IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 14TH DAY OF FEBRUARY 2022 / 25TH MAGHA, 1943

CRL.A NO. 1022 OF 2016

AGAINST THE JUDGMENT IN SC 80/2016 OF SESSIONS COURT, MANJERI

CP 2/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS-1 ,TIRUR

APPELLANT/ACCUSED NO.2:

MUHAMMED YOUSAF @ SAJID
S/O.SAIDALAVI, NAMBRATH HOUSE, 34/1988, FLOWER ENCLAVE, BTS-MANGALAM, CROSS ROAD, ELAMAKKARA, KANAYANNUR TALUK, ERNAKULAM DISTRICT.

BY ADVS.RENJITH B.MARAR
LAKSHMI.N.KAIMAL
SINDHU K.S.,BALASUBRAMANIAM R.
ARAVIND S.P,SRILAKSHMI NAIR R
ARUN POOMULLI,BIJU VIGNESWAR
MEERA M.,SURABHI SANTHOSH

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY ADVS.ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.GRASHIOUS KURIAKOSE
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22.12.2021, ALONG WITH CRL.A.1041/2016, THE COURT ON 14.02.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 14TH DAY OF FEBRUARY 2022 / 25TH MAGHA, 1943

CRL.A NO. 1041 OF 2016

AGAINST THE JUDGMENT IN SC 80/2016 OF SESSIONS COURT,MANJERI

CP 2/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I ,TIRUR

APPELLANT/1ST ACCUSED:

JASEENTHA GEORGE @ JYOTHI
D/O. P.V. GEORGE, W/O. VINODKUMAR, PATHANANIKKAL HOUSE, 48/1661 A-2, VAISHNAVAM FLAT,VALIYAPARAMBA ROAD, ELAMAKKARA, KANAYANNUR TALUK, ERNAKULAM DISTRICT.

BY ADVS.
P.K.VARGHESE
P.S.ANISHAD
K.R.ARUN KRISHNAN
SANJANA RACHEL JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN- 682031.

BY ADVS.ADDL.DIRECTOR GENERAL OF PROSECUTION
SRI.GRASHIOUS KURIAKOSE
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22.12.2021, ALONG WITH CRL.A.1022/2016, THE COURT ON 14.02.2022 DELIVERED THE FOLLOWING:

“C.R.”

J U D G M E N T

Dated this the 14th day of February, 2021

Kauser Edappagath, J.

One Mr.Vinod Kumar, a business man aged 53 years, was brutally hacked to death and his wife Mrs.Jaseentha George @ Jyothi, aged 55 years, was seriously injured by a midnight blitz at their rented house at Valancherry, Thrissur. The shocking incident came to light on the next day morning (09/10/2015) at 9.00 a.m when their immediate neighbour and house owner Mrs. Leelavathy (PW4) found Mrs.Jaseentha @ Jyothi with injuries lying in a pool of blood at the hall of the house. Frightened, she ran out of the house and informed the incident to PW8, an employee of the deceased, who came there to clear the bushes. He immediately went to his workplace and informed the incident to PW1 and PW5, the other employees of the deceased. All of them rushed to the scene house. They saw Mrs.Jaseentha @ Jyothi with bleeding injuries in the hall and her husband lying dead in the bed room. They immediately took her to nearby Nadakkavil Hospital, Valancherry from where she was referred to KIMS Alshifa Super Speciality Hospital, Perinthalmanna for expert

management. At 9.30 a.m., PW1 went to Valancherry Police Station and gave Ext. P1 FI statement to PW50, the Senior Civil Police Officer. He registered Ext. P53 FIR against unknown persons for offences under Ss. 302 and 307 of IPC on the premises that Mr.Vinod Kumar was murdered and his wife was attempted to be murdered by someone. PW52, the CI of Police Valancherry, took up the investigation at 10.00 a.m. on the same day. On questioning the witnesses (especially PWs10 and 11) and verifying the call details of Mrs.Jaseentha @ Jyothi, the investigation agency formed an opinion that Mr.Vinod Kumar was hacked to death by none other than his own wife Mrs.Jaseentha @ Jyothi with the help and connivance of his aide Mr.Muhammed Yousaf @ Sajid (accused No.2) and the injury found on her body was a self inflicted one in order to erase the evidence. Accordingly, Mrs.Jaseentha George @ Jyothi and Mr.Muhammed Yousaf @ Sajid were arrayed as the accused Nos.1 and 2 respectively and Ss. 120B, 201 and 34 of IPC were incorporated, deleting S.307 of IPC. Exts. P54, 55 and 63 reports were filed to that effect at the court. The accused No.2 was arrested on 10/10/2015 at his house and the accused No.1 was arrested on 14/10/2015 on her discharge from the hospital.

2. A synoptical resume of the prosecution version which hinged on circumstances, is this: The accused No.1 was a native of Pandikkad, Malappuram. She was a Christian by birth. She was adopted by an Italian couple and taken to Italy. She was brought up at Italy and was working there as a nurse. She was having Italian citizenship. The deceased was also at Italy. They met at Italy, fell in love and married. The deceased was a Hindu by birth. After the marriage, the accused No.1 converted as a Hindu and adopted the name Jyothi. A child (PW12) was born in their wedlock at Italy. He was also an Italian citizen. Later, the deceased and the accused No.1 came back to India. They were residing at an apartment owned by them at Ernakulam. In the year 2010, the deceased started a gas agency under the name and style Rahul Gas Agency at Alinchode, Valancherry. The deceased took a house owned by the son of PW4 on rent at Valancherry where the incident was taken place. Since then, the deceased and the accused No.1 used to reside both at Valancherry and at Ernakulam. While they were living together, the deceased developed intimacy with another lady namely Mrs. Raji (PW6) and married her discreetly on 9/2/2012. A child was also born in the said wedlock. The accused No.1 was not at all

aware of any such developments. She came to know of it in December 2013. Thereafter she became inimical towards the deceased and their relationship strained. Since then, the accused No.1 was residing at her apartment at Ernakulam and the deceased was residing with his second wife at an apartment at Guruvayoor and also occasionally at the house at Valancherry.

3. The accused No.1 was stated to be a rich woman. After marriage, she purchased several items of properties and transferred certain items of her properties in the name of the deceased. Attempt was made by the deceased to transfer properties in the name of his second wife. Later, when the accused No.1 came to know about the relationship between the deceased and PW6 as well as the attempt made by the deceased to transfer his properties in the name of PW6, things came to such a pass that she decided to do away with him. Accordingly, she entered into a conspiracy with the accused No.2, who was her erstwhile tenant and family friend, offering him a flat at Ernakulam and ₹5,00,000/-. Such a conspiracy took place on 19/9/2015 at the house at Valancherry and on 6/10/2015 at the apartment of the accused No.1 at Ernakulam.

4. The conspirators chalked out a plan for the

extermination of the deceased. The final stage was set. In implementation of the prearranged plan to kill the deceased, on 8/10/2015 in the evening, the accused No 2 travelled from Guruvayoor to Kuttipuram and Kuttipuram to Valancherry in private buses. The accused No.1 picked him up from Valancherry in her car and both of them went to the house of the deceased. The deceased was not there at that time. He came late and straightaway went to bed. While the deceased was sleeping in his bed room, at about 1.10 a.m on 9/10/2015, the accused No.2 with the aid of the accused No.1 inflicted 99 cut injuries to him with MO2 chopper and thus caused his death. Thereafter, in order to give false information about the incident to the police, and thereby to screen themselves, the accused No.1 with the help of the accused No.2 self inflicted a cut injury on her neck with MO26 knife to make it appear that the assailant of the deceased had attacked her also.

5. As to the cause of death, the defence had a different version to tell. While the accused No.2 totally denied the incident, the accused No.1 took the plea that in the mid night of 8/10/2015, a masked man came and attacked her husband and during her attempt to save him, she sustained serious deep

injuries at her neck. The injuries sustained on her neck were highlighted to substantiate the said defence plea.

6. There was no direct evidence to prove the incident. The prosecution case was built upon circumstantial evidence. The prosecution relied on ten circumstances to bring home the guilt of the accused. In order to prove the circumstances relied on by the prosecution, it examined as many as 52 witnesses as PWs 1 to 52 and marked 76 documents as Exts. P1 to P76. MO1 to MO32 were also identified. On the side of the defence, DW1 was examined and Exts. D1 to D9 were marked. The court below after elaborately dealing with the evidence concluded that the prosecution had successfully established the chain of circumstances and they were of a conclusive nature which were only consistent with the hypothesis of guilt of the accused. Holding so, the accused/appellants were found guilty for the offences punishable under Ss.302, 120B and 201 r/w 34 of IPC and they were convicted and sentenced, *inter alia*, to undergo imprisonment for life. The said conviction and sentence are under challenge in these appeals. Crl.Appeal No.1041/2016 has been preferred by the accused No.1 and Crl.Appeal No.1022/2016 has been preferred by the accused No.2. Since both the appeals are

connected, we are disposing of them together.

7. We have heard Mr. P.K. Varghese, the learned Counsel for the accused No.1, Mr. Renjith B Marar, the learned Counsel for accused No.2 and Mr. Gracious Kuriakose, the learned Additional Director General of Prosecution (for short “ADGP’).

8. The learned Counsel appearing for the appellants impeached the findings of the court below on appreciation of circumstantial evidence and the resultant finding as to the guilt. The learned Counsel submitted that the circumstances highlighted by the prosecution do not present a complete chain of circumstances to warrant the conclusion of guilt on the accused. It was contended that the defence version was more probable. The learned Counsel further submitted that several discrepancies were brought out in the prosecution evidence to cast serious doubts as regards the prosecution version. Mr. P.K. Varghese, the learned Counsel for the accused No.1, additionally submitted that the Court below lightly brushed aside the explanation offered by the accused No.1 regarding the manner in which the incident happened. Mr. Ranjith. B.Marar, the learned Counsel for the accused No.2, additionally submitted that the Court below drew inference against the accused No.2 from circumstances which

were not firmly established by the prosecution. He also submitted that presence of the accused No.2 at the place of occurrence was not fixed either by witnesses or by electronic evidence. The evidence is totally lacking to conclusively find the accused guilty of the offence, added both Counsel. Mr. Gracious Kuriakose, the learned ADGP, on the other hand, supported the findings and verdict handed down by the court below and submitted that the prosecution has succeeded in proving the case beyond reasonable doubt. All the links in the chain which are so well connected to one another form a strong chain from which conclusion that the accused Nos.1 and 2 had caused the death in the manner alleged by the prosecution is inescapable, contended the learned ADGP.

9. As stated already, the deceased was found dead in the morning on 9/10/2015 at 9.00 a.m. at his residence at Valancherry. The body was sent for post mortem examination to PW32, the Assistant Professor, Department of Forensic Medicine, Government Medical College, Hospital, Kozhikode, who issued Ext. P31 post mortem certificate. The evidence of PW32 coupled with Ext. P31 would show that the deceased had 99 ante-mortem injuries stated in Ext. P31. The doctor opined that the death was

due to multiple cut injuries involving head and chest, producing cut injuries to brain, collapse of lungs and hemorrhagic shock. He also deposed that all the incised cut injuries in Ext. P31 could be caused with MO2 weapon. Ext. P75, FSL Report, would show that the blood stain found on MO2 was that of the deceased and Ext. P74, FSL Report, would show that the hairs collected from MO2 were similar to that of him. The evidence of PW32 coupled with Exts. P31, P74 and P75 prove that it is a homicide. Even the defence does not dispute the same.

10. The next question is whether there is evidence to show that it was the accused who caused the death of the deceased. As stated already, there is no direct evidence to establish this fact and the prosecution relied on circumstantial evidence to prove the offence. The piece of evidence/circumstances relied on by the prosecution and found in favour by the court below can be enumerated as follows:

(i) The evidence of PW17 and PW18, private bus conductors, and PW19, waiter in a restaurant at Kuttipuram, to show that the accused No.2 travelled in bus from Guruvayoor to Valancherry on 08/10/2015 in the evening and that he had food at the restaurant

mentioned above.

(ii) The call details and tower location details of the mobile phones used by the accused during the period of the commission of the offence.

(iii) The phone call between the deceased and PW10, an employee of the deceased, at or about the time of incident and PW10's subsequent phone call with PW11, another employee of the deceased.

(iv) The evidence of PWs 2, 3 and 6 that the deceased had told them that the accused No.1 had poisoned him with juice on one day.

(v) The scientific evidence that scalp hairs recovered from the Innova car were similar to that of the accused No.2 and that the blood stains found on MO11 mobile phone and MO4 and MO5 towels were that of the deceased.

(vi) The evidence of PW14, bus driver, and PW20, bus conductor, to show that after the commission of the offence, the accused No.2 drove the Innova car, stopped in front of their bus at Manoor and boarded the bus.

(vii) The evidence regarding recovery of cash, MO3 shirt of the accused No.2, MO4 and MO5 towels under S.27 of the Evidence Act consequent to the disclosure statement furnished by accused Nos.1 and 2 while they were in police custody.

(viii) The evidence regarding conspiracy by the accused Nos.1 and 2 to do away with the deceased.

(ix) The injuries found on the body of the accused No.1.

(x) Motive.

11. The care and caution with which circumstantial evidence has to be evaluated has been recognised by judicial precedents. It has been consistently held by the Apex Court that where the case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. 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. It is equally settled that the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. These principles have been laid out in the form of five golden principles by the Apex Court in ***Sharad Birdhichand Sarda v. State of Maharashtra*** [(1984) 4 SCC 116]:-

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent only with the hypothesis of guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12. The Apex Court in ***State of U.P. v. Ashok Kumar Srivastava*** (1992 Crl.L.J 1104) pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the

one in favour of the accused must be accepted. In ***G.Parshwanath v. State of Karnataka*** (2010 (8) SCC 593), it was held that in dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on the mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicion do not take place of legal proof. In ***Musheer Khan @ Badshah Khan and Another v. State of M.P.*** (AIR 2010 SC 762), the Apex court took the view that when a murder charge is to be proved solely on the basis of the circumstantial evidence, the presumption of innocence must have a dominant role. Recently, the Apex Court again in ***Surendra Kuma v. State of U.P.*** (AIR Online 2021 SC 238) held that in the case based on circumstantial evidence, it is necessary to determine whether the available evidence lead only to the conclusion of guilt and exclude all contrary hypothesis. Thus, reminded of the law, let us evaluate the evidence adduced by the prosecution to ascertain whether the conviction and sentence passed against the appellants on the above circumstances are sustainable under law.

13. **Circumstance (i) :** PWs17 and 18, private bus

conductors, and PW19, waiter at Hannath Hotel, Kuttipuram were examined to prove that accused No.2 had made a journey to Valancherry on 8/10/2015 in the evening and that he had food at a hotel at Kuttipuram. PW17 was the conductor of the bus, namely Adikesh, running on the route Kuttipuram-Guruvayoor. He was examined to prove that the accused No.2 travelled in the said bus from Guruvayoor to Kuttipuram on 8/10/2015 at 5.50 p.m. PW18 was the conductor of the bus, namely Royal, which was running on the route Kuttipuram-Valancherry. He was examined to prove that accused No.2 travelled in the said bus from Kuttipuram to Valancherry on 8/10/2015 at 6.50 p.m.

13.1. The evidence of PWs17 and 18 would show that they could not properly identify the accused No.2 at the dock. They were not sure as to whether it was the accused No.2 who travelled in their respective buses. Both of them stated that a person who resembled the accused No.2 was on their bus. This cannot be treated as a proper identification. That apart, PW17 in cross-examination admitted that in between Guruvayoor and Kuttipuram, there were 40 to 45 stops and he cannot identify all the persons who travelled in the said route. PW17 also specifically deposed in cross-examination that he cannot correctly

say whether accused No.2 travelled in his bus. Their evidence coupled with the evidence of PW52 would show that after about six days of the incident, the police people showed Ext. P11 photograph of the accused No.2 to PWs17 and 18.

13.2. PW19 was examined to prove that on 8/10/2015 in between 6.00 and 6.30 p.m., the accused No.2 visited his hotel and had food. He identified the accused No.2. However, he has also admitted that, after two days of the incident, the police produced the accused No.2 before him for identification. He admitted in cross-examination that, on a day, about 1000 customers would visit his hotel. Thus, it is quite improbable that he could remember the accused.

13.3. It is a case where the photographs of the accused Nos.1 and 2 were shown to PWs17 and 18 and the accused No.2 himself was produced before PW19 within a week of the incident. The correct method to conduct the investigation to ascertain the identity of the accused person is to conduct a Test Identification Parade. No such Test Identification Parade was conducted. Instead, the investigating officer has shown the photographs of the accused No.2 itself to the witnesses. In cases where the accused was not known to the witness before the incident and no

Test Identification Parade was held and was also shown to the witnesses by the police, the identification of such accused at the Court becomes valueless. So also, showing a photograph of the accused during investigation makes the identification at the Court worthless. [see ***Mohanlal Gangaram Gehani v. State of Maharashtra***, 1982 (1) SCC 700; ***Laxmipat Choraria and Others v. State of Maharashtra*** (AIR 1968 SC 938)]. Thus, no reliance can be placed on the evidence given by PWs 17 to 19.

14. **Circumstance (ii) :** The frequent phone calls between the accused Nos.1 and 2 especially on the previous day of the incident and the tower location of the phone numbers used by the accused No.2 was strongly relied on by the prosecution as one of the strong circumstances adding to the chain of circumstances. In order to prove this aspect, the prosecution relied on the oral evidence of PWs21 to 23, PWs26, 28 and 29 as well as Exts. P20, 21 and 25.

14.1. The accused No.1 was said to be using two phone numbers– 8157986030 and 9895707901. The former one stood in the name of one Shaji (PW21), but according to the prosecution, it was used by accused No.1. The latter one admittedly stood in the name of the accused No.1 and used by

her. The accused No.2 was also said to be using two phone numbers – 9037473132 and 7034757830. The former one stood in his name and the latter one stood in the name of his son, PW26. The oral evidence of PW28 (Nodal officer, Vodafone Ltd.) and PW29 (Nodal officer, Idea Cellular Ltd), Ext. P20 (CDR of the phone No. 7034757830, Ext P21 (CDR of the phone No.9037473132) and Ext. P25 (CDR of phone No.8157986030) would show that there were several calls from the two phones of the accused No.2 referred above to the phone No.8157986030 allegedly used by the accused No.1 on 8/10/2015 from 04.34 p.m to 07.14 p.m. There is no much dispute that the phone having No.9895707901 stood in the name of accused No.1 and phone having No.9037473132 stood in the name of accused No.2 were used by them respectively. Even though phone having No.7034757830 stood in the name of PW26, his evidence would show that it was used by the accused No.2. But, the crucial question is whether there is satisfactory evidence to show that the phone having No.8157986030 stood in the name of PW21 was, in fact, used by the accused No.1. This question assumes significance for the reason that calls from the phones of the accused No.2 on the previous evening of the incident were to this

number only. There was no call at all to the other number (9895707901) admittedly used by the accused No.1 and seized from the scene of occurrence. As per Exts. P20 and P21, the last call made to the said number was on 14/8/2010.

14.2. A highly convoluted story has been put forward by the prosecution to explain how the phone having No.8157986030 stood in the name of PW21 reached the hands of accused No.1. According to the prosecution, PW21 lost his phone while he was travelling in a bus. PW37, who was a scrap dealer, found the said phone lying in a garbage heap. He took it and handed over to his brother PW23 who was an employee of the accused No.1. It has come out in evidence that PW37 was an accused in theft case. PW23 says that accused No.1 asked him for a SIM card and he gave the SIM card put in the said phone to her. This long chain of events do not inspire any confidence. PW21 deposed that he lodged a complaint about the loss of phone at the police station and police has registered an FIR. But the investigating agency did not take any steps to seize the said FIR. He further deposed that thereafter he went to the police station and enquired about the phone, but there was no information. PW37 deposed that he got the phone from a garbage heap and handed it over to his

brother PW23. According to him, the owner of the phone (PW21) came to him along with his brother PW23, but he gave phone to his brother. But, PW23 has no case that he along with PW21 met PW37. According to him, PW37 gave him the phone for repairing. This story appears to be highly improbable. PWs21, 23 and 37 cannot be termed to be natural or independent witnesses.

14.3. It is pertinent to note that the phone having No.8157986030 or its SIM card was not seized. At the same time, the second phone of the accused No.1 (9895707901) as well as the phone used by the deceased (9895707900) were found in the scene house and they were seized by the police at the time of preparing the scene mahazar. They were marked as MOs 23 and 24. The two phones used by the accused No.2 were also seized from him at the time of his arrest and they were marked as MOs11 and 12. The prosecution has set up a case that, the accused, to erase the evidence, destroyed the phone of the accused No.1. S.201 of IPC was added as well. But, no investigation was done to that effect. No attempt was done to find out the said phone.

14.4. Apart from the evidence mentioned above, there is absolutely no other piece of evidence to show that phone

No.8157986030 was used by the accused No.1. Thus, at best, the evidence of PW28 and PW29 coupled with Exts. P20, 21 and 25 would only prove that there were several calls from two telephones used by accused No.2 (9037473132 and 7034757830) to the phone number 8157986030, but there is no satisfactory evidence to show that it was used by the accused No.2. Moreover, the tower location of the phone number 8157986030 was not fixed.

14.5. Ext. P24 is a letter issued by PW28 to the Superintendent of Police, Malappuram along with a chart showing the tower location of the telephone numbers of the accused No.2 (9037473132 and 7034757830). The prosecution pressed into service this piece of evidence together with the oral testimony of PW28 to substantiate its case that accused No.2 was travelling from Ernakulam to Valancherry on the evening of 08/10/2015. It was accepted by the Court below as well. But, the said evidence cannot be relied on for two reasons: first of all, Ext. P24 is hit by S.162 of Cr.P.C; and secondly, it is inadmissible as it was unaccompanied by a certificate u/s 65B(4) of the Evidence Act.

14.6. S.162 of Cr.P.C. makes it clear that the statement made by any person to a police officer in the course of an

investigation cannot be used for any purpose except for the purpose of contradicting a witness as provided u/s 145 of the Evidence Act. The prohibition contained in the Section (S.162 of Cr.P.C) relates to all statements including the statement in the form of a letter or chart containing narration of facts addressed to a police officer during the course of an investigation. The Apex Court in ***Kali Ram v. State of Himachal Pradesh*** (1973 KHC 634) has held that prohibition u/s 162 of Cr.P.C. cannot be circumvented by the police obtaining a written statement instead of investigating officer himself recording the statement. The Apex Court reiterated this in ***Chenga Reddy v. State of Andra Pradesh*** (1996 KHC 1264). It was held that a report submitted by a Government official assisting the investigating officer during the course of investigation and who was examined by the investigating officer after submission of the said report forming part of his statement under S.161 of Cr.P.C would attract the bar under S.162 of Cr.P.C. In ***Rajeevan and Others v. Superintendent of Police, Cochin and Another*** (2011 (1) KHC 738), two reply letters given by the Government officials in answer to the letter sent to them by CBI Inspector were held to be hit by S.162 of Cr.P.C. In ***Kanu Ambu Vish v. State of***

Maharashtra [(1971) 1 SCC 503], it was held that where the witness was made to write his statement during investigation, it was inadmissible in evidence. The evidence of PW28 would show that chart forming part of Ext. P24 is the consolidated Cell ID decoded statement copied by him from the Master Cell ID Chart. He deposed that he decoded the cell ID of the two phone numbers used by the accused No.2, reduced the same into document and sent to the District Police Chief. Such a letter and the chart attached to it containing the tower location details, in our opinion, would constitute statement for the purpose of S.162 of Cr.P.C, and thus inadmissible in evidence. Since it is hit by S.162 of Cr.P.C, it cannot be used even for refreshing the memory of PW28 u/s 159 of the Evidence Act.

14.7. Ext. P24 is an electronic record falls under S.65 B of the Evidence Act. S.65 A of the Evidence Act provides that the “contents of electronic records may be proved in accordance with the provisions of S.65B”. S.65B provides for “admissibility of electronic evidence”, without the need to produce the original, if the electronic record (being a document) is supported with a certificate under S.65B(4) of the Evidence Act. The special provisions of S.65A and S.65B of Evidence Act is a complete code

in themselves and as such, the electronic record produced in evidence has to be accompanied with a certificate issued under S.65B(4) to be admissible in law {***Anvar P.V.*** **v.** ***P.K. Basheer and Others*** (2014) 10 SCC 473; ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal And Others***, (2020) 7 SCC 1}. Ext. P24 is not accompanied by the certificate u/s 65(B)(4). Hence, it is inadmissible for the said reason as well. PW28 gave evidence about the tower location solely relying on the contents in ExtP24. Since Ext. P24 is inadmissible in evidence on both counts mentioned above, no reliance can be placed on his oral evidence.

15. **Circumstance (iii):** Much reliance is placed by the prosecution on the alleged phone call between the deceased and PW10 and PW10's subsequent phone call with PW11. PW10 deposed that on 9/10/2015 at 1.10 a.m., he received a phone call from the deceased and that the deceased told him over phone that it was the accused No.2 who stabbed him. The learned ADGP submitted that the said statement given by the deceased to PW10 over phone at or about the time of incident is a fact so connected with the fact in issue so as to form part of the same transaction and, hence, admissible u/s 6 of the Evidence Act. The

learned ADGP further submitted that the said statement amounts to dying declaration as well and admissible u/s 32(1) of the Evidence Act. The learned ADGP added that the evidence of PW10 gets corroboration from the evidence of PW11 and Exts. P26 and 27 CDRs and in the inquest itself, PW10 stated about the phone call. Per contra, Mr.Renjith B.Marar, the learned Counsel for the accused No.2 submitted that the said statement can never be considered as *res gestae* as the time of the incident itself was not established with any accuracy. The learned Counsel further submitted that since the alleged statement of the deceased to PW10 over phone was so vague, neither S.6 nor S.32 also can be applied. The Counsel also submitted that though the inquest was conducted on 9/10/2015, Ext. P15 inquest report reached the court only on 12/10/2015.The court below found that the said statement of the deceased to PW10 cannot be given the sanctity of a dying declaration falling u/s 32(1) of the Evidence Act, nevertheless, it will definitely come within the purview of S.6 of the Evidence Act.

15.1. To prove this circumstance, the prosecution relied on the oral evidence of PWs 10, 11, 29 and 52 and Exts. P15, P26, P27, Exts. D4 and D5. PW10 was an employee of the deceased.

He deposed that at about 1.10 a.m. on 9/10/2015, he received a telephone call to his mobile number 9747607169 from the deceased through his mobile number 9895707900 while he was sleeping. He further deposed that when he picked up the call, the deceased told him that “Yousaf cut me” (യൂസഫ് എന്നെ വെട്ടിയെടാ). He further deposed that the deceased told him something else, but by that time the phone got disconnected. Though he called back to the said number as well as to another number of the deceased, he did not pick up the phone. He also deposed that he immediately called PW11, another employee of the deceased, and told him about the deceased’s call. PW11 then told him that the deceased used to make prank calls like this, and that he need not worry. PW11 in his evidence confirmed that he received a phone call from PW10 at about 1.10 a.m. on 9/10/2015 and PW10 told him that the deceased had called him over phone and stated that ‘Yousaf cut me’.

15.2. The evidence of PW10, PW29 and Ext. P26 CDR would prove that the telephone bearing No.9747067169 stood in the name of PW10. Similarly, the evidence of PW11, PW29 and Ext. P27 would prove that the telephone bearing No.8589001122 stood in the name of PW11. As per the evidence of PW29, the

telephone bearing No.9895707900 stood in the name of the accused No.2. But it is not disputed that it was used by the deceased. That apart, in Ext. P2 marriage invitation card of the deceased with PW6, the telephone number of the deceased was shown as 9895707900. No argument has been canvassed before us that the telephones mentioned above were not used by the deceased, PW10 and PW11 respectively.

15.3. Exts. P26 and P27 coupled with the evidence of PW29 would substantiate the evidence of PW10 and PW11 that there was a call from the phone of the deceased to PW10 on 9/10/2015 at 1.10.03 hours at a duration of 30 seconds and there was a call from the phone of PW10 to PW11 at 1.17.33 hours at a duration of 27 seconds. Thus, the prosecution version that at 1.10 a.m on 9/10/2015, the deceased made a telephone call to PW10, who in turn made a telephone call to PW11 at 1.17 a.m., stands established. But the crucial question is whether the statement allegedly told by the deceased to PW10 over phone that “Yousaf cut me” stands legally proved or not.

15.4. A close reading of the evidence of PW10 would show that PW10 could not say with certainty as to the content of the statement that he allegedly heard. In the chief examination, he

stated that he heard “Yousaf cut me”. However, in cross examination, he vacillates and says that he only felt like the deceased saying so. The statement of PW10 given at the time of inquest was contradicted and marked as Exts. D4 and D5. In Ext. D4, he stated that phone call was not clear. In Ext. D5, he stated that he felt like deceased saying ‘Yousaf cut me’. PW52, the investigating officer confirms the fact that PW10 gave Exts. D4 and D5 statements. PW11 also in cross examination submitted that what was told to him by PW10 was that he felt like the deceased saying so. The medical records would show that the deceased sustained 99 injuries. Hence, even if the call was made by the deceased as deposed by PW10, there was no possibility at all for sound being clear so as to hear to PW10 clearly and properly. That apart, the deceased only said ‘Yousaf cut me’. There may be other Yousafs also. It is settled that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court must be satisfied that the deceased was in a fit state of mind after clear opportunity to identify the assailant. Unless one is certain about the exact words uttered by the deceased, no reliance should be placed on verbal statement of the witness and the oral

declaration made by the deceased [See ***Ram Nath Madhoprasad v. State of M.P.*** (1953 KHC 382)]. In ***State of Rajasthan v. Teja Ram and Others*** (1999 KHC 1081), the Apex Court held that even if the injured were able to speak out something after sustaining injuries, it is extremely unsafe to place reliance on such dying declaration as the brain functions of the injured would have impaired due to the brain injury.

15.5. It is pertinent to note that there is not a single phone call from the deceased's number 9895707900 to the phone number of PW10 either before or after the incident except the call at 1.10.03 hours as per Ext.P26. The evidence of PW10 would show that even though he received such an unusual call at an odd hour and the deceased told him that the accused No.2 had stabbed him, he went back to sleep after making a phone call to PW11. He did not even call back the deceased on the next day morning or made any attempt to enquire about the veracity of the phone call. He did not tell about the call to any other person either. This is against the normal human conduct and makes the statement of PW10 not credible.

15.6. S.6 of the Evidence Act read with Illustration (a) thereto shows that spontaneous statements in the course of the

transaction are admissible as being *res gestae*. According to S.6, what is admissible is a fact which is connected with the facts in issue as ‘part of the transaction'. The declaration must be substantially contemporaneous with the fact and not merely the narration of a previous event. In fact, the prosecution failed to establish the time of the alleged attack on the deceased or his death satisfactorily. The court below assumed it to be at 1.10 a.m. on 9/10/2015 based on the purported evidence of telephone conversation between the deceased and PW10. The *res gestae* being an exception to the rule of hearsay only becomes admissible if the thing heard is so inextricably linked with the act so as to form part of the same transaction. Since it was not clear whether the alleged phone call was made when the attack was taking place or long after the attack was over, the principles of *res gestae* cannot be applied. Since the alleged statement of the deceased to PW10 over phone was so vague, it cannot be relied on either with the aid of S.6 or S.32 of the Evidence Act. The evidence of PW11 regarding the call is only hearsay and not admissible.

16. **Circumstance (iv) :** PW2, the mother of the accused No.1, deposed that the accused No.1 told her that the deceased

had another wife and child and then she asked about this to the deceased who confirmed it. She further deposed that the deceased told her that after the accused No.1 came to know of his second marriage, she was furious with him and had also poisoned him with juice on one day in April, 2010. PW3, the sister of the deceased, also spoke in a similar line. She stated that accused No.1 got to know of the alleged second marriage of the deceased and had been nursing a grudge since then. She deposed that accused No.1 herself had informed her about the alleged second marriage. She also stated that the deceased had told her that the accused No.1 had poisoned him in juice on one day. PW6, the second wife of the deceased, also deposed that the deceased had told her about the alleged poisoning incident. The learned ADGP highlighted this evidence as one falling under S.32(1) of the Evidence Act. However, such a plea was not taken at the court below. This plea was canvassed by the prosecution to prove the motive as well.

16.1. S.32 of the Indian Evidence Act constitutes a further exception to hearsay rule. As a general rule, the oral evidence must be direct (S.60). S.32 is an exception to this rule based on the principles of essentiality and practicality. S.32 exhaustively

deals with the law relating to relevancy of statements made by persons falling under four categories mentioned therein. The first category is the statement of a deceased person. Statements mentioned in the section are relevant in the cases falling under eight categories mentioned in Clauses (1) to (8). Clause (1) of S.32 makes statement made by a person 'as to any of the circumstances of the transaction which resulted in his death' a relevant fact in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

16.2. The learned ADGP submitted that the evidence of PWs2, 3 and 6 about the statement given by the deceased to them that the accused No.1 on knowing the second marriage of the deceased, had been nursing a grudge against him and made attempt to kill him by poisoning in the juice relates to the circumstances of the transaction which resulted in his death and, thus, falls under S.32(1) of the Indian Evidence Act. In support of his submission, the learned ADGP relied on two decisions of the

Apex Court in ***Sharad Birdhichand Sarda*** (supra) and ***Kans Raj v. State of Punjab*** (2000 KHC 524) and two decisions of this Court in ***Narayanan v. State of Kerala*** (1992 KHC 96) and ***State v. Ammini and Others*** (1987 KHC 267) to canvas the proposition that S.32(1) includes both near or distant circumstance and that distance of time alone would not make the statement irrelevant. It is true even distant circumstance can become admissible, but it can become admissible only if it has nexus with the transaction which resulted in the death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in S.32 must have some proximate relation to the actual occurrence. In other words, the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. Even if the evidence of PWs2, 3 and 6 that the deceased told them that accused No.1 had nursed a grudge against him and even made attempt to kill him is believed, by no stretch of reasoning, can it be said that the said circumstance is in any way closely connected with the actual occurrence. The circumstances which do not form part of transaction resulted in the death of the

deceased would not fall within the scope of S.32(1). That apart, PWs 2 and 6 omitted to mention these crucial facts when they were questioned u/s 161 of Cr.P.C. PW3 omitted to mention these crucial facts when she was questioned while conducting inquest. The omissions have been put to these witnesses as also to PW52, the investigating officer. Hence, no reliance can be placed on the said testimony. For all these reasons, we are of the view that the said statement cannot be relied on with the aid of S.32(1). Except S.32(1) of the Evidence Act, there is no other provision under which the statement of a dead person can be looked into for evidence.

17. **Circumstance (v) :** The prosecution heavily relied on scientific evidence such as forensic reports of the examination of the forensic materials like hair and blood samples collected from the scene of occurrence, Innova car belongs to the deceased and the mobile phone belongs to the accused No.2. To prove this, the prosecution relied on the oral testimony of PWs35 and 49 and Exts. P74 and 75.

17.1. PW35 is the Scientific Officer who inspected the scene house as well as the Innova car and collected hairs and blood stains. Her evidence would show that on 9/10/2015 at 12.00

noon, she collected blood stains and hair from the scene house and handed over to the Investigating Officer as per Ext. P34 receipt. Her evidence would further show that she collected hairs and blood stains from the Innova car on 11/10/2015 and handed it over to the Investigating Officer as per Ext. P35 receipt. PW49 is the Medical Officer at Ponnani Taluk Hospital. His evidence would show that on 10/10/2015 at 8.40 p.m., he examined the accused No.2, collected his scalp hair and handed it over to the police on 27/10/2015. Exts. P74 and P75 are the FSL reports. Ext. P74 pertains to, among other things, the hairs collected from the Innova car (item No.31) and the scalp hairs collected from the accused No.2 (item No.40). The result of examination shows that the hairs collected from the Innova car (item No.31) and the hairs of the accused No.2 (item No.40) were similar to each other. Relying on this evidence, the learned ADGP submitted that this circumstance is a crucial one in favour of the prosecution in its attempt to establish guilt of the accused. He further submitted that the chemical analysis of the scalp hair as well as the hairs recovered from the car can be considered as an acceptable piece of evidence to connect the accused. Per contra, the learned Counsel for the accused No.2 submitted that chemical

examination of scalp hair cannot be relied on at all for identifying the accused No.2 for various reasons. He submitted that the opinion rendered by the chemical analyst in Ext. P74 is only that the questioned hair recovered from the vehicle and the specimen hair of the accused No.2 were similar and not identical. Relying on the decision of this Court in ***Fr. George Cherian v. State of Kerala*** (1989 KHC 663) and of the Delhi High Court in ***Shahbuddin v. The State (NCT of Delhi)*** [95 (2002) DLT 562], the learned Counsel argued that the scientific evidence regarding hair analysis is inconclusive and similarity of the hair can help the prosecution only to exclude and not to fasten culpable liability of any individual. The counsel further submitted that the evidence on record would show that both questioned hair and the sample hair were not properly packed and sealed. He also submitted that even though PW35 collected the materials from the car on 11/10/2015, they were seized by the police only on 13/10/2015 as per Ext. P47 mahazar. Similarly, the scalp hairs collected by PW49 from the accused No.2 on 10/10/2015 reached the hands of the police only on 27/10/2015. According the counsel, there is every possibility for the prosecution tampering those hairs during this period and the benefit of which should go to the accused. The

seizure of the vehicle, seizure of the forensic materials from the car, sealing of materials are all under a cloud and affect the sanctity of the forensic report, submitted the Counsel. The court below held that the presence of scalp hairs found in the vehicle similar to that of accused No.2 is an incriminating circumstance and would corroborate the prosecution version that the accused No.2 used the Innova car of the deceased to escape from the scene of occurrence.

17.2. All the authoritative text books say that hair analysis has not developed as a perfect science. Modi (***Medical Jurisprudence and Toxicology***, Butterworths, 22nd Edition, 2003, pp.193) says that “Extensive work is yet necessary for universal acceptance of these approaches to the examination of even small pieces of hair. Till then it can only be said that by laboratory examination dissimilarity of hair can be more reliably shown than their similarity. Age and sex of the hair cannot be opined with high degree of reliability in all cases. Any opinion given should, therefore, be worded with due caution indicating the limitations of examination carried out”. It is further stated that “If the questioned hair or a piece of hair is to be reliably shown to have originated from a particular person, the incidence

of one or more of its characteristic in the general population has to be statistically shown as almost rare or infrequent. The microscopic characteristics like the scale-count (number of scales per cm) and medullary index (the ratio of the medulla diameter and the shaft diameter at a place where the latter is maximum) have been found to be of limited use on account of their variation along the shaft of hair of an individual being comparable with those found among hairs of different individuals. Unless an adequate number of hair is obtained as questioned hair, the sophisticated and very highly sensitive methods like neutron activation analysis may also be scientifically unconvincing and unsuitable for Court use"(at pp 190-91). Dr.B.R.Sharma (***Forensic Science in Criminal Investigation and Trials***, Universal Publishing Company Limited, 4th Edition, 2003, p.1049) says "The identification of hair is not conclusive at present stage of development except through DNA Profiling, if hair roots are available or through mitochondrial protein analysis. Without these it cannot be said that the hairs in question belong to a particular individual and could not come from any other person. In extremely rare cases, the presence of some individual dye contamination, some extraordinary defect or disease in the hair,

however, may permit individualization of the source". Geoffrey Davies (***Forensic Science,*** American Chemical Society, 2nd Edition, 1986, p.367) says "Hairs from the head of one person vary naturally among themselves and even single hair may exhibit variations in diameter and other features. Cosmetic treatments, abnormalities may be significant. In the absence of distinguishing characteristics, the conclusion as to origin cannot be definitive solely on the basis of laboratory examination". Lemoyne Snyder (***Homicide Investigation***, Charles.C.Thomas Publication Ltd.,3rd Edition, 1977, p.352) says "It is never possible to state that hairs on the automobile must have come from the victim and could not have been come from any other human being. Thus, the hair evidence, while valuable from the circumstantial point of view, does not have the highest probative value". The Division Bench of this Court in ***Poonthala Aboobacker @ Babu v. State of Kerala*** (2012 (1) KLD 383), held that "Similarity in the hair sample of the accused and the questioned hair does not help to individualize and hold authentically that both hair came from the very same source and culpable liability cannot be fastened on the accused on the basis of such expert evidence alone". Again another Division Bench in

Sudheer Babu v. State of Kerala (2013 (2) KLT 168) held that "Though examination of hair is having some importance in identification, even by careful comparison, one cannot say that a hair came from a particular individual. At the most, it can be said that it could have come from him. Therefore, it may not be proper to find an accused guilty on the sole basis of the report that the hair samples collected from the scene of crime have resemblance with the hair sample collected from him, though the same may have relevance for consideration along with other incriminating circumstances against the accused".

17.3. As stated already, Ext. P74, FSL report, only shows that the hairs that were lifted by PW35 from the car and the sample hairs of the accused No.2 taken by PW 49 are similar in nature. It is not stated that they are identical. The report is inconclusive inasmuch as it only shows that the hairs compared with each other are similar in nature. It is not safe to rely on FSL report relating to the matching of the hair samples when the result only shows that the hairs were 'similar' in nature. There is substantial difference between the words 'identical' and 'similar'.

17.4. Careful collection of specimen from the questioned and controlled hair is a very important pre-requisite for

comparative examination. Modi in ***Medical Jurisprudence and Toxicology*** (*Supra*, p.190) says that "if the control samples have to be meaningful for comparison, they must be full hair with root and tip intact and also to be representative of the body part concerned". For representative sample the usual procedure adopted is to take sample from all parts of the scalp, that is, front, back, both sides and middle. Dr.B.R.Sharma in ***Forensic Science and Criminal Investigation and Trials*** (*Supra*, p.1054) says that "Combing or brushing is the best way to collect sample hair of a person. Combing gives hair of all types. Complete with roots, broken hair, hair ready to fall etc. They are also of all shapes and have varying characteristics. They are usually the best representative hairs. About 100 specimen hairs are adequate for comparison". Admittedly no representative sample was taken. PW49 admitted that he collected hairs only from the middle of the head. He stated that he collected the hairs by cutting and plucking and he could not say the number of hairs collected as samples. He did not adopt the method of combing. There is no evidence to show that the root and tip of the sample hairs collected were in tact. Moreover, the DNA profiling of hair was also not done. The procedure adopted was microscopic

examination.

17.5. The arrest of the accused No.2 was on 10/10/2015. His hair sample was taken on the same day. As per the evidence of PW35, the hair was collected from the Innova car only on 11/10/2015. Thus, when the Scientific Officer collected the hair from the car, the sample taken from the body of accused No.2 was available with the investigation agency. That apart, the evidence discloses that the car was opened and handled by others prior to its inspection by the Scientific Officer. PW15, an employee of Pravasi Hotel at Manoor, deposed that the police reached the spot on 9/10/2015 itself and seized the car. He also deposed that he signed the mahazar (Ext.P10) only after two days, i.e. on 11/10/2015. PW16, the workshop mechanic, stated that he was contacted by the investigating officer on 10/10/2015 to go and force open the Innova car that was parked outside a restaurant at Manoor. He did so by using a beading screw. He stated that a person was standing by to inspect the inside. He was asked on the next day to deliver it at the police station. Ext. P35 receipt with respect to collection of materials from the car was on 11/10/2015, but the same were produced by the police as per Ext.P47 mahazar only on 13/10/2015. PW49 stated that he

examined accused No.2 and lifted his scalp hair on 10/10/2015. But, he gave the sample only on 27/10/2015. There was no satisfactory explanation for these delay. The evidence of PW35 shows that she did not properly seal the materials. She deposed in cross examination that her seal impression was not seen on the receipts issued by her. She stated that she affixed wax seal on the material objects only at the police station. She further stated that her seal impression cannot be seen on packet MO6. These circumstances make the seizure of the forensic materials from the car suspicious.

17.6. The FSL report shows that hairs collected from the vehicle includes type II which is of the deceased. It is further seen from the report that the hairs in item No.23 which were collected from the hall were not similar to either of the accused No.1 or the accused No.2. The prosecution has failed to explain where this hair has come from. It is not similar to that of the deceased, the accused No.1 or the accused No.2. This assumes significance in view of the explanation of the accused No.1 that an unknown masked person had caused injury on her and the deceased.

17.7. As per the prosecution case, after the commission of

the offence, the accused No.2 travelled in the car belonged to the deceased carrying with him MOs3 to 5 clothes and MO10 and MO11 mobile phones. On the way, he stopped the car and threw away Mos3 to 5. Then he abandoned the car without leaving the key in it. The car was in a locked condition till PW16, the workshop mechanic, forced open it by using a beading screw on 10/10/2015. If the prosecution version that the accused No.2 drove the car after the incident and abandoned it in front of a restaurant at Manoor was true, then definitely his finger prints would have been available in the car. If the fingerprint of the accused No.2 was available in the car, it could have been the best piece of evidence. No attempt was done by the investigation agency to lift any such fingerprints. That apart, PW52, the investigating officer, deposed that a water bottle was found in the car and that the finger prints were lifted from the water bottle. However, no report is forthcoming as to whose fingerprint was found on the water bottle

17.8. The evidence of PW47 coupled with Ext. P44 would show that MO11 and MO12 mobile phones were seized from the possession of the accused No.2 at the time of his arrest. Ext. P75, FSL report, shows that blood stains found in MOs11 (item No.20)

is that of the deceased. The court below found this also as one of the incriminating circumstances against the accused No.2. In Ext. P44 seizure mahazar, there is absolutely nothing to show that MO11 contained blood stains. Dried blood of the deceased was taken at the time of the post-mortem examination. Thus, the blood of the deceased was already available with the police. The witness to Ext. P44 was not examined. It was marked through PW47. Even though the seizure of MO11 was on 10/10/2015, it reached the court only on 15/10/2015.There is no explanation for the delay. The prosecution case is that after the incident, the accused erased the evidence. Then, it is quite unlikely that till MO11 was seized by the police, the accused kept it without cleaning the alleged blood stain found on it.

18. **Circumstance (vi) :** PW14, the KSRTC bus driver, and PW20, the KSRTC bus conductor, were examined to prove that after the commission of the offence, the accused No.2 drove the deceased's Toyota Innova car, stopped in front of their bus and that he got into the bus at Manoor.

18.1. PW14 deposed that in the earlier hours on 9/10/2015, when he sat on the driver's seat for starting the vehicle at Manoor, he saw the parking of an Innova car and a person getting

into the bus. But, he could not identify the person. Hence, no reliance can be placed on his testimony. However, PW20 identified the accused No.2. He deposed that on 9/10/2015 a person got into the bus at Manoor unexpectedly, took Trichur ticket and got down at Kunnamkulam. He identified the accused No.2 as the person who got into the bus. He deposed that usually nobody used to get down at Kunnamkulam and he remembered the accused No.2 as he got down at Kunnamkulam. But this statement was brought out as omission. In cross examination, he admitted that, on that day, at about 98 passengers travelled in his bus and he cannot identify any of them. He also deposed that there was no special identifying mark in the face or head of the accused No.2 to identify him. It has also come out in evidence that he was also shown Ext. P11 photograph during investigation. This method of identification suffers the same vice as in the case of testimonies of PW17 and PW18. For the said reason alone, he cannot be relied on. That apart, he admitted in cross-examination that in his professional life, he had seen thousands of passengers and he can rarely identify any of them through the photographs.

19. **Circumstance (vii) :** The accused No.2 was arrested on 10/10/2015. Thereafter he was released on police custody.

According to the prosecution, on 13/10/2015, ₹4.25 lakhs was recovered on the basis of his disclosure statement from his house as per Ext. P42 seizure mahazar and on 14/10/2015, three items- MO3 shirt, MO4 and MO5- towels were also recovered from bushes by the road side on the basis of his disclosure statement as per Ext. P58 mahazar. The accused No.1 was arrested on 14/10/2015 after she was discharged from the hospital. Thereafter she was given on police custody. The prosecution further alleged that on 14/10/2015, MO1 series clothes (churidar top and bottom) belonged to the accused No.1 were recovered on the basis of her disclosure statement as per Ext. P12 mahazar. Thus, the prosecution relied on these three sets of recoveries claiming the same to be admissible u/s 27 of the Evidence Act. The Court below also accepted the said recoveries as link to the chain of circumstances.

19.1. Law is well settled that the prosecution while relying upon the confessional statement leading to the discovery of articles u/s. 27 of the Evidence Act, has to prove through cogent evidence that the statement has been made voluntarily and leads to discovery of the relevant facts. It is trite that the confession statement of an accused cannot be admitted in evidence unless it

falls within the four walls of S.27 of the Evidence Act. The scope and ambit of S.27 of the Evidence Act had been stated and reinstated in several decisions of the Apex Court. However, in almost all such decisions, reference is made to the observation of the Privy Council in ***Pulukuri Kottaya v. Emperor*** (AIR 1947 PC 67). The various requirements of the sections can be summed up as follows:-

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

19.2. As observed in ***Pulukuri Kottaya's case*** (*supra*), it can seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be formed in a manner allowed by law. To similar effect was the view expressed in ***K. Chinnaswamy Reddy Vs. State of A.P***. (AIR 1962 SC 1788). The above decision was highlighted in ***Anter Singh v. State of Rajasthan*** (AIR 2004 SC 2865) and in ***Inspector of Police, Tamil Nadu v. Balaprasanna*** (2008 Crl.L.J. 4332). In ***Mani v. State of Tamil Nadu*** (AIR 2008 SC 1021) it was held that the discovery of articles on disclosure by the accused is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery.

19.3. The first recovery is the cash of ₹4.25 lakhs. PW52, the Investigating Officer, deposed that when the accused No.2

was released on police custody, he was interrogated and he gave confession statement that he had kept ₹4.25 lakhs given to him by the accused No.1 at his residence and if he was taken there, he will show the place where the cash was kept and on the basis of the said disclosure statement, as led by the accused No.2, he went to his house and seized MO10 series cash kept in an almirah at the bed room of his house. MO9 is the plastic cover in which the cash was covered and MO8 is the bag in which the cash was kept. Ext. P42 is the seizure mahazar by which MO10 series were seized. PW46 is the witness to Ext. P42. Ext. P57 is the relevant portion of the confession statement. The prosecution examined PW9, an employee of the deceased to prove that he had handed over ₹3.8 lakhs to the accused No.1 on 8/10/2015 evening as directed by the deceased. According to the prosecution, this amount was handed over by the accused No.1 to accused No.2.

19.4. In fact, the accused No.2 did not dispute the recovery of MO10 series cash from his house. But, he had offered an explanation for the presence of the said money in his house. According to him, his wife Tanuja had availed gold loan of ₹5 lakh on 1/10/2015 and ₹2 lakh on 9/10/2015. To prove the same, he examined DW1 Bank Manager and marked Ext. D9 certificate.

The evidence of DW1 coupled with Ext. D9 would show that wife of the accused No.2 had availed loan. But it would further show that the loan was repaid on 13/10/2015.

19.5. The next recovery is the MO3 shirt of the accused No.2 and MOs4 and 5 towels. Those were recovered from bushes by the road side on the way to Kuttipuram on the basis of the confession statement made by the accused No.2 while in police custody on 14/10/2015. Ext. P19 is the recovery mahazar. PW27 is the witness to the recovery and attestor to Ext. P19. Ext. P58 is the relevant portion of the confession statement.

19.6. It is pertinent to note that the accused No.2 was arrested on 10/10/2015. His mobile phones (MOs11 and 12) were seized on the same day. He gave Ext. P57 disclosure statement on the basis of which MO10 series cash were recovered on 13/10/2015. At that point of time he did not state about MOs 3 to 5. He made another confession, Ext. P58, only on 14/10/2015 and MOs 3 to 5 were recovered. Even though the recovery was on 14/10/2015, MOs3 to 5 reached the Court only on 6/1/2016. There is no explanation for the delay. These circumstances make the recovery and seizure doubtful.

19.7. There are two witnesses to Ext. P19. One among

them was examined as PW27. His evidence does not inspire confidence and appears to be unbelievable. He deposed that he had many criminal cases against him. He also stated that he had been a witness in many cases. The second witness to Ext. P19 is one Mr.Mujeeb Rahman. PW27 deposed that he did not know who is Mr.Mujeeb Rahman, whereas in his 161 statement he stated that Mr.Mujeeb Rahman also signed as a witness in Ext. P19. The said portion is marked as Ext.D6. He deposed that 10 to 15 persons were present at the time of recovery. He also deposed that there were many houses within a radius of 100 metres from the place of recovery. None of them were made as witness. He was admittedly residing 5 kms away from the place of recovery. According to PW27, the recovery was effected from an open space by the side of a road, at a distance of 5 to 6 feet from the road margin. The Apex Court in ***Salim Akhtar @ Mota v. State of Uttar Pradesh*** (AIR 2003 SC 4076) has held that recovery made from an open place accessible to all and every one cannot be relied on.

19.8. As per Ext. P75 FSL report, blood found in MOs 4 and 5 was reported to be that of the deceased. Even though the blood was found in MO3 shirt, Ext. P75 shows that the blood

stain found in the shirt was unsuitable for the extraction and typing of DNA. According to the prosecution, the deceased sustained 99 injuries and those were inflicted by the accused No.2. If that be so, definitely, there would have been blood in his shirt and pant. But, no blood could be detected in his shirt. There is no evidence as to what happened to his pants. It was not recovered. There is no explanation. There is also no explanation for what purpose MOs4 and 5 were used and what was its connection with the crime. No inference can be drawn against the accused under S.27 of the Evidence Act only on the discovery of the material object pursuant to the disclosure statement made by him to the police officer. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence (***Mustkeem @ Sirajudeen v. State of Rajasthan***, AIR 2011 SC 2769). The prosecution miserably failed to prove the link between MOs4 and 5 and its use in the commission of the offence. That apart, there was absolutely no reason for the accused No.2 to carry MO4 and MO5 with him while he allegedly escaped from the scene house. He had even left the weapon used for the commission of the offence there. In these circumstances,

the failure of the accused No.2 to explain the presence of the deceased's blood in MOs4 and 5, in the absence of proof as to the exclusive use of these articles by him, will not provide any additional link in the chain of circumstance. The finding of the Court below in this regard is wrong.

19.9. The next recovery relied on by the prosecution as against the accused No.1 is the recovery of MO1 series clothes (churidar top and bottom) based upon the disclosure statement given by the accused No.1 while in police custody on 14/10/2015 as per Ext. P12 mahazar. Ext. P62 is the relevant portion of the confession statement. PW23 is the witness to the recovery and attestor to Ext. P12 mahazar. The above items were recovered from the place of the incident itself i.e., from the bathroom of the house where the alleged incident took place. On the date of occurrence itself, the investigating officer had conducted search in the said house. The investigating officer could have easily found these items when conducting a search at the place of occurrence. That apart, Ext.P75 would show that no blood was detected on churidar bottom (item No.38) and blood stain found on the churidar top (item No.37) was insufficient for the extraction and typing of DNA. The definite case of the

prosecution as deposed by PW4 and other witnesses is that the accused No.1 was lying in a pool of blood.

19.10. Thus, from the entire evidence on record, we are of the view that the prosecution story about the recovery of MO1 series, MO3, MO4 and MO5 consequent to the disclosure statement of accused Nos.1 and 2 is not believable. The accused No 2 has given probable explanation for the cash recovered from his house. That apart, it is trite that merely on the basis of a fact discovered on the confession of an accused, while in police custody, the prosecution cannot seek his conviction without establishing other corroborating circumstances beyond any pale of dispute. The Apex Court in ***Babboo and others v. State of Madhya Pradesh*** (1979 KHC 762) has held that in the absence of substantive evidence, recovery has no probative value. In ***Vijay Thakur v. State of Himachal Pradesh*** (2014 (14) SCC 609), it was held that in a murder case based on circumstantial evidence, discovery evidence under S.27 of the Evidence Act cannot be wholly relied upon when chain of events is incomplete.

20. **Circumstance (viii) :** According to the prosecution, the accused Nos.1 and 2 conspired to do away with the deceased on two occasions. First one is at the house of the deceased at

Valancherry on 19/9/2015 and the second one is at the house of the accused No.1 at Ernakulam on 6/10/2015. To prove the conspiracy on 6/10/2015, the prosecution examined PW24 and PW51 and marked Ext. P13 and to prove the conspiracy on 19/9/2015, the prosecution examined PW25 and marked Ext. P16. PW24 and PW51 are the attestors to Ext. P13 conspiracy mahazar and PW25 is the attestor to Ext.P16 conspiracy mahazar.

20.1. Exts. P13 and 16 are in the form of confession statement before the police officers. As per Exts. P13 and 16, the accused No.1 had given a disclosure statement that she had conspired with the accused No.2 at two places mentioned above to commit murder of the deceased and on the basis of the said confession statement, the police went to these places as led by the accused No.1 and showed those places. It is inadmissible u/s 25 of the Evidence Act. The learned counsel for the accused No.1 vehemently argued that this type of evidence cannot be relied on at all since there is no concealment or recovery/discovery of a fact to bring it under S.27 of the Evidence Act. It is true, strictly the said evidence would not fall within the ambit of S.27 of the Evidence Act in as much as there is no discovery of new fact consequent to the disclosure statement. The fact of the existence

of two houses is a fact known to all. Recently, the Division Bench of this Court in ***Thadiyantevida Nazeer v. State of Kerala*** (2022 (1) KLT 685) has held that for a confession to be admissible under S.27, the information supplied should lead to the discovery of a fact; leading to the production or recovery of a tangible object, not in the knowledge of the police and only so much of the information that distinctly relates to the fact discovered is admissible and shall be proved. At best, the evidence of the circumstance simplicitor that the accused No.1 pointed out to the police officer where the conspiracy was taken place could be taken as a conduct under S.8 of the Evidence Act irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of S.27. Even under S.8, the conduct is relevant only if it influences or is influenced by any fact in issue or relevant fact. Acts, the proof of which reasonably tends to an inference that they were intended either in preparation of a crime or in its execution; becomes relevant, coupled with other evidence as to the actual commission of the crime. The conduct should be such as to have a direct bearing on the crime, the causation, or should be the natural consequence of that crime,

the effect. [***Thadiyantevida Nazeer*** (supra)]. In the present case there is no independent evidence of the crime. The prosecution has also pressed into service the phone contact between accused Nos.1 and 2 on the previous day of the incident to prove conspiracy. We have already found that the prosecution failed to prove the same.

21. **Circumstance (ix) :** Admittedly the accused No.1 sustained injury on her neck in the occurrence. The evidence on record discloses that on 9/10/2015 at 9.00 a.m., PWs1, 5 and 8 took the accused No.1 to nearby Nadakkavil Hospital, Valancherry. PW39, the Chief Medical Officer, at the said hospital gave first aid and referred her to KIMS Alshifa Super Speciality Hospital, Perinthalmanna for expert management. Ext. P37 is the wound certificate issued by PW39. PW40, CMO, KIMS Alshifa Super Speciality Hospital, examined her. Ext. P38 is the wound certificate. She was discharged on 14/10/2015. The evidence of PW39 and PW40 coupled with Exts. P37 and P38 would show that she had sustained deep incised wounds on the left side of her neck. Both the prosecution and defence have two different stories to tell about this injury found on the body of the accused No.1. The prosecution put forward a case that the injury found on

her body was a self inflicted one in order to give false information about the incident to the police, and thereby to screen themselves. On the other hand, the accused No.1 took up the plea that on the midnight of 8/10/2015, a masked man came and attacked her husband and during her attempt to save him, she sustained serious grievous injuries on her neck. The prosecution projected this injury as one of the circumstances to prove the charge u/s 201 of IPC. On the other hand, the defence contended that the prosecution failed to explain the injuries found on the body of the accused No.1 and the non explanation is very important circumstance throwing doubt on the prosecution case and the benefit of doubt should go to the accused.

21.1. It is trite that the prosecution is bound to explain the injury sustained by the accused at the time of the occurrence in question and the failure to explain the same satisfactorily is fatal to the prosecution case. In ***Eknath Ganpat Aher and Others v. State of Maharashtra and Others*** (AIR 2010 SC 2657), for the reason that various injuries received by the accused were not explained by the prosecution, the accused were acquitted by the Apex Court. In ***Lakshmi Singh and Others v. State of Bihar*** (1976 KHC 958) the Apex Court has held that in a murder case,

the non explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences;

(1) That the prosecution has suppressed the genesis and origin of the occurrence and has thus not presented the true version.

(2) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

(3) That in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution.

21.2. The Apex Court in ***Sikandar Singh and Others v. State of Bihar*** (2010 KHC 4444) considering the effect of non explanation of injuries suffered by the accused has observed that it cannot be held as an unqualified proposition of law that whenever the accused sustains an injury in the same occurrence, the prosecution is obliged to explain the injury and on failure of the prosecution to do so, the prosecution case has to be

disbelieved. Before non explanation of the injuries on the person of the accused persons by the prosecution witness may affect the prosecution case, the Court has to be satisfied of the existence of two conditions; (1) that the injury on the person of the accused was of serious nature; and (2) that injuries must have been caused at the time of occurrence in question. It is true that when the injuries received by the accused were very simple in nature whereas the injuries inflicted on the deceased were very serious in nature and were inflicted on the vital part of the body of the deceased, the accused cannot take a plea that the prosecution has to explain the minor injuries sustained by the accused. The present case, however, is certainly not such a case. The injury sustained by the accused No.1 was serious in nature and was on the vital part of her body.

21.3. As per Ext. P37, the details of the injuries found on the body of the accused No.1 are as follows:

(i) Deep incised wound 16 cm x 3.5 cm x 2.5 cm on the left side of the neck.

(ii) Cut injury of sternocleido mastoid muscles (Clavicular head).

As per Ext. P38, the details of the injuries found on the body of accused No.1 are as follows:

1. Laceration of neck.

2. Two parallel laceration about 1 finger breadth apart. Starting from mild line extending posteriorly up to 2 cm behind the mastoid processes; two finger breadth below the mandible.

3. Stenocledomastoid injury.

4. Platysma breast.

21.4. PW39 deposed that the injuries sustained by accused No.1 and mentioned in Ext.P37 can cause death of the patient. He further deposed that those injuries can faint a person. The evidence of PWs39 and 40 and Exts. P37 and P39 would clearly show that the injuries sustained by accused No.1 were serious in nature. The observation of the Court below that the injuries were not fatal and if the injuries were fatal she would not have survived is without any basis and is not supported by any medical opinion. PW39 who examined the accused No.1 initially clearly deposed that she had suffered deep cut injuries and that she was finding it difficult to talk. He had also ruled out any possibility of a self inflicted injury. He had given reasons also. According to him, since the injuries were deep in nature, it cannot be stated as self inflicted in nature. He stated that all the self inflicted injuries will be hesitating wounds and no hesitating wounds are mentioned in Ext. P37 certificate. However, PW40 deposed that

those injuries could be self inflicted also. He categorically admitted that he did not treat the accused No.1 and that the wounds on the accused No.1 were explored by another Doctor who gave the treatment. The depth of the injuries were also not noted in Ext.P38 certificate. The case sheet of the accused No.1 evidencing her treatment at Alshifa Hospital was not produced or marked in evidence. In such circumstances, PW40 who did not treat the accused No.1 has no authority to say that injuries suffered by her were not deep injuries especially when the depth of the injuries were not noted in Ext. P38 certificate. The prosecution did not take any steps to examine the Doctor who treated the accused No.1 or to call for the case sheet or treatment records from Alshifa Hospital. PW40 deposed that the injuries found on the neck of the accused No.1 could be self inflicted for the reason that the injury was not deep. But in cross-examination he has admitted that the injury was deep.

21.5. The specific case of the prosecution is that the accused No.1 caused self inflicted injury on her neck with the assistance of the accused No.2 by using MO26 knife. It was so specifically stated by PW52 (Page 30 of the deposition). The prosecution has no case that MO2 was used for inflicting injury on

the neck of accused No.1. In Ext. P75 FSL report, item No.12 is MO26. Ext. P75 would show that blood found in MO26 is that of the deceased Vinod Kumar. The evidence of PWs 5 and 8 would show that when they saw the accused No.1, she was lying in a pool of blood. In such circumstances, absence of blood of the accused No.2 and presence of blood of the deceased in MO26 seriously casts doubt on the version of the prosecution regarding the injuries sustained by the accused No.1. MO2 was seized at the time of inquest. Nothing has been stated about MO26 in the inquest report. There is no evidence when exactly MO26 was seized. That apart, the story that in order to give false information about the incident to the police, the accused No.1 with the assistance of accused No.2 inflicted a wound on her neck, which is the vital part of the body, and left her alone in the house in a pool of blood is quite improbable and unbelievable. The finding of the Court below that the accused No.1 is a nurse and so could have self inflicted the injury is against the available medical evidence. In fact, being a nurse, she should have been aware of the danger and consequences of causing a deep injury on the neck. At any rate, when two Doctors give two different versions regarding the injury, one in favour of the prosecution

and one in favour of the accused, the benefit should go to the accused.

21.6. It has come out in evidence that the deceased has got many enemies and more than 83 cases have been filed before the High Court by various persons against the deceased in connection with his business. PW2 deposed that one Nambiar from Africa who was doing certain business with the deceased had animosity with him. It has also come out in evidence that the deceased had taken money from various persons in connection with Jomon Constructions Company in which he was the Managing Director. PW6, the second wife of the deceased, has deposed that she has filed complaint at Tirur Court as well as at the Court below stating that many others were involved in the death of the deceased and praying to enquire about the same. No investigation was conducted in that regard to rule out the possibility of any of the above persons eliminating the deceased on account of business rivalry.

22. **Circumstance (x) :** The next circumstance is the motive. Where there is direct evidence as to how the death was caused, the existence of motive may not be relevant factor, but in a case solely relying on circumstantial evidence, it is one of the

very important factors. The Apex Court in ***Pannayar v. State of Tamil Nadu*** (AIR 2010 SC 85) held that absence of motive in a case which dependent on circumstantial evidence is more favourable to defence. The Apex Court again in ***Nagaraj v. State*** [(2015) 4 SCC 739] held that motive assumes great significance where a conviction is sought to be predicated on circumstantial evidence alone and its absence can tilt scales in favour of the accused where all the links are not avowedly present.

22.1. The motive alleged is that on knowing that deceased had married PW6 and had a child in that relationship and realising that properties belonging to the deceased would be lost by such marriage, the accused No.1 conspired with the accused No.2 to do away with the deceased. The motive alleged as against accused No.2 is monetary benefit. The motive alleged by the prosecution that apprehension of loss of properties of the deceased to the accused No.1 and her son, due to the second marriage and begetting a child in that, is illogical, inasmuch as the death of the deceased in such circumstances would jeopardize her means to obtain the properties.

22.2. PW2, mother of the deceased, PW3, sister of the

deceased, PW6, the second wife of the deceased and PW22, a private detective were examined to establish motive. PWs 2 and 3 deposed that the deceased feared that the accused No.1 would take steps to eliminate him. However, when these witnesses were questioned by the investigating officer at the time of inquest, the above facts were not disclosed. PWs2 and 3 deposed that after accused No.1 came to know of the alleged second marriage of the deceased, she had been nursing a grudge since then. They further deposed that the deceased told them that accused No.1 was furious with him on knowing about the second marriage and she had also poisoned him with juice on one occasion. PW6 also deposed that the deceased had told her about the alleged poisoning incident. All these statements allegedly made by the deceased to PWs2, 3 and 6 are nothing but hearsay evidence and are inadmissible. We have already found that those evidence would not fall within the ambit of S.32(1) of the Evidence Act. As already stated, PWs2, 3 and 6 failed to mention that the deceased had told them that accused No.1 had poisoned him with juice to the investigating officer when they were questioned. They were brought out as omissions amounting to contradiction. That apart, the evidence of PWs2 and 3 would show that even

after the alleged incident of the poisoning in the juice, the relationship of accused No.1 with the deceased was cordial and happy. It is quite natural that when husband contracts another marriage, the first wife will have grudge on him.

22.3. PW22 was examined to prove that she approached him to confirm the veracity of the marriage of the deceased with PW6. His evidence does not inspire the confidence of the Court. Even though he deposed that there are documents with him such as registered diary, receipt book etc., to prove that accused No.1 had approached him and entrusted the work of enquiring about the second marriage of the deceased, the police did not take any steps to seize the same. Even if his evidence is accepted, that would only show that PW22 was entrusted with the work to ascertain the marriage of the deceased with PW6.

22.4. The evidence of motive as far as accused No.2 is concerned is money. As stated already on 13/10/2015, ₹4.25 lakhs is said to have been recovered at the instance of accused No.2 from his house under Ext.P42 seizure mahazar. The accused No.2 had given explanation for the presence of money in his house. The prosecution has no case that the accused No.2 has any other motive other than the financial interest. The accused

No.2 is not a professional killer. The prosecution has no case that he has any criminal antecedents and he was in pressing need of money. In such circumstances, it is quite improbable that accused No.2 who had no other intimacy with accused No.1 took the risk of committing murder for money allegedly offered by the accused No.1. Failure to prove specific motive on the part of the accused is one of the circumstances favouring the hypothesis of innocence of the accused.

23. Taking all the circumstances into account, we come to the conclusion that the prosecution has failed to prove any acceptable chain of circumstantial evidence which points compellingly and conclusively to the guilt of the accused. All the circumstances relied on by the prosecution have not been established by the prosecution by clear and cogent evidence. As stated at the inception, in order to sustain conviction, circumstantial evidence must be complete and incapable of explanation of any other hypothesis than the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with their innocence. The evidence does not justify the hypothesis of guilt of the accused, on the contrary, the evidence justifies the hypothesis of

innocence of the accused.

For the reasons given above, we hold that the prosecution failed to prove its case against the appellants/accused beyond reasonable doubt. We, therefore, allow both the appeals, set aside the impugned judgment of conviction and sentence and acquit the appellants/accused and direct them to be released and set at liberty forthwith. MO10 series currency notes shall be released to the accused No.2. Other material objects shall be dealt with as directed in the impugned judgment.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

//True copy//

PS to Judge