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SATHYA NARAYANAN

v.

STATE REP. BY INSPECTOR OF POLICE
(Criminal Appeal No. 1539 of 2008 etc.)

NOVEMBER 2, 2012

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[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

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Penal Code, 1860 – ss. 302/149 and 201 – Murder – 12 accused – Circumstantial evidence – Deceased last seen together with the accused – Motive – Witnesses turning hostile – Delay in lodging FIR – Trial court acquitting 6 accused, and convicting rest 6 accused – Appeal by the 6 convicts – During pendency thereof, 2 convicts died, hence appeal abated against them – High Court confirming the conviction of the other 4 convicts (appellants) – On appeal, held: Conviction justified – The circumstances complete the chain of link and establish that in all probability the act must have been done by the appellants-accused – As the deceased was last seen with the accused, burden to prove as to what happened to the deceased was on the accused, which they failed – Case cannot be rejected on the ground of delay in lodging FIR as the same has been explained – Reliance placed on certain statements of hostile witnesses by courts below is acceptable.

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Witness – Hostile witness – Evidentiary value and reliance on – Held: Evidence of hostile witness cannot be rejected in toto – It can be relied upon to the extent it supports the prosecution case.

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The appellants-accused alongwith 11 others were prosecuted for having killed one woman. The prosecution case was that accused No. 1 (appellant No. 1 in Criminal Appeal No. 1573), in order to lead a spiritual life, deserted her husband and started running an Ashram and lived there with her son (accused No. 4). Accused No. 2

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became a member of the Ashram and started living there with his son (accused No.3) and daughter (accused No.7). Accused No. 1 and accused No. 2 developed illicit intimacy. The deceased who had initially come to take tuitions of the children of accused Nos. 1 and 2, later became member of the Trust and started looking after the accounts of the Ashram. The deceased also developed illicit intimacy with accused No.2. The deceased was demanding share in the property of the Ashram from accused No. 1 or else she would disclose her illicit intimacy with accused No. 2. On the day of the incident, accused No. 1 alongwith other accused, assembled at the back side of the temple and started beating the deceased. Accused No. 1 strangulated the deceased which resulted in her death. FIR was lodged by PW-1, nine days after the day of the incident. Trial court acquitted accused Nos. 6 to 11, convicted accused Nos. 1 to 5 u/ss. 302 r/w. s.149 and 201 IPC and convicted accused No. 12 u/s. 201 IPC. The convicted accused filed appeal. During pendency of the appeal accused Nos. 2 and 12 died and the appeal abated against them. High Court dismissed the appeal, confirming the conviction.

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In appeals to this Court, appellants-accused contended that there was no eye-witness to the incident; that there was delay in lodging FIR; that prosecution witnesses turned hostile and evidence of PWs 1 and 2 were not accepted in toto by courts below and hence their evidence was not acceptable. Therefore, the appellants could not have been convicted.

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Dismissing the appeals, the Court

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HELD: 1. When in the absence of eye-witness, if various circumstances relied on by the prosecution relating to the guilt are fully established beyond doubt, the court is free to award conviction. Further, the chain of events must be complete in order to sustain the

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A conviction on the basis of circumstantial evidence. Though there is no direct evidence about the cause of death, various circumstances projected by the prosecution complete the chain of link and establish that, in all probability, the act must have been done by the appellants. [Paras 13 and 33] [961-C; 973-F]

Hanumant vs. State of Madhya Pradesh 1952 SCR 1091; *Sharad Birdhichand Sarda vs. State of Maharashtra* (1984) 4 SCC 116; 1985 (1) SCR 88 – relied on.

C 2. Though the High Court disbelieved the version of PW-1 as to the illegal intimacy between A-1 and A-2 and A-2 and the deceased, the reasons furnished by him for the delay in lodging the complaint after 9 days are acceptable. Inasmuch as the entire episode has taken place within the Ashram, PW-1 who worked in the Ashram 9 months ago along with his wife and was residing at the backside of the temple, after getting full information about the incident, made a complaint to the police. In such circumstance, the prosecution case cannot be rejected merely on the ground of delay since the complainant (PW-1) has reasonably explained the reasons for the delay. [Para 14] [962-H; 963-A-B]

F 3. Though both PWs 1 and 2 are not eye-witnesses to the occurrence, in view of the fact that they worked in the Ashram for 9 months prior to the incident and were residing behind the temple, PW-1 lodged a complaint Ext. P/1 about the death of the deceased after getting all the details and the circumstances highlighted by them support the case of the prosecution. [Paras 17 and 24] [964-G-H; 965-A]

H 4. Merely because a witness was declared as hostile, there is no need to reject his evidence in toto. The evidence of hostile witness can be relied upon at least to the extent, it supported the case of the prosecution.

In view of the same, reliance placed on certain statements made by hostile witnesses by the trial court and the High Court are acceptable. PW4, though turned hostile, in his chief examination, he stated that he heard a commotion in the Ashram at the relevant time and the date of the occurrence which is also another circumstance which supports the case of the prosecution. [Paras 16 and 25] [964-C-D; 969-B-C]

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Mrinal Das and Ors. vs. State of Tripura (2011) 9 SCC 479: 2011 (14) SCR 411 – relied on.

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5. The evidence of PWs 6 and 7 (the doctors) prove the death of the deceased occurred on the morning of the date of the incident in the Ashram which is also one of the reliable circumstance which supports the case of the prosecution. It is also relevant to point out that the doctor, PW-7, admitted that when he visited the Ashram, he found a body lying beneath the sofa. It also creates a suspicion about the cause of her death. [Para 28] [971-F-G]

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6. The fact that PW-8, who used to help the devotees all the time was asked not to attend in the afternoon in the month of April, 2000, is also one of the circumstance which supports the prosecution case. [Para 29] [971-B]

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7. PWs 35 and 36, brother and sister of the deceased respectively, residing in the same town, were not informed about the death of the deceased by any person in the Ashram, particularly, A-1 and A-2. PWs 15 and 16 (*vettiyan*) who were attending the work of cremating the dead bodies, before commencement of their work, asked about the relatives of the deceased. A-2 informed them that the deceased is an orphan and had no relatives. The statements of PWs 15 and 16, persons in charge of cremation of dead bodies, answers given by A-2 about their query relating to the relatives of the deceased and

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A their reply that the deceased was an orphan are relevant circumstances which prove the case of the prosecution. [Para 30] [971-C-F]

B 8. In the case of circumstantial evidence, motive also assumes significance for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omission or conjecture do not take the place of proof. In the instant case, the prosecution has demonstrated that initially the deceased entered the Ashram in order to assist the devotees and subsequently became one of the Trustees of the Trust and slowly developed grudge with the appellants. PWs 35 and 36, sister and brother of the deceased deposed that since the time, the deceased became a Trustee, there was a dispute with regard to the Management of the said Trust. [Para 31] [971-G-H; 972-A]

E 9. The appellants-accused having been seen last with the deceased, the burden of proof rests upon them to prove what had happened thereafter since those facts were within their special knowledge. In the absence of any explanation, it must be held that they failed to discharge the burden cast upon them by Section 106 of the Evidence Act, 1872. Admittedly, none of the appellants explained what had happened to the deceased even in their statements under Section 313 Cr.P.C. [Para 23] [968-C-E]

G *State of Rajasthan vs. Kashi Ram* (2006) 12 SCC 254: 2006 (8) Suppl. SCR 501 – relied on.

Case Law Reference:

	1952 SCR 1091	Relied on	Para 11
	1985 (1) SCR 88	Relied on	Para 12
H	2011 (14) SCR 411	Relied on	Para 15

2006 (8) Suppl. SCR 501 Relied on Para 22 A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1539 of 2008.

From the Judgment & Order dated 17.04.2008 of the High
Court of Madras, Bench at Madurai in Criminal Appeal No. B
1108 of 2000.

WITH

Crl. Appeal No. 1573 of 2009.

R. Balasubramanian, V. Giri, Guru Krishna Kumar, AAG, C
A. Radhakrishnan, V.J. Francis, Anupam Mishra, D. Selvan, R.
Murugesan, P. Ramesh, G. Ravi Kumar, V. Santhana Lakshmi,
A. Venayagam Balan, B. Balaji, A. Prasanna Venkat, Muthuvel
Palani for the Appearing Parties. D

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. These appeals are directed against
the judgment and order dated 17.04.2008 passed by the
Madurai Bench of the Madras High Court in Criminal Appeal E
No.1108 of 2000 whereby the Division Bench of the High Court
dismissed the appeal filed by the appellants herein and
confirmed the order of conviction and sentence dated
14.11.2000 passed by the 1st Additional Sessions Judge-cum-
Chief Judicial Magistrate, Trichy in Sessions Case No.139/
2000. F

2. Brief facts:

(a) Jayanthi (A-1) (Appellant No.1 herein in Criminal
Appeal No. 1573 of 2009) was married to one Rajendran (PW-
34) and they were residing at Trichy along with their children. G
After the death of their daughter, Jayanthi intended to lead a
spiritual life and Rajendran started living separately whereas
their son Sathya Narayanan (A-4) was living with her.

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A (b) Jayanthi (A-1) was actually running an Ashram in the name of Sri Devi Maha Sannathi at Govardhan Garden, K.K. Nagar, Trichy. The other accused persons, viz., A-2 to A-11 therein were assisting her in the affairs of the Ashram whereas A-12 was working as a Watchman in the said Ashram.

B (c) One Sriputhra (A-2) used to visit the said Ashram and became a Member and stayed there along with his son Sathya Narayanan (A-3) and daughter Sadhana (A-7) leaving his wife. According to the prosecution, during the course of time, A-1 and A-2 developed illicit intimacy. One Leelavathi (since
C deceased), who was originally taking tuition for the children of A-1 and A-2, has also become a Member and she was looking after the accounts of the said Ashram. During her continuation in the Ashram, A-2 and Leelavathi also developed illicit intimacy with each other.

D (d) On account of the above, there was a quarrel between Jayanthi (A-1) and Leelavathi (deceased) and Leelavathi threatened her that she would disclose about her illicit intimacy with A-2 to the outside public which would cause disgrace and
E shame to her and that she should be given a share in the property of the Ashram.

(e) On 08.04.2000, between 6-7 a.m., Jayanthi (A-1) along with other accused persons assembled at the backside of the Temple and started beating Leelavathi causing grievous injuries
F to her and Jayanthi strangulated her neck which resulted into her death. Sivasanmugam (PW-1), who was residing in the house situated nearby the Temple, heard the cries of Leelavathi and after two days, he came to know that Leelavathi was beaten to death and the dead body was burnt in the burial
G ground.

(f) On 17.04.2000, PW-1 lodged a complaint at K.K. Nagar Police Station, Trichy which came to be registered as C.S. No. 78 of 2000 mentioning the suspicion over the death of Leelavathi. After investigation, the case was committed to the
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Court of Sessions and numbered as Sessions Case No. 139 of 2000 and the charges were framed against 12 accused persons for the offences punishable under Sections 147, 302 read with 149 and 201 of the Indian Penal Code, 1860 (in short 'IPC').

(g) By judgment dated 14.11.2000, the trial Court while acquitting A-6 to A-11, convicted A-1 to A-5 under Sections 302 read with Section 149 and 201 of IPC and sentenced them to undergo rigorous imprisonment (RI) for life along with a fine of Rs. 2,000/- each, in default, to further undergo RI for 6 months for the offence punishable under Section 302. A-12 was convicted under Section 201 of IPC and sentenced to undergo RI for 4 years along with a fine of Rs.1,000/-, in default, to further undergo RI for 3 months.

(h) Challenging the said judgment, A-1 to A-5 and A-12 filed an appeal being Criminal Appeal No. 1108 of 2000 before the Madurai Bench of the Madras High Court. During the pendency of the appeal before the High Court, A-2 and A-12 died and appeal against them stood abated. The High Court, by impugned judgment dated 17.04.2008, dismissed the appeal and confirmed their conviction and sentence.

(i) Aggrieved by the said judgment, Sathya Narayanan (A-3) filed Criminal appeal No. 1539 of 2008 and Jayanthi (A-1), Chinna Sathya Narayanan (A-4) and Dinakaran (A-5) filed Criminal Appeal No. 1573 of 2009 before this Court.

3. Heard Mr. R. Balasubramanian, learned senior counsel for A-3 – appellant in Crl. A. No. 1539 of 2008, Mr. V. Giri, learned senior counsel for A-1, A-4 and A-5 appellants in Crl. A.No. 1573 of 2009 and Mr. Guru Krishnakumar, learned Additional Advocate General for the State of Tamil Nadu.

4. The case of the prosecution is that Jayanthi (A-1) and Sriputhra (A-2) were staying at No.11, Govardhan Garden, K.K. Nagar leaving the company of their spouses. Sathya

A Narayananan (A-4) – son of A-1 and Sadhana (A-7) – daughter
of A-2 were also living with them at the above-mentioned
address. Before coming to Govardhan Garden, A-1 was living
with her husband Rajendran (PW-34) at Kalla Street, Trichy
along with their children. In the year 1987, after the death of her
B daughter-Sridevi, she completely devoted herself to spirituality
which resulted into separation with her husband. It is the case
of the defence that as the place was very small, A-1 shifted to
the above-mentioned address at K.K. Nagar along with
Sriputhra (A-2) for the purpose of continuing the spiritual works.

C 5. Further, it is the case of the prosecution that while
leading a spiritual life, A-1 came into contact with A-2 who used
to visit the Temple and they developed illicit intimacy which
resulted into desertion of the husband and wife of A-1 and A-
D 2 respectively whereas it is the claim of the defence that A-1
and A-2 deserted their spouses for the sole object of attaining
spirituality. While so, on 08.04.2000 between 6 to 7 a.m.
Jayanthi (A-1) along with other accused persons assembled at
the back side of the Temple and beat Leelavathi causing
grievous injuries to her and A-1 strangulated her neck which
E resulted into her death.

6. On the side of the prosecution, 46 witnesses were
examined and documents (Exh. No. P-1 to Exh. No. P-48) and
the material object Nos. 1 to 4 were marked. It is not in dispute
F that all the prosecution witnesses except police officers turned
hostile. The evidence of PWs 1 and 2 were disbelieved to a
certain extent. The trial Judge, based on various circumstances,
which clinchingly proved the prosecution case, convicted the
appellants which was affirmed by the High Court.

G Contentions:

7. Mr. R. Balasubramanian, learned senior counsel for A-
3, submitted that in the absence of any evidence in support of
the prosecution and delay in lodging of the complaint, conviction
solely on the basis of the circumstantial evidence cannot be
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sustained. In any event, according to him, absolutely there is no discussion by the High Court about the alleged role of A-3, hence, prayed for setting aside the conviction and sentence.

8. Mr. V. Giri, learned senior counsel for A-1, A-4 and A-5 submitted that the High Court having disbelieved all the witnesses ought to have acquitted the appellants only on the basis of presumption of certain facts. He further contended that the High Court has also grossly erred in partly believing the evidence of PWs 1 & 2 for the purpose of convicting the appellants. The conduct of the appellants, who brought the doctor to the place where the deceased was lying instead of taking her to the hospital as the same was essential for the safety and the physical condition of the deceased, cannot form any link in the chain of circumstances. He further submitted that the High Court ought not to have convicted the appellants-accused only on the basis of the doubts arose without there being any continuity of incriminating circumstances. According to him, the High Court ought to have seen that to convict a person on the basis of circumstantial evidence, the circumstances must form a complete chain and all the circumstances should point out that the accused is the only person who committed the offence and further exclude the entire reasonable hypothesis that the accused is innocent. According to him, the High Court, having disbelieved the case of the prosecution to the extent that there was illicit relationship between A-1 and A-2 and also that there was no evidence that A-2 was having illicit relationship with the deceased, confirmed the conviction merely on the surmises. He further pointed out that there was no eye witness to the occurrence and the case is purely based on circumstantial evidence. Further, learned senior counsel contended that the date of occurrence was 08.04.2000 at about 10.30 a.m. and the FIR authored by PW-1 was lodged on 17.04.2000, after a gap of 9 days which itself is sufficient to reject the story of the prosecution.

9. Mr. Guru Krishnakumar, learned Additional Advocate

A General for the State of Tamil Nadu while supporting the decision of the trial Court and the High Court submitted that various circumstances relied on by the prosecution are acceptable and, in fact, both the courts rightly convicted the appellants and prayed for confirmation of the same.

B 10. It is not in dispute that the basis of conviction is solely on the circumstances relied on by the prosecution. In view of the same, it is relevant to understand the nature and various aspects relating to circumstantial evidence.

C 11. In *Hanumant vs. State of Madhya Pradesh*, 1952 SCR 1091 the nature, character and essential proof required in a criminal case that rests on circumstantial evidence alone has been laid down. This case has been uniformly followed and applied by this Court in a large number of later decisions up to this date.

D 12. In *Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116, a Bench of three Judges of this Court, after analyzing various aspects, laid down certain cardinal principles for conviction on the basis of circumstantial evidence. This Court laid down the following conditions must be fulfilled before a case against an accused can be said to be fully established:

E "153.....(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

F (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

G (3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

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(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

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13. It is clear that even in the absence of eye-witness, if various circumstances relied on by the prosecution relating to the guilt are fully established beyond doubt, the Court is free to award conviction. Further, the chain of events must be complete in order to sustain the conviction on the basis of circumstantial evidence.

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Delay in filing the complaint:

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14. Both the learned senior counsel for the appellants commented the delay in filing the complaint which, according to them, has not been properly explained by the prosecution. It is true that the incident occurred on 08.04.2000 between 6-7 a.m., and a formal complaint was lodged by PW-1 on 17.04.2000, that is, after nine days of the occurrence. Though the High Court has disbelieved the version of PW-1 on certain aspects, particularly, the claim of illegal intimacy with A-1 and A-2 and the deceased, other aspects of his evidence cannot be rejected. Since it was PW-1 who filed the complaint, in his evidence, he explained the reason for the delay. According to him, at the relevant time, he was residing at 15, Govardhan Garden, 9, K.K. Nagar for the last 15 years along with his wife S. Balambal (PW-2). He stated that the Temple run by A-1 is located behind his house. He further deposed that he is well acquainted with all the accused persons because he along with his wife used to visit the Temple regularly. In his evidence, he described about the details of all the accused persons. According to him, Leelavathi- the deceased was looking after the Accounts and Postal Transactions of the

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- A Temple. She was appointed as a Member in the Educational Trust of the temple. Around 20 days before the incident, when PW-1 was going along with his wife, Leelavathi stopped them and apprised about the ill-treatment meted out to her by A-1 and A-2. He further deposed that on 08.04.2000, about 6-7
- B a.m., when he was in his house, he heard the shoutings of Leelavathi as “don’t beat, don’t beat” and also heard the voice of A-1 saying “beat, beat” and also saying “will you go out”. According to PW-1, after some time, there was no noise. In the same morning, at around 9 a.m., again he heard the cries of
- C Leelavathi. On hearing the same, he along with his wife (PW-2) came out of their house and noticed that Leelavathi was running out of the house. They also heard the voice of A-2 asking others “catch her” “catch her”. They further noticed A-1 asking Sasikala (A-10) to bring a wood in order to beat her.
- D A-10 handed it over to Dinakaran (A-5) who, in turn, assaulted Leelavathi in the back side of her head using that wood. On seeing their presence, the accused persons dragged her inside the house. After two days, when he went to the nearby chicken shop, the owner of the shop told him that Leelavathi was beaten to death and she was burnt in the burial ground.
- E According to him, the chicken shop owner came to know all these details through Karuppaiah (A-12). After enquiring about the death from several persons, PW-1 deposed that he came to know about the truth and then he gave a complaint to the Police on 17.04.2000 which Exh. P/1. PW-1 gave the same
- F reasoning in regard to an answer to a specific question relating to delay in filing of the complaint for the incident that had happened on 08.04.2000. It is pertinent to mention here that the very same facts mentioned above have been narrated by PW-2 in her deposition dated 16.10.2000. In cross-
- G examination, he denied the suggestion that A-2, A-5 and A-9 were behind the termination of his and his wife’s job and that he made a false complaint against them. As mentioned earlier, though the High Court disbelieved his version as to the illegal intimacy between A-1 and A-2 and A-2 and the deceased, the
- H reasons furnished by him for the delay in lodging the complaint

after 9 days are acceptable. Inasmuch as the entire episode has taken place within the Ashram, PW-1 who worked in the Ashram 9 months ago along with his wife and was residing at the backside of the Temple, after getting full information about the incident, made a complaint to the police. In such circumstance, the prosecution case cannot be rejected merely on the ground of delay since the complainant (PW-1) has reasonably explained the reasons for the delay. Accordingly, we reject the argument of the learned senior counsel for the appellants.

Reliance on the hostile witness:

15. It is the contention of Mr. Giri, learned senior counsel that in view of the fact that all the prosecution witnesses turned hostile and even the evidence of PWs 1 and 2 are not acceptable in toto, the conviction based on certain statements cannot be accepted. In this regard, it is relevant to refer a decision of this Court in *Mrinal Das and Others vs. State of Tripura*, (2011) 9 SCC 479. In the said decision, the main prosecution witnesses, viz., PWs 2, 9, 10 and 12 were declared as hostile witnesses. While reiterating that corroborated part of evidence of hostile witness regarding commission of offence is admissible, this Court held:

“67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other

A witnesses. Merely because a witness deviates from his
 statement made in the FIR, his evidence cannot be held
 to be totally unreliable. To make it clear that evidence of
 hostile witness can be relied upon at least up to the extent,
 he supported the case of the prosecution. The evidence
 B of a person does not become effaced from the record
 merely because he has turned hostile and his deposition
 must be examined more cautiously to find out as to what
 extent he has supported the case of the prosecution.”

C 16. We reiterate that merely because the witness was
 declared as hostile, there is no need to reject his evidence in
 toto. In other words, the evidence of hostile witness can be
 relied upon at least to the extent, it supported the case of the
 prosecution. In view of the same, reliance placed on certain
 statements made by hostile witnesses by the trial Court and the
 D High Court are acceptable. Now, let us consider hereunder how
 far those statements supported the case of the prosecution.

Evidence of PWs 1 and 2:

E 17. We have already referred to the evidence of PW-1 at
 length and PW-2 who is none else than wife of PW-1.
 Admittedly, they were residing behind the Temple and it was
 PW-1 who made a complaint (Exh. P/1) to the police after
 enquiring about the incident from various persons/sources.
 Balambal (PW-2) also explained the case of the prosecution
 F similar to as narrated by PW-1. She denied the suggestion that
 she came to know the details about the death of Leelavathi on
 10.04.2000. She also denied the suggestion that even though
 she knew that Leelavathi had a natural death because of the
 chest pain and her husband in order to grab money from the
 G accused persons made a false complaint to the police. Though
 both PWs 1 and 2 are not eye witnesses to the occurrence, in
 view of the fact that they worked in the Ashram for 9 months
 prior to the incident and were residing behind the Temple, PW-
 1 lodged a complaint Ext. P/1 about the death of Leelavathi after
 H getting all the details and the circumstances highlighted by them

support the case of the prosecution.

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Deceased was a Member of the Trust:

18. It is not in dispute that Leelavathi (deceased) was originally taking tuition for the children of A-1 and A-2, who were residing in the Ashram after leaving their spouses. It is also not disputed that Leelavathi has also become a Member of the Trust of the Ashram and she was actually staying in the Ashram. Through the evidence of Subramanian (PW-40), a xerox copy of the Trust Deed had been marked as Exh. P-27. On perusal of the same, it can be seen that Jayanthi (A-1) had established a Trust in the name of Sridevi Sewa Trust and Sriputhra (A-2), Peria Sathya Narayanan, (A-3), Chinna Sathya Narayanan (A-4), Sadhana (A-5) and Leelavathi (deceased) were appointed as Trustees. These aspects have been stated by A-1 in her statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Though there is no acceptable evidence as to the fact that an attempt was made for her removal from the Trust, the fact remains that Leelavathi (deceased) was a Member of the said Trust.

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Death occurred in the Ashram:

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19. It is the definite case of the prosecution that Leelavathi (deceased) was a Trustee in the above said Trust, looking after the accounts of the Ashram and was staying in the Ashram. Selvi Mythili (PW-35) and Thiru Ananda Padhmanaban (PW-36), sister and brother of the deceased respectively, had deposed in their evidence that Leelavathi was staying in the Ashram itself leaving them and her parents and that she had given some assignment there. Both of them deposed that since then she became a Trustee, there was a dispute with regard to the management of the said Trust. The very same fact has also been stated in the evidence of PWs 1 & 2 that about 20 days prior to the occurrence, Leelavathi (deceased) was subjected to torture and harassment with regard to her removal from the said Trust. The evidence of Dr. Thirugnanasundaram (PW-6) and Dr. Sathyavenkatesh (PW-7) –the local doctors are

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A also relevant as to the death of the deceased which occurred in the Ashram. PW-6, in his evidence, had deposed that on 08.04.2000, at about 11 a.m., he received a phone call from a person from Sridevi Temple stating that one lady has become fainted and requested him to see her in the Ashram on which
 B he replied in the negative and advised the caller to take her to his Clinic. After 5 minutes, Sriputhra (A-2) came to his Clinic and again requested him to attend the patient in the Ashram but he refused to accede to his request. From the above, it is clear that PW-6 was requested to attend a lady patient at the
 C Ashram.

20. Likewise, PW-7 was requested to attend a lady lying unconscious in the Ashram. In his evidence, he deposed that on 08.04.2000, at about 11.30 a.m. Sriputhra (A-2) came to his Clinic and stated that one lady was fainted in the Ashram and requested him to attend her in the Ashram. PW-7 went to the Temple in order to see her in the car of A-2 and found one lady lying in the house adjacent to the said Temple beneath the sofa in the front hall. He further explained that after checking the pulse and heart beat, he declared her 'dead'.

E 21. From the evidence of Doctors and the statement of A-2 made to them regarding the condition of the lady, it is clear that the death occurred in the Ashram.

F **Failure of accused to give satisfactory explanation to an incriminate circumstance which was within their special knowledge**

22. Section 106 of the Indian Evidence Act, 1872 reads as under:

G **"106. Burden of proving fact especially within knowledge.-** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

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(a) *When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.* A

(b) *A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.* B

The applicability of the above provision has been explained by this Court in *State of Rajasthan vs. Kashi Ram*, (2006) 12 SCC 254 which held as under:

“23.The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted 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 facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. 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. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in *Naina Mohd.*, Re. AIR 1960 Mad 218. C
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A 24. There is considerable force in the argument of
 counsel for the State that in the facts of this case as well it
 should be held that the respondent having been seen last
 with the deceased, the burden was upon him to prove what
 happened thereafter, since those facts were within his
 B special knowledge. Since, the respondent failed to do so,
 it must be held that he failed to discharge the burden cast
 upon him by Section 106 of the Evidence Act. This
 circumstance, therefore, provides the missing link in the
 chain of circumstances which prove his guilt beyond
 C reasonable doubt.”

23. The appellants-accused having been seen last with the
 deceased, the burden of proof rests upon them to prove what
 had happened thereafter since those facts were within their
 special knowledge. In the absence of any explanation, it must
 D be held that they failed to discharge the burden cast upon them
 by Section 106 of the Indian Evidence Act, 1872. Admittedly,
 none of the appellants explained what had happened to the
 deceased even in their statements under Section 313 of the
 Code.

E **Distress cry of the deceased**

24. We have already stated that at the relevant time, PWs
 1 & 2, who are husband and wife, were residing at the back
 side of the Ashram. It was PW-1, who after thorough enquiry,
 F made a complaint to the police on 17.04.2000 (Exh. P/1). In
 the complaint, PW-1 has specifically stated that on 08.04.2000,
 around 6-7 a.m., while he was in his house, he heard the
 shouting of Leelavathi saying “don’t beat, don’t beat” and also
 heard A-1 saying “beat, beat”. In Exh. P/1, PW-1 also stated
 G that at that time, A-2 shouted by saying “catch her” “catch her”.
 All these events, particularly, the distress cry of the deceased
 was heard by PW-1 and he mentioned the same in his
 complaint (Exh. P/1). It is also a relevant circumstance which
 supports the case of the prosecution.

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Commotion in the Ashram

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25. Mohan (PW-4), whose house is situated next to Sridevi Temple in the eastern side stated that he is well acquainted with A-1 to A-4 and A-7. According to him, in April 2000, when he was studying in the top floor of his house, he heard a sound coming from Sridevi Temple. Though he turned hostile, in his chief examination, he stated that he heard a commotion in the Ashram at the relevant time and the date of the occurrence which is also another circumstance which supports the case of the prosecution.

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The statements of Doctors - PW-6 and PW-7

26. Dr. Thirugnanasundaram (PW-6), deposed that on 08.04.2000, between 11.00 and 11.15 a.m., he received a phone call from Sridevi Temple stating that one woman had fallen down on account of dizziness and requested him to come and see her. He replied in the negative and advised them to take her to his Clinic. There was no response from the other end. After 5-10 minutes, A-2 came to his Clinic in a car and requested him to see the patient in the Ashram but he did not accede to his request. He further deposed that the distance between his Clinic and Sridevi Temple might be of 3 furlong and he also admitted that he knows A-1 and A-2.

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27. Dr. Sathyavenkatesh, who was examined as (PW-7), deposed that on 08.04.2000, around 11.30 a.m., A-2 came to his Clinic and informed that a woman had become unconscious and requested him to come to the Ashram for treatment and on his request, he went to see her in his car. He further deposed that when he reached there, a woman was found lying in the main hall beneath the sofa. He checked her pulse and heart beat and found that the woman was dead. He further stated that on the same day, after 8.00 p.m., A-2 came to his Clinic and sought for the Death Certificate. He informed him that since he had not given any treatment to her, he could not issue the same. Since A-2 compelled him to issue such Certificate on the

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A ground that the deceased was a Member of the Trust and the Auditor has sought the same, he issued a Death Certificate. The Xerox copy of the Death Certificate is marked as Exh. P-2. He also stated that he had not seen any injury on the body. He fairly admitted that without doing post mortem, it would not
 B be possible to mention the cause of death and certificate cannot be issued. He reiterated that only on the insistence of A-2, he issued a Death Certificate.

28. The analysis of the evidence of PWs 6 and 7 shows that in the morning of 08.04.2000, both the Doctors, initially
 C PW-6, was requested to attend a lady lying unconscious in the Ashram and when PW-6 declined, PW-7 was taken to the Ashram. It is further clear that on preliminary examination by PW-7, the woman was found dead. The statements of PWs 6 and 7 prove that the deceased died in the Ashram on
 D 08.04.2000. It is also clear that though PW-7 has stated that he did not notice any injury on the body of the deceased, he admitted that the whole body was covered with a blue colour saree. He issued the Death Certificate mentioning that the deceased would have died due to heart attack without any
 E examination, particularly, when the patient did not come to him at any point of time that too at the insistence of A-2, there is no need to give importance to the same. However, the evidence of PWs 6 and 7 prove the death of the deceased occurred on the morning of 08.04.2000 in the Ashram which is also one of
 F the reliable circumstance which supports the case of the prosecution. It is also relevant to point out that the doctor, PW-7, admitted that when he visited the Ashram, he found a body lying beneath the sofa. It also creates a suspicion about the cause of her death.

G **Sudha (PW-8) servant maid was told not to report for work in the afternoon:**

29. Though Sudha (PW-8) turned hostile, in her deposition, it was stated that she was working in Sridevi Temple from
 H January to March, 2000 and was distributing Saffron powder,

turmeric and holy ashes to the devotees of the Temple. She further deposed that in April, 2000, when she went for work in the morning and was returning to her house for lunch at about 1.00 p.m., A-2 asked her not to come for work in the afternoon, therefore, on his instruction, she did not go for work in the afternoon. The fact that PW-8, who used to help the devotees all the time was asked not to attend in the afternoon in the month of April, 2000 is also one of the circumstance which supports the prosecution case.

PWs 35 and 36 brother and sister of the deceased were not informed about the death of the deceased:

30. Though PWs 35 and 36, brother and sister of the deceased respectively, were residing in the same town were not informed about the death of Leelavathi by any person in the Ashram, particularly, A-1 and A-2. As a matter of fact, PWs 15 and 16 (*vettian*) who were attending the work of cremating the dead bodies, before commencement of their work, asked about the relatives of the deceased. A-2 informed them that the deceased is an orphan and had no relatives. As rightly observed by both the Courts, it would indicate that the appellants were not only responsible for committing murder but also screened the evidence. The statements of PWs 15 and 16, persons in charge of cremation of dead bodies, answers given by A-2 about their query relating to the relatives of the deceased and their reply that the deceased was an orphan are relevant circumstances which prove the case of the prosecution.

Motive:

31. In the case of circumstantial evidence, motive also assumes significance for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omission or conjecture do not take the place of proof. In the case on hand, the prosecution has demonstrated that initially, the deceased entered the Ashram in order to assist the devotees and subsequently became one of the Trustees of the

A Trust and slowly developed grudge with the appellants. PWs 35 and 36, sister and brother of the deceased Leelavathi deposed that since then she became a Trustee, there was a dispute with regard to the Management of the said Trust.

B 32. From the above materials, we noted the following circumstances relied on by the prosecution, accepted by the trial Court and the High Court :

- (i) The deceased was a member of the Trust.
- C (ii) On 08.04.2000, the date of incident, there was some kind of commotion in the Ashram.
- (iii) The death occurred in the Ashram.
- (iv) In the complaint to police (Exh. P-1), it was stated that there was distress cry of the deceased.
- D (v) PW-4 heard a commotion in the Ashram.
- (vi) A-2 approached PW-6 (Doctor) stating that a lady was lying unconscious.
- E (vii) PW-7 (another Doctor) was requested to attend a lady lying unconscious.
- (viii) The accused failed to take the deceased to the hospital rather they preferred to treat her in the Ashram itself with the help of known doctors (PWs 6 & 7).
- F (ix) PW-7 visited the Ashram and found a body lying beneath the Sofa.
- G (x) The dead body was covered with a Saree and, therefore, PW-7 could not have seen any external injury.
- (xi) The accused have chosen not to conduct post mortem hence, the real cause of the death was completely suppressed.
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- (xii) PW-8 was told not to report for work in the afternoon. A
- (xiii) The accused have failed to inform any of the relatives of the deceased (PWs 35 & 36) though they lived in the same town. B
- (xiv) A-2 visited PW-15's place for arranging for the cremation.
- (xv) PWs 15 & 16 asked about the availability of relatives and the accused answered in the negative. C
- (xvi) PWs 15 to 18 identified A-3 as being present at the time of cremation.
- (xvii) The time of cremation of the deceased was late in the evening, though the death occurred in the forenoon itself. D
- (xviii) The accused had voluntarily lied to the persons who were cremating the body (vettiyan) that the deceased was an orphan and has no relatives. E

Conclusion:

33. The above analysis clearly shows that though there is no direct evidence about the cause of death, various circumstances projected by the prosecution complete the chain of link and established that, in all probability, the act must have been done by the appellants. All the circumstances have been clearly discussed by the trial Court and it rightly convicted and awarded appropriate sentence. The High Court, as an appellate Court, once again marshaled all the materials leading to the death of the deceased Leelavathi and confirmed the same. We fully concur with the said conclusion. Consequently, the appeals fail and are accordingly dismissed. F G

K.K.T.

Appeals dismissed.

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