IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

THURSDAY, THE 25TH DAY OF APRIL 2024/5TH VAISAKHA, 1946

D.S.R.NO.1 OF 2018

CRIME NO.501/2015 OF MANARCADU POLICE STATION, KOTTAYAM AGAINST THE JUDGMENT DATED 21/03/2017 IN SC NO.320 OF 2015 OF DISTRICT COURT & SESSIONS COURT, KOTTAYAM ARISING OUT OF THE ORDER/JUDGMENT DATED IN C.P.NO.30 OF 2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS, KOTTAYAM

PETITIONER:

STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
MANARCADU POLICE STATION.

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR

RESPONDENT:

NARENDRA KUMAR
AGED 26 YEARS, S/O.KAILASH CHAND, REHANA,
NORTH NEW AMBEDKAR NAGAR, FIROZABAD DISTRICT,
UTHAR PRADESH STATE.

BY ADV.SRI.M.P MADHAVANKUTTY
BY ADV.SRI.MATHEW DEVASSI(K/000548/2017)
BY ADV.SRI.ANANTHAKRISHNAN A. KARTHA (K/001032/2016)

THIS D.S.R. HAVING BEEN FINALLY HEARD ON 09.04.2024 ALONG WITH CRL.A.NO.319/2017, THE COURT ON 25.04.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

THURSDAY, THE 25TH DAY OF APRIL 2024/5TH VAISAKHA, 1946

CRL.A.NO.319 OF 2017

CRIME NO.501/2015 OF MANARCADU POLICE STATION, KOTTAYAM
AGAINST THE JUDGMENT DATED 21/03/2017 IN S.C.NO.320 OF 2015
OF DISTRICT COURT & SESSIONS COURT, KOTTAYAM ARISING OUT OF
THE ORDER/JUDGMENT DATED IN C.P.NO.30 OF 2015 OF JUDICIAL
MAGISTRATE OF FIRST CLASS, KOTTAYAM

APPELLANT/ACCUSED:

NARENDRA KUMAR
AGED 28 YEARS
S/O. KAILASH CHAND, REHANA, NORTH NEW AMBEDKAR
NAGAR, FIROZABAD DISTRICT,UTHAR PRADESH STATE.

BY ADV.SRI.M.P MADHAVANKUTTY
BY ADV.SRI.MATHEW DEVASSI(K/000548/2017)
BY ADV.SRI.ANANTHAKRISHNAN A. KARTHA(K/001032/2016)
BY ADV.SMT.REMYA M. MENON(K/001042/2022)

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN - 682 031.

BY SRI.ALEX M. THOMBRA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.04.2024 ALONG WITH D.S.R.NO.1/2018, THE COURT ON 25.04.2024 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The appellant Narendra Kumar, who hails from Firozabad in the State of Uttar Pradesh, was a young man of 27 years in 2015 when he secured a job as an Assistant at Wash World Laundry that was being run by its proprietor Praveenlal along with his parents, Lalasan and Prasannakumari, and his brother Bipinlal. Two years later, he was convicted under Section 302 of the Indian Penal Code [hereinafter referred to as the 'IPC'], and sentenced to death, for the brutal murder of his employer Praveenlal, and his parents Lalasan and Prasannakumari. He was also separately convicted and sentenced for the offences under Sections 397, 457, 380 and 461 of the IPC. While he has preferred this Appeal challenging his conviction and sentence by the trial court, the Sessions Judge, Kottayam has forwarded the entire case records to this Court for confirmation of the death sentence as provided in Section 366 (1) of the Code of Criminal Procedure [hereinafter referred to as the 'Cr.P.C.'].

The prosecution case

2. The case of the prosecution was that the appellant Narendra Kumar had secured employment at Wash World Laundry at Vijayapuram

Panchayats, Parampuzha, Kottayam by furnishing a false name of “Jaisingh” to the proprietor Praveenlal. Within a couple of months of securing the said employment, and between 11.10 pm on 16.05.2015 and 12.34 am on 17.05.2015, the appellant committed the murder of Praveenlal, his father Lalasan and his mother Prasannakumari, by inflicting injuries on their heads and necks using an axe and a knife respectively. He then committed robbery of a gold chain and ear studs weighing 22.900 gms that was worn by the deceased Prasannakumari, the latter by cutting her ear lobes. He also committed theft of mobile phones and tablet phones owned by Praveenlal and thereafter trespassed into the neighbouring house of the proprietor’s family, broke open a wooden almirah therein and committed theft of gold bangles weighing 24.500 gms and 11.800 gms respectively, a gold ring weighing 3.900 gms, a stone laid ring weighing 1.700 gms, mobile phones, ladies and gents watches, trolley bag, torches, registers, files and Rs.3000/- that was kept on a table there. The appellant was therefore charged with having committed the offences punishable under Sections 302, 397, 457, 380 and 461 of the IPC.

The investigation

3. The FI Statement (Ext.P1) was recorded by PW52 P.C. John, the SI of Police, Manarcad Police Station, from CW1 Blessen, the nephew of the deceased Lalasan and based on it the crime was registered as Crime No.501/2015 of Manarcad Police Station under Sections 302 and 392 IPC.

Ext.P41 is the FIR. Inquests were then conducted on the bodies of the deceased and the inquest reports pertaining to Praveenlal, Lalasan and Prasannakumari are produced as Exts.P6, P7 and P8 respectively. As the appellant was found to have absconded, a team of police officers was deputed to search for him and the appellant was eventually arrested at 3.30 pm on 22.05.2015 from Firozabad. Based on statements obtained from him, the stolen articles were recovered from his house in Firozabad under Ext.P35 seizure mahazar. The appellant was thereafter brought to Kottayam and produced before the Judicial First Class Magistrate Court-I on 25.05.2015. He was then remanded into police custody. Based on information given by him while in police custody, the police recovered the dhothi that he had worn on the night of the incident from a nearby plot. He was later remanded to judicial custody.

Proceedings before the trial court

4. The appellant pleaded not guilty to the charges against him. In the trial that followed, the prosecution examined 56 witnesses as PW1 to PW56 and marked Exts.P1 to P60 series of documents. The witnesses also identified MO's 1 to 42 series. Thereafter the appellant was examined under Section 313 Cr.P.C and also heard under Section 232 Cr.P.C. Not finding him entitled to an acquittal at that stage, the appellant was called upon to adduce evidence in his defence. Although he submitted a witness schedule citing two witnesses, the said schedule was subsequently

withdrawn. Exts.D1 to D7 were marked on the side of the defence. The trial court thereafter proceeded to hear the learned counsel on either side and convict the appellant as charged. The appellant was then heard under Section 235 (2) on the question of sentence. He was sentenced to be hanged by the neck till he is dead for the offence under Section 302 IPC. He was sentenced to undergo imprisonment for life for the offence under Section 397 IPC, imprisonment for life for the offence under Section 457 IPC, imprisonment for a term of 7 years and to pay a fine of Rs.50,000/- in default to suffer imprisonment for a period of two years under Section 380 IPC and imprisonment for a period of two years and to pay a fine of Rs.25000/- in default to suffer imprisonment for a period of one year for the offence under Section 461 IPC. It was further ordered to pay a victim compensation of Rs.3,00,000/- to PW3 being the only remaining member of the family of the victims as per Section 357A Cr.P.C. All the substantive sentences of imprisonment were ordered to run concurrently and the appellant was held entitled to a set off of the period undergone by him in custody as provided under Section 428 Cr.P.C. The sentence of death was directed to be not executed unless it was confirmed by the High Court under Section 366 (1) Cr.P.C.

The Appeal before us

5. In the appeal before us, we have heard Adv.Sri.M.P. Madhavankutty on behalf of the appellant and Sri.Alex M. Thombra, the

learned Public Prosecutor on behalf of the respondent State. We have also gone through the records of the trial court that were made available before us and through which we were meticulously taken by the learned counsel.

6. The submissions of the learned counsel for the appellant, briefly stated, are as follows:

- The arrest of the appellant at Firozabad was irregular and illegal in that it was carried out in violation of the provisions of Section 41B (*i*) of the Cr.P.C.; that the charges against the appellant were modified at various stages of the investigation and there was no independent witness to Ext.P36 custody memo and Ext.P37 arrest intimation.

- The recovery of MO1 trolley bag and the other MO's kept within it pursuant to the disclosure under Section 27 of the Evidence Act is challenged *inter alia* on the contention that it is wholly unbelievable that the appellant would have kept the trolley bag containing stolen articles in an open place in his own house. It is also pointed out that there were no independent witnesses in Ext.P35 recovery mahazar and hence the possibility of the objects having been planted in the house of the appellant cannot be ruled out. Similar objections also apply to the recovery of MO27 dhothi under Ext.P11 mahazar.

- Even assuming that the recovery of MO1 trolley bag and its contents is valid, there has been a wrong identification of some of the articles contained therein by the prosecution witnesses who identified them in evidence. Further the tissue samples obtained

from the gold ear studs could not be subjected to DNA analysis because they were preserved in formalin. The hair strand found entangled with the said ear studs, on analysis, was found to be only similar to that of the deceased Prasannakumari. Effectively therefore, there was no evidence to link the appellant with the murder of the deceased persons. Reliance is placed on the decisions in **Royson v. State of Kerala – [1990 KHC 528]; Sudheer Babu v. State of Kerala – [2013 (2) KLT 168]; Trimukh Maroti Kirkan v. State of Maharashtra - [(2006) 10 SCC 681]; State of Kerala v. Rejikumar - [2014 KHC 853]; George v. State of Kerala - [1994 KHC 221]** and **Mannyappanachari v. State of Kerala - [2022 (6) KHC 183]**.

- The examination of the appellant under Section 313 was not done in the manner envisaged under Section 281 (5) of the Cr.P.C. in that the translator did not put his signature in the record of examination. Reliance is placed on the decisions in **Dasan v. State of Kerala - [1986 KHC 153]** and **Chalam Sheikh v. State of Kerala - [2020 (4) KHC 378].**

- The DNA analysis and forensic examination were not done properly and in accordance with the procedures mandated in various scientific books. Reliance is placed on the decisions in **Rahul v. State of Delhi Ministry of Home Affairs - [2022 KHC 7172]; Manoj and Others v. State of Madhya Pradesh - [2022 SCC Online SC 677]; Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra - [AIR 2023 SC 2398]** and **Naveen @ Ajay v. State of Madhya Pradesh - [AIR 2023 SC 52]**.

- The chain of circumstances was not established to link the appellant with the crimes. Reliance is placed on the decisions in **Sanwat Khan and another v. State of Rajasthan - [1956 KHC 367]; Rajkumar @ Raju v. State NCT of Delhi - [2017 KHC 6045];**

State of Rajasthan v. Talaver and another - [2011 KHC 4535]; Panayar v. State of Tamil Nadu - [(2009) 9 SCC 152]; Neeraj Dutta v. State [Government of NCT of Delhi] – [2022 (7) KHC 647] and Pamanand @ Nandalal Bharati v. State of Utter Pradesh - [2022 KHC 7803].

7. Per Contra, the submissions of the learned Public Prosecutor, briefly stated, are as follows;

- The chain of circumstances to link the appellant with the crime clearly established in the instant case. It is pointed out that he was an employee at the laundry where the murder took place; that he absconded from there immediately after the incident; that he travelled to his native place in U.P. as evidenced by the CDR data pertaining to his mobile phone; that he was arrested there and the articles stolen from the premises of the deceased persons were recovered from his house based on his disclosure; that MO27 dhothi was also recovered based on his disclosure and scientific evidence also corroborates all of the above circumstances established against the appellant. Reliance is placed on the decisions in **Sunderlal v. The State of M.P. - [AIR 1954 SC 28]; Sathyanesan v. State of Kerala - [1984 KLT 774]; Maghar Singh v. State of Punjab - [(1975) 4 SCC 234]; Mukund alias Kundu Mishra and Another v. State of M.P. - [(1997) 10 SCC 130]** and **Ganesh Lal v. State of Rajasthan – [(2002) 1 SCC 731]**.

Discussion and Findings

8. On a consideration of the rival submissions, we are of the view that the impugned judgement of the trial court, to the extent it finds the

appellant guilty of the offences charged against him, does not call for any interference. That the murders of the deceased persons – Praveenlal, Lalasan and Prasannakumari – were committed in a most brutal and heinous manner is evident from the unimpeached testimony of PW44 Dr. Zachariah Thomas, the doctor who conducted the post mortem on the three deceased persons. He has clearly deposed that the injuries recorded by him in Exts.P30, P31 and P32 reports were the reason for the death of the aforesaid three persons. He has gone on to state that the mode of operation and nature of injuries were suggestive of homicide as the injuries were severe and the manner in which it was committed was brutal.

9. It is significant that there is no direct evidence to prove the incident. The prosecution case is built on circumstantial evidence. The pieces of evidence/circumstances relied on by the prosecution and which we find in their favour, to sustain the conviction by the trial court, are as follows:

(i) The appellant was last seen with the deceased persons.

(ii) The conduct of the appellant in absconding from the scene of crime immediately after the incident.

(iii) The recovery of the ear studs with tissue residue thereon, and a strand of hair that was found to be similar to that of the deceased Prasannakumari, consequent to the disclosure statement given by the appellant.

(iv) The recovery of the dhothi worn by the appellant on the night of the incident, which was found to have blood stains thereon that matched with the blood samples taken from the three deceased persons consequent to the disclosure statement given by the appellant.

(v) The medical evidence shows that the injury on the ear lobes could have been caused by the knife discovered at the scene of the crime.

(vi) The presumption that can be drawn under Section 114 of the Evidence Act and the absence of a valid explanation by the appellant in his examination under Section 313 of the Cr.P.C. for his possession of the stolen property.

10. As for the identity of the killer, almost all the witnesses who had some connection with the family of the deceased, such as PW3 Bipinlal, the brother of Praveenlal, PW21 Sindhu Pramod and PW22 Mallika Ramanan, both of whom were employed at the laundry, and PW17 a friend of Praveenlal who was with him in the evening before the murder, have deposed to having knowledge of the appellant being employed at the laundry shop managed by Praveenlal, and have also identified him in court. The suspicion against the appellant grew stronger when it was noticed that he had absconded from the place the same night. As a matter of fact, the appellant has neither denied his presence at the scene of the crime at the time when it happened ie. on the night of 16.05.2015/morning of 17.05.2015, nor the fact that he had absconded immediately thereafter to go to Firozabad. In the written statement given

by him under Section 313(5) of Cr.P.C., although he gives a different version of the happenings of that night, it is unambiguously stated that he was present at the laundry when the murders were committed by three strangers whose faces he could not see because they were covered. He goes on to state that after committing the murders, the strangers bundled him into a car, brought him a rail ticket to Ernakulam and asked him to leave the place; that accordingly, he travelled to Ernakulam and then left on a train to Agra. In other words, the appellant has virtually admitted that he was present at the scene of the crime when it happened.

11. Even otherwise, the evidence of PW6 Harisankar C, the housekeeping staff of KIMS Hospital that used to entrust the hospital clothes for washing at the laundry run by the deceased Praveenlal, shows that he had called Praveenlal at about midnight on 16.05.2015 when there was no response. However, when he called later in the same number, the call was answered by a Hindi speaking person whose words he could not comprehend. He apparently reported this to PW7 Renjith P.S who was the house keeping in-charge at KIMS Hospital, Kottayam. The latter deposed to having called on the same number at about 12.36 am on 17.05.2015 and talked to Lalasan who, after apparently talking to someone who was nearby, assured him that the washed clothes would reach the hospital in about 40 minutes. The making of the said calls have been proved through Exts.P25, P20 and P22(a) CDR's pertaining to the mobile phones used by Praveenlal, PW6 Harisankar and PW7 Ranjith, and marked through PW40,

PW34 and PW35 Nodal officers of the respective mobile companies. Thereafter, when the clothes did not reach the hospital, he called the number again but the phone was switched off. When he tried the number of Lalasan, he could not get him. He then tried to contact PW3 Bipinlal, the brother of the deceased Praveenlal, but could not get through to him. The evidence of PW6 and PW7 clearly suggests that the murders took place around the midnight of 16th/morning of 17th May, 2015 and that a Hindi speaking person had answered Praveenlal's phone that night. It also corroborates the evidence of the other witnesses, and the version of the appellant himself, that he was present at the scene of the crime around the time of the incident. It is trite that the last seen theory comes into play where the time gap between the point in time when the accused and deceased were last seen alive and the deceased is found dead is so small that the possibility of any other person other than the accused being the author of the crime becomes impossible **[See Vithal Eknath Adlinge v. State of Maharashtra – [(2009) 11 SCC 637]]**.

12. As regards the conduct of the appellant, Section 8 of the Indian Evidence Act states *inter alia* that the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. Illustration (i) to the said Section clarifies that when a person is accused of a crime, the facts that, after the commission of the alleged crime, he absconded, or was in

possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it are relevant. While there is evidence, including the admission of the appellant, to prove his abscondence from the scene of the crime, the other material circumstance that connects the appellant with the crime is the recovery of articles stolen from the person of the deceased Prasannakumari, as also from the neighbouring house where the deceased persons resided. These articles were recovered from the house of the appellant in Firozabad under cover of Ext.P35 mahazar which clearly records that the recovery was pursuant to the disclosure statement made by the appellant wherein he stated that if he was taken to his house, he would hand over the stolen articles. The recovery therefore validates that part of the statement made by the appellant to the investigating officer as envisaged under Section 27 of the Indian Evidence Act. As is trite, Section 27 which has to be read in the backdrop of the prohibition in Sections 25 and 26 of the Evidence Act, is based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact **[See: Pulukuri Kottaya v. Emperor – [AIR 1947 PC 67]]**. In the instant case, the recovery was witnessed by PW49 Sreeprakash Chandrayadav, Inspector, Firozabad Police Station and PW51

CPO Abhilash who was part of the shadow police team constituted by the Kerala Police that included PW48 P.V. Varghese, SI of Police and PW50 Narendrakumar Singh, SI of Police as well. All of them have deposed to witnessing the arrest of the appellant and the recovery of the stolen articles from his residence. Their testimony inspires confidence and has not been shaken by the defence in cross-examination.

13. The articles recovered from the house of the appellant in Firozabad were identified by PW3 Bipinlal, PW21 Sindhu Pramod and PW22 Mallika Ramanan, the last mentioned two of whom were employees of the laundry operated by the deceased persons. Among the articles recovered from the residence of the appellant at Firozabad were the pair of gold ear studs that were attached to pieces of flesh, thought to be from the severed ear lobes of the deceased Prasannakumari. There was also a single strand of hair attached to the said ear studs. As the said ear studs were put in a box containing formalin immediately after the recovery, DNA sampling could not be done on the tissue samples found attached to the ear studs. The hair sample, however, was found to be similar to the hair taken from the scalp of the deceased Prasannakumari. These facts are proved through the unimpeached testimony of PW53 Dr. R. Sreekumar, Jt. Director (Research), FSL, PW54 Sheena S, Asst. Director (Molecular Biology), FSL and their reports that were marked as Exts.P42 and P43 respectively. It is also significant that MO27 dhothi was recovered by the Investigating team based on an oral statement given by the appellant

while he was in police custody immediately after his production before the JFMC-I, Kottayam pursuant to his arrest from Firozabad. The said dhothi contained blood stains that were found to match with the blood samples taken from the three deceased persons. This comes out very clearly from Ext.P42 report of PW53 Dr. R. Sreekumar. The above evidence, taken together with the fact that there was no satisfactory explanation for the same by the appellant during his examination under Section 313 Cr.P.C, clearly points to the involvement of the appellant in the crimes that were committed on 16th/17th May 2015.

14. It might not be out of place to mention here that Section 114 of the Indian Evidence Act enables the court to presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (a) to Section 114 states that the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In **Mohan Lal v. Ajith Singh – [AIR 1978 SC 1183],** it was held that the question whether a presumption under clause (a) of Section 114 should be drawn against the accused is a matter which depends upon the evidence and circumstances of each case; that the nature of the recovered articles, the manner of their acquisition by the

owner, the nature of evidence about their acquisition by the owner, the nature of evidence about their identification, the manner in which the articles were dealt with by the accused, the place and circumstances of their recovery, are some of the circumstances. In **Ronny alias Ronald James Alwaris & Ors. v. State of Maharashtra – [AIR 1998 SC 1251]** the court found that when the articles belonging to the family of the deceased were recovered from the possession of the accused soon after the robbery and the murder of the deceased remained unexplained by the accused, the presumption under Illustration (a) of Section 114 of the Evidence Act would be attracted and it could be concluded that the murder and the robbery of the articles were part of the same transaction. The irresistible conclusion therefore would be that "the accused and no one else had committed the three murders and the robbery". Further, as observed by the Supreme Court in **Ganesh Lal [supra],** recovery of stolen property from the possession of accused enables the presumption as to commission of offence other than theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied, namely, (i) The offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offences and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of

some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the Court to see that suspicion, how so ever strong, does not take the place of proof. In such cases, the explanation offered by the accused for his possession of the stolen property assumes significance in the sense that, when the case rests on circumstantial evidence, the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it is for him to have offered an explanation for the same.

15. The medical evidence of PW44 Dr. Zachariah Thomas, who conducted the post mortem examination on the three deceased persons clearly suggests that the injuries inflicted on the deceased persons were the cause of their death [See: Exts.P30, P31 and P32 post mortem certificates]. He has also deposed that the injuries on the head of the deceased persons could be caused by MO14 Axe, and that the injuries on the neck of the deceased persons could be caused by MO15 Knife.

16. The standard of proof required to convict a person on circumstantial evidence is that the circumstances relied upon in support of the conviction must be fully established and the chain of evidence

furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and further it must be such as to show that within all human probability the act must have been done by the accused **[See: Hanumant v. The State of Madhya Pradesh - [AIR 1952 SC 343]; Bakhshish Singh v. State of Punjab - [AIR 1971 SC 2016]]**. In other words, (i) the circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established, (ii) those circumstances should unerringly point towards the guilt of the accused, (iii) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and (iv) the circumstantial evidence must be complete and incapable of explanation on any other hypothesis other than that of the guilt of the accused **[See: Hanumant [supra]; Ashok Kumar Chatterjee v. State of Madhya Pradesh - [AIR 1989 SC 1890]; State of U.P. v. Dr. Ravindra Prakash Mittal - [AIR 1992 SC 2045]; Vithal Eknath Adlinge v. State of Maharashtra – [(2009) 11 SCC 637]]**.

17. On an application of the said tests to the facts of the instant case, we find that the appellant herein, on his own admission, was the person who was last seen with the deceased persons. In the early hours of the next morning, he left on a train bound for Agra. He was apprehended

and arrested at Firozabad at 3.30 pm on 22.05.2015, and based on statements obtained from him the articles stolen from the person of the deceased Prasannakumari, and from the residential house of the three deceased persons, were recovered from his house in Firozabad under Ext.P35 seizure mahazar. The appellant was thereafter brought to Kottayam and produced before the JFMC-I on 25.05.2015. He was then remanded into police custody when, based on information given by him, the police recovered MO27 dhothi that he had worn on the night of the incident from a nearby plot. The stolen articles were identified as belonging to the deceased persons by the employees of the laundry that was run by the deceased persons, as also by PW3 Bipinlal, the sole survivor in the family of the deceased persons. If all the circumstances mentioned above are taken together, they lead to only one inference namely, that in all human probability the murder of the deceased was committed by the appellant alone and none else. When all the links are established, they together exclude any reasonable hypothesis of the innocence of the appellant. The said proved circumstances would therefore suffice to hold the appellant guilty of the charges under Sections 302, 397, 457 and 461 of the IPC, as rightly found by the trial court.

18. As observed in **Sharad Birdichand Sarda v. State of Maharashtra – [(1984) 4 SCC 116]**, in cases dependent on circumstantial evidence, the inference of guilt can be made if all the

incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypothesis than that of his guilt, and provide a cogent and complete chain of events which leave no reasonable doubt in the judicial mind. When an incriminating circumstance is put to the accused and he either offers no explanation or offers and explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. If the combined effect of all the proven facts taken together is conclusive in establishing the guilt of the accused, a conviction would be justified even though any one or more of those facts by itself is not decisive.

19. Before considering the aspect of sentencing, we might observe that the trial court while arriving at the finding of guilt appears to have relied on the disclosure statement of the appellant as deposed by PW56 Saju Varghese, the Investigating Officer. Paragraph 153 of the impugned judgment of the Sessions Judge reads as follows:

> "153. It has come out in evidence that the accused with intend to earn money came to Kerala and managed to secure a job in the laundry shop owned by Praveen. Ext.P-10 and P-14 series would show that the residential building was under renovation. There is cogent evidence to show that few of the portion of the building were newly tiled, and work in progress to replace new windows and doors. The furniture items were seen kept upside down indicating the same. The circumstances would show that on 16-5-2015 at 11 p.m., while Praveenlal was sitting footsteps on the western veranda of the middle hall room adjacent to the shutters under intoxication, he was hit with the blunt portion of M.O.14 from behind and was dragged on to the middle hall room and again inflicted several hit causing multiple injuries to his face. Then slit his throat with M.O.15. When the mobile rang up it was attended by him in Hindi. Thereafter, he has removed M.O.22 jeans from the body to check his pockets. When he heard the second call, went outside and brought Lalasan to the laundry shop. He was told that Praveenlal was sleeping under

intoxication. When Lalasan reached the porch-hall and looked into the middle hall he felt suspicion on the lie of Praveen. He had noticed bloodstains therein. When he turned back and attempted to contact some one by mobile phone he was also beat from behind with M.O.14. When he fell down he was dragged on to the eastern washing room near the slab. Thereafter when he found Prasanna standing on the porch-hall. She was also hit with M.O.14 on its blunt portion and was dragged on the western washing room where Lalasan was lying. They were lied together and slit their throat with M.O.15 knife. On seeing that Praveen was breathing through the open portion of his throat, he took M.O.20 from the waste materials kept therein, removed the insulations on the tip tied the toes of Praveenlal and connected the plug pin to the plug point nearby on the eastern wall and electrocuted to confirm his death. Then he robbed M.O.8 from Prasanna by breaking the same and cut her lobes with her studs identified as M.O.9 and M.O.10. Thereafter he has committed lurking house trespass into the residential building and committed robbery of M.O.s.2 to 5, M.O.6, M.O.7, M.O.11, M.O.35 and M.O.36 series and currencies by unfastening the receptacles of the almirahs. They were kept in M.O.1 trolly bag returned to the Wash World and after changing M.O.27 lungi by concealing it in M.O.29 plastic bag entered the office room and took away M.O.s.12 and 13 series in which his identification details were suspected to have noted, came out of the Wash World hired an autorickshaw and proceeded to the Railway Station. And he was actually traced out from Firozabad by the skillfull scientific approach of the investigation team. The attempt of the defence that the three-some had enemies on account of the undisciplined life of Praveen and his contact with ladies including P.W.8, his poor economic back grounds, his liabilities and his involvement in illegal transport of sand, were collapsed in the absence of convincing evidence. There is convincing medical evidence to show that the death was due to the injuries sustained by the deceased and that all the injuries are having nexus to M.O.14 and M.O.15. The nature of injuries and their multiplicity together with the testimony of PW.44 ruled out the possibility of involvement of others except one person. The absconding of the accused and recovery of M.O.s. together with the telephone call details would prove beyond doubt that the accused himself had caused the death of Praveenlal, Lalasan and Prasanna by using M.O.14 and M.O.15 and has committed the robbery with the intention of which they were caused to death. The multiple chop and slit injuries inflicted to the deceased and the use of M.O.20 would show that he had the only intention but to kill the victims and to commit robbery. It is a premeditated murder and that was the reason why he has chosen the time when P.W.3 was out of station and when Praveenlal was under intoxication at night. Hence I hold that the prosecution has established all ingredients to constitute the offence under Sec.302 and Sec.397 IPC made out and therefore the accused is found guilty of the said offence. Points found in favour of the prosecution." (*emphasis supplied*)

Although we have upheld the conviction by the trial court based on our own independent analysis of the evidence on record, taking note of the fact that the trial court has placed reliance on the contents of the disclosure statement as deposed to by the Investigating Officer during the trial, we deem it appropriate to reiterate the caveat that we had given in

our earlier decision in Crl.A.No.136 of 2018 [**K. Babu v. State of Kerala**], wherein, we had stated as follows:

> "20. While on the subject of admissible evidence under Section 27 of the Evidence Act, we might highlight an aspect of this case that has left us truly appalled. While listening to the arguments of the prosecutor it appeared to us that mention was being made of facts that we had not come across in the depositions of the various witnesses examined by the prosecution. On probing the matter further with reference to the marked exhibits in the case, we were flabbergasted to find that under the guise of marking the relevant portions of the confession statement of the accused before the CBI officials, to the extent permitted by Section 27 of the Evidence Act, what was done before the trial court was to produce the entire confession statement and selectively highlight the admissible portions within brackets. Effectively, therefore, the entire confession statement was admitted in evidence, although with the fervent hope and expectation that the trial court would rely only on the bracketed portions as evidence against the accused. In our opinion, this defeated the very purpose and object of Sections 25 and 26 of the Evidence Act that bans the admission of confessions made to the police, or by persons in police custody. Section 27 being in the nature of an exception to the prohibition imposed by Sections 25 and 26 of the Evidence Act, has to be construed strictly so that statements that are hit by the provisions of Sections 25 and 26, and which have a tendency to influence and prejudice the mind of the court do not find their place on the records of the case. **[See: Venkatesh @ Chandra & Anr v. State of Karnataka – [2022 KHC 6440]; In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials – [2017 KHC 6234] and Naresh alias Nehru v. State of Haryana – [2023 SCC OnLine SC 1274]]**. As observed by *Justice Anna Chandy* in **Mohammed v. State of Kerala –[1962 KLT 120]:**
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> > *"It is very easily said that the incriminating portion of a lengthy confessional statement should be excluded. But it is a very difficult mental process to close your eyes to the details in the confessional statement and see only the bracketed portions and remain uninfluenced by the confession of the accused. This feat is possible of performance only by a few specially trained experts. There is no reason why the overburdened judicial officers should be saddled with an additional burden which has not the support of law or procedure."*
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> 22. Since we find that the practice of wholesale acceptance of confession statements of accused persons, albeit for introduction of the relevant statement under Section 27 of the Evidence Act, continues even today, notwithstanding the plethora of judgments of the High Courts and the Supreme Court since the 1960's that have deprecated the practice, we feel that perhaps the time has now come to hold that the admission into the evidence, of such confessional statements of the accused as are hit by Sections 25 and 26 of the Evidence Act, and not saved by the provisions of Section 27 of the Act, would, without anything more, vitiate the trial against the accused and entitle him/her to an acquittal. The breach of a statutory provision that is designed to protect a citizen from self incrimination and arbitrary deprivation of life and personal liberty must necessarily have serious consequences for the prosecution. Constitutional safeguards cannot be rendered a teasing illusion by the very State that is obliged to uphold them."

Sentencing:

20. As we have confirmed the findings of the trial court and upheld the conviction of the appellant under Sections 397, 457, 380 and 461 of the IPC, we have now to consider the sentence to be imposed on the appellant *inter alia* under Section 302 IPC. This becomes all the more necessary because the trial court has imposed the death sentence on the appellant and a reference has been made to this Court for confirmation of that sentence [D.S.R.No.01/2018].

21. As was noticed by us in our recent judgment dated 27.02.2024 in Crl.A.No.172 of 2014 and connected cases, in matters of sentencing, especially when called upon to consider sentences of death, imprisonment for life or imprisonment for a particular term of years, we are to be guided by the principles stated in **Bachan Singh v. State of Punjab – [(1980) 2 SCC 684]** and later cases, which can be enumerated as follows:

> (i) The general legislative policy that underlines the structure of our criminal law, principally contained in the Indian Penal Code and the Criminal Procedure Code, is to define an offence with sufficient clarity and to prescribe only the maximum punishment therefor, and to allow a very wide discretion to the judge in the matter of fixing the degree of punishment.
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> (ii) No exhaustive enumeration of aggravating or mitigating circumstances, which should be considered when sentencing an offender, is possible.
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> (iii) The impossibility of laying down standards is at the very core of the criminal law as administered in India, which invests the judges with very wide discretion in the matter of fixing the degree of punishment.
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> (iv) The discretion in the matter of sentencing is to be exercised by the judge judicially after balancing all the aggravating and mitigating

circumstances of the crime. This is because the exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused.

(v) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the IPC, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.

(vi) Section 354 (3) of the Cr.PC now clarifies that the extreme penalty should be imposed only in extreme cases where the exceptional reasons are founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

22. In **Shankar Kisanrao Khade v. State of Maharashtra – [(2013) 5 SCC 546]** the Supreme Court held that instances such as hired killings, as also where the crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society, can be seen as aggravating circumstances for the purposes of punishment. The gravity of the offence committed by the appellant does not call for extending any leniency to him in the matter of punishment. That said, we cannot be oblivious to the fact that in **Rajendra Pralhadrao Wasnik v. State of Maharashtra – [(2019) 12 SCC 495]**, it was held that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. It is for the prosecution and the courts to determine whether a criminal, notwithstanding his crime, can be reformed and rehabilitated. Towards that end, we perused the reports obtained in

relation to the aforementioned appellant, through a mitigation study conducted by Project 39A, National Law University, Delhi, and also heard the learned counsel for the appellant as well as the learned Public Prosecutor on the question of sentence.

23. The findings in the report prepared by Smt.Nuriya Ansari are as follows:

> 1. In the context of death eligible cases, mitigation is a defence led exercise that aims at showing that the accused is not extremely culpable and indicates their probability of reformation. Narendra has had a childhood which was full of adversities ranging from poverty, neglect, abuse as well as discrimination. He lacked guidance, support and a space that every child requires for a healthy environment. He got married when he was extremely young and his marital life was full of conflicts. Losing multiple children at such a young age added to his pre-existing stressors of conflicts with his spouse and financial condition. There were attempts made from Narendra's side to make things better in his life, but when it seemed impossible, he decided to take his life by attempting suicide. He lacked care, love, comfort and warmth from his closed ones, something which is the bare minimum that an individual hopes for in their life.
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> 2. In my experience of interviewing death row prisoners, I have observed that prison, as an institution, reforms people in diverse ways. Some inmates perform self-reform techniques which may include reflection and strengthening relationships with loved ones, or enrolling in educational courses and earning, when permitted. The capacity to reform reflects the evolving state of humans, it reflects their willingness to work on oneself by identifying areas that require improvement and consciously making choices to grow. While surrendering to his difficult circumstances could have been a way of facing his challenges, Narendra fought back showing resilience, will and hope for his future. He has developed new skills that will help him reintegrate into society.
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> 3. He is not extremely culpable as from the numerous interviews with Narendra and his family it reveals that Narendra has motivation of wanting to be a better person and to lead a better life if given a chance. He has been a responsible and caring son, father, brother, uncle and husband. After considering his efforts, it is necessary to weigh his significant reformation and the high probability that Narendra will easily reintegrate into society while deciding on his punishment. Taking into account the different events that have happened in Narendra's life and the impact they have had on him, he strives to convert negative events to positive factors around him. These last nine years have made it much more onerous for Narendra to navigate his incarceration and punishment because of the

> language barrier, no financial support to get adequate legal representation and because of the sensationalization of his case. Narendra continues to work hard in prison and make the best out of his circumstances. Thus, a second chance at life will enable Narendra to have a valuable, meaningful life and be a productive member of his family and society.

24. In our jurisprudence, the death sentence is reserved only for those cases that qualify as the "rarest of the rare". While the facts and circumstances proved against the appellant before us clearly point to his involvement in a gruesome triple murder, we would not go so far as to categorise it as the "rarest of the rare" so as to impose the death sentence on him. This is especially so because this is a case where we have sustained the conviction of the accused for the various offences with which he was charged solely based on circumstantial evidence. The Supreme Court in **Mohd. Farooq Abdul Gafur and Another v. State of Maharashtra – [(2010) 14 SCC 641]** has held that as a rule of prudence and from the point of view of principle, a Court may choose to give primacy to life imprisonment over death penalty in cases which are solely based on circumstantial evidence. Taking note of the submissions made by the learned counsel for the appellant during the hearing on sentence, the reports obtained in relation to the appellant, and the probability of his reformation, we feel that the imposition of stricter terms of life imprisonment would strike the right balance between the conflicting interests of the appellant and the public at large and go a long way towards sustaining public confidence in our legal system.

25. Recently, the Supreme Court had occasion to consider the issue as to whether it was possible for a constitutional court to impose a modified sentence even in those cases where the trial court had not imposed a death sentence. Referring to the earlier decision in **Swamy Shraddananda (2) v. State of Karnataka – [(2008) 13 SCC 767]** and the Constitution bench decision in **Union of India v. V. Sriharan – [(2016) 7 SCC 1]**, it was held in **Shiva Kumar @ Shiva v. State of Karnataka – [(2023) 9 SCC 817]** that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence as contemplated by 'secondly' in Section 53 IPC, shall be of the fixed period of more than fourteen years. The fixed punishment cannot be for a period of less than fourteen years in view of the mandate of Section 433-A of the Cr.P.C. It is also significant that in the report of the *Committee on Reforms of Criminal Justice System, 2003*, headed by Justice (Retd.) V.S. Malimath, it was observed that "punishment must be severe enough to act as a deterrent but not too severe to be brutal. Similarly, punishments should be moderate enough to be human but cannot be too moderate to be ineffective".

In the result, we confirm the conviction and sentence imposed on the appellant by the trial court in respect of the offences under Sections. 397, 457, 380 and 461 IPC. As for the offence under Section 302 of the IPC, while we uphold the conviction of the appellant for the said offence,

we deem it appropriate to modify the sentence to one of life imprisonment with the further condition that he shall undergo mandatory imprisonment without remission for a period of twenty years. Save for the aforesaid modification of the sentence in respect of the offence under Section 302, we uphold the impugned judgment of the trial court. The Criminal Appeal is thus partly allowed and the DSR is answered in the negative i.e. by refusing to confirm the death sentence.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V. M.
JUDGE

prp/