

**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE,
NEYYATTINKARA.**

Present : **Sri. A.M. BASHEER, ADDITIONAL DISTRICT & SESSIONS JUDGE.**

Wednesday the 22nd day of May, 2024

1st day of Jyaishta 1946.

SESSIONS CASE No.1885/2022

(C.P.No.22/2022 of the Judicial I Class Magistrate Temporary Court, Neyyattinkara
Crime No. 79/2022 of the Vizhinjam Police Station)

Complainant : State of Kerala, Represented by the Sub
inspector of Police, Vizhinjam

By Adv. Sri. A. Ajikumar, Additional Public
Prosecutor.

Accused A1 : Rafeeka, W/o Ismail, aged 49/2022, House
No.44, Township Colony, Vizhinjam.

A2 : Al Ameen, S/o Abubekar, aged 25/2022,
Vallikunnathu Veedu, Vilayur West, Vilayur,
Pattambi, Palakkad.

A3 : Shafeek, S/o Ismail, aged 25/2022, House
No.44, Township Colony, Vizhinjam.

For A1 and A3 By Adv. Sri. Sudheesh Kumar
(Legal aid counsel)
For A2 By Adv. Sri. Mahesh (Legal aid counsel)

Charge : Offences punishable u/secs.120(B), 342,
302, 201 and 397 of IPC.

Plea : Not guilty

Finding : Guilty

Sentence or Order : 1. Accused 1 to 3 are sentenced to
undergo rigorous imprisonment for
a period of 5 (five) years each,
and fine of Rs. 5,000/-(Rupees five
thousand only) each, for offence

U/S 120B of IPC , and in default of payment of fine, they shall undergo imprisonment for a period of three months each.

2. Accused 1 to 3 are sentenced to undergo rigorous imprisonment for a period of 1 (one) year each, and fine of Rs. 1,000/- (Rupees one thousand only) each, for offence U/S 342 of IPC , and in default of payment of fine, they shall undergo imprisonment for a period of three months each.
3. Accused 1 to 3 are sentenced to undergo rigorous imprisonment for a period of 10 (ten) years each, for offence U/S 397 of IPC.
4. Accused 1 to 3 are sentenced to undergo rigorous imprisonment for a period of 5 (five) years each, and fine of Rs. 5,000/- (Rupees five thousand only) each, for offence U/S 201 of IPC , and in default of payment of fine, they shall undergo imprisonment for a period of six months each.
5. For the offence U/S 302 of the Indian Penal Code the accused 1 to 3 are sentenced to death and I direct that accused 1, 2 and 3 be hanged by the neck till they are dead. Further, they are sentenced to pay a fine of Rs. 10,000/- (Rupees ten thousand only) each. In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year each for the said offence.
6. The proceedings shall be submitted before the Honourable High Court of Kerala for confirmation of the death sentence U/S 366 Cr.P.C and the death sentence shall not be executed unless it is confirmed by the Honourable High Court.

7. The term sentences imposed as above shall run concurrently and it is allowed to be set off against the substantive term of imprisonment U/S 428 of Cr.P.C. All the three of them were in custody from 15.01.2022 till date, ie., 859 days each in custody.
8. In accordance with the mandate as contained in Sec. 363(4) Cr.P.C. the accused is informed of his right of appeal before the Honourable High Court of Kerala and if they wish to file an appeal it should be filed within 30 days in accordance with Article 115(a) of the Limitation Act, 1963.
9. The accused 1 to 3 are committed to the Central Prison, Thiruvananthapuram under a warrant in Form No. 40 of Cr.P.C (2nd Schedule) in accordance with Sec. 366 (2) Cr.P.C.
10. Material objects produced and marked as M.O.5 to M.O.9, gold ornaments belonging to the victim and M.O. 11 purchased out of the sale proceeds of the robbery, shall be handed over to PW5 and PW17, the legal heirs of the victim, after appeal period is over. M.O.10, the hammer shall be deformed, confiscated and sold in auction, on expiry of appeal period. The other material objects, M.Os.1 to 4 and M.Os. 12 to M.O. 34 , being valueless, shall be destroyed on expiry of period of appeal. If appeal is preferred, disposal of the material objects will be subject to the finding of the appellate court.
11. The M.Os shall be retained intact until further orders from the Honourable High Court of Kerala.

Date on which the trial commenced : 04/03/2024
Date on which trial closed : 12/04/2024

No. of days the case stood posted for trial : 19 days. 04/03/2024, 05/03/2024, 06/03/2024, 07/03/2024, 11/03/2024, 12/03/2024, 13/03/2024, 14/03/2024, 15/03/2024, 16/03/2024, 18/03/2024, 19/03/2024, 20/03/2024, 21/03/2024, 23/03/2024, 30/03/2024, 06/04/2024, 08/04/2024, 12/04/2024.

This case, having been finally heard on 12..04..2024 and the Court on 22..05..2024 delivered the following :

JUDGMENT

This is a case charge sheeted by the Circle Inspector of Police, Vizhinjam Police station against accused numbers 1 to 3 alleging offence punishable U/Ss. 120B, 342, 302, 201 and 397 of IPC.

2. The factual matrix of prosecution case in brief: The macabre incident, out of which the present case arose occurred intervening 9 a.m. to 10.45 a.m. on 14.01.2022 inside a rented house where accused were residing. A1 (50) is mother of A3(25). A2(25) is allegedly in live-in relationship with A1. The trio occupied a rented house near vizhinjam harbour one month ago. The victim, Santhakumari (71) was their next door neighbour. Accused 1 to 3, in furtherance of their common intention to rob the gold ornaments worn by Santhakumari, conspired on 14.01.2022 at the rented house of accused bearing No. TC 60/2145, Vizhinjam village. At around 8 am to 9

am on that fateful day Santha was found in the company of accused at the courtyard of the residence of accused. Accused wrongfully confined Santha inside hall room of the rented house. Accused numbers 2 and 3 thereafter closed the door and windows of the said building. Accused persons , with intention to cause death tied neck of Santha by a dhoti, smothered and strangled. First accused bashed on her forehead and back side of her head with a hammer, a dangerous weapon, causing grievous hurt and resulting in her death. Accused committed murder of Santha for the purpose of committing robbery of the gold ornaments weighing 44.210 grams worn by her . After having inflicted grievous hurt to her using the deadly weapon which resulted in her death the accused have committed robbery. After committing murder and robbery accused persons 1 to 3, in pursuance of their criminal conspiracy hid the dead body inside the house in between the attic of the hall room and the asbestos roof in order to cause disappearance of evidence of murder and robbery. They put one end of the saree worn by deceased Santha on her mouth to smother her and also to strangle the victim. They burnt the dhoti used for strangling Santha, hid the dresses worn by accused persons in the compound of the rented house and fled from the scene of crime with the robbed gold ornaments. After the nasty incident they attempted to flee but were caught hold on by Police ,recovered robed ornaments etc from them. They have thereby

committed offence punishable U/S. 120 B, 342, 302, 201 and 397 of IPC.

3. Case against accused 1 to 3 was committed to court of sessions vide order in CP 22/2022 dated 10.08.2022 on the file of Judicial First Class Magistrate Temporary Court, Neyyattinkara.

4. Accused 1 to 3 are in custody. Legal aid was given to accused 1 to 3 by engaging two lawyers. When the accused appeared before this court in pursuance of a direction U/S. 209 Cr.P.C. learned Public Prosecutor opened his case by describing the charge brought against the accused and stated by what evidence prosecution proposed to prove the guilt of the accused.

5. Upon consideration of records and documents submitted therewith and after hearing the submissions of accused and the prosecution in this behalf it was found that there is a ground for presuming that accused have committed the offence and hence it was recorded that accused are not entitled to get discharge U/S 227 Cr.P.C.

6. After considering as above and hearing both sides a charge was framed for offence punishable U/Ss. 120B, 342, 302, 201 and 397 of IPC . The charge was read over and explained to the accused to which they pleaded not guilty.

7. Altogether 66 witnesses were cited by the prosecution PWs 1 to 34 were examined from the side of prosecution. Exts. P1 to P 67 and M.O.1 to M.O.34 were marked.

8. After closing the prosecution evidence, incriminating circumstances appeared in evidence against accused were put to the accused enabling them to explain such circumstances u/s. 313 Cr.P.C. They have denied all such circumstances appeared in evidence against them and stated that all such evidences are false. They further submitted that they were arrested in connection with Crime No. 76/2021 of Kovalam Police station from 5.30 p.m. on 13.1.2022 and was under illegal custody thereafter. It is further contended that they are innocent of the crime .

9. After hearing both sides, I find no reason to believe that accused did not commit the crime and hence found not entitled for acquittal U/S. 232 Cr.P.C. The same was recorded.

10. Accused were called upon to enter on their defence and adduce evidence. No evidence was adduced from the side of the accused.

11. Heard learned public prosecutor and learned legal aid counsel for accused . Learned legal aid counsel for accused ,Adv Sudheeshkumar, who cross examined all witnesses on behalf of all accused, submitted argument note also.

12. The points arose for consideration and determination are:

1. Whether accused 1 to 3 entered into an agreement and whether they were parties to a criminal conspiracy to commit murder of Santha and robbery of her gold ornaments at 9 a.m. on 14.01.2022, punishable U/S. 120B IPC ?
2. Whether accused persons, in pursuance of their criminal conspiracy wrongfully confined Santha from proceeding beyond circumscribed limits of the rented house TC 60/2145, Vizhinjam village, the residence of accused at 9 a.m. on 14.01.2022, punishable U/S. 342 of IPC?
3. Whether accused persons, in pursuance of their criminal conspiracy committed robbery of gold ornaments worn by Santha, after committing murder of Santha, punishable U/ S. 397 of IPC ?
4. Whether accused persons have voluntarily inflicted grievous hurt on the head of Santha Kumari with hammer with intention to cause death ?

5. Whether accused persons, in pursuance of their criminal conspiracy smothered and strangled Santha with intention of causing such bodily injury as the accused know to be likely to cause death of Santha to whom the harm is caused ?
6. Whether accused, in pursuance of their criminal conspiracy bashed her head with hammer, smothered and strangled with the intention of causing bodily injury to Santha and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death?
7. Whether accused persons, in pursuance of their criminal conspiracy committed murder of Santha, after bashing her head with hammer with intention to cause her death and to rob her gold ornaments thereafter punishable U/S. 302 of IPC?
8. Whether accused persons, in pursuance of their criminal conspiracy caused disappearance of certain evidence after hiding the dead body of Santha on the attic of their residence, punishable U/S 201 IPC ?
9. Where the plea of alibi of accused is sustainable?
10. Sentence or order?

13. **Point Nos. 1 to 9 :**

For the sake of convenience, brevity and to avoid repetition, these nine points are discussed together. ***Who has last seen accused 1 to 3 and deceased Santha soon before her death in the company of the accused ?*** It is the important circumstance leading to the conclusion of the guilt of real culprit. The neighbours of deceased Santha , PW7 and PW8 have last seen Santha standing at the courtyard of the rented house in which accused were residing. PW7 is working at Karshika Karma Sena. Santha's house is just in front of PW7's residence. PW7 and PW8 have deposed that accused are residing at the rented house and both have identified accused numbers 1 to 3 in the dock, who are residing in the neighbourhood. PW7 and PW8 had spotted Santha at the courtyard of the residence of accused and at that time Santha was clad in cream coloured saree with black and red designs in it. Both have seen Santha on **14.01.2022** at **8 a.m.** and at that time she had worn studs, chain, ring, bangles, all made of gold. Both had seen Santha at the courtyard of the rented house in the company of accused. Santha was talking to

Rafeeka, A1, at the courtyard of the rented house. PW7 stated that she usually will go for job at 9 a.m. with PW8. At the time of seeing A1, PW7 and 8 deposed, A1 had worn a green nighty with orange and yellow colour lines. She had also worn a shawl, according to them. Both deposed that 4 persons, accused 1 to 3 and Santha were standing at the courtyard of the rented house talking to each other which lasted till 8.45 a.m. on 14.01.2022. Both have identified the other two persons, one is son of Rafeeka, Shafeek (A3) and other one allegedly the paramour of A1, Al Ameen (A2) . Both had occasion to watch them because they are immediate neighbours.

14. At 9 a.m. when PW7 and PW8 were standing at the compound of PW7 they saw the accused 2 and 3 closing the back door of the rented house and at that time A1 and Santha had gone to the front side of the house. They deposed that A3 was in blue genes and yellow shirt and A2 was in a bermudas and a black shirt. PW7 went to the house of PW8 at 8.45 a.m. on that day and at that time Santha had seen PW7 and PW8 and then Santha proceeded to the courtyard of the rented

house. Both have given evidence that at that time all the four entered inside the rented house and thereafter they have not seen accused 1 to 3 and Santha. They specifically deposed that at that time only those four persons were there inside the residential house of accused.

15. Both PWs 7 and 8 did not go for job on that day because it was 'Makaravilakku'. PW1 (Binu) is husband of PW7. PW2 (Sreerang) is son of the house owner where accused were residing. At 7.30 p.m. on that day PW2 came to the house of PW1 and PW7 and informed that a pool of blood was found on the surface of the rented house. PW1, PW2 and PW7 together rushed to that house. PW7 waited outside the house. PW1 opened the house. Before that PW2 had opened the house because he had found the key of the room kept there on the door itself at around 7.30 p.m., when he came to the adjacent building which is also belonged to him. PW7 deposed that PWs 1 and 2 entered inside the rented house, took a chair, put on the cot and tried to identify the source of blood which was dripping from the attic of the residential house of the accused. PW1 used his mobile torch and found a human leg on that.

Immediately, they alerted the Police and neighbours. It was only on the next day it was revealed that the same was the body of Santha. Both PW7 and PW8 have further stated that the fire force team came to the place of occurrence along with Police, removed the asbestos roof sheet and took the body out. Inquest was done and the body was taken to Medical College Hospital, Thiruvananthapuram for postmortem. They have seen Police bringing accused persons to the place of occurrence for collecting evidence. PW7 identified the saree worn by Santha when she was last spotted. The saree was marked as M.O.4. PW7 also identified M.O.1 red colour blouse which was worn by Santha when she was last seen. The nighty worn by Rafeeka, dress worn by her son A3 and paramour A2 can also be identified, according to her. PW7 identified all the accused persons, specifically each one of them in the dock. She also identified M.O.4, the saree worn by Santha when she was last seen, nighty worn by A1, bermudas worn by Al Ameen.

16. In the cross-examination PW7 has further stated that she can see the rented house from her house. It is hardly 10 metres away from her house. PW7 has stated that the accused

persons used to pick up quarrel with each other. The learned counsel for accused submitted that the fact that Santha was seen in the company of accused numbers 1 to 3 at the courtyard of the rented house, was not stated to any other person except to the Police . Anyhow she has stated it to the Police U/S. 161 Cr.P.C. statement. In fact PW7 has stated the above fact to her husband, PW1. Moreover PW8 has also stated that Santha was seen in the company of accused 1 to 3 at the courtyard of the residential house of accused. Merely for the reason that the witness gave information only to Police, but not to others do not mean that the said information is not credible.

17. PW7 was also there at her house when PW2 came running to her house to inform the presence of blood in the building where the accused were residing . It is pointed by learned counsel for accused that the same is not seen in her statement to Police for which she has no explanation also. In fact PW7 has given such statement, though not in exact words , to PW34, the investigating officer and PW7's statement so given was corroborated by PW34. Moreover, this was elicited in

the cross-examination and hence I do not find anything impairing her version. It is specifically stated by PW7 that no one has gone to the rented house at that time on the date of occurrence which is believable because the said house is very near to her house. She further stated that Santha was residing alone in her house and sometimes A1 will go to the house of Santha to sleep. A1 has no job or avocation, according to her. She denied the suggestion put to her that A1 was doing house chore works at Thiruvananthapuram and Vizhinjam area at various houses. It is true that she has not stated to Police about the nature of the dresses worn by the victim and the accused persons. However, the same was very necessary to be put to PW7 in order to identify the dresses. She has properly identified the M.O.s and got them marked.

18. It is admitted by PW7 that there are two pathways leading to the house of accused so that anybody can enter to that house. Therefore, it is argued that the chance of presence of others at the place of occurrence cannot be ruled out. It is to be noted here that accused left the residence on the very same day at 11 a.m. and thereafter they did not come over

there. The occurrence took place between 9 a.m. and 10.45 a.m. and therefore the version of PW7 in the chief-examination that there was no presence of other persons who had gone to the house of accused, is to be believed. PW7 would admit that in her Section 161 Cr.P.C. statement she has not stated that Rafeeka was standing at the courtyard, talking to Santha soon before her disappearance. The same is not a material omission because she has seen Santha from 8 a.m. to 9 a.m. on 14.01.2022 at the courtyard along with the accused persons and such statement has been given to PW34 . It is quite natural to have some difference between the statement given to the Police and also the fact deposed before the court which does not mean that there are serious contradictions or omissions in the version of witnesses. When PW1 entered inside the house of accused, PW7 was waiting outside near to the well. She does not know who was lying on the attic of the building. Despite several questions put to her , her presence at her house between 8 a.m. and 9 a.m. on 14.1.2022 could not be challenged. It is proved that PW8 was with PW7 and both

have seen Santha in the company of accused persons soon before her disappearance from the courtyard .

19. So also, the fact that PW8 was there with PW7 between 8.30 to 9 a.m. on 14.01.2022 is to be believed because PW8 has spoken in the same line with that of the testimony of PW7. The area is thickly populated and large number of people are residing in the surroundings. Learned counsel for accused submitted that PW7 has not specifically stated to the investigating officer, PW34, about dresses worn by accused persons and the deceased when they were last seen, but those items were identifiable, according to her, when such a question was put to her. She has stated that A1 used to call the deceased 'amma' which itself was fraudulent because their antecedents were not that clear. It is brought in the cross-examination that PW8 was not in good terms with A2 because he threw a stick to her compound. PW8 did not complain about this. Thereafter she closed the kitchen area. PW8 has also stated that being neighbour, she knew the accused persons well and they used to pick up quarrel all the time. Her house is just next to the house of accused on northern side of it and she

can see the kitchen area of their house from the kitchen area of her house. At about 7 p.m. on 14.01.2022 she went to Balaramapuram for a marriage and thereafter visited a temple at Chovvara. She came to know about the occurrence at 9 p.m. only. The name of husband of PW8 is also Biju to whom she told about the phone call received to her with regard to the incident. She identified the nighty worn by Rafeeka, M.O. 14 and she has further stated that Police has recorded her statement after having identified the nighty. PW7 and PW8 have spoken in the same line in support of the prosecution case and similar cross-examination was done because both have together last seen Santha alive in the company of accused soon before the occurrence. Both PW7 and PW8 could withstand several questions put to them to impeach their creditworthiness. Learned counsel for accused submitted that PW7 had no chance to see the house of accused because she cannot see anything from the kitchen area of her house . PW7 has given evidence that she moved to the courtyard of the residential house of PW8 which is also adjacent to her house. All the people in that area have 2 or 3 cents of land and in all

the houses people are residing. Nothing is brought materially to disbelieve the versions of PW7 and PW8. Accused started residing in the place of occurrence for one month. Being neighbours, both PW7 and PW8 could very well identify the accused persons . They have identified the accused in the dock also.

20. PW1 , husband of PW7 is a neighbor of both the deceased and accused. He knew the place of occurrence very well which is belonging to PW6, Sreekumar. According to PW1, accused had resided in the rented building for about 1 month, till the date of occurrence. Next to the house of the accused is the residential house of PW8 and on the eastern side, the house of PW4 Vijayan is situated. Another building adjacent to the rented house is also belonging to Sreekumar in which students are preparing for the P.S.C examination. PW1 identified the accused persons 1 to 3 specifically in the dock. He would say that Rafeeka's son is A3, Shafeek and her boy friend is A2, Al Ameen. He further stated that he went to Peringammala for a concrete work at the early hours of the day and came back home at 12 noon. It was raining on that

day. At around 6.30 p.m. PW2, Sreerang, son of PW6, the house owner, came to his house and informed about the presence of blood in the rented house and sought his assistance. When PW1 accompanied PW2 to the rented house it was lying open. They entered into the sit out and PW1 found pool of blood on the floor. He also noticed blood dripping from the attic of the hall room of the rented house. A cot was lying inside the hall and by putting a chair on the cot he could peep through the openings of the attic and see two legs in the light of his mobile torch. He confirmed that it was a body lying on the attic. Though he touched on the legs, it was not responding and then he came to know that he or she was dead. He came out. PW2 alerted the Police and the Police people came. Nobody was seen inside the house except the body. The roof of the house above the attic was made of asbestos sheet and the attic is made of wood. He did not climb up the attic. The building where the PSC students had occupied is next to the rented house and the Police made a surveillance within 10 minutes after they came. PW1 lodged FIS , Ext.P1 to Police. He further stated that it was at 8 a.m. on 15.1.2022 the fire

force team came and removed the asbestos sheet and the dead body was taken out. He identified the body of Santha and at that time she was clad in a saree which, according to PW1, was used for strangulating and smothering her. PW1 also noticed injury on the forehead of Santha kumari and another injury on the back of her head.

21. The Police team after having removed the body from the rented building to the adjacent building, prepared inquest. Apart from the saree, according to PW1, Santha kumari had worn a blue skirt and red jumper(blouse). He identified M.O.1 blue skirt in the dock. He also identified the the skirt M.O.2 in which blood stains were found. He noticed nose pin on the ala of her nose which was the only ornament found on her body. The blouse worn by her had also blood stains and identified by PW1 and marked as M.O,3. The body was taken to Medical College Hospital for postmortem. PW1 deposed that normally Santha Kumari will wear gold ornaments like studs, chain, rings, bangles and he did not find those ornaments on the body of Santha Kumari when it was removed from the attic of the building for inquest . The hammer was recovered from the

attic which is also identified by PW1 after having recalled him and re-examined him, as M.O.10. Learned counsel for accused pointed out that the fact that PW1 and his wife PW7 went to the rented house was not stated to Police. In fact the same is admitted by him. The point is important, according to learned counsel for accused, because who has firstly seen the body is a crucial fact. It is in evidence that Sreerang, PW2 found his house which was rented to accused kept open with the key on the lock itself, when he came to the next building where he used to have combine study with his friends on 14.1.2022 at around 7.30 p.m. He got panic after seeing the pool of blood inside the house when the door was opened and rushed to the house of PW1 and PW7. At that time the couple went to the rented house where PW7 and PW2 waited outside and PW1 could see the body on the attic. The fact that PW1 was at his work place from 5 a.m. to 12 noon on 14.01.2022 is not disputed. The fact that PW7 was at her house between 8 a.m. and 9 a.m. on that day is also not disputed. The evidence of PWs 1 to 7 would show that at around 7.30 p.,m. only the door was opened and found pool of blood inside the house.

22. The house is very much familiar to PW2 because he was residing in that house 3 years ago with parents. Now they are residing at Nellimoodu, 7-8 kms. away from the place of occurrence. PW1 stated in the cross-examination that apart from PW1, PW2 , PW7 and 5 students were there at the time when they went to the rented house. Naturally when PW2 got panic, his friends will also accompany him. There is not even a suggestion from the side of accused that any of these persons might have involved in the crime. Moreover, the defence is that there was a business deal of the property belonged to Santha Kumari which was agreed to be sold, but she withdrew from the contract and to wreak vengeance the interstate guest workers killed Santha kumari and hid the body on the attic. No other defence was raised to suspect the circumstance proved by the prosecution.

23. It is true that PW2 admitted in the cross-examination that the door of the rented house was found open. PW2 has deposed that he saw the key on the door. So, naturally being the owner of the building she will go and check as no light was seen inside the house. Moreover, accused were told to vacate

the building. In that situation it is human behavior to go and open the door. It is also true that he did not close the door because he got panic after seeing the blood on the floor. Therefore, the fact that when PW1 went to the rented house the door of it was found lying open has no special consequence. Even at the time of PW1 entering the rented house he saw blood dripping very slowly and blood was found clotted on the floor. He further stated that blood was also found on the wall of the room. In the photographs produced by the photographer showing various parts of the room, it looks very shabby and untidy. Therefore, the presence of five other students along with PW2 is not a relevant fact. There is nothing suspicious for PW2 seeing the key of the residential house of accused on the door itself and there is no reason to suspect his conduct in opening the door because there was no light inside the house at 7.30 p.m. In ordinary prudence an owner or landlord will always be vigilant in such a situation and he cannot be suspected for the mere reason that he opened the door first . It was PW2, who seeing the pool of blood on the

floor first, and it was PW1 who had seen the body first on the attic .

24. The next day PW1 went to the Police Station and gave Ext.P1 statement. Learned counsel for accused pointed out that PW1 has not given statement to Police that he saw pool of blood in the sit out. I perused Ext.P1. PW1 has specifically stated that a pool of blood was found in the hall room and he also noticed blood was dripping from the attic . Next it was pointed out that PW1 has not given statement that fire force people came on the next day. This fact was elicited in the cross examination. PW1 gave first information statement about the occurrence. Subsequently son of the deceased, PW5 was arrayed as defacto - complainant. PW1 was not supposed to state each and everything till the body is cremated. After having seen the body on the attic by PW1, Police came 10 minutes thereafter. The same is substantiated by the evidence of PW1, PW2 and PW7. Information alone is required to be provided by the person who found the body first. So also he did not state in the FIS, the nature of the dress worn by Santha kumari. He had gone to see the M.O.1 to M.O.3 at the time of

inquest on the body of the Santha kumari and hence those cannot be stated by him in the F.I. Statement, which was given at 12.45 p.m. on 14.01.2022. So also the appearance of the body when it was taken out from the attic for preparing the inquest including the appearance of the saree which was used for smothering and strangulating the victim was not stated in the FIS or in S.161 statement, according to the accused. These are all the facts subsequently revealed after removing the body from the scene of occurrence. The answers which were elicited in the chief-examination with respect to the physical appearance of the body when it was taken for inquest need not be detailed by the witness either in the FIS or S.161 statement. He is the best witness to speak about the place of occurrence because he is residing 25 metres away from the rented house. He is the best witness to depose that he has seen the body first. It is his best evidence which would reveal that body was found hidden on the attic after having killed and also the fact that the blood was dripping from the attic and blood was found clotted on the surface. Nothing is brought to prove any enmity or anything to impeach his credit worthiness. Despite detailed

cross-examination I do not find any material contradiction except Ext.D1, the portion of S.161 statement of PW1 by which he denied that he did not find door lying open. That means he would stick on his previous statement that he found the door open with key on it. Witness has identified the M.O.10 which was taken from the attic by the investigating officer.

25 PW2 is son of PW6, Sreekumar. PW6 is owner of the rented house which is the place of occurrence . He deposed that the building bearing No. TC 60/2045 belonged to his grandfather, who is no more. He has two buildings, one is the rented house and the next is the building which is being used by PW2 and his friends for combine studies. He knew accused 1 to 3 and the fact that they were residing in the rented house. He also knew PW1, PW7 and the neighbours around the locality. PW2 identified the accused 1 to 3 in the dock. In fact he may be the first person to see the blood on the hall room at 7.30 p.m. on 14.1.2022 when the door was opened. When he came to the building for combine study he found the key on the door itself and for verification he knocked the door, but had no response. He stated that accused had sold all the fans of that

rented building earlier. The neighbouring people had complained about them and hence he got suspicious when the key was found on the closed door. He opened the door and put the light on and found blood on the surface on right side of the building in a corner. He also noticed that the blood was dripping from the attic. His friend Liju also was near to that place and both got panic and went out of the house. It was through PW1 he knew when he came and checked that it was a body hidden inside the house in between the attic and the roof.

26. He immediately alerted the Vizhinjam Police and his brother. The Police came 20 minutes after the phone call. He also got suspicious because PW5 , son of deceased Santha Kumari had come in search of his mother and had told that she was missing. The evidence of PW2 is important because he noticed both the houses, the rented house and the residential house of the victim in which the lights were not put on and in such a situation an ordinary prudent man will get suspicious. He further stated that normally they will put lights on at that time. According to PW2, the victim will be seen all the time well dressed, wearing gold ornaments such as chains, bangles,

rings, studs etc. Therefore, the evidence of PW2 that he was very much acquainted with the victim stood proved. Most importantly there are three tamarind trees which are very much visible in the photographs also and Santha had the habit of collecting the tamarind from the ground. He had noticed the good terms between Santha and accused persons. Therefore, the evidence of PW2 that Santha used to come over there to collect the tamarind is believable. He found the body at 8 a.m. on 15.1.2022 when the asbestos sheet was removed at the instance of Police. He also noticed the M.O.1 to 3 worn by Santha when her body was seen by him. He also noticed injuries on the head of Santha, marks on the neck and also blood . He was present at the time of inquest. It was PW2 who has shown the place of occurrence to the investigating officer for preparing Ext.P2 scene mahazar in which he was an attesor. Therefore, Ext.P2 mahazar stood proved by the testimony of PW2.

27. In tune with the evidence of PW1, PW2 also deposed that M.O.10 was recovered from the attic. Apart from that a portion of kaily was also recovered from the attic. When the

village officer came to the place of occurrence he was present and the mahazar prepared after identifying the location by the village officer was marked through PW2 as Ext.P3. He deposed that accused were directed to vacate the rented building when it was noted that the fans which were hanging in the rented house were removed and sold by the accused. He specifically stated that they resided for one month only in the rented house and the building was occupied by the accused for the residence of three accused persons only. They used to pick up quarrel in the rented house, he added. It is pointed out by learned counsel for accused that the fact that he along with 5 others were doing combine study in the next building were not stated to the Police to which PW2 did not state any reason. According to learned counsel for accused this is very important because the presence of 5 others drew suspicion . No suggestion was put to any witness to make a defence that presence of 5 other students was suspicious. Therefore, such omission is of no any consequence. Next it is pointed out that there are two pathways leading to this property which is in fact admitted by PW1 and PW7. But it does not make any confusion

as to entry of any other persons because it is clear from the evidence of PW7 and PW8 that at around 9 a.m. on 14.1.2022 no one else except the accused entered inside the rented house.

28. Next it was argued on behalf of the accused that it is not possible to see the key which is hanging on the door of a house where lights were not put on. PW2 explained that he arrived at the studying room at around 7.30 p.m. and at that time his friend Liju was there , after having turned the lights on in the room . In that light the door of the adjacent rented house could be seen, PW2 stated. In fact before knocking the door of the rented house PW2 asked Liju if there is anyone inside the house. Then Liju replied that they might have left. These are all brought out in the cross-examination . Therefore, normally the same may not appear in the previous statement and may amount to omission. However, this is not a material omission. He has seen Ext.P7 rent agreement executed by his father with Rafeeka. It is specifically stated that it was signed by A1, Rafeeka. Accused have no case that anybody else is residing in the rented house. The rent agreement is also

not disputed. When it was put to PW2 whether accused were in inimical terms with PW2 and his father because the accused removed and sold the fans of the building, he replied that said building was given for free residence during Covid time. Such a person will not turn against a tenant. It was after that accused occupied the building on executing the agreement.

29. It is further pointed out that there is some suspicion in the testimony of PW2 because when he came out after having seen the blood on the ground, he did not close the door, but investigation officer would say that when the Police visited the rented house it was found closed. This was properly explained by PW2 that he did not properly remember whether the door was closed or kept open soon after noticing the blood found clotted on the ground and also dripping from the attic. Moreover, PW1 came with PW7 and PW2 and they might have opened the room and therefore this does not appear to be material. The learned counsel for accused again raised a doubt as to why PW2 first approached PW1 without informing the Police. PW2 explained that being a relative and familiar he immediately contacted PW1 because he is next to his house.

No ordinary prudent man will alert the Police without properly verifying the circumstances. It is further argued on behalf of the accused that someone peeped into the house of accused and at that time A1 picked up quarrel , but this was denied by PW2. Such denial is believable because accused occupied the house recently only. PW2 further denied that it was PW1 who saved PW2 at the time when his friends peeped into the rented house and accused picked up quarrel. There is absolutely no merit in the contention. Therefore, he had no previous occasion to have enmity between PW2 and accused.

30. Despite several and lengthy cross-examination no material contradictions or omissions could be brought from the side of accused. It is proved by the evidence of PW2 that at 7.30 p.m. on 14.1.2022 he saw the key of the rented house on the door itself, the house was not locked, the lights were not put on, accused who were residing in that rented house were left, the residential house of Santha was also found without lights on, alerted PW1 immediately, he brought PW1 to the rented house along with PW7, PW1 told him that the body was found on the attic, blood was found on the surface inside the

rented house, blood was dripping from the attic, he called the Police, his brother , his father etc. Exts.P2 and P3 mahazars were also proved through PW2. He identified MO1 to MO4 and MO10 recovered from the place of occurrence. The place of occurrence is closely connected with him because he had resided in that house 3 years prior to the commission of the offence. It is also proved that Santha Kumari was found always well dressed, wearing gold ornaments, used to come into the compound of rented house to collect tamarind .

31. PW4, neighbour of both accused and Santha kumari has seen accused residing in the rented house belonged to Sreekumar. He identified specifically each and every accused in the dock. He deposed that the second accused is the boy friend of the first accused and 3rd one is the son of first accused. Normally the boy friend will be clad in bermudas and they used to quarrel with each other after having drunk. The son will be found in blue jeans and shirt. He deposed that he has seen the victim going to the rented house very often. In fact PW4 has warned Santha not to go over there because the people were not suitable to her company. PW4 has seen

Santha wearing gold ornaments such as chain, studs, nose pin , bangles etc., when Santha came to her house for buying milk. He specifically stated that only the accused persons were residing in that rented house. He was present at the time of inquest and at that time he noticed only nose pin on the ala of her nose. In the cross-examination he has stated that he had 30 cows and now he has only two and used to sell milk to Santha. He is a natural witness and hence he told about the dress usually worn by the accused. He was born and brought up there . He specifically stated that on 12.01.2022 and 13.01.2022 Santha Kumari did not come to collect milk. He was very much available in his house on 14.01.2022 also and that day also she did not come. From 1 O'clock in the morning on 14.01.2022 PW4 was available in his house.

32. Learned counsel for accused put some questions regarding the value of the property which may fetch in the locality. This area is having close proximity with Vizhinjam International Harbour. PW4 would say that the property of Santha will fetch Rs.30 lakhs. The distance between his house and Santha's house is only 30 metres. Santha is residing alone

and therefore a proper defence was made to raise a suspicion that someone has eye on this property and to meet that end , they would have finished Santha. It does not make any sense. The property did not belong to Santha. It is belonged to her husband only. After death of husband two children of Santha also will get the right in the property. Moreover, both PW5, her son and PW17, her daughter have deposed that there is no dispute as to right in the property and they are even ready to relinquish their right in the property. So by no stretch of imagination it can be presumed that somebody else is involved to grab her property. It is true that he has not stated to Police about the wearings of Santha, intention of accused to kill Santha etc. This were put to the witness in the chief-examination by the learned public prosecutor . In fact this witness cannot say for sure that it was accused, who beat Santha with a hammer, killed her in order to rob the things. These may be exaggerations. But we at the same time must understand the sentiments of local people who were all shocked after hearing about this glaring incident. So naturally a witness will tend to exaggerate and then the court has to

accept only that much portion. No any other material contradiction or exaggerations were brought to light in the cross-examination . Being a natural witness his evidence is to be believed to the extent that accused were residing in the rented house, accused were familiar to Santha, who used to go to the rented house, he had warned Santha not to go over there, only the accused persons are residing in that building etc. stood proved corroborating the versions of other witnesses.

33. PW5 is none other than son of the deceased. He deposed that he is residing at Venganoor, where he is running a hotel. His sister is permanently residing in Andhara Pradesh with family. Mother was residing alone, but he used to come every day to enquire about her affairs. He is also familiar with persons residing in the locality near to the place of occurrence. He knew accused persons who were residing in the rented house. According to him, his mother was in good terms with the accused persons. His mother used to go over there to collect tamarind from the compound. At 3 p.m. on 14.01.2022 he came to meet his mother, but he did not see her. Though he contacted over phone, she did not pick up. It was

Makaravilakku on that day and he thought that she might have gone to kovil as usual. When he enquired about her in the locality they told him that she was seen in the morning, but did not seen thereafter. He left for his home . Normally his mother will call back if she could not attend the phone when contacted. In the evening, his relative called him and told that mother is not seen in the house and the lights were not on and also the fact that a body of a lady was found inside the rented house where the accused were residing. He rushed to there. No one else was there inside the house. The house was sealed by the Police. On the next day at 8.30 a.m. fire force people came, removed the sheet of the rented house and took the body of his mother from the attic of the rented house. She had worn M.O.1 to 4. He deposed in tune with the evidence of PW1, PW2, PW4, PW7, PW8, PW10 and others that she used to wear gold ornaments like bangles, studs, nose pin, rings, chain etc. However, only nose pin was found in the body of his mother at the time of inquest.

34. According to him, his mother was killed in a brutal manner. She had sustained an injury on her forehead and

another injury on the back of her head. The saree worn by her appears to have been used for strangulating and smothering and to meet that end the saree was used to tie her tight around her chest and neck. The same saree was found put in her mouth so as to smother her. He identified M.Os.1 to 4 in the box. He received the body back after postmortem vide Ext.P5 receipt and cremated on 16.01.2022 along with the nose pin.

35. PW5 identified the ornaments worn by his mother at Police station on 15.01.2022, when he got information that the gold ornaments worn by his mother were recovered. He identified M.O. 5 chain with locket having 2.5 sovereigns, M.O.6, the bangle and deposed that M.O.5 and M.O.6 are her usual wearings. On 18.01.2022 he was asked to go to rented house by the Police. PW5 identified A1 in the dock also. He saw A1 taking M.O.23 bermudas which was hidden under dried leaves near the well and handed over the same to Police. A piece of kaily was also recovered as shown by A1 from the scene of occurrence. Again, on 19.01.2022 at 3 p.m. he was asked to identify the remaining ornaments which were recovered from the place where it were sold. PW5 came to the

Police station and identified M.O.7 series (2 numbers), the two studs worn by his mother. He identified M.O.8 ring having half sovereign. He also identified M.O.9 ring worn by his mother. When the body of his mother was taken out the key of the house where she was residing alone, was found kept inside the blouse. It means that she was residing alone. Ext.P6 is receipt by which PW5 received the key of the house of his mother. PW5 identified all the accused persons in the dock specifically. According to him, accused cleverly enticed his mother to their house, killed his mother with a motive to rob the gold ornaments worn by her.

36. It is suggested from the side of accused during cross-examination that somebody has eye on the property where mother of PW5 was residing. His property is worth more than Rs.30,00,000/- because it is situated very near to the sea port, Vizhinjam harbour. However, PW5 has clarified the position that the property is having 2 cents only in which his sister and himself have right and Santha Kumari had only life interest in the property. PW5 has further stated that mother has no property in her name. It is further pointed out by learned

counsel for accused that both PW5 and the daughter, PW17 were not looking after the affairs of their mother and she was wandering over the area and somebody has committed the crime. It is not correct to say that children were not attending the affairs of their mother. PW5 used to come over there every often and visit his mother at her home. He is at Venganoor for the purpose of his hotel business. Being married, the daughter has to reside at the matrimonial home. There was no problem for mother over the last 10 years while she was residing alone. The reason mainly, according to PW5, is that the graveyard of his father is there in the property and mother wanted to light lamp everyday and therefore she is not willing to come and reside with PW5 or her daughter at Andhra Pradesh. However, if and when necessary any such situation arises all will gather together. Therefore, there is no meaning in contending that there may be dispute between the daughter and son with respect to the property or there was a decision to sell the property by mother to some other person even as she has no manner of right in the property. It is fairly conceded by PW5 that he has no objection in giving the property entirely to his

sister. He denied the suggestion put to him that Santha Kumari was leading her life with the assistance of neighbours as the children had abandoned her. It is in evidence that she had no job or avocation and therefore, it was PW5 and PW17 who extended help to mother to meet livelihood and also for purchasing the gold ornaments. Therefore, it appears from the evidence available that mother Santha Kumari was in good terms with her children.

37. PW5 also had advised his mother not to go to the house of accused, not to purchase anything from them or receive anything from them because they are not good people. Learned counsel for accused then submitted that PW5 was not in good terms with his mother because she defied the advise of her son. The same is denied by PW5. PW5 has categorically denied that he received Rs. 7,00,000/- towards advance after being offered to sell the property where Santha kumari was residing. First time he is hearing such a news, he added. As I have stated above, Santha Kumari has no exclusive right in the property, 2 cents. It originally belonged to father of PW5. He is no more. In the partition this 2 cents of land was set apart

to the share of two children, PW5 and PW17. Mother had only life interest in the 2 cents of land. Therefore, PW5 alone cannot enter into an agreement to sell the property to a stranger. Hence the defence that the people to whom he offered to sell the property came to the house and committed a crime. According to learned counsel for accused such people include guest labourers from other States. PW5 stoutly denied the suggestion while in the box and stated that this is a new story created by accused. At that moment the bell of the court rang thrice and PW5 further stated that the bell rang because what is stated by him was truth. Despite lengthy cross-examination PW5 could withstand his testimony and could support the prosecution case. Nothing material could be brought in the cross-examination to disbelieve the version of PW5.

38. It is argued on behalf of the accused that PW5 did not file any complaint to Police alleging that his mother was missing. PW5 has deposed that on 14.1.2022 he had gone to his house. He could not enter inside his house because the key was with his mother. He returned back to his home at Venganoor and he reached there at 4 p.m. He came back to

the place of occurrence at 9.30 p.m. on 14.1.2022 when he was informed by his friend that something untoward has occurred in the area. He did not file a complaint for woman missing because he thought that his mother might have gone to temple in connection with 'makara vilakku'. Normally his mother will call him back and with that belief he left home even when she was not found out in that area. She was residing alone for the last 10 years so that he was not suspicious. He was expecting a call from his mother , but she did not contact. However, he came back to the place of occurrence at 9.30 p.m. and by that time it was revealed that a body was found on the attic inside the rented house. In that circumstance, PW5 cannot be blamed for not lodging a complaint of woman missing.

39. Therefore, it is proved from the evidence of PW5 that his mother was residing alone for the last 10 years in the house, commonly belonged to PW5, and PW17 in which mother had life interest only. There was no dispute between the members of the family and it was PW5 and PW17 who were looking after the affairs of his mother and they purchased the gold ornaments which were robbed from the body of their

mother. PW5 used to come every often to visit his mother. The state of mind of mother was such that she wanted to live there only due to the fond of her husband whose graveyard was there in the property where she used to light lamp everyday. Accused knew of her gold ornaments and they cleverly enticed her to the rented house and they had every motive to finish Santha Kumari on that day itself in order to commit robbery of her gold ornaments. The circumstances stated by PW5 that he came in search of his mother at around 4 p.m. and further developments stated by PW1 to 4, 6 and 7 were also corroborated the version of PW5 that his mother was killed with the ulterior motive of the accused persons to commit robbery of her gold ornaments. All the gold ornaments worn by Santha Kumari were identified by PW5. The prosecution witnesses, PW1 to 7 have stated in the same line that Santha Kumari used to wear all those gold ornaments which were subsequently recovered U/S. 27 of the Evidence Act. After having committed the robbery accused sold the gold ornaments with the jewelry which were recovered by the Police and the same ornaments were identified by PW5. His evidence

that they were purchased by him and the same were used to wear by his mother daily, is therefore believable. The link of identifying the gold ornaments by the person who purchased the material objects, gold ornaments and also non explanation of the possession of gold ornaments belonged to deceased Santha Kumari by accused persons would specifically prove the fact that the material objects, the gold ornaments were robbed from the body of Santha Kuamri and to meet that end they finished that hapless woman.

40. PW6, Sreekumar @ Nambeesan, S/o Madhavan Nadar, Mulloor Panavilakam Vadakkarikil Veedu deposed that the rented house where the murder occurred had been given on lease to accused and to evidence the rental arrangement Ext.P7 agreement was executed by A1 in favour of PW6. It is a small house with asbestos sheet roof . He deposed that inside the hall room there is an attic above the hall . The monthly rent was Rs. 3,000/- and A1 Rafeeka had paid Rs. 15,000/- as advance amount to PW6. PW6 identified A1 in the dock. He further stated that the building was given for the residence of accused 1 to 3 and A1 had told PW6 that A2 and A3 are her

children. He further deposed that accused had removed four fans and sold out. PW6 identified A1 to 3 in the dock and stated that they were residing in the rented house. Next to the rented house another building is also belonged to him in which students will come and prepare for PSC examination. At 8.30 p.m. on 14.1.2022, on getting information that the body of someone was found on the attic of the rented house he came over there and contacted A1 Rafeeka over phone at 8.30 p.m. on 14.1.2022. The phone was attended by Al Ameen(A2). PW6 was informed that they are at Mukkola, Vizhinjam. The Ext.P7 agreement is not disputed by accused persons. Accused have no case that they have not resided in the rented house.

41. Friend of A2, Al Ameen , PW9 deposed that he knew the accused persons earlier. Al Ameen is his native and PW9 came to Thiruvananthapuram from Pattambi, Palakkad district 5-6 years ago and he started residing near to the rented house where accused started residing subsequently. He knew the place of occurrence. He was residing with his wife in a small rented house near to the place of occurrence for a monthly rent of Rs. 2,000/-. The said building was also owned by the

same landlord, Sreekumar. PW9 resided there for 2 ½ years. However, as on the date of occurrence he was not there because by that time he had married and shifted his residence. He knew Santha Kumari. He had occasion to work with A2 in hotel 'Suprabhatham' at Kovalam. Al Ameen had visited his house once. At the time when he was residing near the place of occurrence a fisherman was residing in the place of occurrence and when he vacated, accused persons came and started residing. He identified the accused persons specifically in the dock. According to him, Santha Kumari used to wear gold ornaments in her body and she used to go to the courtyard of the rented house to collect tamarind. He specifically stated that he had seen A1 Rafeeka with A2 Al Ameen 2-3 times and to his knowledge Al Ameen had married Rafeeka and all these things were known to the family members of Al Ameen. Al Ameen was expelled from Suprabhatham Hotel because he had stolen the fan and sold . The same crime was committed by him in this place also against which landlord and his son had complained. It is further proved that accused were residing in the place of

occurrence after the fisherman vacated the premises. It is further corroborated by his version that Santha Kumari used to wear gold ornaments and used to go to the courtyard of the rented building to collect tamarind.

42. PW10 is residing 50 metres away from the house of deceased Santha Kumari . He knew accused persons ever since they started residing in the rented house belonging to Sreekumar @ Nambeesan. According to him, both accused persons and Santha Kumari were neighbours and Santha Kumari used to go to the house of accused persons every time. Santha is his relative too. PW10 has further stated that accused had invited Santha to go to seashore and when told about that PW10 warned Santha not to venture into sea with strangers. First accused had also visited the house of PW10 and asked for henna and further asked whether he and his wife alone are residing in the house. According to PW10 , he grew suspicious when Rafeeka talked about it and thought that she was not right. Thereafter she has not come. The evidence of PW10 is yet another link to connect circumstance that he saw all the accused persons at 11 a.m. on 14.1.2022 standing by

the side of pathway in front of his house, carrying their luggages. . PW10 asked the accused persons why are they standing there and then Rafeeka asked PW10 where Sreekumar @ Nambeesan is residing. PW10 replied that Sreekumar is residing at Nellimoodu. Then Rafeeka told him that she wanted to get back the advance amount given to the rented house. PW10 further stated that accused persons however, did not go to Nellimoodu area and they proceeded towards Vizhinjam by an auto rickshaw came there at that moment, instead. PW10 noticed only in the evening that Santha was missing and the next day he came to know that Santha was found dead inside the rented house. He further stated that at the time when he saw the accused persons at 11 a.m. , all the three were carrying bags, which means that they wanted to flee the place of occurrence with their belongings. According to PW10, they were leaving the rented house after having committed the robbery of the gold ornaments worn by Santha and to meet that end they killed Santha.

43. PW10 has also corroborated the version of PW5 that the gold ornaments were purchased by PW5 and had given to

Santha. Learned counsel for accused pointed out that PW10 has not given statement to the Police that he was standing in the compound near his gate, he saw accused persons standing in the pathway leading to the rented house and he asked accused persons why are they standing there to which PW10 replied that he had given such statement to investigating officer, PW34 and PW34 also stated that PW10 has given such statement. However, it is not exactly as what learned counsel for accused put to witness. This is not an omission because only tutored witnesses can speak like a parrot and therefore according to me going by his deposition PW10 is a natural witness. He is aged 77 years. He was working in a company for 20 years. He knew Santha Kumari for years. He is also a relative of Santha kumari. He categorically stated that he has no vengeance towards accused or Santha had no ill-will towards him for not obeying his warning not to go to the house of accused persons. His testimony could not be impeached by any score and is trustworthy. Therefore, the fact and the circumstance and also the link that he saw accused persons at 11 a.m. on 14.1.2022 at the pathway in front of his house

carrying bags is to be believed. The fact that accused told PW10 that they wanted to get back the money from Sreekumar @ Nambeesan and asked about the residential house of Sreekumar to PW10, is believable.

44. PW18, neighbour and relative of Santha Kumari deposed that he saw accused 1 to 3 at 11 a.m. on 14.1.2022 at the rented house and PW18 was standing in his property near the well and at that time three accused persons were leaving the rented house. At that time Rafeeka told to two others "Santha is very much tired and do not disturb her", with an intention to PW18 also to hear. Thereafter the trio were moving together. PW18 also had an experience earlier when Rafeeka asked her, "Do you have any gold ornaments?" and she replied that her brother is a Dy.S.P. and thereafter Rafeeka did not speak to her. In the cross-examination she further stated that Dy.S.P. is working in Aluva. When the omission of the statement as told by Rafeeka that late Santha sleep and don't disturb her were not told to investigating officer, PW18 has no explanation. Therefore that part cannot be taken into consideration. However, the fact that accused 1 to 3 were last

seen by PW18 at 11 a.m. on 14.1.2022 near the place of occurrence and two were moving together out of the house. This fact in fact is not cross-examined also. The evidence of PW 18 that accused persons 1 to 3 were sighted at around 11 a.m. in the pathway on 14.01.2022 and they left the rented house at 11 a.m., are further corroborated by the version of PW10. This link is connected to the murder because it is very clear having recorded the time of death as stated by the Doctor who conducted the postmortem on the body of Santha Kumari that the death was in between 9a.m - 11 a.m. on 14.01.2022 . All the three were leaving the rented house carrying their bags which were their personal belongings and also the gold ornaments, the material objects which were robbed from the body of Santha Kumari. The same were recovered by the Police and identified by PW5 and others as that of the wearings of Santha Kumari. The fact that accused 1 to 3 were sighted at 11 a.m. on 14.01.2022 could not be challenged in the cross-examination. Accused were in a hurry to leave the scene of crime and they wanted to confuse PW10 stating that they wanted to go to the house of Sreekumar, but

without resorting to it they left the place by an auto rickshaw in the opposite direction towards Vizhinjam. Their presence at Vizhinjam area was also proved by the evidence of PW11 subsequently. Therefore, the evidence of PW10 and PW18 is a strong evidence to arrive at a conclusion that they had left the house at 11 a.m. on 14.01.2022 with their belongings and in a hurry to leave the scene of crime in order to escape and also to sell gold ornaments robbed from the body of Santha Kumari. This is a strong link in the chain of circumstances because immediately after commission of crime accused 1 to 3 were sighted in the compound of the rented house where accused were residing and the body was found. This is also a link of the circumstance that the accused wanted to flee away from the place of occurrence. Yet another circumstance is that they wanted to confuse the witness, PW10, so that they could not be easily nabbed. The evidence of PWs 7 and 8 that Santha kumari was in the company of accused 1 to 3 at 9 a.m. and thereafter Santha was not seen is corroborated by the evidence of PW10 and 18. At the time of seeing accused 1 to 3 near the scene of crime, Santha kumari was not seen outside

the rented house and the same is not explained by accused persons. What transpired between 9 a.m. to 11 a.m. on 14.1.2022 is exclusively within the personal knowledge of the accused 1 to 3.

45. Without breaking the chain of the circumstances , accused 1 to 3 had straight away gone to Vizhinjam where 'Anjana Jewelry ' is situated. PW11 , the jewelry owner deposed that after 11 a.m. on 14.01.2022 accused 2 and 3 came to his shop to sell a ring and bangle. PW11 specifically stated that he purchased a bangle having 8 gms , M.O.8 and and ring having 4 gms of gold , M.O.9. Both M.O.8 and M.O. 9 were purchased from A2, Al Ameen. A3 was also with A2. PW11 identified A2 and A3 in the dock. PW11 deposed that he paid Rs. 45,300/- towards value of M.O. 8 and M.O. 9 to Al Ameen. This facts are very specifically visible by CCTV footages in which Al Ameen was found handing over the ornaments , M.O.8 and M.O.9 to PW11 and A3 was standing nearby A2 inside the jewelry. The CCTV visuals would further show that Al Ameen was receiving the money from PW11.

46. PW11 deposed that on the same day at 4 p.m. A1 and A2 came together and at that time A2 was clad in a different dress in order to conceal his identity. The same were also visible in the CCTV footage recorded at 4 p.m. onwards. Both have worn masks and A2 was in an entirely different dress from that of the dress worn at 11 a.m. on the same day. Accused might have thought of the easiness of the business, and that is why they again approached PW11 to sell a pair of studs, M.O.7, but this time accused had a different mode of operation to avoid suspicion. Having sold M.O.7 to PW11 they bought a pair of studs worth Rs.5,500/- only. PW11 paid Rs. 29,500/- to accused 1 and 2 towards the value of M.O.7 after deducting the value of the studs which they brought for Rs. 5,500/-. The same were also identified by PW11 as M.O. 11 and also M.O.12, the jewelry box of the shop, Anjana Jewelry. PW11 identified accused 1 to 3 in the dock. He specifically stated that accused numbers 2 and 3 came in the morning and accused 1 and 2 came to the shop in the afternoon on 14.01.2022.

47. PW11 used to record CCTV footages by way of digital video process. He had recorded the visuals of both forenoon

and afternoon of 14.01.2022. On 15.01.2022 he came to know from the newspapers that the gold ornaments purchased by him were belonged to the victim, Santha, who was murdered. The Police people have come to his shop along with A2 on 19.01.2022. Both Al Ameen and PW11 identified each other. PW11 produced the gold ornaments, which he purchased from Al Ameen and Shafeek. The Police examined the CCTV footages of 14.01.2022. One Mr. Vignesh is dealing with the computer connected with CCTV footages of his shop. He copied the CCTV footages from the computer into a pen drive. Altogether 4 cameras were working on 14.1.2022 in his shop and the footages were copied from DVR. As per the requisition of prosecution the pen drive was played in the open court in the presence of accused and learned counsel for accused. PW11 had issued S.65 B Evidence Act Certificate, Ext.P8, of the visuals contained in the pen drive. In the folder number 2010114101859 when clicked and played in which the footage at 11.09 a.m. on 14.1.2022 would show movements of both PW11 and accused 2 and 3. At 11.09.11 , A2 and A3 entered into the shop. Al Ameen was in check shirt and Shafeek in

white shirt. The person who is in check shirt wearing mask and specs is PW11 himself. The visual at 11.13.19 hours show that PW11 weighing the ring, M.O.9 given by accused. At 11.14.57 Al Ameen handed over a bangle to PW11 as seen in the visual. At 11.15.12 hours PW11 was examining the bangles. PW11 identified both the accused in the visuals and specifically stated that those two persons are standing in the dock. PW11 further stated that Al Ameen entrusted a bangle and ring to him as seen in the visuals at 11.20.51 and at 11.22.04 hours PW11 was handing over money to Al Ameen which, according to him was Rs. 45,300/-.

48. Again, the folder No. 2022114154915 in camera No. 2 was played in which it can be seen at 15.49.35 hours on 14.01.2022 that Akhil Krishnan, nephew of PW11, sitting inside the Anjana Jewelry. At 16.20.12 hours A1 Rafeeka was entering into the jewelry shop along with Al Ameen. Both are seen wearing masks. PW11 was also sitting inside the shop opposite to A1, Rafeeka. Al Ameen was standing behind Rafeeka. At that time Al Ameen entrusted a cover to Rafeeka. At 16.22.19 hours, the visuals show accused 1 and 2 purchasing a pair of

studs from PW11 which, according to him, was weighing 950 gms, M.O.11. At 16.23.21 hours, Al Ameen handed over the studs, M.O.9 to PW11. PW11 was seen counting notes at 16.31.38 hours. PW11 deposed that he paid Rs. 29,500/- after deducting the price of M.O.11 as value of M.O.7 at 16.32.27. The money was then handed over to Rafeeka by Al Ameen. PW11 identified A1 and A2 in the dock and further stated that the same persons are seen in the visuals and these people have come to the shop to sell M.O.7 and purchase M.O.11. PW11 has reported that at 11 a.m. on 14.1.2022 Al Ameen came to the shop and at that time he was in check shirt and mundu, but in the second visuals in camera No. 2 when he came at 4 p.m. to Anjana Jewelry he was seen in black shirt and gray pants. He categorically stated that both are one and the same person. The visuals at 16.33.07 specifically show that Rafeeka and Al Ameen after having completed the transaction were going out after opening the door. Through out the visuals it can be seen that some other customers are also coming, selecting and purchasing gold ornaments from the shop of PW11 and PW11 could specifically identify accused

persons in the visuals. This identification could not be challenged by the accused.

49. Learned counsel for accused submitted that Ext.P8, Section 65 B Evidence Act Certificate was not duly issued and therefore the same cannot be relied safely. It is pointed out that PW11 has no authority to issue the certificate because he is not the custodian of the device. It is admitted in the cross-examination that usually he will take print out of the certificate from 'flexo ' shop. He further admitted that the certificate was so issued as per the direction of the Police. However, it is not specifically put to PW11 what was the proper manner in which Ext.P8 ought to have been issued. It is true that the date, time, the place etc. are not seen in Ext.P8 as to its contents and also not mentioned in whose presence Ext.P8 was prepared. It is not stated with what software the visuals were copied in to pen drive and according to learned counsel for accused, those details and material particulars must be shown in the certificate. He has passed +2 examination, but not produced any certificate to show that he is computer literate, argued by learned counsel for accused. The contention of accused is that

all the visuals were morphed, edited and fabricated as evidence. This is not correct because in Ext.P8 certificate it is specifically mentioned that PW11 is the custodian of the CCTV camera server installed in his jewelry, the visuals were captured by the CCTV camera and the camera footage data were saved into the common server of camera units. It is certified that the recording contained in the camera was generated into the ordinary course of activity of the server which was in his possession / control. The server and its software have built in security mechanism, ie., password protected, access control etc. It is further certified that during the period dated 14.01.2022 , 00.00 hours to 23.59 hours, the camera server was operating properly and there was no such operational problems so as to affect the accuracy of the electronic record. Despite lengthy cross-examination on this aspect it could not be brought that at any point of time any visual including the incriminating visuals were not properly seen or noticed any problem affecting the accuracy of the electronic records. Normally in a shop the electronic record generated from the server will be derived from the information

fed into it and is a true extract of the data in the server , it is submitted by learned public prosecutor. I find substance in the submission. It could not be established that the server had any technical issue in its working condition on the specified day. Therefore, I find no reason to suspect the data transferred at SanDisc 32 GB pen drive which were evidently taken directly from the server by connecting it with the computer system through data cable and therefore, the server , according to me, was duly issued.

50. The learned counsel for accused submitted that there were sufficient time to tamper the footage because the Police collected the visuals only on 19.1.2022, 5 days after the alleged occurrence. PW11 denied any such tampering because he has all the footages in its continuity and it is very difficult to tamper these visuals alone. Moreover, PW11 need not to help prosecution because he is the loser . He lost money and gold. He could have suppressed the transaction, but there was no hesitation from his side to co-operate with the investigation when Police brought A2 to the jewelry. Therefore, there is no meaning in contending that PW11 might have tampered the

visuals. It is true that the hash value is not mentioned in Ext.P8 or in the statement given to the Police by PW11, but accused have no case that the hash value of the footages have got decreased and by which anything happened to the footages. Accused have no case that anybody else have watched the visuals except the investigating team for the purpose of this case. Merely for the reason that he is only a +2 qualified person, does not mean that he could not manage CCTV footages of a jewelry. Therefore, I find no reason to disbelieve the version of PW11. Nothing is brought to impeach his trustworthiness.

51. The nephew of PW11 who was also in the shop at 4 p.m. on 14.1.2022, Vignesh, PW12, also identified A2 in the dock who was brought to the shop to identify the gold ornaments. PW12 specifically deposed that the gold which were sold by accused were identified by A2 at the shop in the presence of Police. PW12 stated that the gold were recovered by Police after describing the same in the mahazar. PW12 identified M.O.7, M.O.8 and M.O.9 in the dock. He also identified his signature in Ext.P9 mahazar prepared for the

purpose of recovery. He is not a staff, but he will be in the shop to assist his uncle. He is a student. He came to know about the name of A2 from the newspaper. Accused 1 to 3 have no explanation at all as to their presence in the jewelry shop at 11.9 a.m. on 14.01.2022 onwards, sale of ornaments. Accused have not explained about their presence at 14.01.2022 onwards and sale and purchase of gold ornaments. PW1, PW2, PW5, PW7, PW8, PW10 have deposed that Santha Kumari used to wear M.O.7 to M.O.9 and the same were sold to PW11 and subsequently recovered by the investigating officer. Therefore, the evidence of PW12 would further corroborate the version of PW11 that accused came to the shop to sell M.O.7 to M.O.9 immediately after the murder of Santha Kumari. It is an important link of the circumstance to connect the crime. Mahazar Ext.P9 also would be proved by the testimony of PW12.

52. The goldsmith , PW13, had verified the M.O.5, M.O.6, M.O.11 , M.O.12, after having weighed and appraised that it were gold ornaments. The same were done at the Circle Inspector's office at 3 p.m. on 15.01.2022 as per the request of

Police. He gave statement to Police. However, he has not issued any certificate, certifying the weight of the ornaments and also that it were gold ornaments. He used to do the works of Anjana Jewelry belonged to PW11 and that may be the reason why PW13 was engaged to appraise the 4 ornaments. He has no license, but traditionally he is a goldsmith and having artisan card with him. Learned counsel for accused submitted that PW13 has no power to certify that it were gold ornaments because he has no license and required qualification. Prosecution then examined PW20, another goldsmith. He has license bearing No. 31/85 and he is the person who usually appraising the gold ornaments of various courts. He has specifically stated that he appraised the material objects involved in this case at the Judicial First Class Magistrate Court , Temporary, Neyyattinkara in the presence of Junior Superintendent and he issued certificates, Ext.P16 series. (2 numbers). He has mentioned about the gold ornaments which were recovered from the possession of the accused. He also identified the material objects mentioned in Ext.P16. The material objects were also shown to witnesses in

the box and he deposed that the same are shown in Ext. P 16 series. Learned counsel for accused submitted that he has no license and at that time PW20 took out his license from his pocket while in the box. Nothing were brought to light so as to challenge the credibility of PW20. Therefore, I find that M.O.5, M.O. 7, M.O.8, M.O9 are gold ornaments, sold by accused to PW11 and M.O.11 purchased by accused from PW11 were also gold ornaments. Accused have not explained about the possession of the gold ornaments worn by the victim soon after the crime . Accused have no case that those ornaments were belonging to them. It is further proved that all these gold ornaments (M.O.5, M.O. 7, M.O.8, M.O9,) were worn by Santha Kumari which were robbed from her body and soon after the crime accused sold the ornaments to PW11. They were dare enough to spend their time near to the scene of occurrence and also were very confident to wait till 4 p.m. to approach the same shop to do another transaction. They were very confident that the Police will not catch them as they cleverly concealed the evidence of murder inside the attic of the rented

house. It is only after the transaction, purchasing M.O.11 from P.W. 11 they left Vizhinjam area.

53. Another link connecting to the earlier ones is their attempt to hide themselves in a hotel at 12.25 p.m. on 14.01.2022. The trio, after having sold the ornaments at Anjana Jewelry at around 11 a.m. went to Amala's Residence Hotel to occupy a room. PW14, Manager of the Amala's Residence after having identified accused numbers 1 to 3 in the dock deposed that these three people have come to the hotel at 12.25 p.m. on 14.1.2022 and took an AC room with No. 303 in the name of A2, Al Ameen. Even at that time A2 was not reluctant to hand over his ID card for making entry in the guest register card kept in the hotel. Al Ameen signed in the card in which Ashik (CW26), receptionist of the hotel countersigned. PW14 deposed that they checked in the room for 24 hours and it was a walk-in booking. However, PW14 deposed that they vacated the room at 7.30 p.m. on 14.1.2022 itself. Vizhinjam Police came to the hotel and checked the hotel register which was identified by PW14 and marked as Ext.P10. He specifically stated that the guest registration card No. 705 as entered in

page No. 42 is the relevant entry of the check in details of accused numbers 1 to 3 in room No. 303. The relevant entry was marked as Ext.P10(a) and GRC was marked as Ext.P11. PW14 has given evidence that accused paid Rs. 2,000/- towards rent of the day vide Ext.P12 receipt. A1 was also not reluctant to hand over copy of adhar , identity card to hotel, Ext.P13 in which the copy of adhar identity card of A2 is also seen affixed. They finished their meal at the hotel and paid Rs. 567/- and Ext.P14 bill shows that they paid the money at 1.51 p.m. PW14 was there in the hotel when accused 1 to 3 walked in. He stated in the cross-examination that they entrusted back the key at 7.30 p.m. and normally no entry will be made in the register at the time of check out. It is pointed out by learned counsel for accused that PW14 has not given statement to Police about the GRC page entry and also handing the key of the room back. This cannot be considered to be an omission as those facts were auxiliary to the point to the proof that accused had occupied the room in the hotel 'Amalas Residence'. Further it is argued that PW14 has not produced the CCTV footages showing the movements of accused. PW14

has clarified the position that there was no CCTV facility in the hotel. Therefore, the evidence of PW14 would prove the fact that soon after selling the gold ornaments at the Anjana jewelry belonged to PW11, they hide themselves in Amala's residence hotel at 12.25 p.m. on 14.01.2022. They took rooms in the hotel, paid hotel bills at 1.51 p.m. and again went to Anjana Jewelry at 4 p.m. on the same day. It is proved from Ext.P12 that they paid rent, Rs. 2,000/- on 14.01.2022 at 12.25 p.m. and further proved that it was A1 and A2 who handed over their Adhar identity card to PW14 for the purpose of guest registration card. PW14 identified the accused persons and further submitted that those persons are standing in the dock.

54. Accused were clever enough to approach various travel agents in search of tickets so that the attention of the Police can be diverted. Without staying overnight despite advance payment made, after having vacated Amala's residence at 7.30 p.m. on 14.01.2022 the trio straight away went to Megha Travels near Aristo Junction, Thampanoor in order to flee, probably for the breaking out of the news that the Police were in hunt of the culprits. PW15 security of the Megha

Travels, after having identified A2 Al Ameen in the dock deposed that at 8.30 p.m. on 14.1.2022 , A2 asked for tickets to Palakkad. He could specifically identify A2 because he was brought to Megha Travels on 20.01.2022 by the Police . Therefore, the evidence of PW15 is another important link connecting the attempt of accused to flee away.

55. It is not clear whether PW15 could arrange the tickets . However, A2 could arrange tickets from Siva Sakthi Travels, near Aristo Junction, Thampanoor, Thiruvananthapuram. PW16, Manager, Siva Sakthi Travels deposed after having identified A2 in the dock that at 7.30 p.m. on 14.01.2022 A2 had bought 3 tickets for Palakkad and paid Rs. 2,400/- towards ticket fair. After having bought the tickets A2 came to Megha Travels , Aristo Junction, Thampanoor. Therefore, it is proved from the evidence of PW15 and 16 that after having purchased 3 tickets worth Rs. 2,400 /- from Siva Sakthi Travels at 7.30 p.m. on 14.01.2022, A2 approached Megha Travels at about 8.30 p.m., in order to create confusion in the mind of Police, in case of tracing them in the

Thiruvananthapuram city. In fact, they did not travel in the Suraj bus going to Bangalore via Palakkad.

56. The trio actually travelled by the bus bearing registration No. KL 16M 1640 from Thiruvananthapuram to Calicut. PW19, bus Driver of the Green Line travels gave evidence that at 9 p.m. on 14.1.2022 accused 1 to 3 approached him with tickets and they were allotted with seat numbers 21, 22 and 23 in the bus driven by him . It was actually the tickets issued from Megha Travels and PW14 identified copies of tickets, Ext.P15 issued from Megha Travels. The reporting time was 9.15 p.m. and the departure at 9.45 p.m. PW19 has deposed that trio had taken tickets for Thrissur. He identified accused persons in the dock specifically because it was the duty of the driver, PW19, to verify tickets and allot the seats as per the numbers shown in the tickets.

57. Whole plan of the accused turned down by a telephone call from the Vizhinjam Police station to PW19 with an enquiry whether Ameen was traveling in the bus driven by PW19. He verified the chart and informed the Police that he was traveling in the bus. The bus in which the accused were

traveling was made to stop on road in front of Kazhakkootom Police station where a Police jeep was waiting with sufficient number of Police. Accused 1 to 3 were nabbed. Their luggages were taken from the bus and handed over to Police by PW14. He could identify each and every accused in the dock. This is a brilliant job by police that they could caught hold of the culprits within hours after the crime. The action of the police is to be appreciated. This is also important circumstance linking the earlier circumstances because the proximity of time of recovery of bags within hours of the crime also inspires confidence to believe that accused wanted to escape and these circumstances is conclusive in nature. From 8 a.m. on 14.01.2022 till taking custody of accused persons from the bus at Kazhakkootom there is no break in the chain and it is complete.

58. The evidence of PW5 is further corroborated by the version of PW17, daughter of deceased Santha Kumari to the effect that Santha Kumari used to wear saree , studs, bangles, ring, nose-pin, chain with locket and all these gold ornaments were bought by them. She has identified M.O.5 to M.O.9 in the

box, when they were shown to her. She has further stated that these were gold ornaments and mother used to wear these ornaments. She is residing at Rajamandri in Andhra Pradesh , ever since her marriage in 1997. However, she would come occasionally to visit her mother and she has last seen her mother in 2019. She came to know that her mother was murdered. However, she could not come on that day due to Covid restrictions. She came to the house on 20.1.2022 and gave statement to investigating officer. She has stated in the cross-examination that she could identify the gold ornaments when it were shown to her by the investigating officer. The evidence of PW5 is that the 2 cents of land in which the house is situated where mother was residing , belonged to grandfather and therefore mother alone cannot enter into an agreement to sell the property to strangers as contended by accused.

59. When the accused persons were arrested, their personal belongings and also the material objects were recovered from them and PW21, CPO of Vizhinjam Police station deposed that C.I. of Police had examined the bags of

accused and at 3 p.m. on 15.1.2022. Ext.P17 recovery mahazar was prepared which was attested by him. Altogether three bags were there in which a bangle, a chain with locket , a pair of studs, currency worth Rs. 58450/- were recovered from the bags. He further stated that the nighty belonged to A1 , green in colour, M.O. 14, the blue jeans of accused, M.O. 15, a pink towel, M.O. 16 were recovered from the bag by the investigating officer. PW21 also identified M.O.5, M.O.6, M.O.11 and M.O.12 which were recovered from the accused. He was also in the investigation team. He had also seen preparation of Ext.P18 mahazar for the purpose of recovering pen drive containing CCTV footages of Anjana Jewelry when it was produced by PW11. He identified his signature in the mahazar. He also stated that M.O. 13 pen drive was handed over to investigating officer by PW11 along with Ext.P8 certificate. He had accompanied the investigation team at 10.30 a.m. on 23.01.2022 and went to Palakkad at the residential house of A2. They located the residence of A2 and recovered 3 bags from the house for which Ext.P19 and P20 mahazars were prepared by the Circle Inspector of Police. PW21 also

identified Ext.P7, rent agreement which were produced by Circle Inspector of Police on 24.1.2022. In fact the recovery of 3 bags from the residential house of A2 was not necessary and therefore Exts. P19 and P20 mahazars were having no relevance in this case. Several questions were put to him in the cross-examination with respect to Exts. P19 and P20. However, no material contradiction could be brought out with respect to the fact which is to be proved by this witness. Therefore, it is proved by the evidence of PW21 that three bags were recovered from the possession of the accused persons as per Ext.P17 recovery mahazar, gold ornaments and currencies were recovered from accused, M.O.14 to M.O.16 were recovered from the bags belonged to accused, and also the fact that PW11 handed over Exts. P13 and P8 to investigating officer and Ext.P18 mahazar was prepared for the purpose. These facts could not be challenged by accused.

60. The blood samples of accused were collected when they were produced at the General Hospital, Thiruvananthapuram.

61. PW22, CPO of Vizhinjam Police station identified his signature in Ext.P22 mahazar. The Doctor who conducted the postmortem on the body of Santha Kumari had collected evidence from the body such as the saree worn by Santha Kumari which was handed over to PW23, CPO of Vizhinjam Police station. He identified M.O. 4 when it was shown to PW23. Ext.P23 mahazar was prepared for the purpose and PW23 identified his signature in the mahazar. Therefore, it is proved that M.O.4 saree was recovered from the body of Santha Kumari by the Doctor, who conducted the postmortem.

62. The casualty medical officer at General Hospital, Thiruvananthapuram as on 16.01.2022, PW24, collected samples from Rafeeka as per requisition submitted by the investigating officer. The EDTA tube, nail clippings, scalp hair were collected , packed and sealed. The envelope containing the signature and designation seal of PW24, Ext.P24 , the bottle containing the scalp hair and nail clippings, M.O. 17, EDTA tube containing blood sample, M.O. 18, the samples of A1 Rafeeka, were marked through PW24. The DNA of A2 in EDTA tube, his nail clippings and scalp hair were collected by PW24. The

envelope bearing her signature and office seal , Ext.P.25, EDTA tube, M.O. 19, glass bottle containing nail clippings , scalp hair, M.O. 20 , that of A2, marked through PW24. The blood sample of A3, Shafeek collected for DNA examination in EDTA tube , the glass bottle containing nail clippings and scalp hair were collected by PW24 on 16.01.2022. The envelope which bears her signature and office seal is marked as Ext.P26. EDTA tube, M.O. 21, glass tube M.O. 22 were also marked through PW24. In the cross-examination, she has stated that the seal is not clearly visible in Ext.P24, 25 and 26. However, the seals which are seen on the envelope are not disputed. Therefore, it is proved that PW24 had collected blood samples of A1 to 3 in EDTA tube, collected nail clippings and scalp hair of accused persons and also proved the fact that those were duly collected in accordance with the established procedures.

63. The fact that accused had to reside for a while at Amala's Residency Hotel could not be challenged by accused. As per the confession made by A2 to the investigating officer, A.S.I. of Vizhinjam Police station, PW25 was led by A2 as a part of confession leading to recovery to the Amala's residency

hotel. The SHO was also with the team. The investigation team examined the hotel register. They also prepared Ext.P27 mahazar with respect to the hotel room where the accused were residing immediately after committing the crime. They had gone to several shops nearby which were not relevant for the purpose of this case. PW25 deposed that A2 had purchased several items from various shops nearby the hotel. PW24 has not given any statement to the investigation. Learned counsel for accused submitted that PW25 was not in the team and Ext.P27 mahazar was prepared at the Police station only. It is true that no independent witness has attested Ext.P27 mahazar. However, it is proved by Adhar identity cards produced by A1 and A2 before the hotel and also the oral testimony of Manager of Amala's Residency that accused had resided in the hotel and therefore the evidence of PW25 would further corroborate the testimony of hotel manager, PW14. Mere fact that no independent witness has signed the mahazar, it does not mean that the mahazar has no relevance at all.

64. Accused had sold several items to various persons and those items include fans stolen from the rented house.

PW26, the CPO of Vizhinjam Police station deposed that all those items were recovered by the investigation team and Ext.P28 mahazar was prepared for the purpose. Ext.P29 mahazar was also prepared after having identified the items and A2 from whose statement the recovery could be effected. Ext.P30 mahazar was prepared after having identified A2 by PW5. PW26 identified A2 in the dock also . He is a signatory in Ext.P28 and P29 mahazars.

65. When the accused were brought to the rented house, the place of occurrence at around 12 noon on 18.1.2022 PW27 , a resident of the locality was present and he deposed before court that Rafeeka and investigation team entered in to the rented house, took a piece of kaily, blue in colour, by Rafeeka from the cot lying inside the house and handed over to the Police. Thereafter, the team proceeded to near a well and she took a towel and bermudas from among the dried leaves and handed over to the investigating officer . He is a signatory in Ext.P31 mahazar prepared for the purpose. He identified M.O.3, the bermudas in the box. He has not seen accused before. However, he identified A1 in the box. Therefore, it is

proved that as led by A2 the investigating officer could recover the piece of cloth which was used for committing the crime , the bermudas, M.O. 23, worn by accused, the towel used by accused for committing crime and also proved Ext.P31 mahazar through the testimony of PW27.

66. The Assistant Professor and Assistant Police Surgeon, Department of Forensic Medicines, the Government Medical College Hospital, Thiruvananthapuram as on 16.01.2022 , PW 28, conducted postmortem , on the body of Santha involving in this crime as per requisition from the Inspector of Police, Vizhinjam Police station and issued Ext.P32 postmortem certificate bearing her signature and office seal. Altogether 13 anti-mortem injuries were noted on the body of Santha. They are as follows:

1. Lacerated wound 3.5 x 1 cm, bone deep, oblique on forehead across midline, its lower right end 0.5 cm above right eyebrow and 0.5 cm outer to midline, with a contusion 7 x 3 x 0.5 cm around .

2. Lacerated wound 3 x 0.4 cm, bone deep, vertical on left side of forehead, its lower end at inner end of left eyebrow and 0.5 cm outer to midline.
3. Abrasion 2 x 1.5 cm on left side of forehead, 1 cm above eyebrow and 2.5 cm outer to midline.
4. Two lacerated wounds 1.5 x 0.5 cm bone deep and 1 x 0.5 cm bone deep one above the other separated by a tag of skin of width 0.5 cm on left side of forehead, lower larger one being , 0.5 cm above eyebrow and 7 cm outer to midline, with an abrasion 3.3 x 0.3 cm around.
5. Lacerated wound 1.5 x 0.5 cm , bone deep on left side of forehead, 4 cm above eyebrow and 7 cm outer to midline.
6. Two lacerated wounds, 2 x 0.5 x 0.5 cm and 3 x 0.5 cm bone deep, one behind the other, separated by a tag of skin of width 0.8 cm on left side of head, 7 cm above top of left ear with depressed fracture 1.5 x 1 x 0.2 cm on left parietal bone underneath.

7. Lacerated wound 5.5 x 1 cm , bone deep on left side fo back of head, 10 cm behind the root of left ear and the underlying left parietal bone showed depressed fracture 1.3 x 0.5 x 0.2 cm.
8. Contusion 5 x 5 cm involving the full thickness of left temporalis muscle. Brain showed subarachnoid haemorrhage on both sides. Gyri were flattened and sulci narrowed
9. Pressure abrasion (ligature mark) 30 cm long, continuous around neck, over thyroid cartilage. It was placed 5 cm below right ear (2 cm broad), 6 cm below chin (3.5 cm broad), 5.5 cm below left ear (3 cm broad) and 3 cm below occiput (2.5 cm broad). On flap dissection of neck done under bloodless field, subcutaneous tissue underneath the pressure abrasion showed area of infiltration of blood (1) 4 x 3 x 0.2 cm on right side of front of neck, 2 cm outer to midline and 4.,5 cm below lower jaw border and (ii) 5 x 2 x 0.2 cm on right side of front of neck, 7 cm outer to midline and 3 cm below lower jaw border.

Contusion 4 x 3 x 0.3 cm on the sternal head of left sternomastoid muscle near its lower attachment. An area of infiltration of blood 1.5 x 1 x 0.2 cm noted on the epiglottis on left side. All other underlying muscles, vessels, bones and cartilages were intact and normal.

10. Contusion 1.5 x 1 x 1 cm on right border of tongue, 4 cm behind its tip.
11. Contusion 0.8 x 0.5 x 0.5 cm on left border of tongue, 2.5 cm behind its tip.
12. Two abrasions 2.5 x 0.5 cm and 1.5 x 0.6 cm, one above the other, 1 cm apart on right side of back of trunk, the lower larger one being 9 cm outer to midline and just above top of hip bone.
13. Abrasion 0.5 x 0.5 cm on right side of back of trunk, 14 cm outer to midline and 3 cm above top of hip bone.

67. PW28 deposed specifically that death of Santha was due to combined effect of ligature, strangulation and head injury. She deposed that injuries 1 to 8 were blunt force injuries

and those injuries could be caused by using hard blunt object. M.O. 10 iron hammer was shown to PW28 and she would say that it was possible to cause injuries 1 to 8 by forceful hit on head of victim. She further stated that injury number 9 can be caused by using a cloth for strangulation. According to her, injury Nos. 10 and 11 can be caused by putting the cloth to the mouth to smother the victim and injuries 12 and 13 could be caused by coming contact with rough wooden surface . The postmortem was conducted at 10.50 a.m. and ended at 1.10 p.m. on 16.01.2022. Before that the body was kept in cold chamber of the mortuary. At the time of examination of the body a cream coloured cotton saree with red and black designs having peacock pattern in maroon and and black colour border on either side was seen tied around neck with a sample knot on left side of neck forming a loop around neck of 33 cm. She further stated that the free portion was seen wound around the right side of chest through right axilla and it was seen tied with the other free portion on the right side of back of chest with a reef knot forming a loop of circumference 61 cm, and a short free end of 6 cm. The long free end of reef knot was seen

wound around the left side of chest to the front of chest and was seen folded into two and inserted into mouth. (5cm long folded state). The free portion coming out from mouth had length of 195 cm.

68. M.O.4 series was shown to PW28 while in the box and after having identified M.O.4, she deposed that this was the saree which she found at the time of body examination before postmortem. She deposed that it is easy to lift the body by tying the body in the above manner. She would corroborate the version of prosecution witnesses that only the nose-pin was left and all the remaining gold ornaments were absent in the body. PW28 specifically deposed that a golden coloured nose-pin with white stud was seen on left ala of nose. According to PW28, the same was as such kept in the body and handed over to Police. Sample of blood and viscera were preserved and sent for chemical analysis, she deposed. Nail clippings from both hands, scalp hair, pubic hair and blood in EDTA bottle for DNA examination, vaginal swabs, vaginal smears, gauze soaked in blood collected from the body were handed over by PW28 to the SCPO 2526 in sealed packets. The sample

collected were packed in the envelope , Ext.P33. The samples were examined in the FSL and got it back along with the report after examination. PW28 identified the bottle containing nail clippings, collected from both hands of the body of Santha, M.O. 24, EDTA bottle containing blood , M.O, 25, bottle containing vaginal swabs, M.O. 26, gauze swabs in the blood, M.O. 27 . According to PW28 injury numbers 1 to 9 are sufficient in the ordinary course of nature to cause death and she has given such statement to investigating officer.

69. She has not consulted the relatives of the deceased before taking the body for postmortem. She stated in the cross-examination that the saree was in the same position when the body was brought to hospital for postmortem and the same was kept in the cold storage in the same position. Mouth was seen packed with cotton saree and a portion of saree was inserted into mouth. The same has been stated in the postmortem certificate and her statement to investigating officer. She referred to Form 102 only before conducting postmortem. Live red ants were seen on the ligature material around neck and the same was mentioned in the postmortem

certificate. Learned counsel for accused pointed out that the rigour mortis was present in lower limbs, but was absent in other parts of the body, but the same is not mentioned in the postmortem certificate. PW28 clarified the position that the body will be stiffened within 2-3 hours and the same is also called rigour mortis. Rigour mortis was not present in the other parts of the body, according to PW28. It is pointed out by learned counsel for accused that the identification marks of the deceased were not mentioned in the postmortem certificate. PW28 has replied that normally identification marks will not be mentioned in the postmortem certificate. It is further argued on behalf of the accused that PW28 has not mentioned in the postmortem certificate any material has been used for strangulating the victim, but she has stated in the chief-examination that cloth was used for strangulating the victim. This was a suggestive question from the side of the learned public prosecutor. Anyhow, strangulation has been noted in the postmortem certificate, which according to PW28 can be done by any material. Abrasions were noted in the body of Santha, which according to PW28 could be caused by dragging the

body on rough surface. It is pointed out by learned counsel for accused that it is not stated in the postmortem certificate that contusion on right border of tongue could be caused by putting the cloth inside the mouth to which PW28 replied that the manner in which the act was done will not be stated in the report. Next, it was pointed out that the age of injuries were not noted in the postmortem certificate. Normally it will not be mentioned in the postmortem certificate if the injuries were fresh. PW1, who has seen the body first and PW2, who has entered inside the rented house first have deposed that blood was dripping from the attic with an interval of 2 minutes. PW28 corroborated this version stating that if the volume of blood is high, the blood will continue to drip for long time and towards the end, it may be with an interval of two minutes. This evidence would show that Santha was killed inside the house in between 9 a.m. and 11 a.m. on 14.1.2022, after giving blows on her head and forehead with hammer and hid the body on the attic of the rented house. The evidence of PW28 would prove the fact that the victim was brutally attacked by causing several injuries on head and forehead, strangulated and tied

the body around neck with cloth which means that the trauma suffered by the victim might be unimaginable. It is proved that death was due to combined effect of ligature strangulation and head injury. It is further proved that injury numbers 1 to 8 were fatal and injuries were sustained by using with blunt object. It is clearly a murder after inflicting injuries and such injuries were caused with an intention to cause death. Despite the lengthy cross-examination, the accused could not bring out any material laches or lacunae or anything impairing the credibility of the postmortem certificate and the conduct of the postmortem.

70. The injuries are visible in the Ext.P34 series (51 numbers) photos taken by PW30 as per the direction of the Circle Inspector of Police, Vizhinjam Police station and Assistant Commissioner of Police, District Crime Branch. PW30 is a city Police photographer who took altogether 293 photographs of the inquest proceedings as a part of collection of evidence on 15.1.2022. The Section 65 B Evidence Act Certificate, Ext.34(b) was also issued by PW30 (DVD of the photographs was marked as Ext.P34(a)). PW30 further stated that Ext.P34 series were

taken using DSLR camera issued by the Police department. It is vehemently argued on behalf of the accused that it is not stated in the Ext.P34(b) that which computer of the department was used for copying the photos and also the facts that when and where and in whose presence the photos were copied to DVD are not mentioned in the certificate and the same is not reliable safely. It is specifically stated in Et.P34(b) that the DVD submitted is the original file of the photos exposed on 15.1.2022 in connection with this crime by PW30 as per request of the investigating officer and it is from the very same files Ext.P34 series (51 photos) were printed. The same was for the purpose of identifying the photos with the original image files contained in the DVD. It is further certified in Ext.P 34 (b) that the photos were exposed with the departmental DSLR camera and the image files contained in the DVD were transferred from the departmental computer which are the original files fed from the camera and the said device were in his safe guard , management and control which are recovered and properly used to photograph, story process visuals and print images. It is certified that what device used

for the above purpose were in good working condition and satisfied them during relevant period. PW30 has deposed before court that there is only one DLSR camera in the Police department and the same was used by him. There is only one photographer in the department and he alone is the custodian of all devices. In view of Section 65 B Certificate and the oral testimony of PW30 and also in view of the fact that nothing is pointed out to show that PW30 has any interest in the matter, the argument that the photographs were morphed cannot be believed. Therefore, the evidence of PW30 and the visuals would also show the brutality of the crime , the manner in which the victim was killed which would further strengthen the substantive evidence given by PW29 who noticed all the injuries in the body.

71. The rented house was taken on lease by A1, Rafeeka which could not be disputed by accused. PW31 Revenue Officer Grade II, Vizhinjam Zonal Officer of Thiruvananthapuram Corporation issued Ext.P35 ownership certificate of the rented house stating that the building bearing number TC 60/2145 (old TC No. 12/1119) is belonging to Madhavan Nadar - Kamalam,

Panavilakam Vadakkevila veedu, Mulloor P.O. They are parents of Sreekumar @ Nambeesan, PW6, who is in possession of the building. As I have mentioned earlier, accused has not challenged the fact that they did not reside in the rented house. It is simply contended that there is no such house as stated by PW31 as mentioned in Ext.P35. In view of the evidence available in abundance it is very clear that the said rented house was in occupation of A1 to 3, taken on lease by A1 from PW6.

72. Apart from the preparation of the scene mahazar by the investigating officer the place of occurrence was also located by PW31. Again PW32 , Special Village Officer, Vizhinjam village office prepared Ext.P36 route map and Ext.P37 scene plan. Both were prepared at the place of occurrence, as per the requisition of investigating officer. The route map contained Anjana Jewelry at Vizhinjam junction, the way leading to the rented house where the occurrence took place, the road leading to Poovar, from Mukkola etc. The house and its surroundings are also shown in Ext.P37. Item No. 4 in Ext.P37, the hall room where blood was found clotting on the

floor and from that hall room the body was hid in the attic using the cot. PW32 denied the suggestion that Ext.P36 and P37 were prepared at the village office without visiting the place of occurrence. It is contended that PW32 has not verified any document pertaining to the rented house. It is not necessary to verify the revenue records and title deeds because the place was shown by Police where the blood clotted on the floor was found. PW32 could specifically identify the rented house , the place of occurrence , which would match the scene mahazar. Of course the neighbouring houses are not mentioned in Ext.P37. This is not material because neighbours who have deposed before court stated specifically about the distance between the place of occurrence and their use. He perused the scene mahazar and verified the directions. There was a slight difference in the directions between the scene plan and scene mahazar. The same was subsequently rectified also. It is further pointed out that scene plan was produced 54 days after the occurrence. PW32 has deposed that he signed Ext.P37 on 18.03.2022, but the same was prepared on 15.01.2022 itself. The explanation is satisfactory . Therefore, the evidence of

PW27, PW30 , PW31 and PW32 would prove the fact that the pool of blood found lying clotted on the surface of the rented house, the place of occurrence and the body of victim Santha Kumari was found inside the same house on the attic in a hidden condition, where the accused 1 to 3 were residing for rent. It is proved beyond any reasonable doubt that accused 1 to 3 have been residing in the rented house, the place where the dead body was seen, after having executed Ext.P7 rent agreement between A1 and PW6 and at the time when the murder was committed none else than accused 1 to 3 were there inside that house and therefore, accused alone are responsible for the murder.

73. The body was hidden in such a condition that it cannot be taken easily without removing the roof made of asbestos sheets of the rented house. PW1 could see the legs of the human body by using a chair on the cot inside the hall which proves the fact that if the body is removed without caution the available evidence will be lost. Accordingly , the investigating officer contacted fire and rescue station officer , PW33 who came to the rented house at 7.30 a.m. on

15.01.2022 with his team. PW33 deposed that Police found it difficult to take the body without the assistance of fire force and that is why the assistance was sought. The fire force team also tried to take the body firstly from inside the house itself , but it was not possible and hence through the adjacent building they went to the top of the rented house and removed the asbestos sheet . The body was thereafter examined by the Forensic Officer and then taken to the next building for the purpose of inquest. The evidence of PW33 will also prove the fact that the accused had every intention to conceal the evidence of murder.

74. PW3, member of grama panchayath is the attestor to the inquest which was done at 8 a.m. on 15.01.2022 at the adjacent building of the rented house, the scene of crime. PW3 also stated that the sheet of the rented house was removed, body was taken from the attic and inquest was prepared. He identified his signature in Ext.P4 inquest report. At the time of seeing the body M.O.1 to M.O.3 were in the dead body and it were blood stained. PW3 noticed that only nose-pin was found on the body and usually she will be wearing gold ornaments.

He knew Santha for 30-40 years. Therefore the inquest report, Ext.P4 stood proved by the testimony of PW3.

75. The investigating officer, PW34 , Circle Inspector of Police, Vizhinjam Police station registered FIR, Ext.P38 , Crime No. 79/2022 initially U/S 174 Cr.P.C. He conducted inquest in the presence of the Scientific Officer, fingerprint experts and photographer. He, along with attesters certified Ext.P4 inquest report and M.Os 1 to 3, recovered from the body of Santha Kumari, after describing the same in Ext.P4. He identified M.O.1 to 3 in the box. The same were produced before court under KPF 151 A form. He prepared Ext.P2 scene mahazar in the presence of witnesses in which he, along with witnesses attested by putting the signatures. M.O.s 1 to 3 are items 5 to 6 respectively shown in the Ext.P39 , the above said KPF form, 151 A. M.O. 10 was collected from the scene of crime by the Scientific Officer and the same is shown in Ext.P40 as item No. 1. PW 34 identified M.O.10 in the box and confronted that the same was recovered from the scene of crime. The recovery of M.O.10 was also mentioned in Ext.P2. Partly burnt piece of kaily, M.O.33 was recovered from the scene of crime and

produced before court. The neighbours and son of the victim identified the body as that of Santha Kumari.

76. It was revealed that it was a murder and therefore Ext.P41 report was filed before court by amending Section 173 Cr.P.C. and incorporating Sections 120B, 342, 302, 201, 394 of IPC. The evidence of PW34 that immediately after the commission of the crime inside the rented house, the persons, who were residing in that rented house were found missing is relevant because no one had access to that building except accused on that day. Accused 1 to 3 wanted to leave or vacate the rented house on that day itself and hence asked PW10 as to the residence of Sreekumar to receive back the advance amount. Subsequently they were found in the jewelry , hotel and the travel agency shop. Finally they were caught at the Kazhakkootom Police station and PW34 brought them to Vizhinjam Police station. All these are the links between the circumstances and at no point it seems to have broken.

77. It was revealed that accused were involved in this crime and hence PW34 arrested accused 1 to 3 in accordance with the law and after having prepared Ext.P42 series, P43

series and P44 series (3 numbers each), arrest memos, inspection memos and intimation memos of each accused . PW34 examined the belongings of accused and in the trolley bag belonging to them a packet of newspaper was found from which a bangle (M.O.6), chain (M.O.5), jewelry box (M.O.12) containing studs(M.O.11) were recovered after describing in Ext.P17 mahazar. The same were identified by PW34 in the dock also. They were produced before the court under KPA 151 A form. Rs.57,450/- was recovered from accused which is described in Ext.P17, corroborating the recovery mahazar witness witnesses. The property list with respect to which Ext.P45 is produced and the description of currency notes are mentioned in Ext.P45. The amount was subsequently deposited in the Cr.C.D. treasury deposit. The same was done as per the direction of the learned Magistrate. The recovery of M.Os 14 to 16 were corroborated by the version of PW34, as it was done by him and spoken in the same line. M.Os 10 to 16 were produced as per Ext.P47 property list.

78. Medical examination of accused was conducted and the Doctor collected nail clippings, scalp hair, EDTA blood which

were produced after describing the same in the mahazar and also listing in the KPA 151 A form and produced before court. M.O.17 to M.O. 22 were properly described in Ext.P22. After having conducted the postmortem PW34 obtained Ext.P32 postmortem certificate along with M.O. 4 saree, EDTA sample, envelope etc. which were described in Ext.P23 mahazar and produced before court as per Ext.P49 property list. M.O. 4 saree, M.O. 24 nail clippings, M.O. 25 EDTA bottle, M.O. 26 vaginal swab and M.O. 27 gauze soaked blood respectively were described in Ext.P49. As part of collection of evidence PW29, Scientific Officer, Darsana had collected blood stains in cotton gauze from from the scene of occurrence, blood stains collected in cotton gauze from the entrance hall of roof, blood stains collected in cotton gauze from where the body was seen, control cotton gauze item numbers 1 to 3, hair like materials collected from the scene of occurrence, partially burnt materials collected from the south -western side of courtyard, hair like material collected from the right and left palms of the body as part of collection of evidence and the same were produced as per Ext.P50 property list before court. The above

items Ext. P28 to P32 series were described specifically in Ext.P50. The evidence of PW5 has corroborated by the version of PW34 that the gold ornaments recovered from the possession of accused were identified by PW5 as that of deceased Santha. The evidence of jewelry owner that he purchased gold ornaments from the accused and also sold studs to accused were corroborated by the evidence of PW34. After the accused were obtained in Police custody from judicial custody , PW34 proceeded to the jewelry as lead by accused. Both the owner of the jewelry and A2 have identified each other and PW 11 Sivakumar, Jewelry owner produced the bangle, the studs with matti and ring to PW34 which were described in Ext.P9 mahazar. Material portion of confession leading to recovery made by A2 is specifically marked as Ext.P9(a). PW34 identified M.O.7 to M.O.9 in the box and thereby the recovery as per the version of A2 is proved by the deposition of PW34. The said M.O. 7 to M.O.9 were produced before court as per Ext.P59 property list. The evidence of PW11 that he produced footages of CCTV which has been installed in his shop was produced before him is corroborated

by the version of PW34. The production of S.65 B certificate, was also described in Ext.P52 Mahazar.

79. On 18.01.2022 A1 was brought to the scene of crime for the purpose of investigation. M.O. 23 was recovered from the courtyard of the place of occurrence, the rented house , as it was taken by A1 and produced before PW34. M.O. 34 was also taken from the place beneath the cot by A1 and produced before PW34 which was described in Ext.P31 mahazar. The relevant portion leading to recovery of M.O. 23 and M.O. 34 as confessed by A1, was marked as Ext.P31(a) by which recovery was effected and the same is deposed by PW34. The M.O. 5 so recovered were produced before court as per Exts. P53, property list before court. Thereafter investigation team proceeded to the hotel where the accused had stayed for a while , the shops from where they purchased items, Megha Travels from where they brought tickets etc. The evidence of Manager, Amala's Residency, PW14 to the effect that ledger accounts, registration card, adhar card copies of accused 1 and 2 were produced to PW34 is corroborated. The same were recovered after describing in Ext.P27 mahazar and produced

before court. Ext.P10, P10(a), P11 to P15 were produced before court after describing the same in the property list . As Ext.P10 register is necessary for daily use, the same had been released to the manager on 3rd party kaichit, Ext.P54.

80. The landlord receiving the rent, Sreekumar, PW6 produced Ext.P7 rent agreement and the same is further corroborated by PW34 after recovering Ext.P7 and describing the same in Ext.P21 mahazar. For the purpose of forensic examination of the samples, Ext.P55 , forwarding note, Ext.P56, application were produced by PW34 and thereby obtaining Ext.P57, FSL report after having examined the samples in Physics and Biology departments. The blood items of deceased Santha Kumari were shown as item Nos. 1, 2, 3, 9, 14, 16, 19 in Ext.P57. Item Nos. 9, 13 in Ext.58 , Physics Lab Report contained similar in colour and same design and pattern of fibres. The viscera was sent to chemical lab after the postmortem by PW34. The same is also mentioned in Ext.P34 PMC. The chemical report Ext.P59 was obtained by PW34 . The marking of document regarding the collection of evidence by PW29, Scientific Officer, Darsana was opposed by learned

counsel for accused stating that the said document was produced at a later stage after examination of witnesses. In fact Ext.P28 to P32 series were already produced before court vide Ext.P50 property list. Therefore, the said document, though produced later will not prejudice the defence of accused. Hence it was marked as Ext.P60. The specimen seal, Ext.P60(a) was also produced.

81. The confession statements of all the accused were recorded by PW34. Though they were attempted to be marked, the same was opposed by learned counsel for the accused. On a perusal it appears that it were merely statements which are not signed by accused persons. It also does not involve statement leading to recovery U/S. 27 of the Evidence Act and hence the confession statements being inadmissible in evidence, not marked. It was revealed during the course of investigation that occurrence took place in between 9 a.m and 10.45 a.m. on 14.1.2022 and hence Ext.P64 report was filed to that effect. It was further revealed that the offence U/S 397 IPC has been committed and Ext. P65 report was filed for incorporating S.397 IPC instead of S. 394 IPC . In Ext.P21

mahazar prepared for recovering Ext.P7 rent agreement, the date mentioned is 24.12.2022, but it was in fact done on 24.01.2022 and for rectifying the mistake crept in the mahazar, Ext.P56 report was filed by PW34. PW34 identified each and every accused in the dock and each and every person specifically. He recorded the statement of witnesses, completed the investigation and finally laid charge before court. According to PW34 the investigation clearly revealed that accused 1 to 3 have conspired to commit robbery of gold ornaments worn by Santha Kumari and with that motive she was enticed and taken to the hall room of the rented house and brutally killed her and in order to conceal the offence of murder they hid the body in the attic.

82. Learned counsel for accused vehemently argued that even though PW2 alerted the Police on the same day, 14.1.2022, regarding the commission of of cognizable offence, no entry was made in the G.D. which is mandatory. Upon getting information, according to PW34, the entry was made immediately. He specifically stated that the information was received at 12.15 a.m. on 15.1.2022 and G.D. entry was made

on the same day at 1.19 a.m. on that day. It is true that PW2 deposed that he alerted the Police after seeing the blood on the surface of the rented house and it is not necessary to register crime immediately without verifying the veracity of the information. The crime was registered basing upon Ext.P1 FIS and the FIS was reduced into writing at 12.15 a.m. itself. FIR was registered at 1.19 a.m. and uploaded in the system. Therefore, there was no delay in registering the FIR. Entry was also made in the G.D. Therefore, there is no substance in the argument. Police is not supposed to make entries of every information without verifying the veracity especially an information relating to commission of offence alleging murder. It does not mean that the investigation conducted thereafter was not proper, as contended by accused . PW34 started investigation of the crime soon after registration of FIR. Moreover, it is explained by PW34 that immediately after getting the information the Police team had proceeded to the place of occurrence and therefore the recording of FIS at 12.15 am was done within reasonable time and I do not find any delay in registering FIR or making entries in the GD.

83. Learned counsel for accused vehemently argued that key of the rented house which was kept inside the lock of the outer door, is not produced and the same was not sent for forensic examination or finger print examination. It is important, according to accused, to examine the key of the room because then only the real culprits can be booked. PW2 has seen the key first on the door which invited his attention to look inside the rented house. PW34 also saw the key in the same position when he visited the rented house. PW34 admitted that in between 8 a.m. and 9 p.m. on 14.1.2022 anyone could have entered inside the house as the door was lying open. The evidence of PW7 , PW8 and PW 10 would specifically show that accused were seen at the rented house between 8 a.m. and 9 a.m. The evidence of PW10 and PW18 would also prove the fact that accused were seen near the place of occurrence at around 11 a.m on 19.01.2022. The crime was committed in between 9 a.m. and 10.45 a.m., as per available evidence. Accused left the rented house after 11 a.m. and there is sufficient evidence to show that they were seen at Anjali Jewelry, Amala's Residency , Megha Travels and

finally at bus. It means that accused 1 to 3 after having committed the murder, robbed the gold ornaments, concealed the evidence of murder in pursuance of their conspiracy and attempted to flee at 11 a.m. on 14.1.2022 . At the time when Santha Kumari was killed, accused 1 to 3 alone were there inside their residence. The key of the rented house was in the custody of accused persons till 11 a.m. on 14.01.2022, soon before they left their residence. They were in legal possession of the rented house by virtue of Ext.P7 at the time of murder and robbery. No one else was supposed to be there . While they were in possession of the house it was quite impossible for any other to enter the rented house which was exclusively in possession of the accused persons and commit murder of Santha Kumary who was till that time in the company of accused at the courtyard of rented house talking to accused persons. In such circumstances, by no stretch of imagination it can be believed that any third person entered inside the house and killed Santha Kumari. Accused have no case that Santha Kumari was killed by someone at any other place and brought to this house to conceal the evidence of murder by hiding the

body in the attic. No any witness has stated the presence of any other person in the compound of rented house till PW2 found the key on the door. Therefore, the none production of the key and non examination of the key by the forensic lab will not be fatal to the prosecution case.

84. PW34 has done all the required legal formalities after having verified the occurrence. He immediately informed the Assistant Commissioner of Police, Fort, Deputy Commissioner of Police, Thiruvananthapuram City and City Police Commissioner, Thiruvananthapuram. He forwarded the report to the Executive Magistrate along with the FIR. He had made earnest efforts to collect all the evidence which were left in the scene by the accused persons. Scientific Officer, finger print experts, fire force team etc. were brought to the place of occurrence by PW34. It is pointed out by learned counsel for accused that the chance print on the key was not taken to which PW34 replied that the door was lying open. The version of PW34 is justified because being a thickly populated area someone else might have checked the key which was kept outside. This is yet another idea of accused to divert the attention of the crime.

As I have stated above, the non production of key before court and non examination of the key by the expert do not affect the prosecution case and so also the discretion exercised by the investigating officer for not taking chance print from the key is justified.

85. The most important aspect in the instant case is that accused would not deny their presence at the scene of crime, rented house. Ext.P7 rent agreement is not denied. Accused have no any other place of abode. Accused 1 to 3 were residing in the rented house only , the scene of occurrence. Santha Kumari and accused were last seen between 8 a.m. and 9 am on 14.01.2022 and 11 a.m. on that day. So, within that two hours Santha Kumari was beaten up by accused on her head, forehead, smothered and strangulated and she was killed. Within that two hours, robbery of her gold ornaments was committed by the accused persons and to conceal the evidence of murder the dead body of Santha was hid on the attic. Except the accused no other persons were present at the scene of crime at that time. Accused were inmate of the house where the offence was committed in secrecy inside the

house. The initial burden to establish the case would undoubtedly be upon prosecution, but the nature and amount of evidence to be laid by prosecution to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be comparatively lighter in character because in view of S. 106 of the Evidence Act there will be corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed.

86. Accused 1 to 3 being the only inmates of the house did not offer any explanation as to how the incident took place. Further, they have not explained any other statement recorded U/S. 313 Cr.P.C. regarding the incriminating material that has been produced against them. The well settled principle is that accused have freedom to remain silent during the course of investigation as well as before the court and they may chose to maintain silence or even deny entire prosecution case. In the answers to the S.313 Cr.P.C. examination except saying 'false' and 'do not know', they have not explained how the incident took place or who had committed the offence or the

reason for Santha Kumari sustaining head injuries and her body was found in their residence on the attic. In such circumstances apart from the settled principle of law that it is for the prosecution to prove guilt of accused beyond doubt , I find that accused also have the corresponding duty to explain what happened to Santha Kuamri and how did the body of Santha Kumari hide inside their residence.

87. It is argued by learned counsel for accused that as per Ext.P7 rent agreement 3 houses are mentioned and only Rafeeka (A1) was allowed to reside in the rented house. It is specifically pointed out that the building number as per Ext.P7 is 2145 and no other details are given. Further, it is argued, it is not mentioned that the name of the house is Panavilakathu or Panavila. Referring to Ext.P3, Panavila Vadakkarikathu veedu is the place of occurrence and therefore the place of occurrence is confusing and prosecution failed to establish from where exactly the body was found. The argument has no substance. It is specifically mentioned in Ext.P7 rent agreement that the building was in possession of Sreekumar, Panavilakam

Vadakkariku veedu situated in Mulloor desom, Vizhinjam village of Thiruvananthapuram district. The building number is 2145 of Vizhinjam village office and monthly rent is Rs. 3,000/- per month. The agreement is signed by A1 and it was taken on lease for 11 months. It was agreed that the possession of the building was handed over to A1 and she cannot allow other persons to reside or transfer possession of the building to any other. The signature of A1 is not disputed. The execution of rent agreement is also not disputed. In Ext.P2 mahazar, scene plan, route map and other mahazars, inquest report and also oral testimonies of ocular witnesses deposed specifically that Rafeeka with her son and boy friend were residing in that building. Mere error while mentioning the name of the house in the mahazars or in the deposition of witnesses does not make any difference or change the location of the rented house. It is explained by PW34 that accused were residing in the rented house described in Ext.P2 and P3. The direction of road was mistakenly written in Ext.P2 and to rectify the same Ext.P3 mahazar was prepared. Moreover, in order to correct the position Exts. P36 and P37 were produced by the Village

Officer. Ext.P37 was prepared basing upon Ext.P3. Therefore, there is no substance in the argument. Moreover, accused have no case that they were residing in some other place. It is from this building the dead body of Santha Kumari was found after having concealed the evidence of murder. Accused have no case that any other person have resided in that rented house and therefore accused have to explain how did Santha die and how come the body on the attic. There is absolutely no explanation given by the accused persons in Section 313 examination. Therefore, this is a strong circumstance and link connecting other links to arrive at the conclusion that it is accused alone and none other who are responsible for the crime.

88. Learned counsel for accused submitted that A2 was manhandled by Police and he had to confess the crime. This is a new case. The same was not stated to the Magistrate when he was arrested and produced. A1 and A3 also had no complaint of harassment by Police. It is pointed out further that there are several discrepancies in the preparation of arrest memo, intimation memo and inspection memo of accused 1 to

3, which is violation of guidelines contained in D.K. Basu's case. I perused the exhibits P42 series, P43 series and P 44 series and I do not find any such discrepancies. It is further submitted that the accused were not produced before Magistrate within 24 hours. It is submitted by learned public prosecutor that due to Covid Pandemic accused were produced via video conference only and they had to wait till the link is open. It is true that the learned Magistrate has recorded that the accused were produced by one hour late , but it is not in the order whether Police took time to travel from the Police station to the place where the video linkage was connected. This may be the reason why learned Magistrate did not proceed further though the show cause notice was issued to Police by the Magistrate. Therefore, there is no merit in the submission and I find that accused were arrested in accordance with the provisions of law.

89. It is vehemently argued by learned counsel for accused that the death might have been occurred in between 3.30 p.m. and 7.30 p.m. on 14.1.2022, why because the Doctor who conducted the postmortem had reported that death was occurred 18 hours prior to the time when the body was kept in

the cold storage out of the medical college mortuary . PW34 has specifically stated that death occurred in between 9 a.m. and 10.45 a.m. on 14.1.2022. Learned public prosecutor has submitted that due to Covid Pandemic the body had to undergo Covid test and for the same reason the postmortem was conducted only on 16.01.2022. It is most important to note that the accused 2 and 3 were available at the Anjana Jewelry at 11 a.m. on 14..01.2022 with the gold ornaments worn by deceased Santha Kumari. Again at 4 p.m. on the same day accused 1 and 2 were found on the same jewelry with the gold ornaments worn by deceased. In the morning in between 8 a.m. and 8.30 a.m. and on all other days Santha Kumari was found wearing all those gold ornaments and the same was recovered from Anjana Jewelry . Therefore, there is absolutely no chance to commit the crime at 3.30 p.m on 14.1.2022. Moreover, it is very well proved by the evidence of PW10 and PW18 that accused were found carrying 3 bags and they left the scene of occurrence by an auto rickshaw at around 11 a.m. on 14.1.2022. This circumstance will specifically prove the fact that the death occurred between 9 a.m. and 10.45 am., on

14.1.2022 and they fled from the scene of occurrence immediately after the crime. Conduct of accused fleeing from the scene of occurrence is also a link connecting the crime. The next chain is that they were found at the Anjana Jewelry shortly thereafter which is very well visible in the CCTV footages. The next movement was to the Amala's residency hotel where they check in at 12.45 p.m. on 14.1.2022 and they paid bill to the hotel for having food at 1.55 p.m. on that day. All these circumstances are closely linked and the time without any gap will prove specifically all such link in the circumstances and I am persuaded to arrive at a conclusion that it is none other than the accused persons who were there in the rented house during the period from 9 a.m. to 10.45 a.m on 14.1.2022. In the circumstance the contention of accused that death occurred in between 3.30 p.m. and 7.30 p.m. was raised only to escape from the bounden duty to explain what transpired inside the rented house in between 9 a.m. and 10.45 a.m.

90. An abortive bid was made to summon the documents and examine the defence witness to show that accused were

arrested on 13.1.2022 by the Vizhinjam Police and it was contended that accused were in the custody of the Police at the time of commission of crime. Accused wanted to produce the CCTV footages of the Police station and for the purpose steps were taken. It was reported by the custodian that CCTV footages of 13.1.2022 is not available due to configuring of hard disc stored in existing system to RAID 5 technology. No further steps was taken from the side of accused. In the written statement filed by accused persons while examining U/S 313 Cr.P.C, they have stated that accused were taken into custody by Kovalam Police on 13.1.2022 at 5.20 p.m. in connection with crime No. 76/2021 and they were in illegal custody. They have pleaded that they are innocent. So far there was no allegation by accused that they were in illegal custody in connection with crime No. 76/2021 of Kovalam Police station. PW34 stoutly denied the suggestion put to him that they were in custody of Kovalam Police station at the time of commission of this crime. Accused have not stated what happened after taking them into custody by the Kovalam Police. It is not mentioned in the statement whether they were released on bail and till what

time they were in the illegal custody of the Kovalam Police station. No defence evidence was adduced from the side of accused. The evidence is abundantly available to show that they were very much available from 8 a.m. to 11 a.m. on 14.1.2022 at the rented house. Therefore, the plea of alibi does not hold good.

91. It is next argued by learned counsel for accused that 5 students had been at the next building of the rented house for preparing PSC examination and they were there at around 7.30 p.m. CW14, brother of PW2 was also there, but he was not examined. It is further pointed out on behalf of the accused that if 18 hours is calculated back to the time when the body was taken to cold storage, the occurrence might be at around 7.30 p.m. and therefore, the participation of other persons cannot be ruled out. As I have observed above, the recovery of gold ornaments were effected from the possession of the accused and also from Anjana Jewelry which cannot be disputed by the accused. All the above circumstances discussed above linking each circumstances would clearly indicate the fact that accused , after having committed murder

and concealed the evidence of murder committed robbery and sold the stolen properties at 11 a.m. on 14.1.2022. Therefore, there is no merit in contending that the presence of some other people cannot be ruled out. Moreover, it is the privilege of the prosecution whether to examine or not any witnesses and learned public prosecutor chose not to examine CW14 because, it is submitted, he has spoken with respect to some other crime committed by the accused. Anyhow, I am not inclined to discuss S.161 statement of CW14. I must state that accused cannot dictate that this or that evidence ought to have brought in.

92. In the argument note submitted on behalf of accused it is submitted that all the questions were leading questions put to prosecution witnesses and despite objection by the both legal aid counsel this court did not record the objection. Learned counsel for accused relied the decision in **Varkey Joseph v. State of Kerala (1993 KHC 385)**. In this case there is absolutely no any question suggesting the answer which the person putting it wishes or expects to receive was recorded by me and no leading question suggesting the answers as

contemplated U/S 141 of the Indian Evidence Act was recorded. All the witnesses examined in this case are neighbours and they have stated the truth only . Accused have no case that they are interested or tutored witnesses. They are credible, trustworthy and their evidence is wholly reliable. The learned public prosecutor has directed the witnesses to give evidence which they witnessed and I do not see any such question which the prosecution wished to elicit from the witness or put into witness's mouth the words which he hoped . In the case relied by the learned counsel for the accused the Sessions Court recorded the evidence in the form of question put by the prosecutor and the defence counsel and answers given by each witness. Therefore, there is absolutely no merit in the argument.

93. It is argued vehemently and also mentioned in the argument note that the discovery U/S 27 of the Indian Evidence Act of M.Os 7 to 9 is a weak kind of evidence. It is argued that recovery of M.O.s 7 to 9 were effected from Anjana Jewelry as led by 'first accused' and as confessed by accused. It is further submitted that there is no description of the confession /design

mentioned in Ext.P5 mahazar and therefore no one can identify M.O.s 7 to 9. According to learned counsel for accused M.O.s 7 to 9 were not recovered in sealed packets with the signatures of the witnesses affixed to them. Moreover, it is argued that the presence of accused was also not proved and so the chain link of the evidence was broken. It is crystal clear that M.Os 7 to 9 were sold to Sivakumar, owner of Anjana Jewelry, at the Anjana Jewelry, Vizhinjam, which is very much visible in the CCTV footages. The jewelry owner deposed in support of the prosecution case that M.Os 7 to 9 were duly recovered as led by accused. The neighbours of Santha Kumari, son and daughter of Santha Kumari, Jewelry owner, investigating officer etc. have specifically identified M.Os 7 to 9, which were duly recovered by virtue of Ext.P5. Therefore, the chain is not broken, but it is clearly linked with the commission of the crime.

94. Being a case based on circumstantial evidence the above circumstances prove conclusion of a guilt and all such circumstances are conclusive in nature. All the above circumstances are complete, form a chain and there is no gap

at all left in the chain of evidence. Further, the proved circumstances are consistent only with the hypothesis of the guilt of accused . The circumstances from which the inference as to the guilt of accused can be easily drawn and it is proved beyond reasonable doubt and those are closely connected with the principle fact ought to be inferred from those circumstances. The circumstantial evidence starting from 8 a.m. on 14.1.2022 when the victim was last seen till 9.45 p.m. on the same day when the accused were caught hold on while attempting to flee, show the circumstances as to the conclusion of guilt of the accused persons. The prosecution could successfully prove each link of the circumstances from which an inference of guilt could be easily drawn and the prosecution established the same cogently and firmly. All the above circumstances are of definite tendency unerringly binding towards the guilt of accused numbers 1 to 3. The circumstances as discussed above, if taken cumulatively 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 persons and they should be incapable of

explanation on any hypothesis other than that of guilt of accused and inconsistent with their innocence.

In **Bodhraj @ Bodha And Ors. vs. State of Jammu & Kashmir,(2002) 8 SCC 45**, wherein the Hon'ble Supreme Court quoted number of judgments and held as under:-

*“10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See **Hukam Singh v. State of Rajasthan (1977) 2 SCC 99, Eradu v. State of Hyderabad AIR 1956 SC 316, Earabhadrapa v. State of Karnataka (1983) 2 SCC 330, State of U.P. v. Sukhbasi (1985) Suppl. SCC 79, Balwinder Singh v. State of Punjab (1987) 1 SCC 1 and Ashok Kumar Chatterjee v. State of M.P., 1989 Suppl. (1) SCC 560**)*

The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely

connected with the principal fact sought to be inferred from those circumstances. In **Bhagat Ram v. State of Punjab AIR 1954 SC 621** it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt. We may also make a reference to a decision of this Court in **C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193**, wherein it has been observed thus: (SCC pp. 206-07, para 21) "21. In a case *Indian Kanoon - <http://indiankanoon.org/doc/97060350/> 3 Nizam & Anr vs State Of Rajasthan* on 4 September, 2015 based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must

be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

*(Please refer **Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681, Sunil Clifford Daniel vs. State of Punjab, (2012) 11 SCC 205, Sampath Kumar vs. Inspector of Police, Krishnagiri (2012) 4 SCC 124 and Mohd. Arif @ Ashfaq vs. State (NCT of Delhi), (2011) 13 SCC 621).***

95. Learned counsel for accused advanced elaborate arguments covering the entire spectrum by making available in the argument note. He mainly contended that the case made out by the prosecution falls out of proof needed in a case which is based entirely on circumstantial evidence. Learned counsel contended that with the available evidence it would be unsafe to convict the accused. Various decisions such as **2008 KHC 4031 (para 21,22,23) , 2023 KHC 5598, AIR 1963 SC 74, AIR 1976 SC 2263; 1960 KLT 510, Ayyapan alias Kutty v. State of Kerala, (para no 10), AIR 1987 SC 1507 , 1987 KHC 1032 (Para No. 11), AIR 1956 SC 51 , Shibu v. State of Kerala (2023(7) KHC 178)(para no. 6), 2023 KHC 5598 (Para no. 12), 2023 KHC 3311 (para 15, 17), Jabir v.**

State of Uttarakhand 2023 KHC 6041 (Para - 25) , Sidhardha Bashit @ Manu Sharma v. State NCT (2010 KHC 4268) , Umedbhai Jabarbai V. State of Gujarat AIR 1978 SC 424 - Cri. LJ 489 , State of Haryana v. Mohammad Yunus (2024 KHC 6028), 2019 12 SCC 460 , Chandrapaul V. State of Chattisgarh (2022 KHC 6611), Bai alias nilu alias Niranjan Bhehraq v. State of Odissia (2022 HKC 3979), Pradeep Kumar v. State of Hariyana. (2024 KHC 537). On a close reading of the decisions cited above, I do not find any match with the instant case. The above decisions are mainly related to inconsistent case by the prosecution, delay in lodging FIR, improper discovery U/S 27 Act, seizure effected without presence of witnesses, chain of link of evidence was broken, no reliance would be placed to the circumstances, mere detection of the blood on the exhibits is not enough, the forensic report was not proved, key witnesses were not examined, sole reliance on last seen circumstances cannot be justified, the circumstances could not be proved by prosecution beyond reasonable doubt as well as the links between the circumstances, prosecution failed to establish the

fact that deceased was last seen in the company of accused, the statement of witnesses were contradictory, the facts twisted and improvements made in their statements and no reliance can be made upon such statements etc., I have specifically answered the above contentions in my discussion hereinbefore meticulously and I find that none of the above decisions can be applied to the instant case. I find that prosecution could successfully establish the above aspects in favour of prosecution.

96. I have closely marshalled the circumstantial evidence in the case to arrive at the conclusion that the accused alone is responsible for the death of the deceased. Additionally, it also relied on the fact that the accused having been found present in the house had offered no plausible and cogent explanation about the sequence of events that had transpired inside, leading to the sole and irresistible conclusion that the accused has perpetrated the heinous crime.

97. The circumstances that unerringly point to the guilt of the accused 1 to 3 as it emerges from the deposition of the witnesses and the duly proved exhibits . I am conscious of the

warning in **Shambhu Nath Mehra vs. The State of Ajmer, 1956 SCR 199** to the effect that Section 106 is not intended to relieve the prosecution of its duty. However, Shambhu Nath Mehra(supra) itself recognizes that in exceptional cases where it could be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are especially within the knowledge of the accused, the burden will be on the accused since he could prove as to what transpired in such scenario, without difficulty or inconvenience. In this case, when a brutal murder in order to rob the gold ornaments is committed inside a house in secrecy, the initial burden has to be discharged by the prosecution. From the above stated discussion, as I have observed above, prosecution could successfully establish all the links between all circumstances and each circumstance was complete and proved beyond reasonable doubt. Once the prosecution successfully discharged the burden cast upon it, the burden did shift upon the accused being the only other person inside the four corners of the rented house to offer a cogent and plausible explanation as to how the offences came to be committed. The accused has

miserably failed on that score. This can be considered as a very important circumstance, constituting a vital link in the chain. I am satisfied that the circumstances set out hereinabove are by themselves consistent with the sole hypothesis that the accused and the accused alone are the perpetrator of the murder and robbery. It is also to be noted that the law on the appreciation of circumstantial evidence is well settled and it will be an idle parade of familiar learning to deal with all the cases. I do no more than set out the holding in **Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116**, which dealt with the panchsheel or the five principles essential to be kept in mind while convicting an accused in a case based on circumstantial evidence:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be”

established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(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,

(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

(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.

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

I am convinced that the circumstances presented in evidence in this case is more than which meets the ingredients that are required to be established.

98. The Hon'ble Apex Court in the judgment reported in **(2012) 1 SCC (CRI) 1 in the case of JASPAL SINGH, DEPUTY SUPERINTENDENT OF POLICE VS. STATE OF PUNJAB** in Paragraph Nos.78 and 79 held that the conduct of the accused subsequent to the commission of crime may be relevant. If there is sufficient evidence to show that the accused fabricated some evidence to screen/absolve himself from offence, such circumstance may point towards his guilt. In **Tulsiram Kanu v. State AIR 1954 SC 1**, Hon'ble Supreme Court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act has to be read along with the “important time factor”. If the

ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case, it has been established that immediately after the murder, to be exact, within two hours, the accused had sold some of the ornaments robbed from the deceased and within 24 hours the recovery of the robbed articles was effected from Anjana jewellery at the instance of the confession made by the accused. Such close proximity of the recovery, which has been indicated by Hon'ble Supreme Court as an "important time factor", should not be lost sight of in deciding the present case.

99. It may be indicated here that in **Earabhadrappa Alias Krishnappa v. State Of Karnataka .(1983) 2 SCC 330**, Hon'ble Supreme Court has held , *"the nature of the presumption and Illustration (a) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise and each case must*

be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not, calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. From the available evidence I find that the accused who had to sell cot and fans were not affluent enough to possess the recovered ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from the possession of accused and their dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the accused persons . Accused have no case that the gold ornaments recovered from them and recovered from Anjana Jewellery under section 27 of the Evidence Act are belonging to them. No plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused.

In the facts of this case, it appears to me that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 Evidence Act is that not only the accused have committed the murder of the deceased but also committed robbery of her ornaments.

100. It was held by the Hon'ble Supreme Court in **Mohammad Naushad vs. State of NCT of Delhi (indiankanoon.org. Dated 6.7.2023)** , *Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of*

conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition: [1974 Criminal Law Review 297, 299] “Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties ‘actually came together and agreed in terms’ to pursue the unlawful object;

101. The prosecution succeeded in leading the evidence that shortly before the commission of crime the victim and the trio were seen together and the offence had taken place in the residence of accused and then it is for the accused to explain

as held in **Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681** wherein it came to be held,

*“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See **Stirland v. Director of Public Prosecution** quoted with approval by **Arijit Pasayat, J. in State of Punjab vs. Karnail Singh**) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts*

and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

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

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed

premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

22. *Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In **Nika Ram v. State of Himachal Pradesh**, it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In **Ganeshlal v. State of Maharashtra (1992) 3 SCC 106** the appellant was prosecuted for the*

murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was

*complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In **State of Tamil Nadu v. Rajendran (1999) 8 SCC 679** the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime."*[Para No.28]

102. The motive behind murder is very much explicit and prosecution could prove it beyond any reasonable doubt. The motive was to rob the gold ornaments worn by Santha Kumari

and after having robbed gold ornaments which were sold and the same material objects were recovered. The M.Os were properly identified by the witnesses. Therefore the motive was to rob the gold ornaments and to meet that end she was brutally killed.

103. Undoubtedly, 'last seen theory' is an important link in the chain of circumstances that would point towards the guilt of accused with some certainty. Last seen theory holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to cause of death of the deceased. It is well settled principle of law that it is not precedent to base the conviction solely on last seen theory. I must bear in mind that it should be applied taking into consideration of the case of prosecution in its entirety and can be in mind the circumstances that precede and follow the point of being a scene last seen.

104. Elaborating the principle of "last seen alive" in **State of Rajasthan vs. Kashi Ram, (2006) 12 SCC 254**, the Hon'ble Supreme Court held as under:-

“23. It is not necessary to multiply with authorities. 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)**" The above judgment was relied upon and reiterated in **Kiriti Pal vs. State of West Bengal**".*

105. So far as the conspiracy is concerned the accused started residing in the rented house only on 11.12.2021 vide Ext.P7 rent agreement. Accused have sold a cot to Santha Kumari. A1 used to go to the house of Santha Kumari to sleep over there. It is submitted by learned public prosecutor that the accused were very particular to commit crime on 14.1.2022 itself because the earlier crime No. 76/2021 of Kovalam Police station was alleged to have committed on 14.1.2021. To meet that end they acted as psychopaths. Accused 1 to 3 are parties to criminal conspiracy to commit robbery of gold ornaments worn Santha Kumari and with that motive she was taken to inside the rented house and brutally attacked with intention to

cause death. Injuries on forehead and on back of head were inflicted with the intention to cause death . Being a party to the criminal conspiracy to commit murder and robbery , it is proved by the prosecution that they have committed the offence punishable U/S 120B of IPC.

106. It is proved by the evidence of PW7 and PW8 that Santha Kumari was standing in the courtyard of the rented house from 8 a.m. to 9 a.m and she was in the company of accused. She was killed by accused persons in between 9 a.m. and 10.45 a.m. and her body was found on the attic of the rented house. Therefore, it is proved beyond doubt that Santha Kumari was wrongfully found inside the rented house restraining her in such a manner so as to prevent her proceeding beyond the four walls of the rented house, in order to commit murder and therefore accused persons, in pursuance of their conspiracy committed offence punishable U/S. 342 IPC.

107. It is proved by sufficient evidence and beyond any reasonable doubt that in between 9 a.m. and 10.45 a.m. on 14.1.2022 accused 1 to 3 , after have conspired to commit robbery and gold ornaments, beat with M.O.10 hammer on

forehead and back of head of Santha Kumari, strangulated and smothered with intention to commit murder. The act was done by accused persons with intention of causing death of Santha Kumari and while inflicting such injuries accused numbers 1 to 3 , knew it to be likely to cause death of Santha Kumari to whom the grievous hurts were caused. The expert evidence of the Doctor, who committed postmortem examination of the body proved that the injuries inflicted on the body of Santha Kumari were sufficient in the ordinary course of nature to cause death. It is proved beyond doubt that accused 1 to 3 alone were there in the house in between 9 a.m. to 10.45 a.m. on 14.01.2022 and they did not explain what transpired within that time and how come the body of Santha kumari on the attic of their residence. The accused cleverly put the key on the outer door , but they failed to explain how did the key belonged to accused came on the door itself. As I have observed above, there is every evidence available in abundant to conclude the guilt of accused and it is proved that accused have committed murder of Santha Kumari in a brutal manner. All the 51 photographs would prove the manner in which she was killed

and it also show how a human can be cruel enough to kill a hapless and aged woman for her gold ornaments. Therefore, I find that accused 1 to 3, in pursuance of the conspiracy, committed the offence of murder U/S 302 IPC.

108. After having committed the murder, in pursuance of the conspiracy, accused 1 to 3 caused the evidence of commission of murder to disappear with intention of screening themselves from legal punishment. It is accused 1 to 3 only, who have access to the attic of their residential house in which body was concealed with an intention to cause disappearance of evidence of murder. Soon after hiding the body they fled from the scene of crime with the robbed material objects and their personal belongings . Therefore, I find that accused, in pursuance of their conspiracy committed the offence punishable U/S. 201 of IPC.

109. It is proved beyond reasonable doubt that accused, in pursuance of their conspiracy committed robbery of gold ornaments worn by deceased Santha Kumari . Soon before Santha Kumari was last seen by PW7 and PW8, she had worn the gold ornaments including the nose-pin , but when the body

was taken to inquest, all the gold ornaments except nose-pin worn by Santha Kumari were missing . In order to commit robbery accused committed murder of Santha Kumari by beating on her head with hammer and causing grievous hurt and also death at the time of committing robbery and hence accused have committed offence punishable U/S 397 IPC.

110. In the light of the above, it is to be seen from the facts and circumstances of this case and also the evidence discussed above that PW7 and PW8 have seen Santha Kumari before the occurrence and PW10 and PW 18 have seen accused 1 to 3 after commission of the crime. Within no time, accused after having committed robbery and murder they were sighted at the Anjana Jewelry where accused sold the robbed material object which would strengthen the last seen evidence of the above witnesses. Before 9 a.m. the accused persons were last seen with the deceased and at 11 a.m. accused 1 to 3 were in a hurry to flee from the scene of crime and they left with their belongings. Accused have not offered any plausible explanation as to what has happened to Santha kumari. Be it noted that only if the prosecution has succeeded in proving the

facts by definite evidence that the deceased was last seen alive in the company of the accused 1 to 3, a reasonable inference would be drawn against accused and then only onus can be shifted on the accused U/S 106 of the Evidence Act. The accused could not create any dent in the prosecution case at any point of time during the cross-examination of material witnesses. The defence of accused that they were somewhere at the time of commission of crime , somebody else might have killed Santha Kumari and kept the body in their house, the guest workers with whom Santha Kumari agreed to sell the property might have killed her etc. are of no avail and there is no evidence at all to draw any inference. Nothing is brought to disbelieve the version of prosecution witnesses, to challenge their creditworthiness and to shaken the prosecution evidence including the material objects . Thereby prosecution could successfully prove the guilt of accused beyond any reasonable doubt U/Ss. 120B, 342, 302, 201 and 397 of IPC. Points 1 to 9 are found in favour of prosecution .

111. I find that accused 1 to 3 are guilty of the offence punishable U/Ss. 120B, 342, 302, 201 and 397 of IPC and they are convicted thereunder under Section 235(2) Cr.P.C.

112. This is not a fit case to release the accused on probation and apply any of the benevolent provisions of the Probation of Offenders Act and therefore, I am not inclined to invoke such provisions.

Dictated to the Confidential Assistant, transcribed by her, revised and corrected by me and pronounced in Open Court on this, the 16th day of May, 2024.

Sd/
BASHEER.A.M.
ADDITIONAL SESSIONS JUDGE

113. The case was posted for evidence to be adduced by both sides with respect to hearing on question of sentence as per the decision in **Sundar @ Sundar Rajan v. State by Inspector of Police (2023(3) KHC 6287)** .

114. Heard learned Public Prosecutor and learned counsel appearing for accused 1 to 3. It is submitted for prosecution that accused are having criminal antecedents and they used to involve in similar crimes. On the other hand learned counsel for accused 1 to 3 submitted that no documents are produced to prove previous conviction. PW34 deposed that accused 1 and 2 are involved in crime No. 76/2021 of Kovalam police station for which Crime U/S. 174 Cr.P.C. was registered initially and subsequently charge sheet was filed and SC 2628/2022 is pending before Special Court for Women and Children, Neyyattinkara. The certified copies of FIR and FIS were marked as Ext.P61 series (2 numbers) . Ext.P61 series prove the same. The certified copy of the charge sheet in SC 2628/2022 shows that accused 1 and 2 alleged to have committed offence punishable U/Ss. 449, 324, 302, r/w. 34 of IPC. Shockingly, the occurrence took place in Crime 76/2021 was on 14.1.2021 and

the allegation is that Rafeeka, (the same accused in this case) beat Geethu, 14 years, with a hammer on her head . Therefore, the learned public prosecutor submitted that the same *modus operandi* was done in the instant case that too exactly on 14.1.2021, Makaravilakku day. The using of hammer, hitting on head with hammer and selecting a particular day will lead to a presumption that accused are repeat or habitual offenders of murder. Ext.P62 series (2 numbers) were marked through PW34 which would go to show that accused 1 to 3 are involved in Crime No. 68/2022 of the Kovalam Police Station. The alleged offence in Crime No. 68/22 is Sections 450, 376(2)(n), 376(3) of IPC and Sections 4 (2) r/w 3(a), 6 r/w 5 (I), 21(i)of POCSO Act. SC 1337/2022 is pending before the Fast Track Special Court, Neyyattinkara for Crime No. 68/22 . The copy of final report in SC 1337/2022 is marked as Ext.P63. The allegation in SC 1337/2022 is that the above said Geethu, 14 years was raped by Shafeek, A3 in this case. I must bear in my mind that accused were not convicted in these two cases. Therefore, I am not inclined to look into the merits of the other two cases. At any rate, in this circumstance, there is

no scope for reformation of the accused 1 to 3. If these persons are not dealt with extreme penalty the society will have to suffer.

115. Accused are in custody. They are homeless and jobless people. I find substance in the submission on behalf accused that if excessive fine amount is imposed the same can not be recovered from them. Therefore I am inclined to impose lesser amount as fine. Accused have no family members, relatives or close friends to file affidavit or adduce evidence on the matter of sentence. They also did not produce any evidence.

116. The punishment for murder prescribed u/s 302 I.P.C is death or imprisonment for life and fine. U/S 354(3) Cr.PC it is stated that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or for a term of years, the judgement shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for the sentence. It is clear that imprisonment for life is the rule and death sentence the exception, which can be awarded for special reasons.

117. The **Hon'ble Supreme Court, in Machhi Singh .V. State of Punjab (AIR 1983 SC 957)** and **Bachan Singh. V state Of Punjab (AIR 1980 SC 898)** laid down that life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an inadequate punishment and having regard to the exceptional circumstances of the crime I am inclined to imposes maximum punishment.

118. In Machhi Singh (Supra) the Hon'ble Supreme Court considered 5 category of situations while dealing with the balance sheet of aggravating and mitigating circumstances .

They are:

- i. Manner of commission of crime. Here, the commission of crime was extremely brutal .
- ii. Motive. The motive was to rob the gold ornaments of the victim .
- iii. Antisocial or socially abhorrent nature of crime .

In this case accused after having involved wayward life, continued to involve in similar

crimes which is antisocial, according to the report of the Probationary Officer.

- iv. Magnitude of the crime . Herein the cold blooded murder shocked the conscience of the society which spread a message in Kerala that no aged woman who lives alone in the house is safe, especially in a situation where the nuclear families are on the rise and resultantly the parents are left alone at home.
- v. Personality of a victim of murder. The deceased Santha kumari had a pious soul and extended help to accused as per the available evidence. She used to appear in public wearing Saree, gold ornaments etc. She has a daughter who lives in Andha Pradesh and a son who is running a hotel. As discussed in detail hereinbefore, all these five categories are suited to the facts of this case and in proof of aggravating circumstances projected in this case.

119. In **Ram Naresh v. State of Chhattisgarh, (2012) 4 SCC 257**, the Apex Court mentioned aggravating and mitigating circumstances while considering whether death penalty is to be imposed. Out of aggravating circumstances, in consonance with the principles of the dictum, those applicable to this case are,

- 1) The offences relating to the commission of heinous crimes like murder, robbery etc.
- 2) The offences were committed while the offender was engaged in the commission of another serious offence. Death was caused in order to commit robbery, in this case.
- 3) The offence was committed outrageously, for want only while involving inhumane treatment and torture to the victim.
- 4) The victim was innocent. The victim used to go to the house of accused. She trusted them and even had occasion to allow A1 to sleep in the house of victim. She trusted the culprits blindly and believed them

despite after warning given by neighbours about their antecedents.

- 5) The murder was committed for a motive which evidences total depravity and meanness.
- 6) It is a cold-blooded murder without provocation.
- 7) The crime is committed so brutally that pricks of shocks not only the judicial conscience but even the conscience of the society.
8. The robbery was committed after committing murder of a septuagenarian woman.
9. The offence was committed with an intention to create fear, psychosis in the public at large and was committed in a thickly populated area.
10. The death was caused by using the device, a hammer which is hazardous to the life of human being.
11. The offence was committed outrageously for want only while involving inhuman treatment and torture to the victim.

12. The offence was committed while the victim was in friendly terms with accused persons and till the time of death the victim believed accused persons.
13. The victim was innocent, helpless who relied upon the trust of relationship of a neighbour .
14. It was a cold blooded murder without provocation.
16. Accused had targeted two other elderly people in the same locality who deposed the same before this court.
17. Accused were well planned to execute their target . There is substance in the submission by learned Public Prosecutor, after having committed murder of a girl who was suffering from some illness they left that area and occupied this rented house one month prior to this crime and they executed the target within 14.1.2022, squarely within one year of the earlier crime, ie; 14.1.2021. The report of District Probation Officer will fortify this view because it is reported that accused used to occupy a rented house and will leave that place after committing the crime.

120. The mitigating circumstances propounded in the same judgment are compared with instant case as follows:

- 1) *The manner and circumstances under which the offence was committed like extreme mental or emotional disturbance.* In this case accused have no such defence.
- 2) *The age of the accused.* In the instant case accused 2 and 3 are 25 years old . A1 is aged about 50. They are healthy also.
- 3) *The chance of the accused of not indulging in commission of the crime again and the possibility of the accused being reformed and rehabilitated.* As per the report of the Probationary Officer there is no such chance and they are repeat offenders. Including this case, they are involved in three haeneous crimes.
- 4) *The condition of the accused show that they are mentally defective.* Accused in this case have no such defence.
- 5) *The crime was not committed in premeditated manner.* In this case accused have conspired to rob the gold ornaments and murder was committed in pursuance of

the common intention of all. It was well planned murder.

6) Solitary evidence of eye witness.

All these circumstances, therefore, are not applicable to this case .

121. In **Shankar Kishanrao Khade v. State of Maharashtra, (2013) 5 SCC 546**, the Apex Court has laid down grounds for aggravating and mitigating circumstances and the theory of Crime test and RR test. The aggravating circumstances carved out are.

- 1) The cruel diabolic, brutal depraved and gruesome nature of the crime.*
- 2) The crime result in public abhorrence shocks the judicial conscience or the conscience of the society or the community.*
- 3) The reform or rehabilitation of the convict is not likely or that he would be a menace to the society.*
- 4) The victims were defenceless.*
- 5) The crime was either unprovoked or that it was*
- 6) Premeditated.*

All these conditions are proved to be in favour of the prosecution in this case in view of the discussion made in the foregoing paragraphs.

122. In **Susheel Murmu v. State Jharkhand, (2004) SCC Cri. 529** the Apex Court held, *'In rarest of rare cases the collective conscience of the society is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The Apex Court considered the circumstances that may entertain such sentiments of the community including.*

- (1) *When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.*
- (2) *When the murder is committed for a motive which evinces total depravity and meanness misusing the position of trust etc.'*

123. At this juncture, I am referring two decisions of the Apex Court . The first one is **Rudrappa Ramappa Jainpur and others v. State of Karnataka AIR 2004 SC 4148**, which held that “each case must rest on its own facts and the mere similarity of the facts in one case cannot be used to determine a conclusion of fact in another”. The second decision is **Parasa Raja Manikyala Rao v. State of Andhra Pradesh, AIR 2004 SC 132 (para 9)** which held that *‘Each case , more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such case, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive’* .

124. On an over all view of all the circumstances in this case and on weighing the aggravating circumstances and in the absence of any mitigating circumferences I have no

hesitation to hold that this case is one among the 'rarest of rare' cases, as discussed above, in which the lesser alternative is unquestionably foreclosed and special reasons do exist in this case within the meaning of S.354(3) Cr.P.C. to award death penalty to the accused for the offence U/S. 302 of Indian Penal Code.

125. In **Muthuramalingam and others vs. State represented by Inspector of Police, AIR 2016 SC3340**, the Apex Court held that "*We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentences awarded to the prisoner for the other*". The Apex Court further held that "*The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Sec. 31 of the Cr.P.C. The court can, therefore, legitimately*

direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Sec. 31”.

126. After analyzing all the relevant materials let in by the prosecution and in the light of the well established principles including aggravating and mitigating circumstances as laid by the Constitution Bench in Bachan Singh’s case and explained in Machhi Singh’s case I conclude, the murder committed by the all accused in pursuance of conspiracy is extremely brutal and diabolical one. The medical evidence alone will prove the brutality of crime. The Doctor who conducted postmortem on the body of Santha has deposed specifically the brutality of the crime. At the time of examination of the body a cream coloured cotton saree with red and black designs having peacock pattern in maroon and and black colour border on either side was seen tied around neck with a sample knot on left side of neck forming a loop around neck of 33 cm. She further stated that the free portion was seen wound around the right side of chest through right axilla and it was seen tied with the other

free portion on the right side of back of chest with a reef knot forming a loop of circumference 61 cm and a short free end of 6 cm. The long free end of reef knot was seen wound around the left side of front of chest to the front of chest and was seen folded into two and inserted into mouth. (5cm long folded state). The free portion coming out from mouth had length of 195 cm. Soon after frinedly talking for about an hour, without any empathy or remorse they took the victim inside their house, all the accused turned cruel and bashed the victim's head and forehead with hammer. Thereafter they smothered and strangulated the victim with extreme cruelty. All the photographs would also prove the same. The cold blooded murder is committed with deliberate design in order to rob her gold ornaments. The magnitude of the crime is also enormous since the deceased reposed trust in them until she was strangulated. The victim is innocent who has not provided a provocation for murder. Further, the victim was unaware of the abrupt plan of killing and after bolting the door from inside, she had no other way to go out or resist except subjecting herself to fall prey. Having regard to the brutal injuries caused on the

body, I conclude that it is a gravest case of extreme culpability. Accused have no permanent place or abode. They are healthy and young. As per report of the Probation Officer Thiruvananthapuram Dist. accused are not interested to do any job or involve in any avocation. Their close relatives are not having any communication with accused. Accused just wanted to roam around, lead wayward life and commit heinous crimes and to meet that end they will do anything as per report. The police also filed report in the same line. They cannot be reformed. The learned prosecutor submitted that they killed a girl aged 14 on 14th (14.1.2021) bashing with a hammer on her head. In the same manner, it is proved in this case, accused bashed on head of Santhakumari with a hammer and killed. The motive of this psychopathic killers is to have wrongful gain and to meet that end they in furtherance of their common intention conspired together to do the illegal act. As argued by the learned Public Prosecutor if the accused is permitted to be a part of the society it would be a threat to the society. Considering the above facts and circumstances, I am of the view that this Court will be failing in the duty if the

maximum punishment prescribed under the law is not imposed on the accused. In the circumstances, death sentence alone would be proper and legal. Taking into consideration of all the facts and materials, it is crystal clear that the entire act of accused amounts to a barbaric and inhuman behaviour of the highest order. The manner in which the murder was carried out in the present case is extremely brutal gruesome, diabolical and revolting as to shock the collective conscience of the community.

127. I hereby place appreciation to both learned legal aid counsel who contributed best service and cooperation throughout the trial. I also appreciate the investigating officer who has done a brilliant job in the speedy recovery of gold ornaments robbed and also arresting the accused the very next day of murder. I also appreciate the entire police team who could successfully bring the truth behind the death of a hapless woman .

In the result, the accused 1 to 3 are sentenced as follows:

1. Accused 1 to 3 are sentenced to undergo rigorous imprisonment for a period of 5 (five) years each, and fine of Rs. 5,000/-(Rupees five thousand only) each, for offence U/S 120B of IPC , and in default of payment of fine, they shall undergo imprisonment for a period of three months each.
2. Accused 1 to 3 are sentenced to undergo rigorous imprisonment for a period of 1 (one) year each, and fine of Rs. 1,000/-(Rupees one thousand only) each, for offence U/S 342 of IPC , and in default of payment of fine, they shall undergo imprisonment for a period of three months each.
3. Accused 1 to 3 are sentenced to undergo rigorous imprisonment for a period of 10 (ten) years each, for offence U/S 397 of IPC.
4. Accused 1 to 3 are sentenced to undergo rigorous imprisonment for a period of 5 (five) years each, and fine of Rs. 5,000/-(Rupees five thousand only) each, for offence U/S 201 of IPC , and in default of payment of fine, they

shall undergo imprisonment for a period of six months each.

5. For the offence U/S 302 of the Indian Penal Code the accused 1 to 3 are sentenced to death and I direct that accused 1, 2 and 3 be hanged by the neck till they are dead. Further, they are sentenced to pay a fine of Rs. 10,000/- (Rupees ten thousand only) each. In default of payment of fine, the accused shall undergo rigorous imprisonment for 1 (one) year each for the said offence.
6. The proceedings shall be submitted before the Honourable High Court of Kerala for confirmation of the death sentence U/S 366 Cr.P.C and the death sentence shall not be executed unless it is confirmed by the Honourable High Court.
7. The term sentences imposed as above shall run concurrently and it is allowed to be set off against the substantive term of imprisonment U/S 428 of Cr.P.C. All the three of them were in custody from 15.01.2022 till date, ie., 859 days each in custody.

8. In accordance with the mandate as contained in Sec. 363(4) Cr.P.C. the accused is informed of his right of appeal before the Honourable High Court of Kerala and if they wish to file an appeal it should be filed within 30 days in accordance with Article 115(a) of the Limitation Act, 1963.
9. The accused 1 to 3 are committed to the Central Prison, Thiruvananthapuram under a warrant in Form No. 40 of Cr.P.C (2nd Schedule) in accordance with Sec. 366 (2) Cr.P.C.
10. Material objects produced and marked as M.O.5 to M.O.9, gold ornaments belonging to the victim and M.O. 11 purchased out of the sale proceeds of the robbery, shall be handed over to PW5 and PW17, the legal heirs of the victim, after appeal period is over. M.O.10, the hammer shall be deformed , confiscated and sold in auction, on expiry of appeal period. The other material objects, M.Os.1 to 4 and M.Os. 12 to M.O. 34 , being valueless, shall be destroyed on expiry of period of appeal. If appeal

is preferred, disposal of the material objects will be subject to the finding of the appellate court.

11. The M.Os shall be retained intact until further orders from the Honourable High Court of Kerala.

Dictated to the Confidential Assistant, transcribed by her, revised and corrected by me and pronounced in Open Court on this, the 22nd day of May 2024.

Sd/-
BASHEER.A.M.
ADDITIONAL SESSIONS JUDGE

APPENDIX

Exhibits for the prosecution :

P1	15/01/2022	First Information Statement.
P2	15/01/2022	Scene Mahazar prepared by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam.
P3	19/03/2022	Scene Mahazar Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam.
P4	15/01/2022	Inquest Report.
P5	Dated nil	Receipt given by Sanil Kumar. A, at the time of receipt of the dead body of Santha.
P6	Dated nil	Third party Kaichittu given by Sanal Kumar. A, by receiving key of house.
P7	24/01/2022	Rent agreement.
P8	22/01/2022	Certificate CCTV footage installed at the jewellery.
P9	19/01/2022	Recovery Mahazar prepared by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam.

P9(a)	19/01/2022	Statement of Accused “ഞാൻ സ്വർണ്ണം വിറ്റ വിഴിഞ്ഞത്തെ ജില്ലാറി എനിക്ക് ഓർമ്മയുണ്ടെന്നും എന്നെ കൂട്ടിക്കൊണ്ടുപോയാൽ ഞാൻ ആ ജില്ലാറി കാണിച്ചു തരാം .”
P10	14/01/2022	Hotel Amala’s Residency Register.
P10(a)	01/01/2022	Hotel Amala’s Residency Register.
P11	14/01/2022	Copy of Registration card Amala’s Residency.
P12	14/01/2020	Receipt.
P13	Dated Nil	Copy of Identity card of Al Ameen. V.K and Aadhar Card of Rafeekha.
P14	14/01/2022	Bill.
P15	14/01/2022	Journey Reservation Coupon of Megha Tours and Travels.
P16	21/01/2022	Certificate signed by Viswanathan, appraiser.
P16(a)	21/01/2022	Certificate signed by Viswanathan, appraiser.
P17	15/01/2022	Mahazar prepared by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam.
P18	23/01/2022	Recovery Mahazar prepared by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam.
P19	23/01/2022	Recovery Mahazar prepared by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam.
P20	23/01/2022	Recovery Mahazar prepared by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam.
P21	24/01/2022	Mahazar to recover the rent agreement.
P22	16/01/2022	Mahazar looks at the collected samples.
P23	16/01/2022	Mahazar
P24	Dated nil	Envelop of MO17 and MO18.
P25	Dated nil	Envelop of MO19 and MO20.
P26	Dated nil	Envelop of MO21 and MO22.
P27	20/01/2022	Recovery Mahazar
P28	24/01/2022	Recovery Mahazar
P29	24/01/2022	Recovery Mahazar

P30	24/01/2022	Recovery Mahazar
P31	18/01/2022	Scene recovery Mahazar
P32	16/01/2022	Postmortem Certificate prepared by Dr. Salini. R, Assistant Professor & assistant Police Surgeon, Department of Forensic Medicine, Govt. Medical College, Thiruvananthapuram.
P33	Dated nil	Envelop of FSL.
P34	17/03/2022	Photos.
P34(a)	17/03/2022	DVD.
P34(b)	17/03/2022	Certificate submitted under section 65 B Indian Evidence Act issued by Sri. Spensar Bose, Police Photographer, District Police Office, Thiruvananthapuram City.
P35	27/01/2022	Ownership Certificate issued from Thiruvananthapuram Corporation to Madhavan Nadar and Kamalam.
P36	18/03/2022	Route map.
P37	18/03/2022	Scene plan.
P38	15/01/2022	First Information Report.
P39	15/01/2022	Property list (T.No.27/22)
P40	15/01/2022	Property list (T.No.24/22)
P41	15/01/2022	First Information Report.
P42	15/01/2022	Arrest memo of A1, Shafeek.
P42(a)	15/01/2022	Inspection memo of A1, Shafeek.
P42(b)	15/01/2022	Check list on production of A1 before Magistrate.
P42(c)	16/01/2022	Certificate of physical examination by a Medical Officer of A1, Shafeek.
P42(d)	Dated Nil	Arrest intimation of A1, Shafeek.
P43	15/01/2022	Arrest memo of A2, Al Ameen.
P43(a)	15/01/2022	Inspection memo of A2, Al Ameen.
P43(b)	15/01/2022	Check list on production of A2 before Magistrate.
P43(c)	16/01/2022	Certificate of physical examination by a Medical Officer of A2, Al Ameen.

P43(d)	Dated Nil	Arrest intimation of A2, Al Ameen.
P44	15/01/2022	Arrest memo of A3, Rafeeka.
P44(a)	16/01/2022	Certificate of physical examination by a Medical Officer of A3, Rafeeka.
P44(b)	15/01/2022	Inspection memo of A3, Rafeeka.
P44(c)	15/01/2022	Check list on production of A3 before Magistrate.
P44(d)	Dated nil	Arrest intimation of A3, Rafeeka.
P45	15/01/2022	Property list (T.No.37/22).
P46	25/02/2022	List of documents produced by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam Police Station.
P47	15/01/2022	Property list (T.No.35/22)
P48	16/01/2022	Property list (T.No.32/22)
P49	16/01/2022	Property list (T.No.31/22)
P50	15/01/2022	Property list (T.No.23/22).
P51	19/01/2022	Property list (T.No.36/22)
P52	22/01/2022	Property list (T.No.133/22)
P53	18/01/2022	Property list (T.No. 54/22)
P54	20/01/2022	Third party Kaichittu.
P55	14/02/2022	Forwarding note.
P56	14/02/2022	Forwarding request.
P57	18/10/2023	FSL Report.
P58	17/10/2023	FSL Report.
P59	25/03/2024	Chemical Examination Report prepared by Haseena. S, Assistant Chemical Examiner.
P60	15/01/2022	Collection of evidence.
P60(a)	15/01/2022	Specimen seal.
P61	14/01/2021	First Information Report of Kovalam Police Station.
P61(a)	14/01/2022	First Information Report of Kovalam Police Station.
P62	17/01/2022	First Information Report of Kovalam Police Station.
P62(a)	17/01/2022	Final Report in Crime.No.68/22

P63	14/01/2022	Final Report in Crime No.76/2021 of Kovalam Police Station.
P64	11/04/2022	Report of correct time of the crime submitted by Sri. Prajeesh Sasi, Sub Inspector of police.
P65	07/04/2022	Report submitted by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam to amend Section 394 r/w 34 IPC and add Section 397 IPC.
P66	11/04/2022	Report submitted by Sri. Prajeesh Sasi, Sub Inspector of Police, Vizhinjam to correct the date in rent agreement.
P67	16/01/2022	Proceedings of Judicial I Class Magistrate, Temporary Court, Neyyattinkara.

Exhibits for the Defence :

D1	Dated nil	Portion of 161 statement of PW1 “മുൻവശം വാതിൽ താക്കോലോടു കൂടി തുറന്നു കിടക്കുന്നതു കണ്ട് എന്ന് ഞാൻ തെറ്റായി പറഞ്ഞതാണ്.”
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Witness for the prosecution:

PW1	04/03/2024	Binu.
PW2	30/03/2024	Sreerag
PW3	0/03/2024	Njanasikhamony.
PW4	05/03/2024	Vijayan.
PW5	30/03/2024	Sanalkumar.
PW6	06/03/2024	Sreekumar.
PW7	23/03/2024	Rema.
PW8	23/03/2024	Aswathy.
PW9	07/03/2024	Mahesh.
PW10	07/03/2024	Balakrishnan.
PW11	11/03/2024	Sivakumar.
PW12	11/03/2024	Vikesh. V.
PW13	11/03/2024	Kumar. R.

PW14	11/03/2024	Anandhu Anilkumar, General Manager, Amalas Residence.
PW15	12/03/2024	Babu. P, Security, Megha Travels.
PW16	12/03/2024	Ravilal, Manager, Sivasakthi Travels.
PW17	14/03/2024	Sivakala.
PW18	14/03/2024	Santha. G.
PW19	14/03/2024	Jagadeesh. J., Driver, Remya Tours and Travels.
PW20	14/03/2024	Viswanathan. P., Appraiser.
PW21	15/03/2024	Selvaraj, Civil Police Officer, Vizhinjam.
PW22	15/03/2024	Ajayakumar, Civil Police Officer, Vizhinjam.
PW23	15/03/2024	Sreekumar, Civil Police Officer, Vizhinjam.
PW24	16/03/2024	Kalayani. S. Nair, Medical Officer, General Hospital, Thiruvananthapuram.
PW25	16/03/2024	Benedict, Assistant Sub Inspector of Police, Vizhinjam Police Station.
PW26	16/03/2024	Sabu, Civil Police Officer, Vizhinjam.
PW27	16/03/2024	Karthikeyan.
PW28	18/03/2024	Dr. Salini, Assistant Professor & Assistant Police Surgeon of Department of Forensic Medicine, Govt. Medical College Hospital, Thiruvananthapuram.
PW29	19/03/2024	Darsana, Rural DCRB Scientific Officer, Thiruvananthapuram.
PW30	19/03/2024	Spenser Bose. B.S, , City Police photographer, Thiruvananthapuram.
PW31	19/03/2024	R. Rajendran, Revenue Officer Grade – II, Vizhinjam Zonal Office.
PW32	20/03/2024	Jiji Mohan. A.M., Special Village Officer, Vizhinjam Village Office.
PW33	21/03/2024	Ajai. T.K., Station Officer, Fire and Rescue Station, Vizhinjam.
PW34	06/04/2024	Prajeesh Sasi, Circle Inspector of Police, Vizhinjam Police Station.

Witness for Defence : Nil

Material objects:

MO1	Red colour blouse.
MO2	Meroon colour skirt.
MO3	Blood stained brazier.
MO4	Saree.
MO5	Gold chain with locket.
MO6	Gold bangle.
MO7	Gold kammal with matty.
MO8	Gold bangle.
MO9	Gold ring.
MO10	Iron hammer.
MO11	Kammal inside the box.
MO12	Jewellery box.
MO13	Pendrive.
MO14	Nighty.
MO15	Jeans.
MO16	Towel.
MO17	Glass bottle.
MO18	EDTA Tube
MO19	EDTA Tube
MO20	Glass bottle.
MO21	EDTA Tube
MO22	Glass bottle.
MO23	Shorts.
MO24	Nail clipping from both hands of the body.
MO25	EDTA bottle for DNA analysis.
MO26	Vaginal sapps.
MO27	Gouze soaked in blood.
MO28	Envelop with blood stain collected from the room.
MO28(a)	Blood stained glouze.
MO29	Envelop
MO29(a)	Blood stained glouze.

MO30 Envelop
MO30(a) Blood stained glouze.
MO31 Envelop
MO31(a) Cotton cloth
MO32 Envelop
MO32(a) Plastic bottle.
MO33 Kaili.
MO34 Kaili.

//true copy//

Id/-
ADDITIONAL SESSIONS JUDGE.
By Order

SHERISTADAR.

**CALENDAR STATEMENT IN SESSIONS CASE No.1885/2022 OF THE
ADDITIONAL SESSIONS COURT, NEYYATTINKARA**

Serial Number : Sessions Case No. 1885/2022
C.P.No. 22/2022 of the Judicial I Class
Magistrate Temporary Court, Neyyattinkara

Name & Crime No. of the : Crime No.79/2022 of Sub Inspector of police,
Police Station Vizhinjam

Description of the Accused:

Name : A1- Rafeeka, A2 - Al Ameen, A3 – Shafeek.
Father's Name : A1- W/o Ismail, A2 - Abubekar, A3 – Ismail.
Residence A1 : House No.44, Township Colony, Vizhinjam.
A2 : Vallikunnathu Veedu, Vilayur West, Vilayur,
Pattabi, Palakkad.
A3 : House No.44, Township Colony, Vizhinjam.
Occupation : --
Caste or Religion : --
Age : A1-49/2022, A2-25/2022, A3-25/2022

Date of :

Occurrence : 14/01/2022
Complaint : 15/01/2022
Apprehension : A1- 15/01/2022, A2- 15/01/2022
A3- 15/01/2022
Release on Bail : --
Commitment : 10/08/2022
Commencement of trial : 04/03/2024
Date on which : 12/04/2024
trial closed
Sentence or Order : 22/05/2024
Name & Designation of the : Sri. Mahesh. M, Judicial I Class Magistrate ,
committing Magistrate Temporary Court, Neyyattinkara
Explanation for delay :

**A.M. BASHEER,
ADDITIONAL SESSIONS JUDGE.**

Typed by : Sindhu
Compared by : Biju

Fair/ Copy of JUDGMENT IN
Sessions Case 1885/2022
Dated: 22/05/2024