

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE A.M.BABU

TUESDAY, THE 09TH DAY OF APRIL 2019 / 19TH CHAITHRA, 1941

CRL.A.No. 544 of 2015

AGAINST THE JUDGMENT IN SC 479/2013 of SESSIONS COURT,
KASARAGOD DT 24.3.2015

AGAINST THE ORDER/JUDGMENT IN CP 48/2013 of JUDICIAL
MAGISTRATE OF FIRST CLASS -I,HOSDURG DATED 05-10-2013

APPELLANT:

MOHANAN K.N, S/O LATE NARAYANAN,C.NO.242/15
AGED 63 YEARS
CENTRAL PRISON,KANNUR

BY ADV. SAJI ROSHAN (STATE BRIEF)

RESPONDENT:

STATE OF KERALA
(STATION HOUSE OFFICER, CHANDERA, CRIME
NO.25/2013) .

BY ADV.SR.PP. S.U.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
04.02.2019, THE COURT ON 09.04.2019 DELIVERED THE FOLLOWING:

J U D G M E N T

Shaffique, J.

This appeal has been preferred by the appellant challenging the judgment of conviction and order of sentence passed by the Sessions Judge, Kasaragod in S.C. No. 479 of 2013 dated 24/03/2015 by which he was found guilty for offence under Section 302 of the Indian Penal Code, 1860 (for short 'IPC') and was sentenced to undergo imprisonment for life and to pay a fine of ₹5,000/- (Rupees Five Thousand only) with a default stipulation of rigorous imprisonment for three months.

2. Prosecution case is as under:

The appellant/accused is a toddy tapper by profession. He hails from Vaikom of Kottayam district. He was staying in a rented house of CW31. He came into contact with the parents-in-law of the deceased and was helping them in their day to day activities. The mother-in-law of the deceased was a chronic diabetic patient and her younger daughter Madhavi (PW7), who is the sister-in-law of the deceased, was helping her in nursing. The appellant was provided a shed on the south-western corner of the house. While

so, the appellant developed illicit relationship with PW7. On the date of incident at about 04.30-05.00 a.m., the deceased happened to see PW7 and the appellant in a compromising position in the shed. The deceased beat the appellant, warned him and expelled him from the house compound. Thereafter, the deceased went to Mangalapuram (Mangalore) for purchasing medicine as the health of his mother-in-law got worse. PW2 Vijayan went for his work of lorry driving. At that time, the health condition of the mother-in-law of the deceased further worsened and the appellant agreed to help the family in taking her to hospital and attend on her but on the condition that PW7 also should accompany him for help. The same was conveyed to the deceased over mobile phone of PW2. Deceased rejected the same and told that the appellant was an immoral fellow and he cannot be permitted entry into their house. It was the practice of the deceased to attend the mother-in-law and meet his wife during night hours. On the fateful day, at about 07.30-08.30 p.m., Bharathi, who is the wife of the deceased, happened to be on the terrace of the house for hanging clothes. The appellant caught hold of her and there was a push and pull and the appellant

jumped and left the place. At that time, the appellant lost his mobile phone in between the house compound and the shed which was occupied by him. On the way, he encountered the deceased and stabbed twice on the left side of his chest and armpit with a sharp small knife. Balan succumbed to the injuries later.

3. To prove the case, prosecution examined PW1 to PW26 as witnesses, marked Exts.P1 to P19 documents and identified MO1 to MO12 series objects. During 313 examination, the appellant denied all incriminating circumstances against him and pleaded innocence. Defence adduced no evidence.

4. Admittedly, there was no direct evidence in the case. Prosecution relied on circumstantial evidence to prove the guilt of the appellant. Evidence adduced, in short, are as under:

5. PW1 is the son-in-law of the deceased. He gave Ext.P1 F.I. Statement. He identified MO1 torch belonging to him which was handed over to the deceased a few hours prior to the incident. He also identified MO2 knife recovered from the place of occurrence. He further identified MO3 series chappals, MO4 mobile phone, MO5 to MO7 dresses and MO8 chord belonging to

the deceased. PW2 is the brother-in-law of the deceased. He identified MO2 knife, MO4 mobile phone, MO9 mobile phone of the appellant/accused and MO10 to MO11 dresses worn by the appellant. PW3 is the wife of the deceased. PW4 is the daughter of the deceased and wife of PW1. PW5 is a neighbour of the deceased and he identified MO2 and MO9. PW6 is a member of Panchayath. PW7 is the sister-in-law of the deceased. PW8 is a resident of the locality who stated that he saw the appellant running towards his quarters in a perplexed state at about 08.00-08.30 p.m. PW9 is an attester to Ext.P2 mahazar by which MO9 mobile phone of the appellant was recovered. PW10 is a police constable who also identified MO9 mobile. PW11 is the one who handled the tracker dog Alex which was brought to the place of occurrence. The dog after smelling MO2 blood-stained knife seized from the place of crime went up to the quarters in which the appellant was residing. PW12 is the person who resided along with the appellant. He identified MO2 knife, MO10 and MO11 dress of the appellant and also identified MO9 mobile phone of the appellant. PW13 is another Panchayath Member. He is an attester to Ext.P3 mahazar prepared for the recovery of MO10

and MO11 dress of the appellant. He also witnessed the arrest of the appellant. PW14 is an attesor to Ext.P4 recovery mahazar of MO1 torch. PW15 is the owner of the quarters in which the appellant was staying on a rental basis. Ext.P5 is the lease agreement. Ext.P6 is the receipt book for the same. Ext.P7 is the mahazar prepared for the seizure of Exts.P5 and P6. PW16 also proved Exts.P5 and P6. PW17 is the owner of the property where the deceased was found dead. PW18 issued Ext.P8 FSL report. PW19 is an attesor to Ext.P9 inquest report. PW20 is a witness to the collection of blood done by PW18 the Scientific Assistant as per Ext.P10 mahazar. PW21 is examined to prove Ext.P11 print out of the call details of MO9. Ext.P12 is the mahazar prepared for its recovery. PW22 proved Ext.P13 post-mortem certificate of the deceased. PW23 is the Village Officer who prepared Ext.P14 site plan. PW24 proved MO12 series photographs of the corpse of the deceased. PW25 is the S.I. of Police, Chandera Police Station who registered Ext.P15 FIR based on Ext.P1 FIS given by PW1. PW26 is the Circle Inspector, Neeleswaram. He prepared Ext.P4 inquest report, recovered MO2 to MO8, proved Ext.P16 forwarding note, recovered MO9 etc. He completed the investigation and laid the

charge-sheet.

6. Learned counsel for the appellant submits that there is no legal evidence to support the verdict of the trial Court and it is a perverse judgment based on surmises and conjectures. There is no eye-witness to the incident. Motive is not proved by the prosecution. There is nothing on record to show that the appellant and the deceased were last seen together soon before the incident. No weapon is recovered at the instance of the appellant. Prosecution falsely implicated the appellant based on mere suspicion. He prayed for an acquittal by extending benefit of doubt to the appellant.

7. Per contra, learned Senior Public Prosecutor argued that though there is no direct evidence, prosecution proved the case against the appellant through circumstantial evidence. Motive is clearly proved. MO2 knife belonging to the appellant is seized from the place of occurrence and it is found to be stained with human blood belonging to group 'B'. Both the appellant and the deceased were available near to the place of occurrence at or around the time of incident. His subsequent conduct spoken to by PW8 and PW12 coupled with his absconding from the place

clearly shows his involvement in the crime. Prosecutor pleaded for confirming the verdict of the Court below.

8. Evidence of witnesses and medical evidence clearly shows that Balan met with a homicidal death. Ext.P9 is the inquest report. PW22 conducted the post-mortem examination of the deceased and Ext.P13 is the post-mortem certificate issued by him. He deposed that the following ante-mortem injuries were noted by him on the corpse of the victim:

"1. Incised penetrating wound 2x1 cm (2.3 cm in length on approximation of edges), vertically placed on the front of chest, the lower sharply cut end being 6cm above the left nipple in the 1'O Clock position. The wound entered the chest cavity through the second second intercostal space and transfixed the upper lobe of left lung. (entrance wound 2.5x0.5 cm: exit wound 1x0.5 cm). The wound was directed backwards, downwards and to the right for a total minimum depth of 6.5 cm. Left lung was collapsed. Chest cavity contained 100ml of blood.

2. Wedge shaped incised stab wound 2.2x0.5 cm on the front of left elbow. The wound was directed upwards and inwards for a depth of 7cm and terminated by severing the brachial artery."

It is in evidence that two injuries were noted on the corpse of the victim. According to PW22, the cause of death of Balan is stab

injuries sustained at chest and left armpit involving lung and a major artery. It is proved beyond doubt that the death of Balan was a homicide.

9. Court below also arrived at a conclusion that death of Balan was caused by the appellant herein. Court below based its verdict on finding that the following circumstances stand proved against the appellant:

- (i) Motive for the crime.
- (ii) Availability of the appellant in the locality and his subsequent conduct soon after the commission of the crime.
- (iii) Seizure of MO9 mobile phone from near the house of the deceased.
- (iv) Seizure of blood-stained knife (MO2) from the place of occurrence which belonged to the appellant.
- (v) PW12 stated that MO2 was the knife the appellant keeps with him usually.
- (vi) Blood traced on MO2 in FSL examination belonging to B positive group and that exactly is the blood group of the deceased.
- (vii) PW8 had seen the appellant in a panic state at about

08.30 P.M. near the place of occurrence.

(viii) The appellant was not available at the place after the occurrence.

10. Whether the said conclusion is just in the light of available evidence is the brainstorming question before us. For deciding the same, it would be appropriate to look into the evidence of key witnesses in detail.

11. PW1 deposed that he had given Ext.P1 FIS to police. On 12/01/2013 at 08.15 p.m., the deceased came to his house. By 08.30 p.m., the deceased collected a torch light (MO1) from him and proceeded to his tharavad house which was situated about 500m east from PW1's house, where the grandmother of his wife was laid up. PW1's house is 100m away from Balan's house. After Balan had gone, PW1 and his wife locked their house and went to neighbour Bhaskaran's house where house warming ceremony was going on. By 10.00 p.m., both of them came back to their house as power-cut timing was over by then. By about 10.20 p.m., uncle of PW1's wife, Vijayan (PW2) contacted PW1 over phone and asked him to reach his wife's house soon. PW1, his wife and their child went there. Then, mother-in-law of PW1

(PW3) complained that the appellant tried to catch her. She fell down and he ran away. PW3 also stated that her husband (the deceased) had not reached and he is not available on phone. PW1 borrowed a torch and started searching Balan. As he moved eastward, he saw one person lying in a ditch with the face downward. He called Vijayan and told to come there. Both of them identified the person lying in the ditch as Balan. He identified material objects seized from the spot by the police.

12. PW2 Vijayan deposed that he is the brother-in-law of the deceased. It is his version that in the morning on the date of incident, he dropped Balan in Thrikkarippur railway station for going to Mangalore to purchase medicine for his grandmother. By about 02.00 p.m., PW3 contacted him over phone and informed that her mother was serious and the feeding tube was disconnected from mother's nose. In between the call, the appellant herein took the phone and asked PW2 whether he should take the patient to hospital. PW2 agreed. The appellant told that it was not possible for him to take ailing mother alone and he sought permission to take PW7 also to hospital for which PW2 agreed. PW2 contacted Balan and told all these

developments. Balan opposed the same and told that the appellant is not a person of good morals and that he is not fit to be welcomed into a house. PW2 further deposed that the appellant started residing near them, 8 months prior to the incident. It is his further version that on the date of incident at night about 08.30 p.m., son of PW7 came to him and told that the appellant had ran away from the terrace after hitting PW3. PW2 contacted one Madhu and asked him to enquire whether the appellant was available in the quarters in which they were staying. Madhu informed PW2 that the appellant and others were locked in their quarters. PW2 reached there and hit Lavan and Satheesan who are the friends of the appellant. He had seen the appellant running out from the quarters. Later, he reached home and on the request of PW3, he along with others started searching for the deceased and finally they found the dead body of the victim in a nearby ditch. He called others and they reached there. He saw the deceased lying with bleeding injuries. There was no breath. MO4 is the mobile phone of the victim. He had also seen pool of blood near the coconut firewood lying above the ditch. He had also noticed that the grass above the ditch were

pressed to the ground following scuffle. He also identified material objects seized from the body of the deceased. MO2 is the weapon he had occasion to see in the possession of the appellant earlier. He further identified MO9 as the mobile phone of the appellant.

13. During cross-examination, he admitted that he is a party worker of CPI(M). He also stated that the cases by or against him were only cases triable before Magistrate Court.

14. PW3 Bharathi is the wife of the deceased. She deposed that on the date of incident, her mother's health condition got worsened and she contacted PW2 over phone. At that time, the appellant took the phone in between the call from her and spoke to PW2. The appellant told PW2 that he would take the patient to hospital along with PW7 Madhavi. After sometime, PW2 called and told her that Balan had told him that the appellant is not a good person and that he should not be allowed to accompany them while taking her mother to hospital. On the same day at about 08.30 p.m., PW3 was hanging the dresses on the terrace of their house. At that time, the appellant caught hold of PW3 on her neck. As she made a hue and cry, the appellant kicked her and

she fell down. Hearing her cry, PW7 and her son Sarath reached the spot. The appellant jumped and ran away. Sarath went and brought PW2 with him. Both PW2 and Sarath went in search of the appellant. PW3 also called PW2 over phone and informed him that Balan had not reached the house though it is time for his arrival. PW1 and his wife also reached there. PW3 told the matter to PW1. He said that Balan had bought a torch from him by 08.30 p.m. and he started from PW1's house to the tharavad house. She further stated that on the previous day of the incident at about 01.30 a.m., she had not found PW7 in the place where PW7 usually sleeps. The door was not locked. After a considerable time, she had seen PW7 coming down from the terrace of the house through the stair case. PW3 asked her where she was and she replied that she was having periods and that she had gone to take clothes from the terrace. She had suspicion about PW7. PW7's husband was lying ill at his house at Kannur. Thereafter PW7 is staying in the tharavad house along with her parents. After the incident, PW7 and her son shifted to Madakkallu.

15. PW4 is the daughter of the deceased and PW3. She also stated that the deceased had taken MO1 torch from her

husband PW1 and she identified the same. She also deposed that PW3 told her that the appellant had kicked her and Balan had not reached home. PW1, PW2, Sarath and her son went in search of Balan. Later she came to know that her father sustained injuries and he is no more. PW5 also stated that he had seen the deceased lying in the ditch dead and that he had come to know about the attack on PW3 by the appellant. He also identified material objects belonging to the deceased and other articles seized from the spot.

16. PW6 is the ward member of the locality. She came to know about the incident on 12/01/2013 at about 11.00 p.m. According to her, after the incident, there was a news report about the illicit relationship between the appellant and PW7. So, PW6 asked about the same to PW7, but initially she denied the allegation. But later PW7 told her that, on the date of incident early morning, the appellant had approached her demanding a match box and as she was handing it over to him, he dragged her to the nearby shed and both of them had entered into sexual intercourse. Balan reached there seeing the same. Balan hit the appellant. PW6 stated that she gave statement to that effect to

the police. The news item appeared in the daily after the arrest of the appellant. According to her, all the details disclosed by PW7 was not reported in the news paper.

17. PW7 deposed that the appellant is known to her nine months prior to the incident. It is her version that on the date of incident at about 04.30 a.m., the appellant came to the kitchen area of their house and asked for a match box. As PW7 had given the match box, the appellant caught hold of her hands and dragged her to the shed in which the appellant was keeping his work articles. There, the appellant entered into sexual relation with PW7. Deceased Balan saw the same and he had beaten up the appellant. He also asked to stop his tapping and get out of his house. Hence, the appellant had shifted all his tapping utensils to his quarters from the shed. By noon time, mother's illness aggravated and PW3 contacted PW2 over phone. At that time the appellant agreed to accompany mother to hospital and he also asked PW7 to go along with them. PW3 informed this to PW2 and PW2 in turn informed the same to Balan. It is her version that she had heard that Balan telling to PW3 that the appellant is a man of low morals and that he is not a fit person to be entertained in

families. The appellant over-heard it. On the same day night, Balan was missing and later he was found dead. During cross-examination, she stated that Balan told her not to disclose the early morning incident to anyone and that was the reason why she did not tell it to PW3 and also to the police. She also stated that she had not taken any legal action against the appellant in connection with the alleged physical relationship that had taken place in the early morning. She further stated that since PW6 was the ward member, she disclosed the early morning incident to her.

18. PW8 is a resident of the locality. He is a mason by profession. He rears two buffaloes as well. He knew the appellant and the deceased. On the date of incident, at about 08.00 p.m., he went to untie the buffaloes with a torch. As he was untying the buffaloes, he heard a sound. He lighted the torch and saw the appellant coming in a panic state. He asked many questions to the appellant and he did not give clear answers to them. According to PW8, he had seen the appellant in a frightened mood at about 08.30 p.m. During cross-examination, he stated that the appellant came near to him through another place and

not through the road.

19. PW12 Satheesh deposed that he had been residing with the appellant and CW24 in a quarters at Idayilakkadu four months prior to the incident. He knew the incident. On the day of incident, the appellant consumed alcohol by 04.30 p.m. and in that intoxicated state, he had left the quarters at 05.30 p.m. Then he came back at about 08.45 p.m. At that time, the appellant told them that his mobile phone (MO9) was lost and he sought their help to find it out. PW12 did not agree for the same. Later, three people came there in search of the appellant and beat PW12 and CW24. The appellant ran away. He identified MO10 and MO11 as the dress worn by the appellant at that time. He also identified MO2 as the knife which was usually kept by the appellant in his possession. MO9 is identified as the mobile phone of the appellant.

20. We have gone through the entire evidence on record. Prosecution attempted to prove their case by adducing circumstantial evidence as there are no eye-witnesses for the offence. It is in evidence that the appellant was residing with PW12 Satheesan and Lavan at the quarters mentioned in Ext.P5

rent agreement which is owned by PW15 Rajeevan. It is also brought in evidence that the appellant had good relationship with the family of the deceased and that he was permitted to keep his work utensils in the shed attached near to the house of the deceased. He had access to the house and he was not a stranger.

21. According to the prosecution, the deceased was found injured in a ditch near to their house by around 10.20 p.m. and the approximate time of death is between 08.30 p.m. and 10.30 p.m. PW8 deposed that the appellant was found near the place of occurrence in panic at around 08.30 p.m.

22. Recovery of MO1 torch is argued to be a vital piece of evidence against the appellant. But as far as the recovery of MO1 torch is concerned, there is evidence to show that MO1 belonged to PW1 and on the date of incident, the deceased bought it from PW1 at about 08.30 p.m, and it was in his possession thereafter. Prosecution story is that, the appellant herein, after inflicting injuries on the deceased, snatched the torch from the deceased and ran to escape and during the process he fell down and the torch was lost somewhere around the place of fall. It is seen that the said torch is recovered as per the disclosure statement of the

appellant as MO1. It is true the said recovery does not come within the purview of Section 27 of the Indian Evidence Act, 1872 (for short 'Evidence Act') but it is admissible as his conduct under Section 8 of the said Act.

23. According to the prosecution, the appellant had illicit relationship with PW7 and that is the immediate provocation for the crime. But it can also be seen in evidence that the appellant had attempted to molest the wife of the deceased (PW3) at the time when she was on the terrace of their house. PW3 was stated to be hit by the appellant and he had run away. The incident in question happened somewhat around 08.30 – 08.45 p.m. MO9 mobile phone belonging to the appellant was seized from near the house of PW3. The mahazar clearly describes where MO9 was found. It was about 15 metres from the house of PW3 and 25 metres away from the house of PW2. It is 150 metres away from the alleged place of occurrence. The phone, if at all taken as seized as alleged by the prosecution, only shows that it was recovered from near the house of PW3 where he was present even according to the deposition of witness PW3. Admittedly, MO9 is not seized from the place of occurrence or from near the

body of the deceased. PW3 stated that after attempting to molest her, the appellant ran away by jumping from the terrace. It is a possibility that the mobile phone might have fallen during that process. It is also brought in evidence that the appellant asked PW12 to help him to find out the mobile phone which was lost. PW12 did not help him to find it out as it was night. Ext.P11 is produced to show that the SIM card seized from inside MO9 mobile phone was that of the appellant. PW12 who is the room mate of the appellant clearly deposed that MO9 belongs to the appellant. The seizure of MO9 mobile phone belonging to the appellant from near the house of PW3 which is only 150 metres away from the place of occurrence is another circumstance which corroborates the version of PW3 that the appellant was available at the place of occurrence at the relevant time as alleged by the prosecution.

24. Motive for the commission of the crime as alleged by the prosecution is that the appellant had enmity towards the deceased because on 12/01/2013 at 04.30 a.m., the deceased had hit the appellant as he was found in a compromising position with PW7, who is the sister-in-law of the deceased in the shed

near their house in which the appellant was permitted to keep his work utensils. Accordingly, the appellant took away the utensils on that day itself to his rented quarters. Further, it is also in evidence that, on the same day, while PW2 contacted the deceased over phone in the noon time to inform about the worse health condition of his mother-in-law and also to let him know the willingness of the appellant to accompany them to hospital along with PW7, the deceased had told PW2 that the appellant is an immoral person and that under no circumstance, he should be allowed to accompany them. Witnesses, especially PW7, deposed that this conversation was over-heard by the appellant. We find these two proved instances as incidents sufficient to attribute motive for the appellant to commit the alleged offence.

25. PW12 deposed that MO2 knife belonged to the appellant and he also identified MO9 mobile phone, MO10 and MO11 dresses as that of the appellant. Their living together is further fortified by the fact that PW2 had gone there in search of the appellant and had beaten PW12 and Lavan who were there in the quarters at that time. The appellant ran away. Ext.P8 is the chemical analysis report of the properties recovered and seized in

connection with case. It shows that MO2 knife contained human blood belonging to group 'B'.

26. From the above discussion, the following facts and circumstances are proved either by direct evidence or by necessary inference:

(i) The appellant was a toddy tapper by profession and he was residing with PW12 Satheesan and Lavan at the quarters mentioned in Ext.P5 rent agreement, which is owned by PW15 Rajeevan.

(ii) The appellant was permitted to tap from the coconut trees on the compound of the parents-in-law of the deceased and he was in the habit of helping them in their day-to-day activities. The appellant was permitted to keep his work utensils in a shed on the south-western corner of the house of the deceased.

(iii) PW7 Madhavi and her son Sarath were also staying in the tharavad house for nursing the ailing parents.

(iv) The appellant developed illicit relationship with PW7 and on 12/01/2013 at 04.30 a.m., the deceased Balan found both the appellant and PW7 in a compromising position in the shed. Balan hit the appellant and asked to vacate the shed and warned

him not to enter into his family any more. Accordingly, on the same day, the utensils of the appellant were shifted from the shed to his rented quarters.

(v) On 12/01/2013, the mother of PW3 had developed health complications due to high sugar and she had to be taken to hospital. Balan was at Mangalore to purchase medicines for his mother-in-law. The appellant offered his help to PW2 and PW3 to take mother to hospital with a condition that PW7 need to accompany them to hospital.

(vi) PW2 contacted Balan over phone and informed the same. Balan vehemently opposed the appellant accompanying them to hospital. He added that the appellant is not a morally upright person and that he is not worthy to be entertained in family. This conversation was overheard by the appellant.

(vii) On the same day, at about 04.30 p.m., PW12 saw the appellant in his quarters in a drunken state and the appellant left the quarters by 05.30 p.m.

(viii) PW3 and PW12 stated that the appellant was in the habit of keeping MO2 knife with him.

(ix) PW12 deposed that MO9 mobile phone belongs to the

appellant. Ext.P11 is the document to corroborate the same.

(x) On 12/01/2013 at 08.15 p.m., the deceased went to the house of PW1 and PW4 and remained there for sometime and he bought MO1 torch from PW1 and proceeded to the tharavad house by 08.30 p.m.

(xi) On the same day at about 08.30 p.m., the appellant attempted to molest PW3 who is the wife of Balan, while she was on the terrace to hang the clothes. She hit the appellant and the appellant jumped from the terrace and escaped.

(xii) On his way, he lost MO9 mobile phone from his possession near the house of PW3.

(xiii) PW3 informed the matter to PW2 and she tried to contact Balan but she could not get him over phone.

(xiv) By around 08.30-08.45 p.m., PW8 who was untying his buffaloes, happened to see the appellant in a panic state and the appellant was seen frightened. He did not answer the queries of PW8. He was not coming through the common road but through another place.

(xv) The appellant reached the quarters by 08.45 P.M., and he told PW12 and CW24 that his mobile phone (MO9) was lost

and he sought their help to trace it out. PW12 declined to go with him for search as it was dark.

(xvi) PW2 along with others came to the quarters seeking the appellant by that time and they attacked PW12 and CW24 who were injured and taken to hospital. The appellant at that time ran away from the quarters.

(xvii) The appellant was absconding from then until his arrest from his daughter's house at Kozhikode on 16/01/2013 at 05.00 p.m.

(xviii) PW3 made queries about her husband as he had not reached home though it was the usual time of his arrival. By 10.00 p.m., PW1 was informed the matter and they began to search for Balan around the locality. By 10.20 p.m, PW1 saw Balan lying in a ditch with bleeding injuries.

(xix) PW1 gave a prompt FIS (Ext.P1) on 12/01/2013 at 11.45 p.m alleging suspicion about the involvement of the appellant.

(xx) MO9 mobile phone of the appellant was seized on 13/01/2013 at 12.00 p.m. from the the compound of PW3 which was 150 m away from the place where the dead body was found

and 15 metres away from the side wall of the house of PW3 as per Ext.P2 mahazar. Evidence of PW12 coupled with Ext.P11 shows that it belongs to the appellant.

(xxi) MO2 knife was seized from the spot which was stained with blood. PW3 and PW12 deposed that MO12 belongs to the appellant. The sniffer dog after smelling MO2 blood-stained knife which was seized from the place of crime, went up to the quarters in which the appellant was residing. It is true that evidence of tracker dog is not of much weight. But in the light of other evidence available, it adds some credibility to the prosecution case regarding the ownership of MO2.

(xxii) Ext.P4 is the mahazar prepared for the seizure of MO1 torch which the deceased had bought from PW1 prior to the incident, based on the disclosure statement of the appellant. It is not admissible under Section 27 of the Evidence Act, but is admissible under Section 8 of the said act as a conduct.

(xxiii) Evidence of PW22 coupled with Ext.P13 post-mortem certificate proves that the appellant died of stab injuries sustained at the chest and left armpit involving lung and a major artery. The said injury is possible using MO2 as weapon of

offence.

(xxiv) PW12 is the person who resided along with the appellant. He identified MO2 knife, MO10 and MO11 dress of the appellant and also identified MO9 mobile phone of the appellant. PW13 is another Panchayath Member. He is an attestor to Ext.P3 mahazar prepared for the recovery of MO10 and MO11 dress of the appellant. He also witnessed the arrest of the appellant. PW14 is an attestor to Ext.P4 recovery mahazar of MO1 torch.

(xxv) Ext.P8 is the FSL report proved through PW26. In Ext.P8, item nos. 7 and 8 are the shirt and dhoti of the appellant which were seized as per Ext.P3 mahazar on 16/01/2013 at 05.00 p.m., at the time of the arrest of the appellant from his daughter's house at Kottoor, Kozhikode. The said items were found with blood whose origin could not be determined due to insufficient quantity. No explanation was forthcoming from the appellant regarding the presence of blood-stains on his dress. He did not have a case that he had some contact with blood.

(xxvi) Item no. 4 in Ext.P8 report is MO2 knife seized from the place of occurrence which proved to be belonging to the appellant. It is detected with human blood belonging to group 'B'

which is the blood group of the deceased Balan.

27. It is proved beyond doubt that the appellant and the deceased were available almost same time at or near the place of occurrence. The relatives of Balan saw his dead body within an hour and the appellant's knife was found near the dead body with blood in it. His subsequent conduct deposed to by PW8 and PW12 and his absconding from the place would, *inter alia*, prove his involvement in the crime beyond reasonable doubt. Motive for the commission of the crime is clearly established. The chain of circumstance is complete which points unerringly to the guilt of the appellant. We have no difficulty to agree with the trial Court.

The appeal is dismissed.

Sd/-

A . M . SHAFFIQUE

JUDGE

Sd/-

A . M . BABU

JUDGE

Rp

//True Copy//
PS to Judge