(2012) 03 KL CK 0197

High Court Of Kerala

Case No: Criminal A. No. 1852 of 2007 (B)

Kailasan		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: March 13, 2012

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 3
- Penal Code, 1860 (IPC) - Section 300, 302, 84

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

Bench: Division Bench

Advocate: P. Vijaya Bhanu and Sri. P.M. Rafiq, for the Appellant; Gikku Jacob George, Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

R. Basant, J.

In the Indo-Anglo Saxon adversarial system of administration of criminal justice, which we follow, witnesses are the eyes and ears of the Court. It is they who help the Court to ascertain truth and to administer justice. The system is built on the solid rock of sanctity of oath. Unless this sanctity of oath is imbibed by the polity and the witnesses, the system would crumble down and discredit itself. To preserve the sanctity of oath, it is important that the trial is conducted expeditiously. When there is unreasonable gap of time between the culpable event and the trial, the very foundations are shaken. Righteous indignation gives way to misplaced sympathy and the truth discovery process gets defeated and discredited. This is a classic case which points to the urgent need for innovation and reform of the system, if discovery of truth and administration of justice is the real and dominant purpose of the voyage of trial. The appellant has been found guilty, convicted and sentenced u/s 302 IPC to undergo imprisonment for life. He, a person aged 35 years, is alleged

to have caused the death of Suguna, his wife, a woman aged 26 years, who had borne two children for him in the wedlock, by acts of violence directed against her inside her matrimonial home at 6.30 p.m. on 18.10.1999. 4 cuts with M.O. 1 sickle were allegedly inflicted on the deceased by the appellant. Blunt injury was caused on her head - evidently by hitting her head against a hard surface. Suspicion about her chastity is the alleged motive behind the incident.

2. Investigation commenced with the registration of Exhibit P1(a) F.I.R. on the basis of Exhibit P1 F.I. Statement lodged by P.W. 1. P.W. 1 is a relative of the deceased and is admittedly not an eye witness. Investigation was completed and final report was filed by P.W. 33, the Investigating Officer. The learned Magistrate, after observing all legal formalities, committed the accused to the Court of Session. The learned Sessions Judge took cognizance of the offence alleged against the appellant. The appellant denied the charge framed against him by the learned Sessions Judge. Thereupon the prosecution examined P.Ws. 1 to 33 and proved Exhibits P1 to P27. M.Os 1 to 5 were also marked.

3. The appellant, in the course of cross examination of prosecution witnesses and when examined u/s 313 Cr.P.C., took up a case of omnibus total denial. No defence evidence whatsoever was adduced. The learned Sessions Judge, notwithstanding the hostility of the prosecution witnesses, on an anxious evaluation of all the relevant inputs came to the conclusion that there was sufficient evidence to come to a safe and sure conclusion that the deceased had suffered death at the hands of the appellant, her husband. Accordingly, the learned Sessions Judge proceeded to pass the impugned judgment.

4. We have heard Sri.P.Vijaya Bhanu, the learned Senior Counsel for the appellant and the learned Prosecutor.

5. The learned counsel for the appellant submits that this is a classic case where moral conviction which the learned Sessions Judge appears to have entertained on non legal evidence persuaded the learned Sessions Judge to enter a verdict of guilty, conviction and sentence against the appellant. This is grossly incorrect and unjust, argues the learned counsel. According to the learned counsel, there is absolutely no legal evidence on which the verdict of guilty can be founded against the appellant. In any view of the matter, the appellant is entitled to be acquitted, argues the learned counsel for the appellant.

6. The learned Prosecutor, on the contrary, defends the impugned judgment. The learned Prosecutor submits that the legal evidence introduced before the Court below is sufficient for any prudent mind to come to a safe and sure conclusion about the guilt of the appellant. Notwithstanding the fact that the prosecution, consequent to blatant and total hostility of the prosecution witnesses, could not adduce the evidence which it proposed to adduce before the learned Sessions Judge, there is sufficient evidence legally introduced in the case to support the

verdict of guilty, conviction and sentence against the appellant. In these circumstances, the appeal only deserves to be dismissed, argues the learned Prosecutor.

7. We have considered all relevant inputs. We do not think it necessary to re-narrate the oral and documentary evidence placed before the learned Sessions Judge. The appellate judgment is, is intended to be read and must be reckoned, in continuation of the impugned judgment of the trial Court. Suffice it to say that we have been taken in detail and meticulously through the oral evidence of P.Ws. 1 to 31. We have also been taken through the contents of Exhibits P1 to P27. Our attention has been drawn in detail to the charge framed by the Court below against the appellant and the answers given by the appellant when he was examined u/s 313 Cr.P.C. We shall later refer to relevant materials specifically wherever necessary in the course of our discussions.

8. We deem it appropriate to specify the case of the prosecution. According to the prosecution, the appellant and the deceased were legally married spouses. Two children were born in the wedlock. There was strain in their relationship. The appellant had raised suspicion against the chastity of his wife, the deceased. This had led to a strain in the relationship and the spouses had started residing separately. Later, on the intervention of well meaning relatives, they were persuaded to resume cohabitation in the house within which the alleged incident took place. They resumed cohabitation about 10 days prior to the unfortunate incident in the case. In that house, the appellant, deceased, their minor son P.W. 2 and his younger brother alone were residing.

9. According to the prosecution, on the date of occurrence, i.e., 18.10.1999, birthday of one of the two children was being celebrated. The appellant, deceased and the children had gone to a local temple at about 6.00 p.m. and they had returned to their house before 6.30 p.m. It is the case of the prosecution that while the couple were returning from the temple, smiles were exchanged between the deceased and some other person, which upset the appellant. In a fit of rage after they reached the house, the appellant had allegedly taken out M.O. 1 sickle which was available in the house and had inflicted multiple injuries on the deceased. Blunt injury to her head was also caused. P.W. 2, the minor son of the appellant, had allegedly witnessed the occurrence. The deceased, after suffering the injuries, had come out running from her house keeping a hand on the injuries suffered by her on her head. Neighbours, hearing the cries, had rushed to the deceased. To them, she is alleged to have made a dying declaration that she had suffered the injuries at the hands of the appellant. Neighbours who came to the scene had also seen the deceased with the injuries in the courtyard of the house. The appellant in a fit of rage was available inside the house. The deceased was rushed to the hospital by neighbours and relatives. She was treated at the local hospital and later shifted to a higher centre for treatment. P.W. 20, the brother of the appellant, had allegedly taken the deceased to that

higher centre for treatment and there P.W. 29 had issued Exhibit P22 wound certificate, in which the version of P.W. 20 about the incident - that the deceased had suffered injuries at the hands of the appellant, was specifically incorporated. The deceased succumbed to the injuries suffered by her while she was undergoing treatment at that hospital.

10. It is the further case of the prosecution that after the deceased was removed from the scene of the crime, the appellant went to his brother, P.W. 11 and sister-in-law P.W. 12. He left P.W. 2, his son, there. He allegedly made an extra judicial confession to P.Ws. 11 and 12 that he was responsible for causing the injuries on the deceased. It is the further case of the prosecution that the appellant had surrendered before the police after commission of the crime, on the next morning.

11. Though this is the case of the prosecution, on account of omnibus hostility of the prosecution witnesses, the prosecution was not able to place before the Court direct evidence of the incident by P.W. 2, of the dying declaration made to the neighbours or the extra judicial confession made by the appellant to his relatives. The incident took place on 18.10.1999. The examination of the witnesses started with the examination of P.W. 1 only on 22.01.2007. Out of the total of 33 witnesses, 5 witnesses, i.e., P.Ws. 29 to 33, all official witnesses, supported the case of the prosecution. of the 28 non-official witnesses, 5 alone supported the case of the prosecution, i.e., P.Ws. 1, 10, 24, 25 and 26. P.W. 1 is not an eye witness to the occurrence and he had lodged Exhibit P1 F.I. Statement on the basis of information collected by him. The Court below had not chosen to place any reliance on Exhibit P1 F.I. Statement. P.W. 10 is the mother of the deceased and P.W. 26 is another relative of the deceased. They are examined by the prosecution to prove the motive - to be specific, to the strain in the relationship between the appellant and the deceased and the events which preceded the crime in question. P.W. 25 is an official of the local S.N.D.P. Sakha and he, who supported the prosecution, was examined by the prosecution to speak about a complaint which was lodged before the Sakha raising allegations against the appellant of his contumacious conduct against his spouse. The only other non-official witness who supported the prosecution, P.W. 24, was only an attestor to Exhibit P20 inquest report.

12. The temptation in these circumstances must evidently have been great for any adjudicator to throw his hands up in helplessness and conclude that there is no legal evidence against the appellant. But, the learned Sessions Judge, it appears, was evidently not prepared to give up. The learned Sessions Judge attempted to marshal various circumstances that had come out in evidence, notwithstanding the hostility of the prosecution witnesses, and proceeded to consider whether those circumstances which had come out in evidence are sufficient to come to a safe inference of guilt against the appellant.

13. We have been taken through the evidence of all the witnesses. We are perturbed to note that there was too naive an approach on the part of the Prosecutor not to strain to bring out, elicit and extract truth from a set of witnesses who were completely hostile to the prosecution. It is significant that they made no secret of their hostility. Most of them admitted on oath before the Court that they want to save the appellant from legal punishment.

14. One of the primary and dominant purposes of constitution of "State" is to defend citizens against external aggression and internal disturbances. Prevention of crime is the inalienable duty of any civilized State. Right to live in a crime free society must certainly be reckoned as an incident of the right to life guaranteed under Article 21 of the Constitution. State must imbibe this responsibility. The surest way to ensure a crime free society is to ensure that crimes are appropriately responded to and criminals are punished.

15. To discharge this fundamental duty of the State, it is important that competent, committed and dedicated Prosecutors are appointed. Office of the prosecutor carries with it the weight of responsibility in a civilized State to discharge this obligation. Sitting in this jurisdiction of criminal appeals, we are perturbed to note the quality and the level of efficiency of prosecution in criminal trials. The office of the Prosecutor cannot be gifted to seekers of the office of the choice of political executive without any regard to their competence, commitment and dedication. If the State is to perform its duty of ensuring a crime free society, it certainly must be impressed on the functioning of the State that it must promote the primary duty to pursue excellence in its Prosecutors. We have said so much because were are pained by the absence of a committed effort to bring out details favourable to the prosecution from the sea of hostile prosecution witnesses.

16. Art of cross examination cannot be alien to a Public Prosecutor. A Public Prosecutor has to prepare the brief. He will certainly have to anticipate hostility of prosecution witnesses. In a system like ours, where Courts do every day come across the parade of hostile witnesses before it, an alert, efficient and competent Prosecutor must certainly contribute to the task of eliciting relevant information from hostile witnesses who on their own showing are not willing to co-operate in the truth discovery process.

17. A perusal of the manner in which the hostile prosecution witnesses were dealt with in this case, suggest to us that the anxiety of the Prosecutor was to get the witness declared hostile at the earliest and confront him with the relevant portion of the case diary statement. The Prosecutor appears to have felt that his duty/job is over once the contradiction was marked. The great potential of effectively cross examining the prosecution witnesses and eliciting information from them even against their volition was overlooked or ignored by the Prosecutor. The Prosecutors'' commitment to the cause of bringing out truth through the mouth of witnesses, even when they are unwilling to co-operate with the Court in the truth discovery

process, deserves to be emphasized.

18. We do note that little has been done by the Prosecutor in this regard and in fact it is actually the learned Sessions Judge who had elicited certain relevant pieces of information from the witnesses. We have digressed in our anxiety to ensure that the Prosecutors must realise their solemn responsibilities and should not give up the search for the truth and justice so easily. We do hope that the Directorate of Prosecution shall take necessary steps to train the Prosecutors in Courts, including the Sessions Courts, to live up to the expectation of the polity and the State. We are happy to take note of the efforts in this direction already undertaken by the Directorate.

19. Be that as it may, we come back to the facts of the case. The prosecution intended to establish its case by the direct ocular testimony of P.W. 1, the dying declaration made by the deceased to those neighbours who had reached the scene immediately after the crime before she lost consciousness and the extra judicial confession made by the accused to his close relatives. The prosecution had also expected the neighbours who ran to the scene of the crime to speak about the presence of the appellant in a fit of rage inside his house. The apple cart was upset with the blatant hostility of all the non-official witnesses to the prosecution except the few referred above who spoke of the motive aspect only.

20. It is trite and it is unnecessary to refer to specific authority that culpability has to be decided on the basis of the materials that are placed before Court. The mere fact that the prosecution could not adduce the evidence which it initially expected to adduce is no reason for the Court not to consider the circumstances which have been revealed in evidence and to ascertain whether such circumstances are sufficient to prove the guilt of the indictee. The crucial question hence is whether on the materials placed before Court - materials available now in the form of circumstances, a safe inference of guilt against the appellant is possible or not.

21. Before we proceed to consider the circumstances, it will be apposite for this Court to remind itself of the law on the point. The law is too well settled to require or warrant reference to any specific precedents. The burden always rests in a criminal trial on the shoulders of the prosecution to prove the charge against the indictee beyond reasonable doubt. This burden continues to rest heavily on the shoulders of the prosecution, whatever be the nature of the evidence - direct or circumstantial, that the prosecution is able to place before the Court. In a case resting entirely on circumstantial evidence, the circumstances have to be proved firmly and satisfactorily. The proved circumstances must constitute links in a chain of circumstances. The links must be strong. The chain of circumstances must unerringly and clinchingly point to the guilt of the indictee - to the exclusion of every reasonable hypothesis of innocence of the indictee. The strength of the chain of circumstances, it has often been repeated, is the strength of the weakest link in the chain of circumstances. It is not the number of circumstances that matter. It is the

probative significance and relevance of the circumstances that really matter.

22. We may remind ourselves of the bible of a Court of facts. Section 3 of the Evidence Act, according to us, is the bible of all Courts of facts. On the proved circumstances, a court will have to consider whether it can believe in the existence of a given fact culpability of the indictee in this case. In the alternative, the Court has to ascertain whether a prudent mind, in the given circumstances, would have considered the fact to be so probable that it would have acted upon it. We need only remind ourselves that all the circumstances have to be anxiously considered to come to a conclusion as to whether the Court can believe in the culpable responsibility of the appellant or would consider them to be sufficient for a prudent mind to act on the supposition that such culpability is established.

23. The first circumstance relied upon is the circumstance that the deceased had suffered the fatal injuries at about 6.30 p.m. on 18.10.1999 inside the house where she resides as the spouse of the appellant. She had suffered injuries including 4 cut injuries with M.O. 1 and the fatal injury, i.e., the blunt injury No. 6, described in Exhibit P23 postmortem certificate on her head. On this aspect, we find practically no dispute at all. We have the oral evidence of P.W. 30 and Exhibit P23 postmortem certificate issued by him. We have the scene mahazar Exhibit P21 prepared by P.W. 33 and attested by P.Ws. 27 and 28. P.Ws. 27 and 28 had joined the crowd of hostile witnesses, but they had admitted their signatures in Exhibit P21. We have the evidence of P.W. 33 of what he perceived at the scene of crime which he had recorded in Exhibit P21 scene mahazar. M.O. 1 sickle was available at the scene of the crime. P.W. 30 tendered evidence that injuries other than injury No. 6 could have been inflicted with a weapon like M.O. 1 was seen inside the house and there is no semblance of a suggestion even that M.O. 1 was not a weapon that was available in the house. We are, in these circumstances, satisfied that it can safely be concluded on the basis of the materials available (and in fact there is no serious dispute regarding the proof of this circumstance) that the deceased died of injuries described in Exhibit P23 which she suffered inside her house at about 6.30 p.m. on 18.10.1999. Some of such injuries were inflicted with M.O. 1, a weapon that was available in the house. We are satisfied that the enquiry by an adjudicator of the person responsible for commission of the crime can certainly start on the very firm foundation of this first circumstance.

24. That the injuries suffered by the deceased were homicidal injuries is established. The venue where she suffered the injuries is also established. The weapon with which some of those injuries were inflicted is also established. That the weapon was available inside the house is also convincingly established. The real question/challenge/mission of the adjudicator in this case is to ascertain the person at whose hands deceased must have suffered these injuries. That unquestionably is the main or the only task before the adjudicator.

25. We now come to the second circumstance relied on by the prosecution that the injury on the deceased could not have been inflicted by any outsider. We shall delve deeper and consider this circumstance in detail. It is the case of the prosecution, duly supported by hostile witnesses, that in the scene house only the appellant, the deceased and their two minor children including P.W. 2 were residing. No one has a case that any other person resides in the house. It is unnecessary to advert to the specific pieces of evidence which have come out from the mouth of hostile witnesses. Suffice it to say that on that aspect there is no virtual dispute.

26. These injuries could have been suffered by the deceased either at the hands of a person residing in the house along with her or at the hands of an outsider. We shall consider the probabilities in this aspect now. The Court below had correctly looked into the possibility or the probability of the deceased having suffered such injuries at the hands of any outsider. The deceased and the appellant were residing together in that house. They were legally married spouses, with two children. It is significant that even from the very obliging hostile prosecution witnesses not a shred of possibility has been revealed as to how the deceased could have suffered such injuries at the hands of any outsider. There is no semblance of a motive suggested for any other person to entertain animosity against the deceased. Even during the 313 examination of the appellant there is not a suggestion that the deceased could have suffered the injuries at the hands of any other person. No one is shown to have any motive or animosity against her. We have evidence about the conduct and character of the deceased from the hostile prosecution witnesses themselves. Throughout the trial, it is significant to note that not a shred of evidence is adduced or even possibility or probability is exposed - of the deceased suffering injuries at the hands of any other person for any possible reason.

27. In this context, we take note of the conduct of the prosecution witnesses. As already stated, all of them en masse turned hostile to the prosecution. The prosecution declared the witnesses hostile and relevant portions of the case diary statements of the witnesses were used by the prosecution for cross examination of the witnesses. We readily agree with the learned counsel for the appellant that these case diary contradictions can never be made use of as pieces of substantive evidence. They can be used only to discredit the makers of such statements before the police. We are left with no doubt that all the hostile non-official witnesses examined by the prosecution have deliberately turned hostile to the prosecution in a transparent attempt, as admitted by most of them, to save the appellant from punishment. Even though the case diary contradictions cannot be used as substantive evidence, they eloquently convey to us that the hostile prosecution witnesses were engaged in a deliberate attempt to stonewall and not reveal to the Court consciously any information which was incriminating against the appellant. In these circumstances, we are satisfied that whatever incriminating circumstances have come out in evidence through the mouth of these hostile prosecution witnesses can safely and surely be relied on by the Court. There is no reason at all to

assume that the hostile prosecution witnesses are in any way interested in perjuring against the appellant or furnishing any incriminating circumstance or even circumstance inconvenient to the appellant before the Court. In that view of the matter, we are satisfied that answers given by these hostile prosecution witnesses can safely be made use of against the appellant if they are sufficient to induce the requisite satisfaction in the mind of the Court.

28. It is crucial to take note of the circumstance that no witnesses present at the scene did ever entertain a feeling, impression or suspicion that the deceased must have suffered the injuries at the hands of any other person. All of them had stated very clearly and have revealed from their conduct that they did not suspect at the scene of the crime or later, that the deceased might have suffered the injuries at the hands of any other person. In fact, their earlier version before the police reveal that the appellant, in a fit of rage, was available inside the house. Now most of them want to make it appear that the appellant was not seen by them at the scene of the crime when they reached the scene. If that version were true, any reasonable person because of his curiosity must have enquired about the cause of death. It is significant that no prosecution witnesses have a case that anyone at the relevant time entertained an impression or suspicion that the deceased might have suffered the injuries at the hands of any other. In fact, we have admissions from the hostile witnesses to show that no other person was available in the house and that no one ever thought that the deceased might have suffered injuries at the hands of any other. Absolute certainty does not remain in the realm of human achievement, but we have no hesitation to confirm without the semblance of any reasonable doubt that the evidence on record is sufficient to conclude that every one knew, assumed, were satisfied and accepted that no outsider could have committed the crime. We reckon this as a significant circumstance against the appellant. It is possible from the totality of circumstances to effectively rule out the possibility/probability of the deceased having suffered the injuries at the hands of any other person at the scene of the crime. The second circumstance is thus found to be established convincingly.

29. Having confirmed that the deceased met with a homicidal death on account of injuries suffered by her in her house at the relevant time and having confirmed that the probability/possibility of the deceased having suffered such injuries at the hands of any other/outsider can be effectively ruled out, we now come to the circumstances specifically loaded against the appellant.

30. The 3rd circumstance relied on by the prosecution is that it is admitted and not disputed that the appellant, the deceased and the two children alone were residing in the house in question. That third circumstance is also convincingly established.

31. The 4th circumstance relied on by the prosecution is that the appellant had motive against the deceased. According to the prosecution, the appellant was a person of suspicious character. He always had suspicion about the chastity of his wife. He used to assault her on such allegation. She was constrained to separate and

take up residence at her parental home. There was attempted reconciliation and about 10 days prior to the occurrence, the deceased was brought back to the house of the appellant. This is the prosecution case and we find this circumstance to be eminently established by the oral evidence of P.W. 10, the mother of the deceased, P.W. 26, a relative of the deceased and P.W. 25, the office bearer of the local S.N.D.P. Sakha. According to us, it is unnecessary to place reliance on even the evidence of the witnesses related to the deceased. It will be appropriate to briefly refer to the evidence of P.W. 11, the brother of the appellant/accused. P.W. 11 though hostile, in the course of cross examination admitted specifically that the appellant did not appreciate anyone looking at his wife. He was suspicious of everyone. When the couple resumed cohabitation about 10 days prior to the incident, he had advised the deceased to inform him and the other mediator, if she had any complaints. He had specifically instructed the appellant not to assault her. These admissions are made by P.W. 11 and that goes a long way to assure us of the evidence of motive spoken to by the close relatives of the deceased. The fourth circumstance is established beyond doubt.

32. We now come to the 5th circumstance relied on by the prosecution. According to the prosecution, the appellant and the deceased along with the children had gone on that evening to the temple and had returned together to their house. What triggered the fatal incident is the alleged exchange of smiles between the deceased and some unidentified stranger. This remains in the realm of a hypothesis with no specific evidence to support the same. Strain in the relationship between the husband and wife is thus clearly established. That they had resided separately for some time on account of this strain and that they had resumed cohabitation on the intervention of relatives is also established. That even P.W. 11, brother of the appellant, had instructed the appellant not to indulge in violent conduct against the deceased and he had left word with the deceased that she should complain if there is any such contumacious conduct on the part of the appellant, do clearly establish this circumstance of motive/strain in the relationship between the appellant and the deceased.

33. The 6th circumstance relied on by the prosecution is that the appellant and the deceased along with their children had gone to some local temple on that day to celebrate the birthday of one of the children. On this aspect, we have only the evidence of P.Ws. 2 and 3. They were also careful not to knowingly incriminate the appellant, but their evidence read together clearly shows that at about 6.00 p.m. on 18.10.1999 the couple along with the children had proceeded to the temple and had returned in half an hour. of course, these witnesses have not spoken specifically that the appellant and the deceased, after returning, had reached their house, but, definitely when the evidence of P.Ws. 2 and 3 are read together, the conclusion is irresistible that the appellant and the deceased along with the children, after visit to the temple, had returned to their house. This circumstance also has been satisfactorily established, according to us.

34. The 7th circumstance relied on by the prosecution is that the appellant was present in the premises when the deceased suffered injuries. The neighbouring witnesses and P.W. 2, the son of the deceased, turned hostile and did not support the prosecution. The case diary contradictions on this aspect have been marked during the cross examination of all neighbours who had rushed to the scene of the crime. But all of them chose to eat their own words and did not admit that they had seen the appellant available in the house when they came to the scene of the occurrence. But, we have the evidence of P.Ws. 2, 5, and 8 on this aspect and we reckon their evidence to be relevant and crucial. Presence of the appellant at the scene of the crime is indicated by the evidence of P.Ws. 2, 5 and 8 though they attempted to make it appear that the appellant had come to the scene of occurrence a little later after the deceased suffered injuries. This aspect of the evidence of P.Ws. 2, 5 and 8 is, to say the least, totally unconvincing and unacceptable. Their evidence shows that the appellant was present at the scene of the crime. Their evidence that the appellant had reached the scene of the crime a little later after the witnesses reached the scene is found to be totally unconvincing. That evidence is belied by the case diary contradictions marked in the testimony of the witnesses concerned. The presence of the appellant at the scene of the crime is thus convincingly indicated by the oral evidence of P.Ws. 2, 5 and 8 and their explanation that the appellant reached the scene a little later is belied by the totality of the circumstances available. We do, in these circumstances, find it absolutely safe to conclude that the appellant was present in the premises when the deceased suffered injuries. In coming to this conclusion we are conscious of the fact that we are discarding a part of the testimony of P.Ws. 2, 5 and 8. Their assertion that the appellant did come to the scene of the crime later is found to be inherently unacceptable and belied by their earlier statements. That version of theirs does not stand to reason, logic or commonsense. Further it is evident that the appellant did not accompany the deceased to the hospital. Nor did any of the neighbours, examined as witnesses or otherwise, choose to inform the appellant or at least enquire about his whereabouts; if in fact he was not available at the scene, when the offence was committed. That response of the witnesses also confirms his presence at the scene. Even though the prosecution could not adduce positive evidence of the appellant moving around in a fit of rage inside the house, this circumstance is proved satisfactorily that the appellant was available at the scene of the crime. Rejecting the version that he came to the scene of the crime later, we accept the evidence of P.Ws. 2, 5 and 8 that the appellant was present at the scene of the crime.

35. The prosecution relies on the 8th circumstance that the appellant did not accompany his wife to the hospital. The prosecution relies on this conduct of the appellant, consistent with his culpable and contumacious responsibility for the injuries on his wife. We have the evidence of P.W. 5 that the appellant was present at the scene of the crime when the deceased was rushed to the hospital. He did not

accompany his wife. He remained in the house only. That conduct is certainly consistent with the case of the prosecution and inconsistent with the possibility that the appellant now wants to canvass - that the deceased must have suffered injuries at the hands of some outsider who came in to the house. The court below had relied on this part of the statement of hostile prosecution witnesses. We agree with the learned Sessions Judge that this 7th circumstance has also been proved satisfactorily.

36. The court below appears to have taken the view that the appellant was not present for the funeral of the deceased. The learned counsel for the appellant has trained all his guns against reliance on this circumstance by the learned Sessions Judge. We find merit in the objection raised. Going by the evidence it is very clear that the appellant was in custody at the time when the funeral took place after the postmortem examination. That circumstance, we agree with the learned counsel for the appellant, could not have been made use of against the appellant.

37. The prosecution wanted to rely on the 9th circumstance that the appellant had surrendered before the Investigating Officer. P.W. 33 Investigating Officer had tendered evidence on this aspect. The remand report submitted by the Investigating Officer to the Court which is available in case records does also support this version. But the learned counsel for the appellant submits that this theory of the appellant surrendering before the Investigating Officer cannot be accepted and acted upon. In view of the evidence of the loyal witness P.W. 1 who unambiguously stated that the appellant was in custody when he went to the police station, to lodge Exhibit P1 F.I. Statement, the theory of his subsequent surrender before the police cannot be accepted. We do not in these circumstances choose to place any reliance on the said circumstance - of the appellant having surrendered before the Investigating Officer admitting his guilt.

38. The last question to be considered is whether these circumstances proved are sufficient to come to a fair, certain and firm conclusion about the guilt of the appellant. We take note of the circumstance that the deceased died of homicidal injuries suffered by her inside her house. We take note of the crucial circumstance that she along with the appellant and the two minor children alone were residing in that house. We take note of the totality of circumstances which suggest that the deceased could not have suffered the injury at the hands of any outsider who had come in to the house. On human probabilities such a theory has no legs to stand on. We take note of the motive/strain in the relationship between the appellant and the deceased. We take note of the fact that the appellant and the deceased had gone to the temple along with their children and had returned to their house immediately prior to the incident. We take note of the evidence of hostile prosecution witnesses who were constrained to admit that the appellant was available at the scene of the crime. We take note of his conduct consistent with the case of the prosecution of his culpability and inconsistent to his version consistent with his innocence, that he did

not go with his wife to the hospital. We take note of the compelling circumstance that the appellant did not make a grievance, at any point of time, that the deceased might have suffered the injuries at the hands of some stranger. We are satisfied that these circumstances, within all human probability, effectively establishes the guilt of the appellant beyond doubt.

39. We note that during trial attempt was made to suggest that the accused was suffering from some mental ailment. No satisfactory indications are revealed to show that he had any mental unsoundness as to attract Section 84 of the Indian Penal Code. The learned Sessions Court accepted that the appellant is not canvassing the defence of legal insanity. He only contends that while assessing his conduct, absolute standards of an ordinary prudent person may not be used as indices. We are satisfied that the defence of legal insanity u/s 84 of IPC is not available for the appellant. We are further satisfied that his alleged mental ailment, which has not been proved satisfactorily cannot help him to contend that the Court should not take into reckoning the 8th circumstance referred above while considering his complicity.

40. We are convinced that this finding is on the basis of the probative circumstances legally introduced into evidence and not based merely on the alleged moral conviction ''of the Court below''. Analysing facts rationally and reasonably, the conclusion is inevitable that the deceased must have suffered the injuries at the hands of the appellant. Within all human probability that fact has been established beyond doubt. We find absolutely no merit in the challenge against the verdict of guilty entered by the learned Sessions Judge. Even after excluding some of the circumstances incorrectly taken cognizance of by the learned Sessions Judge, we are satisfied that the conclusion of the learned Sessions Judge is absolutely justified. The appellant who caused the injuries suffered by the deceased can safely be assumed to have intended to cause her death or at least to have intentionally inflicted the fatal injury which was sufficient in the ordinary course of nature to cause death. The offence of murder defined under 300 IPC is thus clearly established. The appellant faces only a sentence of life. No sentence of fine has been imposed. The sentence does not at all warrant interference.

41. In the result, this appeal is dismissed. Forward a copy of this judgment to the Director General of Prosecutions to draw his attention to the observations relating to selection and training of Public Prosecutors.