2024:KER:92686

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 9TH DAY OF DECEMBER 2024 / 18TH AGRAHAYANA, 1946

CRL.A NO. 1193 OF 2017

CRIME NO.61/2010 OF Payyannur Police Station, Kannur

CP NO.5 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS, PAYYANNUR

SC NO.4 OF 2011 OF SPECIAL COURT FOR THE TRIAL OF OFFENCES AGAINST WOMEN AND CHILDREN, THALASSERY

APPELLANT/1ST ACCUSED

M.SHAMMYKUMAR, S/O NARAYANAN, AGED 43 YEARS, PULIKKAL HOUSE, PALUTTUKAVU, AZHIKKAL AMSOM/POST, KANNUR DISTRICT. 670009

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.THOMAS SABU VADAKEKUT
SMT.S.LAKSHMI SANKAR

RESPONDENT/STATE

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM - 682031

BY SMT.S.AMBIKA DEVI – SPL.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20.11.2024, ALONG WITH CRL.A.755/2017, THE COURT ON 9.12.2024 DELIVERED THE FOLLOWING:

2024:KER:92686

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 9TH DAY OF DECEMBER 2024 / 18TH AGRAHAYANA, 1946

CRL.A NO. 755 OF 2017

CRIME NO.61/2010 OF Payyannur Police Station, Kannur

CP NO.5 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS, PAYYANNUR

SC NO.4 OF 2011 OF SPECIAL COURT FOR THE TRIAL OF OFFENCES AGAINST WOMEN AND CHILDREN, THALASSERY

APPELLANT/3RD ACCUSED

M.PADMAVATHY, W/O.NARAYANAN, AGED 72 YEARS, PULIKKAL HOUSE, PALUTTUKAVU, AZHIKKAL AMSOM/POST, KANNUR DISTRICT-670009.

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.THOMAS SABU VADAKEKUT

RESPONDENT/STATE

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY SMT.S.AMBIKA DEVI - SPL.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20.11.2024, ALONG WITH CRL.A.1193/2017, THE COURT ON 09.12.2024 DELIVERED THE FOLLOWING:

2024:KER:92686

C.R.

J U D G M E N T

Dated this the 9th day of December, 2024

C. Pratheep Kumar, J

'Suspicion' is a disease. If it is not treated, one becomes blind and the consequence will be disastrous.

These appeals are filed by accused persons 1 and 3 respectively, in Sessions Case No.4 of 2011 on the file of the Special Court for the trial of Offences against Women and Children, Thalassery, against the judgment dated 29.7.2017, finding the 1st accused guilty of the offences under Section 498A, 302 and 201 IPC and the 3rd accused guilty of the offence punishable under Section 498A IPC.

2. The 1st accused is the husband of deceased Remya. The 2nd accused is the brother of 1st accused and the 3rd accused is the mother of the 1st accused. The trial court acquitted the 2nd accused, while convicted accused persons 1 and 3, as stated above.

3. BACKGROUND: The background of the prosecution case is that, on 22.1. 2010 at about 1 p.m., CW1, namely the manager at Everest Lodge, Payyannur Central Bazaar, found that the bolt of the door in room No.204 of

the lodge was locked from outside. When he opened the door, he found that a lady aged about 26 years was found hanging from the hook of a fan. It was on 20.1.2010, she along with a male person and a child of about 2 years took the said room and they were staying in the said room. However, on 22.1.2010 at 1 p.m. when he opened the door, the male person and the child were absent in the room. He immediately reported the matter to the GD charge of Payyannur Police Station and on the basis of the above first information statement (Ext. P29), a crime was registered as Crime No.61/2010 under Section 174 Cr.P.C. PW28, the Sub Inspector, Payyannur Police Station who had conducted the initial investigation, at first, found that it is a case involving Section 498-A IPC against the accused persons 1 to 3. Accordingly, the section was altered to 498-A IPC against the accused persons 1 to 3 and he filed a report to that effect, on 1.2.2010. Thereafter, when the investigation progressed, the offence under Section 302 IPC was also revealed and accordingly, another report was filed on 20.2.2010, incorporating the offence under Section 302 IPC also. Thereafter, the investigation of the case was taken over by the DySP, Thaliparamba, namely PW39. After the incident, the 1st accused was absconding and therefore, PW39 filed final report stating that the 1st accused was absconding. Subsequently, the 1st accused was extradited from Dubai and thereafter further

investigation was conducted by PW40 and a further report was also filed by him. The investigation revealed that the offence under Section 302, 201, 498A of IPC were committed by the 1st accused and the offence under section 498-A IPC was committed by accused persons 2 and 3 and accordingly, they were tried for the aforesaid offences.

4. PROSECUTION CASE: The prosecution case is that, the 1st accused married Smt. Remya, the deceased on 2.6.2002 and while they were living together as husband and wife in the residence of the 1st accused, he along with the accused persons 2 and 3, suspecting her chastity spread false allegations against her and subjected her to cruelty demanding more dowry. In that respect, Remya filed a complaint against accused persons before the Circle Inspector, Women's Cell, Kannur. Due to that enmity, the 1st accused with the intention to murder Remya, secretly came home on 15.1.2010 from his place of work in UAE. On 16.1.2010, at about 5.45 p.m. he secretly took Remya and their younger daughter aged 1½ year, from her house, and finally reached Everest Lodge, Payyannur Central Bazaar, on 20.1.2010 and stayed in room No.204 therein. While staying in that room, he murdered Remya by hanging her from a hook in the sealing of that room by tying a shawl around her neck. Thereafter, with the intention to destroy evidence, locked the door of the room from

outside using the bolt, stealthily dropped the younger child Keerthana at the courtyard of the house of PW1, the father of Remya, at about 12.30 a.m. on 21.1.2010. Then he telephoned PW1, enquired about Remya and thereby deliberately suppressed the factum of murder of Remya.

5. EVIDENCE: The evidence in the case consists of the oral testimonies of PWs 1 to 40 and documentary evidence Exhibits P1 to P70 and P70(a) on the side of the prosecution. MOs 1 to 34 were also identified. On the side of the accused persons, Exhibits D1 to D6 were marked. Exhibit C1 was marked as a court exhibit. After evaluating the available evidence, the trial court found the 1st accused guilty of the offences under Sections 302, 201 and 498-A IPC and convicted him inter alia, for imprisonment for life and fine, the 3rd accused was found guilty under Section 498 A of IPC, while the 2nd accused was acquitted of the charge. Being aggrieved by the above judgment of the learned Sessions Judge, the 1st accused preferred Crl. Appeal No.1193 of 2017 and 3rd accused preferred Crl. Appeal No.755 of 2017.

6. POINTS: Now, the points that arise for consideration are the following:

1) Whether the accused 1 and 3 subjected deceased Remya to cruelty and thereby committed the offence punishable under

Section 498-A IPC?

2) Whether the prosecution has succeeded in proving that the 1st accused has committed the murder of Remya, as alleged?

3) Whether the 1st accused has committed the offence punishable under Section 201 of IPC?

4) Whether the impugned judgment of conviction and sentence passed by the trial court calls for any interference, in the light of the grounds raised in the appeal?

7. Heard the learned Senior Advocate Sri. B.Ramanpillai, on behalf of the appellants and Smt. S. Ambika Devi, learned Special Public Prosecutor on behalf of the State.

8. POINT NO.1:- In this case, there is no direct evidence to prove the charges levelled against the accused persons and therefore, the prosecution has solely relied upon circumstantial evidence, including the presumptions under section 106 of the Evidence Act and last seen theory. The learned Senior Counsel would argue that in this case, the prosecution has miserably failed in proving the charges against the appellants beyond reasonable doubt, on several grounds. One of the arguments advanced by the learned Senior Counsel is that 161 Cr.P.C statements of PWs 1 to 4, 10 and 13 recorded by PW28, the Sub

Inspector, Payyannur Police Station who had conducted the initial investigation of this case, was neither supplied to the accused nor produced along with the final report and as such, prejudice was caused to the accused persons. Another argument was that, though the finger print expert found out certain chance prints from a glass as well as liquor bottle from the lodge room, it was not pursued and hence the involvement of somebody else in the commission of offence was not ruled out. It was argued that the 1st accused was not in India, during the relevant period. Another argument raised by him is that the prosecution has not succeeded in proving the actual cause of death, as according to him, the medical evidence available in this case has not ruled out the possibility of suicide. Another argument advanced by him is that according to PW20, the Professor, Forensic Medicine and the Police Surgeon, Medical College Hospital Pariyaram, who had conducted the postmortem examination on the body of the deceased, only if the victim became intoxicated or unconscious, a person could hang her from a hook in the ceiling, as alleged in this case. It was also argued that, in this case, there is no evidence to prove that the victim became intoxicated or unconscious before the commission of the offence. According to the learned senior counsel, even if the victim became unconscious, it is not at all possible for a man to hang such a lady from the

hook in the ceiling, as alleged by the prosecution. Another argument raised by him is that the prosecution has not succeeded in proving that it was the 1st accused who has taken room No.204 in Everest Lodge, as the name and address shown in Exhibit P13 Register is not that of the 1st accused. He would also argue that, the car allegedly used for taking the victim to the lodge was not traced out. Another contention raised by him is that the call details of the phone allegedly used by the accused and deceased for contacting PWs1,3 and 4 were not produced in evidence. He has raised another contention that in this case there is absolutely no evidence to prove that the accused persons had subjected the deceased to cruelty as alleged. In the light of the above grounds, he would argue that the accused persons are entitled to get an order of acquittal.

9. On the other hand, the learned Special Public prosecutor would argue that in this case, there is sufficient circumstantial evidence to prove the guilt of the accused persons beyond reasonable doubt and therefore, she prayed for dismissing the appeals.

10. CHARGE OF CRUELTY: The fact that the 1st accused is the husband of deceased Remya, is not in dispute. Admittedly, the marriage between them was solemnized on 2.6.2002. It is also admitted that three children were born in that wedlock. The first child is a male, while the other

two are girl children. It is also admitted that the 1st accused was employed in UAE, during the relevant time. The case of the prosecution is that the 1st accused was suspicious of the chastity of his wife and disputed the paternity of the elder child. It is also alleged that he along with the other accused persons subjected her to cruelty demanding more dowry. In order to prove the cruelty, they have produced Exhibit P1 complaint given by Remya to PW17, the Circle Inspector, Women's Cell, Kannur. However, at the time of evidence, the prosecution witnesses PWs1 to3 mainly focused on the suspicion of the 1st accused on the chastity of Remya and in the paternity of the elder son. According to PW2, the sister of Remya, at the time of marriage, the 1st accused had not raised any demand for dowry. She also deposed that even after the marriage, he had not raised any demand for dowry. PW3, the mother of Remya also deposed that she never saw the 1st accused assaulting Remya.

11. According to PWs 1 to 4, when the 1st accused came from abroad, on 16.1.2010, Remya took the younger child and went along with him, without informing her parents as well as other family members. PW1, the father of Remya would swear that Remya used to go along with 1st accused even ignoring their opposition. Therefore, even from the evidence of PWs 1 to 3, the parents and sister of Remya, it can be seen that there is no merit in the

prosecution case that the accused persons subjected Remya to cruelty, as alleged. At the same time, when the Circle Inspector, Women's Cell, Kannur was examined as PW17, it was revealed that the deceased was very much fond of her husband. In the above circumstances, we are constrained to hold that the prosecution has not succeeded in proving that the accused persons subjected Remya to cruelty, as alleged. In other words, the prosecution has failed to prove the offence under Section 498-A IPC against the appellants. Point No.1 answered accordingly.

12. POINT NO.2:- The 1st accused stands charged for committing murder of his wife by hanging her by a shawl from a hook placed at the ceiling of room number 204 in Everest lodge, Payyannur. However, he has taken a stand of total denial. According to him, on 20.1.2010, on the date when Remya died, he was in his place of work in UAE and that, he did not come to India during the said period.

13. PLEA OF ALIBI: When an accused pleads alibi, the burden is on him to prove it under section 103 of the Evidence Act. (**State of Haryana v. Sher Singh and Others**, (1981)2 SCC 300; **Rajendra Singh v. State of U.P. and Another**, (2007) 7 SCC 378). However, in order to prove alibi, the 1st accused has not adduced any positive evidence. Rather, he has relied upon the

weakness in the prosecution evidence, in his attempt to show that he was not in India during the relevant period.

14. At the same time, the prosecution has relied upon the evidence of PWs 34 and 35 to prove that on 20.1.2010, the date of death of Remya, the accused was very much available in India. Further, the prosecution has relied upon the evidence of PWs 10, 13, 14 and 15 to prove his presence in and around the place of occurrence. Out of which, PW10 was a Security in Everest Lodge, and PW13 was a helper engaged in house keeping in that lodge. PW14 was running a mechanical workshop at Thottada and PW15 is his brother. PW34 is the Assistant Director, Bureau of Emigration, Ministry of Home Affairs, International Airport, Manglore and PW35 is the Assistant Central Intelligence Officer-II, Bureau of Emigration, Kozhikode. Since PW34 and 35 being officials in the Emigration department, and they were examined to prove that the 1st accused arrived in India during the relevant period, we consider it apposite to examine their evidence first.

15. PW34 would swear that Exhibit P48 and P49 are the travel details of the 1st accused for the period from 1.1.2009 to 8.1.2014. Relying upon those documents, PW34 would swear that, on 30.9.2009 the 1st accused departed from Karipur Airport, as per Flight IC597. Then, on 22.1.2010, he departed

from Manglore Airport through Flight No.IX/811. Thereafter, on 17.8.2011, he departed from Trivandrum Airport as per Flight No.TR 2613. He would further swear that, as per Exhibit P49 arrival details of the 1st accused, on 16.8.2009, he arrived at Cochin International Airport as per flight IX/434. Thereafter on 15.1.2010, he arrived at Karipur Airport as per flight No.IX/344. Again on 8.1.2014, he arrived at Cochin Airport, as per Flight IX/434.

16. PW35 would swear that Exhibit P51(a) is the document produced by him containing the travel details of the 1st accused from Kozhikode Airport during the period from 1.1.2009 to 31.12.2010. As per the above document, on 30.9.2009, the 1st accused travelled from Karipur to Sharjah as per Flight No. IC 597. Thereafter on 15.1.2010, he travelled from Dubai to Karipur as per Flight IX/344. Therefore, from the evidence of PW34 and 35, it is revealed that on 30.9.2009, the 1st accused went from Karipur to Sharjah and thereafter on 15.1.2010 he returned to Karipur and thereafter only on 22.1.2010 he departed from India through the Manglore Airport. In short, from the evidence of PWs 34 and 35 and from Exts. P48 to 51, it is revealed that the 1st accused was available in India during the period from 15.1.2010 to 22.1.2010.

17. The admissibility of Exhibits P48, 49 and 51 documents were seriously raised by the learned senior counsel at the time of arguments. Along

with Exhibits P48, 49 and 51, PWs 34 and 35 have produced Section 65B certificates also. It was argued by the learned Senior Counsel that PWs 34 and 35 are not competent persons to prove those documents. PW34 would swear that Exhibits P48 and 49 are computer generated records from the Central Server located at New Delhi. Section 65B certificate is signed by Sri. S.K. Gupta, who is a colleague of PW34, whose signature he identified. PW34 would further swear that Mr. S.K. Gupta is the custodian of all the travel records. He deposed that, the details of the travel of every person going outside India will get automatically entered in the computer, from which these statements were generated. During the cross examination, he clarified that there is absolutely no human intervention in generating the aforesaid records. He also deposed that the information in Exhibit P48 and 49 are regularly carried out, maintained and fed in the computer in the normal and regular official activity and that it cannot be accessed by anybody else. Since from the evidence of PW34, it is revealed that the details of the travel of every person going outside India will get automatically entered in the computer server located at New Delhi and there is no human intervention in the uploading of those data and Exhibits P48 and P49 were duly authenticated by the person in custody of those documents, we do not find any grounds to disbelieve Exhibits

P48 and P49.

18. A similar objection was raised as against the receipt of Exhibit P51 also. PW35 would swear that the main computer server from which the printout was taken, is located at New Delhi and Exhibit P51 was the print out taken from the computer situated at Karipur Airport in his own custody. He would also swear that he is in charge of the computer systems located at Karipur Airport and that he knew the user ID as well as the password of the above computer system. By using the above user ID and password, which are confidential, he has taken out the print out of Exhibit P51 and attested by him. The main objection raised as against PW35 is that, the summons was addressed to the Foreigners' Regional Registration Officer and not to PW35. At the time of evidence, PW35 deposed that he appeared before the court as authorized by the Foreigners' Regional Registration Officer. Since from the evidence of PW35 it is revealed that PW35 himself is the custodian of the computer system located at Karipur Airport, that the main server of which is located at New Delhi, that he himself had taken out the print out of the data available with the main server located at New Delhi using the user ID and password available to him in his official capacity and attested by himself, we do not find any merits in the objection raised against the receipt of Exhibit P51 also.

19. At this stage, the learned Senior Counsel raised another objection that there is no guarantee that Exhibits P48, 49 and 51 relate to the 1st accused. As per the final report, the address of the 1st accused is M. Shammikumar, s/o Narayanan, Pulickal house, Polottukavu, Azhikode Amsam. In Exhibit P48, the name of the passenger is shown as Shammikumar and Shammikumar Madankara, while in Ext. P49 it is Shammikumar Madankara. Therefore, he would argue that there is no guarantee that the passengers referred to in those documents is the 1st accused involved in this case.

20. According to PWs 34 and 35, they have traced out the details called for by the court, by looking at the passport number of the passenger and not by looking at the name. As per Exhibit P51, the passport Number of M. Shammikumar is, E7606699. Further as per Exhibit P51, the date of birth of Shammikumar is, 31.5.1975. In Exhibit P48, out of three entries, in one entry, the name of the passenger is shown as Shammikumar Madankara, while in the other two entries the name shown is Shammikumar. However, the passport Number shown against all the three entries is the same, E7606699. The date of birth shown in Ext. P48 is also 31.5.1975. In Exhibit P49 also, the date of birth of Shammikumar Madankara is shown as 31.5.1975. However, the passport Number for the first two entries is shown as E 7606699, while for the third

entry is L1217591.

21. Exhibit P42 series are the documents seized from the 1st accused when he was arrested and his body was searched by PW31. Exhibit P42 is the copy of the Labour Card issued by the Ministry of Labour, UAE in favour of Madankara Narayanan Pulickal Shammikumar. Exhibit P42(a) is the copy of identity card issued in the name of Shammikumar Madankara Narayanan Pulickal, from UAE. Exhibit P42(b) contains the copy of passport of Shammikumar Madankara, with passport No. L1217591 valid for the period from 28.5.2013 to 27.5.2023. It also contains copy of the residence permit issued from Dubai, UAE valid for the period from 12.10.2011 to 11.10.2013, in favour of Madankara Pulickal Shammikumar. In the above residence permit, the passport number shown is E7606699.

22. The 1st accused has not challenged the seizure of Exhibit P42 series from him, in the body search conducted by PW31. He also has no case that Ext. P42 series documents were not issued in his favor, from UAE. Therefore, it can be safely concluded that the names Shammikumar, Shammikumar Madankara, Madankara Pulickal Shammikumar and Shammikumar Madankara Narayanan Pulickal shown in Ext. P42, 42(a) and 42(b) represent the same person namely the 1st accused. Since in the residence permit issued in the year 2011 in favour

of Shammikumar, the passport number shown is, E 7606699 and in the new passport issued in the year 2013, the passport number shown is L1217591, it can be safely concluded that passport No. E7606699 is the old passport number of Shammikumar and L1217591 is the number of his new passport issued on 28.5.2013. Presence of passport No. E7606699 and L1217591 in Exhibit P49 is to be appreciated in the above context. Since both the above passports belong to the 1st accused, valid for two different periods, he cannot now contend that Exhibit P49 could not be relied upon as it contain two different passport numbers.

23. A1 NOT PRODUCED HIS PASSPORT: In this context, it is also to be noted that the 1st accused has not produced the original or even a copy of his passport, before the court, to prove that passport No. E7606699 and L1217591 does not belong to him or that his passport number is a different one. Similarly, if he has got a case that he has not arrived in India on 15.1.2010 and not departed from India on 22.1.2010, the same also could have been proved by producing his passport. Though it was argued that the 1st accused lost his passport, the stand taken by him during the cross-examination of PW31 is that when Dubai police arrested him, his passport was seized and the same was handed over to PW31, which he denied. The above suggestion put to PW31

shows that there is no merit in the argument that he lost his passport. Though he claims that he lost his passport, he has not disclosed the circumstance under which he lost it. He also has not taken any steps to get a duplicate passport in place of the one he allegedly lost, in spite of the fact that he was working abroad. Absence of any such steps from his side is an indicator that he has actually not lost his passport. Therefore, there is every reason to conclude that the 1st accused deliberately suppressed his passport. In the above circumstance, an adverse inference is liable to be drawn against him, under section 114(g) of the Evidence Act, to the effect that, if it is produced, the same will be unfavorable to him. In short, from the evidence of PWs 34 and 35 and from Exhibits P42 series, 48, 49, 50 and 51, it can be safely concluded that the 1st accused came to India on 15.1.2010 and left India only on 22.1.2010, and that too, from Manglore Airport. In other words, the 1st accused has failed in proving the defence of alibi.

24. On 22.1.2010 the body of deceased Remya was found hanging by a shawl from a hook on the ceiling in a room in Everest lodge, Payyannur and the body was first seen by CW1, the Manager of the lodge. In the morning, on 22.1.2010, he saw the said room locked from outside, using a bolt. Since the room was seen locked as above till the afternoon, out of curiosity, he opened

the room and saw the dead body. In that respect, he had given Ext. P29, FI statement also. The fact that Remya died of hanging is not disputed. The dispute is whether it was a homicide or a suicide. If it was proved that the room was locked from outside, the same would have helped the prosecution a lot, in proving that it is a case of homicide. However, the prosecution could not examine CW1 and prove the FIS.

25. EFFECT OF NON-EXAMINATION OF CW1:- In this case, the prosecution could not examine CW1, the Manager of Everest lodge who had given Ext. P29, FI statement to PW28, because, during the trial stage, he became incapable of giving evidence. The above fact was proved by the prosecution by examining PW19 as well as by producing the document, Ext. C1. The evidence of PW19 and Ext. C1 showing that CW1 became incapable of giving evidence, due to ailments, was not challenged by the accused. In the above circumstances, the learned Special Public Prosecutor would argue that the FI statement given by CW1 under Section 154 Cr.P.C (Ext. P29) and the sworn statement given by him under Section 164 Cr.P.C (Ext. P46) are to be admitted in evidence, in view of Section 32(1) of the Evidence Act. The above prayer was seriously objected by the learned Senior counsel. It is true that in case a witness becomes incapable of giving evidence, Section 32(1) of the

Evidence Act will apply. However, the statements given by CW1 in the FI statement and in the 164 Cr.P.C statement, that he had seen room No.204 bolted from outside, will not come within the sweep of section 32(1) of the Evidence Act. The law is well settled that, generally, the statements under Sections 154 and 164 can be used only for the purpose of corroboration and contradiction. In this case, there is absolutely no substantive evidence to show that room No.204 was bolted from outside. In the absence of any substantive evidence in that respect, Ext. P29, FI statement and Ext. P46, 164 Cr.P.C statement given by CW1 are not sufficient to prove the fact that room No.204 of Everest lodge was bolted from outside on 22.1.2010.

26. MEDICAL EVIDENCE: Medical evidence has much relevance in this case, as the crucial question to be answered is, whether Remya's death is a homicide or suicide. In the above circumstance, the evidence of PW20, the Police Surgeon, Pariyaram Medical College Hospital who had conducted the postmortem examination on the body of deceased Remya and issued Exhibit P22 Postmortem certificate is very crucial. The general findings arrived at by PW20, after examining the dead body are the following:

> *"General: Body was that of a fair complexioned adult female of height 168 cm; body was in an early state of decomposition. Dried salivary dribble mark was seen extending obliquely from left corner of*

mouth, to the jaw. Blood stained discharge was coming out from the vagina. Eyes were normal. Rigor mortis was retained in the lower limbs only. Postmortem staining was seen on the lower parts of limbs; fixed. Marbling was seen in the lower limbs, sides of abdomen, face and shoulders. Postmortem bullae were seen on the inguinal region. Cuticle was peeling off on the buttocks. Abdomen was distended with foul smelling gases of decomposition. Body refrigerated. "

27. Neck Findings, according to PW20 are the following:

"Neck Findings:- An orange coloured shawl was found tied round the upper part of neck, with a slip knot on the right side. The loop, short free end and long free end measured 35 cm, 34 cm and 98 cm respectively; the long tree end was found neatly cut at its distal end. Underneath, there was a grooved pressure abrasion, completely encircling the neck. It was situated 4 cm below the right ear (1 cm broad), 4 cm below the chin (1.5 cm broad), 6 cm below the left ear (1.5 cm broad) and just below the hairline at the back (2.5 cm board). On layer dissection under a bloodless field, the subcutaneous tissues were dry and pale. Muscles, blood vessels, cartilages and hyoid bone were intact."

28. The other findings of PW20 are the following:

"Other findings: Scalp, skull and dura were intact. Brain showed autolytic changes. Lungs showed decomposition. Heart and coronary arteries were normal, except for the decomposition changes. Intima of aorta was discolored red, due to decomposition. Stomach contained two handfuls of vegetable food particles including cooked rice in a semifluid medium, no unusual smell; mucosa decomposed. Uterus was

normal in size, with its cavity empty; evidence of bilateral, old, tubal sterilization seen. All other internal organs were normal except for the varying stages of decomposition. Viscera and vaginal swab were preserved."

29. CAUSE OF DEATH: The opinion as to the cause of death, according to PW20 is, Remya died of hanging. PW20 would further swear that viscera and vaginal swab collected by him from the body was forwarded for chemical examination. Exhibit P23 is prepared on the basis of chemical examination result, which is to the effect that, alcohol was detected in the viscera. It also states that semen and spermatozoa were not detected in the vaginal swab and vaginal smear. He sent Exhibit P23 letter based on the report received after chemical examination.

30. According to PW20, the hanging in this case is ante-mortem. The body was kept in the refrigerator at 6.50 p.m. on 22.1.2010. So according to PW20, there can be no change to the body after 6.50 p.m. on 22.1.2010. According to him, the time of death would be 36 hours prior to 6.50 p.m. on 22.1.2010 and below 72 hours. Considering the contents of the stomach, he deposed that the death was within a period of 6 hours after the last meal. Assuming that the victim had her last meal at 7 p.m. on 20.1.2010, according to PW20, she would have died before 1 a.m. on 21.1.2010.

31. PW20 further states that the rigor mortis starts and disappears from head downwards from 18 to 24 hours from the jaw muscles. According to him, the last part of disappearance of rigor mortis would be in lower limbs by 24 to 36 hours. Marbling appears from 36 to 48 hours and postmortem bullae appears from 36 to 72 hours after death, especially in the climatic conditions prevailing in Kerala.

32. SYMPTOMS OF PARTIAL HANGING: According to PW20, he had visited the scene of occurrence and saw the body position as seen in Exhibit P9(b) photograph. It shows partial hanging with the right limb of the body touching the cot and left one touching the ground. In partial suicide hanging cases, according to him, the face will be bluish in colour. In some cases, there would be hemorrhage to eyes. To a suggestion, he deposed that the posture seen in Exhibit P9(b) photograph is possible, if the victim was pulled up sufficiently high to a completely hanging posture for one or two minutes, without her feet touching the ground and then due to some loosened tying, the body comes down and touches the ground.

33. According to PW20, usually in partial hanging cases, the face will turn blue. In the instant case, the face of the victim was pale. Therefore, he clarified that partial hanging and pale face cannot go together. The above

circumstance is another indicator that this is a case of ante-mortem hanging. In other words, she might have died before her feet touched the ground.

34. SYMPTOMS OF SUICIDE ALSO: According to PW20, he noticed the features of suicidal as well as homicidal hanging in this case. According to him, most of the partial hangings are suicidal, especially in females. They cannot climb up to more heights and jump down. So, according to him, in such cases, some part of the body would touch the ground. Pw20 would further swear that, in this case, if the victim stands on the cot, the suspension point can be accessed by her, as the roof of the room was at low level and the victim was a tall girl. According to him, it was on the basis of these two points that he has not ruled out the possibility of suicide. Further according to him, there will be suicidal impulse for committing suicide and if the mental status is not normal, then such impulse would give way and the person can commit suicide.

35. NUDITY AND SUICIDE: PW20 is an experienced Police Surgeon having more than 33 years experience in the field, at the time of examination. He would swear that, normally Indian women hide their nudity, when they commit suicide. In the instant case, except that there was a loin cloth, the victim was nude. According to PW20, the place of occurrence being the heart

of the town, with plenty of people going around, no girl would normally hang herself in a nude state as seen in Exhibit P9(b) photograph. He further deposed that even in an extremely depressed state, normally no female would suicide being nude, unless she is mentally insane. During re-examination, PW20 deposed that he had 33 years of experience in the field and that he used to attend at least 30 hanging cases in a month and also that he had never seen a women who had committed suicide by being nude. During further cross examination, he deposed that in Modi's Book on Medical Jurisprudence, it is stated that Indian women, while committing suicide, will not expose their private parts and also that it does not state about existence of exceptions. However, according to him, in modern books, there is no such statement.

36. In the decision in **Kodali Puranchandra Rao & Anr vs The Public Prosecutor, Andhra Pradesh, AIR 1975 SC 1925**, the Hon'ble Supreme Court also observed that, *"Ordinarily, no Indian woman would commit suicide by jumping into the sea by getting into such a near-nude condition and thereby expose her body to the risk of post-mortem indignity."*

37. The fact that the deceased was found hanging in nude form is to be evaluated in the above context. The above circumstance was strongly relied upon by the learned Special Public Prosecutor to show that it is a case of

homicide and not a case of suicide. We are in respectful agreement with the statement of the learned Special Public Prosecutor as well as the evidence of PW20 that no woman will chose to commit suicide in nudity. The fact that in Ext. P9 series photographs, the deceased was found hanging nude, is a clear indication against suicide and a sign of homicide.

38. NO SIGNS OF VIOLENCE: During the cross examination, PW20 deposed that in this case, there were no marks of violence, on the body of the deceased. The only antemortem injury noticed by PW20 on the body of the deceased was an abrasion 2×1 cm under the chin, more towards the right side. At the place of occurrence also there was absolutely no signs of any kind of use of force or violence.

39. PW28 the Sub Inspector, Payyannur Police Station visited the place of occurrence in room No.204 of Everest Lodge on 22.1.2010, examined the body of Remya and prepared Exhibit P12 inquest report. In the said room, he had noticed several articles including dress belonging to the deceased and her child, food materials and also a pair of chappals and an undergarment of a male person. PW28 identified those items as MOs 2 to 27, which are green Churidar top (MO2), white churidar pant (MO3), churidar top (MO4), baby frock (MO5), Maxi (MO4), white churidar shawl (MO7), Orange Churidar shawl

(MO8), Orange churidar pant (MO9), lungi (MO10), 3 plastic bottles (MO11), 750 ml liquor bottle containing 100 ml. liquor (MO12), a glass (MO13), chocolate envelope (MO14), a cover of dates (MO15), ladies chappal (MO16), plastic cover containing porotta (MO17), brassiere MO(18), cotton towel (MO19), ladies panties (MO20), a pair of socks (MO21), baby shaddy (MO22), stayfree 2 numbers (MO23), gents underwear (MO24), Hawaii chappal (MO25), towel (MO26), and cellotape 2 numbers (MO27).

40. PRESENCE OF A MAN INSIDE THE ROOM: The evidence of PW10 and 13, the watcher and the helper of Everest Lodge that the deceased came along with a male person and a child in a car and occupied room No.204 also remains unchallenged. In addition to the same, presence of gents underwear (MO24) and Hawaii chappal (MO25), in the above room also points to the fact that there was a male person also in the said room, along with the deceased and her 1½ year old girl child. The contention taken by the appellants is only to the effect that the person who accompanied the deceased and the child to the above room is not the 1st accused. From the evidence of PW13, it can also be seen that, the male person who accompanied the deceased to Everest Lodge has made Ext. P13(a) entry in Exhibit P13 register. In the said register, the name, address and phone number given by him is, 'Shyamkumar,

Amban House, P.O. Kattampalli, Mob. No.9947519551'. In the said register, he has also written that the number of inmates are three and that they belong to a family. The time of arrival shown is 3.55 p.m. on 20.1.2010.

41. SUICIDE RULED OUT: PW20 did not rule out the possibility of suicide on two grounds. One of the grounds is that the point of suspension is accessible to the victim, provided, she stands on the cot. The other reason stated by PW20 is that the victim in this case is tall. As per Ext. P22 postmortem certificate, the height of the victim is 168 cm. As per Ext. P12 inquest report, the height of the cot is 39 cm and the height of the bed placed over the cot is 10 cm. Therefore, the total height up to which the victim could access if she stands on the top of the cot is 207 cm (168 + 39). Even if the height of the bed also is taken into consideration, the total height that could be accessed by her is 217 cm (168 + 39 +10). In this context, it is to be noted that, since the bed is soft, a person standing on the bed will not get access for the entire width of the bed. Therefore, the accessible height, which a person having a height of 168 cm standing on the cot with bed, will be around 210-212 cm.

42. As per the inquest report, the total height of the point of suspension from the floor is 250 cm. Since the maximum accessible height of the victim is 210-212 cm only, even if the cot and bed are placed just below the

point of suspension, she has to cover a further 38-40 cm, by stretching her hands, to reach the point of suspension. It appears that, PW20 came to the conclusion that the point of suspension is accessible to the deceased, if she stretches her hand fully, after climbing over the cot with bed, placed exactly below the hook.

43. COTS ARE FOUND AWAY FROM THE POINT OF SUSPENSION: It is very important to note that, in this case, the cots present in the room are not positioned below the point of suspension. From Ext. P9 series photographs it can be seen that the body of the deceased hangs at a place, while both the cots are seen far away from the point of suspension. As per Ext. P12 inquest report, the body was found hanging from a hook in the ceiling on the eastern side of the room. One of the cots situates on its north and the other one is on its south. As per the inquest report, there is a distance of 137 cm between the above two cots on the eastern side and 45 cm on the western end. Therefore, it can be seen that, the cot on the northern side of the body situates 50 cm away from the body, while the cot on the southern side of the body situates 87 cm away from the body. There is no other accessible furniture also, below the point of suspension. Since the body of the deceased stands suspended from the hook which is placed near the wall on the eastern end of the room, where there is a

distance of 137 cm between the two cots, it is evident that, from the top of those cots, from the place the said cots are found, the point of suspension will not be accessible to the deceased.

44. The explanation offered by the learned Senior counsel is that, the victim might have climbed over the cot, after placing the cot below the hook and that, after tying the knots on the hook as well as on the neck she might have kicked the cot away, so that she could jump down for hanging. However, the said argument does not appear to be sound or reasonable. A person while standing on the cot will not be able to move it to such an extent. If she tries to move the cot after jumping down for hanging, only her body will move away from the cot and not vice versa. Therefore, the only possibility is, there was intervention of somebody else in the hanging of the deceased. Since both the cots are positioned far away from the point of suspension, and there are no other articles present in the room to enable the deceased to have access to the point of suspension, the contention that the victim might have climbed over the cot to have access to the point of suspension cannot be believed. In the instant case, since both the cots are positioned far away from the point of suspension, the possibility of suicide can be ruled out.

45. WHETHER CONTENTS OF INQUEST REPORT RELIABLE?:

The learned senior counsel would argue that the contents of Ext. P12 inquest report cannot be relied upon, as the same was not reproduced in the deposition of PW28, who prepared the same. It is true that when PW28 was examined, he has only deposed that the report was prepared by him and that it bears his signature. The contents of the report in respect of what he had personally seen and perceived were not reproduced in his deposition, in detail. The learned Special Public Prosecutor would argue that the portion of the inquest report which relates to the record of what the investigating officer had seen with his own eyes can be relied upon, even though, it was not repeated in his oral evidence. In order to substantiate the above argument, the learned Public Prosecutor has relied upon the decision of a Division Bench of this Court in **Pookunju v. State of Kerala,** 1993 KHC 148 as well as the decision of the Hon'ble Supreme Court in **Rameshwar Dayal and Others v. State of U.P.,** (1978) 2 SCC 518.

46. In the decision in **Rameshwar Dayal** (supra), the Hon'ble Supreme Court while rejecting the argument that the statements made in the inquest report were inadmissible in evidence being hit by Section 162 Cr.P.C, held in paragraph 35 that :

".....In the first place, the statement made by the Investigating

Officer in Ex.Ka-10 is not a statement made by any witness before the police during investigation but it is a record of what the Investigating Officer himself observed and found. Such an evidence is the direct or the primary evidence in the case and is in the eye of law the best evidence. Unless the record is proved to be suspect and unreliable perfunctory or dishonest, there is no reason to disbelieve such a statement in the inquest report. "

47. In the decision in **Pookunju** (supra) in paragraph 18, the Division Bench held that :

"Inquest report would, in the ordinary course consist of three types of recitals. First category consists of the statements made by persons interrogated by the investigating officer during inquest. Second category consists of the opinions of the persons in whose presence the inquest was held. Third is the record of what the investigating officer had seen with his own eyes. The first category has no evidenciary value. Second category cannot be used as evidence on account of more than one inhibition, main among them is the bar contained in S.162 of the Code. But the third category is not subject to any such legal disability. We have not come across any legal hurdle against accepting them as admissible evidence. If the inquest report is proved under law, the recitals falling under the third category mentioned above are relevant under S.35 of the Evidence Act and are admissible in evidence even if the officer fails to repeat them in his oral evidence.

48. As per the above decision, even if the Officer who prepared the

inquest report, fails to repeat the recitals falling under the third category, which the Officer had seen with his own eyes, those recitals are relevant under Section 35 of the Evidence Act. In the above circumstance, there is nothing wrong in relying upon that part of Ext. P12 which PW28 personally seen or observed, while preparing the same.

49. IS IT POSSIBLE FOR ONE PERSON TO HANG ANOTHER?: It is common knowledge that, one person could not easily hang another living person, especially by suspending from a hook placed on the ceiling of a room, as in this case. If the victim is capable of resisting, it will be more difficult for the perpetrator to hang the victim. According to PW20, if the victim is intoxicated or made unconscious, she can be suspended by another person. Though it is revealed that the victim had consumed alcohol, he could not state whether it was sufficient to intoxicate her. Since the body was decomposed, blood sample was not available. Urine was also absent as her bladder was empty. He clarified that for the same quantity and volume of alcohol, females get intoxicated much earlier than males.

50. STAGE OF INTOXICATION: According to PW20, average percentage for intoxication for a person is 150mg alcohol per 100 ml. of blood. He also made it clear that, it may vary from person to person, from 80 mg. to

200 mg. per 100 ml blood. A person who is not used to alcohol may get intoxicated when the percentage of alcohol in his blood reaches 80 mg. But persons who are used to alcohol, may require up to 200 mg per 100 ml blood. According to him, for 1 ounce of brandy, there would be an increase of 25 mg percentage of alcohol in the blood.

51. CHANCES OF REMYA GETTING INTOXICATED: In Ext. P52 chemical examiner's report, the percentage of alcohol present in the blood of the deceased was not quantified. At the same time, it is revealed that there was smell of alcohol in the viscera of the deceased. In the above circumstances, the learned counsel would argue that in this case there is no evidence to prove that the deceased was in an intoxicated or unconscious state and therefore, the allegation of hanging by the accused will not stand. It is true that in this case there is no direct evidence to prove that the deceased was in intoxicated or unconscious state, before she was hanged. Since death of Remya is a homicide and she could have been hanged only if she was intoxicated or unconscious, presence of liquor bottle in the room and ethyl alcohol in her viscera persuades us to presume that she became intoxicated before she was hanged.

52. CHILD PRESENT IN THE ROOM WAS SECRETLY SENT TO PW1: Along with the deceased, her 1½ year old daughter born to the 1st accused

was also present in the room, at the time of the alleged incident. From the room, food articles, liquor, sweets, dry fruits etc., were recovered. From those articles, it can be seen that the deceased along with the child and the male person who was present along with them, after occupying that room in the evening on 20th January, 2010, had food and liquor, before the untoward incident occurred. The fact that at about 12.30 a.m. on 21.1.2010, the 1½ year old daughter of the deceased and the 1st accused was safely sent back to her parents by somebody, is not disputed. Nobody has seen anyone dropping the child at the courtyard of the house of the parents of the deceased. From the evidence of PWs1 to 3 it is revealed that at about 12.30 a.m. on 21.1.2010, the child was found crying at their courtyard.

53. From the evidence of PWs10 and 13, it is revealed that a child was also present along with the deceased in room No.204 when she came to the lodge on 20.1.2010 along with the male person. There is no dispute that it was the younger girl child of the deceased and 1st accused. Since the said child who was present in room No.204 was safely dropped by somebody at the parental home of the deceased at about 12.30 in the same night, it is evident that the male person who was present in room No.204 along with the deceased was one who was very much concerned about the safety and well-being of the child. If

the person who was present in room No.204 along with the deceased was a stranger having no interest in the safety and well-being of the child, he would never have dropped the child at the courtyard of the parental home of the deceased. Therefore, as argued by the learned Special Public Prosecutor, it is a circumstance leading to the conclusion that the person who was present along with the deceased in room No.204 is the father of the child, namely the 1st accused.

54. ENQUIRY ABOUT THE CHILD: PWs1 and 3 deposed that a few minutes after the younger child of the deceased was found in the courtyard of their house, the 1st accused telephoned them in their land phone and asked whether they received the child. From the above evidence of PWs1 and 3, it can be seen that after dropping the child in the courtyard of the house of PW1 and 3, the 1st accused wanted to ensure that the child reached the safe hands of PW1 and 3. The above evidence of PWs 1 and 3 to the effect that immediately after the child was dropped at the courtyard of their house, the 1st accused contacted them over the land phone and asked whether they received the child, was not challenged during the cross-examination. In the above circumstances, the evidence of PWs1 and 3 that after the child was found at the courtyard of their house, the 1st accused contacted them over land phone and enquired about

the child, is liable to be accepted. The above evidence of PWs 1 and 3 is another circumstance which substantiates the involvement of the 1st accused in the commission of the offence.

55. REMYA DIED BEFORE THE CHILD WAS SENT TO PW1: According to PW20, if it is assumed that the last meal of Remya was at 7.00 p.m., the time of her death was around 1.00 a.m. on 21.1.2010. Since the child, who was present in room number 204 of Everest lodge along with the deceased and 1st accused during the night on 20.1.2010, was found at the courtyard of the residence of PW1 at 12.30 a.m. on 21.1.2010, it is evident that it was the 1st accused who had taken the child from Everest lodge and dropped her there. It appears that, immediately thereafter, the 1st accused called PW1 and ensured that the child was taken care of by PW1. The reason why the 1st accused sent back the child alone to the residence of PW1 during that odd hours assumes much significance. It can only be because, at the time when the 1st accused dropped the child at the residence of PW1, he was aware that Remya was no more. The residence of PW1 is at Kattampally, whereas Everest lodge is at Payyannur. Therefore, it can be further presumed that the 1st accused left the lodge, with the child, after the death of Remya. If so, Remya might have died a little before 1 a.m., as opined by PW20. It is possible because, PW20 assumed

that Remya had her last meal at 7 p.m. to arrive at the conclusion that the time of death may be around 1 a.m. on 21.1.2010.

56. WRONG ADDRESS GIVEN BY A1 IN LODGE: Ext. P13 is the register maintained by CW1 in the Everest lodge. According to PW13, he saw the 1st accused making Ext. P13(a) entries relating to hiring room No.204, in that register. Since Ext. P13(a) entry made by the 1st accused in Ext. P13 register maintained by CW1 in the ordinary course of business, the said entry is relevant in the light of Section 32 of the Evidence Act. In Ext. P13(a), the address given by the 1st accused is Syamkumar, Amban House, Kattampalli, Kannur. Admittedly, it is not the correct address of the 1st accused. It was argued by the learned Special Public Prosecutor that the 1st accused has deliberately given such a false address in the lodge, in order to hide his identity and also that at the very beginning he had the intention to murder his wife. We have already seen that the above room was occupied by the 1st accused along with the deceased and their minor child. There was absolutely no justification for the 1st accused to give such a false address while taking room number 204 in Everest lodge, especially when he was there along with his wife and minor daughter. The above conduct of the 1st accused in giving false address in the lodge can only be with the deliberate intention to hide his identity. It also brings

to light the guilty mind of the 1st accused, which was in existence, even at the time when he reached the lodge. The conduct of the 1st accused in giving false address in the lodge immediately before the commission of the offence is also relevant, under section 8 of the Evidence Act.

57. ARREST OF A1 FROM DUBAI AND RECOVERY OF MO1: PW31 was the Circle Inspector, Payyannur, who along with PW30 went to Dubai airport on 7.1.2014 and arrested the 1st accused. He would swear that on 7.1.2014, he along with PW30 reached Dubai airport and at the airport, Dubai police officer, Shaheed Shameer handed over the 1st accused to him. Accordingly, he arrested the 1st accused at the airport and searched his body and prepared Ext. P39 seizure mahazar. At the time of search, MOs 28 to 34 items were seized in addition to MO1 thali from his purse. PWs1 and 2 identified MO1 as the Thali that belonged to the deceased Remya. We do not find any grounds to disbelieve the evidence of PWs1 and 2 that MO1 was the Thali of the deceased. The 1st accused has not offered any explanation for the presence of MO1 thali in his purse, when his body was searched by PW31, on 7.1.2014.

58. EVIDENCE OF PW14 AND PW15: PW14 is a car mechanic who is running a shop by name ‘S.Dot’ at Thottada, since the year 2006. Before opening the above workshop, he was working as mechanic in 'Shaji Motors'. He

would swear that while he was working in 'Shaji Motors', the 1st accused used to come in that workshop for repairing his car. According to him, the 1st accused again came there and met him, once for consulting him for purchasing a car and on another occasion for taking a car on 'rent a car' basis, saying that his car met with an accident. He would further depose that three days before the news regarding the death of the deceased came out, the 1st accused came to his workshop in an Alto car, along with a lady and a child, in search of a building on rental basis. Since there was no such building within his reach, he contacted his brother PW15, in the mobile phone of the 1st accused. Accordingly, PW15 came there and he along with the 1st accused discussed about taking a building on rent. He further claimed that, at that time, the 1st accused introduced the lady as well as the child present in the car as his wife and child.

59. PW15 also adduced evidence almost in tune with the evidence of PW14. He also claimed that he had seen the lady and child in the Alto car in which the 1st accused came in the workshop of PW14 and also that the 1st accused introduced that lady as his wife. However, in the 161 Cr.P.C statement given by PWs 14 and 15, there is no statement to the effect that the 1st accused introduced the lady present inside the car as his wife. Similarly, in the evidence of PW14, regarding the period in which he worked in Shaji Motors, there was

an insignificant contradiction, which was marked as Ext. D5. However, with respect to the reaming evidence of PWs14 and 15 that on 19.1.2010, the accused came in an Alto car along with a lady and a child in the workshop of PW14, remains unchallenged. Therefore, from the above evidence of PWs14 and 15 it can be safely concluded that on 19.1.2010 the 1st accused travelled in an Alto car, along with a lady and a child.

60. EVIDENCE OF PW10 AND PW13: Much reliance was placed by the learned Special Public Prosecutor in the evidence of PWs 10 and 13 to prove that it was the 1st accused who stayed in room No.204 along with the deceased as well as the child. PW10 is the Security of Everest lodge, Payyannur. He would swear that on 20.1.2010 at about 3.30 p.m., the 1st accused came in a white car, with a lady and a child, in search of a room. He asked whether any rooms are available in that lodge. He told the 1st accused that, in order to know about the vacancy of room he has to contact the Manager. At that time, the 1st accused asked whether he could park his car in front of the lodge. He told the 1st accused that he could park his car there only for ten minutes and thereafter, it is to be parked in the nearby Gandhi park. After going inside the lodge along with the lady and child, the 1st accused came out, took his car from there for parking it outside. On 22.1.2010 the body of the above

lady was found hanging inside the above room. At the time of evidence, PW10 correctly identified the 1st accused as the person who came to Everest lodge and stayed in room No.204 along with the deceased and the child.

61. During the cross-examination, PW10 clarified that he had no prior acquaintance with the 1st accused. In the above circumstance, the learned Senior counsel would argue that in the absence of any test identification parade, the identification made by PW10 for the first time before the Court after the incident in the year 2010 is not reliable and trustworthy. On the other hand, the learned Special Public Prosecutor would argue that there was enough time for PW10 to see and remember the 1st accused and hence, according to her, there is no ground for discarding the identification made by PW10 before the court.

62. The law is well settled that, if the witnesses had sufficient opportunity to see and know the features of the accused, failure of the investigating agency in conducting test identification parade is not fatal (**Manikuttan @ Sajay and others v. State of Kerala**, 2012 KHC 699). From the evidence of PW10, it is revealed that he had sufficient opportunity to see and know the features of the accused, and hence, in the facts of this case, failure in conducting test identification parade is not fatal.

63. WHY NO T.I. PARADE?: When PW31 was asked as to why no

test identification parade was conducted, he clarified that immediately after the arrest of the 1st accused, his photographs appeared in dailies and it was in the above context, no test identification parade was conducted. The above explanation offered by PW31 for not conducting the test identification parade of the 1st accused, is a reasonable and believable one.

64. During the cross-examination, PW10 deposed that after the accused was arrested, the police brought the accused before him and at that time he identified the 1st accused. He would also depose that, before bringing the accused, the police showed him the photograph of the 1st accused and got it identified by him. According to him, the said photograph was shown to him by the police about three years after the incident.

65. EFFECT OF SHOWING PHOTOGRAPH OF A1 TO WITNESSES: An argument was advanced by the learned Senior counsel that during the course of the investigation, the Investigating Officer has shown the photograph of the 1st accused to PWs 10 and 13 and therefore, subsequent identification of the 1st accused made by PWs13 and 14 before the Court, cannot be relied upon. It is to be noted that the deceased was found hanging in room No.204 of Everest lodge on 22.1.2010. On the very same day, the 1st accused absconded to Dubai from Mangalore airport. Thereafter, the

prosecution did not get the presence of the 1st accused, till he was finally extradited from Dubai and brought to India on 7.1.2014. In the meantime, he was inaccessible to the prosecution. In the above circumstance, the only option available to the prosecution was to show his photograph to the witnesses to check whether the investigation is in the right direction. In the above circumstances, we do not find anything wrong on the part of the investigating agency in showing the photograph of the 1st accused to PWs10 and 13 to ascertain whether he was the person who was staying along with the deceased in room No.204 of Everest lodge on 20.1.2010.

66. In the decision in **Gopalakrishnan v. Sadanand Naik, 2004 KHC 1195,** the Hon'ble Apex Court also held that showing photographs of the accused by the investigating agency to the witnesses to ensure whether the investigation is going on the correct direction, is permissible. At the same time the Court further warns that, if the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance. In paragraph 7, the Apex Court held as follows:-

> *"7. There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the*

> *right direction. But in the instant case, it appears that the investigating officer procured the album containing the photographs with the names written underneath and showed this album to the eye witnesses and recorded their statements under S.161 Cr. P.C. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants. During the course of the investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance."*

67. In the instant case, the 1st accused absconded immediately after the commission of the offence, to Dubai and he was not available for identification, till he was extradited to India. Therefore, the conduct of the Investigating Officer in showing his photograph to the witnesses to ensure that the investigation is going on in the right direction cannot be found fault with.

68. PW13 was working as helper in Everest lodge. He would swear that on 20.1.2010 at about 3.30 p.m. the 1st accused came there in search of a room. At first, he wanted to see the room. Accordingly, he had taken the 1st accused to room No.204, and showed the said room to him. After keeping his

wife at the reception, he went out for parking his car. Thereafter the 1st accused came back and made necessary entries in the ledger maintained in the office, as Shyamkumar. He identified Ext. P13 as the above register and Ext. P13(a) as the relevant entry made by the 1st accused in that register. During the cross-examination PW13 admitted that at the time of writing he had not seen it's contents, as it was made in the presence of the Manager, CW1. However, he had seen the 1st accused writing that entry and after the incident he verified its contents. PW13 being only a helper, his evidence in that respect looks quite natural and believable. Further according to PW13, thereafter the 1st accused along with the deceased and the child stayed in room No.204. Then, on 22.1.2010 the body of that lady was found hanging from a hook in the ceiling of that room. Thereafter, the police came to the lodge and seized Ext. P13 register. He also admitted his signature in Ext. P14 mahazar prepared in that respect as well as in Ext. P11 scene mahazar. Before the court, PW13 correctly identified the 1st accused as the person who came along with the deceased and resided in room No.204 in the said lodge.

69. During the cross-examination, PW13 clarified that two days after the alleged incident, the police questioned him and showed the photograph of the 1st accused and at that time, he identified the 1st accused by seeing the

photograph. He also deposed that, thereafter the photograph of the 1st accused came in newspapers also. It is true that during the cross-examination, PW13 deposed that he had no prior acquaintance with the 1st accused and that for the first time he was seeing him on 20.1.2010 when he came in search of a room in that lodge. However, the evidence of PW13 that, two days after the incident, PW28, the Sub Inspector came there and shown the photograph of the 1st accused to him and he identified the 1st accused in that photograph, remains unchallenged. Since the 1st accused absconded immediately after the incident, there was no other option for the police, to ensure that the investigation was going on in the right direction. He also deposed that after the 1st accused was arrested, the Investigating Officer brought him to the lodge and at that time, he again identified the 1st accused. In the above circumstances, the identification of the 1st accused before the Court by PW13 could not be disbelieved. Since PW13 had seen the photograph of the 1st accused two days after the incident and identified the 1st accused in that photograph and thereafter when the 1st accused was arrested and brought before the lodge, again he identified the 1st accused, the identification of the 1st accused by PW13 before the Court can only be believed. Therefore, from the evidence of PW13, it can be safely concluded that it was the 1st accused who stayed in room No.204 along with the deceased and

her child on 20.1.2010.

70. FAILURE TO SUPPLY STATEMENTS RECORDED BY PW28: The learned Senior counsel would argue that PW28, the Sub Inspector, recorded the 161 Cr.P.C statement of PWs1 to 4 also, in addition to that of PWs10 and 13 and that failure of the prosecution to supply the copies of those statements, seriously prejudiced the appellant. Therefore, it was argued that, the evidence of PWs10 and 13 could not be relied upon. He has relied upon the decision of a Single Bench of this Court in **State of Kerala v. Raghavan Alias Maniyan,** 1974 KHC 48 in support of the above argument.

71. In the above decision, the revision petitioners filed an application before the trial court for issuing the copy of the statements recorded from one of the witnesses by the Circle Inspector of police during the course of investigation. The application was opposed by the State on the ground that the prosecution did not propose to rely on that statements and contended that therefore, the accused were not entitled to get a copy of the same. However, the learned Sessions Judge allowed the application and the said order was upheld by the learned Single Judge.

72. During the examination of PWs 28 and 39, it is revealed that PW28 has recorded the statements of only PWs1, 3 and 4 and not that of PWs2,

10 and 13. When the learned Senior counsel asserted that PW28 has recorded the statements of PWs2, 10 and 13 also, we have decided to call for the case diary (CD) and to peruse the same by invoking the power under Section 172 Cr.P.C. On perusal of the above CD, it is revealed that PW28 has recorded the 161 Cr.P.C statement of PWs1, 3 and 4 alone and not recorded the statements of PWs2, 10 and 13.

73. It is true that the prosecution has not supplied the copy of the statements of PWs1, 3 and 4 recorded by PW28, to the accused persons. The explanation given by PWs28 and 39 for not furnishing copies of those statements to the accused and for not producing the same along with the final report is that the statement given by those witnesses to PW28 was similar to that given to PW39.

74. On perusal of the statements given by those witnesses to PW28 along with that given by them to PW39, it is seen that the statement given by them to PW39 is slightly different from the one given to PW28. As noticed above, originally, the crime was registered under Section 174 Cr.P.C as a case of unnatural death and only after the elapse of about one month, the offence under Section 302 IPC was added in the crime. Thereafter, the investigation of the case was taken over by PW39. As deposed by PWs28 and 39, the same

statement given by PWs 1, 3 and 4 to PWs 28 was given to PW39 also. However, there is one discrepancy in them. In the statement given by PW4 to PW28, he claimed that at about 8 p.m. on 16.1.2010 the 1st accused came in a white car, went inside the house of Remya and about 15 minutes thereafter he went along with Remya and child in that car and that, at about 10 p.m. when PWs1 and 3 came, he told them as above. PWs1 and 3 in their statement given to PW28 also stated that, PW4 told them that, the 1st accused came in a car, and took Remya and the child along with him in that car. In the statement given to PW39, PW4 states only to the effect that he saw a slate colour car in front of his house and not seen anybody in the car. In the statement given by PWs1 and 3 to PW39 also there was corresponding change. There are no other major discrepancies in the statements given by PWs1,3 and 4 to PW28 and 39. Therefore, it can be seen that it was PW4 who mislead PWs1 and 3 and that is why there occurred such a change in the statement given by them to PW39. In the above circumstance, we hold that the evidence of PW4 is not reliable. However, for that reason alone, the remaining evidence of PWs1 and 3 could not be disbelieved or discarded.

75. In the above circumstances, in the facts of this case we further hold that the failure of the prosecution to produce the statements given by PWs1, 3

and 4 to PW28 along with the final report and also failure to supply the copies of those statements to the accused persons will not in any way cause prejudice to them and as such, merely on that ground, the prosecution case could not be thrown out.

76. When PW28 was examined before the Court, he denied the suggestion that he has recorded the statements of PWs10 and 13. He admitted that he had questioned PWs10 and 13, but he denied the suggestion that he had recorded their statements. At the time of evidence, PWs10 and 13 also admitted that they were questioned by PW28 but they have not stated that their statements were recorded by PW28. In this context, it is also to be noted that, at first PW28 has registered the crime under Section 174 Cr.P.C, as a case of unnatural death only. Later on, the offence under Section 498-A IPC was included against accused persons 1 to 3. It was about one month after the incident, the offence under Section 302 IPC was included. Thereafter, the investigation was taken over by PW39, the Circle Inspector Kunnamkulam, and then he had recorded the statements of these witnesses. We have perused the case diary and convinced that the statements of PW10 and 13 were not recorded by PW28. Therefore, we believe the testimony of PW28 that he has not recorded the statement of PWs10 and 13 and hold that there are no grounds to

disbelieve the testimonies of PWs10 and 13.

77. The evidence of PW10 identifying the 1st accused as the person who came in room No.204 and stayed there along with the deceased and the child corroborates the evidence of PW13 in that respect. The evidence of PWs14 and 15 that they have seen the accused along with a woman and child on 19.1.2010 at the workshop of PW14 also corroborates the evidence of PWs10 and 13 that it was the deceased and her child, who were travelling along with the 1st accused in his car. In other words, from the evidence of PWs 10, 13, 14 and 15, it can be safely concluded that it was the 1st accused who stayed along with the deceased in room No.204 of Everest lodge on 20.1.2010. In short, it is evident that Remya died inside room number 204 of Everest lodge, when the 1st accused along with the child were also present in that room. Therefore, the 1st accused owes an explanation as to how his wife died inside the room in which he was also present.

78. NON-PRODUCTION OF CDR: As per the prosecution case, on 19th, 20th and as well as on 21st of January, 2010, the 1st accused as well as the deceased contacted PWs1 and 3 over telephone. PW4 also deposed that when such a call was made in the mobile phone of PW1, he came to his residence and at that time the 1st accused introduced himself and talked about the deceased.

However, the 1st accused stoutly denied having made any such telephone call to PWs1 and 4. The prosecution could have proved those telephone calls by producing the CDR of those phones. Without offering any satisfactory explanation, the prosecution has not produced the call details of those phones. Therefore, the evidence of PWs1, 3 and 4 regarding those telephone calls could not be believed.

79. FINGER PRINT: At the time of evidence, it is revealed that in the place of occurrence, there was a glass and a liquor bottle, from which a few chance finger prints were detected by the finger print expert. It is true that those chance prints were not sent for examination and no expert report was called for in that respect. The above fact was highlighted by the learned Senior counsel as a circumstance to disbelieve the prosecution case. It is true that the prosecution has not given any satisfactory explanation for not examining those chance finger prints with the help of a finger print expert. In a given factual situation, the above circumstance may be relevant. However, in the instant case, from the evidence of PWs10 and 13, the prosecution has succeeded in proving that it was the 1st accused who stayed in room number 204 of Everest lodge along with the deceased and their child during the night on 20.1.2010. In the above circumstances, failure of the prosecution to examine the chance prints available

in the glass as well as the liquor bottle seized from room No.204 is of no consequence. Therefore, solely because of the above defective investigation, the prosecution case could not be thrown away.

80. DEFECTIVE INVESTIGATION: The learned Special Public Prosecutor would argue that defective investigation by itself is not a ground for rejecting the prosecution case. In support of the above argument, the learned Special Public Prosecutor has relied upon the decision of the Hon'ble Supreme Court in **State of Karnataka v. K.Yarappa Reddy, (1999) 8 SCC 715,** and **State of W.B. v. Mir Mohammad Omar and Others, (2000) 8 SCC 382**. In **Yarappa Reddy** (supra) in paragraph 19, the Hon'ble Supreme Court held:

> *"The conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well nigh settled that even if the investigation is illegal or even suspicious the rest of evidence must be scrutinized independently of the impact of it. Otherwise criminal trial will plummet to that level of the investigating officers ruling the roost. The Court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made the casually for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit investigating officer's suspicious role in the case. "*

81. In paragraph 41 of **Mir Mohammad Omar** (supra), the Apex Court held that :-

> *".....In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. ..."*

82. From the evidence on record and from the materials found in room number 204 in Everest lodge, it can be seen that, the 1st accused after returning from Dubai, took the deceased and the child in his car to various places and thereafter, took them to room No.204 in Everest lodge in the evening on 20.1.2010. Thereafter, he brought food items like paratha, chocolate, dates etc. and had food with his wife and child, like a responsible husband and father. He also brought liquor and might have drank the same along with his wife. Nobody heard any sound from that room during the night, and there was no violence, use of force or even quarrel between the deceased and the 1st accused. Since the child also has not made any noise, it is to be presumed that the child was

sleeping during the night, when the untoward incident occurred. Since the deceased was found naked, and her under garments and clothes were found lying in the room, the only presumption that can be arrived at is that, after the child slept, the 1st accused might have caused the deceased to drink liquor and share some intimate moments with him. At the same time, since it is revealed from the evidence of PW20 that human spermatozoa was not detected in the vaginal swab and smear collected from the deceased, it is evident that there was no physical relationship between them on that day.

83. MOTIVE: From the evidence of PWs1 to 3 it is revealed that the 1st accused had suspicion in the chastity of Remya and dispute in the paternity of the elder son. When PW17, the Circle Inspector, Vanitha Cell, Kannur, was examined, she deposed that on the basis of Ext. P1 complaint given by Remya, notice was issued to the respondents who are the accused persons 1 to 3 in this case to appear on 16.11.2009 and that on 16.11.2009 Remya as well as the accused persons 2 and 3 appeared before her. After negotiations, they arrived at Ext. P2(a) settlement whereby the accused persons 2 and 3 agreed to persuade the 1st accused to pay monthly maintenance @ Rs.3000/- to Remya. As per Ext. P2(a), the 3rd respondent therein (the 2nd accused) agreed to pay maintenance for the current month by himself to Remya. PW17 would further swear that the

accused persons have not complied Ext. P2(a) settlement and hence, Remya again approached her. Accordingly, notice was again issued to the respondents to appear before the Women's Cell on 11.1.2010 and accordingly Remya as well as the accused persons 2 and 3 again came to her office on 11.1.2010. Ext. P21 is the copy of the acknowledgement signed by the 3rd accused in respect of the notice for appearance on 11.1.2010. According to PW17, on that day, respondents 2 and 3 disputed their liability on the ground that maintenance to Remya is to be paid by her husband, namely the 1st accused.

84. PW17 would further swear that, when the attempt for amicable settlement of the dispute failed, she suggested to Remya that in the above circumstance, criminal case can be registered against the 1st accused. However, the said suggestion was declined by Remya saying that she was very much fond of her husband. According to PW17, thereafter, she had contacted the 1st accused, who was in Gulf, over telephone and at that time, he told her that he is about to return home, that he has something to tell PW17 and also that Remya is of bad character. In this context, it is to be noted that the above discussions were held at the office of PW17 on 11.1.2010, while as per the evidence of PWs34 and 35, the 1st accused returned home immediately thereafter, on 15.1.2010.

85. EXPLANATION TO INCRIMINATING CIRCUMSTANCES: Regarding the liability of the accused to explain the incriminating circumstances put to him during the examination under Section 313 Cr.P.C, the Hon'ble Supreme Court, in the decision in **Dr. Sunil Clifford Daniel v. State of Punjab,** (2012 KHC 4501) held in paragraph 37 and 38 as follows:

> *"37. It is obligatory on the part of the accused while being examined under S.313 Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence, to decide as to whether or not, the chain of circumstances is complete. The aforesaid judgment has been approved and followed in Musheer Khan v. State of Madhya Pradesh, 2010 (2) SCC 748. (See also: The Transport Commissioner, A.P., Hyderabad & Anr. v. S. Sardar Ali and Others, AIR 1983 SC 1225).*
>
> *39. This Court in State of Maharashtra v. Suresh, 2000 (1) SCC 471, held that, when the attention of the accused is drawn to such circumstances that inculpate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. We may hasten to add that we have referred to the said decision, only to highlight the fact that the accused has not given any explanation whatsoever, as regards the incriminating circumstances put to him under S.313 Cr.P.C."*

86. Though during the examination of the 1st accused under Section 313 Cr.P.C, he claimed that his date of birth is 27.6.1974 and in order to prove the same, he had agreed to produce his SSLC book, no such certificate was produced by him. The above conduct of the 1st accused will also go to show that his date of birth is not 27.6.1974 as claimed, but 31.5.1975, as seen in Exts. P48 and 49 and that the answer given by him, during the examination under Section 313 Cr.P.C, to the contrary is false.

87. LAST SEEN TOGETHER: As we have already noted above, on 20.1.2010, the 1st accused along with the deceased and their minor, went to Everest lodge, Payyannur and stayed in room number 204 therein. Thereafter, on 22.1.2010, the deceased was found dead by hanging on a hook placed on the ceiling and the accused as well as the child were absent in the room. Since the deceased was found hanging from a hook inside the room where the 1st accused alone was present in addition to their minor child, it is the burden of the accused to explain as to what happened to his wife and how she died. It is something within the exclusive knowledge of the 1st accused, which the prosecution could not prove otherwise.

88. In the decision in **Trimukh Maroti Kirkan v. State of Maharashtra (2006 KHC 1469),** regarding the application of the last seen

theory, the Apex Court in paragraph 17 held as follows:

> *"Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes placed in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. ……. In Ganeshlal v. State of Maharashtra (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr.Ravindra Prakash Mittal AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances*

was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC…."

89. In the decision in **Anees v. State Govt. of NCT, AIR 2024 SC 2297,** with regard to the applicability of Section 106 of the Evidence Act, in paragraph 36, the Hon'ble Supreme Court held that:

"S.106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. S.101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and S.106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

90. In paragraph 45, the Apex Court further held that:

> *"S.106 of the Evidence Act obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him..."*

91. If the offence takes place inside the privacy of a house where the assailant has all the opportunity to plan and commit the offence at the time and circumstances of his choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle and circumstantial evidence is insisted upon by the courts. The law does not enjoy the duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty of the prosecution is to lead such evidence which is capable of leading, having regard to the facts and circumstances of the case (see **Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681**).

92. In paragraph 17 in **Trimukh Maroti Kirkan**(supra), the Hon'ble

Apex Court held that:

> *"Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes placed in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."*

93. Here, the 1st accused has not only offered any explanation in that respect, but he has even absconded from India. His stand was that he was not at all present in India during the relevant period and that he was in UAE, which is his place of employment, during the relevant period. As we have already noted above, from the evidence of PWs34 and 35 and from Exts. P48 to 51, it is revealed that the above contention taken by the 1st accused is absolutely false. On the other hand, from their evidence it is revealed that on 15.1.2010, the 1st accused arrived in India at Karipur airport and thereafter, he left India only on 22.1.2010 from Mangalore airport. He has not only suppressed his arrival in India on 15.1.2010 and his departure from India on 22.1.2010 but also has not even produced his passport before the Court. The reason why the 1st accused secretly arrived in India on 15.1.2010 and thereafter, all on a sudden, left India

from Mangalore on 22.1.2010, the date on which the news about the death of his wife came in public domain, assumes much significance in this context. Since it is revealed that when the deceased breathed her last, the 1st accused was present along with her inside the room in Everest lodge, he is bound to explain as to how his wife happened to die by hanging from a hook on the ceiling of that room. We have already found that it is not a case of suicide but a homicide. Since the accused has not offered any explanation for the death of his wife in his presence inside room No.204, an adverse inference is liable to be drawn against him.

94. The law of circumstantial evidence is well settled. The most fundamental and basic decision relating to the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone is, **Hanumant Govind, Nargundkar and Another v. State of M.P.**, AIR 1952 SC 343. In the above decision, a three Judges Bench of the Apex Court held in paragraph 10 thus:

> *"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a*

conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

95. The five golden principles (styled as panchasheel) relating to circumstantial evidence consistently followed in subsequent decisions is, **Sharad Birdhichand Sardar v. State of Maharashtra,** 1984 (4) SCC 116. In the said decision, the Apex Court after analysing various decisions including **Hanumant Govind** (supra), in paragraph 153 held that:

"A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the

mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

96. From the above evidence, the prosecution has brought out the following circumstances against the 1st accused.

a) He had suspicion in the chastity of his wife Remya and dispute in the paternity of the elder son.

b) His matrimonial discord with Remya resulted in Ext. P1 complaint before the Women Cell, Kannur, on 19.10.2009.

c) Ext. P2(a) settlement arrived at before the Women Cell was violated by the accused on 11.1.2010.

d) On 15.1.2010, the 1st accused landed at Karipur airport, secretly.

e) He picked Remya and the younger daughter from her house, in his car, without the knowledge of her parents and other relatives.

f) In the evening on 20.1.2010, he took Remya and the child to Everest lodge, Payyannur and stayed in room No.204.

g) In Everest lodge, he had given incorrect name and address.

h) In room No.204, Remya, had food, liquor etc., along with him.

i) On 22.1.2010, the body of Remya was found hanging from the hook placed on the ceiling of room No.204.

j) Examination of the viscera proved presence of ethyl alcohol.

k) Remya's body was nude, except that there was a loin cloth.

l) PW20 certified that it is a case of antemortem hanging.

m) At 12.30 a.m. on 21.1.2010, he secretly sent the child to PW1.

n) Thereafter, he called PW1 in land phone and ensured the safety of the child.

o) On 22.1.2010, he secretly escaped to Dubai from Mangalore Airport.

p) He deliberately suppressed his passport from being produced before the Court.

q) His attempt to prove the defence of alibi failed.

r) He has not offered any explanation with regard to the death of his wife inside room No.204, in his presence.

s) On 7.1.2014, PW31 arrested him from Dubai, after extradition.

t) On his body search, MO1 thali, which was in the possession of Remya, was seized by PW31.

u) Remya was last seen alive, along with the 1st accused.

97. The above circumstances, brought out in the evidence adduced by the prosecution when taken together, forms a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and at the same time, beyond any reasonable doubt shows that, in all human probability, the act of commission of the murder of his wife Remya, must have been done by the 1st accused and not by anybody else.

98. The 1st accused hanged his loving wife to death due to suspicion, using a shawl by suspending her from a hook on the ceiling of room No.204 in Everest lodge. Therefore, it is evident that he had committed the aforesaid act with the intention to cause her death, which is culpable homicide amounting to murder punishable under Section 302 IPC. In the above circumstances, the trial court was perfectly justified in finding the accused guilty of the offence punishable under Sections 302 IPC and convicting him thereunder. Point No.2

is answered accordingly.

99. POINT NO.3 – OFFENCE UNDER S.201 IPC:- In order to find the 1st accused guilty of the offence under Section 201 IPC, the trial court has considered the fact that room No.204 in Everest lodge was bolted from outside and also that he had given wrong address in the lodge. It is true that in the FI statement, CW1, the Manager of the lodge has stated that in the morning on 22.1.2010, when he walked through the verandah of the lodge, he saw that room No.204 was locked from outside, using bolt. In the afternoon also the room was seen bolted from outside. It was in the above context that, he removed the bolt, opened the door and found the deceased hanging from a hook in the ceiling. However, CW1 could not be examined in this case, as at the time of evidence, he became incapable of giving evidence on account of his ailments. In the above circumstance, Ext. P29 FI statement stands not proved. The other witnesses namely PWs 10 and 13 have only hearsay knowledge in that respect, from CW1. In short, in this case there is no reliable evidence to prove that room No.204 in Everest lodge was locked from outside, after the commission of the offence.

100. Section 201 of IPC relating to causing disappearance of evidence of offence, or giving false information to screen offender states that:

> *"Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false"*

101. On a perusal of the above provision, it can be seen that in order to attract the offence under Section 201 IPC, the prosecution has to prove that the accused has caused disappearance of evidence of the commission of the offence, with the intention of screening the offender from legal punishment or with that intention gives any information respecting the offence which he knows or believes to be false. In the instant case, it is true that in Ext. P13 register, the 1st accused had given wrong name, address and phone number. However, the above information was furnished by the 1st accused, before the commission of the offence. In the above circumstances, it is to be held that wrong information furnished by the 1st accused before CW1 will not amount to causing disappearance of evidence with the intention of screening offender from legal punishment or giving any information in respect of the offence which he knows or believes to be false. In other words, in this case, the prosecution could not succeed in proving the offence under Section 201 IPC against the 1st accused. Therefore, the conviction of the 1st accused under

Section 201 IPC is liable to be set aside and he is liable to be acquitted of the offence under Section 201. Point No.3 answered accordingly.

102. CONCLUSION: In the light of the above discussions, Crl.Appeal 755/2017 is liable to be allowed and the appellant therein namely, the 3rd accused is liable to be acquitted of the offence under Section 498-A IPC. Crl.Appeal 1193/2017 is liable to be allowed in part and the appellant therein namely, the 1st accused is liable to be acquitted of the offence under Sections 498-A and 201 IPC, while the conviction against him under Section 302 of IPC is liable to be sustained. The trial court has granted only the minimum punishment of imprisonment for life for the offence under Section 302 IPC in addition to fine and as such, the punishment under Section 302 IPC is also liable to be sustained. Point No. 4 answered accordingly.

103. In the result, Crl.Appeal 755/2017 is allowed. The appellant therein, namely the 3rd accused is acquitted of the offence under Section 498-A IPC, under Section 386(b)(i) of Cr.P.C. She is set at liberty, cancelling her bail bond.

In the result, Crl.Appeal 1193/2017 is allowed in part as follows :

The conviction rendered and the sentence imposed on the appellant under

Section 302 IPC is sustained. The appellant is acquitted of the offences under Section 498-A and 201 IPC, under Section 386(b)(i) Cr.P.C.

Sd/-

P.B.Suresh Kumar, Judge

Sd/-

C.Pratheep Kumar, Judge

Mrcs/sou/22.11.