

**SUPREME COURT OF INDIA**

K. V. Chacko

Vs.

State of Kerala

Crl.A.Nos.475-476 of 2000

(M. B. Shah and N. Santosh Hegde, JJ.)

07.12.2000

**JUDGEMENT**

**SANTOSH HEGDE, J.:-**

1. The appellant has preferred these appeals against the judgment of the High Court of Kerala at Ernakulam dated 28th March, 2000 delivered in Criminal Appeal Nos. 105/98 and 642/98. Criminal Appeal No. 105/98 was filed by the appellant against the conviction and sentence imposed on him by the learned Sessions Judge, Kottayam Division, Kerala in Sessions Case No. 60 of 1993 dated 29-12-1997 wherein he was found guilty of offences punishable under Sections 449, 302, 397 and 201, IPC and was sentenced to undergo imprisonment for various terms including imprisonment for life under Section 302, IPC. Criminal Appeal No. 642/98 was preferred by the State of Kerala against the said judgment of the Sessions Court for not awarding capital punishment to the accused in the said case. The High Court heard both the appeals together and as per its impugned judgment dismissed the appeal of the appellant and allowed the State appeal by coming to the conclusion that the offence committed by the appellant deserved nothing short of capital punishment to meet the ends of justice. Accordingly, it enhanced the sentence from life imprisonment to death sentence. The appellant has preferred the abovesaid appeals against the said judgment from jail. Mr. KH. Nobin Singh, learned Advocate, has appeared as an amicus curiae while the State is represented by Mr. A.

S. Nambiar, learned Senior Counsel and Mr. Gracious Kuriakose, learned Advocate.

2. The prosecution case as presented before the trial Court is that on 6-8-1988 at about 3.20 a.m. the appellant entered the house of Johnny, a resident of Thadiyampadu in Idukki District by making an opening near the kitchen door of the house where deceased Johnny was sleeping with his family members, namely, his wife Mariakutty, daughter Rani aged 15 years, daughter Honey aged 9 years, and son Sony aged 7 years. It is stated that the appellant immobilised the said victims by hitting them on their heads by using an axe (MO-12) and removed the jewellery worn by the female victims, so also a revolver (MO-13) and cartridges (MO-14) belonging to Johnny along with currency notes worth Rs. 60/- which were inside the drawer of a table in the house and thereafter with a view to destroy the evidence of the crime, poured diesel oil which was kept by Johnny in a can in his house, set fire to the house and decamped with the booty so collected. It is the further case of the prosecution that Beeran (PW-17), who happened to pass by the house of Johnny at about that time, came to notice the flames of fire emanating from the said house, hence, ran to a nearby night shop situated at Thadiyampadu junction and informed Ismail (PW-1) and some other head-load workers who were with PW-1 and brought them to the house of Johnny. It is further stated that on breaking open the front door by these people, they noticed a young girl who was later identified as Rani, lying and moaning but before any help could be rendered to her, the roof of the house fell on her and their efforts to save her failed. It is further stated that when PW-7 Muralidharan S. I. of police arrived at the spot, the house was completely burnt and he with the help of the people present including the fire force personnel, extricated the completely charred bodies of the abovesaid 5 victims from the burnt debris. PW-7 then recorded the statement of PW-1 which is marked as Ex. P-1, the first information. Based on the said information, Crime No. 151/88 was registered at Idukki Police Station vide Ex. P-7. It is stated that PW-13, Thulasidas conducted the further investigation and held inquest on the dead bodies as per Ex. MO-11 as also the spot Mahazar. On his request a team of doctors led by the District Medical Officer arrived at the scene and conducted the post-mortem. The report of the said post-mortem signed by one Dr. Dias was marked as Ex. P-9 series. As per the said report the doctor gave a provisional opinion that the cause of death was due to burning and reserved his final opinion till after the receipt of the report of Chemical Examiner to whom the viscera were sent for examination. The said PW-13 is stated to have examined 116 witnesses and gave his report to the Superintendent of Police on 6-9-1988 to the effect that the death of these victims was due to fire accident. Based on his report the case was closed as deaths due to accident.

3. It is the further case of the prosecution that on 7-8-1988 PW-28 K. S. Augustine arrested the appellant in an unrelated case and seized a country-made revolver (MO-13) and under a Mahazar Ex. P-18, the accused was prosecuted for the offences of resisting arrest and illegal possession of arms under Sections 332, 324, 506, IPC and 25(1)(a) of the Indian Arms Act before the JFCM Court, Adimali.

4. While the incident of 6-8-1988 involving the death of Johnny and his family lay closed as an accidental death, in the year 1992 PW-43 M. V. Thomas came to know through reliable sources that the appellant was involved in the said case of death of Johnny and his family, and having come to

know that this appellant was in custody in some other cases, he filed an affidavit and a report before the JFCM Court, Chalakkudy to obtain custody of the appellant to interrogate him. The said custody was ordered by the Magistrate on 4-5-1992 and the appellant was handed over to the custody of PW-43 from 4-5-1992 to 11-5-1992. It is also stated that the accused was interrogated by PW-43 and Superintendent of Police, Crime Branch, by name K. I. Michael, PW-45, and during the course of questioning on 11-5-1992 the appellant admitted before these persons that he had committed the murder of Johnny and his family and he was also involved in 4 other crimes, namely, SC No. 77/93, SC No. 26/93, SC No. 29/93 and SC No. 47/93. Since the appellant was required for further investigation in view of the said confession, PW-45 filed another report and an affidavit for the further custody of this appellant which was granted till 25-5-1992. The prosecution further states that on the statement made by the appellant which was marked as Ex. 13-A, he was taken to the house of Johnny at Thadiyampadu at 10.30 a.m. on 25-5-1992 and on being pointed to the well by the appellant, PW-45 requisitioned the help of one George to recover the axe (MO-12) said to have been thrown by the accused into the said well. The prosecution also relied on the evidence of PW-16 Mathew and PW-18 Kunhu Achari to show that the appellant was in Thadiyampadu the night preceding the incident i.e. on 5-8-1988. They also relied on the evidence of PW-27 Elikutty, aunt of the accused to show that a few days before and after the incident, the appellant, who was her nephew, was visiting her and stayed with her. Prosecution also relied on the evidence of PW-20 Thomas, the taxi driver, to establish the activities and whereabouts of the appellant on 7-8-1988. PW-15 Annamma who was a neighbour of Johnny being the occupant of a house situated hardly 50 meters away from Johnny's house, identified MO-12, the axe, as belonging to her and which was found missing a couple of days after the incident in question. The prosecution has not examined Dr. Dias who conducted the first post-mortem on the bodies of the victims since he was not available but has marked his report as Ex. P-9 series through the evidence of PW-9 Dr. M. N. Vijayan. It is stated by the prosecution that on being satisfied that the death of Johnny and his family members was due to homicidal act, PW-45 requisitioned the services of PW-39, Dr. C. Radhakrishnan to give his opinion as to the cause of death of these victims and, accordingly, with the permission of the authorities concerned the bodies of the victims were exhumed on 1-6-1992 and during the forensic examination of the bodies, the said doctor noticed in the skull of Johnny a fissured fracture involving the right parietal bone which was extending to the floor of the right middle cranial fossa. Similar fracture were also noticed in the skull of Mariakutty. The said doctor also opined that the fractures noticed by him could have been caused by use of a blunt edge of weapon like MO-12. He also stated that Dr. Dias who conducted the previous post-mortem had committed many errors and did not do a proper professional job. He opined that the deceased Johnny and his family members suffered a homicidal death. It is based on the evidence collected during the investigation conducted for the second time under PW-46 that the appellant was sent up for trial and both the Courts below having notice that the prosecution case is based on purely circumstantial evidence, proceeded to accept the prosecution case and convicted the appellant as aforesaid and the appellant is now before us in these appeals.

5. The law regarding basing a conviction by the Courts on circumstantial evidence is well settled. When a case rests upon circumstantial evidence, such evidence must satisfy three tests : (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilty of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction

must also be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra*, (1982) 2 SCC 351 : (AIR 1982 SC 1157 : 1982 Cri LJ 1243).

6. Bearing in mind the above principles, we will examine the material on record to satisfy ourselves whether the test laid down by this Court in *Gambhir's case* (AIR 1982 SC 1157 : 1982 Cri LJ 1243) (supra) has been properly applied or not by the Courts below. Having examined the prosecution case in these appeals in the light of the above judgment of this Court, we are of the opinion that if the prosecution is able to establish successfully the recovery of MOs. 12 and 13 then it should succeed in obtaining a conviction against the appellant, should it fail then the prosecution cannot establish the chain of circumstances against the appellant successfully. Therefore, we will first take up for consideration the alleged recovery of MO-13 from the appellant. It is the prosecution case that pursuant to an arrest warrant issued by the Magistrate, Mavuttupuzha in CC No. 224/87 in an unrelated case, PW-28 was entrusted with the job of execution of this warrant. Pursuant to the same, he along with Constable Mathew CW-42 were on the look out for the appellant, and that on 7-8-1988 they saw the appellant at about 10.30 p.m. in front of Rajeshwari Hotel in Kunchithanni and when they tried to arrest him, he resisted by threatening them with the revolver MO-13 which he pulled out from a suitcase carried by him. The appellant was, however, overpowered and arrested by said PW-28 who recovered MO-13 along with the suitcase containing some clothes and Rs. 1,500/- in currency notes. It is also stated that during the course of his arrest the appellant bit said Mathew causing injury on his chest, therefore, a case being CC No. 239/89 under Sections 332, 324, 506(ii), IPC read with Section 25(1)(a) read with Section 3 of the Indian Arms Act was filed by Vellathooval Police before the JFCM Court, Adimali, in which case the appellant was acquitted. It is the prosecution case that after the closure of that case, MO-13 was kept in safe custody with A.R. Camp, Idukki and after fresh investigation was started by PWs. 43 and 45, they came to know that MO-13 belonged to deceased Johnny and it was stolen by the appellant after he committed crime. In this regard, prosecution has relied on the evidence of PWs. 19 and 31 to prove the ownership of MO-13. The Courts below have accepted this case of the prosecution, as stated above.

7. However, it should be seen that this very MO-13 and its recovery from the appellant was the subject-matter of CC No. 239/89 before JFCM Court, Adimali. The Magistrate in that case while acquitting the appellant as per his judgment Ex. X-11 framed the following points for consideration :

1. Whether the accused voluntarily caused hurt to PW-3 Police Constable for preventing him from discharging the official duty as alleged by the prosecution.
2. Whether the accused threatened PW-1 and PW-3 for preventing them from discharging their official duty as alleged by the prosecution.

3. Whether the accused possessed M.O.I. revolver without any licence or authority as alleged by the prosecution.

4. The offence if any committed by the accused and the sentence or order.

8. While discussing the above points, the learned Magistrate observed : "If actually the accused was possessing a revolver and threatened the police officials by using it the local witnesses also would have witnessed the same. It is also worth mentioning here that the alleged incident took place in a town and even according to the prosecution many local persons witnessed the incident. In the light of the above discussion I find that the interested versions of PWs. 1 and 3 cannot be relied on safely. Even if there might have happened some incident before the arrest of the accused that need not be as alleged by the prosecution. There is no sufficient evidence before the Court to show that the accused was possessing M.O.I. revolver or the police recovered the same from the accused. Hence I find that the prosecution has not proved the case against the accused."

(Emphasis supplied) Based on this finding of the Magistrate, it was argued on behalf of the appellant before the Courts below that in view of this finding of the Magistrate the recovery of MO-13 from the appellant on 7th of August, 1988 cannot be believed. Both the Courts below have rejected this argument. The High Court especially while doing so held that the point involved in the said judgment was not the same as is involved in the present case. The High Court even went to the extent of observing that in the present case the accused is not being prosecuted for either possessing or using MO-13 as a weapon of offence. By this observation, in our opinion, the High Court totally misdirected itself as to the relevancy of the finding of the Magistrate because the very question whether MO-13 was in fact seized from the appellant on 7th of August, 1988 was an issue before the Magistrate in that case and the same is also an issue in this case. In the judgment as per Ex. X-11, the learned Magistrate disbelieved the evidence of PW-28 who, in that case, was examined as PW-1. The Court in that case also disbelieved the recovery of MO-13 in specific terms from the appellant. Therefore, the said finding of the Magistrate is a relevant fact in deciding whether MO-13 was recovered from the appellant immediately after the crime so as to implicate the accused in this case. This finding of the Magistrate ought to have been given due weightage, hence the Court below committed a grave error in rejecting the findings of the Magistrate as irrelevant. If this very evidence of PW-28 as to the recovery of MO-13 is rejected as unreliable in that case, in our opinion, the prosecution should establish convincingly why the very same evidence should be believed in this case. This having not been done, the evidence of PW-28 remains to be doubtful. This apart, there are certain other probabilities which should be noticed when we consider the prosecution case as to the recovery of MO-13. It is in evidence that immediately after the death of Johnny on 6-8-1988 all the neighbouring police stations were informed of the said crime and PW-28 admits as also having received such information. PW-43 at that point of time was a Circle Inspector at Adimali Police Station which had the jurisdiction over Rajakkad Police Station, hence we can reasonably presume that he too had this information. It is also in evidence that PW-20 the taxi driver with his friends was also arrested on 7-8-1988 for having taken the appellant to various places in his taxi on the said date. This witness had told the police that he had taken the appellant to the house of Elikutty PW 27 at Chelachuvadu near- about the house where Johnny and his family were murdered. He also stated

that the appellant had picked up the suitcase from the house on the evening of 7th August, 1988 and it is the case of the prosecution as stated by PW-28 that when he tried to arrest the appellant he pulled out the revolver MO-13 from the said suitcase. PW-28 had also the knowledge that the appellant was a notorious criminal having been involved in many a serious crime like robbery and dacoity and was registered as K.D. in Rajakkad Police Station. Therefore, it is surprising that either PW 28 or his superiors did not suspect that MO-13 could have been stolen, and did not think it fit to investigate as to the origin and ownership of this revolver. This admitted failure on the part of PW-28 and his superiors at that point of time creates a serious doubt in our minds as to the truth of recovery of MO-13 from the appellant and its ownership. Defence has suggested to both PWs. 43 and 45 that MO-13 is a weapon which was with Police having seized the same in some other case and which was planted on the appellant to obtain a more severe conviction against him for having assaulted a Police official in CC No. 224/87 and having failed there, the same revolver is now being used to implicate the appellant in this case. This suggestion is, of course, denied. But the fact remains that in the background of the fact narrated by us, the recovery of MO-13 from the appellant remains to be doubtful.

9. The prosecution in this case has relied on the evidence of PWs-19 and 31 to establish the ownership of Johnny in respect of MO-13. It is seen that PW-19 Kamalan stated that he had seen a revolver in the hands of Johnny which he thought was a playing gun, and the said pistol was similar to MO-13. In his cross-examination, he stated that he was shown MO-13 about two months prior to his evidence by the Crime Branch Police in their office at Kottayam. He also stated that the Crime Branch Police has specially asked him whether any weapon was seen in the hands of Johnny and then he remembered having seen the gun in his hands. He further stated that even though he had mentioned this to the police at the time he does not know why the same has not been recorded, while PW-31 Omana who is a sister-in-law of deceased Johnny stated that she had seen MO 13 revolver with Johnny who used to keep the same in a drawer of a table in his house. She admits that she has not told anybody about Johnny having a revolver until the same was shown to her in the Court even though the police in fact first questioned her about 2 to 3 days after the death of Johnny and his family. In the background in which the prosecution has produced its evidence in this case as to the ownership of Johnny of MO-13, we find it difficult to accept these evidence which has come on record for the first time after 4 years of the incident. Hence, we are reluctant to place any reliance on the same and hold that the prosecution has not established either MO-13 belonged to Johnny or the same was recovered from the appellant.

10. We will now consider the prosecution case in regard to the recovery of MO-12, the axe. It is the case of the prosecution that when PWs. 43 and 45 interrogated the appellant on 11-5-1992, the appellant during the course of his statement to the Police had stated that he had concealed the axe MO-12 which was used in the commission of this crime by throwing the same into a well in the compound of the house of deceased Johnny and that he would show the place if taken to the house of Johnny. This part of the statement made to the Police is marked as Ex. 13-A. It is the further case of the prosecution that PW-45 on 21-5-1992 took the appellant to the house of Johnny at Thadiyampadu and on the appellant pointing at the well where he allegedly threw the axe when PW-45 requisitioned the help of one George (CW-37) to recover the said axe. Said George, it is alleged, got into the well and recovered MO-12, the axe, which was then completely rusted and covered with mud. This recovery is evidenced by Mahazar P-13 to which PW-22 Jose is the witness. To connect

the use of MO-12 with the crime, the prosecution has examined PW-15 Annamma who resided in a house about 50 meters away from the house of Johnny and who stated before the Court that MO-12 belonged to her family for a number of years and the same was being kept in the open verandah of her house. She stated that she came to know that the axe was missing 2 days after the murder of Johnny but she did not tell anybody about the loss of this axe. She admits that there is no specific identification mark on MO-12, and it is similar to other axes used by other agriculturists. The High Court has accepted her evidence by complimenting her power of keen observation and memory without considering the fact that for four years the witness had not stated to anyone that someone had taken away her axe or that there was no reason to identify and say that the said axe belonged to her. Then, the prosecution through the evidence of PW-14, V.S. Parameswaran Nair, the then Asstt. Director, Biology Division, Forensic Science Laboratory, Thiru-vananthapuram, tried to establish a connection between the crime and MO-12. The said witness stated that when he examined the axe though it was rusted, he was able to trace some blood stains on it. He has denied the suggestion of the defence that the detection or existence of blood stains on the axe which was immersed in water for 4 years is not possible, by giving certain scientific explanation for the same. His evidence does not establish beyond all reasonable doubt that this MO-12 was used in assaulting Johnny and his family because he has not been able to trace any human blood on MO-12. Even though he found some blood, he was unable to analyse the said blood to find out whether the same belonged to human beings or not. In the absence of any such finding, in our opinion, from the evidence of PW-14, it is not possible to come to the conclusion that the axe in question was really used in the assault on Johnny and his family members. We may note at this stage that there is no direct evidence to connect MO-12 with the death of Johnny and his family members. However, to further connect this MO with the crime, the prosecution has examined PW-6 Luckose who states that there were blood clots in the head of Johnny which he had noticed at the time of inquest. It is extremely difficult to accept this version of PW-6 because either in the inquest Mahazar or in the post-mortem report no trace of blood was found in the head of Johnny or other members of the family. This witness though had given a complaint as per Ex. X-1 a few days after the incident to the Chief Minister, did not mention this fact in the said complaint nor has he stated before the investigating agency in the first round of litigation as to the existence of blood clots. That apart, as seen from the post-mortem report Ex. P-9 series, the doctor who conducted the post-mortem then did not notice any external head injury much less any blood clots. For all these reasons we are not in a position to place reliance on the evidence of PW-6. The prosecution in this regard has also relied on the evidence of PW-39 Dr. C. Radhakrishnan who in his evidence has stated that the skulls examined by him had suffered fractures and he was of the opinion that the said fractures could be caused by the use of blunt edge of MO-12. In our opinion, this evidence also does not help the prosecution because in the original post-mortem no external injury to the head was noticed nor was any blood clot or external injuries were noticed in the inquest Panchnama of the bodies. In the absence of any such recorded injuries, it is difficult to accept the evidence of PW-6 or that of PW-39. Both the Courts below have placed strong reliance on the evidence of PW-39 which only goes to show that the skulls examined by the said witness contained fractures which in his opinion were ante mortem. Per contra, Ex. P-9 series which is the first post-mortem report, does not refer to any external head injury much less any bleeding injury. It is the case of the prosecution that the doctor who conducted the first post-mortem did not do a professional job. But, we cannot accept this explanation on the face of it. Dr. Dias who signed the said post-mortem report as per Ex. P-9 series, has not been examined by the prosecution on the ground that he was not available for examination. Without examining Dr. Dias, it will be unfair to come to the conclusion that the contents of Ex. P-9 series do not reflect the true state of affairs as it existed when the first post-mortem was conducted. Similarly, without such examination of the said doctor, it will not be possible for us to accept the evidence of PW-39 to come to the

conclusion that Dr. Dias did not do a proper professional job. The benefit of doubt, which arises out of the two conflicting post-mortem reports, in our opinion, must go to the appellant. Therefore, we are unable to accept the finding of the Courts below that the prosecution has established beyond reasonable doubt that MO-12 was used by the appellant in execution of the crime, as stated by the prosecution.

11. We will now examine the other circumstantial evidence adduced by the prosecution in this case.

12. To establish the presence of the appellant in Thadiyampadu, the prosecution relies on the evidence of PWs. 16 and 18-Mathew and Kunhu Achari respectively. PW-16 states that he was a friend of deceased Johnny and used to meet him regularly to go to the local arrack shop to take drinks. He stated that on 5-8-1988 also he went with the deceased to the arrack shop and while they were consuming liquor he saw the appellant coming in the company of PW-18 to consume liquor. He states that at about 8 p.m. he and the deceased Johnny left the arrack shop and at about the same time, he saw the appellant and PW-18 also coming out of the said shop. He came to know the next day that Johnny and his family had died in a fire accident. PW-18 Kunhu Achari says that he knew the appellant and was in friendly terms with him and he saw him in the evening of 5-6-1988. He was invited by the appellant to have drinks with him and they also went to the same arrack shop where PW-16 and the deceased Johnny were consuming liquor. This witness says that he saw the deceased in the said shop and after some time the deceased with PW-16 went away, and at about the same time, this witness and the appellant also left the said shop and next morning he came to know about the death of Johnny and his family. From this the prosecution wants to establish the presence of the appellant near Thadiyampadu in the night of 5th August, 1988. PW-27 is Elikutty, an aunt of the appellant who has stated that the appellant had come to her house two days before the incident, stayed with her and on 7th August, 1988 he had gone out and came back to collect his suitcase. From this the prosecution wants to establish that the appellant was nearabout Thadiyampadu on the day after the incident. It is seen from the prosecution evidence that the appellant was no stranger to this place. On the contrary, he was a frequent visitor. He has an aunt in Chelachuvadu which is a few kilometers from the place of incident. The appellant was known to the local people. Therefore, assuming the prosecution evidence led through PWs. 16, 18 and 27 is true, there is nothing exceptional about the appellant's presence in Thadiyampadu so as to draw any inference adverse to the appellant, and this circumstance by itself would not be sufficient to come to the conclusion that the appellant was responsible for the death of Johnny and his family members. The prosecution has also relied upon the evidence of PW-12 Jose to establish that Johnny had sold his mini lorry for which he had received Rs. 25,000/- as an advance and he was to get the balance sum of Rs. 22,000/- on 5-8-1988 but the same was not paid to him on that day. PW-16 Mathew stated that on the day he went with the deceased to the local liquor shop, Johnny was carrying a paper bundle containing biscuits for his children. From this, the prosecution wants to draw an inference that the appellant might have thought that Johnny had received the balance consideration Rs. 22,000/- which he was carrying in the paper packet and with a view to steal that money he committed the murder of Johnny and his family. From the evidence of PWs. 12 and 16 and for that matter from the other evidence led by the prosecution, there is no material to arrive at the conclusion that the appellant had the knowledge that Johnny had sold his mini lorry and he was to get the balance consideration on 5-8-1988. In the absence of any such material to infer that the appellant was under an impression that Johnny had substantial cash in his house, is wholly erroneous and baseless. Inference so drawn must

be held to be without foundation. Therefore, these two circumstances of the appellant's presence in Thadiyampadu and Johnny having sold his mini lorry cannot be the circumstances to conclude that the appellant committed the murder of Johnny and his family.

13. The Courts below have also failed to take into consideration two important improbabilities in the prosecution case. It is the case of the prosecution that the appellant gained entry to the house of the deceased by making a hole in the wall next to the kitchen door. It has come in evidence that the walls of the house of Johnny were constructed with bricks and were strong. If that be so, the prosecution has not established how the appellant could have made a hole in such a wall without noise and without waking up the inmates of the house. This inference of ours improbabilises the possibility of the victims being attacked when they were asleep. The next improbability in the prosecution version is that the crime was committed in the manner alleged by the prosecution or that the appellant alone could possibly have committed it in the manner alleged because the house of Johnny is a two-room accommodation and such an attack on one victim cannot go without awakening the other inmates. If that be so, the victims who were yet to be attacked, in all probability, would have cried for help which would have certainly awakened the neighbour like PW-15. The prosecution has not adduced any evidence to show any such hue and cry were raised by the victims. A feeble attempt was made through PW-15 to say that she did wake up in the middle of the night that day after she was told by her father that he had heard some noise outside but she stated that after satisfying herself that there was no such cause for noise, she went back to sleep. The fact that the incident of assaulting five victims by a lone attacker has gone unheard by anybody in the vicinity, also improbabilises the prosecution case as to how the crime in question was committed.

14. Having carefully examined the evidence in this case, we are of the opinion that the prosecution has failed to establish the circumstances relied by it to establish the guilt of the appellant.

15. For the reasons stated above, we allow these appeals. The judgment and convictions of the Courts below are set aside. It is seen from the impugned judgment that the appellant is already serving another life sentence in some other case. Therefore, there shall be no order as to his release. However, if the appellant is not required in any other case or to serve any other sentence, he shall be released from the custody forthwith.

Appeals allowed.