



2023/KER/35522

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 27TH DAY OF JUNE 2023 / 6TH ASHADHA, 1945

CRL.A NO. 978 OF 2019

AGAINST THE JUDGMENT IN S.C.NO.474/2015 DATED 08.02.2019

OF THE ADDITIONAL SESSIONS DISTRICT COURT, THODUPUZHA

APPELLANT/ACCUSED:

MIRAJUL ISLAM SHEIK
AGED 31 YEARS, S/O AREJULLA SHEIK, C NO.3306,
CENTRAL PRISON AND CORRECTIONAL HOME,
POOJAPPURA, THIRUVANANTHAPURAM, AND RESIDED AT
MALABARI-2, PARAUTTAR-5, RANI NAGAR POLICE
STATION LIMIT, MURSHIDABAD DISTRICT, WEST BENGAL
STATE.

BY ADV ANANDAN PILLAI

RESPONDENTS/COMPLAINANTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.
- 2 THE INSPECTOR OF POLICE,
THODUPUZHA POLICE STATION.

BY ADV SMT.AMBIKA DEVI S, SPL.GP ATROCITIES
AGAINST WOMEN & CHILDREN & WELFARE OF W & C

ADV.SHEEBA THOMAS P.P.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
27.06.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

Criminal Appeal No.978 of 2019

Dated this the 27th day of June, 2023**J U D G M E N T****P.B.Suresh Kumar, J.**

The sole accused in S.C.No.474 of 2015 on the files of the Additional Sessions Court - IV, Thodupuzha is the appellant in this appeal. He challenges in this appeal, the conviction entered and the sentence passed against him in the said case.

2. The accusation against the accused in the case as narrated in the final report is that on 15.11.2014 at about 2 a.m., the accused banged the head of his second wife Nazeema Bewa on the wall of the rented building occupied by them and when she fell down unconscious on account of the same, the accused strangled her to death using a shawl, on account of



the enmity towards her for having picked up a quarrel with him demanding a property which he intended to give to his first wife.

3. A case was registered in connection with the occurrence on the same day by the Thodupuzha police, on the basis of the information furnished by the owner of the building, and after investigation, a final report was filed in the case against the accused, alleging commission of the offence punishable under Section 302 of the Indian Penal Code (the IPC). On committing the accused for trial to the Court of Session, the Court of Session also framed charge against the accused for the offence punishable under Section 302 IPC. The accused, however, pleaded not guilty on the charge being read over to him.

4. The prosecution, thereupon, examined 20 witnesses as PW1 to PW20 and proved through them as many as 15 documents as Exts.P1 to P15. Mos.1 to 8 are the material objects caused to be identified by the prosecution through its witnesses. Exts.D1 to D4 are portions of case diary statements of PW14 and PW15 marked at the instance of the accused.



5. Among the witnesses examined, PW1, the owner of the building is the first informant, PW2 is the brother of the deceased, PW3 is the son-in-law of the deceased, PW4 is the next-door neighbour of the deceased, PW5 is an autorickshaw driver, PWs 13 and 15 are occupiers of the building adjoining to the building in which the occurrence took place, PW16 is the Police Surgeon who conducted post-mortem examination on the body of the deceased, PW19 is the child of the deceased and PW20 is the Police Officer who conducted the investigation. Among the documents proved, Ext.P1 is the First Information Statement and Ext.P7 is the post-mortem certificate.

6. After the prosecution tendered its evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure (the Code) as regards the incriminating circumstances brought out by the prosecution against him. The accused denied the same and maintained that he is not the person who caused the death of his wife. Since the trial court did not find the case to be one fit for acquittal under Section 232 of the Code, the accused was called thereupon to enter on his defence. The accused, however, chose not to adduce any



evidence.

7. On appraisal of the materials on record, the Court of Session found the accused guilty of the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.25,000/-, and in default of payment of fine, to undergo rigorous imprisonment for a period of six months, for the offence punishable under Section 302 of IPC. It is aggrieved by the said decision of the Court of Session that this appeal is preferred by the accused.

8. Heard the learned counsel for the accused as also the learned Public Prosecutor.

9. It was submitted by the learned counsel for the accused that it is placing reliance solely on the evidence tendered by the child of the deceased as PW19, that the accused has been convicted by the Court of Session. It was argued by the learned counsel that the evidence tendered by PW19 is not reliable and trustworthy and therefore, the Court of Session ought not have convicted the accused based on the evidence tendered by PW19. According to the learned counsel, if one eschews the evidence of PW19, there is no evidence in



the case to justify the conviction of the accused.

10. Per contra, the learned Public Prosecutor argued that the Court of Session examined the competency of PW19 to give evidence in the case, in terms of Section 118 of the Indian Evidence Act and it was only thereafter that the prosecution was permitted to examine PW19. According to the learned Public Prosecutor, inasmuch as nothing was brought out in cross-examination to doubt the reliability of the evidence tendered by PW19, the Court of Session cannot be found at fault with for having relied on the evidence of PW19. It was also pointed out by the learned Public Prosecutor that it has come out in evidence that the deceased made a statement to PW13 prior to her death, when he went to her residence hearing the noise, that the accused is beating her for having demanded his property which he intended to give to his first wife. According to the learned Public Prosecutor, the said statement would amount to a dying declaration falling within the scope of Section 32(1) of the Indian Evidence Act and is admissible in evidence. The essence of the arguments advanced by the learned Public Prosecutor was that the evidence tendered by



PW19 coupled with the evidence tendered by PW4, the next-door neighbour of the deceased, PW5, the autorickshaw driver, PWs 13 and 15, who were occupying the adjoining building and PW16, the Police Surgeon who conducted the post-mortem examination, would establish the guilt of the accused.

11. The point that arises for consideration in the appeal is whether the conviction entered and the sentence passed against the accused by the Court of Session are sustainable in law.

12. As noticed earlier, the case of the prosecution is that the accused banged the head of the deceased on the wall of the building and when she fell down unconscious on account of the same, the accused strangled her to death using a shawl. PW16, the Police Surgeon who conducted the post-mortem examination on the body of the deceased deposed that the death of the deceased was due to constriction force on her neck. Although PW16 was cross-examined by the learned counsel for the accused, there was no challenge in the cross-examination to the said opinion given by PW16 as to the cause of the death. As such, it can be safely concluded that the



prosecution established the fact that death of the victim was a homicide.

13. The next question is whether the prosecution has established beyond reasonable doubt that it was the accused who caused the death of the victim.

14. The accused and the deceased are natives of the State of West Bengal. As stated, PW1 is the owner of the building in which the occurrence took place and he was not residing in the neighbourhood of the said building. What was stated by him in his evidence was that PWs 13 and 15 who are natives of the State of Assam informed him on 12.11.2014 that one of their relatives needs a place to reside in the locality and requested him to provide accommodation on rent, and that he, accordingly, gave a portion of the building owned by him on rent to the accused who was introduced to him by PWs 13 and 15 as their relative. PW1 stated that at the time when he gave the building on rent to the accused, the wife and child of the accused aged about 5 years were also with him. PW1 stated that he saw the accused thereafter on the evening of 14.11.2014, when PW1 was closing his shop which is located on



the ground floor of the same building let out to the accused. PW1 stated that by about 9.30 a.m. on 15.11.2014, PW15 called him and told him that the wife of the accused is lying dead in the building. PW1 stated that he went to the building on the basis of the said information and found that the body of the wife of the accused was lying on the floor of the building on a plastic mat.

15. PW2 deposed that he received information about the death of his sister from the local police station and when he contacted the accused over telephone then, the accused told him that he does not know the whereabouts of the deceased. PW2 deposed that after about two days, the accused called him over telephone and informed him that he is coming to Islampur Railway Station with the child and if PW2 wants, the accused is prepared to give the child to him. PW2 deposed that on the basis of the said information, he went to Islampur Railway Station and contacted the accused. The accused then wanted PW2 to come to a nearby farm and when PW2 went to the said farm, the accused handed over the custody of the child to him.



16. PW4, the lady who was residing in the adjoining portion of the building occupied by the accused at the time of occurrence, identified the accused and deposed that the accused was residing in the building with his wife and child and that by about 1 O'clock on the night of 14.11.2014, she heard the noise of something being banged on the wall. PW4 also deposed that on the next day morning, by about 9 O'clock, she found PW13 and PW15 knocking at the door of the building occupied by the deceased and as there was no response from inside, they pushed open the door and went inside and she also went inside the house of the deceased along with PW13 and PW15 and when she went inside the house, she found the body of the deceased lying on the floor of the building. PW4 further deposed that she did not find the child of the deceased in the house at that point of time. Even though PW4 stated to the police that she saw PW15 knocking the door of the house of the deceased, in her evidence, she denied having made such a statement to the police. This contradiction in her previous statement is marked as Ext.D1.

17. PW5, the autorickshaw driver deposed that on



15.11.2014, by about 5.20 a.m. when he was driving his autorickshaw through the place called “Kummamkallu Palli”, the accused was found standing there with a child, and on the request of the accused, he dropped them in the KSRTC bus stand. He deposed that in the course of the day, when he received information that a person hailing from the State of West Bengal has murdered a lady and fled from the scene, he informed the police that it is he who dropped that person in the bus stand.

18. PW13 deposed that he knew the accused; that he met him at about 10.30 p.m. on 12.11.2014 and that the wife and child of the accused were also with him at that time. PW13 deposed that since the accused requested him to arrange a place for him to stay, he contacted PW1 and PW1, in turn, rented out a portion of his building to the accused for his stay. PW13 deposed that he heard a noise from the portion of the building occupied by the accused at about 10 p.m. on 14.11.2014; that when he along with PW15 went to the house of the accused hearing the noise, they found the accused beating the deceased and when they enquired with the



deceased as to the reason for their quarrel, the deceased informed them that the accused has a property and he is transferring the same to his first wife. PW13 deposed that they left the scene after dissuading them from their quarrel. PW13 deposed that after sometime, on re-occurrence of noise from the house of the accused, he and PW15 went to the house of the accused again and informed them that if they continue quarrelling, the people in the locality would handle them. PW13 deposed that when they were about to leave, the deceased told him that the accused is leaving the locality. PW13 deposed that he then obtained the ID card of the accused and kept it with him. In cross-examination, he clarified that PW15 is known as Imran as well. The suggestion made to PW13 by the counsel for the accused during cross-examination was that it was his friend Imran who caused the death of the deceased. PW13 denied the said suggestion.

19. PW15 gave evidence more or less in tune with the evidence tendered by PW13. PW15 deposed that on 15.11.2014 morning, he went to work, and when he came back for food to a shop near the house of the accused, he called the



accused over telephone and as the telephone was switched off, he went to the house of the accused along with PW13 and when they opened the house of the accused, they found the body of the deceased lying on the floor. The suggestion made to PW15 by the counsel for the accused during cross-examination was that he is not called Imran and that he is falsely giving evidence as Imran. PW15 denied the said suggestion. It was also suggested by the counsel for the accused to PW15 that it was PW13 and Imran who caused the death of the victim. PW15 denied the said suggestion as well. PW15 stated to the police that he had made arrangements for the accused to take the building of PW1 on rent. But, in his evidence, he denied having stated so to the police. This contradiction in his previous statement is marked as Ext.D2. Similarly, PW15 has stated to the police that at about 10.30 p.m. on 14.11.2014, he went to the house of the accused and dissuaded him and his wife from quarrelling. But, in his evidence, he denied having stated so to the police. This contradiction in his previous statement is marked as Ext.D3. Similarly, PW15 has stated to the police that since the accused



was not found when he came to have his food, he went to the house of the accused, and as the door was locked, he knocked at the door. But in the evidence, he denied having stated so to the police. This contradiction in his previous statement is marked as Ext.D4.

20. It is seen that when the child of the deceased, viz, her daughter, was summoned before the court on 02.08.2014, she was aged 7 years. The Court, therefore, examined the competency of the child to give evidence, and as it was found that the child is competent, she was examined as PW19. PW19 identified the accused as her father. When PW19 was questioned in chief-examination as to what happened to her mother, she deposed that the accused banged her mother's head on the wall by pulling her hair. PW19 deposed that there was nobody else in the house at the relevant time. PW19 also deposed that the accused had taken her thereafter and handed over to her uncle in a farm. In cross-examination, she deposed that the building where she was staying at the relevant time was a double storeyed building and that the colour of the floor of the building was red. PW19 deposed in



cross-examination that she did not tell anyone that her father had banged the head of her mother on the wall. When she was told that such a statement was recorded from her by the police; she said that she does not know. When PW19 was asked in cross-examination as to when PW19 and her father left the house, she answered that 'after the death of her mother'. In cross-examination, she denied the suggestion that she was tutored by the police to give evidence in court. To a question whether PW19 told the police that her father banged the head of her mother on the windows of the house, she clarified that the head of the deceased was banged against the wall as also against the grills of the window. PW19 also denied the suggestion in the cross-examination that her father did not bang the head of her mother on the wall or window.

21. To a leading question put to PW16, the Police Surgeon as to whether injury No.12 noticed on the body of the deceased is possible as a result of sexual abuse, she answered in the affirmative. On a question put to PW20, the Police Officer who conducted the investigation, during cross-examination as to whether he enquired with PW16 the possibility of sexual



abuse on the deceased prior to the occurrence, he answered that he made enquiries with PW16 who opined that there was no possibility for sexual abuse. PW20 asserted in cross-examination that Imran referred to by PW13 is PW15. PW20 denied the suggestion put to him that it is one Imran who caused the death of the deceased after making an attempt to commit rape on her, after chasing the accused and child away from the scene.

22. Let us now deal with the reliability and sufficiency of the evidence let in by the prosecution to prove the guilt of the accused. As noted, the essence of the evidence tendered by PW1 is only that he let out a portion of the building owned by him to the accused at the instance of PW13 and PW15 and that the accused was staying in that portion of the building along with his wife and child from 12.11.2014; that he saw the accused on 14.11.2014 evening when he was closing his shop located on the ground floor of the building and that the wife of the accused was found dead in that portion of the building on 15.11.2014. Nothing was brought out by the accused during the cross-examination of PW1 to discredit the



said evidence tendered by PW1. The essence of the evidence tendered by PW2, the brother of the deceased is that the accused had handed over the custody of the child after the death of his sister in a clandestine manner. The essence of the evidence tendered by PW4 is that the accused was residing in a portion of the building occupied by her with his wife and child; that at about 1 O'clock on the night of 14.11.2014, she heard the noise of something being banged on the wall and that on the following morning, when she went into the house of the accused, she found the dead body of the wife of the accused on the floor of the building. The aforesaid evidence of PW2 and PW4 have also not been discredited in cross-examination. As noted, the only contradiction in the previous statement of PW4 which is brought on record, is one pertaining to her evidence that she saw PW15 knocking at the door of the house of the accused on 15.11.2014 which according to us, is not of any significance. As noted, the essence of the evidence of PW5, the autorickshaw driver is that on 15.11.2014, by about 5.20 a.m. he dropped the accused and child in the KSRTC bus stand. The essence of the evidence tendered by PW13 and PW15 was that



it was they, who arranged the stay of the accused in the building of PW1; that when they went to the house of the accused hearing a noise at about 10 p.m. on 14.11.2014, they found the accused beating the deceased and that when they enquired with the deceased as to the reason for their quarrel, the deceased informed them that the accused has a property which he is not giving her and instead, transferring the same to his first wife. It was also deposed by PWs 13 and 15 that though they left the scene after dissuading the accused and deceased from their quarrel, on re-occurrence of noise from the house of the accused, PWs 13 and 15 went to the house of the accused again and dissuaded the accused from quarrelling with the deceased. It was also deposed by PWs 13 and 15 that on the following morning, when they went to the house of the accused, they found the body of the deceased lying on the floor and that the accused and his child were absent in the house at the relevant time. As indicated, although a few contradictions in the previous statement of PW15 was brought on record, the same are not of any significance which would affect the credibility of the evidence tendered by the said witness.



Various injuries were found on the body of the deceased by PW16, the Police Surgeon while conducting the post-mortem examination. The injuries noted by PW16 on the body of the deceased are the following:

“1. Contusion of scalp 1.3x1x0.3cm. on the left side of head, 3cm outer to midline and 3.5cm above eyebrow with a small lacerated wound of 0.5x0.3x0.2cm in the middle.

2. Abrasion 10x0.5 to 2cm, obliquely placed on the left side of neck, the upper backend 1.5cm outer to midline and 9cm below occiput.

3. Abrasion 4.5x3cm horizontal, on the back of neck across midline and 4.5cm below occiput.

4. Abrasion 2.5x1.5cm, horizontal, on the right side of neck, the back end at the angle of jaw bone.

5. Abrasion 1.5x1cm, on the right side of neck 3.5cm below the lobule of ear.

6. Abrasion 5x2.5cm, oblique, on the left side of neck, the upper back end overlying the jaw bone.

7. Two abrasions 1.5x1.5cm each 0.5cm to 0.7cm apart broad at the inner end, one above the other on the right side of neck, just outer to midline and 10cm below jaw bone.

8. Abrasion 1x0.2cm, on the left side of neck, 3.5cm below the lobule of ear.

9. Contusion 0.5x0.5x0.3cm, on the lower margin of lobule of left ear.

10. Two contusions 9x0.6x0.3cm and 4.5x2.5x0.2cm, 1cm apart, one above the other, oblique and parallel on the left side of neck, the inner end of the upper one, 6cm below jaw bone and just outer to midline.

Flap dissection of neck was done under a blood less field. The subcutaneous tissue underneath injury No.s (2) to (10) appeared normal. Left superior horn of thyroid cartilage showed fracture with infiltration around. The other neck structures including muscles, vessels, hyoid bone long and



cartilages were intact and normal.

11. Contusion 2.3x1.4x0.3cm on the inner aspect of left arm, 7cm above elbow.

12. Multiple small contusions of sizes varying from 0.6x0.4x0.2cm to 1.1x0.6x0.3cm over an area of 6x4cm on the upper inner quadrant of right breast just outer to mid line and 5cm below inner end of collar bone."

Coming to the evidence of PW19, the child of the deceased, what was stated by her was only that the accused who was identified by her in court as her father had banged the head of her mother on the wall by pulling her hair and that the accused took PW19 thereafter and handed over her custody to her uncle, PW2 in a farm in Bengal. We have carefully examined the evidence tendered by PW19, and we do not find any reason to disbelieve that portion of the evidence tendered by PW19. We take this view also for the reason that PW19 specifically denied the suggestion that her father did not bang the head of her mother on the wall or window. She also denied that she was tutored by the police to give evidence in court.

23. From the discussion of the evidence tendered by the witnesses, it can certainly be found that the accused was residing with the deceased at the time of her death; that there was a quarrel between them preceding the death of the



deceased relating to her claim over a property owned by the accused; that the accused has assaulted the deceased and banged the head of the deceased on the wall; that the accused fled away from the scene and the locality thereafter with the child and that the body of the deceased was found in the same place on the following morning. The injuries found on the body of the deceased by PW16 would also corroborate the evidence tendered by PW13, PW15 and PW19 that the deceased was brutally assaulted by the accused prior to her death.

24. As noted, the cause of the death of the deceased was certified by PW16 as constriction force on the neck. There is no evidence in the case to show that the accused has strangled the deceased to death. The argument advanced by the learned Public Prosecutor in this regard is that inasmuch as the prosecution has established that the accused was found in the company of the deceased immediately prior to her death, the cause of her death is a fact which is within the special knowledge of the accused, and the burden of proving that the said fact is not true, is therefore upon the accused himself. According to the learned Public Prosecutor, inasmuch



as the accused failed to discharge the said burden, it must be taken that the prosecution has proved the guilt of the accused beyond reasonable doubt.

25. Before dealing with the contention aforesaid of the learned Public Prosecutor, it is necessary to refer to the charge framed by the court in the proceedings against the accused. The charge is that on 15.11.2014 at about 2 a.m., the accused committed murder by intentionally causing the death of his wife Nazeema Bewa. Section 213 of the Code provides that where the nature of the case is such that the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. The accused has no case that the particulars mentioned in Sections 211 and 212 do not give sufficient notice of the matter with which he is charged. In other words, what the prosecution is expected to prove in the instant case is the charge that on 15.11.2014 at about 2 a.m., the accused has committed murder by intentionally causing the death of his



wife Nazeema Bewa.

26. It is trite that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution. As pointed out by the learned Public Prosecutor, Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the context of criminal trials, the Apex Court has observed thus in **Shambu Nath Mehra v. State of Ajmer**, 1956 SCR 199 that Section 106 of the Indian Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. The relevant observation reads thus:

“This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word “especially” stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge.”



Placing reliance on the said judgment, in **State of W.B. v. Mir Mohammad Omar**, (2000) 8 SCC 382, the Apex Court held that Section 106 would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused, by virtue of the special knowledge regarding such facts, offers any explanation which might drive the court to draw a different inference. In short, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted the company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of the facts within his knowledge, he fails to discharge the burden cast upon him by Section 106 of the Indian Evidence Act. In short, in a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him [See **State of Rajasthan v. Kashi Ram**, (2006) 12 SCC 254]. Keeping in



mind the aforesaid principles, let us now consider the question whether the prosecution has proved the guilt of the accused beyond reasonable doubt.

27. In this context, the first and foremost aspect to be considered is the question relating to the admissibility of the statement made by the deceased to PW13 prior to her death that the accused has been beating her for having demanded his property which he wants to give to his first wife. Section 32 (1) of the Indian Evidence Act provides that statements, written or verbal made by a person who is dead, are themselves relevant when the statement is made by a person as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. As noted, it is in the light of the above statutory provision, the learned Public Prosecutor contended that the statement made by the deceased to PW13 prior to her death is admissible in evidence. In the celebrated case, **Pakala Narayana Swami v. King-Emperor**, 1939 SCC OnLine PC 1, the Privy Council after observing that it has been argued that the statement must be made after the transaction has taken



place, that the person making it must be at any rate near death, and that the "circumstances" can only include the acts done when and where the death was caused, it was opined that the natural meaning of the words does not contain any of these limitations and even statements made before the cause of death has arisen and before the deceased has any reason to anticipate being killed are also admissible, provided the same pertain to circumstances which have some proximate relation to the actual occurrence. In other words, such declarations are admissible, if they point directly to the fact constituting the *res gestae* of the homicide, that is to say, to the act of killing and to the circumstances immediately attendant thereon, like threats and difficulties, acts, declarations and incidents which constitute or accompany and explain the fact or transaction in issue. It is necessary also to state in this context that the expression "transaction" used in Section 32(1), shall be understood as a series of events or all facets of the occurrence which are normally investigated as a whole and shall not be understood as a single act, which means the word "transaction" refers to the series of events from the beginning



to the end. It was held by the Apex Court in **Rattan Singh v. State of H.P.**, (1997) 4 SCC 161 that the collocation of the words in Section 32(1) “circumstances of the transaction which resulted in his death” is wider in amplitude than saying “circumstances which caused his death” and there need not necessarily be a direct nexus between “circumstances” and death and it is enough, if the words spoken by the deceased have reference to any circumstances which have connection with any of the transactions which ended up in the death of the deceased. In other words, such statements would also fall within the purview of Section 32(1) of the Indian Evidence Act. It was held by the Apex Court in the said case that it is not necessary that such circumstances should be proximate, for, even distant circumstances can also become admissible under the provision, provided it has nexus with the transaction which resulted in the death. Reverting to the facts of the case on hand, the statement of PW13 referred to by the learned Public Prosecutor reads thus:

"ഞാനും ഇമാനും പ്രതിയുടെ room ൽ കയറി. അപ്പോൾ പ്രതി ഭാര്യയെ അടിയൊക്കെ കൊടുത്തു. ഞങ്ങൾ പോയി മാറ്റിവെച്ചു എന്നിട്ട് പെണ്ണുനുള്ളയോടു ചോദിച്ചു എന്തിനാണു അടി എന്ന്.



പ്രതിക്കു culcutta യിൽ വേറെ പെണ്ണുമിള ഉണ്ട്. പ്രതിയുടെ പേരിലെ സ്ഥലം ആ പെണ്ണുമിളയുടെ പേരിൽ എഴുതിക്കൊടുക്കുകയാണ്. എന്റെ പേരിൽ തരുന്നില്ല എന്നു പറഞ്ഞാണ് അടി എന്നു പെണ്ണുമിള പറഞ്ഞു.”

Inasmuch as the statement aforesaid pertains to an incident immediately preceding the occurrence, and the difficulties faced by the deceased on account of the same, there cannot be any doubt to the fact that the statement aforesaid is a circumstance which has a proximate relation and a close nexus with the transaction which resulted in the death of the victim. As such, in the light of the principles aforesaid, the said statement is admissible in evidence, as one falling within the scope of Section 32(1) of the Indian Evidence Act.

28. From the facts of the case on hand as discussed in the preceding paragraphs, especially in the light of the statement given by the deceased to PW13 which is found by us to be one falling under the purview of Section 32(1) of the Indian Evidence Act, only the accused could offer an explanation as to how the death of the victim occurred, for it is a fact which is especially within his knowledge. Inasmuch as the accused has not offered any explanation as to the cause of



the death of the victim, we are of the view that in the aforesaid facts and circumstances established in the case, it can certainly be found that the prosecution has proved beyond reasonable doubt that it is the accused who has caused the death of the victim.

In the light of the discussion aforesaid, the appeal is without merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

YKB