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(2012) 08 KL CK 0124

In the High Court Of Kerala

Case No : Criminal A. No. 651 of 2008 (B)

Sivan @ Siva, C. No. 2088, CP., TVM C. No. 2088, Central Prison, Thiruvananthapuram — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 313, 313(1)(b)
Evidence Act, 1872 — Section 11
Penal Code, 1860 (IPC) — Section 302, 447

Citation : (2012) 08 KL CK 0124

Hon'ble Judges : K. Hema, J;Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : Renjith B. Marar, Sri. C.V. Manuvilsan, Sri. P.G. Suresh and Smt. K. Vidya, for the Appellant; Madhu Ben, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Babu Mathew P. Joseph, J.—The appellant was found guilty of the offences under Sections 447 and 302 of IPC by the learned Sessions Judge and he was convicted for those offences. He was sentenced to undergo imprisonment for life for the offence u/s 302 of IPC and sentenced to undergo rigorous imprisonment for three months and a fine of Rs. 500/- for the offence u/s 447 of IPC. Simple imprisonment for one month was also imposed as default sentence. Challenging the said conviction and sentence, the appellant/accused has preferred this appeal. The prosecution alleged that, out of previous enmity towards the deceased Baby, the accused trespassed into the courtyard of the house, where the deceased, PW1 and others were residing, at 11.45 a.m. on 14.4.2002 with the intention of committing murder of the deceased and committed murder by intentionally causing her death by inflicting stab injuries on the left side of her chest and on her right palm with MO1 knife. The deceased Baby was taken to Karuna Hospital, Nedumkandam, soon after the occurrence where she was

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declared dead.

2. PW1, the sister of the deceased, went to Santhanpara Police Station and gave Ext. P1 First Information Statement to PW5, the Head Constable attached to that Police Station, at 5 p.m. on 14.4.2002 itself. Based on Ext. P1, PW5 registered Crime No. 116 of 2002. Ext. P3 is the F.I.R. thus drawn by PW5.

3. PW7, the Circle Inspector of Police, Devicolam, had taken over the investigation of the case on 15.4.2002 and conducted the investigation. PW8, the Circle Inspector of Police, Devicolam, completed the investigation and submitted the final report alleging the offences under Sections 447 and 302 of IPC against the appellant/accused before the learned Magistrate having jurisdiction.

4. Learned Magistrate, after observing the legal formalities, committed the case to the Court of Session. The Court of Session took cognizance of the offences alleged against the accused. The accused denied the charge, alleging the offences under Sections 447 and 302 of IPC, framed against him by the learned Sessions Judge. The prosecution examined PWs. 1 to 8 and marked Exts. P1 to P8. MOs. 1 to 14 were also marked. The defence has not adduced any evidence.

5. In the course of cross-examination of the prosecution witnesses, the accused set up a defence that the deceased Baby sustained stab injury on her chest from the knife of PW2 while she was attempting to separate PW2 and the accused when they were quarrelling each other. The accused had denied all the incriminating circumstances shown against him while he was being examined u/s 313(1)(b) of Cr.P.C. Further, he had stated as follows: PW2 and himself went to Parathode in the morning, on the day of the death of Baby, for drinking toddy. After drinking toddy, both of them returned to their respective houses. Thereafter, he (accused) left his house and went to the road. There occurred a scuffle and altercation between PW2 and himself. PW2 made an attempt to stab him with a knife. Then, the deceased Baby came there for his rescue. While so, the attempted stab of PW2 aimed at him fell on the chest of the deceased. Thus, according to the defence, the deceased sustained the stab injury on her chest.

6. The prosecution mainly relied on the evidence of PWs. 1 to 3 for proving its case against the accused. Learned Sessions Judge placed reliance on the oral testimony of these witnesses for finding the accused guilty. According to the defence, the prosecution has not placed the true facts before the court and the evidence of PWs.1 to 3 is not at all reliable for finding the accused guilty of the offences alleged. In the facts and circumstances, according to the defence, the accused, at least, is entitled to the benefit of doubt.

7. I have heard the learned counsel for the appellant and the learned Public Prosecutor. I have also perused the records.

8. The points that arise for consideration are as follows:

(i) Did the court below err in accepting and acting upon the oral evidence of PWs.1 to 3?

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(ii) Is the accused entitled to the benefit of doubt?

9. Learned counsel for the appellant/accused argued that the learned Sessions Judge had erred in placing reliance on the oral testimony of PWs. 1 to 3. Their evidence should have been discarded by the learned Sessions Judge. It is further contended that in any view of the matter, the accused is entitled to the benefit of doubt. He has pointed out various facts and circumstances in order to support his arguments. On the other hand, the learned Prosecutor contended that the learned Sessions Judge had committed no error in placing reliance on the oral evidence of PWs.1 to 3. According to her, the circumstances available in this case also support the reliance placed on their evidence. The accused is not entitled to any benefit of doubt as the prosecution fully succeeded in establishing the guilt of the accused beyond reasonable doubt. Hence, she prayed for dismissing this Appeal.

10. That the deceased Baby died of homicidal injury suffered by her is established beyond any doubt by the evidence given by PW6 doctor and Ext. P4 Post-mortem Certificate issued by him. There was no dispute also regarding this fact. Therefore, it can be safely found that the deceased had succumbed to the homicidal injury suffered by her and I find so. I also find no reason to disbelieve the evidence tendered by PW6 that both the injuries noted in Ext. P4 could be caused by stabbing with a weapon like MO1.

11. I shall now consider the evidence of PWs.1 to 3. PW1 is the sister of the deceased Baby. Her version is as follows: The deceased Baby was deserted by her husband and, thereafter, she was staying at the residence of PW1. The occurrence in this case took place at about 11.45 a.m. on 14.4.2002. PW1 asked the deceased to go and take a bath. Accordingly, she had gone to the bathroom. PW1 was remaining in the kitchen of the house at that time. While so, she heard the cry of the deceased. She went outside. Then, the accused was found standing there with a knife. Both the accused and PW2 were seen engaged in a scuffle for getting the knife. The deceased was seen lying on the ground. The deceased stood up and ran towards the house of CW7 Pandi. PW1 also followed her. While the deceased was so running, she was heard to say aloud that she was stabbed with a knife by Siva. The deceased fell down in the house of Pandi. The people gathered there took the deceased to the hospital in a jeep. The deceased told her that the accused harassed her on several occasions. The accused is the son of the elder sister of the mother-in-law of the deceased. PW1 has proved Ext. P1 First Information Statement given by her to the police.

12. The version of PW2 is as follows: The occurrence in this case took place at about 11.30 a.m. on 14.4.2002. He had witnessed the occurrence. On that day, at about 8 a.m., the accused came to his (PW2) house. They went to Parathode town for receiving the money in respect of the honey sold. Both of them had taken arrack from Parathode and returned to the house of PW2. Wife of PW2 scolded him. Then, both of them went to the road. The accused repeatedly told him that he would stab and kill a person on that day. While so, Pandi (CW7)

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came there. The accused told Pandi also that he would kill a person on that day. While so, the wife of PW2 came to the road. Then, PW2 and his wife returned to their house through the ''Lakshamveedu'' road. The accused followed and overtaken them and reached the courtyard of PW1. PW2 and his wife also followed him. While so, the deceased Baby came to that courtyard from the house. Then, the accused took a knife and inflicted a stab injury on her chest. PW2 ran towards the accused and forcefully took that knife from him and threw it away. Sustaining the stab injury, the deceased fell down. Then, she stood up and ran to the house of Pandi (CW7). The deceased was taken to Karuna Hospital, Nedumkandam, in a jeep. She was examined there and declared dead by the doctor. The accused stabbed the deceased with a knife like MO1.

13. PW3 is the son of PW1 and residing along with her. His version is as follows: The occurrence in this case took place at about 11.45 a.m. on 14.4.2002 and he had witnessed the same. He woke up at about 11.45 a.m. on that day and, after cleaning the teeth, carrying ''iddali'' he went to the front side of the house. While so, he had seen the accused stabbing the deceased with a knife. Then, PW2 came there and forcefully took the knife from the accused and threw it away. The deceased fell down and then stood up and ran to the house of Pandi. His mother also followed her. The deceased was taken to the hospital in a jeep.

14. Thus, according to prosecution, PW1 partially witnessed the occurrence and PWs.2 and 3 witnessed the whole incident. Whether the version of PWs. 1 to 3 regarding the occurrence can be believed? I shall consider a few other relevant aspects before answering this question.

15. The prosecution case is that the occurrence took place in the courtyard of the house of PW1 and her family. Ext. P2 is the scene mahazar prepared by PW7, the Investigating Officer, on 15.4.2002. Ext. P6 is the scene plan of the place of occurrence prepared by the Village Officer. It can be seen from these documents that the house of PW1 and her family faces towards south. There is a verandah, having a width of 47 cm and a height of 28 cm from the courtyard, in front of that house. There is a door leading to the western room of that house from the verandah. The place of occurrence shown is at a distance of 152 cm straight towards south from the south-western corner of that house. Therefore, when the width of verandah and the distance from the south-western corner of the house to the place of occurrence are considered, the place of occurrence, according to the prosecution, is about 2 metres away towards south from the door leading to the western room of that house.

16. There are two steps for entering the western room of that house. It is specifically noted in Ext. P2 that cream coloured powder was seen scattered on these steps and nearby areas. It is the specific case of the prosecution that the deceased Baby was stabbed by the accused with a knife while she was going to the bathroom, after entering the courtyard of that house, taking besan (Bengal gram flour) for using on her body while taking bath. According to the learned Prosecutor, the cream coloured powder so seen on the said door steps and the

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nearby areas was besan fell down from the hands of the deceased at the time of occurrence. If that be so, why the besan fell down on or near the said steps, i.e., about 2 metres away from the place of occurrence shown in Ext. P2. No such powder was seen at or near the place of occurrence shown by the prosecution. If the occurrence had taken place at the place shown in Ext. P2, in all probability, the besan would have fallen down only at or near that place and not on the said door steps or nearby areas. The fact that the besan fell down from the hands of the deceased on those steps and the nearby areas clearly indicates that the deceased was gravely alerted by something happened leading her to abandon that powder or its sudden involuntary falling from her hands. If somebody was attempting then to attack her, she would not have gone to the courtyard for receiving injuries at the hands of the assailant, but would have tried to remain safely inside the house.

17. The prosecution case is that the deceased was stabbed by the accused while she was going to take a bath after entering the southern courtyard of the house. Where is that bathroom? Ext. P2 scene mahazar or Ext. P6 scene plan does not show the existence of a bathroom at the scene place. The fact that a person who wants to go to that bathroom will be going through the place of occurrence shown in Ext. P2 is a relevant fact which can be relied on by the prosecution for proving its case regarding the place of occurrence. The investigating officer had shown the presence of coffee plants and peppervines in front of that house and jack tree and mango trees on the western side of those plants. The nearby houses are also shown in Ext. P2. Then, why the bathroom has been spared by the investigating officer in Ext. P2 when that fact is a relevant one supporting the case of the prosecution regarding the place of occurrence?

18. Another fact also has to be considered along with this. PW2 deposed that he was residing very close to the house of PW1. The existence of several houses including that of the accused is shown in Ext. P2. Some of them are close to the house of PW1 and some others are not so close. But, curiously enough, the house of PW2, which is claimed to be very close to the house of PW1, is not shown by the investigating officer in Ext. P2. Why? No answer is forthcoming. This omission assumes significance in relation to the prosecution case of occurrence and the place of occurrence. PW2 was examined as an independent eyewitness in this case. It is the case of PW2 that his wife and himself were returning to their house from the road through the Lakshamveedu road and, while so, the accused followed them and overtaken them and reached the courtyard of PW1. PW2 and his wife also followed him. While so, the deceased came to the courtyard from the house and then the accused took a knife and inflicted a stab injury on her chest. Going by the evidence of PW2, the accused and himself had consumed arrack on the morning and both of them quarrelled each other and then his (PW2) wife came and scolded him and, thereafter, they were so returning to their house. Therefore, there was no reason for PW2 and his wife to follow the accused when he had overtaken them. A ''colony road'' leading towards north from the Lakshmi Vilasam road lying east-west is shown in Exts.P2

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and P6. This colony road is passing through the western side of the house of PW1 and her family. This colony road appears to be the Lakshamveedu road through which PW2 claimed to have walked for returning to his house along with his wife. According to PW2, while he was so walking, the accused had overtaken him. So, the accused was also walking through that road. If that be so, which is the way leading to the courtyard of the house of PW1 where allegedly the occurrence took place? No such way leading to the courtyard from the colony road is noted in Exts.P2 and P6. The case of PW2 is that his house is very close to the house of PW1. Where is that house? Whether the house of PW2 can be reached by walking through the colony road? If so, is it possible for the accused and PW2 to reach the courtyard of the house of PW1? The location of the house of PW2 and the ways leading to his house as well as to the courtyard of the house of PW1 assume significance here. If these facts are noted in the scene mahazar by the investigating officer, which would have been relevant and helpful for the prosecution for proving their case of occurrence as well as the place of occurrence. But, these facts do not find a place in Exts.P2 and P6. The investigating officer has shown a few houses near the house of PW1 in the scene mahazar. But, the inmates of those houses were not seen questioned by the investigating officer. This fact is also relevant to note here.

19. It is the case of PWs.1 to 3 that the deceased Baby fell down at the place of occurrence after sustaining the stab injury inflicted by the accused on her chest. If that be so, in all probability, there must be the presence of blood. It is stated in Ext. P2 scene mahazar that, on a close observation of the place of occurrence, bloodstain was found there. The scene mahazar was prepared on the very next day. There is no case for the prosecution that the blood fell on that place was disappeared for some reason. That the presence of some bloodstain which could be detected only on a close observation of the alleged place of occurrence cannot be found to be a material fact supporting the prosecution case regarding the place of occurrence. The foregoing facts throw considerable shadow of doubt on the prosecution case.

20. The case of PW1 is that she had asked the deceased to go and take a bath. Accordingly, the deceased left the house for the bathroom. PW1 was remaining in the kitchen of her house at that time. While so, hearing the cry of the deceased, she went outside. The accused was found standing there with a knife and both the accused and PW2 were seen engaged in a scuffle for getting the knife. The deceased stood up and ran towards the house of Pandi (CW7). PW1 also followed her. While the deceased was so running, she was heard to say aloud that she was stabbed with a knife by Siva (accused). The deceased fell down in the house of Pandi (CW7). Ext. P1 F.I. Statement was proved and marked through PW1. The prosecution case, as set out in Ext. P1, is as follows: PW1 asked the deceased Baby to take a bath for them to go to Nedumkandam for purchasing vegetables etc. Accordingly, the deceased, after taking besan for using on her body, left the house for the bathroom. PW1 was remaining then in the kitchen. While so, hearing the cry, PW1 rushed to the scene when the accused and PW2 were seen

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engaged in a scuffle for getting the knife in front of her house. PW2 forcefully took the bloodstained knife from the accused. The deceased was seen crying and running. PW1 followed her. The deceased fell in front of the house of Pandi (CW7). The deceased was heard to say aloud that she was stabbed by Siva (accused) with a knife. Supporting her, PW1 tied the bleeding wound of the deceased with a small piece of cloth.

21. Exhibit P1 is a previous statement which can, strictly speaking, only be used to contradict or corroborate the maker of the same. Here, PW1 is an important witness cited and relied on by the prosecution for proving its case. She is the sister of the deceased. She had not witnessed the accused stabbing the deceased with the knife. But, according to her, she could witness rest of the incident. She deposed that the deceased was seen lying on the ground and, thereafter, the deceased stood up and ran towards the house of Pandi (CW7). She also deposed that the deceased fell down in the house of Pandi. These statements made by PW1 before the court do not find a place in her Ext. P1 F.I. Statement. If these important facts were known to PW1 which would have found a place in Ext. P1. I am of the view that the omissions of such important facts, affecting the prosecution case, are relevant u/s 11 of the Evidence Act. This view is fortified by the ruling of the Supreme Court reported in Ram Kumar Pandey Vs. State of Madhya Pradesh, .

22. It is the case of PW1 that the deceased Baby was heard to say, while she was running to the house of Pandi (CW7), that she was stabbed with a knife by the accused. In view of the material omissions in her Ext. P1 F.I. Statement, the case so deposed by PW1 becomes suspicious. This suspicion is strengthened by some other facts as well. PWs.2 and 3, who claimed to have witnessed the entire incident, have no case that the deceased, after sustaining the stab injury, said that she was stabbed by the accused with a knife. The prosecution cited CW8 as a witness for proving the fact that the deceased Baby, after sustaining the stab injury, was seen by him and then she was heard to say that she was stabbed by the accused. Since, this being a material fact as far as the prosecution case is concerned, the best evidence for proving that fact is the evidence of CW8, being an independent witness. But, the prosecution has not examined CW8 for proving that material fact. In view of the material omissions in Ext. P1, the case of PW1 before the court that she followed the deceased while she was running to the house of Pandi cannot be believed. PW3 also deposed that PW1 followed the deceased while she was running to the house of Pandi. This statement of PW3 also cannot be believed for the very same reason. In view of all these facts, the case of the prosecution that after sustaining the injury the deceased said that she was stabbed by the accused with a knife cannot be believed.

23. It is noted in Ext. P2 scene mahazar that drops of blood were seen on the front door step of the house of Pandi and a pool of blood was seen in the middle of the room inside. PWs.2 and 3 have no case that they had seen such drops of blood or a pool of blood in the house of Pandi. CW5 is the wife of the said Pandi

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and CW6, a lady, is another inmate of their house. These two witnesses were cited for proving the fact that the deceased Baby, after sustaining the stab injury, ran into the room of their house while they were watching television. But, they were not examined by the prosecution. PW1 has no case that she had seen drops of blood on the door step or a pool of blood in the house of Pandi. Then, how that pool of blood and drops of blood appeared in the house of Pandi? In order to prove that fact, CWs. 5 and 6 were cited. But, that relevant evidence was shut out by the prosecution by their non-examination.

24. Exhibit P4 Post-mortem Certificate and the evidence of PW6 doctor show that the deceased sustained two separate ante- mortem injuries. The first injury sustained was on the left side of front of chest of the deceased. The second injury is noted as follows:

Incised wound 4.5x1x0.3 cm. vertical on the back of right hand, lower end in between roots of thumb and index finger.

The doctor opined that both the injuries could be caused by stabbing with a weapon like MO1. PW1 had not seen the accused stabbing the deceased with a knife. PWs.2 and 3 have no case that the deceased was stabbed twice by the accused. Their case is that the accused stabbed the deceased only once. Then, how the deceased sustained two separate incised wounds as noted in Ext. P4 and deposed by PW6. The prosecution has not offered any explanation for the same.

25. PW2 deposed that the accused repeatedly told him that he would kill a person on that day. But, neither the accused told him nor he had asked the accused as to the person who would be killed. This conduct of PW2 in such a context appears to be strange. PW2 further stated that the accused told Pandi also that he would kill a person on that day. Pandi has been cited as CW7 for proving the fact that the accused told him that he would kill a person within 10 minutes prior to the occurrence. If the accused said so to CW7, that fact is a material one and the best witness to prove that fact is CW7 himself. Therefore, if CW7 was examined and that material fact is elicited from him which would have been helpful for the prosecution to support their case. But, the prosecution has not chosen to examine CW7. No explanation is forthcoming for the same. PW3 is the son of PW1. He was aged 17 at the time of occurrence. His dramatic appearance at the time of occurrence is also rather strange. He was waking up only at about 11.45 a.m. on that day and, after cleaning the teeth, coming to the front courtyard of the house carrying iddali and witnessing the occurrence as a chance witness!

26. I shall now consider another aspect of the matter. It is the case of PW2 that MO1 knife belongs to him. He deposed, during cross-examination, that MO1 knife belonged to him. According to him, he has been rearing goats and MO1 was being used for removing the skin of the goats. During re-examination, he stated that he had given MO1 knife to PW4 on the previous night for cutting plantain leaves. PW7, the investigating officer, stated that he could understand that MO1

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knife belonged to PW2 and it was kept at the residence of PW4 in connection with some work. He also stated that he could understand that the accused had taken that knife from the house of PW4 and stabbed deceased Baby. It is his case that he could understand these facts from PW2. At the same time, he admitted that he had not questioned PW4. Therefore, the investigating officer had not conducted a proper investigation as to how MO1 weapon had come to the possession of the accused. PW4 has been cited as CW14 in order to prove the preparation of Ext. P2 scene mahazar. When PW4 was examined, he stated that the police seized MO1 knife from the scene of occurrence. But, he had no case that MO1 was kept in his house as stated by PW2. The prosecution has not attempted to elicit any evidence with regard to MO1 from PW4 except the fact that the police seized it from the scene of occurrence. PW4 did not have a case that he was acquainted with MO1 prior to the occurrence. It is the case of PW2 that he had handed over that knife to PW4 on the previous night for cutting plantain leaves. PW4 has not explained any such case while he was in the witness box and the prosecution has not made any attempt to clarify that position.

27. How and when MO1 knife reached the hands of the accused? It is the case of PW2 that the accused and himself left for Parathode at about 8 a.m. on 14.4.2002 and came back to his house along with the accused at about 11 a.m. on that day. Thereafter, both of them went to the nearby house of PW4. (Going by the evidence given by PW2 during his chief-examination, he has no case that he had gone to the house of PW4 after returning to his house). PW2 has no case that at that time MO1 knife came to the hands of the accused. According to him, just prior to the occurrence, MO1 knife was seen kept at the loin of the accused covered with a paper. There is nothing on record to show as to how and when MO1 knife belonging to PW2 came to the possession of the accused. The prosecution keeps mum with regard to this material aspect.

28. I shall now consider the case of PW2 that the accused and himself went to the house of PW4 on that day after 11 a.m. PW1 stated that her husband and herself went to the house of PW4 for attending the house-warming at about 8 a.m. on that day when PW2 and the accused were present there. Therefore, the case of PWs. 1 and 2 in this regard cannot go together. When these facts are also considered, the question as to how and when MO1 knife belonging to PW2 came to the hands of the accused becomes more complicated. In short, the prosecution has failed to prove the fact as to how and when MO1 knife came to the possession of the accused. These aspects have not been fairly investigated by the investigating agency. In view of the specific case of the defence as to how the deceased happened to sustain the injury and the case of PW2 that MO1 knife belongs to him, these facts assume significance.

29. The sequence of events narrated during chief- examination by PW2 and his narration during cross-examination cannot go together. During chief-examination, PW2 had no case that his wife came to the road and scolded him.

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But, during cross-examination, he had such a case. He had no case during chief-examination that the accused and himself quarrelled each other after consuming arrack. But, during cross-examination, he stated that, after consuming arrack, both of them quarrelled and then his wife came and scolded him. Thereafter, while his wife and himself were returning to their house from the road, the accused followed them and overtaken them and reached the courtyard of PW1. (The wife of PW2 was also cited as an occurrence witness. But, she was not examined). If PW2 and his wife were returning to their house, after the quarrel between PW2 and the accused, what motivated them to follow the accused who had overtaken them? No reason is available in the evidence of PW2.

30. The case of the defence pleaded by the accused during his examination u/s 313(1)(b) of Cr.P.C. has to be considered in the background of these facts. His case is that PW2 and himself went together to Parathode in the morning on that day for drinking toddy. After drinking toddy, both of them returned to their respective houses. Thereafter, he (accused) left his house and went to the road. There occurred a scuffle and altercation between PW2 and himself. PW2 made an attempt to stab him with a knife. Then, the deceased Baby came there for his rescue. While so, the attempted stab of PW2 aimed at him fell on the chest of the deceased and, thus, she had sustained the injury. The location of the bathroom of PW1 is not noted in Exts.P2 and P6. The location of the house of PW2 and the ways leading to his house and to the courtyard of the house of PW1 from the colony road are also not noted. Admittedly, both the accused and PW2 had consumed alcohol. MO1 belongs to PW2. There is no evidence as to how and when this weapon came to the possession of the accused. The evidence of PW2 himself shows that without any justification he had followed the accused after the quarrel that took place between them just a while ago. The conduct of PW2 was strange. Even, according to the prosecution, a scuffle took place between PW2 and the accused for getting possession of the knife. The besan possessed by the deceased Baby was seen scattered on the door steps and nearby areas about two metres away from the alleged place of occurrence. When these facts and other circumstances pointed out are considered in their right perspective, the case of the defence as to the cause of injury sustained by the deceased cannot be lightly brushed aside.

31. I shall now consider the motive alleged against the accused. The allegation is that the deceased Baby was deserted by her husband and, thereafter, she was staying at the residence of PW1. The accused is the son of the elder sister of the mother-in-law of the deceased. He wanted to exploit sexually the deceased. But, she was not agreeable for the same. The enmity caused by this fact had motivated the accused to kill the deceased. In order to prove this fact, CW11, the brother of the deceased, and CW12, a neighbour of PW1, were cited. But, they were not examined by the prosecution. Thus, the motive alleged by the prosecution has not been proved. PW1 admitted that she had not seen the accused harassing the deceased. She also admitted that the accused used to go to the deceased and request money from her. Therefore, even from the evidence

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of PW1, it can be seen that the accused and the deceased were not on inimical terms but, he used to meet her and request money from her. This, in fact, falsifies the case of motive alleged by the prosecution.

32. A careful consideration of all the facts narrated and the discussions held would lead me to the irresistible conclusion that the prosecution has not placed the true facts before the court or suppressed the material facts from the notice of the court. PWs.1 to 3 were deposing only a particular prosecution theory in order to secure the conviction of the accused in a charge of murder. Their evidence is not reliable. The prosecution cannot have a partisan or hostile attitude in a criminal trial. The investigation and trial of the case shall be fair and transparent to inspire confidence or faith in them. The fairness and transparency of investigation and trial are essential for protecting the rights guaranteed under Article 21 of the Constitution of India. The true faith of the parties as well as the members of the society in the criminal justice delivery system will alone help the system to survive. The investigation or trial devoid of its true spirit and merit will undermine the confidence of the society in the criminal system of administration of justice as well as in the sublime values enshrined in our Constitution. A fair investigation of the case is not a mere exercise of formulating a particular theory as the prosecution case with such evidence so as to secure a conviction of the accused based on that theory. The prosecution case must be one placing the true facts including those facts which are beneficial to the accused to the notice of the court. A conviction secured without adhering to the fair principles of criminal justice would be anathema.

33. The presumption of innocence of the alleged accused is fundamental in nature in the criminal justice delivery system until the charges framed against him are proved beyond reasonable doubt by way of credible, cogent and unimpeachable evidence. The evidence collected by the investigation and adduced before court during trial shall not create suspicion and cast shadow of doubt on the credibility and truthfulness of the prosecution case spoken through their witnesses. The facts narrated and the discussions held in this case would definitely create serious suspicion and cast great shadow of doubt on the prosecution case. Therefore, the accused in this case is entitled to the benefit of doubt. The reliance placed on by the court below on the evidence of PWs. 1 to 3 for finding guilty of the accused is on a wrong appreciation of evidence. Therefore, the conviction and sentence passed against the appellant/accused are liable to be set aside and he is entitled to be acquitted of the charges framed against him.

K. Hema, J.

34. I have gone through the judgment of my learned brother, Babu Mathew P. Joseph, J. Though I agree with the decision taken to acquit the accused, with due respect, I have some reservations about the reasons given in the judgment, particularly on the applicability of Section 11 of Evidence Act etc. Hence, I would add the following paragraphs.

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35. On the facts of this case, the place of occurrence has great relevance. It is necessary to ascertain where exactly the incident occurred, in the light of the rival contentions taken up. While prosecution would allege that the incident happened on the extreme southern margin of the courtyard of the house of PW1, as per the statement given by accused (while questioned u/s 313 Cr.P.C), the incident happened on the public road.

36. According to accused, PW2 and himself were drunk on the crucial day and they quarrelled from the public road. A scuffle ensued between the two when PW2 attempted to stab the accused with MO1. The deceased came running to the scene to intervene and the stab aimed at the accused fell accidentally on the chest of the deceased and accused ran away.

37. Curiously, PW2 admitted almost all the above facts, except the stab aimed at the accused and its falling on the deceased. He admitted that there was a quarrel between himself and accused from the road on the crucial day, immediately prior to the incident. He also admitted that both of them were drunk at that time. He also admitted that MO1, which is the weapon of offence used in this case belonged to himself.

38. It is well settled that possession follows ownership and if this principle is applied, accused himself must be in possession of MO1-knife, especially in the absence any case for PW2 that MO1 was given by him to the accused or that it was procured by him by some means or other. But, PW2 has no case that he gave MO1 to accused or that he obtained possession of the same in any particular manner. PW2 has absolutely no explanation, how the weapon used for commission of murder which belonged to him reached the hands of the accused, except by making a bare statement in re-examination that it was given to PW4 on the previous day.

39. The fact remains that the deceased died due to the fatal injury inflicted on her, by using a weapon belonging to PW2. Therefore, PW2 will necessarily have every reason to protect himself from being implicated in the offence and for that purpose he may suppress the facts, if any, which may incriminate him. In such circumstances, evidence of PW2 deserves a stricter scrutiny and the fact stated by him that the incident happened in the courtyard of the house of PW1 cannot be acted upon, unless there are strong reasons to believe such version.

40. PW1 is the owner of the property where the incident allegedly took place. But, PW1 did not say that the incident happened in the courtyard of her house. According to prosecution, accused committed trespass into the property of PW1, in order to commit murder and a charge is also framed against accused for offence u/s 447 IPC. Therefore, it is the bounden duty of the prosecution prove that the murder took place in the property of PW1. But, PW1 did not depose before court where exactly the incident occurred, whether it was in the courtyard of her house or at some other place.

41. PW1 deposed that she heard a cry, while she was in the kitchen. She came

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out of the kitchen and found a scuffle between the accused and PW2 and the deceased Baby having fallen down. She did not specifically say whether she came to the front side (southern side) of the house or its back side (northern side). Being in the kitchen, normally, back side would be more accessible and as a coincidence the house from where the deceased was taken to hospital (Pandy''s house) is situated on the back side of the house of PW1, towards the east.

42. In such circumstances, the omission to say from which side of the house PW1 saw the scuffle, where exactly the incident happened, where the deceased fell down etc., gains significance. If, as a matter of fact, the deceased had fallen down in the courtyard, there will be a pool of blood there, considering the nature of injuries sustained by the deceased and the profuse bleeding from the injuries. Apart from this, one can also reasonably expect a trail of blood drops starting from the place of occurrence to Pandy''s house, where to the deceased ran on sustaining injuries.

43. Therefore, the best evidence to aid the court to locate the place of occurrence is the presence of blood. During investigation, the scene of offence is normally inspected by the Investigating officer to confirm that a particular incident occurred at a particular place, as alleged by the witnesses. The investigating officer makes a note of presence of blood and other facts found at the scene and prepares a scene mahazar. But, PW7, the Circle Inspector who prepared the scene mahazar, Ext. P2 did not depose that the place of occurrence is the courtyard of the house of PW1 or that he saw blood at the scene. He also did not depose whether he found any trail of blood drops running from the place of occurrence to Pandy''s house.

44. PW7 only deposed that he seized blood stained soil from the "place of occurrence", but where exactly is the place of occurrence was not stated by him. He also stated that he seized MO1-knife from the "place of occurrence", but, evidence of the eye witnesses does not support this fact. None of the alleged eye witnesses has a case that MO1-knife was left by the accused at the place of occurrence itself. On the other hand, their case is that the knife was thrown off by PW2 after snatching it from accused. Therefore, the knife must be at some distance away from the place of occurrence and it would not be found at the place of occurrence.

45. Therefore, evidence given by PW7 that blood and MO1 was seized from place of occurrence does not reconcile with evidence of eye witnesses. PW7 also deposed that he seized some blood from a house which is situated near the place of occurrence. He deposed that blood was found on the door-step and inside the room of the house which is situated close to the place of occurrence. But, PW7 did not depose to whom the said house belonged.

46. If the case of prosecution is accepted, the nearest house is the house of PW1 and not that of Pandy. The eye witnesses have no case that the deceased ran into the house of PW1 where she resided, but as per their evidence she ran to a

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neighbour''s house which is situated away from the alleged place of occurrence. When the house of PW1 is the nearest house from the place of occurrence wherein she could have easily taken shelter, it is not clear from evidence why she ran to a longer distance to reach a neighbour''s house that too, after sustaining serious injuries on the chest. All these facts pose a question, where exactly did the incident take place. The facts revealed from evidence cast a doubt whether the incident happened in the courtyard of the house of PW1 as alleged by prosecution or elsewhere, under some other circumstances.

47. Of course, the place of occurrence and the place where the blood was seen are all described in the scene mahazar. But, contents of the scene mahazar are not substantive evidence. The prosecution cannot rely upon the contents of the scene mahazar to prove that the relevant facts stated therein. The court cannot act upon the contents of the scene mahazar to hold that the incident happened at the place, alleged by prosecution or that the blood was seen at a particular place referred to in the scene mahazar in the absence of direct oral evidence given by the investigating officer on the relevant facts. (vide Mohanan Vs. State of Kerala [2011 (3) KHC 680].

48. In the absence of PW7 deposing about the relevant facts from the witness box, particularly, the presence of blood in the scene, no reliance can be placed on the contents of the scene mahazar to come to a conclusion that blood was seen at a particular place and that such place could be the place where the incident happened. Though PW2 and PW3 deposed that the incident happened in the courtyard of the house of PW1, in the absence of corroboration from other source, it cannot be safely concluded that the incident happened at the place as alleged by the prosecution, especially since there is nothing in the evidence of PW1 to support this version.

49. It is not enough if an allegation is made that the incident happened at a particular place, but it must be proved to the satisfaction of the court, especially when there is rival version about the scene. It is not enough if two witnesses say that the incident happened at a particular place, but when such statement is made by interested witnesses, the court must seek corroboration from other source especially if certain facts emerging from records cast doubt on their version. The presence of blood would have been the best piece of evidence to support the version of the eye witnesses but, PW7 did not speak where he found the blood. The prosecution has thus, failed to prove where exactly the incident occurred. Therefore, it is not safe to convict a person on the basis of the evidence adduced in this case by holding that the incident happened in the courtyard of the house of PW1 as alleged by prosecution and not on the road.

The order of the Court

(a) This Criminal Appeal is allowed.

(b) The conviction and sentence passed against the appellant/accused are set aside.

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(c) The appellant/accused is found not guilty of the offences alleged against him. He is acquitted of the offences under Sections 447 and 302 of IPC.

(d) A copy of this judgment shall forthwith be communicated by the Registry to the court below and the prison concerned.

(e) If further detention of the appellant/accused is not required in connection with any other case, he shall be set at liberty forthwith.

(f) The Registry is directed to issue the release order forthwith.

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