



2023:KER:48753

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 17TH DAY OF AUGUST 2023 / 26TH SRAVANA, 1945

CRL.A NO. 183 OF 2018

AGAINST THE JUDGMENT IN SC 308/2007 ON THE FILE OF

COURT OF SESSION, ERNAKULAM

CP 4/2007 OF CHIEF JUDL.MAGISTRATE, ERNAKULAM

CRIME NO.DST/2005/S/0006, CBI, NEW DELHI

APPELLANT/ACCUSED:

B.W.JYOTHIKUMAR

S/O.LATE WILSON,KUZHIVILA HOUSE,

THAMPONKALA,CHANI,KANJIRAMKULAM.P.O,THIRUVANANTHAPURAM.

BY ADV SRI.SHAJIN S.HAMEED

RESPONDENT/RESPONDENT:

CENTRAL BUREAU OF INVESTIGATION

REPRESENTED BY PUBLIC PROSECUTOR(CBI),

HIGH COURT OF KERALA,ERNAKULAM.

BY ADVS.SRI.K.P.SATHEESAN, PUBLIC PROSECUTOR

(ASSISTED BY SRI.SUDHINKUMAR K, CENTRAL GOVERNMENT
COUNSEL)

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
04/08/2023, THE COURT ON 17.08.2023 DELIVERED THE FOLLOWING:



Crl.Appeal No.183 of 2018

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P.B.SURESH KUMAR & C.S.SUDHA, JJ.

Crl.Appeal No.183 of 2018

Dated this the 17th day of August, 2023

J U D G M E N T

C.S.Sudha, J.

Can the prosecution, in a case under Section 300 IPC based on circumstantial evidence succeed relying on a few instances of suspicious conduct of the accused coupled with a weak motive??? Let us examine.

2. This appeal under Section 374(2) Cr.P.C. by the accused in S.C.No.308/2007 on the file of the Court of Session, Ernakulam, in Crime no. DST/2005/S/0006, CBI, New Delhi has been filed challenging the conviction entered and sentence passed against him for the offences punishable under Sections 302, 201 and 203 IPC.

3. The prosecution case as stated in the charge sheet is as follows- the accused, due to his ill feelings towards his father, M. Wilson, during the early hours of 16/02/2004 murdered him by stabbing him with MO.2 knife. Wilson thereafter succumbed to the injuries sustained on 25/02/2004. The accused also destroyed the evidence and gave false information to mislead the



police. Hence the accused is alleged to have committed the offences punishable under Sections 302, 201 and 203 IPC.

4. Based on Ext.P1 FIS of PW1, the wife of the deceased and the mother of the accused, recorded on 16/02/2004 at 11:30 hours, crime no.34/2004, Kanjiramkulam police station, that is, Ext.P1(a) FIR alleging the commission of the offence punishable under Section 307 read with Section 34 IPC, was registered by PW44, Additional Sub Inspector. In the crime registered, PW60, J. Wilfred and his son PW26 Roland Wilfred were arrayed as the first and the second accused respectively. Thereafter, as per the order of this Court dated 09/08/2005 in W.P.(C)No.20019/2005, the investigation of the case was transferred to the CBI. The case was re-registered as DST/2005/S/0006 alleging commission of the offences punishable under Sections 302, 201 and 203 IPC. As per the final report submitted by PW80, Dy. Superintendent of Police, CBI, STF, New Delhi, investigation was conducted, and his investigation revealed that PW60 and his son PW26 are innocent and that it is the accused who is the actual culprit. Hence a final report was submitted arraying the accused herein as the sole accused alleging the commission of the offences punishable under the above mentioned Sections.



5. On the final report being submitted, the jurisdictional magistrate, after complying with the statutory formalities, committed the case against the accused to the Sessions Court which court took the case on file as S.C.No.308/2007. On appearance of the accused before the Court of Session, he was furnished with copies of all the prosecution records. On 11/05/2011, the trial court framed a charge for the offences punishable under Section 302; 201 and alternatively under 203 IPC, which was read over and explained to the accused to which he pleaded not guilty.

6. The prosecution examined PWs.1 to 80 and got marked Exts.P1 to P88 and MO.1 to MO.7. Ext.C1 dated 11/07/2006 is the consent given by the accused for subjecting himself to brain-mapping examination. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence.

7. As the Sessions Court did not find it a fit case to acquit the accused under Section 232 Cr.P.C., he was asked to enter on his defence and adduce evidence in support thereof. No oral or documentary evidence has been adduced by the accused. Exts.D1 to D12 are the contradictions



brought out in the testimony of the prosecution witnesses.

8. On a consideration of the oral and documentary evidence and after hearing both sides, the trial court by the impugned judgment found the accused guilty for the offence punishable under Section 302 IPC and hence convicted and sentenced him to imprisonment for life and to a fine of ₹50,000/- and in default of payment of fine, to imprisonment for a period of one year ; to rigorous imprisonment for two years and to a fine of ₹2,000/- and in default of payment of fine to rigorous imprisonment for one month for the offence punishable under Section 201 IPC and to rigorous imprisonment for six months for the offence punishable under Section 203 IPC. The substantive sentences of imprisonment have been directed to run concurrently. Set off under Section 428 Cr.P.C. has also been allowed.

9. The only point that arises for consideration in this appeal is whether the conviction entered, and sentence passed against the accused by the trial court is sustainable or not.

10. Heard Sri.Shajin S.Hameed, the learned counsel for the appellant and Sri.K.P.Satheesan, the learned Public Prosecutor for the CBI assisted by Sri.Sudhinkumar K, the learned central government counsel.

11. Wilson, the father of the accused is stated to have died due to the



injuries caused to him by MO.2 knife. PW54, Associate Professor, General Surgery, Medical College, Thiruvananthapuram deposed that on 16/02/2004 while he was working as Casualty Medical Officer, Surgery, he had examined Wilson who had been brought to the hospital by his son Jyothish Kumar (the accused). The patient was in shock. He noticed four injuries which are: -

“(i) incised wound 1.5x0.5 cm in the epigastrium.

(ii) incised wound 1x.5 cm in the epigastrium.

(iii) incised wound 1x.5 cm in the epigastrium and

(iv) incised wound in the neck horizontally placed trachea cut.”

Ext.P22 is the wound certificate issued by him. According to PW54, he had referred the patient to the ENT Department. The patient had undergone an operation on the same day. The patient was in the hospital under treatment till 25/02/2004. Doctors from different departments examined the patient during the period. PW54 also deposed that the injuries noted in Ext.P22 can be caused by MO.2 weapon. The cut injury seen on the neck was serious and grave and therefore immediate surgical interference was required. He had done all the surgical methods that were possible to save the patient's life.

11.1. PW20, Associate Professor, ENT, Government Medical College Hospital, Thiruvananthapuram deposed that Ext.P20 is the case sheet of



Wilson. The patient had first been examined by PW54, in-charge of surgery casualty, who referred the patient to ENT casualty. She examined the patient in the emergency theatre at around 10:00 a.m. On examination she found a 10 cm horizontal cut injury on the throat at the level of thyroid cartilage. When the patient was brought before her, portex tube had already been inserted. The injury involved the right ala of thyroid cartilage cutting it into two pieces extending to involve aryepiglottic fold on the right-side epiglottis. The base of the tongue was found injured and the wound stopped short of posterior pharyngeal wall, which was found intact. The bleeding points were ligated. The cut injury on the throat was repaired with layers and Ryle's tube put. The patient was not able to speak as the portex tube had been inserted. The clarity of speech of a person who sustains a cut injury on his throat would be low. He would be able to make some sound/noise before inserting the portex tube.

11.2. PW64, then a PG student in the General Surgery Department, deposed that on 16/02/2004 he had conducted surgery on the abdominal part of Wilson. There were four wounds on the body of Wilson, among them three were on the abdomen and one incised wound on the neck. He attended the wound over the abdominal region. Simultaneously the doctors from the



ENT department also conducted operation on the neck region.

11.3. PW21, Associate Professor, Forensic Medicine, Gokulam Medical College, Venjaramoodu, Thiruvananthapuram, deposed that on 25/02/2004 she had conducted postmortem examination on the body of the deceased. The postmortem certificate has been marked as Ext.P21. The injuries noted by her are -

“INJURIES (ANTEMORTEM) :

1. *Contusion 7x5x0.5cm on the scalp, on the front of head, its lower extent, 5cm above the root of nose.*
2. *Abrasion 3.5x3cm on the left side of back of head 3cm above occiput and just outer to midline.*
3. *Contusion of scalp 11x5 x0.5cm on the left side of back and top of head, 4cm above and 2.5cm behind the top of ear. Brain showed thin film of subdural bleeding (sticky) on the left side of base and thin film of subarachnoid bleeding bilaterally.*
4. *Sutured wound 10 cm long and 3cm deep horizontal on the front of neck, across midline 6.5cm below chin. Underneath the muscles were sutured in layers. thyroid cartilage showed an oblique sutured wound 3.3cm long on its front aspect, its upper right end was 1.5cm to right of midline and 1cm below the upper border. Right side of epiglottis and epiligottic region and base of*



tongue seen sutured. The wound was directed backwards and upwards.

5. *Surgical tracheostomy wound 4x1cm was seen on the front of neck, 2cm above sternal notch in midline, (one suture each seen at the upper and lower ends)*
6. *Contusion 3.5x3x0.5cm, on the front of chest, 6.5cm below sternal notch in midline.*
7. *Superficial lacerations 2.7x0.2 cm on the front of left lobe of liver, 2cm above its lower border and 7.5cm to the right of its left border.*
8. *Multiple contusions were seen in the mesentery (21x5x0.3 to 0.5cm) and adjacent part of intestinal wall 118cm distal to the fixed loop.*
9. *Sutured wound 18cm long vertical on the front of trunk in midline its lower end 2.5cm above the umbilicus. Omentum showed reddish discolouration and was seen adherent to the inner surface of this wound.*

Peritoneal cavity contained 30ml of bright red, sticky blood.

10. *Multiple linear abrasion over an area 7x4cm on the outer aspect of right thigh 17cm below top of hip bone.*
11. *Multiple linear abrasions over an area 7x1cm, on the front of right thigh, 14cm below top of hip bone.*
12. *Abrasion 2x0.5cm on the back of right heel.*



All abrasions were covered with black adherent scab. Contusion and haemorrhages were dark red in colour. Sutured wounds had adherent edges.

13. *Fracture of 4th, 5th and 6th rib on left side at their angles with minimal infiltration of blood around.*

OPINION AS TO THE CAUSE OF DEATH

Death was due to infection following injuries sustained.”

According to PW21, death was due to infection following the injury sustained.

11.4. PW75, the then C.I Poovar, the first Investigation Officer, conducted the inquest and the inquest report has been marked as Ext.P60.

12. On going through the testimony of PW20, we find that there was an attempt to bring in evidence that there was some foul play committed by the accused while Wilson had been admitted in the hospital. As per Ext.P22 wound certificate, Wilson had sustained only four injuries. But Ext.P21 would show that Wilson had sustained some other injuries also. From the line of cross examination of PW20, the attempt seems to have been to bring out that the accused who was attending his father had removed the Ryle's tube and thus tried to accelerate the death of his father. Ext.P20 case sheet would show that the Ryle tube had been removed and thereafter re-introduced



by the doctors. No evidence has been let in to show that the tube had been removed against medical advice. Had there been such an attempt to remove the tube, it would certainly have been noticed by the doctors treating the patient. However, no such entry is seen in Ext.P20 case sheet. Moreover, there is no such case for the prosecution as per the final report or the court charge. The accused is liable to answer only the charge against him and not new theories developed in the evidence for the first time in the court. Bringing a new allegation at the evidence stage would certainly cause prejudice to the accused, as he would never have had notice of the same. The accused must be put on notice as to the allegations he must answer. Therefore, the attempt of the prosecution to bring out such a story through the cross examination of PW20 seems to have been a futile exercise.

13. From the testimony of PW54, PW 20, PW 64, and PW 21 as well as the connected records referred to, it is clear that Wilson had sustained injuries in the incident pursuant to which he died. The medical evidence is not disputed or challenged by the accused. Therefore, the aforesaid evidence will certainly show that the death of Wilson was in fact a case of culpable homicide falling under Section 299 IPC.

14. The accused, the elder son of deceased Wilson @ Chellathambi



and PW1, a taxi driver by profession, during the period 2002-2004 was driving the taxi car owned by PW63 Shobana Lucy. The accused was residing with his wife PW33 Anitha, a nurse cum midwife, in the house of his parents. PW9 Shaji, a police constable, is his younger brother. PW9 had contested the panchayath election in the year 2001 relating to which the deceased had spent a considerable amount towards the election expenses. The deceased had also spent a substantial amount to help PW9 get a job in the police department. The accused firmly believed that his father was more affectionate and partial towards PW9. The deceased used to borrow money from several sources and then lend it out on interest at high rates. The accused had availed a loan of ₹40,000/- from the Backward Classes Development Corporation and had given it to his father. The deceased had used this amount for repaying a loan availed by him in the year 1999 for purchasing land. The deceased had also taken an amount of ₹20,000/- from the accused, which amount had been taken by the accused from Leela Bai, his mother-in-law. The deceased thus owed an amount of ₹60,000/- to the accused. In the meanwhile, the marriage of Sunitha, the sister of PW33 was fixed. The accused had to return the amount of ₹20,000/- received from Leela Bai, who was insisting on getting back the same. The accused also had



the liability to repay the loan of ₹40,000/- taken by him.

14.1. On 03/12/2003, Leela Bai died and so the marriage of Sunitha which had been initially fixed to 19/12/2003 had to be postponed. The failure of the accused to return the amount of ₹20,000/- was yet another reason for the postponement of the marriage. The accused was under tremendous pressure to return the amounts due from him. In the year 2002, the deceased had availed a loan of ₹2,00,000/- from the District Co-operative Bank, Kanjiramkulam, Thiruvananthapuram. Despite that the deceased did not repay the amount due to the accused or help him in clearing his loan. Though the accused had on several occasions requested his father for a share in the property, the latter refused to accede to his demand. The accused was in a relationship with a girl named Suchithra. However, as per his father's wishes he was compelled to marry PW33. Due to the aforesaid reasons, the accused decided to eliminate his father and falsely implicate PW60 Wilfred and his son PW26 Roland Wilfred. The accused believed that his father, who used to consult PW60 in all matters including the family's personal matters, was refusing to help him on the advice of the latter. He did not like the friendship between his father and PW60. Thus, with the intention of murdering his father, the accused in the month of January 2004 purchased MO.2 knife from



a roadside vendor. To execute his plan, the accused asked PW63, his employer, to ring him up in the early hours of 14/02/2004. Accordingly, PW63 contacted him over the land phone, which phone had been kept in the room of the accused. The accused attended the call. When asked by his father as to who had made the call, the accused told him that it was a call by PW60 who wanted the former to go his residence at 05.30 am on 16/02/2004, to collect the amount due from PW60. Believing the words of the accused, the deceased in the early hours of 16/02/2004 left on foot for the house of PW60, situated about a kilometer away from his house. Thereafter at 06.30 a.m., the deceased was found injured by the side of the public road leading to the house of PW60. The deceased had sustained an incised injury on his neck because of which he was unable to speak. He had also sustained three stab injuries above his abdomen. He was hospitalized and operated upon. He died on 26/02/2004 due to the injuries sustained. This in effect is the prosecution case.

15. As noticed earlier, initially PW60 and PW26, the father and son duo, had been arrayed as accused in Ext.P1(a) FIR based on the allegations of PW1 in Ext.P1 FIS. PW75, the then C.I., Poovar, arrested PW60 and PW26 pursuant to which they were remanded to judicial custody. They continued in



custody for about 58 days or so. Investigation was thereafter taken over by the CBCID. PW60 and PW26 were released on bail as the application was not opposed by the CBCID. Later as per orders of this Court, the investigation was handed over to the CBI. The CBI investigation found no involvement of PW60 and PW26 in the crime based on the Polygraph and Narco analysis test, to which PW60 and his son were subjected to at FSL, Bangalore. The CBI obtained permission from the court of the Chief Judicial Magistrate, Ernakulam, to subject the accused herein to Polygraph and Narco analysis test. The petition was allowed and the accused was subjected to Polygraph test, Brain Mapping test and Narco analysis test by PW79, Assistant Director of FSL, Bangalore. The examination of the accused revealed that there was deception in the answers given by him. Based on the same, complicity of the accused in the crime was found and on 11/04/2007, the accused was arrested by the CBI.

16. As per the prosecution case, the accused had a motive to commit the crime. The reasons cited for the accused to harbour ill-feeling/enmity against his father are – (i) the accused had to marry PW33 against his will. He was in a relationship with Suchithra, a tribal girl. However as insisted by his father he was compelled to marry PW33; (ii) his father refused to give the



accused his share in the property despite repeated demands being made by him. (iii) the accused believed that his father was more affectionate towards PW9, as the latter had spent substantial amounts to enable PW9 to contest the election and thereafter for enabling PW9 to get employment in the police department; and (iv) his father owed an amount of ₹60,000/- to the accused, which the former failed to pay in spite of repeated demands being made by the latter.

16.1. PW1, the mother, when asked whether the accused, her eldest son, had married PW33 against his wishes did not give a clear answer. She said that the accused had married PW33 as desired by his father. The accused had never said that he wanted to marry another girl. PW1 denied that the accused was in inimical terms with the deceased as the latter had not consented to his marriage with a tribal girl and had insisted on the accused marrying PW33. PW9 denied any knowledge of his brother having any relation with any other girl before the marriage. According to him the accused had no objection to marry PW33. This allegation is not supported by PW11, the brother-in-law of the accused also. PW4, a cousin of the deceased married to PW1's sister, deposed that he does not know whether the accused wanted to marry Suchithra. He had heard about the accused's relationship



with the said girl. He had not heard that the deceased was against the said relationship. PW22 Murugan, an acquaintance of the deceased, deposed that the latter had in fact told him that the accused was not keen on marrying PW33. He had asked the deceased the reason for the same, to which the latter had told him that the accused was in a relationship with another girl. The said relationship, according to PW22 was avoided by giving the girl money. Therefore, there appears to have been some connection of the accused with the girl named Suchithra before his marriage to PW33. However, it needs to be noted that the marriage was a few years before the date of the incident and the accused has two children born in the wedlock also. In such circumstances it is difficult to believe that the accused continued to harbour ill feelings against his father due to which he would go to the extent of murdering his father.

17. The second reason stated is that the father had refused to give the accused his share in the property. PW1 deposed that the accused had not demanded his share in the property resulting in disquiet in the family. She denied the suggestion that the accused was inimical terms with his father as the latter had refused to partition the property as demanded by the former. PW9 deposed that the accused never demanded the property in the name of



PW33 to be sold. There were no issues in the family due to the demand of the accused. PW11, to a question whether the accused had demanded for partition of his father's property, answered that he had asked PW1 and the deceased to partition the property. PW11 was asked as to why he had made such a request, answered that in many houses when girls get married, their share is given. But boys are never given their share till the death of the parents. So, to enable the children to build a house of their choice, he had put forward the suggestion of partitioning the property. But the deceased was not amenable to the suggestion to partition the property. On several occasions he had discussed this matter in the presence of all the family members. The deceased had said that the property would be partitioned after clearing his various liabilities. He had suggested for partition to ensure that there were no further problems in the family. PW22 Murugan and PW60 Wilfred, acquaintances of the deceased, deposed that the latter had told them that the accused had demanded partition of the properties. Further, it has come out through the testimony of PW1, PW9 and PW11 that after the death of Wilson, the property had been partitioned and that the accused had been given 5 cents as his share in the property. Therefore, there appears to have been a demand by the accused to his father for partition of the property.



18. The next reason cited for the motive is that the accused felt that his father was more affectionate towards PW9, his younger brother, as the deceased had spent substantial amounts for the panchayat election contested by PW9 as well as to enable PW9 to get an employment in the police department. The deceased had also helped PW9 in the purchase of a car of his own. According to PW1, PW9, has an ambassador car which he had purchased with his own funds. It was PW9 who had cleared the chitty transaction. The accused had never demanded that he wanted to buy a car of his own. PW1 admitted that PW9 had contested an election but denied that any money had been spent by her husband for the same. According to her, it was PW9 who had met all the expenses for his election. She also denied the suggestion that the accused created issues at home as her husband had helped her younger son PW9 financially. PW9 deposed that he had contested the election for which he had spent an amount of ₹3,500/-. He denied that his father had spent more than ₹1,00,000/- for his election expenses. Likewise, PW1, PW9 and PW11 denied the prosecution story that a substantial amount had been paid by the deceased to enable PW9 to get employment in the police department. PW9 stated that he does not know whether his father had told PW60 and John P. Sam, brother of PW60, that more than ₹1 lakh had been



spent for his job. PW9 denied that the accused was in inimical terms with his father as the latter had failed to assist/help the accused in buying a car of his own.

18.1. PW22 and PW60 do support this story. PW22 deposed that the deceased had spoken to him about the expenses to be met when PW9 contested the election. The deceased had also requested his help for getting employment for PW9. As requested by the deceased, he had helped PW9 in getting employment. The deceased had spent considerable amount to enable PW9 to get the job. PW60 deposed that the deceased had spoken to him about his financial position; that the deceased told him that he had availed a loan for meeting the expenses of PW9's election; that he had spent an amount of ₹1,50,000/- for PW9's job and that the accused had demanded the deceased to spend money for him in the same manner as he had spent money for PW9.

19. PW60 may have an axe to grind against the accused because he and his son were initially made accused in this case based on the complaint of the accused and his mother PW1. The relationship between PW60 and the accused even before the incident does not seem to have been cordial. According to PW60, the deceased used to discuss with him family matters also. The accused was under the impression that it was under his instructions,



the deceased had refused to partition the property or give the money as demanded by the accused and due to this, the accused was on inimical terms with him. In such circumstances, it may not be safe to rely on the testimony of PW60 on this aspect. However, the testimony of PW22, Branch Secretary, CPI(M), Kanjiramkulam, Thiruvananthapuram, shows that help had been requested by the deceased as per which the former did help him in getting a job for PW9.

20. The last reason stated for the accused to entertain ill feelings against his father is that the latter had failed to pay the amounts borrowed from the accused. The prosecution relies on the testimony of PW1, PW8, PW11, PW33, PW57, PW60 and PW65 to establish this aspect. PW1 admits that her husband had taken an amount of ₹60,000/- from PW33. Out of this, ₹20,000/- had been given by PW33's mother, which amount the latter had saved for her daughter Sunitha's marriage. PW33, through the accused had several times demanded the amount to be returned. To a question whether there was any quarrel or altercation between the accused and her husband relating to this, PW1 answered in the negative. The marriage of Sunitha had to be postponed because this money was not repaid by her husband in time. Thereafter, it was PW33 who had to bear all the expenses for marrying off her



sister. She denied that the accused had harboured strong feelings of enmity as her husband failed to return the amount of ₹60,000/- he owed to the accused, although accused needed it quite urgently. PW33 corroborates this version of PW1.

20.1. PW11 deposed that the deceased owed an amount of ₹60,000/- to the accused; that the marriage of PW33's sister Sunitha had to be postponed as the deceased failed to return the amount of ₹60,000/- to the accused in time; that it was PW33 who had conducted the marriage of her sister, Sunitha; that the accused did not attend Sunitha's marriage and that he does not know whether due to this, there was any heated exchange of words between PW33 and the accused.

20.2. PW8's son is married to Sunitha. According to PW8, at the time of the marriage of his son, the parents of Sunitha were not alive. The marriage fixed had to be postponed due to the death of Leela Bai, Sunitha's mother. Leela Bai died about two months before Wilson died. PW33 had conducted the marriage of Sunitha. The accused had not attended the said marriage. After the marriage was fixed, when he asked the date on which the marriage could be solemnized, he was told by Leela Bai that her eldest son-in-law owed her an amount of ₹20,000/- and when the said amount is



received, the date for the marriage can be fixed. In the cross examination when PW8 was asked whether there were any issues in the family of Sunitha relating to the amount due from the accused, answered that he is unaware of the same.

20.3. PW57, another son of PW8, deposed that issues cropped-up between his brother and Sunitha and they are divorced. When there were issues between his brother and Sunitha, PW33 used to come to his house for settlement talks. PW33 used to advise Sunitha, that there would be issues in every family and that one needs to adjust and adapt to the said life. PW33 told her sister that the accused also used to assault her physically. She used to advise Sunitha to adjust and bear with it. When the accused used to beat PW33, the deceased used to take sides with the latter. In such situations, he has heard that the accused used to physically assault the deceased. The marriage of his brother to Sunitha had been fixed in the month of December. However, before the said date, Sunitha's mother passed away due to which reason the marriage was postponed. There were doubts regarding the manner in which Sunitha's mother died. Initially the marriage had been decided to be solemnized in July, but thereafter it was postponed to December as the money required for conducting the marriage was not ready.



20.4. PW65, nephew of the deceased, whose house is adjacent to the house of the accused deposed that he does not know whether before the marriage the accused was in a relationship with another lady. He also does not know whether the accused takes liquor regularly. He does not know whether the accused and his father used to daily fight with each other. PW65 deposed that he and the accused are now on good terms. PW65 denied having stated to PW80 that the accused is arrogant, a drunkard and womanizer and that he used to daily fight with his father and wife.

21. The evidence establishes that the deceased did owe money to the accused. It has also come out through the testimony of PWs.12 to19 that the deceased at the time of his death was heavily in debt. That appears to be the reason why he was unable to repay the amount he owed to his son. The reasons cited for the motive more or less stands established. However, the question is, are the said reasons sufficient to hold that the accused harboured ill feelings towards his father which prompted him to take the extreme step of murdering his father. We have serious doubts about the same. It is true that the variations in human nature being so vast, murders are actuated by even lesser motives. In any case, it is not *sine qua non* for the success of the prosecution that the motive must be proved (**Krishna Pillai Sree Kumar v.**



State of Kerala, AIR 1981 SC 1237). Motive is not an integral part of the crime or an ingredient of it. It is not possible for the court to gauge the reaction of persons to circumstances. If the circumstances of the case support the alleged motive, the court can accept it. In any case, if the testimony of independent witnesses is available motive loses its relevance (**Pedda Narayana v. State of A.P., (1975) 4 SCC 153**). Further, to establish commission of a murder, motive is not required to be proved. An intention can be formed even at the place of incident at the time of commission of the crime. (**Sanjeev v. State of Haryana, (2015) 4 SCC 387**). The motive may be considered as a circumstance relevant for assessing the evidence, but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is settled law that the motive loses all its importance in a case where direct evidence of eyewitness is available, because even if there may be a very strong motive for the accused person to commit a particular crime, he cannot be convicted if the evidence of eyewitnesses is not convincing. Likewise, even if there may not be an apparent motive, but if the evidence of the eyewitnesses is clear and reliable, the absence of inadequacy of motive cannot stand in the way of conviction (**State of U.P. v. Kishanlal, (2008) 16**



SCC 73). Therefore, let us examine whether there are other cogent pieces of evidence to establish the prosecution case beyond reasonable doubt, apart from the motive alleged.

22. The prosecution relies on circumstantial evidence to establish the case against the accused. The circumstances relied on are - (i) suspicious conduct of the accused; (ii) the accused repeatedly made false accusations against PW60 and PW26, though he had never witnessed the incident; (iii) recovery of MO.2 knife from the scene of occurrence and (iv) the accused produced MO.1 shirt, his own shirt, instead of producing the shirt that was worn by deceased at the time of the incident. Let us examine whether these circumstances are sufficient to establish his guilt and if sufficient whether the prosecution has been successful in establishing the same from the materials on record.

23. Ext.P1 FIS given on 16/02/2004 @ 11:30 hours by PW1 has been recorded at the Medical College Hospital, Thiruvananthapuram, where Wilson was undergoing treatment. In Ext.P1 PW1 states that she along with her husband and the accused, her son, are living together. On the said day at 05:30 a.m., her husband went to the house of PW60 to get back the money he had loaned to the latter. By 06:30 a.m., she was informed by PW6, the



newspaper man, that her husband has been found near the gate of the house of PW60, drenched in blood. She immediately woke up the accused, who was sleeping, and informed him. The accused proceeded to the spot in the ambassador car that he drives. Shortly thereafter the accused along with her husband; PW2 Simon; PW22 Murugan and PW4 Wilson, returned home in the car. She saw a deep wound on her husband's neck and three stab wounds above his abdomen. The wounds were bleeding profusely. She also joined her husband and then in the car they took him to the hospital, where he is under treatment. She has further stated that her husband had borrowed about ₹1 lakh from several people and had given it on interest to PW60. PW60 had said that he would return the money on 16/02/2004. Hence the reason why her husband had gone to the house of PW60. While on the way to the hospital, her husband told her that PW60 and PW26 had cheated him. What he said was not very clear (വിൽക്കൂട്ടം മക്കൾ ചേർന്ന് എന്തെങ്കിലും എന്ന് ഭർത്താവ് അർത്ഥമായി പറയുന്നതായിരുന്നു). Her husband is now not able to speak. According to her, PW60 and his son must have attempted to murder her husband, as the latter had demanded his money back.

23.1. PW1 when examined, stands by what she has stated in Ext.P1. On the previous night, herself, her husband and the accused were at



home. PW33, who works in a hospital, had left for work the previous day. The accused was sleeping in the room adjacent/next to their room. She is not aware of the money transactions of her husband. On 14/02/2004 at about 06:00 a.m. PW60 had made a call, which call was attended by the accused. When her husband asked the accused as to who the caller was, the accused answered that it was PW60, and that the latter had said that the money would be returned on 16/02/2004. Hence on the morning of 16/02/2004, her husband left to get the money. PW1 also deposed that her husband had gone at 05:30 a.m. itself because only then he would be able to meet the person who owed him the money. When her husband left, she sat on the veranda of her house. PW6 Yesudas, by about 06:30 a.m. came and informed her that he had seen her husband standing in the courtyard of the house of PW60 drenched in blood. Sathyan also came and informed her. PW35, Vasanthi informed her over the phone. She immediately woke up the accused. PW4 followed him. Immediately thereafter, the accused along with her husband returned in the car accompanied by PW2 Simon, PW4 Wilson and PW22 Murugan. Her husband gestured to her that they can go (ഭർത്താവ് പോകാം എന്ന് എന്തെങ്കിലും കൈ കാണിച്ചു). At that time her husband was unable to speak. When her husband had reached home, he by himself had got out of the car and sat on



the verandah, at which time his dress was found drenched in blood. Her husband insisted that she join him. PW1 when asked whether in the FIS she had stated the name of the two persons who had stabbed her husband, replied that she had actually named three persons. She had said so as her husband gestured and indicated three persons as the assailants. She admitted having stated the names of PW60 and PW26 as the persons who had stabbed her husband. PW1 had no answer when she was asked the basis on which she had named the two, though she had never witnessed the incident. PW1 also deposed that when PW75 questioned her husband, the latter had again shown three fingers. The police had given pen and paper to her husband to write down the details. But she does not know whether he had written anything. When she was asked whether her husband had pointed to the accused when PW75 enquired about the assailant, she answered in the negative. PW1 further deposed that her husband and PW60 were very close acquaintances and that the latter used to visit their home. According to her, MO.1 is her husband's shirt. She admitted that Ext.P2 is the account book kept by her husband in the provision store run by him. At this juncture, the prosecution is seen to have sought permission under Section 154 Evidence Act r/w the 2nd proviso to Section 162 Cr.P.C. to put questions to PW1 as put in cross



examination. This request was granted and thereafter PW1 was asked by the Prosecutor whether PW75 on 17/02/2004 had recorded her statement, to which she answered that she does not remember. To a further question she admitted having given a statement to the police. She denied having stated to the police that while on the way to the hospital, her husband had told her that PW26 had hit him on his head with a stone; that PW26 and another person held him, at which time PW60 with a steel knife stabbed him thrice above his abdomen. When her husband cried out, he was stabbed in the neck also. This contradiction has been marked as Ext.P3. When PW1 was asked as to why she had not stated in Ext.P1 that PW60 on 14/02/2004 had telephoned and asked her husband to come and get the money, answered that she did not say so as she was never asked about the same. She admitted that her husband had financial liabilities when he died. However, there was no quarrel in the family on account of this. According to her, neither she nor the accused had objected to her husband clearing the liabilities by selling off his property. After the death of her husband, she sold the property purchased after her marriage and cleared her husband's liabilities, which ran into lakhs of rupees. She denied the suggestion that the accused, with the intention to do away with her husband, had deliberately misled the latter and created a situation to



send her husband to the house of PW60. She denied that the accused had stabbed and injured her husband and abandoned him while the latter was in a critical condition. She denied that the accused had misled her into giving Ext.P1 FIS containing false allegations. PW1 admitted that she had given several complaints to the authorities concerned that the police investigation was unsatisfactory. She proceeded with the said complaints even after PW60 and PW26 were arrayed as accused, as she was convinced that there was a third person also involved in the crime. But she does not know who the said person is.

23.2. In the cross examination, PW1 deposed that one can reach the house of PW60 not only through the main road, but also by cutting across properties. This is a shortcut to reach the house of PW60. If one goes by the said way, it will take ten minutes to reach PW60's house. Her husband had gone to the house of PW60 through the main road. This she came to know later as informed by the people who had seen him. PW1 deposed that she had stated that PW60 and his son had stabbed her husband because her husband, on the said day had gone to see PW60. She does not know the place where her husband was found injured. From the time her husband left till PW6 came and informed her about the incident, she continued sitting on the



verandah. She sat there with the intention of going to the kitchen in between. (... ഇടക്ക് അടുക്കളയിൽ പോയി ജോലി ചെയ്യണം എന്ന് പറഞ്ഞാണ് അവിടെ ഇരുന്നത്... See page 41 of her deposition.) She did not see the accused going out after her husband had left home and before PW6 came. When PW6 came, her son was at home. In the re-examination, PW1 denied having stated to PW80 that after her husband left, she had again gone to bed and that when PW75 had questioned her husband about the assailant, the latter had pointed out to the accused.

24. PW8 deposed that on 16/02/2004 after 05:30 a.m., he went to the shop of PW3 to deliver milk at which time PW3 and his wife were in the shop. It was still dark when he went there and returned. He had not seen anybody on his way to the shop or on his return.

24.1. PW6, a newspaper man, stated that he starts distributing newspapers by 5:15 a.m. He had seen the deceased for the last time a few days before his death at about 06.15 a.m. sitting by the roadside leading to the house of PW60. PW6 seems to be the first person to have seen the deceased on the said day.

24.2. PW3 Wilson @ Maniyan at the relevant time was conducting a small tea shop near the place where the deceased was found injured. The



shop according to PW3 is situated slightly away from the road. On the southern side of his shop is the compound wall of PW60. Normally he opens his shop between 05:30 - 06:00 a.m. On the day on which the deceased was found injured, he had opened the shop by 06:00 a.m. It was still dark. His wife had also come to assist him in the shop. PW8 came to his shop with the milk. The next person to come to his shop was PW7 Palayyan. PW7 sitting on the veranda (തിണ്ണ) of his shop told him that somebody was calling him. After about 5 minutes he went out of his shop and looked around. As it was dark, he was not able to clearly see things around. Again, PW7 told him that somebody was calling him. PW7 also told him that it was the person conducting a shop at Koonanvila who was calling him. He then realized that it was Chellathambi Annan (the deceased). He went towards the place from where he heard the noise. He saw the deceased on the road in between the grave and the pathway leading to the house of PW60 with blood stains, standing leaning on to the compound wall of the house of PW60. (അപ്പോൾ രക്തത്തിൽ പുരണ്ട് വിൽപ്രഡ്റുറെ വീട്ടിലേക്ക് കയറുന്ന വഴിക്കു കല്ലറക്ക് ഇടക്ക് റോഡിൽ കയ്യാലയിൽ പിടിച്ചു ചെല്ലുന്നവീ (വിൽസൺ) ചാരിനിൽക്കുന്നത് കണ്ടു). He asked Sathyan who came there to take his bicycle and to go and inform the family members of the deceased. Then PW10 Vimala came and said that the deceased had



vomited blood and that his family needed to be informed. Then Vijayan mesthiri came. Vijayan said that he knew the phone number of the house of the deceased and that he would ring and inform them. Saying so, Vijayan left the place. Sathyan arrived on the bicycle. PW10 gave instructions to Sathyan regarding the way to the house of the deceased. Sathyan left for the house of the deceased. Vijayan Mesthiri after informing the family members over the phone, returned to the place. On the western side of the place where the deceased was found, is the residence of one Daniel and on the opposite side, the house of PW60 is situated. The inhabitants of the said house had not awakened by the said time, and nobody was seen outside their respective residence. After about five minutes, PW2 Simon came to the scene. Then the accused arrived in his car. PW2 Simon, and the accused helped the deceased inside the car to take him to the hospital. They proceeded towards the house of PW2. The car was stopped at the house of PW2, who went inside his house to put on his shirt. Then the deceased got out of the car. When PW2 returned dressed, he again helped the deceased into the car. By this time PW60 came out of his house and approached the place where the car was parked. PW60 asked him what had happened. He told PW60 that he did not know what exactly had happened and that the deceased was being taken to the hospital.



When PW60 was approaching the car, the car was reversed and driven away by the accused towards the house of the deceased. Before the accused arrived in the car, he had not seen any other car in the area. He also did not see any knife near the place where the deceased was found injured. Initially when PW7 told him that somebody was calling him, he thought that it must be Chellan, an alcoholic. It was only when he was called again, he had gone and looked. Shortly after the deceased had been taken to the hospital, the police came to the scene. They asked him whether he knew anything about the incident. He told the police that the deceased had vomited blood and hence had been taken to the hospital. His statement was not recorded. After about five to six days, PW75 and his team came and questioned him. He told them the facts that he knew. He was then called to the police station, where he repeated the same facts which he knew.

24.3. In the cross-examination PW3 denied having stated to PW75 that on 16/02/2004 at about 6:15 a.m., while he was in his shop he had heard a groan from PW60's property; that when he went and checked, he saw three persons stabbing a person; that this was happening in the pathway leading to the house of PW60 and that two of the assailants were holding the victim and the other cutting at his neck. He also denied having stated that the assailants



were PW60 Wilfred, his son PW26 and PW60's daughter's driver; that he does not know the driver's name and that he had seen the said person going to the house of PW60. The contradictions have been marked as Ext.D3series.

24.4. PW7 Palayyan, supports the version of PW3. According to PW7 when PW2 got down at his house to change his dress, PW60 came there. The deceased got out of the car and folded his hands (... അപ്പോൾ ചെല്ലത്തമ്പി അണ്ണൻ (Wilson) ക്കാരിൽ നിന്നു പുറത്തിറങ്ങി ചെല്ലത്തമ്പി അണ്ണൻ രണ്ടു കയ്യും എടുത്ത് തൊഴുതു.... See page 3 of his deposition). PW2 returned. The deceased said he wanted to go home. The car was at that time parked in the direction of proceeding to the hospital. It was then the deceased had gestured that he wanted to go home by folding his hands. (... ആ സമയം ഹോസ്പിറ്റലിൽ പോകാനുള്ള രീതിയിൽ ആണ് വണ്ടി നിർത്തിയിരുന്നത് അപ്പോഴാണ് വീട്ടിലേക്ക് പോകണം എന്ന് കൈകൂപ്പി ആശംസ കാണിച്ചത്.... See page 3 of his deposition). He was questioned by all the three investigating agencies. It was not possible for him to see the place where the deceased was sitting from the shop of PW3. In the cross examination, PW7 deposed that when he first saw the deceased at dawn, there was nobody else around. The distance between the shop of PW3 to the place where the deceased was found is about 20 meters. There was no blood in the place where the deceased was found injured. There was only



blood on his dress.

24.5. PW2 Simon, deposed that on 16/02/2004 at about 06:15 a.m., Aju, a next-door boy came and told him that the deceased had been found injured near the house of PW60. He immediately ran to the spot which is about 100 meters away from his house. When he reached there, he found the deceased leaning on to a compound wall (കുറ്റുവെ) situated near a grave (കല്ലറ). The compound wall and the grave are situated by the roadside. The grave is of the deceased son of PW60. When he saw the deceased, there was an injury on his neck. The shirt of the deceased was drenched in blood. The deceased did not utter a word when he asked who had injured him. When he reached the spot, Sathyan, Vijayan, PW3 Maniyan and another person whose name he does not remember were there. He asked his son who had also come to the scene to inform the matter to PW22 Murugan. By this time the accused arrived in his car. He told the accused to ask his father as to who had injured him. But the accused did not ask anything. The accused did not speak or say anything to his father. When he asked the accused whether there was anybody in inimical terms who would have done this act, the accused still did not answer. He told the accused that they need to quickly take the deceased to the hospital. When he along with the accused helped the deceased into the



car, the latter gestured that it is enough that he be taken home. They proceeded to the house of the deceased. On the way they stopped at his house for him to change his dress. When he came out after changing his dress, he saw the deceased standing outside the car. When he asked the deceased to get into the car, the latter again gestured towards his house. As there was profuse bleeding, he attempted to bandage the wound with a cloth. But the deceased did not allow it and he took the cloth and threw it away. At this juncture, PW60 came briskly near the car. By that time, he and the accused had helped the deceased into the car and left for the house of the deceased. When they reached the house of the deceased, the latter again got out of the car and sat on the verandah. PW1 came out of the house into the courtyard. PW1 told him that her husband had gone to the house of the jail warden (PW60), and it was the latter who had injured her husband. By this time, PW22 Murugan arrived in a car. PW4 Wilson, PW1's sister's husband, residing to the south of the house of the deceased also arrived. He along with PW1, PW4 and PW22 helped the deceased into the car and took him to the hospital. On the way they got down at Kanjiramkulam police station and informed the police. When they reached the hospital, the doctor examined the deceased and asked the buttons of the shirt to be opened. When he



opened the shirt, he saw three wounds on the abdomen below the chest. As instructed by the doctor, he along with PW22 Murugan opened the buttons and removed the shirt worn by the deceased. After removing the shirt, it was placed under a cot in ward no.5 of the hospital. It was a half-sleeved shirt. The shirt had buttonholes. When PW2 was shown MO.1 shirt, he stated that the same was not the shirt worn by the deceased. MO.1 is a full sleeve shirt whereas the shirt worn by the deceased was a half sleeved one. On his way back home, he had gone to the place where the deceased had been found injured. He saw little bit of blood on a plant and on the trunk of a coconut tree. A policeman told him that a knife was seen in the place. He did not see the knife. The knife was found covered with a flowerpot. The pot was seen about 2 feet away from the coconut tree. There was grass around the place. He did not see blood anywhere else. There were no signs of scuffle at the place. On that day the police never questioned him. After about two months, PW77, the Circle Inspector, Poovar questioned him and recorded his statement. During the time of the incident, his son Sajil Kumar @ Jiji was the driver of the car owned by PW9. He is acquainted with PW9, who used to come to his residence. Then he used to have long conversations with PW9 who had told him that his family had lot of liabilities and to clear the same



they wanted to sell some property. PW9 had said this about 2-3 months before the incident. PW2 also deposed that the place where he found the deceased could be seen from the house of PW60. There is a distance of about 100 to 125 feet from the road to the house of PW60. In the morning when he reached the place, he had seen PW60's daughter (PW25) with a broom in the courtyard. He knows PW60, a retired jail superintendent, quite well. PW60 is quite well off and has landed properties. The deceased and PW60 were close acquaintances. He had seen them together in the shop of the deceased. On some days, he has also seen the deceased going to the house of PW60 and delivering goods. PW2 also deposed that from the house of the deceased till the place where the latter was found injured, there is a shortcut. After Wilson's death, an action council had been formed as the investigation being conducted was unsatisfactory. There were protest meetings and hartal on account of the same. After the CBI took over the investigation, there was no hartal or any further activities by the action council.

24.6. PW2 in the cross-examination deposed that PW75 had never questioned him or recorded his statement. He denied having stated to PW75 that it was PW60 and PW26 who had beaten and injured the deceased ; that he had heard the deceased telling PW1 in the car that PW60 and his son along



with another person had cheated, beaten and stabbed him ; that the deceased had borrowed several thousands of rupees from others and had given into PW60; that PW60 never returned the money though the deceased had gone to his house several times for the money; that on 16/02/2004 at 6:15 a.m. the deceased had gone to get the money back and that PW60, PW26 and the driver of PW45 Ambika Mable(PW 60's daughter) had attempted to murder Wilson. The contradictions have been marked as D1 series. PW2 admitted that on 27/03/2004, PW77 had questioned him. When PW2 was asked whether he had stated to PW77 or PW78 that the half-sleeved shirt worn by the deceased had been removed by him and that the shirt had nylon buttons, answered that he does not remember whether he had stated about the kind of buttons, but he did state that it was he who had removed the shirt. PW2 had nothing to say when his attention was drawn to the fact that the said aspect is missing in his statement to the police. MO.1 shirt had never been shown to him by the police. The deceased was conscious when he was being taken to the hospital. But he does not know whether the deceased was able to comprehend things. When PW60 Wilfred had come near the car, the deceased and the former did not speak/talk to each other. The deceased must have understood that it was PW60 who had come near the car. PW2 was then



asked whether he saw any fear on the face of Wilson, he answered in the negative. PW2 answered in the affirmative when he was asked whether the deceased had refused to get into the car of the accused. According to PW2, the deceased was compelled to get into the car. The deceased had only gestured that he wanted to go home and did not say so. He denied having stated to PW77 that the deceased repeatedly said that he wanted to go home. He had only stated that the deceased indicated so by his gestures. This contradiction has been marked as Ext.D2. He had asked the deceased as to who had attacked him because he believed that the latter would reveal the same to him. After he had asked this to the deceased, PW3 Maniyan, PW7 Palayyan, Sathyan and Vijayan mesthiri, arrived. Then also the deceased never gave any indication as to how he was injured. When it was suggested to PW2 that the deceased had not revealed the name of his assailants as he had been attacked by strangers, replied that he cannot say whether the said statement is true. From 06:15 a.m. till 03:00 p.m., he was present along with the deceased. During that time, he never received any indication that the accused had committed the crime. In the re-examination PW2 deposed that from the morning of 16/02/2004, till the deceased had been taken to the operating theatre, he was present all along with the latter. During the said



time, the deceased never spoke to anyone. He had stated to PW80 that it was he who had removed the shirt worn by the deceased, which was a half-sleeved shirt with nylon buttons. When PW60 approached the car, the accused drove away and so there was no opportunity for any conversation. (.....Wilfred കാരീന് സമീപ വന്നപ്പോഴേക്കു കാർ വിട്ടുപോയി. സംസാരിക്കാൻ അവസരം ഇല്ലായിരുന്നു See page 31 of his deposition). PW2 further admitted that he had stated to PW77 that the deceased had folded his hands and that the deceased by folded hands indicated that he wanted to go home. (C.I. ഫിറോസ് മുൻപാകെ മൊഴികൊടുത്തപ്പോൾ കൈ എടുത്തു തൊഴുതു എന്നു പറഞ്ഞിട്ടില്ല (Q) ഉണ്ട് (A). Witness voluntarily adds, വീട്ടിൽ പോകണം എന്ന് ആഗ്രഹം കാണിച്ചത് കൈ എടുത്ത് തൊഴുതുകൊണ്ടാണ്... See pages 31 and 32 of his deposition).

24.7. PW25 Ajantha Mable, daughter of PW60 deposed that on 16/02/2004 at 06:30 a.m., when she came out of her house to sweep the courtyard, she saw a small crowd in front of the shop of PW3. An ambassador car came there. Attempts were being made to help a person inside the car, which the person was resisting. People around were telling him to get inside the car to go to the hospital and police station. The man refused to enter the car. The man got into the car when the people assured him that he would be taken home. When the injured turned to enter the car, she



saw blood on the front portion of his shirt. When the man was helped into the car by PW2, she saw the man trying to get out of the car through the door on the opposite side. The door was closed, and the car sped away (ഡോർ അടച്ച് റണ്ടി വിട്ടു പോയി). When she enquired the matter with the people gathered there, they told her that the injured was Wilson. She informed PW60 her father and PW26. The deceased and her father were on friendly terms.

24.8. PW22, Murugan deposed that he was told about the incident by PW2's son Sajil. When he reached the house of the deceased, he found the latter sitting on the verandah drenched in blood. Though he asked the deceased who had injured him, the latter did not answer. He along with PWs.1, 2 and 4 took the deceased in the car driven by the accused to the hospital. As instructed by the doctor, PW2 Simon removed the shirt worn by the deceased which was a half sleeve shirt with nylon buttons. PW2 opened the buttons of the shirt and removed it. The shirt had buttonholes. The shirt was drenched in blood. MO.1 is not the shirt that was worn by the deceased on the said day. He had helped PW2 in removing the shirt. From the time he saw the deceased till he was taken to the operation theater, the latter had not spoken. While on the way to the hospital, apart from the conversation he had with PW2, none of the others, that is, neither the accused, PW1 nor PW4 had



spoken. He was well acquainted with the deceased from whose shop he used to buy provisions. The deceased had borrowed an amount of ₹20,000/- from him, out of which ₹15,000/- had been repaid. Till two months before Wilson's death, interest had been paid. PW75 never questioned him. PW77 had questioned him. In the cross-examination PW22 deposed that at no point in time he had felt that the accused was in inimical terms with his father. He saw MO.1 for the first time in the court. He had not been questioned by PW77 or by the CBI officials regarding MO.1 shirt. He also deposed that the deceased had not told him that PW60 owed him money.

24.9. PW10 Vimala supports the version spoken by PW2, PW3 and PW7. PW35 Vasanthi deposed that her husband on his way to work, had seen the deceased lying on the road. As instructed by her husband, she called on the phone in the house of the deceased. The call was attended by the accused. She informed that matter to the accused, who according to her did not reply. In the cross-examination she stated that it was by about 07:00 a.m. she had made the call. To a question as to what exactly she had conveyed to the accused, answered that she told him that his papa was lying on the road and then disconnected the call. In the re-examination PW35 deposed that as soon as she told the accused that his papa was lying sick on the road, the latter



disconnected the call. To a leading question as to whether she had noticed any further queries from the accused, answered in the negative.

24.10. PW4, the cousin of the deceased is married to PW1's sister. His house is adjacent to the house of the deceased. He deposed that he was informed about the incident by PW1. When he proceeded to the place of occurrence, he saw the deceased being brought home in the car driven by the accused. Therefore, he returned to the house of the deceased, where he saw the latter sitting on the verandah of his house. The shirt and dhoti worn by the deceased was completely drenched in blood. PW2 was also present in the car in which the deceased had been brought home. When he asked the deceased as to what happened, the former was unable to speak and was gesturing something. He was not able to comprehend what the deceased was trying to say through gestures. After some time PW22 came. He along with PW22, PW1 and PW2 took the deceased in the car driven by the accused to the police station. From there they went to the medical college hospital. Till they reached the hospital the deceased never spoke. The deceased and PW60 were close acquaintances. He had seen PW60 going to the house of the deceased about 3 to 4 days before the incident. PW75, had never questioned him. PW77 had questioned him for the first time about a month after the incident.



PW78, DYSP, CBCID had also questioned him. The police had never asked him whether he was ready to be a witness in the case. PW4 to a question whether he had stated to PW78, that two days after the incident he had gone to the Kanjiramkulam police station, at which time the police told him that three witnesses were required; that he was asked whether he was ready to be a witness in the case; that he had agreed to be a witness, but said that he was not ready to say what he had not seen, answered that he does not remember. He also stated that he does not know about the financial dealings of the deceased. In the cross-examination, PW4 was asked whether he could comprehend from the gestures of the deceased as to what the latter was trying to say, answered that when the deceased was asked as to who the assailant was, had gestured that he does not know.

24.11. PW5, a distant relative of the deceased, deposed that on the date of the incident PW2's son between 06:45 and 7:00 a.m. had informed him about the incident. When he went to the spot on his bike, he was told that Wilson had already been taken to the hospital. He then accompanied by K.K.Vijayan, party Local Secretary went to the place of occurrence. PW60 was present when they reached there. Nobody had shown him the place of occurrence. After several days they had formed an action council and had



gone to the office of the DYSP. After the accused (PW26 and PW60) were arrested, the policemen at the office of the DYSP told them that 2 to 3 witnesses were required. But he did not give his name. In the cross-examination he deposed that he had visited the deceased in the hospital about 4 to 5 times. On none of these occasions, the deceased had told him anything. Whenever the deceased was asked anything, he just used to show gestures. He does not know whether there were any financial transactions between the deceased and PW60. He had seen them several times together.

25. Now the question is, whether the aforesaid evidence brings out any suspicious conduct on the part of the accused as alleged by the prosecution and whether the same is sufficient to hold the accused guilty. It was pointed out by the learned Public Prosecutor that when PW6 Yesudas, one Sathyan and PW35 Vasanthi had informed the accused of the fact that his father had been found injured, there was no reaction or expression of shock or anguish by the accused. In fact, the accused never asked the details like the place where his father had been found injured. On the other hand, without asking anything he straightaway went in his car to the place where the deceased was found injured, which indicates that he knew beforehand the place where his father was or else, he would have certainly asked the



aforesaid witnesses the details. This was pointed out as one suspicious conduct on the part of the accused.

25.1. From the testimony of PW1 it appears that it was PW6 who had first informed her about the incident. Neither PW1 nor PW6 has a case that it was the accused who was informed of the incident first. On the other hand, PW6 seems to have conveyed the information to PW1 who in turn conveyed the same to the accused. PW1 admits that one Sathyan had also informed her. Here again it was PW1 who had been informed and not the accused. Therefore, there was no opportunity for the accused to react or express shock or anguish on hearing the incident.

25.2. Now coming to the testimony of PW35, whose call PW1 admits having received. According to PW1, the information was received from PW6; Sathyan and PW35 in quick succession. It is true that PW35 Vasanthi deposed that the accused did not reply when she made the call. In the cross-examination she deposed that after informing the accused, she had disconnected the call. Only in the re-examination and that too to a leading question as to whether she had noticed any further queries from the accused, answered in the negative. By the time PW35 Vasanthi made the call, it appears that PW6 as well as Sathyan had already conveyed the message to



PW1, who in turn told the accused. That may also be the reason why the accused did not react or continue the call with PW35 by asking further questions. PW6 and Sathyan have no case that they had informed the accused and that the accused had never reacted. Therefore, this cannot be taken as a suspicious conduct on the part of the accused.

26. The second suspicious conduct pointed out is that the accused, after reaching the place where his father was found injured, never asked the latter anything about the incident. True, this is spoken to by PW2. According to PW2 not only did the accused not ask his father about the incident but also did not reply when PW2 asked him whether the accused was aware/knew any enemies of his father who would have done this. It was pointed out by the learned defence counsel that PW2 never had such a case when PW75 and PW77 had questioned him. He comes up with a new story only when the CBI comes into the picture. It is true that such a statement is not there in his earlier statements to the police. But then the complaint itself was that the investigation by PW75 was faulty. All the witnesses vouch for the fact that PW75 had never questioned them or recorded their statements. This is corroborated by PW39, Writer, Poovar police station, who deposed that from 16/02/2004 till 18/02/2004, PW75 had never questioned anybody or recorded



their statements. As dictated to him by PW75, the statements of PW3 to PW6, PW22 and PW23 were taken down by him. PW39 also deposed that he had never seen any of the aforesaid witnesses. Therefore, the fact that such a version of PW2 is not found in his statement recorded by PW75, cannot be taken as an omission as urged by the defence counsel. It is true that none of the other witnesses whose testimony to which we have adverted to in detail, say that PW2 had asked the accused and that the latter had not reacted or responded. We will for the moment assume that PW2 did ask the accused and that the accused never responded and hence that is suspicious conduct of the accused. Now would that be sufficient to conclude that he is guilty. Let us examine further.

27. Another suspicious conduct pointed out is the reluctance shown by the deceased to get into the car driven by the accused. This is spoken to by PW2 Simon, PW7 Palayyan and PW25 Ajanta Mable. It was pointed out by the learned defence counsel that PW25 cannot be believed as she is the daughter of PW60, initially the first accused in this case. It was also pointed out that if PW3 is to be believed no one in the house of PW60 had woken up or were seen outside their house and so the testimony of PW25 that she had seen from the courtyard of her house the deceased with blood on his shirt



being helped into a car cannot be believed. It is true that PW3 does not refer to the presence of PW25 in the courtyard of her house. But PW2 Simon says that PW25 was there in the courtyard of the residence with a broom in her hand. According to PW25, when the injured had been helped into the car, he tried to get out from the car by opening the door on the opposite side. Even if the testimony of PW25 is ignored, we still have the testimony of PW2 and PW7 which show that the deceased had to be coaxed into the car of the accused. The deceased, through gestures insisted on being taken home and it was only when he was assured of the same, he got into the case. When the car reached the house of PW2 and when he went inside his house to get dressed, the deceased again got out of the car and only after PW2 returned dressed to go, the latter was ready to get into the car. The deceased seemed to have been quite particular that PW1, his wife, join him. The deceased on reaching his house had also got out of the car and sat on the veranda and was ready to get into the car only when PW1 joined him. Therefore, the reluctance of the deceased to get into the car of his son, the accused, is certainly a suspicious factor.

28. The next suspicious conduct pointed out is the repeated false allegations made by the accused and PW1 that it was PW60 and PW26 who



had injured the deceased. PW1 in Ext.P1 as well as in the box has a case that her husband had said so while on the journey to the hospital that it was PW60 and PW26 who had done the job, though what he said was not very clear. However, PW1 had no answer to offer when she was asked how she concluded so without seeing the incident. PW1 seems to have concluded so as her husband had gone to the house of PW60. Merely because he had gone to the house of PW60, it cannot be concluded that it was PW60 and PW26 who had injured him, because it could have happened before the deceased reached the house of PW60 also. The said possibility cannot be ruled out. One can understand PW1 expressing doubts as to the complicity of PW60 and PW26 in the incident. But we fail to understand how the mother and son can assert and continue to assert that PW60 and PW26 committed the crime without seeing the incident. The fact that it was in consultation with the accused that PW1 had given Ext.P1 statement is apparent from the testimony of PW44, who had recorded her statement. Further, the accused gave Ext.P16 to Ext.P18 complaints to various authorities in which also, he asserts that it was PW60 and PW26 who are the culprits. Here again it is not suspicion that is expressed in the complaints, but an assertion that PW60 and PW26 are the culprits. However, investigation by the CBCID and the CBI found PW26 and



PW60 to be innocent. Therefore, a clear attempt seems to have been made by PW1 and the accused to mislead the police into believing that it was PW60 and his son PW26 who had committed the crime.

29. Another aspect which needs to be noticed is the version of PW1 that her husband had in fact told her that PW60 and PW26 had cheated, stabbed, and injured him. However, it has come out in evidence that the deceased was unable to speak. Even PW1 admits this fact. The medical evidence is also clear on the point. PW20, the doctor who conducted the surgery on the deceased also says that the deceased was unable to speak. In addition to this, PW2 Simon also deposed that during the journey to the hospital, the deceased had never spoken. Therefore, the version of PW1 that her husband had spoken to her and referred to the assailants cannot be believed. Here again an attempt is seen to mislead the police.

30. The prosecution relies on the testimony of PW39, Writer, Poovar police station to establish that the deceased had pointed to the accused when PW75 questioned him about the assailants. He is the only witness who speaks of the same. We have doubts as to the extent to which PW39 can be believed because he admits that many things done by PW75, his superior officer, were not right. PW39 deposed that on many days he had accompanied PW75 to the



place of occurrence. He admitted that Ext.P24 scene mahazar had been taken down in his handwriting and the contents of the same had been dictated to him by PW75. In Ext.P24 it is stated that PW2 Simon was present when the mahazar was prepared. PW2 is not an attestor to Ext.P24. When PW39 was asked the reason for the same, he answered that by the time he had finished writing the mahazar, PW2 had left. He was then asked by the court if PW2 was not present, the reason for recording the presence of PW2 in the mahazar, answered that he does not know. To a further question by the court whether the facts stated in Ext.P24 are true and correct, he answered that all what is stated is not correct. [പിന്നെ എന്തിനാണ് ഹാജർ ഇല്ലാത്ത ആൾ ഹാജർ ഉണ്ട് എന്ന് C.I. ഡിക്ലേഷൻ തന്നത് നിങ്ങൾ എഴുതിയത് (Q) അത് അറിയില്ല (A). Ext.P24-ൽ പറഞ്ഞിരിക്കുന്ന കാര്യങ്ങൾ എല്ലാം ശരിയും സത്യവും ആണോ (Q) എല്ലാം ശരിയും സത്യവും അല്ല (A)]. As noticed earlier, PW39 has also admitted that without questioning or recording the statements of the witnesses, PW75 had made up their statements. Further, the fact that the deceased had pointed out to the accused when PW75 questioned him is not spoken to by any of the other prosecution witnesses. According to PW1, PW75 had given a pen and paper to the deceased to write down the details of the assailant(s). PW1 when asked what her husband had written, conveniently answered that she does not know.



31. PW11 the son-in-law of the deceased stated that the deceased when asked about the assailants had shown three fingers indicating the involvement of three persons, one tall and two short. This is spoken to by PW1 and PW9 also. However, PW2 and PW4, who were present with the deceased and the others during the crucial time have no such case. PW75 deposed that the deceased had written something which was not legible/clear. Where is the paper on which the deceased had written something? The same has not been produced before the court. It is not in the CD also submits the prosecutor. PW75 admits that he had not recorded this fact in the CD. As to why he did not do so, no explanation is forthcoming from him. The investigating officer is supposed to record all the steps taken by him from the day he takes over the investigation. But PW75 quite conveniently has not recorded many things for reasons to which we will refer shortly. In aforesaid circumstances, it may not be safe to rely on the testimony of PW39 alone.

32. It was further pointed out that if the accused was not involved and that he is innocent, why did he have to create a story based on which the deceased in the early hours of 16/02/2004 proceeded to the house of PW60. If PW60 never owed any money to the deceased, the latter would never have gone. The very fact that the deceased went to the house of PW60 believing



the version of the accused would show that the accused did have a role in the crime.

33. The prosecution case is that the accused had asked his employer PW63 Shobana Lucy to make a call on 14/02/2004, which call he represented to his father as a call from PW60. PW63, when examined admits that during the said period she used to call the accused on his land line. When she was asked whether two days before the incident the accused had asked her to call him at 6:00 a.m., answered she does not remember. The prosecutor then sought the permission of the court under Section 154 Evidence Act read with the second proviso to Section 162 Cr.P.C. to put questions to the witness as put in the cross-examination, for which permission was granted. When PW63 was asked whether she had stated to PW80 that as requested by the accused two days before the incident at 06:00 a.m. she had made a call to the accused, answered that she does not remember. The said contradiction has been marked as Ext.P49. The next question put to her was whether on the request of the accused she had made a call to the accused, answered in the affirmative. Of course, she has an explanation for the same. She had borrowed an amount of ₹30,000/- from the accused and it was relating to the said transaction, she made the call. It was pointed out by the learned defence



counsel that PW63 was neither asked nor has she stated that she called the accused on 16/02/2004 at 06:00 a.m. What she has stated is only that she had made a call to the accused relating to a money transaction between them. We disagree with the said argument advanced. A whole reading of the deposition of PW63 would make it quite clear that she did call the accused two days before the incident at 06:00 a.m. It appears that she had been won over by the accused and hence feigning ignorance. This is all the more clear from her further examination. She was asked with whom she had come to the court to which she answered that it was with PW33. She admits that PW33 is residing quite far away from her residence. The explanation given by her is that it was because she did not know the way to the court that she had sought the assistance of PW33. PW63 admits that the day before the date on which she came to the court, she had contacted PW33 on the phone number of the accused and it was as directed by the accused, PW33 had accompanied her. Admittedly PW33 is not a neighbour of PW63 or staying on her way to the court. It is further admitted that PW63 has a son aged 20 years and that her brother was residing nearby. In such circumstances, what was the necessity for PW63 to seek the assistance of PW33 and the accused when her son and brother were very much available. Even if it is taken that her son is young to



have accompanied her to the court, her brother was very much available. The reason given by PW63 to take the assistance of PW33 is not convincing.

34. The prosecution has also a case that the land phone of PW60 was not working during the period and hence he could not have made any calls. It was submitted that the CBI did make efforts to get the phone call details of the accused as well as PW60 but were unable to get it as the CBI had entered the picture quite late by which time the records were no longer available with the authorities concerned. The said records are not required because the testimony of PW63 establishes that she did call the accused in the morning of 14/02/2004. PW1 also admits that a call had been received on the morning of 14/02/2004. The deceased and PW1 were made to believe by the accused that the call was from PW60. It was pointed out by the learned prosecutor that investigation by the CBI did not reveal any financial transactions between the deceased and PW60, except an amount of ₹2600/- odd due from the latter towards the purchase of provisions from the shop of the former, which is established by Ext.P2 account book maintained by the deceased. Therefore, there was no necessity for the deceased to have gone to the house of PW60 in the early hours of 16/02/2004. It is true that there are no records to establish any financial transaction with PW60. None of the witnesses also speak of the



same. But if PW60 did not owe any money to the deceased, why did he go to the residence of the former on the saying of the accused? If there was no money transaction between the two, that fact would certainly be within the knowledge of the deceased and if that was so he would never have left for the house of PW60. PW60 when asked about the same in the cross examination does not emphatically or for that matter deny the same. His response was-
 “..... കടയിലെ പറ്റു ബാക്കി അല്ലാതെ Wilson ന് ഞാൻ പണം കൊടുക്കാനും ഇല്ലാത്ത അങ്ങനെയൊന്നിടത്തു എങ്കിൽ രാവിലെ 5 മണിക്ക് ചെന്നാൽ നിങ്ങൾ പണം തരാം എന്ന് പറഞ്ഞിട്ടുണ്ട് എന്ന് ആരെങ്കിലും Wilson നോട് പറഞ്ഞിട്ടുണ്ടെങ്കിൽ അത് കേട്ട് Wilson വരുമോ (Q) Wilson എന്തിനു വരണം (A)”. Therefore, there seems to have been some transaction between the two prompting the deceased to leave for the house of PW60 in the early hours of the day.

35. Another suspicious conduct concerns MO.1 shirt. The accused is alleged to have substituted the shirt worn by the deceased with MO.1, which according to the prosecution is the shirt of the accused. PW2 and PW22 in quite categorical terms have deposed that MO.1 was not the shirt worn by the deceased. It was a half sleeve shirt which had buttons and buttonholes that was worn by the deceased, whereas MO.1 shirt is a full sleeve shirt with press buttons. According to PW2 and PW22, on the instructions of the doctor, they



had removed the shirt and put it under a cot in ward no.5 of the Medical College Hospital. It is seen that PW75 made no attempt to seize the shirt of the deceased on 16/02/2004 or on the dates immediately thereafter. PW75 when examined, initially deposed that when he had enquired about the shirt, the accused told him that the shirt had been taken away by the sweeper which he later corrected and said that MO.1 shirt had been produced before him by the accused. In Ext.P31 seizure mahazar, as per which PW75 is stated to have seized MO.1 shirt, it is stated that the shirt had been changed when the deceased was taken home from the place where he was found injured. However, none of the prosecution witnesses including PW1, his wife, has such a case. PW39 an attester to Ext.P31 mahazar says that MO.1 shirt had been produced by the accused on 26/02/2004. PW39 also stated that on 16/02/2004, when the accused was asked regarding the shirt, he had said that he had thrown away the shirt in a dustbin. If so, how could MO.1 shirt have been produced by the accused on 26/02/2004? PW75 never seemed to have found anything amiss in this conduct of the accused. No explanation is forthcoming from PW75 as to why for the period from 16/02/2004 till 26/02/2004, no steps had been taken by him for seizing the shirt and why the delay in seizing the same. In the light of the argument advanced on behalf of



the prosecution that the shirt had been replaced, we called for MO.1 shirt from the trial court. MO.1 shirt is seen full of dark stains, which must be blood. If the accused had changed the shirt, the question is how come, the same is also drenched in blood? As per the report of the FSL, the blood seen in MO.1 shirt belongs to 'O' group, which is the same as the blood group of the deceased. When the learned Prosecutor was asked about this, he was unable to give a proper explanation. It was submitted that it can only be assumed that the accused might have held his father while stabbing and causing the incised injury on the neck and then the shirt of the accused might have been stained with blood. It is not a few stains that are seen on MO.1 shirt. Stains are seen on the front, back of the shirt and almost all portions of the shirt. To a question by us as to how if the explanation given by the prosecutor was right, how could blood stains come on the back of the shirt also. It was then submitted by the prosecutor that it might have happened when the accused kept the shirt folded and hidden somewhere, then the blood stains on the front of the shirt must have spread to the back and other areas of the shirt also. This is difficult an explanation to accept in the absence of any evidence on the said aspect.

36. The deceased sustained three incised wounds on his abdomen.



There is a tear in MO.1 shirt between the second and the third button. The tear does not look to be a tear that might have been caused in the shirt when the deceased was stabbed with MO.2 knife. The cut seen between the second and third button seems to be a careful and deliberate cut made thereafter. It was also pointed out by the Prosecutor that the FSL report says that there were no blood stains seen on the tear in MO.1 shirt, which would also show that MO.1 was not the shirt worn by the accused. Yes, we certainly do entertain doubts as to whether MO.1 was actually the shirt worn by the deceased in the light of the testimony of PW2 and PW22, whose testimony has not been discredited in anyway. The delay in producing the shirt by the accused and the statement of PW39 that the accused had initially stated that he had thrown away the shirt, raises questions as to how he subsequently got it. The prosecution attempted to prove that MO.1 shirt is that of the accused by examining PW53, the tailor who used to stitch shirts for the deceased as well as the accused. However, PW53 does not support the prosecution case and deposed that he does not remember whether he had stitched MO.1 shirt for the father or the son. The aforesaid aspects also raise suspicion about the conduct of the accused.

37. The next piece of evidence relied on by the prosecution is MO.2



knife seized from the near the scene of occurrence. PW58 was examined to prove that he had seen the accused purchasing MO.2 knife from a wayside vendor. PW58 deposed that he is acquainted with the accused as he has hired the latter's taxi a few times. He had read in the newspapers that Wilson had been stabbed by his son. He had also seen the photo of the accused in the paper. An officer of the Crime Branch, namely, Sub Inspector Gopi, is his neighbour. Therefore, he went to the said officer and told him that he had seen the accused buying a knife. The said officer instructed him to go to the office of the CBI and inform the matter. The officer also gave him the address of the office of the CBI. Pursuant to the same, he went to the office of the CBI at AKG Nagar, Peroorkada, Thiruvananthapuram and gave his statement. It was sometime in January 2004 that he saw the accused buying MO.2 knife. He along with his friend Chandran was there for buying a chisel (ഉളി). He noticed the knife purchased by the accused. The accused had bargained for the price of the knife and thereafter got into a car and drove away. These are the reasons for noticing the accused. PW58 further deposed that the knife has a black handle with a red border. In the cross examination he denied the suggestion that he had not seen the accused buying MO.2 knife and that he was deposing falsehood as instructed by the CBI.



37.1. It is true that no serious challenge is seen to the testimony of PW58. However, a reading of the testimony of PW58 does not inspire confidence in our mind regarding the facts spoken to by him. It appears to be too farfetched a story and we wonder how PW58 could correctly remember the red border in MO.2 knife even after a lapse of several years. PW58 refers to a police officer to whom he had informed the matter and the latter is supposed to have directed him to the office of the CBI. If the said officer had been examined, the story probably could have been made more credible. Therefore, in such circumstances, we do not find it safe to rely on the testimony of PW58 especially when there is no other evidence to connect the accused with MO2 knife or the crime.

38. Another suspicious conduct pointed out is the false narrative given by the accused to PW54, the doctor who had first examined the deceased. In Ext.P22 wound certificate, the doctor has recorded that the accused told him that his father had been found injured in a drain/gutter. It was also pointed out that the accused had never mentioned the name of the assailant to the doctor. It is true that none of the witnesses have a case that the deceased had been found in a drain/gutter. The accused does not have a case he had never stated so to the doctor because he never challenged the same



when PW54 was cross examined. However, it is not the concern of the doctor who examines a patient as to who all were all involved in the crime. That is a matter for the investigating officer to investigate and find out. The person who sustained injuries or the persons who bring him to the hospital need disclose the same to the investigating agency though there is no harm in disclosing the same to the medical officer also. In **Pattipati Venkaiah v. State of A.P., 1985 KHC 700: AIR 1985 SC 1715** while dealing with the contention that the eye-witnesses did not care to disclose the names of the assailants to the doctor, the Supreme Court held that a doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person. His primary concern or duty is to save the life of the person brought to him and inform the police in medico legal cases. (See **Bhargavan v. State of Kerala, 2004 KHC 39: AIR 2004 SC 1058** also).

39. Further, the prosecution does not seem to have a definite case regarding the scene of occurrence. The final report does not specifically refer to the place where the incident took place. This fact has been noticed by the trial court also. According to the learned prosecutor, after inflicting injuries on the deceased, the accused might have brought him near the house of PW60



and left him there with the intention to make it appear that the crime was committed by PW60 and his son. The prosecution was not able to ascertain the actual place of attack. However, all the prosecution witnesses say that the deceased was found on the public road near the pathway leading to the house of PW60. It has also come out that blood stains were found on a plant and on the trunk of a coconut tree standing not far off from the place where the deceased was found injured. This aspect is supported by PW26 as well as PW60. It has come in evidence that when the police came to the spot, PW26 had shown the blood stains on the coconut tree. When the police had conducted a search in the nearby areas, they found MO.2 knife near the coconut tree. According to PW26, as directed by the policemen present there, he had covered the said knife with a flowerpot. No evidence has been let in by the prosecution to show that the deceased had been attacked at some other place and then had been brought to the compound of PW60. That being the position, the place of occurrence can be taken to be the place where the deceased was found injured. However, going by Ext.P40 site plan, the place of occurrence is inside the property of PW60.

40. It is quite curious to note that PW75 never thought it necessary to take the assistance of a fingerprint expert or the services of a sniffer dog.



This would have certainly helped in the investigation though the evidence relating to the sniffer dog may not be of much relevance or admissible in evidence. No explanation whatsoever is given by PW75 as to why no such steps were taken by him. As the investigation conducted by PW75 was quite faulty, we wanted to go through the CD maintained by him. However, it was submitted by the learned prosecutor that the same is not available. Not available? We doubt. The needle of suspicion certainly points in the direction of the accused. But suspicion, however strong, cannot take the place of proof. Speculation is no substitute of proof. If facts are equally compatible with the innocence of the accused, the benefit of doubt must go to him. [**State of M.P. v. Ramkrishna, (1952) 2 SCC 496**]. Probabilities, however strong, and suspicion however grave can never take the place of proof. [**Babu Singh v. State of Punjab, 1963 (3) SCR 749**]. In criminal trials there is no scope for applying the principle of moral conviction or grave suspicion. [**Haricharan Kurmi v. State of Bihar, AIR 1964 SC 1184**].

41. The investigation conducted by PW77 and PW78 seems to have been going in the right direction. PW78 deposed that his investigation revealed that PW1 and the accused were not telling the truth. When the investigation was zeroing in on the accused, the investigation had to be



handed over to the CBI. We are quite unhappy with the manner in which the CBI has also conducted the investigation in this case. There are many loose ends in the prosecution story. The CBI seems to have left it to the court to assume many things and arrive at a decision. PW80 does not seem to have a concrete opinion about the prosecution case which is quite clear from a reading of his testimony. PW80 is not quite sure about the place of occurrence, the purpose for which the deceased left his home, the route by which the accused is supposed to have left his house for committing the crime and then returned home. To most of the questions PW80 answered either he does not know, not sure or cannot say. Evidence has come on record that apart from the route through the main road, one can reach the house of PW60 from the house of the deceased through a shortcut which cuts across the property of PW60, which property has an extent of about two to three acres. This shortcut is spoken to by PW1, PW6, PW77, PW78 as well as PW80. However, the said pathway has not been shown in Ext.P40 site plan. The prosecution in the final report has no case that the accused had in fact gone through the said shortcut to reach the place where the deceased was found injured. They do not have a case that it was through the said way the accused had returned after committing crime. According to PW80, all that he had



stated in the final report is only probabilities or possibilities. The prosecution does not have any explanation as to how the accused reached the place, committed the crime, and returned home without anyone noticing him. It was submitted by the learned Public Prosecutor that it was possible that the accused had taken the shortcut route to reach the place of occurrence and return home. Well to say, that was also possible, or a possibility is not sufficient in a criminal trial. If PW1 is to be believed, there are people who had seen her husband on the morning of the date of incident. PW1 deposed that her husband had reached the place through the main road. To a question as to how she knows that her husband had taken the route through the main road, replied that people who had seen him had told her. However, none of the said witnesses have been examined by the prosecution. On the other hand, if PW77, PW78 and PW80 are to be believed, there are no witnesses who had seen either the deceased going to the place of occurrence or the accused going to the place of occurrence and returning. PW3 followed by PW7 are the persons who had first seen the deceased injured. PW3 says that it was PW8, who had first come to his shop to deliver milk. The place where the deceased was found injured is near the shop of PW3, though evidence has come on record that it was not possible to see the place where the deceased



was standing from the shop of PW3. This must be because the deceased was found by the side of the public road, whereas PW3 says that his shop is situated slightly away from the road. PW8 deposed that he never saw anybody either on his way to the shop of PW3 or on his return journey. PW3 and PW7 deposed that they had not seen anybody in around the place the deceased was found injured. We are at a loss to understand as to how none of the people of the locality had noticed the deceased coming to the place or the incident because according to PW75, the place of occurrence is situated in an area where people of the locality normally get up by 4:30 -05:00 in the morning and go for work. He also admitted that there was every possibility of many such people having seen the deceased on the said day. If so, why were they not questioned, or their statements recorded? Another question that remains unanswered is as to how the accused reached the place of occurrence and returned home. PW65 was examined to prove that he had seen the accused going out in his car twice on the morning of the day of the incident. However, PW65 turned hostile and denied having stated so to the CBI. It was argued by the learned defence counsel that it was impossible for the accused to have left his home without PW1 his mother, noticing him because PW1 was sitting all along in the veranda of their house from the time the deceased



left till PW6 arrived and informed her about the incident. It was also pointed out that if the accused had to go out of his house, he will have to first step out from his room into the veranda, cross the veranda and then either take the back door to go through the shortcut or take the route through the main road by going out through the front of his house. Either way he will have to cross the verandah to go out, goes the argument. It is doubtful whether PW1 was sitting all along in the veranda as argued on behalf of the accused. As per the testimony of PW6, the person to first inform PW1 of the incident, the latter was inside her house when he went there. He had called out to PW1, who came out from inside her house, pursuant to which he informed her about the incident. Therefore, it was possible for the accused to slip out of his house without PW1 noticing. However, no satisfactory evidence or material or circumstances have been brought in to show that the accused had done the same.

42. As pointed out by the learned defence counsel, in a case resting on circumstantial evidence, the five golden principles, namely - (i) the circumstances from which the conclusion of guilt is to be drawn should fully established; (ii) 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; (iii) the circumstances should be of a conclusive nature and pendency; (iv) they should exclude every possible hypothesis except the one to be proved and (v) 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, will have to be established. These golden principles according to the Apex court in **Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622**, constitute the panchsheel of the proof of a case based on circumstantial evidence. The aforesaid golden principles have not been satisfactorily established in the instant case, argues the learned counsel. It was also submitted that it could be a case of suicide also. This argument is advanced based on the testimony of PW11, who deposed that he had asked the deceased whether the injuries were self-inflicted, that he asked this question as the deceased was not giving any clear answers and that he had asked the said question not because he felt that the deceased because of some worries had attempted suicide. The case of suicide has been ruled out by the testimony of PW20 who deposed that had it been a case of suicide, there would have been hesitation cuts on the neck. PW20 to a question in the cross



examination, whether he was aware of the opinion of Dr.Uma Dathan, an expert in the field, that several hesitation cuts would coalesce to ultimately form a single wound, answered in the affirmative. According to PW20, the wound of the patient he had seen was not a coalesce wound. The skin edges, according to him, were regular. That being the position, the case of suicide is also ruled out.

43. One question that puzzles us for which we are unable to get any answer, despite closely examining the testimony of all the witnesses, is as to why the deceased never pointed out the accused as the assailant, if the accused was actually the person involved, in spite of several persons asking him about the same. Shortly after the incident, the accused arrived at the scene in his car. Though he seems to have been reluctant to travel alone in the car of the accused, despite persistent questions by several of the witnesses he does not point out to his son, the accused, as the assailant. PW39 alone has stated that when PW75 had asked the deceased, the latter had pointed to the accused as the assailant. We have already given reasons as to why we are not ready or inclined to accept the sole testimony of PW39 to arrive at such a conclusion in the absence of any of the other witnesses saying so. PW2 was there with the deceased from the place where he had been found injured till



the deceased was taken into the operating theatre. PW2 and PW22 have visited the deceased several times. They had also asked the deceased as to who had done it. All of them answered that the deceased never gave any indication. PW1, PW9 and PW11 have a case that the deceased had indicated the involvement of three persons. Now let us assume that they are interested witnesses and their evidence is discarded, we still have the testimony of the other witnesses who do not support the case stated by PW39 that the deceased had pointed to the accused. PW22 in fact has also deposed that at no point of time he entertained any suspicion/doubts against the accused. The deceased had ample opportunities to point out the accused. It was pointed out by the learned defence counsel, that the accused along with his mother was present all along in the hospital with the deceased. If the accused was the person who had done it, he would have made himself scarce and avoided coming anywhere near his father. According to the learned prosecutor, the deceased might not have pointed out the accused due to fear. That conduct of the deceased is understandable and that probably must have been the reason why he was reluctant to travel alone with the accused. But even after others arrived at the scene of occurrence and thereafter in the hospital when he was surrounded by others who had no interest in the matter, he still did not point



to the accused as the assailant. Was he trying to protect the accused, his son?

We are unable to get any answers for the same.

44. In spite of three agencies conducting the investigation they have been unable to give an answer to the question, 'whodunit'. Even the CBI seems to have been groping in the dark with no definite leads or clue leading them to the culprit. The CBI has established some points to suspect the accused. Suspicion, however grave, is not sufficient to find the accused guilty of the offences alleged against him. The links in the chain of circumstances leading to the hypothesis that it is the accused and no one else who has committed the crime, has not been established. The chain of evidence is not complete as to leave any reasonable ground for the conclusion consistent with the innocence of the accused and show that in all human probability the act must have been done by the accused and accused alone. Hence in these circumstances we are afraid we will have to give the accused the benefit of doubt. The trial court, in our opinion, went wrong in relying on the aforesaid unsatisfactory evidence to conclude that the guilt of the accused has been established beyond reasonable doubt.

45. Before we conclude, a few words about the investigation conducted in this case. A precious life has been extinguished and because of



the blotched-up investigation, the culprit will walk away scot-free. Not only was the investigation blotched up, but the incident in this case is seen to have affected the life of several people in the locality. PW75, the first investigating officer, appears to have swallowed the allegation of PW1 and the accused that it was PW60 and PW26 who are the culprits in the case and believed it to be the gospel truth. Was PW75 that naive or that inexperienced to do that? We think not. Absolutely no investigation is seen to have been conducted by PW75. He seems to have been contented with the statement of PW1 in Ext.P1 and Ext.P16 to Ext.P18 complaints of the accused. PW75 never took the assistance of any experts to examine the scene of occurrence. He does not record the statement of any of the witnesses in this case. He just notes down their names and addresses and then makes up their 161 statements as per his own imagination. This is clear from the testimony of PW39, his subordinate officer. The fact that PW75 was trying to implicate PW60, PW26 and PW24 in the crime is obvious from the evidence on record. PW24, a village officer and son-in-law of PW60 speaks of the harassment he had to face at the hands of PW75. PW45 his wife and the daughter of PW60 says that she was made to sit in the police station for an entire day. PW24 deposed that he had been summoned to the police station and questioned by PW75 regarding the crime.



He stated that he does not know anything about the same. His statement was also recorded. But it was not read over to him. He was asked regarding matters of which he had no knowledge. While he was being questioned by PW75, K.J. Scaria, the then Dy.S.P., Neyyattinkara, came to the police station and questioned him. He replied that he had no knowledge about the incident. The Dy.S.P. then instructed PW75 to handcuff him, take him in a police jeep to several places, parade him around saying that the police had apprehended the accused. PW75 did not do as directed by the Dy.S.P., and so the latter reprimanded him. He had to spend the night at the police station. The next day PW75 called him and asked whether he had confessed. He replied that he had stated all what he knew. Then two policemen, namely, Sasikumar and Krishnan Kutty approached him and told him that if ₹20 lakhs is given to the Dy.S.P., he would be released/discharged from the case. Thereafter, one Gerald, the driver of the Dy.S.P., and another policeman named Philipose (PW50) told him that they are agents of the Dy.S.P.; that PW50 had met his brother and that things would be sorted out. He was then taken to the Dy.S.P.'s room. The Dy.S.P. asked him whether he had told everything to the policemen. He replied that he is innocent and that he may be released. Again by 06:00 p.m. in the evening, he was called to the room of the Dy.S.P.



Suddenly PW75 closed all the windows and the door of the room. The light was switched off and he was beaten up. At that time only the C.I. and the Dy.S.P. were present in the room. On being beaten, he fell and for a moment, lost consciousness. He urinated and defecated. Immediately a policeman Sasi, came running to the room and lifted him up. He was taken to the bathroom, where he washed himself. He was given a dhoti to change-in too. The next day his brother Arnold William (PW74) came to the police station. The Dy.S.P. asked him and his brother whether they had discussed the matter. He told the Dy.S.P. that money could be raised and arranged only if he is released from the station. He was then allowed to go. He was directed to present himself in the police station the next day. However, he did not go. After the incident in this case, his auditorium, parallel college, and unaided school had to be closed due to police harassment and threats. He had to shift from his own house to a rented house. His wife's family also had to shift their residence due to police harassment. Somebody had complained to the District Collector, Idukki, that on 16/02/2004 he had not attended his office. Pursuant to the same he was served with a memo. Enquiry is still pending. Due to this, he has lost his promotion also. PW74, the brother of PW24, also corroborates his version.



45.1. PW75 denied having summoned PW24 to the police station for questioning. But PW43, the then ASI, Kanjiramkulam police station, admitted that as directed by the Dy.S.P, Neyyattinkara, he had gone to the office of PW24 and made enquiries. He had brought PW24 to Thiruvananthapuram to be produced before PW75. This testimony along with Ext.P34(c) G.D entry which has been recorded by PW75 in his own handwriting, shows that PW24 had in fact been summoned to the police station. PW75 had initially feigned ignorance and stated that he had never summoned or questioned PW24. However, when he was confronted with Ext.P34 (c), he had to admit that PW24 had been brought to the station. But he then took up a case that he had never questioned PW24. The attempt seems to have been to cook up evidence against PW60, PW26 and PW24 and extract money from PW24. This is clear from the testimony of PW3 also.

45.2. PW3 speaks of the harassment he had to face. He deposed that Dy.S.P, Neyyattinkara and his team had questioned him. He said that he had not seen the incident and he had only seen the deceased injured on the said day. Thereafter, two policemen namely, PW45 and PW50 from Neyyattinkara police station came to his shop at which time his son was also present. He was again questioned by the said policeman to which he



answered that he does not know anything relating to the said incident. Then PW50 abused him slapped on his cheek resulting in a loss of one tooth.

PW50 is stated to have threatened him thus - "..... നിനക്കിയാമല്ലോ ഇത്ര സഭവം ഫോൺ വിളിച്ചു പറഞ്ഞ് അവർക്ക് ഇരിക്കപ്പൊറ്റിയില്ല നീ ഉള്ള സത്യം പറ എന്നു പറഞ്ഞു അപ്പോൾ ഞാൻ പറഞ്ഞു വിളിച്ചു പറഞ്ഞ അളിനെ സാറ് വിളിക്കാൻ അപ്പോൾ എന്നെ ചീത്ത പറഞ്ഞിട്ട് എന്റെ ഇടതു കരണത്തു അടിച്ചു തള്ളി. എന്റെ ഒരു പല്ല് ഇളകി. ഞാൻ അത് കണക്കിലാക്കാതെ അവർ പറഞ്ഞതെല്ലാം കേട്ടു കൊണ്ടു നിന്നു ഇതല്ല സഭവം നീ സത്യം പറയും നിന്റെ ഭാര്യയേയും മൊട്ടു സൂചി അവയവങ്ങളിൽ അടിച്ചു കയറ്റി ഐസ് കട്ടയിൽ ഇട്ട് ഉരുട്ടുമ്പോൾ നീ സത്യം പറയും നാളെ നിന്റെ ഭാര്യയേയും കൊണ്ട് നെയ്യാറ്റിൻകര സ്റ്റേഷനിൽ വരണം ഞാൻ പറയുന്നതു പോലെ ഒപ്പിട്ട് തരണം എന്നും ഞാൻ പറഞ്ഞു ഈ സഭവങ്ങളെല്ലാം ഞാൻ പറഞ്ഞിട്ടുണ്ടല്ലോ നാളെ S.P. ഓഫീസിൽ നെയ്യാറ്റിൻകര ചെല്ലാം എന്നു ഞാൻ സ്ഥിരീകരിച്ചു.....". His son who was present in the shop went home and told his wife about the assault and the threat. When he returned home his wife was sitting in a corner of the house without talking to anybody. By about 10:00 p.m. in the night his wife asked him whether they were required to go to the police station at Neyyattinkara. He then told her that he would go alone to the station. The next day early morning, his wife jumped into the well situated adjacent to his shop. She was rescued by the officials of the fire-force and by the people of the locality. The fact that PW3's wife had attempted suicide is



admitted by PW75, PW77 and PW78.

45.3. PW60 and PW26 appear to have removed themselves from the scene when they heard that they have been implicated in the crime. To secure their presence, PW75 seems to have taken PW36 Sivendran, the brother-in-law of PW60 and John P. Sam, the brother of PW60, into custody. PW36 deposed that in the evening of 16/02/2004 when he went to the house of PW60, Scaria, Dy,S.P. and PW75 came and took him to the police station in the police jeep. He had to spend the night in the station. The next day PW75 took him to the house of John P.Sam. Then both were taken in the jeep to the police station. He was then working as Assistant, KSEB. The Dy.SP rang up his office and informed his colleagues that he had been arrested as the accused in the murder case. His colleagues came to see him in the station. In front of them his shirt was removed, and he was locked up in the cell. The next day he was released. PW29 Bennet Solomon supports the version of PW36, who deposed that John P Sam and PW36 were released only when PW26 and PW60 had surrendered.

46. We refrain from passing any adverse remarks or strictures against PW75 as he is neither before us nor has, he been heard. But we certainly need to direct the D.G.P to look into the matter and take necessary action against



PW75. The police have no right to commit such atrocities. PW3 and PW24 were beaten up. The wife of PW3 attempted suicide. One can very well imagine the fear in the mind of PW3's wife when she heard the threat of PW50. PW42 and PW50 admit that they had gone to the shop of PW3. PW50 denied the case of assault of PW3 and the threat that he had meted out to the latter. However, there is no reason why we should disbelieve PW3. PW42, a constable, had also accompanied PW50. PW3 has not raised any such allegations against him. PW42 admits that there was heated exchange of words between PW3 and PW50. One can very well imagine the plight of a person who dares to argue with a policeman and that too a person like PW3 conducting a small tea shop in what appears to be a remote village. The fact that PW3's wife had attempted suicide is admitted by PW75 also. No crime was registered relating to the same. PW77 who thereafter took over the investigation stated that a crime ought to have been registered. All these factors would show that local police under PW75 and Scaria, the then Dy.S.P, Neyyattinkara, terrorized the people of the locality and the family of PW60 and tried to cook up a false case.

In the result, the appeal is allowed. The conviction and sentence of the appellant for the offences punishable under Sections 302, 201 and 203 IPC is



set aside, and the accused is acquitted under Section 235(1) Cr.P.C. He shall be set at liberty forthwith, if not required in any other cases. Registry shall forthwith send a copy of the judgment to the Superintendent of the jail concerned, where the appellant is now detained.

The Registry is also directed to send a copy of the judgment to the Director General of Police and the Secretary, Home Department, Government of Kerala, to take necessary action for the matters we have referred to in paragraphs 45 to 46 of this judgment.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

**P.B. SURESH KUMAR
JUDGE**

Sd/-

**C.S.SUDHA
JUDGE**

ami/ak/Jms