

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MRS.JUSTICE M.R.ANITHA

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

CRL.A.No.289 OF 2015(D)

AGAINST THE JUDGMENT IN S.C.NO.302/2014 DATED 12-02-2015 OF THE
COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE-I, MANJERI

[CP NO.28/2014 OF JUDICIAL FIRST CLASS MAGISTRATE, NILAMBUR]

[CRIME NO.194/2014 OF NILAMBUR POLICE STATION, MALAPPURAM]

APPELLANT/ 2ND ACCUSED:

SHAMSUDHEEN @ BAPPUTTY, AGED 30 YEARS, S/O UMMER,
KUNNASSERY HOUSE, UNNIKKULAM, CHULLIYODE,
AMARAMBALAM VILLAGE, MALAPPURAM DISTRICT.

BY ADVS.

SRI.V.JOHN SEBASTIAN RALPH

SRI.V.JOHN THOMAS

SRI.E.A.HARIS

KUM. KEERTHANA SUDEV

SRI. RALPH RETI JOHN

SRI.VISHNU CHANDRAN

RESPONDENT/ COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADDL.DIRECTOR GENERAL OF PROSECUTION

SRI.SURESH BABU THOMAS

BY SPECIAL PUBLIC PROSECUTOR SRI.N.K.UNNIKRISHNAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.03.2021,
ALONG WITH CRL.A.607/2015(A), CRL.A.303/2016(A), THE COURT ON
31.03.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MRS.JUSTICE M.R.ANITHA

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

CRL.A.No.607 OF 2015

AGAINST THE JUDGMENT IN S.C.NO.302/2014 DATED 12-02-2015 OF THE
COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE-I, MANJERI

[CP NO.28/2014 OF JUDICIAL FIRST CLASS MAGISTRATE, NILAMBUR]

[CRIME NO.194/2014 OF NILAMBUR POLICE STATION, MALAPPURAM]

APPELLANT/ COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.SURESH BABU THOMAS
BY SPECIAL PUBLIC PROSECUTOR SRI.N.K.UNNIKRISHNAN.

RESPONDENTS/ ACCUSED 1 & 2:

- 1 BIJU B.K. ,
S/O KRISHNAN NAIR, BIJUNA HOUSE,
KALLEMPADAM, NILAMBUR.
 - 2 SHAMSUDHEEN @ BAPPUTTY,
S/O UMMER, KUNNASSERY HOUSE, UNNIKULAM, CHULLIYODE,
AMARAMBALAM VILLAGE.
- ADDL.R3 CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIATE, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

ADDL.R4 ADDITIONAL CHIEF SECRETARY (HOME),
GOVERNMENT SECRETARIATE, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

ADDITIONAL RESPONDENTS 3 & 4 ARE IMPEADED AS PER
ORDER DATED 09/03/2021.

R1 BY ADV.SRI.P.K.VARGHESE
R2 BY ADV.SRI.V.JOHN SEBASTIAN RALPH
R2 BY ADV.SRI. RALPH RETI JOHN
R3-R4 BY SENIOR GOVT.PLEADER SRI.SUMAN CHAKRAVARTHY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
19.03.2021, ALONG WITH CRL.A.289/2015(D), CRL.A.303/2016(A), THE
COURT ON 31.03.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MRS.JUSTICE M.R.ANITHA

WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA, 1943

CRL.A.No.303 OF 2016

AGAINST THE JUDGMENT IN S.C.NO.302/2014 DATED 12-02-2015 OF THE
COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE-I, MANJERI

[CP NO.28/2014 OF JUDICIAL FIRST CLASS MAGISTRATE, NILAMBUR]

[CRIME NO.194/2014 OF NILAMBUR POLICE STATION, MALAPPURAM]

APPELLANT/ ACCUSED NO.1:

BIJU B.K., S/O.KRISHNAN NAIR,
BIJUNA HOUSE, KALLEMPADAM,
NILAMBUR, MALAPPURAM DISTRICT.

BY ADVS.
SRI.P.K.VARGHESE
SRI.R.RANJITH (MANJERI)
SRI.K.R.SHYNE
SRI.K.R.ARUN KRISHNAN
SMT.SANJANA RACHEL JOSE.

RESPONDENT/ STATE:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 31
FOR THE ASSISTANT COMMISSIONER OF POLICE, D.C.R.B.,
THRISSUR CITY IN NILAMBUR POLICE STATION.

BY ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.SURESH BABU THOMAS
BY SPECIAL PUBLIC PROSECUTOR SRI.N.K.UNNIKRISHNAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
19.03.2021, ALONG WITH CRL.A.289/2015(D), CRL.A.607/2015(A), THE
COURT ON 31.03.2021 DELIVERED THE FOLLOWING:

K. Vinod Chandran & M.R. Anitha, JJ.

Crl.Appeal Nos.289/2015, 607/2015 & 303/2016

Dated, this the 31st day of March, 2021

JUDGMENT

Vinod Chandran, J.

Murder most foul, turned into a sensation with the arrest of a political front man of the area; the Personal Assistant of a Minister and the Secretary of the Office of the Local Committee of the then ruling party. The Police went full hog with the investigation commenced by a Circle Inspector [CI], continued by a Deputy Superintendent of Police [Dy.SP] and then an Assistant Commissioner of Police [ACP]; who were examined as PWs.103, 105 & 108; under the supervision of an Additional Director General of Police [ADGP]. The political overtones led the investigation astray and the trial went haywire with tutored witnesses, concocted confessions and manufactured evidence asserts the appellants, who are the two convicted of the charges levelled against them.

2. The prosecution went to trial parading a whooping 108 witnesses and marking more than 264 exhibits and MO-1 to MO65. The defence examined one witness and

marked four portions of 161 statements as also a remand report dated 11.02.2014. The Sessions Judge, who conducted the trial, listed out 140 circumstances and found the accused to have had a common intention of committing murder, in pursuance of which the deceased was wrongfully confined, raped and killed; after which the evidence was destroyed and the ornaments of the deceased misappropriated. The Sessions Judge acquitted both the accused under Section 235(1) of Cr.P.C. for the offences punishable under Sections 376(2)(k), 376A and 120B of the Indian Penal Code. Both the accused were sentenced for various terms, to run concurrently, under Sections 302, 376(1), 201, 404 and 342 read with Section 34 IPC and fine, with default sentences on failure of payment of fine.

3. Sri.P.K.Varghese, learned Counsel appearing for the 1st accused, submitted that the version of the prosecution is unbelievable and the witnesses paraded before Court are artificial, making the evidence led highly suspicious. There is no last seen theory as attempted to be projected. The commission of the crime and removal of the corpse as discernible from the evidence led is highly improbable. The witnesses were questioned after a long delay. No blood stains or any other incriminating material

was recovered from the alleged scene of occurrence. The recoveries made were challenged one-by-one on various aspects and specifically on the ground of many of them being articles of common use. A1 was implicated only because of his presence at Unnikulam, an area where A1 was present for a house warming on the said day. The motive projected and the earlier attempts are just a figment of imagination. A1 was throughout available in the locality and accompanied the brother of the deceased after the deceased was found missing. The accused were arrested on 10.02.2014 after which literally, all hell broke loose, according to the defence, in the print and electronic media. The prosecution's attempt to nail him is purely by reason of political vendetta; to which the Police willingly succumbed.

4. Sri.V.John Sebastian Ralph appearing for A2 also challenged each of the recoveries made and from the evidence led itself it is clear that they were planted. The delay with which the witnesses were questioned point to statements taken in the course of the initial investigation having been suppressed from Court. The witnesses who identified A2 are all strangers and before their statements were taken, the photographs of the accused were published

in the print media and flashed in the electronic media. The presence of A2 at Unnikulam is only natural since he resides within that area. The prosecution case is far fetched and fanciful. The learned Counsel seeks for acquittal of both the accused.

5. The learned Prosecutor, Sri.Suresh Babu Thomas [Additional Director General of Prosecution] asserts that there is a complete chain of circumstances as revealed in evidence, which pinpoints the accused as the perpetrators of the murder and disposal of the dead body. The recoveries made, on the basis of confession statements, prove the preparation, the murder and destruction of evidence. The motive and the earlier attempts to murder have been testified to by a host of witnesses. The deceased was last seen on the stairs to the Office, where A1& A2's presence is established. The accused were seen taking out the sack in which the body was found floating and were also seen near the pond. That it was a homicidal death is proved by medical evidence; which also reveal a vengeful assault. The circumstances proved from the evidence led by the prosecution clearly establish the guilt of the accused.

6. We also heard Sri.N.K. Unnikrishnan, Special PP appointed long back; without communication of the order,

after the hearing was concluded. The Special PP commenced his arguments with the State's appeal and conceded that the State is not pressing the charge under Section 376(2)(k) and 376A IPC on which the appellants were acquitted by the trial Court. But, the evidence on record is sufficient to find conspiracy and the accused ought to be convicted under Section 120B. There is a discrepancy in the recording of the time in which the deceased was last seen. Stress was laid on phone calls between the accused. The recoveries have been gone over with the help of a sketch handed over across the Bar and it is urged that none of the recoveries have been seriously challenged in cross-examination. As to the delay in examination of various witnesses under Section 161, it is stated that this is a unique case in which the charge-sheet was filed in 90 days and the delay is inconsequential. The injury suffered by A1 is not properly explained. The evidence led establish the crime and implicates the accused unequivocally. In addition, an application has been filed for acceptance of a document, which is the bail application filed by A2, for the purpose of urging this Court to rely on a categoric admission made in the application. It is also argued that there can be no privilege claimed under Section 126 of the Evidence Act, as

held in Anantasayanam P.G. & Others v. Miriyala Sathiraju & Others [AIR 1998 AP 335 = 1998 KHC 1738] and Chaman Lal & Others v. Sunder Lal [AIR 2016 HP 83 = 2016 KHC 2966].

THE PROSECUTION CASE:

7. A middle-aged spinster coming from an improvised family, engaged as a Sweeper in three offices, was found murdered; huddled into a sack and submerged in a pond. The deceased left for her work in the morning and was seen in the building in which her work places are located between 9.00 and 9.45 a.m on 05.02.2014. She was last seen going into the Office of the political party ('Party Office' hereinafter) and was not seen thereafter. A1, the Office Secretary of a political party, in which office also the deceased was engaged as a Sweeper, for reason of the threats levelled of exposing him, murdered the woman by smothering and suffocating with a ligature along with A2. A man missing case was registered on the next day and on 09.02.2014 a body in a jute sack was seen floating in a pond which was identified as that of the missing person. The medical evidence was to the effect that death was due to strangulation and smothering and there was evidence of brutal attack on the woman before death as evidenced by the injuries on the chest and the vulva and perineum; the

latter of which is indicative of a vengeful murder. The motive was the threat levelled by the deceased to expose the flirtatious activities of A1, which were even carried on inside the Party Office. There is evidence to indicate A1 having attempted to murder the deceased earlier.

8. The murder was carried out inside the computer room of the Party Office, after which the body was huddled into a jute sack and carried to the goods vehicle of A2 and removed from the scene. The goods vehicle was parked inside a residential compound near the roadside at Unnikulam, till evening. The body was disposed of in the night, in a pond after tying it with two stones for the purpose of submerging it. The dress worn by the deceased was burnt and the charred remains thrown in a canal. After the body was recovered the accused were arrested since their mobile phones were seen in the location where the pond is situated as per the details collected from the Cyber-Cell. On confessions made by both the accused the personal effects of the deceased including her ornaments were recovered and so were the articles purchased in preparation of the crime and those procured for destruction of evidence. It is the case of the prosecution that the above circumstances unerringly point an accusing finger at the appellants.

IDENTIFICATION OF THE DECEASED & CAUSE OF DEATH:

9. The body was first seen by PW-10 the employee of PW-11, who owns the property in which the pond exists. PW-10, on the evening of 09.02.2014 went to the property to fix a new pump for the purpose of irrigating the land with the water in the pond. While he was waiting for the technician, he noticed a floating sack with a human leg and arm protruding out. He immediately called his employer PW-11 and in his scooter went to the Pookkottupadam Police Station. PW-89 the Sub Inspector of Police recorded FIS, Ext.P4 and lodged P4(a) FIR dated 09.02.2014 at 5.45 p.m.

10. On recovery of the body, the next day, PW-1, the brother of the deceased looked only once, since he was a heart patient, but still identified the body. PW-1's wife PW4 clearly identified the body especially from the peculiar shape of the leg of the deceased and her long toes. PW-4 also identified her sister-in-law from her hair, which used to be dyed with her help. The undergarment found on the body was identified as that purchased by PW1 at Erode and given to the deceased by PW-4.

11. The identification of the close relatives is further fortified by the artificial dentures MO7, found in the body which were identified by PW-40 a Dentist, whose

patient the deceased was. The Dentist, who was also a neighbour, produced Ext.P25 Diary where he enters the details of his patients and the procedure carried out on them. Ext.P25(a) is the portion in the Diary wherein the fixation of artificial dentures was noted. PW-41 the staff of the Dentist deposed on the seizure of Ext.P25 having been made by the Police as per Ext.P26 seizure mahazar. Samples were collected by PW-86, from the sisters and brothers of the deceased for conducting DNA test. The DNA test by Ext.P246 established the deceased had matrilineal connection with the persons from whom samples were taken, who were her siblings. The identity of the deceased hence stands proved.

12. PW-80 is the Doctor who conducted the post-mortem on the body. He deposed with the aid of Ext.P75 postmortem report. The body showed five ante-mortem injuries, the first of such injuries was the fracture of ribs 2 to 9 on the right side and 4 to 9 on the left side, with minimal blood infiltration at the fracture sites. As per the Doctor's opinion the said injuries could have been caused by stamping on the chest while the victim was lying down or sitting with the back resting firmly on something, like a wall. The second and third injuries are respectively

lacerated wound on the back of head just to the left mid-line with surrounding blood infiltration and contusion on left side of forehead, left to mid-line just above the left eyebrow. The second injury as per expert opinion could have been caused by hitting on a protruding hard surface, like the edge of a wall or a table and the third likewise by a hard object. The fourth injury was a faint pressure mark found transversely over the middle and lower one third, on the front of neck with fracture on the thyroid cartilage and blood infiltration in right thyrohyoid membrane, which as deposed by PW-80 was suggestive of ligature strangulation using the adhesive plaster found loosely around the neck (MO28). The fifth injury was a penetrative lacerated circular wound, heavily contused with inverted dragged edges over posterior part of vulva and perineum at mid-line. The Doctor opined that the said injury by itself could cause death independently by reason of neurogenic shock.

13. The cause of death as spoken of by PW-80 was due to combined effect of smothering (binding of plaster over mouth and nose) and constricting force around neck with a ligature. There was also evidence of forcible penetrative injuries to genital area which was capable of

producing neurogenic collapse. The plaster marked as MO28 recovered from the body had a length of 51 cms which was found loosely around the neck of the corpse. The circumference of the neck is deposed to be 32 cms. and the plaster had longitudinal wrinkles and on its under surface tufts of scalp hair. The longitudinal wrinkles are suggestive of use of the plaster as ligature. The expert opinion of the Doctor who conducted the postmortem; the report of which is produced as Ext.P75, establishes death by homicide.

14. The appellants-accused have a specific case that the allegation of penetration with the foreign object and the story of a mop having been used is a figment of imagination. It is urged that there is a suspicion as to the post-mortem carried on going by the dates seen in Ext.P75. Ext.P75 shows three days; on the first page 10.02.2014, on the second and third 11.02.2014 and where the Report is signed by PW-80, the doctor who conducted the post-mortem, 15.02.2014. It is to advance the charges under Section 376 that an inspection was conducted and a mop recovered from the scene of occurrence. The FSL report having not brought forth any incriminating material, PW-108 speaks of a confession having been made with respect to the

mop used for penetrating the vagina having been destroyed in the incinerator available with the Municipality. The free access to such incinerator available with the local body has not been established. If such free access was not available, necessarily A1 would have had to use his influence through another. Despite the post-mortem having disclosed a penetrated injury to the vagina, grievous enough to even cause death, it is not clear as to how the same was caused. The anomaly in dates have been explained by PW-8 as an inadvertent error.

15. The Post mortem would have commenced and concluded on 10.02.2014 itself since the body was recovered from the pond on the morning of 10th and the funeral was conducted on the same day, as is deposed by PW-1. Ext.P76 a Report of inspection of the scene of occurrence by a medical team, was also authored by PW-80. The said report also suffers from similar infirmity in dates; the first page shows 10.02.2014, and beneath the signature 28.02.2014. Ext.76 Report also speaks of the crime scene visit on 14.02.2014 on the first page where the date shown is 10.02.2014. The disparity in dates raise serious apprehensions regarding the medical evidence and the medical officer having prepared the report on the dictates

of the police. This aspect according to the accused plagues the entire investigation.

THE MOTIVE:

16. A motive is very relevant when the prosecution case is based on circumstantial evidence. Here the prosecution with a host of witnesses seeks to establish that A1 is of loose morals; the threat to disclose which, had resulted in A1 harbouring enmity against the deceased leading to her murder. PW-56 is a resident of the locality who belongs to Kozhikode and came to Nilambur after marriage. She approached A1 to facilitate an Educational Loan for her daughter and developed close acquaintance with him. She speaks of having had regular contact over phone with A1 extending to almost 5 to 10 times a day. She specifically speaks of not being able to contact A1 on the night of 05.02.2014. But, A1 called her around 1'0 clock in the night to inform her that he had been attending a housewarming function. He also sang a song over the phone, which he claimed to have sung at the function he attended. She also claims that after the disappearance of the deceased, when she asked him about the same, A1 had informed her that the police were making enquiries and advised her not to make regular calls since the Cyber-Cell

was tracking long duration calls. PW-91 an acquaintance of A1, who was the Gardner in the Museum and a member of the Union formed by A1, also spoke of A1's relationship with PW-56. He said A1 and PW-56 have come together to the museum. But this was proved to be an omission by PW-108, who deposed that PW-91 did not in his S.161 statement speak about A1 and Nisha [PW-56] having come to 'Thekku Museum' together.

17. PW-96 is the Chungathara Mandalam Committee Secretary of the political party of which A1 was the Office Secretary. PW-96 speaks of A1 having had a relationship with his wife's sister and having seen them together twice going in a scooter. He also spoke of having traveled with the said lady and A1 in a car. PW-97 is the landlord of the house A1 had rented out earlier, who deposed that A1 was evicted since there were complaints that the house was frequented by women. PW-92 is also a political activist belonging to the same party as A1 who claims to have seen the sister-in-law of A1 in the Office at Nilambur. PW-70 is another witness who sought the help of A1 for his political connections and maintained close relationship with him. She states that one day inside the Party Office, A1 caught hold of her hands and after that she broke away from A1. This

incident was first spoken of before Court as PW-108, the ACP, denied such a statement having been given by the witness. According to PW-108, PW-70 only spoke of an indecent behaviour on the part of A1. PW-70 also spoke of an instance where A1 visited her house with his sister-in-law, on the pretext that it was his wife. Even then, she speaks of having complained to Sheeba, the sister-in-law of A1, about the minor transgression of A1 having caught hold of her arm in the Office. Further in cross examination she admitted to have known the wife of A1, six months after she came into contact with A1 and also admitted to have visited A1's residence.

18. The flirtatious nature of A1 is sought to be established since the deceased threatened to reveal A1's misdeeds to the higher functionaries in the party. The prosecution even produced PW-93, the sister-in-law of A2 who is said to have admitted to her illicit relationship with her brother-in-law, A1. PW-93 turned hostile and denied having given any statement to the Police. Even if we accept the version of the witnesses, the amorous antecedents of A1 were known to many and even other party functionaries. The threat of an expose by the deceased without anything more specific is very difficult to swallow

as a motive to murder. Though a feeble attempt was made to allege such transgressions inside the Office, there was no proof offered. The same is also highly improbable since it was the office of the ruling party where normally the functionaries and even the lower minions frequent.

19. In this context, it has to be noticed that both PW-1 and PW-4, the brother and sister-in-law of the deceased spoke of the enmity between the deceased and A1. Though PW-1 deposed in Court that he heard the deceased scolding A1 over the telephone, he had not stated so in the S.161 statement, which omission was brought out by the defence in the cross-examination of PW105, the Dy.SP who was in the Investigation Team. PW-4 specifically spoke of having heard her sister-in-law, the deceased threaten A1 to reveal his activities in the office, to one Sivasankaran, who is a higher functionary of the party. In the same breath she also deposed that the said Sivasankaran died in January; while the death of the sister-in-law of PW-4 occurred on 05.02.2014. PW-4 in her cross-examination categorically stated that the enmity between A1 and the deceased or rather, anybody having animosity to the deceased was not stated to the Police on 05.02.2014 or 10.02.2014 when the Police questioned her. Obviously the

statement was made after the arrest made by the Police. Both PWs.1&4 first called A1 to enquire about the deceased when she went missing. A1 accompanied PW-1 at 7.00 p.m on 05.02.2014 to the Sub Inspector PW-102, who registered the FIR on the next day. A1 was present when the body was recovered and for the funeral. The character or the lack of it, of A1 is projected only to prove his motive. There is no other inference possible from such antecedents even if found proved by the prosecution. The loose morals even if established, it does not establish the motive; which is the threat of exposure. When many in the location, including other party functionaries of A1 are aware of his amorous antecedents; a threat of exposure cannot be a valid motive, for committing a murder.

20. In pursuance of the motive, the prosecution also attempted to project earlier instances of attempt to murder the deceased. PW-58 the Advocate in whose office also the deceased was employed, spoke of she having complained about somebody having attempted to run her down with a car, which was about an year back. To further fortify this allegation PW-52 was examined. PW-52 claims to have run a tea shop in Nilambur for four years prior to his shifting to Bangalore six months back. He claims to have

been entrusted by A1 to run down the deceased. A1 is said to have supplied a car and paid him Rs.1000/-, in the presence of another, one Fasil, CW-116, who was not examined before Court. He also says that after the entrustment when Fasil queried him, he confessed to have no intention to endanger anybody. He is also said to have taken the car for a trip to Ukkadam after which he entrusted the vehicle back to A1. The witness speaks of no adverse reaction from A1 on his having not carried out the task he was entrusted with. PW-52 is also not specific about the time when such entrustment was made and there was no attempt by the prosecution to elicit the period in which such an entrustment was made. We find no way to believe the version of PW-52; of his having taken money for an illegal act and having not committed it, which definitely the person who entrusted him would have known about. Further PW-108 the ACP, speaks of A1 having spoken of one Jamsheer, a 'Bengali' having been entrusted with the task of endangering the life of the deceased in a car accident. PW-108 also speaks of having conveyed this aspect to PW-1 when he was called for questioning, thus sowing the seeds of suspicion in the minds of the relatives of the deceased. It was also claimed by PW-108 that he had questioned the

said Shamsheer but he was not cited before Court.

21. To fortify the allegation of attempts to murder, the prosecution also examined PWs.49, 50 and 51. PW-49 claimed that A1 asked him for cyanide which he procured from PW-50. In fact, PW-49 is a Goldsmith while PW-50 admittedly is a person engaged in manufacturing copper ornaments, who cannot have any free access to cyanide. In re-examination it has been brought out that PW-50 had Gold work earlier, but still at the relevant time he was only engaged in copper. PW-50's evidence is that he gave a 'block' used to polish gold styling it as cyanide. Anybody would know that cyanide is not available in blocks. PW-51 another person engaged in making copper ornaments also spoke of A1 having asked for cyanide purportedly to kill stray dogs. Both PW-50 and PW-51 speak of having given A1 something else in the guise of it being cyanide. Even the witnesses claim that A1 purportedly told them that he wanted to use it on stray dogs. That the cyanide was sought to be procured to kill the deceased remains in the realm of a mere surmise. We are not satisfied that the motive has been established by the prosecution. However, we observe that motive though, could be a relevant factor, is not necessary or imperative even in a case based on

circumstantial evidence, if the other circumstances unerringly prove the accused having committed the crime.

THE SCENE OF OCCURRENCE AND THE LAST SEEN THEORY

22. The scene of occurrence is a commercial area and is a beehive of activity as is evident from the deposition of the witnesses, most of whose presence in the area is not by chance. We do not have a clear picture about the location of the office of the political party in which the crime is alleged to have been committed. The Sketch Plan prepared, Ext.P50 shows only the Party Office. PW-2 is the owner of 'Orbit Computers' which is carried on in the Treasury Building which has four floors. In the said building is located the Advocate's office of PW-58, 'Excel Tailors' of PW-12, 'X-Man Gents Cotton' of PW-13, the Construction Company of the Municipal Chairman-PW-83 and many other commercial establishments. From the totality of the depositions we get the picture that there are two other buildings nearby, one of which houses the Party Office. This is a two storey building, as seen from Ext.P7 Scene Mahazar, on the ground floor of which is 'Eye Style Opticals' belonging to PW-19. The Party Office is on the first floor. Adjacent to that building is a building in which one 'Swantham Saree Kendra' is located and opposite

to it is the 'Cherupushpam Paper Mart' in which PW-5 is an employee. The fateful day is a Saturday and from the evidence of PWs.5, 2 and 13 the shops in the locality open between 8.30 and 9.30. According to PW-3, an Advocate Clerk having his office nearby, all the shops open by 9.30. Hence our observation, that it is a busy area which by 10'0 clock becomes a beehive of activity on a working day.

23. The deceased was seen by PW-4, last at 7.00 a.m and by PW-1, at 7.30 a.m from their Tharavad house. According to PW-4 the deceased usually starts for work between 8.30 a.m and 8.45 a.m and returns by around 11.30 a.m. PW-2 opened his establishment 'Orbit Computers' at around 8.45 a.m. and at around 9 a.m he saw the deceased sweeping the front-side of the Advocate's office. PW-2 had installed a CC TV camera on the outside of his shop which had caught the deceased in its sight as seen from the visuals displayed in Court from a DVD. The trial Judge accepted the objection of the accused regarding the admissibility of the video footage copied, rightly so, since the hard disc was not produced and there could be allegation raised of tampering. Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal [(2020) 7 SCC 1] held that the original device on which the information is stored, if

produced in Court there was no necessity for a Certificate under S.65B of the Evidence Act and if it is a copy the Certificate is required. We too do not intend to place any reliance on the visuals displayed from pen-drive to which it was copied, since the Certificate under S.65B is absent. But PW-2 had spoken of having seen the deceased at 9.00 a.m sweeping the Advocate's office.

24. PW-3 is an Advocate Clerk having his office in an adjacent building. He was standing in front of 'Cherupushpam Paper Mart' when he saw the deceased in front of 'Eye Style Opticals' with her hands on the handrail of the stairs leading to the scene of occurrence. He also spoke of having seen A1 and A2 standing in front of the office of A1 at that time. In cross-examination PW-3 admits that in his statement to the Police he had told them that he saw the deceased at 8.30 a.m. PW-12, while opening 'Excel Tailors' at 9'0 clock speaks of the deceased having come to his office to take the keys of the construction company belonging to PW-83. PW-13 Proprietor of 'X-Man Gents Cotton' deposed that the keys of the Advocate's office is kept in his shop and the deceased picked it up at 9.15 a.m. PW-5 is an employee of 'Cherupushpam Paper Mart' who spoke of having seen the deceased going into the

Congress Office at 9.45 a.m. This was the last time anybody among the witnesses spoke of having seen the deceased alive. There is a contention raised by the prosecution that PW-5's deposition is not clear as to the time the deceased was last seen since there is an overwriting. There is an overwriting in so far as the 1 in 9¼ having been overwritten with 3. But the learned judge has cautiously written 9¾ above and underlined the overwritten portion. There is no anomaly and clearly it is 9¾. We do not think any last seen together theory arise because PW-3 saw the deceased standing in front of 'Eye Style Opticals' with her hand on the handrails of the stairs leading to the alleged scene of occurrence and A1 and A2 were standing on the first floor. A2, admittedly was a stranger to the witness. In Chandu alias Chandrahas v. State of M.P. [1993 Supp (1) SCC 358] the witnesses saw the accused grazing cattle near a river and the deceased was about to cross the river. It was held that merely because the accused and the deceased were seen in the vicinity of a river, that alone is not sufficient to hold that they were last seen together. PW-3 has nothing to say about the further movements of the accused and the deceased.

25. The evidence of PW-3 is also seriously assailed by the accused for reason of there being no possibility of him identifying A2, a total stranger. It was also further urged that all the above witnesses who were of the same locality, some of whom identified A2, were questioned by the Police after considerable delay, which makes the identification of A2 artificial. PW-3's 161 statement was taken on 19.02.2014, 14 days after the incident and 9 days after the arrest of A1 & 2; by which time their photos were published and flashed in the media. It has to be said there is no clear theory propounded by PW-3 that the deceased was seen last, along with A1 and A2 and his identification of A2 a total stranger cannot form a circumstance for reason of the delay in recording his statement, by which time the accused were well known to the general public. In Ganesh Bhavan Patel v. State of Maharashtra [AIR 1979 SC 135] the eye witnesses to the crime proper was examined with a delay of one day. Though the delay of a few hours may not by itself constitute a serious infirmity, that there are concomitant circumstances which suggest that the investigator was deliberately marking time to shape a credible case, then it could be a significant factor in favour of the accused. PW-3 is not a

chance witness and the Police would have on recovery of the body first enquired at her place of work since the lady was found missing; when she did not return from work. In addition to the media publicity the accused were brought to the scene on 11.02.2014, the day after their arrest. The statement was taken still an eight days later. The same infirmity arises in the case of the other witnesses who identified A2, which we will deal with a little later. The aspect of delay highlights the attempt of the prosecution to shape a case with tutored witnesses; which we pointed out when we discussed the medical evidence.

PREPARATION FOR THE CRIME

26. The prosecution has proffered witnesses to show the preparation for the crime made by the accused 1 and 2. It is their specific case that on the previous day, A1 along with PW-91 had arrived from Trivandrum and in the evening according to PW-91 by around 8.00 p.m A1 called him on the telephone and picked him on his scooter to clean the Party Office. He gathered the waste and put it in a box as also arranged the festoons, pipes and sticks etc. The prosecution would tell us that this is in preparation of the crime to set up a story of removal of waste for which A2's vehicle had to come to the premises. PW-91 does not

speaking about having seen A2 at the time he reached the Party Office. However, PW-95 Melekulam Balakrishnan who was in overall charge of the Party Office, being the Block Secretary of the then ruling party, spoke about seeing A2 in the Party Office on the previous day evening.

27. Further evidence led by the prosecution is the procurement of a jute sack, a torch, plaster roll and scissors by the accused. The jute sack is procured by A1 according to PW-35 who runs VPC Vegetable Stall at Nilambur. On 05.02.2014 A1 took the sack from PW-35's shop. PW-35 identified the sack by the mark 'KC' indicating the sack having been received by PW-35 on wholesale purchase of onions from KC Vegetables, Manjery. PW-36 is the proprietor of KC Vegetables who affirms that the sacks in which he supplies vegetables contain the distinctive mark 'KC' and supplies are made from his shop to numerous shops in Nilambur. He also deposed that the sack in which he makes the supplies contains the source from which he purchased the items which in the particular sack is 'CMB', indicating Ottamchathram. MO16 sack in which the body was recovered was shown to PW-35 who identified it as 'the sack given to A1 Biju'. We find the said evidence to be weak

insofar as it is admitted by PWs.35 and 36 that such sacks are available aplenty in Nilambur. It is also the specific deposition of PW-35 that he did not take any money for the sack from A1. This leads to an inference that the sacks in which supplies are received by PW-35 from PW-36 are sold for a price to the general public. Apart from the mark 'KC' and 'CMB' available in the sack as deposed by PW35 and PW36; which marks are available in many supplies made by PW36, there is no distinctive mark to identify the particular sack given to A1. The marks available in the sack identified by PW35 and PW36 are available in other sacks supplied by PW36 to retailers in Nilambur which are sourced from Ottamchathram. Further PW-35 stated before Court that he was shown the sack by the police on 14.02.2014 when his S.161 statement was taken. The learned Special PP would point out that it could be a mistake. But there is clear affirmation in the statements made by PW-35, while being cross-examined, that the sack was shown to him when his statement was taken by the Police, which was on 14.02.2014. Even if it be a mistake, when the prosecution chose not to clarify, then the benefit of the mistake inures to the accused. This statement assumes relevance on examination of the property list,

Ext.P132 dated 12.02.2014, proved by PW-103. The sack was received at the Magistrate's Court on 13.02.2014. MO16 sack is item No.3 in Ext.P132. There was no possibility of PW-35 being confronted with the sack MO16 on 14.02.2014. The prosecution, as we noticed, did not carry out any re-examination to clarify the date.

28. A torch was recovered at the instance of A1 from his residence based on his confession; allegedly used when the body was drowned in the pond at night. PW-31 a shop owner deposed that MO13 torch recovered from A1 was purchased by A2 along with another torch at around 9.00 O' clock in the night of 05.02.2014. The Police again showed the torch to him after recovery when recording PW-31's statement. PW-31 deposed that A2's photos were flashed in the news and that such torches are available freely in the market. PW-31 in his deposition spoke of the exact description of the torch which was specifically marked as an omission in his S.161 statement, which omission stood proved while cross-examining PW-105 the Dy.SP.

29. A1 is said to have purchased a plaster roll from PW-32 who runs a medical store at Nilambur. The plaster roll marked as MO14 was purchased on 04.02.2014 and the same is a fast moving item according to PW-32 himself.

The plaster roll was shown to the witness after the same was recovered by PW-102 a Sub Inspector. More interesting is the purchase of a scissors (MO11) and its recovery. A1, according to PW-33 who has a shop on the Pookkottupadam-Chulliyodu road purchased the scissors at around 9.00-9.30 p.m. The scissors was shown to the witness on 24.03.2014. The defence has specifically brought out that in the statement of PW-33 under S.161 he had spoken of the purchase of the scissors having been made by A2 and not A1. The ACP, PW-108 who led the Investigation team labours in cross-examination to justify it as a mistake committed by him. He also clarifies that after the recovery on 24.03.2014 it was again shown to PW-33 who confirmed the purchase having been made by A1; a clear attempt of tutoring. The justification proffered by PW-108 is that PW-33 even while giving statement before the Police was distracted by the customers in his shop. We cannot believe the statement of PW-108 that PW-33 was catering to his customers while he was being questioned at the first instance, by as high a functionary of the Police, as the ACP. The justification of PW-108 comes out a little feeble and we reject the same *in toto*. The recovery again is a mockery which we would point out at the appropriate time.

30. We do not think the decision in Perumal C. v. Rajasekaran [(2011) 15 SCC 510], relied on by the accused have any application. There the articles recovered were found to have no connection with the murder and were items of common use. Here though the items were of common use the plaster from the roll is alleged to have been used as a ligature, the torch, for lighting the pathway to the deserted pond, the scissors, to cut the dress of the corpse and the sack, is alleged to be one in which the corpse was transported and drowned. The sack in which the body was found definitely cannot be identified as the one given to A1 since it did not have any distinctive mark for recognition other than 'KC' and 'CMB', which we found to be available in many supplies made by PW-36. The other items would be dealt with along with the S.27 recoveries.

THE CRIME PROPER:

31. From the deposition of the witnesses cited earlier, the deceased had first taken the keys of the Advocate's office and the construction company from the shops of PWs.13 and 12, swept the Advocate's office by around 9.15 a.m, then presumably the construction company and went to the Party Office at 9.45 a.m, when she was last seen alive by PW-5. PW-5 again was questioned after 34 days

of the incident alleged and he was not a chance witness, being an employee of a nearby shop. Be that as it may, the prosecution case is that the crime was committed in the Computer room of A1's office and the body taken out in a sack, which was witnessed by PWs.6, 19 and 60. PW-6 was examined with a delay of 79 days and PW-60 after 9 days. PW-6 is a Daily Wage Municipal Contingent Worker who admits that his working hours are between 6.00 a.m and 12.00 noon. But on the said day he went to the Party Office to read the newspapers; which he claims to be a daily habit. In fact, PW-60 who is the employee of PW-19 (Eye Style Optical) also speaks of reading newspapers in the Party Office. On the fateful day, according to him, by around 9.30-9.45 a.m he was climbing the stairs to the scene of occurrence for reading the newspapers, when PW-19 his employer arrived. He immediately came down the stairs and was with his employer after that. In this context we have to notice that the Party Office was of the then ruling party, which as is evident from the depositions, is an open house, where even casually people frequent to read the newspapers.

32. PW-5 speaks of Melekulam Balakrishnan [PW-95] [Block Secretary] who frequents the Congress office and who on many days opens the office and shuts it down in the

night. PW-95 though examined was not queried about his absence on that day. PW-14 an auto goods driver, a chance witness, whose presence at the scene is seriously challenged, was questioned after a delay of 75 days. PW-14, also had spoken of Melekulam Balakrishnan [PW-95], who is the General Secretary of the Block Committee of the ruling party and the Party Office being frequented by the 'Mahila Wing', and other feeder organizations of the political party, who use the Party Office for their activities. PW-14 also claimed that he was the Office bearer of the Autorickshaw Employees Union affiliated to the ruling party. PW-6 spoke of others coming to the office to read newspapers. It is in such a place, the prosecution alleges the crime to have been carried out. PW-95, as we noticed, is conspicuously absent from the Office though he is said to be a regular functionary. In the party hierarchy he is obviously above A1 since he speaks of having given A1 Rs.5,000/- to be handed over to the relatives of the deceased on coming to know of her death. PW-1 accepts that he received money, though only Rs.4,000/-, from A1 towards funeral expenses.

33. We reiterate, at the risk of repetition, that at 9.45 a.m PW-5 last saw the deceased alive. PW-6 the

person who was reading the newspaper at the Party Office deposed that at 10'0 clock A1 and A2 were seen taking a sack out of the office. In cross-examination he says that at 10.30 he saw A2 carrying a thread sack (Jute) and A1 a plastic sack, which is a contradiction. Definitely the body in a sack cannot be carried out by one person and if we believe his earlier version in chief examination, the crime occurred between 9.45 a.m and 10.00 a.m, which considering the manner in which the murder was committed and the alleged task of huddling the body into a sack; a 150cm tall woman into a sack having length of 110cm, itself is improbable.

34. Further PW-19 the proprietor of 'Eye Style Opticals' speaks of A1 having come to his shop asking whether there was any waste to be taken away, since one of his friends had come with a vehicle. PW-19 replied that there is not much waste but still promised to see if there was any. At this point the employee of PW-19, PW-60 told A1 that there is nothing to put the waste in, upon which A1 asked him to go to the Party Office where there were sacks available. PW-60 deposes that he went to the Congress Office picked up a sack lying in the hall, saw PW-6 reading a newspaper and later saw A2 bringing a sack and putting it

inside the goods carrier van. PW-105, deposed that PW-60, in his statement to the Police neither spoke of having seen A1 and A2 putting a sack in the vehicle nor did he state that he saw PW-6 in the Party Office. PW-19 speaks of having seen A1 and A2 carrying a sack, after A1 came to his shop asking for waste. The picture we get from the evidence of the witnesses is that when the body was inside the Party Office, A1 went around asking for waste to be taken out and even asked PW-60 to go to A1's office and pick up a sack; which is unbelievable. All this time, PW-6 was sitting in the Party Office, which even according to the witnesses, is frequented by many belonging to the party and those casually coming there to read the newspapers. We have our own doubts about the crime having been committed in the alleged scene that too in a space of 15 minutes and the body brought out in a sack. Here we again emphasize that the deceased was a fully grown woman, of 150cm height and weight of 50Kg, as seen from the postmortem report. The sack in which the body was found floating had a length of 110 cm and width of 70cm as evidenced from Ext.P-111, Inquest Report prepared by PW-102 Sub Inspector. The *modus operandi* of the murder was smothering on the mouth with plaster and strangulation of the neck with the very same

plaster used as ligature. There was also brutal stamping of the chest causing the ribs; 8 on the right and 6 on the left, to be fractured. Then there was bizarre penetration of the vagina, allegedly with a mop, causing very serious injuries which could even result in death by neurogenic shock. After having accomplished these tasks the body had to be huddled into the sack, all within 15 minutes. Further all this was done with the doors to the Office left open since PW-6 walked freely in to read the news paper at 10a.m. More suspicious is the fact that PW-6 speaks of having seen PW-1 and PW-2 carry out the sack which later stood contradicted by himself. For a moment if we ignore the contradiction, the sack carried by A1&A2 presumably held the body weighing 50 kgs, which is no mean task for even two able-bodied men, especially given the fact that the dead-weight of a corpse huddled into a sack will not be evenly distributed.

35. PW-14, apart from the delay in S.161 statement, is a chance witness brought in to further fortify the presence of A2 and his vehicle in the locality. The delay assumes significance since, as in the case of PW-3, A2 is a stranger to PW-14 also, which negates the identification made. PW-14 is an auto goods driver who

reached there to collect certain goods from one 'Zenith Sanitisation'. He deposed in chief-examination that one 'Kulakandathil Achayan' called him around 10-10.30 to collect some pipe fittings from the aforementioned shop. He does not offer any further information about the man who called him and feigns ignorance even about that persons actual name. In cross-examination, he changed his version and stated that it was an electrician who called him on the mobile phone to collect the pipe fittings. His version in the 161 statement was that he reached the auto stand around 8.30 when Kulakandathil Achayan called him to collect PVC pipes from 'Zenith Sanitisation'. On a specific question put to him he had admitted the said statement and PW-108 also proved these contradictions. The presence of the said witness in the locality is highly suspicious. But as we noticed PW-14 spoke of Melekulam Balakrishnan who is the Block General Secretary of the political party to which is affiliated the Auto-Rickshaw Employees Union whose office bearer PW-14 is. His specific contention is that it is Melekulam Balakrishnan who looks after the affairs of the Party Office. PW-14's presence in the scene of occurrence is suspect and so is his identification of A2, but it was the prosecution who brought out his membership in the Party

and the person who looks after the affairs of the Office, PW-95. The maxim '*falsus in uno, falsus omnibus*' does not apply to India and the fact that PW-14's deposition is discredited on one aspect need not affect his evidence on other aspects. PW-95's position in the party is spoken of by the other witnesses also.

36. PWs.3, 6, 14, 19 and 60 are the witnesses who identified A2 at the crime scene. Apart from the delay in taking their 161 statements, they were admittedly not acquainted with A2. The necessity for holding an identification parade arise when the accused are not previously known to the witnesses as has been held in (2007) 2 SCC 310 [Amitsingh Bhikamsing Thakur v. State of Maharashtra]. The identification parade held, for the witnesses to identify the culprits from the midst of other persons is a test of their veracity. It was also held that it is desirable that a test identification parade should be held immediately after the arrest of the accused since that eliminates the possibility of the accused being shown to the witnesses. In the present case no identification parade was held, obviously because the accused were brought to the scene of occurrence on the next day of their arrest and their photographs were publicized in the print and

electronic media. The identification of the accused in Court though constitutes substantive evidence, in the present case there cannot be much reliance placed on it since even before the 161 statements itself the witnesses were well aware of who the second accused was; the 1st accused being a familiar person to all of them. It has also been held in the cited decision that "*the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character*" (sic- para 13). It is also declared that there is no obligation on the investigating agency to carry out a test identification parade; nor can the accused claim such a right. However, it corroborates the sworn testimony of witnesses in Court and, hence, it is a rule of prudence. Here, the weak evidence of identification in Court for the first time is rendered weaker for reason of the photographs of A2 having been publicized in the media.

SUBSEQUENT CONDUCT OF A1 & A2

37. After the body was placed inside the vehicle of A2, from the Party Office, the prosecution traces the path which A1 and A2 took, through the following witnesses. PW-23 is the Branch Manager of one Malabar Gold which establishment is located on the side of CNG Road. He

produced the pen-drive which contains the visuals, as copied from a DVD, to which the copy was made from the hard disc available in his establishment. The visuals displayed in Court suffered from the very same legal infirmity under S.65B of the Evidence Act as was noticed in the case of the visuals produced by PW-2, the proprietor of 'Orbit Computers'. We cannot but observe that the visuals only indicated an Ace goods vehicle and a Honda Activa Scooter proceeding from Nilambur to Chandakunnu without any identification of the vehicles as that belonging to A1 and A2, by reference to their registration numbers or otherwise. PW-24 deposed that he saw A1 on his Honda Activa Scooter at around 11.00 a.m and after talking to him he went towards the level-cross in the direction of Pookkottupadam-Chulliyodu. Both these witnesses do not in any manner establish the movement of the vehicle, which according to the prosecution contained the body.

38. The further case of the prosecution is that the vehicle which contained the body was parked in the residential compound of PW-53, Eleykutty. Eleykutty stays at Chulliyodu and knows A2, who belongs to the said place. Her deposition is that by around 11-11.30, A2 came with his TATA Ace goods vehicle and parked it in front of her

residence. A2 then told her that he is going to Nilambur and would take the vehicle in the evening. A2 also went outside and got on a scooter and proceeded towards Unnikulam. A2 came back at around 6.30 p.m to take the vehicle. It is highly unlikely that the perpetrators of a murder would have left the body in a vehicle and left it parked on the roadside, as seen from Ext.P6 Observation Mahazar. Ext.P6 is prepared on the parking spot as pointed out by one Sajiv Rahman S/o.Saithali, who is said to have seen the vehicle parked there, who was not cited as a witness. In any event Ext.P6 identifies the exact spot of parking as that inclusive of the road margin. We also see from PW-53's evidence that she speaks of the sides and back of the vehicle being covered with a black hood. In this context we looked at the photographs of the vehicle which were shown to us to point out that the carriage portion was fully covered. Though the carriage portion is covered any person could have had access to the carriage portion for reason of there being no possibility of it being secured. This renders the prosecution story of the vehicle with the corpse in the carriage portion, having been parked on the road side from 11.30 a.m. To 6.30 p.m., highly improbable.

39. There are also witnesses produced to speak about the conduct of A1 and A2 in the evening of the fateful day. PW-8 who runs a mobile eatery speaks of A2 having purchased two parcels in the night of 05.02.2014 at around 8 to 8.30. PW-105, Dy.SP however stated that in the statement to the Police, PW-8 only said that A2 purchased a food parcel; further evidencing tutoring of witnesses. PW-9 a resident of Unnikkulam who is acquainted with both A1 and A2 speaks of having seen A1 and A2 going from Chulliyod to Unnikkulam on the same day between 8.00 and 9.00 p.m. This statement also was not made to the Police as stated by PW-105, Dy.SP. PW-9 claimed that he was sitting in the goods auto of CW-41 when A1 and A2 proceeded towards the pond in a scooter. He also asserts that he saw them by the light of the vehicle in which he was sitting and the scooter driven by A1. It is pertinent that in cross-examination he resiles from the definite stand taken earlier and deposes that he had a doubt that it was A1. It is also to be noticed that he along with CW-41 were sitting and talking in the latter's vehicle for about 10 to 15 minutes, as deposed; when the possibility of keeping the headlights on, is very remote. PW-9 also admitted in cross-examination that he had not stated before the Police

(under S.161) that he had seen A1 and A2 between 8.00 and 9.00 p.m on that day. We cannot place any reliance on the evidence of PW-9 and PW-8, which runs contrary to their statement before Police.

40. PW-18 is a toddy tapper who also runs a chicken stall at Chulliyod. His evidence is that he had proceeded to his sister's house by around 9.30-10.00 in the night and reached there around 10.30-10.45. He deposed that when he was coming back, around 11.30 he saw A1 standing on the road going to Unnikulam immediately after the Chulliyod Market and A2 a little further. His evidence is suspicious insofar as he states in cross-examination that to reach his sister's house it takes about an hour and in chief-examination his specific case was that he left his sister's house at around 11-11.15. He could not have reached Chulliyod market at 11.30 when he claims to have seen A1 and A2. In any event A1 has a definite case that he was at Unnikulam on the said night for a house warming function and A2 has his residence at Unnikulam. Their presence as spoken of by PW-18, if at all true, stands explained.

41. PW-63 is the next witness who spoke of seeing A1 and A2 on the night of 05.02.2014. Though PW-63 is a

prosecution witness his account supports the explanation of A1 and to an extent aids A2 also. PW-63 stays at Unnikkulam and has a business in Tea Powder. A2 was his former Sales agent and he still maintains a connection with A2 who has started an independent business in Tea Powder, which he purchases from PW-63. It is stated that between 5 and 6 in the evening A2 called him on the mobile and as he stopped, A2 got on his two wheeler. A2 is said to have got down at Chulliyodu where he said his vehicle was parked. The witness further stated that in the night around 8.45-9.00 he saw A2 sitting in the veranda of a shop playing caroms with some others. He further deposed that even at 10.00 O' clock when he passed that way A2 was still playing caroms at the same place; when he saw the vehicle of A2 parked opposite to where he was playing.

42. In cross-examination PW-63 states that on the 5th there was a party organized at his residence in connection with the housewarming ceremony. Only friends participated in the function which was attended by A1. It is also stated that the function concluded only around 1'0 clock at night. The said evidence is corroborated by that of PW-56. PW-56 as we noticed had regular contact over the telephone with A1 on a daily basis, frequently. She claimed

that she could not get A1 on the telephone in the night of 05.02.2014. However, at around 1.00 'O Clock in the night, A1 called her back and told her of the housewarming ceremony he had been attending. He also spoke of the song he rendered on the occasion. It is the specific statement of PW-56, again a prosecution witness, that A1 rendered the song over the mobile phone, for her benefit. A conduct unlikely of a person who had just drowned the body of the woman he murdered in the morning, in a nearby pond.

43. PW-63 provides a valid explanation for the presence of A1 at Unnikkulam; justifying the tower location provided of his mobiles, which alone prompted PW-103 to arrest A1 and A2. A2 as we noticed, is a resident of Unnikkulam and A1 was present in the locality for a function as deposed by the prosecution witness itself. The cross-examination was left unchallenged by the prosecution. Here we also have to notice that it is PW-91's evidence that he saw A1 at 7.00 O' clock, on 05.02.2014, at the Party Office and he accompanied him to A1s house. The prosecution witness PW-63 assert the presence of A1 in the function organised by him which commenced at 10'0 clock and ended at 1'0 clock. It cannot be believed that after having disposed of the body in a pond with two boulders tied to

it, thrown away the personal effects of the deceased and burned her clothes; A1 attended a function, rendered a song there and sung it over again on the mobile phone, to a girl friend, at 1.00 O' clock.

THE RECOVERIES:

44. There are a spate of recoveries made by the prosecution, each of which are challenged by the accused. We shall deal with one by one. PW-103, the Circle Inspector, made these recoveries after the arrest of A1 & A2. The recoveries are of the personal effects of the deceased and those objects used to commit the crime. In the case of the latter we would also discuss the evidence led to establish the procurement of some of those objects. The confessions are said to have been made on 10.02.2014 but the recoveries were made on different dates; the delay with respect to some of these, makes those recoveries very suspicious.

45(i). Ornaments of the deceased: The ornaments worn by the deceased, according to the prosecution, was recovered by Ext.P8 Mahazar on the basis of Ext.P8(a) confession made by A2. The confession dated 10.02.2014 is to the effect of A2 having hidden the ornaments in a plastic cover in his bedroom, out of the eyesight of his

wife. As per Ext.P8 Mahazar, witnessed by PW-20, one bangle weighing 7.92gms, a pair of ear studs weighing 2.68gms, a necklace [not of gold] and the plastic cover in which the ornaments were secreted, were recovered from the concrete rack in the bedroom of A2's house. Ext.P8 indicates that a goldsmith, PW-30, was present when the recovery was made to ascertain the purity of the ornaments. PW-20, the witness to the seizure accepted his signature on Ext.P8 Mahazar, dated 11.02.2014, the day after the body was recovered from the pond. He identified the ornaments recovered as per Ext.P8, as also A2.

45(ii). PW-30, the goldsmith, also a resident of the locality examined the ornaments at the time of recovery according to the prosecution. He identified the ornaments MO1 to MO3. In cross-examination he stated that he was summoned from his shop for the purpose of examining the ornaments, which he did in the veranda of A2's house. In cross-examination he also stated that such examination was done 4 or 5 days after the body was recovered; which was on 10.02.2014. This is quite contrary to Ext.P8 recovery mahazar which is dated 11.02.2014, in which the presence of PW-30 and the examination conducted of the ornaments is specifically recited; raising a reasonable doubt about the

said recovery alleged to be made on the confession statement of A2.

45(iii). We also notice that the I.O, PW-103 [C.I] had specifically spoken of the ornaments having been shown to PW-1, PW-4, the brother and sister-in-law and CW-2, another sister of the deceased when their S.161 statements were recorded; without any independent identification being called for from among other similar ornaments. In (2002) 7 SCC 317 [Ashish Batham v. State of M.P] recovery from the accused, of a chain belonging to the deceased was held to be shrouded in mystery for many a reason. One of the reasons was that the identification of the chain, which distinctively had an iron wire in the place of a hook, was not done after mixing it up with similar chains. AIR 2010 SC 85 Pannayar v. State of T.N held that identification of ornaments of the deceased recovered on the confession statement of the accused, if carried out for the first time in Court would be a weak type of evidence. In the present case the recovered items are said to have been shown to the relatives, PWs.1, 4 and a sister before the same were produced in Court. No Test Identification was carried out. PW-1 and PW-4 were then shown the ornaments in Court as those of the witnesses which they readily accepted without

any distinctive aspect of the same being elicited from them before confronting them with the objects. This renders the evidence liable to be discarded by Court.

46. Umbrella [MO6], Ladies Slippers [MO4], Spectacles [MO5]: The umbrella, MO6, allegedly owned by the deceased is recovered as per Ext.P27 as per the confession statement of A2 [Ext.P119]; that he threw it into the shrubs available on the roadside near 'Thondivalavu'. Ext.P27 recovery was witnessed by PW-42. As per the description of the umbrella available in Ext.P27 it is a triple folding one, coffee coloured with white and yellow dots, having the words 'JOHN's' written on the handle. The ladies slippers allegedly belonging to the deceased marked as MO4 was recovered on the confession statement of A2 as per Mahazar Ext.P9 on 11.02.2014. The confession statement Ext.P120 was to the effect that the ladies slippers were thrown into the rubber estate enclosed inside a fence lying to the left of the Pattaraka road. Ext.P9 Recovery Mahazar is witnessed by PW-21. The slippers were described as having black colour with a sticker 'Paragon' on its strap, of size 4 inches and with the words 'Solea' inscribed within. The spectacles used by the deceased was recovered as per Ext.P10 as per the confession statement of A1,

Ext.P122. The spectacles [MO5] are described as having metal frame with white and black coloured legs. The confession is to the effect that the spectacles were thrown away in the rubber estate belonging to one Prabhakaran lying on the side of Ulladu-Cherai road. It is pertinent that though the umbrella, the slippers and the spectacles have distinctive descriptions, even the obvious among these were not attempted to be elicited from either PW-1 or PW-4 before the MO's were shown to them, in Court, for identification as belonging to the deceased. The identification also suffers from the same defect pointed out in the case of the ornaments since PW-103 speaks of the said articles having been shown to the relatives including PWs.1 & 4 immediately after the recovery, before producing it in Court.

47. SIM Card of the deceased: A2 also confessed, to have thrown away the SIM card of the deceased, as per Ext.P14(a) dated 10.02.2014 which was recovered as per Ext.P14 Mahazar dated 15.02.2014. The recovery of SIM Card (MO-10) belonging to the deceased is specifically emphasized by the prosecution to drive home the guilt of the accused. It is to be noticed that the SIM Card is established to be that of the deceased. PW-79, the Nodal

Officer of Vodafone Cellular Limited, from the SIM Number H3 8991462160282615090, deposed it as the SIM Number of the connection having No.9645880217 as subscribed by the deceased. Ext.P74 is the communication from PW-79 to the District Police Chief indicating the details of the subscriber having SIM serial number as displayed in MO-10. Ext.P89, is the application submitted by the deceased and Ext.P90 is the ID proof of the deceased submitted to the service provider. The confession to PW-103 is to the effect that the SIM card was thrown away at Angadippuram and the same was recovered from near the waiting shed of Platform No.1 of the Angadippuram Railway Station from among the dead leaves lying scattered on the ground. The confession of A2 is also to the effect that the SIM Card was removed from the switched off mobile phone and after scratching it on the wire fencing, it was thrown into the dead leaves lying beyond the fencing. The evidence of PW-103 embellishes the confession to specify the location as 'Angadipuram Railway Platform'; the words 'Railway Platform' being absent in Ext.P14(a) confession statement. It is also indicated by PW-103 that the SIM Card was recovered by A2 from among the dead leaves lying outside the fencing of Platform No.1 of Angadipuram Railway

Station. The recovery was made after 10 days, on 15.02.2014, and it is very unlikely that such a small object like a SIM Card could be traced out from the fallen leaves lying near a Railway Platform where there is definitely more than normal foot falls. Though it is established that MO-10 is the SIM Card of the deceased, we are not fully satisfied of the recovery, for reason of the embellishment and the improbability of such a small object lying there for 10 days for easy detection on a casual search made among the fallen leaves as the I.O would have us believe from the Mahazar, Ext.P14. Pertinent is also the fact that the confession statement made regarding the SIM card on 10.02.2014 was pursued only after 5 days. A conscientious investigator would have first caused the recovery of the SIM card, a minute object, left on a Railway Platform.

48(i). Burnt Remnants: The burnt remains recovered are from two places as per the confession statements respectively given by A1 & A2. The clothes worn by the deceased, a phone book, the cover of a scissors, a plastic sack and a packet in which the jute sack was brought, is said to have been burnt by A1 & A2, which were collected by the Scientific Assistant as per Ext.P125. Here we note an

anomaly, for the purse [MO17] and phone book [MO18] of the deceased were recovered by the I.O, PW-108 from the house of the deceased by Ext.P21 in the presence of PW-38, the Mahazar witness, on 03.03.2014. Coming back to the recovery, the confession statement of A1 was dated 10.02.2014 and marked as Ext.P125(a). The recovery itself was from one 'Cheranga Thodu' a canal; from the stagnant water on its northern side. Three packets of burnt remnants are said to have been sampled from the water, which itself is improbable. MO15 series sent to the Forensic Lab did not bring out any incriminating information on scientific analysis. More disturbing is the fact that the witness in the Mahazar was a Civil Police Officer who was not examined as a witness. Nor was the Scientific Assistant who took the samples examined.

48(ii). There is also the gross inconsistency pointed out by the defence, seriously putting to peril the recovery itself. According to the defence, the Mahazar was drawn up at 07.30 p.m on 11.02.2014 as seen from Ext.P125, but on the same day the accused were produced before the Magistrate at 7.35 p.m. as is evidenced from Ext.D5 remand report. 'Cheranga thodu', from where the recovery is effected, is at least 15 kilometers from the Magistrates

residence. PW-26's evidence is pointed out wherein the witness, a resident, speaks of the distance from Chulliyodu to Unnikkulam being 2 kilometers; from where, to approach 'Chirang thodu' one has to go by foot for two kilometers. Nilambur proper is further distant from Chulliyodu. We have further assistance in Ext.P76, which is the inspection report of the Doctor PW-80, who carried out the postmortem and later scene inspection. Ext.P76 records that the pond where the body was found is 12 kilometers from Nilambur and the location of the stream of water where the burnt remnants were found is two kilometers further north, as deposed by PW-80. The contention that, if at 7.30 p.m the recovery was made, there is absolutely no way the accused could be produced before the Magistrate at 7.35 p.m.; has to be accepted.

48(iii). The second set of burnt remains was recovered by P34 on the confession statement P34(a) by A2. The confession statement dated 10.02.2014 is vague and is just that certain things were burnt near a canal and the same kicked into the water in a canal. It is not clear as to what were the things that were burned and the scientific analysis [MO27] also does not reveal anything to connect A2 with the crime. More intriguing is that the above recovery

was also made from 'Cheranga thodu' on 13.02.2014; when, the earlier recovery of burnt remnants discussed in the previous paragraph was on 11.02.2014 from that identical location. When the earlier recovery was made, obviously the confession from A2 was available with the I.O which however was not pursued then. Here too, both the Mahazar witnesses were not examined. The recovery of burnt remnants definitely is a farce which raises serious questions on the manner in which the recoveries were made. Pertinent is also the fact that the place chosen to burn the various items is a most unlikely choice. According to PW-26, a resident of the locality who witnessed the recovery of a scissors from the identical location 'Chiranga thodu', in the evenings elephants descend from the nearby forest.

49. Mobile Phone of the deceased: The mobile phone of the deceased, without its battery and the back cover was recovered on 14.02.2014 [described as motherboard of the mobile] as per Ext.P33 based on P33(a) confession statement. The confession indicates that A2 threw MO26 into a rubber estate on the side of Pookkottupadam-Chulliyodu road, near a wayside Church. The recovery was made on 15.02.2014 when the confession itself was on 10.02.2014. The recovery suffers from the same defect we pointed out as

regards the other personal effects of the deceased, on the identification made by the relatives, first in Court on the same being confronted to them as the mobile of the deceased without even the make being elicited in chief-examination.

50. Plaster Roll: Ext.P28 is the Mahazar by which a Plaster Roll was recovered in a rubber estate on the side of Ulladu-Puthiyarkodu road based on the confession statement of A1 at Ext.P121. The plaster stuck on the mouth of the deceased and that used as ligature is alleged to be from the plaster roll recovered as MO24. On scientific examination, it has been found in Ext.P221 that it is not possible to say whether the adhesive tape found in Item No.3 ['plaster roll of white colour adhesive tape'- MO24] is similar to that in Item No.23 ['stained and foul smelling adhesive tape with few hairs adhered on it' obviously that recovered from the body of the deceased].

51. Torch: As per Ext.P87 Mahazar a torch was recovered from the house of A1, marked as MO13 as per Ext.P87(a) confession statement, which is dated 10.02.2014 and the recovery is on 14.02.2014.

52. Bottle: A1 is also said to have confessed about having taken petrol in a bottle [MO30], which was recovered as per Ext.P81 on the confession statement

Ext.P81(a) of A1. This was obviously to burn the various items including clothes of the deceased. The scientific analysis of the Bottle, as per Ext.P223 did not reveal any inflammable oils in the said bottle.

53. Metal Cover of Plaster Roll: The further recovery made is of the metal cover of the plaster roll [MO14] as per Ext.P82 Mahazar based on the confession statement of A1, Ext.P82(a). The recovery was on 16.02.2014, when the confession itself was on 10.02.2014. There is also no single witness examined to affirm the recovery.

54. Scissors: As we noticed earlier the recovery of the scissors does not speak well of the prosecution. The scissors are marked as MO11 and the recovery is by Ext.P15 mahazar. PW-108 would state that on 13.03.2014 A1 and A2 were questioned in the District Jail with permission of the Magistrate, upon which A1 confessed about the place where the scissors was thrown away. Though no confession is marked the recovery of MO11 from Chiranga thodu on 23.03.2014 is stated to be on A1's confession statement on 13.03.2014. There is no explanation for the delay in carrying out the recovery immediately after the alleged statement. We recall that it is at the identical spot from

which two burnt remnants were recovered, on the confessions made on 10.11.2014 by A1 and A2, respectively on 11.02.2014 and 14.02.2014. The recovery is said to be made again from a sand bank in 'Chiranga thodu' where there is water even as per Ext.P15 Mahazar. MO11 was recovered by the ACP himself as spoken of by PW-26. As we noticed there is no confession recorded nor was the accused present on the occasion of the recovery, to point out the place where the scissors was thrown away. The scissors also eluded the investigators when they recovered burnt remnants from the identical spot, twice before.

55. All the recoveries were challenged in cross-examination of mahazar witnesses wherever they were examined. Each of the said recoveries were also challenged when the Investigating Officers PWs-103, 105 and 108 were examined. As we noticed the delay occasioned in the recoveries despite the confession statements having been recorded on the date of arrest is a very fatal aspect against acceptance of those recoveries. When so much confessions are made by the accused on arrest, there is no explanation as to why custody was not sought immediately on production of the accused before the Magistrate on 11.02.2014. PW-103 says that the accused were produced

before the Magistrate on 11.02.2014 and remanded to judicial custody. The application for custody was made only on the next day even as per PW-103. The accused were obtained on police custody on 13.02.2014, but the recoveries even then were delayed.

56. The prosecution would have us believe that they made the recoveries as per the confessions made by the accused, which translate to incriminating circumstances. While the prosecution would represent that they followed the script of the accused, we have our own suspicions about the confessions made; which also could be words put in to the mouth of the accused as per the script prepared by the prosecution. We say this specifically because the objects recovered to project the preparation for the crime and the recoveries made are more dramatic than real. Many of the objects seized and recovered are of common utility used in any household, like a torch, a plaster roll and scissors. We also have our own doubts of the recoveries of personal effects made on confession of the accused. We have to remember that the objects, as per the prosecution case, were thrown away in pitch darkness while coming back from the pond where the body was drowned. These objects were thrown away indiscriminately into estates and shrubs which

exact spot, even for a resident, would not be easy to identify the next day in day light. Moreover when many items are thrown away indiscriminately it is difficult for a person to exactly recall the spot in which a particular item was discarded when questioned by the Police. We find the entire recoveries to be artificial to the core.

THE OTHER INCONSISTENCIES:

57. Ext.P7 speaks of blood presence in the computer room of the Party Office as detected by the Scientific Assistant. In this context, we have to notice the elaborate search made by the Police, twice; once when the accused were brought to the scene of occurrence in the course of investigation and then the Doctors, accompanied by the Police, inspected the crime scene. Ext.P7 was prepared in the presence of the accused at 15.10 hours from the scene of occurrence. The Computer room is in the south-west portion of the building where on the north-west of the room blood presence was detected by the Scientific Assistant. PW-103 specifically deposes on this aspect. However, the same has not been collected and sent for analysis, nor has the Scientific Assistant, who detected it, cited as a witness.

58. Ext.P76 is the report of inspection of the scene of occurrence conducted by the team of Doctors along with the Police. As per the report, every nook and corner and edges of the table were scrutinised for traces of blood. No trace of blood, hair or skin was detected from the scene of occurrence. The objects which were in the computer room of the Party Office were also closely examined and a mop [MO29], in which faint trace of blood was detected, along with certain other objects were seized. This is in addition to the various objects seized by the police at the time of their inspection in the presence of the accused, which is evident from Ext.P7 scene mahazar. All these objects were sent for chemical examination, which did not bring forth any incriminating material. The stain found in the mop was so insignificant that even the origin could not be detected as seen from Exhibit P-254 analysis report. In this context we have to notice the observation of PW-80, the Doctor, that the penetration of the vagina, which was grievous enough to cause death, would not have occasioned profuse bleeding. It is safe to infer that there could have been bleeding, no trace of which was found at the scene of occurrence despite the scene having been examined with a fine-tooth comb.

59. The Special PP has stressed on the numerous calls between A1 and A2. PW-104, the Sub Inspector who was entrusted with the task of verifying the call details, has deposed that between 01.03.2013 to 05.02.2014 there were 90 calls between A1 and A2, of which 20 calls were between 01.02.2014 and 05.02.2014. On the fateful day, i.e., on 05.02.2014 there were 9 calls. That A1 and A2 were friends, was admitted by them and the prosecution case also proceeds on that premise. There is a defence raised that the calls were to and from the mobile in which the SIM card was applied for and obtained by the mother-in-law of A2. The prosecution relies on P157 and 161 receipts issued to A2 to establish that though the subscriber was the mother-in-law, it was used by A2. Ext.P157 is a receipt for the complaint submitted by A2 to the police. In the address portion, there is a handwritten mobile number which was not written by A2, since it is a receipt issued from the Police Station. The complaint which is annexed to the receipt does not show a mobile number. Ext.P161 is a receipt issued by a Service Station for the service of A2's vehicle, which again has the mobile number written in a hand different from that filling up the various columns in the receipt. For all we know, it could have been entered by the Police

personnel. The prosecution has not attempted to get the receipt book from the Service Centre or examine the person who issued the receipt. However, we find that the mobile phone in which the SIM was found was recovered from A2's vehicle. A2 cannot, merely on the subscription being in the name of the mother-in-law, wriggle out of the use of that particular number by him. However, merely because there were frequent calls between A1 and A2, it cannot lead to an inference that it was in preparation of the murder and in furtherance of such plans, without something more than the mere frequency of the calls.

60. The Special PP also stressed on the fact of the injury caused to A1, which was denied by the suggestion in cross-examination of PW-76 but admitted in S.313 questioning. PW-84 is the Head Nurse in the District Hospital, Nilambur. The O.P. Register of the hospital between 25.01.2014 to 22.02.2014 was seized by the police as per Ext.P83 seizure mahazar in which she was one of the witnesses. The Register was also handed back to the Lay Secretary of the Hospital from whom the Register was taken possession of, by Kychit Ext.P84. The O.P. Register was produced before Court and marked as Exhibit P85. Ext.P85(a) is the entry regarding O.P.No.25608, wherein the name of

the patient is shown as Biju. PW-76 is the Junior Consultant who treated Biju, 38 years, with a sprain of right thumb. The patient was given analgesics and the thumb was fixed with a splint. The OP ticket issued to the patient with the signature of the Doctor was marked as Ext.P77. The Doctor also deposed that any direct force applied on the thumb could produce such an injury. The prosecution case is that the said injury was caused while committing the alleged murder of the sweeper inside the Party Office. There was a specific suggestion made in cross-examination by A1 that Biju was not treated as an outpatient at his hospital on 06.02.2014 and that Ext.P77 is falsely created. In 313, the accused has spoken of the injury having been suffered when he fell down in the bathroom. It is trite that the accused can take any inconsistent plea and in any event '*a false plea taken by the accused cannot be the basis of the conviction when the prosecution story itself suffered from glaring infirmities*' (sic-[Surendra v. State of Rajasthan (2011) 15 SCC 78, para 4]). A Division Bench of this Court in Santhosh Kumar v. State of Kerala [1986 KLT SN 23 (C.No.41)] held that suggestions made in cross-examination cannot be treated as admissions and the accused is entitled to take

conflicting defence.

61. We have to now examine the plea taken by the Special PP by production of the bail application filed by A2 and the prayer made for acceptance of the same in Crl.M.A.No.1 of 2021 in Crl.A.No.607 of 2015. The admission sought to be relied on is from Ground-B, in which it is stated that A1 hired the vehicle of A2 and transported a bag of waste to Unnikkulam, which was thrown into a disused pond. We find the plea made by the Special PP to be preposterous especially considering the fact that the bail application is not a document signed by the applicant and is one filed on instructions by the Advocate. The argument seems to be that the Advocate could be examined; which obviously was not done at the trial stage. Even before this Court the application moved under Section 391 of the Cr.P.C is grossly delayed; that too one moved after the conclusion of hearing. The Advocate is also protected under Section 126 of the Evidence Act from any communication made to him in the course of his professional engagement.

62. The learned Special PP seeks to rely on two Single Bench decisions of the Andhra Pradesh and Himachal Pradesh High Courts. Anantasayanam P.G. is a case in which an Advocate was summoned to prove the notice sent to the

defendant, the original of which was lost. The Court found that there is no confidential communication that is sought to be elicited in examination of the Advocate. This has no application to the present case. Chaman Lal was again a case where the Advocate was summoned to prove the pleadings filed in the Court. The decision itself indicates that the pleadings were signed by the party. In such circumstances, we fail to understand why the Advocate was summoned and we do not agree with the proposition laid down therein, with due respect. We do not find any reason to entertain the application and we reject the same.

63. PW-1 had spoken about the arrest of one Mani in connection with the missing of the lady. The said person is said (PW1) to have been in custody on 09.02.2013, which information was conveyed when PW83, the Municipal Chairman enquired with the Police about the missing case. Nothing was elicited by the prosecution from PW-103 who was initially in charge of the investigation, nor did the defence attempt to seek an explanation regarding the statement made by PW-1. There are certain suggestions made to PW95, the Block Secretary, about the said witness having deleted the Memory Card of his mobile for reason of it containing photos of Mani with other leaders of the

Party. But PW95 asserted that the deletion was for reason of A1 having figured in the photos. This establishes that A1 was very much available in the locality. Despite PWs.1 and 4 having spoken about the deceased being in inimical terms with A1, there were contradictions in their statements. Further, on his sister not returning from work till evening, PW-1 contacted A1 and with his help approached the Sub Inspector of Police who assured them that if the lady does not turn up by next morning, a case could be charged and enquiries made. PW-1 asserts that A1 had been with him throughout, after the body was recovered till it was taken to the Medical College. He also deposed to the fact that A1 passed on money for the purpose of the funeral. Though PW-61 deposed that A1 was not available for the funeral, he admitted that PW-95 had told him that A1 had gone to Perinthalmanna and will be back by 7 p.m. There was also the aspect of an international call having been received by the deceased on 03.02.2014, having duration of 489 seconds. The prosecution did not examine this aspect at all. The arrest of yet another person, the failure to enquire into the international call received in the mobile of the deceased and the conduct of A1 who remained with the family of the deceased gives rise to a reasonable suspicion

about the death having occurred in some manner other than the version of the prosecution.

64. In a case based on circumstantial evidence alone, the oft repeated principles of how the guilt has to be established has to be noticed. When there is no direct evidence, the principles have been restated in Ashish Batham at para 6, extracted here under:

"6. The principles, which should guide and weigh with the courts administering criminal justice in dealing with a case based on circumstantial evidence, have been succinctly laid down as early as in 1952 and candidly reiterated time and again, but yet it has become necessary to advert to the same, once again in this case having regard to the turn of events and the manner of consideration undertaken, in this case by the courts below. In *Hanumant Govind Nargundkar v. State of M.P.* [AIR 1952 SC 343] it has been held as follows: (AIR pp. 345-46, para 10)

"In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in *R. v. Hodge* [168 ER 1136] where he said:

'The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and

mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

These principles were needed to be restated even as late as in the decision reported in *Sudama Pandey v. State of Bihar* (2002) 1 SCC 679 and *Subhash Chand v. State of Rajasthan* (2002) 1 SCC 702".

65. The Hon'ble Supreme Court in *State of Rajasthan v. Mahesh Kumar @ Mahesh Dhaulpuria & another* [(2019) 7 SCC 678] again emphasized the duty of the Court to evaluate the circumstantial evidence so as to ensure a chain of evidence clearly establishing the guilt of the accused and completely ruling out any reasonable likelihood of innocence of the accused. It was observed that in deciding whether the chain is complete or not would depend

on the facts of each case emanating from the evidence and there can never be a strait-jacket formula laid down for the purpose. Varkey Joseph v. State of Kerala 1993 Suppl.3 SCC 745 held that suspicion is not a substitute for proof. It was held that there is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt. The distance must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict. The burden of proof squarely rests on the prosecution and there can be no conviction on the basis of surmises and conjectures or suspicion howsoever great it may be. Strong suspicion, coincidences and grave doubts cannot take the place of legal proof.

66. We have discussed the evidence threadbare and we have pointed out the inconsistencies starting from the medical evidence adduced. The post-mortem report was unnecessarily delayed and was signed only after the crime scene visit carried out by the team of Doctors, which was unnecessary since the medical opinion as to cause of death does not depend upon examination of the crime scene. Right from the beginning of the investigation there is a

deliberate scripting of events, clear from the evidence led by the prosecution. We have pointed out the glaring improbabilities in the prosecution case which coupled with the omissions and contradictions and the artificial manner in which the recoveries were made, with perfunctory identification carried out by the witnesses in Court, raise very serious doubts as to the case set up by the prosecution. The contradictions/omissions/embellishments as pointed out by us is of such a magnitude that it materially affects the case of the prosecution and are not of a trivial nature as has been held in Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra [(2010) 13 SCC 657].

67. Any investigation of a crime, especially one based on circumstantial evidence is fraught with numerous uncertainties and pitfalls which force the investigators to blindly grope for loose threads which are to be tied up to form the links in an unbroken chain of circumstances. The investigation proceeds on a number of probabilities but a successful prosecution would depend upon such probabilities being raised to the level of a credible version which, beyond any reasonable doubt brings home the guilt of the accused. The ingenuity of the investigator is in unearthing the evidence that eludes the common man and not in

scripting a story and collecting evidence to match the script. In Santhosh Kumar a Division Bench held that Investigating Officers are expected to be fair towards the accused also. The object they seek to serve, by the investigation, should be vindication of justice and not merely obtaining conviction at any cost.

We are unable to accept that in this case there is an unbroken chain of circumstances which unerringly results in the conclusion of the guilt of the accused and excludes every hypothesis of their innocence. The lingering doubts that pervades every aspect of the evidence led, persuades us to give the accused the benefit of doubt and acquit them of the charges levelled against them. We allow the appeals of the accused, Crl.A.Nos.289/2015 and 303/2016, setting aside the judgment of the trial court and direct the accused to be released forthwith, if they are not wanted in any other case. The appeal of the State, Crl.A.No.607 of 2015, is dismissed.

Sd/-
K.VINOD CHANDRAN
JUDGE

Sd/-
M.R.ANITHA
JUDGE

vku/jma/sp.

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