residing in the said house. PW1 would depose that at about 1 p.m. on 9.5.2007 while he was watching T.V. he heard the scream of the deceased from "Sanjay Bhavan" and he rushed to the spot and found deceased Jaspin lying in a pool of blood and the appellant holding MO1 knife in his hand. Ext.P18 FSL report would show that item Nos. 10 shirt and 12 thorthu therein, which are the articles seized from the body of the accused worn by him at the time of occurrence, contained human blood belonging to "A" Group and MO11 lunki worn by him though found to be stained with blood its grouping could not be made on account of insufficiency of blood for determining the origin. MO1 knife seized by PW9 from the place of occurrence after describing in Ext.P2 mahazar was also found stained with blood belonging to "A" Group. Though in Ext.P3 postmortem report, the blood group of the deceased was mentioned as A Rh positive, Ext.P18 did not mention about the Rh factor in the blood that was found stained on items 10 to 12 and also in MO1. At the same time, Ext.P18 FSL report would reveal that the aforesaid items on chemical analysis found to have stained with human blood belonging to "A" Group. In this context, it is to be noted that MO1 is the knife seized after describing in Ext.P2 scene mahazar on 10.5.2007 from beneath a coconut tree near the kitchen, standing in the property of the appellant and item Nos. 10 and 12 are respectively MO3 shirt and MO4 thorthu which were worn by the appellant at the time of the incident and they were recovered under Ext.P12 recovery mahazar dated 10.5.2007. The appellant had not given any explanation at all as to how his dresses happened to

be stained with human blood. The evidence of PW2, the daughter of deceased and the appellant would reveal that on that fateful day, she along with her mother went to the sea shore and collected fish from there and went to the market for sale. According to her, after selling the fish thus collected, the mother returned home earlier and she came home only at about 2 p.m. PW2 had also deposed that in Sanjay Bhavan, the deceased and the appellant alone were residing. Apart from the evidence of PW1 that he had seen the appellant in the house when he rushed to the house on hearing the scream of the deceased, in his statement additionally made by the appellant u/s 313 Cr.P.C., the appellant himself admitted the fact that he was very much there in the house at the relevant point of time and he and his wife alone were residing in "Sanjay Bhavan". Thus, it is evident that at the relevant point of time, the appellant was in the house. When the incident was happened in secrecy in that house wherein the appellant and the deceased alone were residing, the appellant who is the husband of the deceased is bound to explain how it happened. In the statement u/s 313 Cr.P.C., appellant stated that on the date of occurrence his son John Bosco came there and attempted to strangle him with thorthu in order to kill him insisting his demand for vacating the house and as a consequence he lost his consciousness and fell in front of the house. Further he had stated that when he regained consciousness, he was lying on a cot inside the house and when he got up and came out of the house, police personnel were coming to his house. They asked him to get into the jeep and took him to the police station and implicated him as accused, it is stated. Thus, apart from the evidence of PW1, the appellant himself admitted the factum of his presence in the house at the relevant point of time in his statement made additionally u/s 313 Cr.P.C. besides offering an elaborate explanation therein as mentioned above. When the appellant offered an explanation in his statement u/s 313 Cr.P.C. as above he had to prove the same in view of the provisions of Section 106 of the Indian Evidence Act. The decision of the Hon'ble Supreme Court in Haresh Mohandas Rajput Vs. State of Maharashtra, assumes relevance in this context. Going by the said decision when a particular explanation is furnished by an accused in a bid to prove his innocence it had to be proved by him in view of the provisions of section 106 of the Indian Evidence Act. Thus the failure to prove the explanation furnished by the appellant would also be a fact that would go against him. In such circumstances, offering a false explanation would definitely be an additional link in the chain of circumstances in a case depending on circumstantial evidence. In Trimukh Maroti Kirkan Vs. State of Maharashtra, the Hon'ble Supreme Court held thus:

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.

21. In a case based on circumstantial evidence where no eye witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. (See *State of Tamil Nadu Vs. Rajendran*,); *State U.P. Vs. Dr. Ravindra Prakash Mittal*, ; *State of Maharashtra Vs. Suresh*, ; *Ganesh Lal Vs. State of Rajasthan*, and *Gulab Chand Vs. State of Madhya Pradesh*, .

As already noticed hereinbefore, the tenor of the cross examination of PWs 1 to 3 would reveal that the appellant was suggesting that it was PW1 who had involvement in the commission of the crime. However, the defence could elicit anything from PWs 1 to 3 or from PW9, the Investigating Officer to make their oral evidence unreliable and untrustworthy. More over, during his examination u/s 313 Cr.P.C., he had abandoned the said defence and stated that his son John Bosco came to the house and raising his usual demand to vacate the house, he strangled him with the thorthu and attempted to kill him and as a consequence, he fell unconscious and later on regaining his consciousness, found him lying in a cot. However, the appellant had not adduced any evidence to prove the said defence set up by him. In this case, evidence of PWs 1 and 2 would reveal that the appellant and the deceased alone were residing in "Sanjay Bhavan" and PW1 heard scream of the deceased Jaspin from that house and when he reached there he found the deceased lying in a pool of blood and the appellant was found there holding MO1 knife. The fact that the appellant was residing at "Sanjay Bhavan" only along with his wife the deceased Jaspin as spoken to by PW1 is corroborated by the evidence of PW2 who is none other than one of the daughters of the appellant and the deceased. PW9, investigating officer seized MO1 knife from the premises of the appellant after describing it in Ext.P2 mahazar and Ext.P18 would reveal that MO1 knife was stained with blood. The dresses worn by the appellant at the relevant point of time viz., MOs 1 to 3 were also recovered under Ext.P12. The appellant had not furnished any explanation as to how those dresses worn by him happened to be stained with blood. In the light of the decision of the Hon"ble Supreme Court in *Trimukh Maroti Kirkan's* case (supra) the appellant was bound to offer an explanation as to how homicidal death of his wife had occurred in the house whereon he and his wife alone reside and especially when his presence at the said residence was not disputed. The failure to offer an explanation or furnishing a false explanation would undoubtedly act as an additional link in the chain of circumstances. On account of his failure to prove the explanation offered by the appellant his

version cannot be believed and it can only be taken as a false explanation. The false explanation offered by him during his examination u/s 313 Cr.P.C. assumes relevance in the situation available in this case and in the light of the decisions of the Hon''ble Supreme Court in Trimukh Maroti Kirkan's case (supra) and Haresh Mohandas Rajput's case (supra) they would act as an additional link in the circumstantial evidence, against the appellant.

8. Now, we will consider the admissibility of the extra-judicial confession said to have been made by the appellant to the effect that it was he who committed the murder of Jaspin, to PWs 2 to 4. For considering the said question in its true perspective it would only be profitable to refer to certain authorities. In State of Rajasthan Vs. Raja Ram, the Hon''ble Supreme Court held:-

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

20. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration as rightly submitted by the learned counsel for the respondent-accused, is a matter of prudence and not an invariable rule of law.

In Gagan Kanojia and Another Vs. State of Punjab, it was held:-

23. Extra-judicial confession, as is well known, can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra-judicial confession cannot ipso facto be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the courts.

In State of Rajasthan Vs. Kashi Ram, the Hon''ble Supreme Court held:-

14.... There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The High Court observed that evidence of extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made.

In Sahadevan and another Vs. State of Tamil Nadu, the Hon"ble Supreme Court enunciated principles for deciding whether an extra-judicial confession is admissible and capable of forming basis of conviction as hereunder:-

The Principles

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.

9. Bearing in mind the principles and propositions laid down by the Hon"ble Supreme Court in the above referred decisions we will consider whether the extra-judicial confession made to PWs 2 to 4 in this case are admissible and capable of forming the basis for conviction.

10. While considering its admissibility this Court has to look into whether it was spontaneous in the form of a natural response to a stressful stimulus and invariably, to rely on extra-judicial confession as a piece of reliable evidence it has to pass the test of reproduction. No doubt, in order to be admissible an extra-judicial confession must be recorded in the words of the maker thereof. In this case, PW2 is none other than the daughter of the appellant and the deceased. In normal circumstances, it cannot be believed that she would tell a lie to implicate her own father. In this case, PW2 deposed that while she was proceeding to "Sanjay Bhavan" where her father and mother were residing, after coming to know the fact that her mother was stabbed by her father, she found the appellant on her way and then the appellant made the confession statement. PW1 deposed that she enquired the appellant as to why he had done so and then he replied "I stabbed your mother to death". But, during cross examination PW2 deposed that she had not asked anything to her father and further that on seeing her the father said loudly "I stabbed your mother to death". At the same time, PW2

asserted that it is incorrect to say that the appellant had not said like that to her. She had deposed that the appellant said like that on seeing her. It cannot be believed that she would lie with a view to rope in her father. It is also to be noted that even the illusory suggestion made to her during her cross examination to connect her husband with the crime was virtually abandoned by the appellant as is obvious from what he had stated additionally when being examined u/s 313 Cr.P.C. Though PW2 was cross examined at length nothing to discredit her evidence was brought out. The evidence of PW2 and the circumstances in which such confession was made by the appellant would reveal that it was his natural response to a stressful situation and it was made spontaneously. It is relevant to note that even while PW2 was cross examined not even a suggestion was made to her that the appellant had not made such a confession. In fact, PW2 had reproduced the exact words of the appellant for making the confession regarding the commission of the crime.

11. The appellant is alleged to have made extra-judicial confession to PW3 also. As per the evidence of PW3, on his query the appellant told him "I stabbed her to death. Take away the corpse from here". Though PW3 had deposed that the appellant had made such a confession and reproduced the exact words of the appellant used for making the confession a scanning of his cross examination would reveal that the said aspect was not seriously disputed by the defence and that no question was put to PW3 in that regard. It is a fact that not even a suggestion was made to PW3 that such a confession had not been made by the appellant. The prosecution has a case that an extra-judicial confession was made by the appellant to PW4 as well. PW4 would admit that while taking his statement u/s 161 Cr.P.C. he had not divulged to the police that the appellant had made such a confession to him. She would further depose that her statement was recorded u/s 161 Cr.P.C. by the police and read over to her, but she could not then realise that the statements were not recorded in the manner she stated to them. A careful consideration of the oral testimony of PW4 would make us think it is not inspiring confidence as regards the extra-judicial confession alleged to have been made by the appellant to her. In the said circumstances, there is no reason to disbelieve the evidence of PW2 and PW3 regarding the fact that the appellant had made confession in the manner deposed by them with respect to the murder of Jaspin and he had confessed before them that it was he who committed her murder especially in view of the circumstances mentioned earlier. In the said circumstances, the extra-judicial confession made by the appellant to PWs 2 and 3 also would form a reliable piece of evidence against the appellant. On the evidence brought on record as discussed above, we find no reason to disagree with the finding of the trial court that the prosecution has succeeded in establishing that it was the appellant who had committed murder of Jaspin, his wife. The circumstances established by the prosecution are incompatible with the innocence of the appellant and they unerringly point to the guilt of the appellant and are against any other hypothesis. Then the question to be decided is what is the offence committed by

the appellant. We have already found that the incised penetrating injuries sustained on the chest and abdomen by Jaspin, viz., injury Nos. 1 to 5 mentioned in Ext.P3 are the cause of her death and that they are sufficient in the ordinary course of nature to cause death. Those injuries are inflicted on the vital parts of the body and it cannot be said that those particular injuries were caused accidentally. In such circumstances, clause thirdly of Section 300 would apply. None of the exceptions u/s 300 is applicable in this case. In the said circumstances, the finding that the appellant had committed the offence punishable u/s 302 IPC is perfectly legal and invites no interference. The only question now to be considered is what should be the sentence for the conviction u/s 302 IPC. Evidently, the trial court sentenced the appellant to life imprisonment for the conviction u/s 302 IPC and it is the lesser sentence that could be imposed for the conviction u/s 302 IPC. In that view of the matter, the sentence imposed on the appellant for the conviction u/s 302 IPC also calls for no interference.

In the result, the appeal is dismissed. The conviction and sentence of the appellant u/s 302 IPC imposed by the Court of Sessions, Thiruvananthapuram in S.C.No. 1162 of 2007 are confirmed. The appellant is entitled to set off for the period of detention he had undergone in terms of Section 428 Cr.P.C. and that will be subject to orders by the competent authority u/s 432 and 433 of Cr.P.C., if passed.