
(2012) 03 KL CK 0185
In the High Court Of Kerala
Case No : Criminal A. No. 1640 of 2007

Raju

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 300, 302, 449

Citation : (2012) 03 KL CK 0185

Hon'ble Judges : R. Basant, J; K. Vinod Chandran, J

Bench : Division Bench

Advocate : Renjith B. Marar, Smt. Lakshmi N. Kaimal, Sri. C.V. Manuvilsan, Sri. P.G. Suresh, Smt. K. Vidya and Sri. Rajan Vishnuraj, for the Appellant; Gikku Jacob George, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. BASANT, J

1. (i) Have the circumstances relied on by the prosecution been established satisfactorily? (ii) Do the circumstances lead to a safe inference of guilt against the appellant? (iii) Is the appellant/accused entitled to the benefit of any reasonable doubt? These are the questions raised for our consideration in this appeal by the learned counsel for the appellant Sri.C.V. Manuvilsan. The appellant has been found guilty, convicted and sentenced under Sec. 302 IPC to undergo imprisonment for life. He was found not guilty and acquitted of the charge under Sec. 449 IPC framed against him.

2. The prosecution alleged that the appellant had committed the murder of Shaji, the deceased, by inflicting a stab injury on his chest with M.O.1 knife at 9.45 p.m. on 1/5/2004 at the residence of the said Shaji. The prosecution did not allege any specific motive.

3. Investigation commenced with Ext.P10 FIR registered on the basis of Ext.P1 First Information Statement lodged by P.W.1, a relative of deceased Shaji. Investigation was completed and final report was filed by P.W.12 Investigating Officer. The learned Magistrate, before whom the final report was filed, after observing all legal formalities, committed the case to the Court of Session. The learned Sessions Judge took cognizance of the offences alleged against the appellant. The appellant denied the charges framed against him by the learned Sessions Judge. Thereupon, the prosecution examined P.W.1 to 12 and proved Exts.P1 to P15. M.Os.1 to 12 were also marked.

4. In the course of examination of P.Ws.1 to 12 and later when examined under Sec. 313 Cr.P.C., the appellant denied all circumstances which appeared in evidence against him. He specifically denied his presence at the scene of the crime. He suggested that there was an attempt to falsely implicate him in the crime. The appellant did not adduce any evidence - oral or documentary.

5. The learned Sessions Judge, on an anxious evaluation of all the relevant inputs, came to the conclusion that the prosecution has succeeded in satisfactorily establishing the circumstances relied on by it. The proved circumstances were sufficient to come to a safe conclusion of guilt against the appellant, it was held. Accordingly, the learned Sessions Judge proceeded to pass the impugned judgment.

6. Before us, the learned counsel for the appellant/accused Sri.C.V. Manuvilsan. and the learned Public Prosecutor have advanced their detailed arguments. The learned counsel for the appellant contends that the prosecution has not succeeded in proving the circumstances relied on by it. The proved circumstances are insufficient to lead a prudent mind to a safe conclusion of guilt against the appellant. The appellant is, at any rate, entitled to the benefit of doubt, contends the learned counsel for the appellant.

7. The learned Public Prosecutor, on the contrary, contends that the proved circumstances do lead to a safe inference of guilt against the appellant. The appellant is not entitled to the benefit of any reasonable doubt. This appeal is liable to be dismissed, contends the learned Public Prosecutor.

8. We have considered all the relevant inputs. In this appellate judgment we do not think it necessary to re-narrate the oral and documentary evidence placed before the learned Sessions Judge. We may hasten to observe that we have been taken in detail through the oral evidence of P.Ws.1 to 12. The contents of Exts.P1 to 15 have also been read to us in detail. The charge framed by the learned Sessions Judge against the appellant and the answers given by the appellant in the course of cross- examination under Sec. 313 Cr.P.C. have also been read to us in detail. We shall refer specifically to the relevant materials wherever necessary in the course of the discussions to follow.

9. The prosecution has not been able to trace any eye witnesses as such. According to the prosecution, there was no eye witness who had actually

witnessed the entire occurrence. The case hence rests entirely on circumstantial evidence. Before we proceed to narrate the circumstances relied on by the prosecution, it is appropriate to remind ourselves about the law. The law is too well settled to require or warrant reference to any specific precedent. We need only remind ourselves of the settled law.

10. The burden always rests on the shoulders of the prosecution heavily to prove the charge against the indictee beyond doubt. Whatever be the nature of evidence relied on by the prosecution and whatever be the defence set up by the indictee, that burden continues to rest on the shoulders of the prosecution from the beginning to the end of a criminal trial. In a case of resting on circumstantial evidence, the burden is on the prosecution to establish all the circumstances relied on by it firmly and satisfactorily. The circumstances proved must constitute strong links in a chain of circumstances which points unerringly and clinchingly to the guilt of the indictee - to the exclusion of every reasonable hypothesis of innocence of the accused. It has often been repeated that the strength of the chain of circumstances is equal to the strength of the weakest link in the chain. It is not the number of the circumstances that matter, it is the probative significance and relevance of the circumstances that is of importance.

11. We shall now narrate the circumstances relied on by the prosecution. Thereafter we shall consider whether these circumstances have been established. Subsequently we shall consider whether the proved circumstances can safely point to any inference of guilt against the appellant.

12. The prosecution has relied on the following circumstances against the appellant:

(i) The oral evidence of P.Ws.1 and 2 as to what they perceived about the incident at the scene of the crime.

(ii) Corroboration afforded by Ext.P1 First Information Statement.

(iii) Presence of finger prints of the appellant in glasses and an alcohol bottle available in the house where the incident took place.

(iv) Recovery of M.Os.1 to 3 (of which M.Os.1 and 3 were stained with the same group of blood as that of the deceased) on the basis of the information furnished by the appellant to the Investigating Officer while in custody.

(v) Corroboration available from the evidence of the medical expert about the injuries suffered.

13. We shall now proceed to consider these circumstances. Circumstance Nos. (1) & (ii): The prosecution primarily relies on the oral evidence of P.Ws.1 and 2. P.Ws.1 and 2 and C.W.3 are friends. P.W.1 is related to the deceased Shaji also. These three friends were allegedly available on a rocky portion near the house of the deceased where the alleged incident took place. It was about 9 p.m. and these three friends were simply sitting and chatting there. The appellant and the

deceased were allegedly available in the residential shed which the deceased was occupying. The wife of the deceased had left him long back and the deceased was residing alone in that residential shed. Initially, the appellant and the deceased were singing songs together. Later, there was allegedly some quarrel between them inside the house. They both allegedly came out of the house and returned again to the house. Later, the friends (P.W.1, P.W.2 and C.W.3) perceived a loud cry of the deceased from the scene. They found the appellant running away from the house. They pursued him. After the friends ran behind the appellant for some time, the appellant turned back and attempted to deter them by attempting to throw a stone at them. The friends started running backwards in fear. The appellant chased them for some distance. The friends became apprehensive and they (including P.Ws.1 and 2) proceeded to their respective houses. Information was passed on by C.W.3 to his father and then P.Ws.1 and 2 along with C.W.3 and his father went to the house of Shaji. They found Shaji lying dead with an injury on his chest. Thereupon, P.W.1 along with the father of C.W.3 proceeded to the Police Station and lodged Ext. P1 First Information Statement. The alleged incident had taken place at about 9.45 p.m. Ext.P1 First Information Statement was lodged at the Police Station at 00.10 hours on 2/5/2004. The FIR had reached the court on 3/5/04. This, in short, is the version of P.Ws.1 and

14. The learned counsel for the appellant/accused contends that no reliance ought to have been placed on the oral evidence of P.W.1 and 2. Ext.P1 First Information Statement should not be made use of to draw inspiration for the oral evidence of P.Ws.1 and 2, contends the learned counsel for the appellant.

15. Why should P.Ws.1 and 2 be disbelieved? The learned counsel for the appellant submits that P.W.1 has animus against the deceased. The evidence does not at all reveal that either P.W.1 or P.W.2 has any animus against the appellant. No contention to that effect is raised and no suggestions to that effect have been thrown at P.Ws.1 and 2 while they were in the witness stand. No material contradictions have been marked while P.Ws.1 and 2 were in the witness stand to discredit their version now. Broadly, their version is supported by the contents of Ext.P1 First Information Statement also. However, the learned counsel for the appellant contends that P.W.1 has an animus against the deceased. When the death of such a person occurred, police would have suspected the involvement of P.W.1. He was therefore obliged to advance a version exonerating himself of any culpability. Hence he must have raised false allegations against P.W.1. This is the first aspect on which the evidence of P.W.1 is challenged.

16. P.W.1 is the nephew of the deceased. Of course relying on the inconsistency between the version of P.W.1 in Ext.P1 and the version of P.W.1 on oath about the precise relationship, attempt is made to contend that there is no precise evidence about the nature of the relationship. We find this incongruity in the precise statement of the relationship between the version of P.W.1 in court and

his version in Ext.P1 to be absolutely irrelevant. He was not cross-examined with the help of such alleged inconsistency. (P.W.1 is either the nephew or a cousin of the deceased either way). We do not find the precise relationship between them to be of such crucial importance as to approach the evidence of P.W.1 with any amount of reservation on the basis of that incongruity.

17. There is a suggestion thrown at P.W.1 that the wife of the deceased had left the deceased because of the illicit relationship between P.W.1 and the wife of the deceased. This suggestion is of course thrown at P.W.1 when he was in the witness stand. That suggestion was promptly denied. In 313 examination the accused has repeated the said theory. We need only note that this theory remains in the realm of an unsubstantiated wild suggestion thrown at P.W.1 who is related to the deceased. Absolutely nothing is available to indicate the truth of the said suggestion. P.W.1 is shown to be a close relative of the deceased. He is shown to be aged 28 years when he was examined as P.W.1 in court on 5/7/07. The incident had taken place on 1/5/04 and the evidence is that the wife of the deceased had left him about 7 years prior to the incident. P.W.1 must have been in his teens at that time. The age of P.W.1 at the relevant time when the wife of the deceased must have left him is such that inherently we do not find much substance in this theory ritualistically thrown at P.W.1 when he was in the witness box to tender incriminating evidence against the appellant. There are absolutely no other circumstances to even remotely suggest that P.W.1 had any animosity against the deceased. In the cross-examination of the Investigating Officer it is not even suggested that the needle of suspicion was ever pointed at P.W.1. At any rate, the theory that because of the animosity of P.W.1 to the deceased he is now falsely implicating the appellant cannot be swallowed meekly by any prudent mind.

18. In this context we look at the evidence of P.W.2. No motive whatsoever is suggested against P.W.2. P.W.2 at the time of his examination is shown to be aged only 22 years and he must have been in his late teens when the incident took place. There is nothing in evidence to indicate that P.W.2 has any motive against the appellant or the deceased. There is also nothing to indicate that P.W.2 is subscribing to the allegedly false version of P.W.1 for any purpose. We are, in these circumstances, unable to accept that the evidence of P.Ws.1 and 2 deserve to be approached with doubt, suspicion and distrust. The court below which had the opportunity to see them perform in the witness box found their evidence to be absolutely convincing. Specific reference is made by the learned Sessions Judge to their demeanour. We do not, in these circumstances, find any reason for us invoking our appellate jurisdiction to interfere with that discretion exercised by the trial court - to place reliance on the testimony of P.Ws.1 and 2.

19. The learned counsel for the appellant then points out that the conduct of P.Ws.1 and 2 and C.W.3 after the event must inherently arouse dissatisfaction. The learned counsel for the appellant points out that all the three had allegedly gone after the appellant and when the appellant turned back and chased them

they had retreated. But surprisingly P.Ws.1 and 2 and C.W.3 had not cared to go to the house of the deceased and verify what had actually happened to him. This is extremely suspicious and contrary to the ordinary, reasonable and natural conduct of persons. Therefore their evidence deserves to be approached with caution, contends the learned counsel for the appellant. We do not find much merit in this contention. When we go by the evidence of P.Ws.1 and 2, it is evident that the appellant who was having a knife had chased them and that had compelled them to run away. The appellant had allegedly come upto the house of the deceased in his attempt to chase P.Ws.1 and 2 and C.W.3 away. He was having a knife in his possession, going by the evidence of P.Ws.1 and 2. In such circumstances if P.Ws.1 and 2 and C.W.3 did not return to the house of the deceased, we find absolutely nothing abnormal or artificial in their conduct. They evidently must have been very apprehensive. It will not be inapposite in this context to look at the age of P.Ws.1 and 2 and C.W.3. P.Ws.1 and 2 were aged 28 years and 22 years when they tendered evidence in July 2007, the incident having taken place three years earlier. C.W.3, the available indications suggest, was another young boy in his SSLC class when the incident took place. If such young persons did not muster courage to go to the house of the deceased upto which the appellant had allegedly chased them back with M.O.1 weapon, we find nothing artificial or abnormal in that. The request to discard/approach their evidence with reservation on this score cannot obviously succeed.

20. It is then contended that going by the description of the scene in Ext.P11 there must have been other neighbours residing close to the house of the deceased. None of them have been examined. If, as a matter of fact, an incident like this had taken place on that night, it is only natural that the attention of the occupants of nearby houses would be attracted. Their non- examination is hence suspicious, it is contended. There is no case for any one that any neighbour had come to the scene of the crime hearing the cry that emanated from the house of the deceased. It is also to be noticed that the area is not thickly populated with neck-to-neck houses. The house of the deceased was an isolated hut standing on a rock as is seen from Ext.P12. In these circumstances, the non-examination of other neighbours does not also arouse any suspicion or reservation in our mind.

21. Why has C.W.3 not been examined? Why has C.W.3's father not been examined?; argues the learned counsel for the appellant. P.Ws.1 and 2 have been examined. C.W.3, going by the materials available, was a much younger boy. His father C.W.4 had not witnessed the incident also. Of course, we would have been happier, if C.W.4 were also examined by the prosecution. But the non-examination of C.Ws.3 and 4 cannot in the facts and circumstances of this case deliver any advantage to the appellant.

22. The learned counsel for the appellant contends that the oral evidence tendered by P.Ws.1 and 2 does not rhyme well with the circumstances proved. The learned counsel for the appellant contends that there are inconsistencies inter se between the oral evidence of P.Ws.1 and 2. Their evidence does not

account for certain proved circumstances, contends counsel. It is, first of all, contended that though it is the case of P.W.1 that the deceased and the appellant were consuming alcohol, in the post-mortem certificate Ext.P4, there is nothing to indicate that alcohol was available in the system of the deceased. We do not have any evidence to throw light on the quantum of alcohol, if any, consumed by the deceased. In these circumstances, the fact that P.W.5 doctor did not specifically perceive presence of alcohol in the stomach content or blood of the deceased is, according to us, too insufficient and unsatisfactory a circumstance to persuade a prudent mind to approach the evidence of P.Ws.1 and 2 with any reservation.

23. The learned counsel for the appellant strenuously contends that Ext.P1 First Information Statement is not the real First Information Statement and no reliance should have been placed on Ext.P1 First Information Statement for any purpose. We have the evidence of P.W.1 that after the incident at 9.45 p.m. he had gone to the Police Station where P.W.10 had recorded Ext.P1 First Information Statement. On the basis of which Ext.P10 FIR was registered. On this aspect, we have the evidence of P.Ws.1 and 10. The contents of Ext.P1 do also support the oral evidence of P.Ws.1 and 10. However, P.Ws.1 and 2 in the course of cross-examination had indicated that some police officials had reached the scene before P.W.1 proceeded to the Police Station to lodge Ext.1 First Information Statement. This aspect was not specifically put to P.W.10. However, we do note that P.W.11 had admitted that before 12 mid night he had sent a police official to the scene of the crime. P.W.11 was not further asked about the nature of information which he received on the basis of which he resorted to such conduct. The probability of a police party reaching the scene even prior to P.W.1 proceeding to the Police Station to lodge Ext.P1 First Information Statement cannot effectively be ruled out. But all the same that by itself cannot persuade the court to conclude that Ext.P1 is not the real First Information Statement and that an earlier First Information Statement must really have been recorded, On the evidence available there is no possibility of any direct and tangible information of the crime being conveyed to the police by any one prior to Ext.P1. The contention that Ext.P1 is not the real First Information Statement cannot, in these circumstances, be accepted. We are unable to rule out the probability of P.W.11 on the basis of information received by him sending a police party to the scene of the crime; but that is far from saying that P.W.11 had received earlier specific information - a prior First Information Statement before Ext.P1 was lodged before P.W.10. In these days of extensive police patrolling of areas, the mere fact that a police party had reached the scene of the crime cannot ipso facto persuade a court to jump to the conclusion that there must have been an earlier First Information Statement. We find the absence of positive efforts to confront P.Ws.10 and 11 with the theory that an earlier First Information Statement must have been registered to be of crucial relevance. Of course, in the nature of the answer given by P.W.11 and P.Ws. 1 and 2, the prosecution could itself have attempted to explain the circumstance; but however

the absence of such efforts voluntarily on the part of the prosecution does not generate any doubt in our mind about the acceptability of Ext.P1 as the First Information Statement. In fact, P.W.1 was not even specifically asked whether he was taken in the police jeep to the Police Station to lodge Ext.P1. We are satisfied, in these circumstances, that the contention that the contents of Ext.P1 cannot be used to draw support and inspiration for the oral evidence of P.Ws.1 and 2 cannot be accepted.

24. The learned counsel for the appellant points out an innocuous incongruity between the evidence of P.Ws.1 and 2 as to whether police who came to the scene had asked them of the details of what had transpired. We do not reckon this also as vital or crucial on the question of acceptability of the oral evidence of P.Ws.1 and 2.

25. The FIR which was registered at 9.45 p.m. on 1/5/04 had reached the learned Magistrate only on 3/5/04. From this a contention is built laboriously that Ext.P1 First Information Statement must have been doctored and moulded to shape the case for the prosecution. It is true that the FIR had reached the learned Magistrate only on 3/5/04 as per the endorsement on Ext.P10. But we do note from the calendar that 1/5/04 was a holiday - being International Labour day and 2/5/04 happened to be a Sunday. Though this is not reason enough for the police not to deliver the FIR promptly before the learned Magistrate, the fact remains that there is an explanation for the FIR reaching the court only on 3/5/04. It will not be inapposite straightaway to note that even Ext.P11 inquest report had reached the learned Magistrate on 3/5/04 itself. It is evident that the present version was not created with prior planning and shaping by the police.

26. We are, in these circumstances, satisfied that the court below has committed no error in placing reliance on the oral evidence of P.Ws.1 and 2 which is eminently supported by the contents of Ext.P1 First Information Statement. We hold that these circumstances have been proved by the prosecution. 28. Circumstance No. (iii): According to the prosecution, the appellant and the deceased were available together in the house of the deceased where the incident took place. The appellant has a case that he was not present at all at the house of the deceased on that night. The prosecution had seized as per Exst.P11 one alcohol bottle and two glasses. According to the prosecution, these had finger prints on it. Those chance finger prints were lifted and developed. They were compared with the specimen finger prints of the appellant. It was seen that four of the chance finger prints lifted from the scene tallied favourably with the specimen finger prints of the appellant. The prosecution relies on this circumstance as a crucial circumstance to establish the presence of the appellant along with the deceased at the scene of the crime on that night. The evidence of P.Ws.1 and 2 is sought to be further supported by this circumstance relied on by the prosecution.

28. The accused does not dispute that the bottle and the glasses from where chance finger prints were lifted did not contain his finger prints. He has advanced

a different version. According to him, the police had gone to his house and had taken away an alcohol bottle and three glasses from his house by force. Therefore according to the appellant, this was an attempt by the Investigating Officer to falsely implicate him in the crime. That the bottle and the glasses sent to the expert had his finger prints on it is thus indirectly and impliedly admitted. The only contention is that those were taken away from his house and not from the scene of the crime.

29. On this aspect, the learned Public Prosecutor points out that when P.W.11 was in the witness stand such a suggestion was not put to him at all. Going by the present case of the appellant, P.W.11 had created false evidence to implicate the appellant with vexatious intent. If that be so, one fails to understand why such a case was not specifically taken when P.W.11 was in the witness stand. He was not cross-examined with the help of such a theory at all. Wisdom appears to have dawned much later - at the stage of examination under Sec. 313 Cr.P.C. for the appellant to advance such an ingenious version. The other four points tallied with that of the deceased. How did that happen if the glasses and bottle were lifted from house of the appellant. There is no attempt to even explain this.

30. It will be most appropriate in this context to note that Ext.11 inquest report had reached the learned Magistrate on 3/5/04 itself. That inquest report contains the description of the scene (no separate scene mahazar is seen prepared) as also the details regarding the seizure of articles from the scene including the alcohol bottle and the glasses. Even Ext.P12 series photographs reveal that the alcohol bottle and the glasses were available at the scene. The appellant was arrested long later on 8/5/04. The fact that Ext.P11 with these descriptions about the alcohol bottle and glasses had reached the learned Magistrate on 3/5/04 itself is, according to us, of vital relevance in this context. We are satisfied, in these circumstances, that the prosecution has succeeded in satisfactorily establishing this third circumstance against the appellant.

31. Circumstance Nos.(iv) & (v): According to the prosecution, the appellant was arrested on 8/5/04. He was interrogated by P.W.11. He allegedly gave a confession statement Ext.P2(a) and Ext.3(a) are the relevant information in such confession statement sought to be admitted under Sec. 27 of the Indian Evidence Act. According to P.W.11, in Ext.P2(a) information furnished by the appellant he offered to take P.W.11 to the place where he had concealed M.O.1. Accordingly, P.W.11 along with the appellant went to the place of concealment and seized M.O.1 weapon under Ext.P2 seizure mahazar. P.W.1 along with another is an attessor to Ext.P2 seizure mahazar. Similarly, he had furnished Ext.P3(a) information to P.W.11 and P.W.11 had proceeded to the house of the appellant and had recovered M.Os.2 and 3 lungi and shirt of the appellant which were concealed under the bed in the house of the appellant. Those were seized under Ext.P3 seizure mahazar in the presence of P.Ws.3 and 4 attestoRs. P.W.3 was declared hostile by the prosecution during re-examination. P.W.4 stood by the prosecution case. Both unambiguously admitted their signatures in the

seizure mahazar Ext.P3 prepared by P.W.11. Primarily we have the oral evidence of P.W.11 about the recovery of M.Os.1 to 3 under Exts.P2 and P3 on the basis of Exts.P2(a) and P3(a) information. The version of P.W.11 is eminently supported by the contents of the contemporaneous seizure mahazars Exts.P2 and P3. We find no merit in the contention that authorship of concealment is not revealed in Exts.P2(a) and P3(a). After *Ajayan v. State of Kerala* (2011 (1) KLT 8 [FB]) it is trite that it is not invariable that authorship of concealment should be admitted in the information to make the same admissible under Sec. 27 of the Evidence Act. The accused has no explanation whatsoever as to how he came to know of the fact of concealment of M.Os.1 to 3. In these circumstances, the contention that the authorship of concealment is not specifically admitted in Exts.P2(a) and P3(a) is of no consequence at all.

32. In this context, the prosecution relies on Ext.P14 report of the Forensic Science Laboratory which confirms that M.O.1 as well as M.O.2 had blood stains on it. They were human blood stains and the blood was of "A" group. The evidence further shows that the blood of the deceased was also of "A" group. The presence of "A" group blood on M.O.1 and the presence of "A" group blood on M.O.3 is consistent with the case of the prosecution about the presence and culpable involvement of the appellant in the incident.

33. The learned counsel for the appellant laboriously contends that in Exts.P2 and P3 there is no specific observation that M.Os.1 to 3 were blood stained. The contention is factually correct. But it must be seen that M.Os.1 to 3 were recovered 7 days after the occurrence. In such circumstances it would not have been fresh blood and if the Investigating Officer omitted to specifically note the presence of blood stains on M.Os.1 and 3 when he prepared the seizure mahazar Exts.P2 and P3, that cannot be given undue importance. Those M.Os. were sent to the Chemical Examiner at the FSL and it is there that it was confirmed that they were blood stained. The want of statement in Exts.P2 and P3 that the M.Os. were blood stained does not at all militate against the efficacy of that input available from Ext.P14.

34. It will be apposite in this context to refer to the evidence tendered by the medical expert P.W.5. His evidence clearly shows that the injury suffered by the deceased could have been inflicted with a weapon like M.O.1. That again links M.O.1 weapon to the crime committed. We do also note that P.Ws.1 and 2 had tendered evidence that the appellant was running away with a weapon like M.O.1. That again is consistent with the prosecution evidence about recovery of M.O.1. The learned counsel for the appellant argues that the prosecution has surprisingly chosen to examine P.W.1 himself as an attester to Ext.P2 seizure mahazar. According to the appellant, P.W.1 is interested. Why the prosecution has chosen to examine P.W.1 himself as an attester to Ext.P2 is suspicious, contends the learned counsel for the appellant. It is not as though there was no other witness in Ext.P2 seizure mahazar to attest Ext.P2. A reading of Ext.P2 shows that another independent witness has also been cited as a witness for the

recovery of M.O.1. P.W.1 as stated earlier is not shown to have any motive or animus against the appellant. In these circumstances, the course adopted by the prosecution for examining P.W.1 himself as an attester cannot succeed in generating any reasonable doubt. Here again we may hasten to observe that it would certainly have been better for the prosecution to have examined the other independent witnesses and not P.W.1 himself as an attester; but that cannot be reckoned as a suspicious circumstance at all. Circumstance Nos.(iv) and (v) have also been satisfactorily established.

35. All what remains to be considered is whether the proved circumstances satisfactorily point to the guilt of the appellant. We have already taken note of the oral evidence of P.Ws.1 and 2 which has been rightly accepted by the court below. Their evidence clearly indicates the crucial circumstance. The appellant and the deceased were together happily available at the house of the appellant initially. There something untoward definitely happened between them and they started quarreling. A loud cry was heard from the house and thereafter the appellant was found running away from the scene. He was holding the weapon M.O.1 in his hand and when P.Ws.1 and 2 and C.W.3 chased him, he turned back, threatened them and ran after them. The deceased at that point of time was lying dead inside the house. The recovery of blood stained M.Os.1 and 3 on the basis of the information furnished by the appellant convincingly re- inforces the other circumstance in the case. The presence of finger prints of the appellant on the bottle and the glasses inside the house of the deceased further confirms the oral evidence of P.W.1 and 2 and establishes convincingly that the appellant was available inside the house of the deceased on that night.

36. The learned counsel for the appellant argues that in this case resting on circumstantial evidence no motive has been proved by the prosecution. It is true that the prosecution has no case of any prior motive. In fact the friends (appellant and the deceased) were seen together in a happy mood when they were first seen in the house of the deceased. They were singing songs. That is the definite case of the prosecution. However, the evidence of P.Ws.1 and 2 clearly suggest that while they were in the house of the deceased something had happened between the deceased and the appellant which pitted them against each other. We must note that motive is not an ingredient of the offence of murder under Sec. 300 IPC. As correctly observed in some of the binding precedents motive can be reckoned as a plus factor in a case resting on circumstantial evidence. But in a case like the instant one where there is direct positive evidence about the straining of relationship between the appellant and the deceased after they were found peacefully, happily and harmoniously in the house of the deceased, the absence of prior motive cannot be held to be crucial or of significance.

37. The learned counsel for the appellant then contends that by the time P.Ws.1 and 2 and C.Ws.3 and 4 came back to the house of the deceased and found him dead, there has been lapse of considerable time. The possibility of the deceased

having suffered injuries in some other manner after the appellant also left the scene cannot be ruled out, contends counsel. This, according to us, does not open up any reasonable alternative possibility. It is idle to assume that after P.Ws.1 and 2 and C.W.3 were chased away from the scene of the crime some different and independent incident must have taken place in which the deceased may have suffered the fatal injury. That theory does not rhyme well with human possibilities logic, reason and commonsense. That contention remains in the realm of wild imagination. That cannot deliver any advantage to the appellant.

38. We are, in these circumstances, satisfied that the court below was eminently justified in coming to the conclusion that the deceased must have suffered the fatal injury on his person described in Ext.P4 at the hands of the appellant with M.O.1. We concur with the said finding of fact recorded by the trial court.

39. any one who inflicts such an injury as is described in Ext.P4 can safely be assumed to have intended to cause the death of the deceased. Under Clause Firstly of Sec. 300 IPC the offence of murder punishable under Sec. 302 IPC is thus clearly established. Even otherwise the injury is certainly seen to be the result of a deliberate infliction. No one has any contra case also. That injury, viewed objectively, opined the medical expert P.W.5, was sufficient in the ordinary course of nature to cause death. Therefore under Clause Thirdly of Sec. 300 IPC (if not under Clause Firstly) the offence of murder defined under Sec. 300 IPC and punishable under Sec. 302 IPC is clearly established.

40. We are, in these circumstances, satisfied that the verdict of guilty, conviction and sentence imposed on the appellant by the court below does not warrant any interference. The challenge fails. In the result, this appeal is dismissed.