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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DINESH MAHESHWARI; J., BELA M. TRIVEDI; J.
CRIMINAL APPEAL NO. 762 OF 2012; FEBRUARY 22, 2023
VAHITHA *versus* **STATE OF TAMIL NADU**

Indian Penal Code, 1860; Section 302 - Murder Trial -when there is concurrent findings of fact by the Trial Court and the High Court, the Apex Court ought not to re-appreciate the evidence to examine the correctness of such findings of fact, unless there is manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence - Conviction and sentence of mother for killing her 5-year old child upheld.

For Appellant(s) Mr. Chanchal Kumar Ganguli, AOR Ms. Simran Singh, Adv.

For Respondent(s) Dr. Joseph Aristotle S., AOR Mr. Shobhit Dwivedi, Adv. Ms. Vaidehi Rastogi, Adv.

J U D G M E N T

DINESH MAHESHWARI, J.

1. This appeal by special leave is directed against the judgment and order dated 09.03.2010 in Criminal Appeal No. 1 of 2010, whereby the High Court of Judicature at Madras has dismissed the appeal against the judgment of conviction and order of sentence dated 15.10.2009, as passed by the Sessions Judge, Mahila Court, Perambalur in Sessions Case No. 9 of 2008, holding the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860[1] and awarding her the punishment of imprisonment for life and fine of Rs. 2,000/- with default stipulations.

2. In a brief outline, it could be noticed that in this case, the appellant has been convicted of the offence of murder of her five-year-old child in the house of her mother-in-law at Perambalur in the morning of 21.06.2007. According to the prosecution case, the appellant's husband was living abroad for earning livelihood and the appellant was mostly living with her father at Kolakkudi. However, on being forced to live with her mother-inlaw for the purpose of upbringing and education of the child, she found the child to be an obstacle in her desire to live separate and hence, strangulated the child to death when her mother-in-law had gone out of the house. It was alleged that the appellant was last seen with the child and after having killed the child, when her mother-in-law and other witnesses reached the scene of crime, she ran away and was apprehended in the late afternoon at Perambalur New Bus Stand. As per the post-mortem report, the cause of death of the child was asphyxia because of strangulation. In the trial, all but one prosecution witnesses supported the accusations against the appellant. Only the father of the appellant deposed to the contrary and asserted that at the relevant point of time, the appellant was with him at Kolakkudi and he accompanied her to Perambalur after receiving information about death of the child. After appreciation of evidence, the Trial Court, in its judgment dated 15.10.2009, rejected the plea of alibi taken on behalf of the accused-appellant and held proved that the victim child died of asphyxia because of strangulation and was last seen alive with the appellant, who failed to explain the circumstances in which the child died. Hence, the appellant was convicted of the offence punishable under Section 302 IPC and was sentenced accordingly. In appeal, the High

[1] 'IPC', for short.

Court concurred with the findings of the Trial Court while holding that the ingredients establishing culpability of the appellant were clearly established on record.

2.1. In this appeal, the concurrent findings of the two Courts have been questioned essentially with reference to certain discrepancies in the version of the prosecution witnesses and on the ground that the prosecution has failed to establish a chain of cogent circumstances which could lead to the only hypothesis that the appellant had killed her own child. These submissions have been countered with reference to the evidence of the prosecution and findings of the two Courts.

3. Having regard to the submissions made and the questions arising for determination, we may take note of the relevant factual and background aspects as follows:

3.1. In this case, the First Information Report[2], bearing No. 328 of 2007 was registered at Perambalur Police Station at around 9.00 a.m. on 21.06.2007 on the information furnished by PW-1 Basheera, mother-in-law of the appellant, about killing of the victim child by her own mother, that is, the appellant. The relevant contents of the FIR, said to have been scribed by PW-10 Subbulakshmi, SI, Perambalur, read as under:[3] -

"…As my grand daughter is 5 years old, my son had spoken from Riyat to Kolakkudi and said that she has to go to Perambalur and stay in my house and educate the child. Hence, Vahida was brought by her father on 18.6.07 along with grand daughter Farhana and dropped in my house at Perambalur. For two days after her arrival she did not properly have the food and also did not speak to me properly and my daughter-in-law Vahida picked up quarrel with me and was telling me that she is going to Kolakkudi. As I had warned her not to go to Kolakkudi, she was telling that only because of this child, I could not live peacefully. My husband is suspecting me. You are also not allowing me to go to Kolakkudi. Only if I finish off this child, I shall live peacefully. I, my daughter Mumtaz, my 2nd daughter-in-law Asha, and the Kamala, my neighbour together had warned her on the night of 20.6.2007. On 21.06.2007 at about 8.00 A.M. I said that I will go and get idli for the child. She said that I could not educate my child here and she wanted to go to Kolakkudi. Hence, there was a quarrel picked up between me and my daughter-in-law Vaheetha. I told her let us see and went to get the idli. By that time, my daughter Mumtaz and my daughter-in-law Asha came to see me. I being left the home for buying idli without taking money went along with them came to house to take the money. By that time my daughter-in-law Vaheetha, was tying the neck of my grand daughter Farhana who is aged five years with the outer end of a saree (mundanai) portion of her saree and was holding it tight. After seeing this I shouted why are you killing my grandchild. Besides, holding my grandchild's neck with the saree and killing her, she had pushed us and ran away through the entrance. The neighbours Kamala and Jayaraman came running there, after hearing my scream. I touched the child. She was dead…"

3.2. After registration of the FIR (Ex.P10), PW-12 Thiru G. Ayyanar, the first Investigating Officer[4] reached the place of occurrence, photographs of the dead body (Ex. P11) were taken; the rough sketch (Ex. P12) and inquest report (Ex. P13) were prepared; and the dead body was sent for post-mortem examination. As per the post-mortem report (Ex. P5), there was a wound around the neck of the victim child measuring 20 cm in length and 2 cm in breadth; and victim died due to asphyxia because of strangulation.

3.3. According to the first IO, PW-12 Thiru G. Ayyanar, the appellant was arrested at about 5.00 p.m. near a ladies washroom at the Perambalur New Bus Stand, i.e., approximately nine hours after the occurrence. It was alleged that after her arrest, the appellant identified the saree by which the child was strangulated; that the saree allegedly carrying blood-stains was seized in the presence of attesting witnesses; and that following

[2] 'FIR', for short.

[3] The extractions in this judgment are from the translated copies placed on record.

[4] 'IO', for short.

her arrest, the appellant made a confessional statement that was recorded by PW-12 in the presence of witnesses. Later on, the investigation was taken over by PW-14 D. Sivasubramanian, who filed the charge-sheet for the offence under Section 302 IPC against the appellant. After committal, and upon denial of charge by the appellant, the case was tried as Sessions Case No. 9 of 2008 by the Sessions Judge, Mahila Court, Perambalur.

4. In trial, a total of fourteen witnesses were examined by the prosecution. The first witness PW-1 Basheera, mother-in-law of the appellant and the informant, was examined as the key witness related with the occurrence. Four other witnesses, PW-2 Mumtaz, daughter of PW-1; PW-3 Asha Begum, other daughter-in-law of PW-1; PW-4 Sharfunisha, landlord of PW-1; and PW-5 Thiru-Jothi, neighbour of PW-1 were claimed to be the witnesses who reached the scene of crime immediately after the occurrence. PW-8 Dr. Saravanan and PW-13 Dr. Karthikeyan A. testified respectively to the post-mortem report and the report with respect to the thyroid cartilage bone of the victim child. PW-9 Devaraj, Village Administrative Officer and PW-7 Sadiq Ali were examined as attesting witnesses related with the process of investigation. PW-10 Subbulakshmi had recorded the statement of PW-1 and scribed the FIR whereas PW-11 Mohammed Munwar Khan was the photographer who had taken photographs at the scene of occurrence. As noticed, PW-12 Thiru G. Ayyanar carried out the initial investigation whereas PW-14 D. Sivasubramanian, SI, Perambalur completed the investigation and filed charge-sheet. Apart from these witnesses who supported the prosecution case, there had been another witness PW-6 Jamal Mohammed, father of the appellant, who stated to the contrary and asserted that the appellant was with him at his village Kolakkudi. In other words, this witness supported the appellant's plea of alibi.

5. Though elaboration of the entire prosecution evidence is not necessary for the purpose of the present appeal, but having regard to the contentions urged, we may take note of the relevant part of depositions, particularly in reference to certain inconsistencies/discrepancies in the assertions of the prosecution witnesses as also in reference to the appellant's plea of alibi.

5.1. PW-1 Basheera has been the key witness for the prosecution. In her testimony, she stated that her son Abdul Raheem had married the appellant; that a female child was born to the appellant after the marriage; and that Abdul Raheem was sending all the money earned by him to the appellant. She further stated that Abdul Raheem had called her to say that his daughter should be admitted in a school in Perambalur and he would send her money for that purpose; and subsequently, on 18.06.2007, PW-6 Jamal Mohammed, father of the appellant, dropped the appellant and the child to the house of PW-1 with request to educate the child in Perambalur since Abdul Raheem was allegedly not sending the appellant any money. She stated that on the morning of 21.06.2007, the appellant gave her Rs. 100 and asked her to buy idli; that when she came back to the house, the appellant was sitting silently next to the child; and that upon asking, the appellant told her that she had killed the child. During cross-examination, this witness stated that she went to the police station with the appellant immediately after the occurrence. The relevant parts of her statement read as under: -

"……About 10 months ago, 18th day of 6th month, my daughter-inlaw's father Jamal Mohammed had brought his daughter, the margin accused and our grand child to my house at Perambalur. My daughter-in-law's father was telling his daughter, the margin accused, that on the next day, 19th he would be leaving to his village and she has to take care of everything. The margin accused told her father that she would take care. On the next day 19th, the accused's father went back to his village. On the next day to that, on 20th Wednesday we cooked and had our food and were

available in the house of my daughter Mumtaz. ….. I am residing separately after 4 or 5 houses from her house. (the witness repeats the same.) I told the margin accused to come to my house along with her daughter and we would admit the grand daughter in school. The accused said OK for the same and on that day Wednesday, night, I, the accused and the grand daughter Farhana three of us went to the house wherein I am staying as a tenant for our sleep. In the morning of the next day, at about 6.00 A.M. I went to get the society milk. … I bought the milk and made tea and gave to her. Thereafter I told her that I would get meat. For that the margin accused said that no need of getting meat, and gave me Rs.100/- and asked me to get idli. It would be around 7.00 A.M. I came to Farmers' market. It took some time. By that time I got the change for Rs.100/- and got the idli and came back to home. On the same day, i.e. 21st at 6.00 A.M. my son Abdul Raheem had called my daughter Mumtaz from abroad. The said information was given to me by my daughter Mumtaz on the way to home after getting the idli, as the house of my daughter Mumtaz is situated on the way….. I bought the idli and went to my house. The tea which was kept by me in a glass was there as it is. That tea was kept by me for my grand daughter. It was there as it is. By that time the accused Vahida was sitting near my grand daughter who was lying there. I told the details given by Mumtaz to me and asked her to wake up grand daughter and give her the tea. For that the accused was sitting quiet. When I was telling the accused about the admission of my granddaughter into school and she has to talk to my son Abdul Raheem over phone, the accused asked me where is the police station. I asked the accused, "What I am telling you. What you are asking me." For that the margin accused said that she had killed her daughter. I told her, "none of the mother who gave birth to a child will kill the child. You are telling lie". For that the margin accused said that really she had killed her child. When I was telling the accused that she is telling lie once again, my daughter Mumtaz and my middle daughter-in-law Asha Begum both of them came into my house. Again I told the accused "You are telling lie." And asked her to wake up the child. But again the accused said that she had killed the child, I shook the head of my grand daughter. There was blood out of my grand daughter's nose. My grand daughter Farhana was dead. When I saw that my grand daughter was dead and came out shouting, as said by me earlier, my daughter Mumtaz, my middle daughter-inlaw Asha begum came there. The people also gathered. I had giddiness. They took me to the neighbouring house and made me to sit there. Anwar Basha had made phone call. Police authorities came to our house. They called me to the police station and asked me. I told them all that had transpired. The police authorities recorded the same. I had affixed my left thumb impression in the same. That was shown to me. When the witness was shown the complaint dated 21.6.2007 and asked about the same, as the witness had accepted the same the above said complaint had been marked as Ex.P1. ….. The accused told me that she had put the saree outer end of a saree (mundanai) around her neck and murdered her. When the police authorities examined me I deposed what had happened.

Cross Examination: On the date of the death of my grand daughter, at about 8.30 A.M. the police authorities came to our house. After the police authorities came, seeing that the child was dead, the police authorities brought me and the margin accused, my daughter-in-law to the police station. I had deposed the same particulars that I had deposed in the chief examination, in the police station also. If anyone call loudly in front of my house, it would be heard by the persons in the house of my daughter Mumtaz. My son Shamsudeen and his wife Asha Begum both were staying in a house in some other street. When I bought idli and came back, Asha Begum and Shamsudeen were not available in the house of my daughter Mumtaz……. If it is said that as we did not take any steps to admit our grand daughter in the school, on 20th morning the father of the accused had left our grand daughter Farhana in our house and left for Kollakudi village, it is incorrect. When I saw the child was dead and when I came out of the house and shouted at about 10 or 15 feet distance, Mumtaz and Asha Begum were coming. The name of my house owner is Majid. I was residing in a portion of the portico which was covered with asbestos sheet. It has only one door. As the place wherein I resided is a portico, there are no windows. When I got the idli and came back, the door of the house was closed tight. I had knocked it strongly and opened. …. It is incorrect to state that I had not deposed during the police investigation that on the next day at 6.00 A.M. I went to get the society milk and brought the milk. It is incorrect to state that I had not deposed during the police investigation that after making the tea and giving it to my

daughterin-law the margin accused gave me Rs.100/- to get idli and that I went to the farmer's market to get the idli and when I got the idli and was coming back, through my daughter Mumtaz she said that Abdul Raheem spoke to my daughter Mumtaz over phone. It is incorrect to state that as deposed during my chief examination, I did not mention in the complaint statement as well as during the police investigation, that when I came back the tea which had been kept for my grand daughter was as it is, and that when I asked the accused, why she did not wake up granddaughter and give her the tea, she was sitting quiet, and that when I asked again the accused said that she had killed the child. … My eldest son Jamal Mohammed and my another son Shamsudeen, alone were sending money to be from abroad. It is incorrect to state that as Abdul Raheem did not take care of me, after his marriage, I am angry with him. It is incorrect to state that in the event that my son Abdul Raheem and the accused did not take care of me, they had handed over my grand daughter Farhana to me. If it is said that on account of this anger, I and my daughter Mumtaz colluded and murdered my grand daughter, it is false. If it is said that Shamudeen who came from abroad had given the money and by using his influence, had used me and made a false case to be filed against the accused, all of them are wrong. If it is said that after hearing the news of the child's death, the accused who came to Perambalur at 5.00 P.M. from Kollakudi Village, was taken by all of us and handed over to the police, all are incorrect."

5.2. The testimony of PW-2 Mumtaz, daughter of PW-1, assumes relevance in view of her close connectivity with the occurrence, as asserted by PW-1. The relevant parts of her statement read as under: -

"…..The name of the daughter of the margin accused is Farhana. The child died on the 21st day of June, 2007. Two days earlier, the accused and her daughter stayed at Perambur as guests. My mother is residing separately in a house which is away slightly from my house. By that time, along with my mother, the margin accused and her daughter were staying when they came to Perambalur. The accused and her daughter were residing in my mother's house separately. On the date of incident, between 7.30 to 8.00 A.M. my mother went to get idli. When my mother got idli and went home, my mother shouted. People gathered there. We went to that place.

I saw that the accused's daughter was dead…..When I asked margin accused, she said that she had killed the child. (The witness once again said this). At about 7.00 A.M. on that day, my younger brother Abdul Raheem had called me over phone and said that Vahida i.e. the margin accused should not go anywhere and that the accused's daughter has to be admitted in the school. My younger brother Abdul Raheem told me over phone that I have to tell the accused to admit the school in Perambalur and to stay along with my mother. When my mother got idli and came back, I told the details as said by my younger brother, Abdul Raheem over phone. My younger brother told me over phone to bring the margin accused and keep her in my house and before I could do the same, the incident had taken place. When I saw, Farhana was dead with the blood coming out of the nose and mouth. When the police authorities examined me, I deposed the above details. That is all.

Cross Examination: After my mother got idli she shouted within 5 minutes. By that time 20 or 30 persons gathered there. Immediately, between 9.30 and 9.45 A.M. the police authorities came there. When I went and saw and asked the accused, the accused was silent and this had been deposed by me in the chief examination and the same had not been deposed during the investigation by the police authorities. I did not depose during the investigation by the police authorities about the phone call from Abdul Raheem at 7.00 A.M. on that day, and the details of conversation and also about my informing the same to my mother, as I had deposed in my chief examination…. After the marriage the accused and her husband did not have smooth relationship with my mother. In these circumstances, if it is said that the accused had left her daughter for educating her in my mother's house and on 20th she went to Kolakkudi Village they are all false. The reason for the death of the child who had been left as such is me and my mother, they are all false."

5.3. PW-3 Asha Begum, the other daughter-in-law of PW-1, also allegedly reached the scene of occurrence at the relevant point of time. She allegedly asked the appellant as to

why she killed the child but the appellant did not answer. During her cross-examination, this witness mentioned that she was not speaking to the appellant for four years prior to the occurrence. The relevant parts of her statement read as under: -

"….The margin accused had a daughter by name Farhana. She died on 21.6.2007. On the date of incident, the accused, her daughter were staying in the house, wherein Basheera was staying, along with P.W.1 Basheera. After my mother-in-law got the idli, when she shouted, I and my sister-in-law Mumtaz went to the house of my mother-in-law. My mother-in-law was residing in a house 5 houses away from my house. When I went there and saw, the child of the accused was instable. One nurse came and saw the child and confirmed that the child was dead. My sister-in-law Mumtaz had said accused "Why did you do like this. If you do not like the child, you would have left her with me" and she was beating on her head. I also asked the accused "You are an educated woman. Isn't it? Why did you kill the child" and shouted at her. The accused did not speak anything. When the police authorities examined me, I deposed the above said particulars. If it is asked who is the cause for the death of Farhana, her mother is the sole reason. That is all.

Cross-examination: I had deposed the facts which had been said by me in the chief examination, during the police investigation also. On the date of incident, my husband came from abroad for his holidays. I and the margin accused are not speaking with each other for the past four years. Two days before the death of Farhana, the accused came with her child to our house. After she came, she asked my husband that the husband of the margin accused Abdul Raheem is not sending money to her and that he is also not calling her over phone, and that she wanted to educate her child Farhana. My husband asked the margin accused keeping silent for all these years, now you have come here. Thereafter, the accused took the child and went to the house of my mother-in-law. I did not say the details of my sister-in-law Mumtaz, asking the accused after seeing the dead body of the child, during the police investigation. It is incorrect to state that the accused is not the cause for the death of Farhana and that as there is no contact between me and the accused for the past four years, I am adducing false evidence against the accused. As the accused did not come to us, there is no contact between us."

5.4. PW-4 Sharfunisha, the landlord of PW-1, deposed that when she came back to her house, she saw the child with the appellant. The witness also claimed that she heard the appellant admit that she had killed the child. The relevant parts of her statement could also be reproduced as under: -

"… P.W.1 Basheera is residing in a portion of our house. At the time of the incident, the margin accused came as a guest to Basheera's house. Only then I came to know her. Before that, I do not know the margin accused. The margin accused came with her child to the house of Basheera and stayed there. On 21.6.2007, the child of the accused was dead. I came to send my child to school by bus went near to Perambalur Farmers market and came back to my house, after sending my child. People were talking there that the accused had killed her child. When I saw that child, the margin accused was there. She said the crowd that she had killed her child by straggling with her saree outer end of a saree (mundanai) around her neck. I was there at that time. When the police authorities examined me I deposed the above particulars.

Cross Examination: Basheera is residing in our house as a tenant with the monthly rent of Rs.350/- for the past two years. It is incorrect to state that I did not depose during the police investigation that I went to send my child to school and after sending my child, when I came back, I saw the crowd in my house. I did not tell the police authorities that the accused had said the crowd that she straggled the child with her saree outer end of a saree (mundanai). It is incorrect to state that I do not know the accused and that I had not seen the accused on the date of the death of her child. It is incorrect to state that as Basheera is our tenant, I am adducing false evidence."

5.5. PW-5 Thiru-Jothi, neighbour of PW-1, testified to have seen the appellant for ten minutes, when the appellant was sitting near the body of the deceased child. Her deposition could also be usefully reproduced as under: -

"My name is Jothi. My father's name is Veerasamy. I am residing at Perambalur. Witness Basheera is residing in the house next to our house. About 4 or 5 months ago, one day on the date of death of the child, I had seen the accused for 10 minutes. The margin accused's child had passed away on that day. Only on the date of the death of the accused's child, I had seen the margin accused when she was sitting near the dead body of the child in the house wherein witness Basheera was staying. By that time, it would be around 8 or 8.15 A.M. P.W.1 Basheera was crying and said the mother who gave birth to the child itself had murdered the child. I told her to go to the police station and not to do anything else. I told this at the time of police investigation.

Cross-examination: It is incorrect to state that I had not deposed the details as mentioned in the chief examination, during the police investigation. It is incorrect to state that I am adducing false evidence."

5.6. As noticed, the prosecution examined two medical officers as regards post-mortem examination of the dead body of the victim child who testified to the injuries noticed on the dead body and as regards the cause of death. PW-8 Dr. Saravanan testified that there was a wound measuring 20 cm in length and 2 cm in breadth around the neck; and the thyroid cartilage bone was fractured, which was consistent with strangulation. He also opined that if outer end of a saree was twisted, put around the neck and strangled, there was a chance of such wound to the child. During cross-examination, he deposed that the wound would be more than 2 cm if a saree was tied around the neck. However, in re-examination, he clarified that the wound could be less than 2 cm if the saree was completely twisted in small measurement. PW-13 Dr. Karthikeyan A. has been the doctor who gave the report in respect of the thyroid cartilage bone. As per his examination, the fracture of the thyroid bone was *ante-mortem* and there was a chance that it was caused due to strangling. However, during cross-examination, he stated that if the neck is strangled using a saree, there is a less likelihood of marks. The fact that the victim child died due to asphyxia because of strangulation is as such not a matter of dispute and hence, we need not elaborate on these testimonies.

5.7. As regards the police personnel related with this matter, PW-10 Subbulakshmi, Sub-Inspector of Perambalur, recorded the statement of PW-1 and scribed the FIR. She deposed that at around 9:00 am, PW-1 came to the police station to file a complaint. During cross-examination, she clarified that PW-1 had not deposed in her original complaint that she had come out of her house and shouted after realising that the child was dead and had not brought the appellant to the police station immediately after the occurrence. She also denied the suggestions in the crossexamination that she visited the place of occurrence at 8:00 a.m. and brought the witnesses as also the appellant with her to the police station. The relevant extracts from the testimony of PW-10 are as under: -

"…On 21.6.2007 at 9:00 A.M. when I was on duty, Basheera, wife of Mohammed Kasim, aged 65 years, residing at No. 230/48D, Cross Street, Renga Nagar, Perambalur, came to the station and had deposed the complaint and I recorded the same in writing. After deposing the complaint, I had read out the statement to Basheera. As she said that it was as deposed by her, and as she said that she did not know to sign, I had obtained her left thumb impression in the complaint…

Cross Examination:…In the complaint that had been deposed to me it had not been indicated that after the incident was over, the margin accused was brought by the complainant Basheera to the Perambalur Police Station. When Basheera deposed, Anwar Basha was with her…. The witness Basheera did not depose in the complaint that after seeing that the child was dead, Basheera came out of the house, and shouted and thereafter the witnesses Mumtaz and Asha Begum came there. Basheera did not depose in the complaint that she went to get the society milk at 6:00 A.M. She did not depose in the complaint that when she bought the milk and came on the way she met her daughter Mumtaz at her house and talked to her. The witness Basheera did not depose in the complaint that after coming to house, the accused had given Rupees one hundred for getting idli

and that she had taken the same and went to the farmer's market to get idli. The witness Basheera did not depose in the complaint that after she came to the house, the house door was locked and she had knocked the door and opened the same. If it is said that after coming to know of the incident, I went to the place of incident at 8.00 A.M. itself and I had brought the witnesses, Basheera, Mumtaz and Asha Begum to the police station, they are all incorrect. If it is said that at that time, I had taken the margin accused along with the above said witnesses, it is also incorrect…"

5.8. PW-12 Thiru G. Ayyanar was the first IO in the case. He stated to have received the FIR at 10:15 a.m. on 21.06.2007 and commenced the investigation. For the purpose, he went to the place of incident and examined a few witnesses; prepared the mahazar; and seized the articles like mat and pillow. He also stated to have arrested the appellant at Perambalur New Bus Stand and having recorded her confessional statement in the presence of witnesses. He further stated to have seized the saree said to have been used in the offence. The relevant parts of his testimony read as under:

"…On the same day at about 17.00 hours, I had arrested the accused Vahida in the Perambalur New Bus Stand. I had examined the margin accused and recorded her confession statement before the witnesses Devaraj and Parameswaran. The margin accused said in her confession statement that she had killed the child by strangling her neck with the saree which she was wearing. The admitted portion of the confession statement had already been marked as Ex. P9. As per the confession statement, the saree which she was wearing was seized by me with the assistance of the lady police under the mahazar. The mahazar for the same was the one shown to me. That had already been marked as Ex. P8. The saree which was seized by me is the one shown to me. That had already been marked as M.O.3. ….

Cross-Examination: In Ex.P8 Mahazar, it had been indicated that through the Sub-Inspector, Subbulakshmi the accused was given the alternate saree. The accused who was arrested at 5.00 P.M. on that day, was kept by me till 6.45 P.M. in the Perambalur New Bus Stand only. In the last portion of the confession statement, it had not been mentioned that the sub-inspector Subbulakshmi was sent to get the alternate saree. It had been indicated that the lady police had been sent and the alternate saree was brought… The evening newspapers which are published in Perambalur would come at 5.00 P.M. If it is said that in the Maalai Malar newspaper dated 21.6.2007, which had been circulated at 5.00 P.M. on that day, it was indicated that the accused of this case had been arrested, I do not know of the same. I did not give such a news. If it is said that in the same newspaper, the news stating that the police authorities are conducting the investigation to witness Basheera, I do not know of the same. The witnesses Basheera and Mumtaz had deposed that after the incident was over, the margin accused ran from the house. If it is said that in the circulation of Dinakaran and Dinamalar newspapers, it had been indicated that after the incident was concluded, the mother of the child was lying down near the child, I do not know of the same. It is incorrect to state that after the death of the child the margin accused had ran away from the house and that we had published the news falsely stating that the margin accused was lying near the deceased child. It is incorrect to state that the witnesses Basheera, Mumtaz and Ashabegum had deposed during my investigation that they had seen that the child was dead. It is incorrect to state that on 20.6.2007 itself, the margin accused had left her female child to the witness Basheera, and she went to Kolakkudi Village on the same day. It is incorrect to state that on 21.6.07, the accused who was in Kolakkudi village had the information that her child was dead and that she came to Perambalur by bus and when she got down, I had arrested her…."

5.9. PW-14 D. Sivasubramanian had been the other police officer who carried out the later part of investigation, recorded the statements of other witnesses and then filed the charge-sheet. For the present purpose, we need not elaborate on the testimony of this witness or the other witnesses who had been a part of the investigation including the photographer and the attesting witnesses.

5.10. However, the testimony of PW-6 Jamal Mohammed, father of the appellant, assumes relevance in the present case, particularly when he did not support the prosecution version and deposed in support of the plea of alibi as taken by the appellant by asserting that he had left the child with PW-1 on 20.06.2007; had taken the appellant with her to Kolakkudi village, and the next day, he came to Perambalur with the appellant after getting information about demise of the child, when the appellant was arrested at the bus stand. This witness was treated as a hostile witness and permission was granted to the prosecution to cross-examine him. He was, of course, not cross-examined by the defence. The relevant parts of the statement of this witness could be usefully reproduced as under: -

"….On 16.6.2007, I had called Shamsudeen who came from foreign country over phone. He asked me to come on Monday. On 18th I took my daughter, the margin accused and my granddaughter Farhana and went to the house of Shamsudeen. I talked to Shamsudeen that if leave the child in Perambalur for education and if she is in their protection, Abdul Raheem would be sending the money. Shamsudeen asked me to tell this to his mother. I went there and told that. She asked me to tell the same to her daughter Mumtaz. In this manner, I was telling for 3 days. They did not respond properly. When I started to go to the village, my son-inlaw's mother asked me to leave her grand daughter Farhana alone and take my daughter along with me. On 20th Wednesday at 6.00 P.M. I took my daughter alone and went to Kolakkudi Village. The next day morning we got the information over phone that the child Farhana was dead. We came to Perambalur. They had arrested my daughter. My son-in-law Abdul Raheem is not sending the sufficient money. In these circumstances, this witness had been treated as hostile witness by the prosecution and sought permission for the cross examination. The permission was granted for cross examination.

Cross-examination on the side of the prosecution: As Abdul Raheem did not send the money properly and manage the family, we dropped his child in Perambalur. No one said us to go to Perambalur. We ourselves went to the eldest son of the family Shamsudeen. As no one had responded at Perambalur we did not take steps to take the child again to Kolakkudi. As she i.e. my sonin-law's mother asked to leave the child and go, we had left the child and went from there. I was working in foreign country earlier. At present I am running the poultry shops business. If it is said that I had deposed during police investigation, that my daughter margin accused used to tell me that she is going to mother-in-law's house and hospital, and was going in a wrong way, it is not correct. The police authorities did not examine me. If it is said that the margin accused was not staying in my house properly and that the conduct of the accused is not good and that if the same is revealed out it will spoil the prestige of my family, and hence I did not reveal it, they are all incorrect. If it is said that during the police investigation, I had deposed that my son-in-law who came to know all these details, had called over phone and told me to drop the margin accused and his child in the house of witness Basheera, they are all incorrect. It is incorrect to state that during the police investigation I had deposed that thereafter I had taken the margin accused and her child and dropped them in the house of witness Basheera. If it is said that during the police investigation, I had deposed that when I dropped them and started to leave Permabalur, the accused told me that she could not stay in Perambalur and that she will be coming soon to me and that I had advised her to do as said by the accused's husband and I left from there, they are all incorrect. If it is said that, during the police investigation I had deposed that on the next day, I came to know over phone that my daughter, the margin accused had killed my grand daughter Farhana and that thereafter I came to Perambalur and saw my granddaughter who was dead and that the accused had ran away, they are all incorrect. If it is said that, during the police investigation I had deposed that as the accused could not act as per whims and fancies at Perambalur, the accused had killed her child, it is incorrect. It is incorrect to state that as the accused is my daughter, I am adducing false evidence."

5.11. In her examination under Section 313 of the Code of Criminal Procedure, 1973[5], the appellant denied all the allegations made against her as false.

6. With the aforesaid status of record, the Trial Court heard the parties and proceeded to decide the matter by way of its judgment and order dated 15.10.2009.

6.1. The Trial Court held that although PW-1 to PW-3 were related witnesses but, PW-4 and PW-5 were independent witnesses who had seen the child and the accused-appellant together; and there was no necessity for them to depose against the appellant. The Trial Court also held that the testimony of PW-1 could not be discarded merely because of minor contradictions, given that she might not have been able to remember certain details on account of her age and other factors. The Trial Court also referred to the statement of PW-6, the hostile witness, who admitted the fact that the appellant was arrested at the bus stand; and held that the appellant had not fulfilled the burden of proving alibi, since there were two independent witnesses who saw her at the scene of occurrence. Further, the Trial Court held that the oral testimony was consistent with the cause of death determined by the medical findings.

6.2. After finding that the appellant was the last person to be seen with the victim child, as established by the testimony of PW-1 to PW-5, the Trial Court highlighted the importance of cogent evidence establishing the chain of circumstances; and held that the prosecution had discharged its burden of proving beyond reasonable doubt that the appellant had committed the offence of murder of the victim child. The Trial Court summed up its conclusion as follows: -

"38. In the case before us also, the accused who had been leading an independent luxurious life with the money more than sufficient, not willing to live with P.W.1 for the sake of the education of her child, and without considering that the child was born to her with an intention to cause death to the child, and also knowing full well that the act being committed by her would cause death to the child on 21.6.2007 at 8.00 A.M. in the house of P.W.1, when P.W.1 was not available at house, she had twisted outer end of her saree and strangled around the neck of her daughter 6 years old Farhana, who was sleeping and the thyroid cartilage bone was fractured and thus caused the death. In order to prove the charge, the prosecution had placed the oral evidences and documentary evidences in a cogent manner like a chain."

6.3. Accordingly, the Trial Court held that the appellant was guilty of the offence under Section 302 IPC and awarded the sentence as noticed hereinbefore.

7. The appellant challenged the decision of the Trial Court before the Madras High Court in Criminal Appeal No. 1 of 2010, which was dismissed by the impugned judgment and order dated 09.03.2010.

7.1. While accepting the submissions that there had been certain inconsistencies in the statements made by PW-1, the High Court held that the only point for consideration was as to whether the child was left in the custody of the appellant at the time of occurrence; and after detailed examination of the evidence on record, affirmed the findings of the Trial Court that the appellant was the last person seen with the deceased child. Hence, the High Court observed that the onus was on the appellant to explain as to how the death was caused. Addressing the plea of alibi, the High Court also held that such a plea was not tenable because PW-4 and PW-5 were independent witnesses, both of whom testified that the appellant was available at the place of occurrence on 21.06.2007; that she was arrested on the very same day she was seen with the deceased child; and that she was

[5] 'CrPC' for short.

the only person available with the child at the time of occurrence. The High Court, *inter alia,* observed and held as under: -

"13. Now learned counsel brought to the notice of this Court that according to P.W.1, when she was returning from the house, she found that the accused was strangulating the child, which was not available in 161 statement. It is true, when she gave Ex.P1 report, she has stated that she actually found the accused/appellant strangulating the child, which was not available in 161 statement. Even then, the only point that arises for consideration at this juncture is that when the child was left in the custody of the mother/appellant by P.W.1 at the time of occurrence, when P.W.1 came back, she found only the dead body of the child. At the time of occurrence, the appellant alone was available along with the child. Hence, it is for the accused to explain as to how the death was occurred. In the instant case, the prosecution proved that the child died of asphyxia due to strangulation. If to be so, it is for the mother/appellant to explain as to how the death was caused."

"14. The defence plea putforth before the Trial Court and equally here also is that the accused was absent during the relevant time and she left the place leaving the child along with P.W.1. The Court is unable to agree with the same for more reasons than one. It is a false plea. Firstly, P.Ws.4 and 5 are independent witnesses, who are neighbors. According to P.Ws.4 and 5, the accused was very much available at the place of occurrence, which took place on 21st June, 2007 morning. Secondly, according to the police, she was arrested on the very day and she was produced before the Court. When the occurrence had taken place at 8 a.m., the case came to be registered at 9 a.m. and the First Information Report reached the Court on the same day. Thirdly, the accused was the only person available with her child at the place and time of occurrence and it is for the accused to explain as to how the occurrence had taken place. But, she did not explain. Under such circumstances, it is quite clear that the prosecution has proved its case that except the accused, no one could have committed the murder of the child."

7.2. In view of the above and taking all the factors into consideration, the High Court upheld the judgment of the Trial Court and dismissed the appeal.

8. Assailing the judgment and order aforesaid, learned counsel for the appellant has put forward a variety of submissions, particularly assailing the findings in question with reference to several discrepancies appearing in the prosecution case; the factum of strained relations between the husband of the appellant and PW-1 to PW-3 for which, they might be interested in deposing against the appellant; the plea of alibi of the appellant, particularly with reference to the testimony of PW-6 Jamal Mohammed; and no likelihood of motive for the appellant to kill her own child.

8.1. Learned counsel has made elaborate reference to the contents of the complaint and several contradictions appearing in the version occurring in the complaint from that occurring in the statement of PW-1 Basheera, particularly when in the complaint she alleged to have left her house for buying idli without taking money but, in the deposition, she has stated that the appellant gave her Rs. 100 and asked her to get idli; when in the complaint, PW-1 asserted that the appellant ran away from the scene of occurrence, but in her deposition, she stated that the appellant was taken to the police station. Various other contradictions as to what PW-1 saw and did after reaching back the house have also been referred to.

8.2. Learned counsel has also referred to the omission in the statements of witnesses that the appellant twisted her saree and strangulated the child by pressing the same around the neck and has submitted that their versions do not correlate with the post-mortem examination.

8.3. Learned counsel has submitted that there was no conclusive proof as regards the theory of arrest of the appellant at the bus stand and has relied upon the testimony of PW-

6 Jamal Mohammed that the appellant was arrested at the bus stand only when she came back to Perambalur with him after receiving information about the demise of the child. Further, with respect to the statement of PW-6, learned counsel has argued that plea of alibi taken by the appellant is clearly established on record and looking to the background facts, particularly the strained relations of the appellant with her mother-in-law and other relatives of her husband, the plea of alibi and assertion of PW-6 that he and the appellant left the child in the company of PW-1 and her relatives cannot be ignored.

8.4. Learned counsel has also argued that the motive as suggested by the prosecution that the appellant wanted to live lavishly and for that purpose killed the child remains baseless as the appellant was living alone in her matrimonial house immediately after the marriage where her husband used to stay during his short visits to India. In this regard, the learned counsel has also submitted that husband of the appellant was never examined by the prosecution as regards her conduct and hence, there is no basis to allege motive. It has also been submitted that in view of the admitted fact that there were strained relations between husband of the appellant and PW-1, possibility of the appellant being falsely implicated so that PW-1 could derive monetary benefit from her son, husband of the appellant, cannot be ruled out.

8.5. Learned counsel has argued in the alternative that the case does not fall under Section 302 IPC, particularly in view of the fact that admittedly there had been strained relations between the parties and even as per the version of PW-1, on the morning of the date of incident itself, she and the appellant had entered into a quarrel as the appellant wanted to go to the place of her father, Kolakkudi. In the given circumstances, according to the learned counsel, even if the accusations against the appellant are taken into consideration, it could not be a case beyond culpable homicide not amounting to murder.

8.6. Learned counsel has relied upon various decisions of this Court including that in the case of ***Shyamal Ghosh v. State of West Bengal*****: (2012) 7 SCC 646** as regards the witness discrepancies; ***Sharad Birdhichand Sarda v. State of Maharashtra*****: (1984) 4 SCC 116** as regards circumstantial evidence and the factors when accused would be entitled to benefit of doubt as also with regard to the testimony of interested/related witnesses; and ***Ramnaresh v. State of Chhattisgarh*****: (2012) 4 SCC 257** as regards entitlement of the accused to maintain silence in examination under Section 313 CrPC; and obligation on the part of the Trial Court to put the material evidence to the accused to extend an opportunity of explanation.

9. *Per contra*, learned counsel for the respondent-State has submitted that the prosecution has discharged its burden of proving beyond reasonable doubt that the appellant committed the offence punishable under Section 302 IPC.

9.1. Learned counsel has argued that minor discrepancies in the statements of witnesses have no effect on the prosecution case, and that presence of the appellant alone with the child has been corroborated by the testimony of independent witnesses. In this regard, reliance has been placed on various decisions including those in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*****: (1983) 3 SCC 217**; ***Krishna Mochi v. State of Bihar*****: (2002) 6 SCC 81** and ***Leela Ram v. State of Haryana*****: (1999) 9 SCC 525** to submit that minor contradictions are normal and are bound to appear in the statements of witnesses.

9.2. It has further been submitted by the learned counsel that the appellant was the last person to be seen with the child before she died; therefore, she had special knowledge about the death of the child and was required to provide an explanation in terms of Section

106 of the Evidence Act, 1872[6] about the circumstances under which the death took place. In this regard, learned counsel for the respondent-State has relied upon various decisions including those in ***Satpal v. State of Haryana*: (2018) 6 SCC 610;** and ***State of Rajasthan v. Kashi Ram*: (2006) 12 SCC 254** to submit that if the accused does not offer an explanation under Section 106 and there is corroborative evidence establishing a chain of circumstances leading to the conclusion of guilt, the accused could be convicted on that basis.

9.3. It has also been submitted that the testimonies of PW-1 to PW-5 clearly establish the fact that the appellant was present at the place of occurrence and hence, her alibi has not been proved. The appellant was required to furnish some explanation under Section 313 CrPC but she did not do so, leaving no room for doubt that she was responsible for the death of the child.

9.4. Coming to the question of reasonable doubt, learned counsel has contended that this benefit cannot be stretched and the prosecution cannot prove its case without there being an iota of doubt. To substantiate this argument, the learned counsel has relied upon several decisions including those in ***State of Haryana v. Bhagirath*: (1999) 5 SCC 96**; ***Gangadhar Behera v. State of Orissa*: (2002) 8 SCC 381** and ***Krishna Mochi*** (supra) wherein it was held that it is impossible to prove all the elements in a criminal trial with scientific precision and that reasonable doubt must not be a 'trivial' or 'merely possible' doubt.

9.5. The learned counsel for the respondent-State has also countered the argument that PW-1 to PW-3 were biased witnesses by submitting that in the instant case, there was no reason to falsely implicate the appellant or protect the real culprit. In this regard, reliance has been placed on ***Gangabhavani v. Rayapati Venkat Reddy*: (2013) 15 SCC 298** and ***State of Rajasthan v. Kalki*: (1981) 2 SCC 752** to submit that a witness can only be called "interested" when they derive some benefit out of the litigation. Natural witnesses are not interested witnesses, and if a related witness was present at the scene of occurrence, his deposition cannot be discarded.

9.6. It has also been submitted on behalf of the respondent-State that last seen theory would not apply to PW-1 as she was never found present alone with the deceased child. It has further been contended that PW-1 would not have benefitted in any way from the death of the child.

9.7. Thus, learned counsel for the respondent-State would submit that when duly established chain of circumstances leads to no other plausible hypothesis than the guilt of the appellant, no case for interference in the concurrent findings of the Trial Court and the High Court is made out.

10. We have given anxious consideration to the rival submissions and have examined the record with reference to the law applicable.

11. As noticed, the Trial Court and the High Court have concurrently recorded the findings in this case that the prosecution has been able to successfully establish the chain of circumstances leading to the only conclusion that the appellant is guilty of the offence of murder of her daughter. The concurrent findings leading to the appellant's conviction have been challenged in this appeal as if inviting re-appreciation of entire evidence. Though the parameters of examining the matters in an appeal by special leave under Article 136 of the Constitution of India have been laid down by this Court in several

[6] 'Evidence Act' for short.

decisions but, having regard to the submissions made in this case, we may usefully reiterate the observations in the case of ***Pappu v. The State of Uttar Pradesh*: *(*2022) 10 SCC 321** wherein, after referring to Articles 134 and 136 of the Constitution of India and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 as also with a detailed reference to the relevant decisions, this Court has summed up the subtle distinction in the scope of a regular appeal and an appeal by special leave as follows: -

"**71**..... In such an appeal by special leave, where the trial court and the High Court have concurrently returned the findings of fact after appreciation of evidence, each and every finding of fact cannot be contested nor such an appeal could be dealt with as if another forum for reappreciation of evidence. Of course, if the assessment by the trial court and the High Court could be said to be vitiated by any error of law or procedure or misreading of evidence or in disregard to the norms of judicial process leading to serious prejudice or injustice, this Court may, and in appropriate cases would, interfere in order to prevent grave or serious miscarriage of justice but, such a course is adopted only in rare and exceptional cases of manifest illegality. Tersely put, it is not a matter of regular appeal. This Court would not interfere with the concurrent findings of fact based on pure appreciation of evidence nor it is the scope of these appeals that this Court would enter into reappreciation of evidence so as to take a view different than that taken by the trial court and approved by the High Court."

11.1. This proposition has been recapitulated in the case of ***Mekala Sivaiah v. State of Andhra Pradesh*: (2022) 8 SCC 253**, in the following words: -

"15. It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice.

16. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact."

12. Learned counsel for the appellant has endeavoured to argue that there are several shortcomings and lacunae in the prosecution case, particularly in view of several inconsistencies and contradictions in the versions of the witnesses; and that the relied upon factors are not providing such links in the circumstances which may lead to the finding on the guilt of the appellant. While dealing with such submissions, we may usefully take note of the basic principles applicable to this case, as noticeable from the relevant cited decisions.

12.1. The principles explained and enunciated in the case of ***Sharad Birdhichand Sarda*** (supra) remain a guiding light for the Courts in regard to the proof of a case based on circumstantial evidence. Therein, this Court referred to the celebrated decision in the case of ***Hanumant v. State of Madhya Pradesh:* AIR 1952 SC 343** and deduced five golden principles of proving a case based on circumstantial evidence in the following terms:-

"152. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case:*

"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."

153. 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* v. *State of Maharashtra*[7] where the 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in *King* v. *Horry* [1952 NZLR 111] thus:

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction..."""

12.2. As regards inconsistencies and/or discrepancies in the version of the witnesses, in the case of ***Shyamal Ghosh*** (supra) this Court has explained the distinction between serious contradictions and omissions which materially affect the prosecution case and marginal variations in the statement of witnesses in the following terms: -

"68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. **Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case**

[7] (1973) 2 SCC 793.

should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution."

(emphasis supplied)

12.3. In the case of ***Bharwada Bhoginbhai Hirjibhai*** (supra), this Court has explained that concurrent findings of fact cannot be reopened in an appeal by special leave unless shown to be based on no evidence or inadmissible evidence or being perverse or suffering from disregard of some vital piece of evidence. In that case the finding of guilt concurrently recorded by the Trial Court and the High Court was challenged mainly on the ground of minor discrepancies in the evidence for which, this Court emphasised that excessive importance cannot be attached to such minor discrepancies. This Court explained the reasons including that a witness cannot be expected to possess a photographic memory; a witness is likely to be overtaken by events particularly of unanticipated occurrence; the powers of observation differ from person to person; by and large people cannot accurately recall the conversations or the sequence of events; and a witness howsoever truthful is liable to be overawed by the Court atmosphere and piercing crossexamination etc. The following passage from this decision could be usefully extracted thus: -

"5……Their evidence has been considered to be worthy of acceptance. It is a pure finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (*1*) that the finding is based on no evidence or (*2*) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (*3*) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (*4*) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the evidence. **We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies.** The reasons are obvious:

"(1) By and large **a witness cannot be expected to possess a photographic memory** and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) **Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprised.** The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The **powers of observation differ from person to person.** What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another. (4) **By and large people cannot accurately recall a conversation** and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And

one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) **Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.**

(7) **A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts**, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

(emphasis supplied)

12.4. In the case of ***Gangadhar Behera*** (supra), this Court again highlighted that the normal discrepancies in evidence are of natural occurrence in the Court, while observing as under: -

"15. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi* v. *State of Bihar* [(2002) 6 SCC 81] ....."

12.5. As regards the approach towards the appreciation of the evidence of closely related witnesses, in the case of ***Gangabhavani*** (supra), this Court has explained the principles as follows: -

"15.....It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. **Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased.** In the case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (Vide *Bhagaloo Lodh v. State of U.P.*) [(2011) 13 SCC 206]"

(emphasis supplied)

12.6. In the case of ***Ramnaresh*** (supra), this Court has, though recognised the right of the accused to maintain silence during investigation as also before the Court in the examination under Section 313 CrPC but, at the same time, has also highlighted the consequences of maintaining silence and not availing opportunity to explain the circumstances appearing against him, including that of the permissibility to draw adverse inference in accordance with law. This Court observed and held as under: -

"49. In terms of Section 313 CrPC, the accused has the freedom to maintain silence during the investigation as well as before the court. The **accused may choose to maintain silence or complete denial even when his statement under Section 313 CrPC is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible** to it in accordance with law. **** **** *****

52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. **But once he does not avail this opportunity, then consequences in law must follow.** Where the

accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law."

(emphasis supplied)

12.7. The principles enunciated by this Court in regard to the obligation of explanation in terms of Section 106 of the Evidence Act and the consequences of want of explanation have been explained by this Court in the case of ***Satpal*** (supra) as follows: -

"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. **But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same.** If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

(emphasis supplied)

12.8. In ***Satye Singh and Anr. v. State of Uttarakhand*: (2022) 5 SCC 438**, where the prosecution failed to prove the basic facts as against the accused, this Court emphasised that Section 106 of the Evidence Act does not relieve the prosecution of its primary duty to prove the guilt of the accused as follows: -

"**19.** …the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused…."

12.9. Apart from the above, we may also usefully take note of the decision of this Court in the case of ***Sabitri Samantaray v. State of Odisha*: 2022 SCC OnLine SC 673**. In that case based on circumstantial evidence, with reference to Section 106 of the Evidence Act, a 3-Judge Bench of this Court has noted that if the accused had a different intention, the facts are specially within his knowledge which he must prove; and if, in a case based on circumstantial evidence, the accused evades response to an incriminating question or offers a response which is not true, such a response, in itself, would become an additional link in the chain of events. This Court said, *inter alia*, as under: -

"**19.** Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events."

13. While keeping the aforesaid principles in view, and while reiterating that wholesome reappreciation of evidence is not within the scope of this appeal, we may examine if the concurrent findings call for any interference in this case.

14. A few basic aspects are not of much controversy in this case, essentially based on circumstantial evidence. The husband of the appellant was mostly living abroad and the appellant was mostly living with her parents at Kolakkudi. As per the version of the witnesses PW-1, PW-2 and PW-3, who supported the prosecution case as also as per the version of PW-6 Jamal Mohammed, father of the appellant, who did not support the prosecution case and was declared hostile, this much remains indisputable that on 18.06.2007, the appellant came with her father and with her daughter to Perambalur from Kolakkudi. The victim child, daughter of the appellant, met with her homicidal death on 21.06.2007.

15. The major disputable part of the matter is that as per the testimony of PW-6 Jamal Mohammed, on 20.06.2007, he left the victim child with PW-1 Basheera and went back to Kolakkudi with his daughter, that is, the appellant. According to the prosecution case, the appellant remained very much in Perambalur with the victim child and in the morning of 21.06.2007, she strangled the child when her mother-in-law (PW-1) was out of the house. According to PW-6 Jamal Mohammed, the appellant was not in Perambalur at the relevant point of time; and she came to Perambalur with him on 21.06.2007 in the late afternoon after receiving information about demise of the child and thereafter, she was arrested. Some of the other prosecution witnesses were also given the same suggestions in the crossexamination. These aspects lead to the plea of alibi as has been referred to and relied upon by the learned counsel for the appellant.

15.1. The Trial Court and the High Court have examined the evidence on record and have rejected this plea of alibi with reference to the significant features of the case that there is no corroborative evidence on record, to the assertion made by PW-6 Jamal Mohammed, that on 20.06.2007, he took his daughter back to his village Kolakkudi. The accused-appellant did not adduce any evidence to prove that she was not present in Perambalur, at the time and place of incident. Apart from the fact that PW-1, PW-2 and PW-3 consistently maintained their versions that the appellant was available at the time and place of incident, two independent witnesses, PW4 Sharfunisha, landlord of PW-1 and PW-5 Thiru-Jothi, neighbour of PW-1 testified that they saw the appellant sitting with or near the body of the deceased child immediately after, and at the place of, the incident. Although there appears to be no reason to discard the testimonies of PW2 and PW-3 but even if for the sake of argument their testimonies are left aside for being directly related witnesses who might not be favourably disposed towards the appellant, there appears no reason to disbelieve and discard the testimonies of PW-4 and PW-5. Nothing even remotely has been shown as to why PW-4 and PW-5 would be interested in testifying about the presence of appellant around the time, and at the place of incident.

15.2. Apart from the foregoing, fact of the matter also remains that the appellant was arrested on 21.06.2007 i.e., the very day of the incident, albeit nine hours after the incident, at the bus stand. However, when the theory propounded by PW-6 Jamal Mohammed that the appellant had travelled to Kolakkudi with him on 20.06.2007 and then travelled back to Perambalur on 21.06.2007 is discarded, all other facts taken together lead to the logical conclusion that the plea of alibi is required to be rejected. 16. Another major factor highlighted and elaborated by the learned counsel for the appellant relates to certain discrepancies appearing in the versions of PW-1 Basheera, as stated in the complaint made to the police compared with her assertions before the Court. No doubt,

there had been some such discrepancies in the matter which, at the first blush, give rise to certain doubts as to whether the testimony of PW-1 could be believed or not. However, a close look at the record makes it clear that the discrepancies, said to be of contradictions in the versions given by PW-1 Basheera, could only be considered to be normal and natural or being the result of her want of proper comprehension.

16.1. PW-1 Basheera is none other than mother-in-law of the appellant and the grand-mother of the victim child. The first discrepancy in the matter is that, as per the version in the complaint, she left her house in the morning to buy idli without taking money, but in her deposition, she stated that appellant gave her Rs. 100 and asked her to get idli. Another major discrepancy surfaces when it is noticed that in the complaint, she asserted that the appellant ran away from the scene of occurrence but in her deposition, she stated that the appellant was taken to the police station. Thirdly, what she saw and did upon reaching the house after visiting the market is also stated differently in the complaint and in the deposition. The question is as to whether her testimony and the prosecution case be rejected altogether because of these discrepancies.

16.2. In our view, the Trial Court has rightly analysed the matter and has rightly observed that when PW-1, sixty-five years of age, was deposing before the Court from her memory after one year from the incident, such discrepancies would not result in rejection of her testimony altogether. The relevant features emanating from her assertions in the complaint as also in the statement are that she had gone out to purchase eatables in the morning while leaving the victim child with the appellant; and after coming back, found the child dead, with the appellant being with the child. As to whether she had gone to the market after being given money by the appellant or without taking money, in our view, cannot override entire of her testimony as also the testimonies of other witnesses. Further, the said witness PW-1 seems to have obviously lost the track of facts when she asserted in her deposition that the appellant was taken to the police station after the incident. It has clearly been established on record that the appellant was arrested in the late afternoon at the bus stand and it has nowhere been shown if she was taken to the police station immediately after the incident. A suggestion made in that regard to the official witness PW-10 Subbulakshmi has also been specifically denied by her. The said discrepancy in the version of PW-1 is also of no relevance and the concurrent findings of the two Courts cannot be displaced on that count. Even the version given in the complaint as if PW-1 saw the appellant strangling her child seems to be an overt assertion immediately after the incident. The other witnesses who had reached the scene of crime including the independent witnesses PW-4 and PW-5 have consistently maintained that the appellant was available with the dead body of the child at the place of, and immediately after, the incident.

16.3. Taking an overall view of the matter, we do not find any reason that entire prosecution case be disbelieved and discarded because PW-1 has not projected the case in a consistent manner. Apart from the private witnesses, all the relevant facts have been duly established in the testimonies of the official witnesses too. The discrepancies as noticed in the present case, at the most, could be said to be of minor contradictions or inconsistencies or embellishments of trivial nature; and are reasonably referable to the reasons recounted by this Court in ***Bharwada Bhoginbhai Hirjibhai*** (supra) for which, the minor discrepancies do occur in evidence and excessive importance cannot be attached to them.

17. The submission that the assertion about the appellant having strangled the victim, by pressing her saree around the neck, does not correlate with the post-mortem

examination is also untenable. As noticed, the medical officers have clearly established that the child suffered strangulation with a wound measuring 20 cm in length and 2 cm in breadth around the neck and with thyroid cartilage bone having been fractured. PW8 also opined that if outer end of the saree was twisted and put around the neck and the person was strangled, there was a chance of such a wound. The saree in question had been duly recovered from the appellant and was said to be carrying blood stains.

18. In the given set of facts and circumstances, the motive as suggested by the prosecution, i.e., the desire of the appellant not to live in her matrimonial house and, on being forced to do so only because of the child, she being not interested in the existence of the child, though presents a somewhat difficult proposition but, at the same time, cannot be ruled out altogether, particularly looking to the fact that, until 18.06.2007, the appellant was living with her parents and she was forced to come to Perambalur for the purpose of upbringing of the child with the family of her husband.

19. Another submission made on behalf of the appellant, that her husband has not been examined by the prosecution, does not take her case any further. Her husband was not shown to be in the country at the time of incident and he was not a direct witness in relation to the material facts to be established by the prosecution. Other way round, if at all the appellant considered him to be a material witness, nothing prevented her from making a prayer to the Court for his examination and nothing prevented her from making specific submissions in that regard during her examination under Section 313 CrPC.

20. As regards the statement under Section 313 CrPC, the appellant has not given any explanation whatsoever and has not made any statement except denying the circumstances put to her. In the facts of the present case, when the prosecution evidence categorically established the fact that the victim child was last seen alive with the appellant only; she was required to explain the circumstances leading to the demise of the child. Upon her failure to do so and failure to give the explanation with regard to the circumstances under which death may have taken place, burden of Section 106 of the Evidence Act operates heavily against the appellant, as noticeable from the decisions above referred, particularly in the cases of ***Satpal*** and ***Sabitri Samantaray*** (supra).

21. In an overall comprehension of the material on record and the findings recorded by the Trial Court and the High Court, in our view, no case for interference with the concurrent findings of fact is made out.

22. The submissions made in the alternative that in the given set of circumstances, the present case could only be of culpable homicide not amounting to murder has only been noted to be rejected. Even if it be taken that there was a quarrel of the appellant with her mother-in-law (PW-1) in the morning of the date of incident because the appellant wanted to go the place of her father, it cannot be said that such a quarrel would make it a case of grave and sudden provocation. The circumstances as proved on record, and the manner of commission of crime, make it clear that the present case cannot be brought under any of the Exceptions of Section 300 IPC; and conviction and sentencing of the appellant under Section 302 IPC cannot be faulted.

23. In view of the above, this appeal fails and is, therefore, dismissed.