2024:KER:60223

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR. JUSTICE G.GIRISH
THURSDAY, THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946

CRL.A NO. 527 OF 2017

AGAINST THE JUDGMENT IN SC NO.648 OF 2012 OF ADDITIONAL SESSIONS JUDGE-II, ALAPPUZHA DATED 10.05.2017.

APPELLANTS/ACCUSED 3 & 4:

1 RAJESH @ SUNIL,
S/O.RAGHAVAN, SURESH BHAVANAM, MALAMEL BHAGAM,
KEERIKKAD VILLAGE,

2 PRAMOD, S/O.SUKUMARAN, CHAPRAYIL KIZHAKKETHIL VEEDU, KARUVATTOM KUZHIMURI, KEERIKAD VILLAGE

BY ADVS.
SRI.SOJAN MICHEAL
SRI.V.S.BOBAN
SMT.JENCY MICHEAL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
(CIRCLE INSPECTOR OF POLICE, KAYAMKULAM POLICE STATION)REPRESENTED BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31

BY SRI. ALEX M.THOMBRA, SENIOR PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 08.08.2024, ALONG WITH CRL.A.528/2017 & 540/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2024:KER:60223

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR. JUSTICE G.GIRISH
THURSDAY, THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946
CRL.A NO. 528 OF 2017

AGAINST THE JUDGMENT IN SC NO.648 OF 2012 OF ADDITIONAL SESSIONS JUDGE-II, ALAPPUZHA DATED 10.05.2017.

APPELLANT/1ST ACCUSED:

AJI KUMAR @ THIMMAN AJI, S/O PRABHAKARAN,
CHAPRAYIL VEEDU,KARUVATTAMKUZHI MURI,
KEERIKKAD VILLAGE.

BY ADVS.
SRI.ALAN PAPALI
SRI.ANTONY ROBERT DIAS
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.
KUM.NIHARIKA HEMA RAJ
SRI.SOJAN MICHEAL
SRI.J.VIMAL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
(CRIME NO.213/2007, CIRCLE INSPECTOR OF POLICE, KAYAMKULAM POLICE STATION), REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.31.

BY SRI. ALEX M.THOMBRA, SENIOR PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 08.08.2024, ALONG WITH CRL.A.527/2017 & 540/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2024:KER:60223

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR. JUSTICE G.GIRISH
THURSDAY, THE 8TH DAY OF AUGUST 2024 / 17TH SRAVANA, 1946

CRL.A NO. 540 OF 2017

AGAINST THE JUDGMENT IN SC NO.648 OF 2012 OF ADDITIONAL SESSIONS JUDGE-II, ALAPPUZHA DATED 10.05.2017.

APPELLANTS/ACCUSED NOS. 2 & 5:

1 RAJAN NAIR
S/O.KUNJU PANICKER, RAJA MANDIRAM, BHUDANOOR,
PADINJARUM MURI, ENNAKKAD VILLAGE.

2 SURESH,
S/O.PADMAKARAN, KOTTUUR THEKKETHIL VEEDU, PATHIYOOR
PADINJARE MURI, PATHIYOOR VILLAGE.

BY ADVS.
SRI.O.V.MANIPRASAD
SRI.JOSE ANTONY

RESPONDENT/COMPLAINANT:

STATE OF KERALA
(CIRCLE INSPECTOR OF POLICE, KAYAMKULAM POLICE STATION)
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY SRI. ALEX M.THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 08.08.2024, ALONG WITH CRL.A.527/2017 & 528/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2024:KER:60223

J U D G M E N T **"CR"**

[Crl.A Nos.527/2017, 528/2017, 540/2017]

Raja Vijayaraghavan, J.

These appeals have been preferred by the appellants, who are the accused in S.C.No. 648 of 2012 on the file of the Additional Sessions Court-II, Alappuzha. They have been found guilty by the learned Sessions Judge for the offence under Sections 302 r/w. Section 34 of the Indian Penal Code, Section 120B of the IPC, and Section 201 r/w. Section 34 of the Indian Penal Code and have been sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/- each and in default to undergo rigorous imprisonment for 6 months each under Section 302 r/w. Section 34 of the IPC and Section 120B of the IPC. They have also been sentenced to imprisonment for a period of six years each and to pay a fine of Rs.10,000/- each and in default to undergo rigorous imprisonment for 3 months each for the offence under Section 201 r/w. Section 34 of the IPC.

2. **Chronology of the events:**

a) A young man by name Sreekanth @ Akku was found lying in a prone position on the sleepers parallel to the railway line at a place on the

northern side of Pathiyoorkkala by Sasimohanan Pillai (PW1) at 7.30 a.m. on 8.6.2007. A white underwear and a red T-shirt were found on the body. The first informant was not aware of the identity or whereabouts of the deceased. He immediately rushed to the Police Station and lodged the FI Statement based on which Crime No.213 of 2007 was registered by the Sub Inspector of Police, Kareelakulangara Police Station (PW24) under Section 174 of the Cr.P.C. At 8.30 p.m. on the same day, he conducted the inquest over the dead body. The dead body was later identified as that of Akku. In the course of the inquest, the statement of the father of the deceased, Sri. Govinda Panicker (CW4), and Sri. Santhosh (PW4), a close friend and neighbour, were recorded by PW24.

b) The investigation was later taken over by PW25. The said Officer procured the presence of the fingerprint expert, the dog squad, and the Scientific Assistant. Certain items found at the scene of the crime were seized. The body was then forwarded to the Medical College Hospital, Alappuzha, for conducting the autopsy. A report was later forwarded to the Executive Magistrate deleting Section 174 of the Cr.P.C. and Section 302 of the IPC was incorporated. The investigation was then taken over by the Circle Inspector of Police, Kayamkulam (PW25). The Officer conducted a search

in the house of suspected persons, which included the 1st accused. However, nothing incriminating was found.

c) Nothing eventful took place for about eight months. While so, on 19.2.2008, a motorbike bearing Reg. No. KL-29-4589 was found abandoned at the Thekkumaykal temple at Muthukulam and the same was seized Later, after about three months, on 13.5.2008, the accused Nos. 2 and 5 were arrested, and based on the alleged confessional statement given by the 5th accused while in custody, a mobile phone alleged to have been used by the deceased was seized on 14.5.2008 at 10.00 a.m. The 5th accused is also alleged to have disclosed to the investigating officer the place where the murder was committed. Later, based on the alleged confessional statement given by the 2nd accused, the dhoti, shirt, a coir rope, a pair of sandals, a piece of brick, and an alcohol bottle were seized at 12.30 p.m. on 14.5.2008.

d) On 21.8.2008, the accused Nos. 1, 3, and 4 surrendered before the Judicial Magistrate of the First Class, Ramankari. While they were in judicial custody, their custody was obtained from 3.30 p.m. on 26.8.2008 to 5 p.m. on 2.9.2008. Based on the disclosure statement given by the 4th accused, an 'iron leaf' alleged to have been used for causing injuries

to the deceased was recovered at 11 a.m. on 29.8.2008. On the next day, at about 4 p.m. on 30.8.2008, based on the alleged disclosure statement given by the 1st accused, the purse of the deceased containing a copy of his identity card was seized from the premises of the house of the 1st accused. Thereafter, based on the disclosure statement given by the 3rd accused, the handle grips of the motorcycle alleged to have been used by the accused to transport the deceased to the place where the dead body was ultimately dumped were recovered. Meanwhile, a report incorporating Sections 143, 144, 147, 148, 149, 302, and 201 of the IPC was submitted before the court. Later, an additional report was submitted incorporating Sections 120B, and 396 of the IPC on 20.11.2008. The investigation was then taken over by PW26, the Circle Inspector of Police, who laid the final report before court.

3. **Conspectus of the Court Charge:**

The prosecution allegation is that the accused entered into a criminal conspiracy to murder Akku and in furtherance of the same, they formed themselves into an unlawful assembly, armed with an iron leaf and a rope in a reclaimed land at Karuvattamkuzhi in Keerikkadu village at 9.00 p.m. on 7.6.2007. Thereafter, in prosecution of their common object, the accused are

alleged to have invited Akku using the mobile phone of the 3rd accused. When Akku came to the spot, the accused are alleged to have strangulated him with a rope after closing his mouth and nose, and thereafter hitting him with an iron leaf and causing his death. Thereafter, the body was taken on a motorcycle bearing No.KL-29/4589 and the same was dumped on the Alappuzha-Kayamkulam Railway line near the Pathiyoorkala Southern Railway Cross. The motorcycle used by the accused was allegedly pushed into the pond of the Mayikkal temple with a view to cause disappearance of the evidence. It is alleged that by their acts, the accused have committed offences punishable under Sections 120B, 143, 144, 147, 148, 302, and 201 r/w. Section 149 of the IPC.

4. **Proceedings before the Court:**

After the committal, on receipt of summons from the Court of Sessions, the accused appeared and when the charges were read over, they pleaded not guilty. In order to prove its case, the prosecution summoned and examined PWs 1 to 28 and through them, Exts.P1 to P15 were marked. The contradictions brought out from the previous statement of the witnesses were marked as D1 to D6. MOs 1 to 21 series were produced and identified. The incriminating materials arising from the prosecution evidence were put to the accused under

Section 313 of the Cr.P.C. and their explanation was sought. No defence evidence was adduced by the accused.

5. **Findings of the learned Sessions Judge:**

A) The learned Sessions Judge placed implicit reliance on the recovery evidence effected based on disclosure statements given by the accused, which are the following:

(i) Recovery of MO4 Mobile Phone, MO 14 Battery, and MO 15 Plastic cover, on 26/08/2008 under a pineapple plant in the house compound of the 5th accused, based on Ext.P10 (a) confession.

(ii) Recovery of MO1 T-Shirt, MO3 Sandal, MO16 Dhoti, MO17 Coir rope, MO18 Brick piece, and MO19 empty liquor bottle on 13.05.2008, based on Ext. P11 (a) disclosure statement given by the 2nd accused from a property situated on the northern side of a property owned by one Mr. Radhakrishnan. It is specifically alleged that the Dhoti, the T-shirt, and the Sandal were tied around a brick using a coir rope and were found under an algal bloom in a water body. The case of the prosecution is that MOs 1 to 3 were the property of the deceased as identified by PWs 2 and 3.

(iii) Recovery of MO10 Iron leaf, based on Ext. P12(a) confession statement given by the 4th accused at 11:00 a.m. on 29.08.2008, from the house compound of the 4th accused.

(iv) Recovery of MO5 Purse, belonging to the deceased, based on Ext.P39 (a) confession statement, given by the 1st accused on 30.08.2008, from underneath a flower pot in the courtyard of the house of the 1st accused. The said purse contained Ext.P2, a copy of the Electoral Identity Card of the deceased.

(v) Recovery of MO20 series, handle grips of MO6 Motorbike, based on Ext.P40(a) confession statement of the 3rd accused given on 31.08.2008, from the courtyard of his house. The handle grips are stated to have been taken out from the bike before dumping the same into the temple pond.

(vi) The report of the Director of Forensic Science Lab, that the MO16 Dhoti, MO1 T-Shirt, contained human blood and MO10 Iron leaf contained blood, the origin of which, which could not be detected.

(vii) The learned Sessions Judge was of the view that the recovery of the objects, based on the disclosure statement unmistakably points to the

guilt of the accused. The evidence showing the conduct of the accused in transporting the dead body to a different location and in hiding the belongings of the deceased and the material objects used to murder him, clearly discloses that the accused have committed the offence under Section 201 of the IPC.

B) The learned Sessions Judge placed implicit reliance on the evidence tendered by PWs 4, 5, and 7, wherein they stated that the deceased while leaving their company on 07.06.2007, had stated that he intended to meet the 1st accused. The Court was of the view that the said statement of the deceased was admissible under Section 32(1) of the Indian Evidence Act.

6. **The submissions of the appellants:**

Sri. O.V Maniprasad, the learned counsel appearing for the appellants in Crl.Appeal No.540 of 2017, and Sri. Sojan Michael, the learned counsel appearing for the appellants in Crl. A Nos.527 of 2017 and 528 of 2017, submitted that the case rests squarely on circumstantial evidence and therefore, 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. It is pointed out by the learned counsel that the incident leading to the death of Akku had allegedly

taken place on 07.06.2007. Except for the fabricated recovery, which was effected more than a year after the incident, and certain embellishments in the statements of the family members and the close associates of the deceased, there is absolutely no material to link the accused with the crime. It is submitted by the learned counsel that it would be legally impermissible and thoroughly improbable to believe that the so-called hardened criminals like the accused as projected by the prosecution, took the valueless personal belongings of the deceased and took it to their residential premises and kept the same in safe custody, to enable the Investigating Officers to stage a recovery and to create evidence to link the accused with the offence of murder. It is pointed out by the learned counsel that no prudent person would believe that the prime accused took the purse containing the Voter ID Card of the deceased and kept it underneath a flower pot in the courtyard of his house. The same is the case of other recoveries as well. It is submitted that the learned Sessions Judge had seriously erred in believing the recovery evidence and in concluding that the failure on the part of the accused to furnish a reliable explanation for their possession of the material objects, would clearly lead to the irresistible conclusion that they are also involved in the murder. It is further submitted that the defence had brought out that PWs 4 and 5 had not stated to the police that the deceased had told them that he was going to meet the 1st accused. The

same was brought out as an omission, which amounts to material contradiction. However, the learned Sessions Judge had erroneously concluded that the said statement, which is nothing but an embellishment, is admissible under Section 32(1) of the Indian Evidence Act. It is further submitted that PW7 was brought into the picture, seven years after the incident, much after the filing of the final report. The defence had brought out that he was in Kerala all through and nothing prevented him from disclosing what had transpired between him and the deceased on the fateful day. It is further submitted that the call-data records of the conversation between PW7 and the deceased would have been the best piece of evidence to probablize his version. However, for reasons best known, no such evidence was adduced. It is pointed out by the learned counsel that the prosecution has not let in any evidence to fix the place where the accused had attacked the deceased and caused the injuries. There was also no evidence to substantiate that the deceased was found in the company of the 1st accused after he had parted the company of PWs 4 and 5 at Velanjira. Furthermore, no evidence was let in to show the distance from the place where the injuries were inflicted to the Railway line, where the body was ultimately dumped and the manner in which the body was transported, and by whom. It is submitted that there are several missing links in the chain, and it cannot be said with any amount of certainty that the offence was committed by the accused and none

else. It is further submitted that the fact that blood was detected from some of the recovered objects, is no reason to conclude that the case of the prosecution stands proved, particularly when a specific case of the defence is that the recovery evidence was cooked up. Reliance was placed on the observations made by the Apex Court in **Geejaganda Somaiah v. State of Karnataka**[1], wherein it was held that the courts are required to be vigilant about the recovery under Section 27 of the Indian Evidence Act and must ensure the credibility of evidence collected by police because this provision is vulnerable to abuse. Reliance was also placed on **Raja Naykar v. State of Chhattisgarh**[2] and in **Mustkeem v. State of Rajasthan**[3], and it is urged that on the basis of fabricated recovery of some items, it cannot be said that the prosecution has discharged its burden of proving the case beyond a reasonable doubt.

7. **Submission of the learned Public Prosecutor:**

Sri. Alex M. Thombra, the learned Public Prosecutor submitted that the learned Sessions Judge had evaluated the evidence let in by the prosecution in a thorough manner and had rightly come to the conclusion that the circumstances proven had a definite tendency and it unerringly pointed towards the guilt of the

[1] (2007) 9 SCC 315)
[2] (2024) 3 SCC 481)
[3] (2011) 11 SCC 724)

accused. It is submitted that though the witnesses to the recovery had turned hostile, the fact remains that the items recovered were identified to be those of the deceased by none other than his mother (PW2) and brother (PW3). It is further submitted that after the deceased had left the company of PWs 4 and 5, he was found dead on the next day. In that view of the matter, the statement of the deceased to the witnesses that he was going to meet the 1st accused was rightly held to be admissible. It is further urged that the learned Sessions Judge had properly evaluated all the aspects and rightly concluded that the evidence let in is clearly consistent with the guilt of the accused and is inconsistent with their innocence.

8. **Circumstantial evidence and the nature of proof:**

a) The entire prosecution case rested on circumstantial evidence. The learned Sessions Judge relied on the recovery effected at the instance of the accused and certain statements alleged to have been made by the deceased to PWs4, 5 and 7 on the fateful day to convict the accused.

b) The question, therefore, is whether the prosecution proved guilt of the appellants beyond all reasonable doubt. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to

be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form an unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypotheses then the accused must have the benefit of that hypothesis. In assessing the evidence, imaginary possibilities have no role to play. What is to be considered are ordinary human probabilities. In other words, when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established. The chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. If any of the circumstances proved in a case are consistent with the innocence of

the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt. In assessing the evidence to find these principles, it is necessary to distinguish between facts which may be called primary or basic facts on one hand and inference of facts to be drawn from them, on the other. In regard to the proof of basic or primary facts, the court has to judge the evidence in the ordinary way and in appreciation of the evidence in proof of those basic facts or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The court has to consider the evidence and decide whether the evidence proves a particular fact or not. Whether that fact leads to the inference of the guilt of the accused or not is another aspect and in dealing with this aspect of the problem, the doctrine of benefit would apply and an inference of guilt can be drawn only if the proved facts are inconsistent with the innocence of the accused and are consistent only with his guilt. There is a long distance between 'may be true' and 'must be true'. The prosecution has to travel all the way to establish fully the chain of events which should be consistent only with the hypothesis of the guilt of the accused and those circumstances should be of conclusive nature and tendency and they should be such as to exclude all hypotheses but the one proposed to be proved by the

prosecution. In other words, there must be a chain of evidence so far consistent and 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 in all probability the act must have been done by the accused and the accused alone. (See **Kishore Chand v. State of Himachal Pradesh**[4]].

c) The question that emerges, therefore, is whether the prosecution has established the circumstantial evidence heavily banked upon by the prosecution in proof of the guilt of the appellant.

9. **Evaluation of the evidence:**

a) We have delineated the chronology of events at the outset itself. The fact that the death of Akku was a case of homicide is not disputed. Ext.P7 is the postmortem certificate issued by PW9, who conducted the autopsy. He has noted nine injuries and his opinion was that the injury Nos. 1 and 2 were sufficient in the ordinary course to cause death. As the body was lying on the Sleepers parallel to the Railway line, a question was put to the Doctor by the prosecution, whether the death was a case of homicide or an accident, to which he answered that it was a case of homicide.

[4] [(1991) 1 SCC 286)]

There is thus convincing evidence that injuries were inflicted on the body of the person and after committing his homicide, the body was placed on the Railway Track.

b) PW2 is the mother and PW3 is the brother of the deceased. The mother was working as a Bank Manager during the said period. In her evidence, she stated that her son had a lot of friends, who were on the wrong side of law, and though she used to advise him to mend his ways, he never heeded to her pleas. It was brought out from her evidence that her son had very hardened criminals as enemies. She stated that in 2014, Aneesh (PW7) told her that, the day before Akku's death, Akku mentioned over the phone that he had spirit business dealings with the 1st accused and that the 1st accused had some misconceptions about him that needed to be cleared. Immediately, she lodged a petition before the Dy.S.P., Kayamkulam. She stated that the 1st accused was her son’s friend and he had attended the betrothal of her elder son. She also identified all the accused, who were standing in the dock. During cross-examination, it was brought out that in her earlier statement to the police, she had stated that Praban and his friends, who are her son’s sworn enemies, had been roaming around her house and the houses of his friends on the day on

which Akku was found dead. It was also brought out that a month prior to the death of Akku, there was a gang fight between Akku's gang and Praban's gang at Flower Junction. Essentially, the attempt of the accused in their cross-examination of the mother was to bring out that Akku was a member of a criminal gang, that he was engaged in nefarious activities and was on the wrong side of law. The accused were also able to bring out that PW6 Aneesh had met her after $1^1/_2$ to 2 years of the death of Akku and even thereafter, they had met on multiple occasions but did not choose to reveal the conversation he had till 2014.

c) Arun, the elder brother of Akku, was examined as PW3. He stated that Akku's friends informed him that Akku left their company on the evening of 7.6.2007 to meet the 1st accused. During the chief examination, he confirmed his awareness of Akku's spirit dealings with the 1st accused. On 8.6.2007, he received a call on his landline inquiring about Akku. The next day, he received another call from someone identifying himself as Kumar. Kumar stated that he was distributing spirit to Aji and Akku and that Akku had requested a load of spirit on 7.6.2007. Kumar waited for Akku, but Akku's phone was switched off. Later, Kumar learned about Akku's death and he asserted that the 1st accused was behind it. Arun also mentioned

a fight between Akku's gang and Praban's gang. However, during cross-examination, it was revealed that Akku had never mentioned his spirit dealings to Arun. Evaluating the evidence of PWs 2 and 3 shows that, aside from what Akku's friends allegedly told them, they had no direct knowledge of Akku's dealings.

d) PW4, Sri. Santhosh, is a friend of the deceased. He stated that he along with Biju (PW20), Ullas (PW6) and Arun (PW5) met Akku on 7.6.2007 in the evening. They together went to a petty shop nearby to consume toddy. They were together till 9.00 p.m. Akku then told him that he would drop PW6 at his home and will go to the house of the 1st accused thereafter and left the place in Praveen's bike. On the next day, he heard about the death of Akku. He identified the clothes found on the body of the deceased and the accused standing in the dock. In cross-examination, he was asked as to whether his statement was recorded at the time of preparation of the inquest, which he denied. He admitted in cross-examination that he had not stated to the police either at the time of inquest or later that he had met Akku on the previous day and that they had consumed alcohol and that Akku told him that he was going to the house of the 1st accused. D4, D5 and D6 are the contradictions

brought out by the defence to discredit the witness. The defence was able to bring out that the witness had no such case in his earlier statements that he had met Akku on the previous day and Akku told him about his intention to go to the house of the 1st accused. This assumes great significance as the learned Sessions Judge has relied on this piece of evidence and has concluded that the said statement of PW3 that Akku mentioned about his intention to go to the house of the 1st accused is admissible under Section 32(1) of the Evidence Act.

e) The next witness examined by the prosecution is Arun (PW5). He stated before court that Akku was his close friend. He stated that on 7.6.2007, he went to the shop run by one Reghu at Velanchira Junction for consuming alcohol. He found that Akku, Biju (PW20), Ullas (PW6) and Santhosh (PW4) were already there. When he was about to leave, Akku asked him whether he could buy some petrol. PW4, Santhosh, gave him Rs.30/- with which he purchased petrol and poured it into the tank of a Bajaj Discover Motorbike owned by Praveen. While he was about to leave, he asked Akku whether he was also coming along. Akku is said to have responded to him that he wanted to go to the house of the 1st accused. He identified the clothes worn by Akku when the same was

shown to him. In cross-examination, it was brought out that he was questioned in detail by the Circle Inspector of Police, but he had no occasion to state then that Akku told him that he was going to the house of the 1st accused. It was also brought out that there were gang wars earlier between Praban's gang and Aji's gang. Another very important aspect that was brought out in cross-examination is that on 18.6.2007 and on 19.6.2007, calls were received from Akku's mobile phone to his number. This aspect of the matter is highlighted by the defence to substantiate that while the specific case of the prosecution was that MO4 mobile phone was taken away by the accused after the murder and the same was recovered only on 26.8.2008 from the house compound of the 5th accused based on Ext.P10(a) disclosure statement given by the 5th accused, the statement of PW5 in his evidence would prove otherwise.

f) Ullas (PW6) was also a close associate of Akku and he was allegedly present along with PWs 4, 5 and 20. However, he did not support the case of the prosecution.

g) Aneesh (PW7) stated that he is a very close friend of Akku. According to him, he was employed at Bangalore during the relevant time. On 7.6.2007, he called Akku on his mobile phone. According to him, the last

three digits of Akku's phone number were '400'. He called Akku after 8.00 p.m. During their conversation, Akku reminded him of the witnesses's awareness of the spirit business jointly done by Aji (A1) and Akku. He stated that Akku told him during their conversation that Aji had called him over phone and Sunil (A3), Thakkali Pramod (A4) were with him. Akku is stated to have told him that Aji and others suffered some loss in their business due to his actions and he wanted to settle the issues for which he was on his way to Aji's house. PW7 asked him to go back to his house without roaming around. On the next day, he heard that Akku was found dead. He further stated that in the year 2014, he went to meet PW2 and during their conversation, he mentioned about the conversation they had on 7.6.2007. PW2 asked him to divulge this fact to the police and later he was called to the office of the Dy.S.P. and his statement was recorded. He stated that he had returned back from Bangalore during the end of 2008 itself and that he used to meet PW2 very often thereafter. His explanation for non-mentioning about the conversation that he had with Akku till 2014 is that whenever he used to talk to PW2, she used to get sentimental and cry. He stated that it is at her behest that he went to the office of the Dy.S.P., Kayamkulam in the year 2014 and disclosed about the conversation that he had with Akku about 7 years back. In

cross-examination, he pleaded ignorance about the telephonic conversations that he had with Akku prior to 7.06.2007. He admitted that he was residing about 1.5 kms from Akku's house. He stated that he was not aware of Akku's spirit business and dealings. He also stated that he had close connections with PW3, he being Akku's brother. However, the fact that Akku had called him during the previous day was never mentioned to him as well any time prior to 2014. His response was that Akku's brother was in Bangalore and they could not meet. However, when he was cross-examined that PW3 was at home till 2010, he responded by stating that he did not feel like stating about the conversation to him. He admitted that he was aware that the Police were unable to identify the persons responsible for committing the murder of Akku for more than a year after his death and in spite of the same, he chose not to tell anyone of his close relatives. In response, he stated that he had mentioned the conversation to PW4 and PW5 however, they did not request him to disclose this aspect to the police. It was brought out that when he had given the statement to the police, he did not mention that he had divulged this fact to his friends. He admitted that he is an accused in several police cases. The tenor of cross-examination by the accused was to the effect that PW7 has always been around and it was only in the year

2014, when the trial was about to start, a petition was filed by PW2 to conduct a further investigation and to record his statement. The contention of the defence is that this was another vain attempt by the prosecution to introduce a witness and to link the accused with the crime. The fact that being such an intimate friend, he did not choose to disclose about the conversation with Akku till 2014, i.e., 7 years after the incident, despite being aware of the fact that the culprits were at large even one year after the incident cannot be ignored. Furthermore, there is no reliable evidence to show that there was indeed a conversation between the witness and the deceased over phone that could not be proved by legally admissible evidence in the form of authentically proven Call Data Records.

h) The question is whether the evidence let in by PWs 4, 6 and 7 can be stated to be credible and the same can be treated as the dying declaration of Akku. It has come out that PW4 was questioned as a witness during inquest and at that time or later, he had no case that he was told by Akku that he was on his way to meet the 1st accused. Same is the case with PW5. Insofar as PW7 is concerned, the said witness, despite residing very close to the house of Akku and meeting his mother

on numerous occasions, decides to divulge this fact only after seven years, that too, when the trial was about to commence. No worth can be attached to his evidence. The prosecution has not produced the authenticated CDR accompanied with a 65B certificate to show that such a conversation had in fact taken place. We have no doubt in our mind that without conducting a credible investigation, close associates of the deceased were procured and they were made to state that Akku had told them that he is on his way to meet the 1st accused. No credibility can be attached to the evidence of PWs 4, 5 and 7. Furthermore, even according to them, all that Akku had stated was that he was going to the residence of the 1st accused. No evidence whatsoever was adduced to show that he had in fact reached the home of the 1st accused and that the rest of the accused were there or that the deceased was found in the company of the accused at any point of time. There is a total vacuum in respect of the above aspects.

i) We find that there have been major contradictions/improvements/ embellishments in the deposition of witnesses which cannot be ignored when they are examined in the correct perspective. It is a settled legal proposition that, while appreciating the evidence of a witness, minor

discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence thus provided in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labelled as omissions or contradictions. Therefore, the courts must be cautious and very particular in their exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the court to scrutinize the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief. We are of the view that the evidence adduced by the prosecution has been very shaky and the chain of links connecting the appellants with the crime appears inconclusive.

10. **Recovery of weapon of offence and articles:**

a) Much reliance was placed by the learned Sessions Judge on the recovery

of certain articles at the instance of the accused. The credibility of the evidence needs to be tested. An evaluation of the evidence tendered by PW25 would disclose that he received secret information that the 2nd accused used to reside in the house of the 1st accused during the period that the murder of Akku took place. On the basis of the above information, the 2nd accused was arrested on 13.5.2008. It is alleged that during his interrogation, he disclosed the names of the other accused. Based on the above new found information, the 5th accused was arrested at 10.00 p.m. on 13.05.2008. The officer stated that the 5th accused during interrogation stated that he had destroyed the SIM card and thereafter concealed the mobile phone and its battery separately in a plastic cover underneath a pineapple plant in the eastern backyard of his house. Based on the above information, the alleged mobile phone was seized.

b) PW11 was the witness who was cited and examined to prove the mahazar. He stated before court that he was summoned to the Police Station and was made to sign on the mahazar. The said witness did not support the prosecution. There is another serious issue which affects the credibility of the evidence of recovery of the mobile phone. The specific

case of the prosecution is that the same was taken from the possession of Akku after he was murdered and his SIM was destroyed. The 5th accused took it back to his residence and he is alleged to have concealed it in the backyard of his house. One fails to understand why the mobile phone would be taken and concealed in his own house to later enable the police to effect the recovery. Even if this utter improbability is ignored, the fact remains that the mobile phone was purchased by PW4 for his own use. Furthermore, PW5 in his evidence had admitted that he had received calls from the very same phone on 18th and 19th of June, 2007. Fortunately or unfortunately for the prosecution, they did not procure the certification under Section 65B of the Indian Evidence Act and hence, the learned Sessions Judge ignored the Call Data Records. However, in view of the emphatic admission of PW5 that he had in fact received calls from the same phone number on 18th and 19th of June, 2007, the recovery evidence appears to be cooked up.

c) It appears that the prosecution, instead of collecting reliable and credible evidence, wanted to adopt the much deprecated practice of effecting recovery based on alleged disclosure statements and thereby, link the accused with the crime. The only evidence to link the 2nd accused with

the crime is the recovery of MO1 shirt, MO2 Banyan, MO3 Sandal, MO16 Dhoti, MO17 coir rope and MO19 liquor bottle. From the charge, it can be deduced that the clothes were allegedly worn by the deceased and the coir rope was used to strangulate him. The liquor bottle apparently was placed in evidence to show that the deceased was forced to consume alcohol. This is because when the blood of the deceased was tested it was found that his blood contained about 287.5 mg/100 ml. of alcohol. It is alleged that the 2nd accused led the investigating officer to a marshy land from where the above items were seized. PW12 is the attestor to the recovery mahazar, however, he did not support the prosecution case. The same witness was the attestor to Ext.P37 recovery mahazar of the 5th accused as well. It is specifically alleged that the Dhoti, the T-shirt, and the Sandal were tied around a brick using a coir rope and were found in a water body covered with algal bloom ('Payal' in Malayalam). In cross-examination, the investigating officer stated that the place from where the clothes were found was in an open place accessible to all. It was also brought out that the items recovered did not show signs of being kept immersed in stagnant water and under algal bloom for over a year.

d) Insofar as the 4th accused is concerned, it is based on Ext. P12(a)

confession statement given him at 11:00 a.m. on 29.08.2008, that an iron leaf used to cause the fatal injury was seized from his house compound. Anil Kumar (PW12) was examined to prove the recovery. He stated that the iron leaf was taken out by the 4th accused from the property of Paramod situated on the northern side of the house of the 1st accused. However, it was brought out during cross-examination that he admitted that he was residing about 2 kms away from the place from where the iron leaf was recovered. It was brought out that he was a lorry driver and he leaves early in the morning for work and returns back late in the day. He stated that the place from where the recovery was effected is situated about 200 meters away from the main road and he does not have the need to travel through this road to go to his house. He stated that when he reached the place, there were more than 100 persons at the place. He also stated that when he reached there, the mahazar was being prepared and the same was being taken down by a lady Constable. No reliance can be placed on the evidence of PW12 since when he had reached the place, the recovery had already been effected.

e) It was on 30.8.2008 that a purse owned by the deceased was recovered based on the disclosure statement given by the 1st accused. PW25 stated

that while in custody, the 1st accused made a disclosure and based on the same, the officer was led to the house of the 1st accused and the purse of the deceased was taken out from a concrete flower pot in the courtyard of his house. CW26 Gopalakrishnan was cited as a witness to the mahazar. However, he was not examined as a witness. The importance of this recovery is that the purse did not contain anything but a copy of the Voter ID of the deceased. It would be far-fetched to believe that after brutally murdering Akku, the 1st accused found his purse which contained his voter ID, and brought it back to his house and concealed it underneath a flower pot so as to enable the officer to effect recovery. We find it difficult to place any value to the recovery of the purse as it appears that a conscious effort has been taken by the investigating officer to plant evidence against the accused.

f) As against the 3rd accused, the only incriminating material collected by the prosecution is the recovery of the handle grips of MO6 motorbike which was dumped in the temple pond. The investigating officer stated that, while in custody, the 3rd accused gave Ext.P40(a) disclosure statement that the handle grips were concealed in his house compound near a latrine and based on the same, the handle grips were recovered.

CW26 Gopalakrishnan, the same witness cited to prove the recovery of the purse at the instance of the 1st accused is the witness to Ext.P40 mahazar. However, he was not examined.

g) In **State Of Rajasthan v. Bhup Singh**[5], the Apex Court has observed the following as the conditions prescribed in Section 27 of the Evidence Act, 1872 for unwrapping the cover of ban against the admissibility of statement of the accused to the police (1) a fact should have been discovered in consequence of the information received from the accused; (2) he should have been accused of an offence; (3) he should have been in the custody of a police officer when he supplied the information; (4) the fact so discovered should have been deposed to by the witness. The Court observed that if these conditions are satisfied, that part of the information given by the accused which led to such recovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence.

h) In the aforesaid context, we may also refer to a decision of this Court in the case of **Bodhraj alias Bodha and Others v. State of Jammu and Kashmir**[6], as under:

---

[5] (1997) 10 SCC 675

[6] (2002) 8 SCC 45

"18. .....It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the

> principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or noninculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67] is the mostquoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269]). No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given." [Emphasis supplied]

i) The aspect which this Court has to consider in the present case is

whether these recoveries have been made in accordance with law and whether they are admissible in evidence or not, and most importantly, the link with and effect of the same vis-a-vis the commission of the crime. At this juncture, it would be profitable to bear in mind the observations of the Apex Court in **Subramanya v. State of Karnataka**[7] wherein the Supreme Court has delineated the principles that are to be borne in mind by the Court while confronted with the question of admissibility of recovery effected at the instance of the accused. It was observed as follows in paragraph Nos. 77 and 78 of the judgment.

> 77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.
>
> 78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent

[7] (2022 SCC OnLine SC 1400)

witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

j) In **Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh**[8], the principles were clarified further and it was observed as under in paragraph 56 of the judgment:

> 56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about

[8] 2022 SCC OnLine SC 1396

such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

xxxxxxx xxxxxxxxx

70. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Exh.5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon

71. If it is the case of the prosecution that the PW2, Chhatarpal Raidas, s/o Rameshwar Raidas had acted as one of the panch witnesses to the drawing of the discovery panchnama, then why the PW2, Chhatarpal Raidas in his oral evidence has not said a word about he having acted as a panch witness and the discovery of the weapon of the offence and blood stained clothes being made in his presence. The fact that he is absolutely silent in his oral evidence on the aforesaid itself casts a doubt on the very credibility of the two police witnesses i.e. PW6 and PW7 respectively.

k) In the case on hand, when the investigating officer was examined, he merely stated that the accused while in custody furnished a statement and nothing more. In his evidence, he has not proved the contents of the recovery mahazar. He has also not mentioned that he had procured the presence of independent witnesses of the locality to witness the search. Furthermore, the witnesses to the recovery effected at the instance of the 2nd accused and the 5th accused did not support the prosecution case. Insofar as the witnesses to the recovery effected at the instance of the 4th accused are concerned, he stated that he reached the place only when the mahazar was being prepared by the lady Constable and about 100 persons had assembled at the place by then. Insofar as the recovery effected at the instance of 1st and 3rd accused are concerned, the very same witnesses were cited and the prosecution did not choose to examine anyone. We have also noted that we entertain serious doubts as regards the recovery effected at the instance of the accused as it appears that an attempt has been made to plant evidence in spite of getting enough time to conduct a thorough investigation, all that they have managed is to procure a stage-managed recovery.

l) In **Geejaganda Somaiah** (supra), the Apex Court had occasion to

observe that Section 27 of the Evidence Act is frequently misused by the police, and the courts are required to be vigilant about its application. The court are required to be extremely cautious and ensure the credibility of evidence by police because this provision is vulnerable to abuse. However, this does not mean that any statement made in terms of the aforesaid section should be seen with suspicion. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 of the Evidence Act.

m) In **Mustkeem** (supra), the Apex Court held that in a case which rests purely on circumstantial evidence the recovery cannot be the sole basis for conviction. It was observed as under:

> 21. The recovery memos also reflect that there were overwriting on the same which has not been explained by PW 16 Diwakar Chaturvedi (Investigating Officer). He admitted that memos and annexures were prepared in his own handwriting but also admitted in his cross-examination that the same were in a different handwriting. This lacuna should have been explained by the prosecution more so when the whole case rested only on circumstantial evidence.

22. Thus, looking to the matter from all angles we are of the considered opinion that it would not be safe and proper to hold the appellants guilty for commission of offence.

23. It is too well settled in law 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. No doubt, it is true that conviction can be based solely on circumstantial evidence but it should be decided on the touchstone of law relating to circumstantial evidence, which has been well settled by law by this Court.

xxxxxxx xxxxx xxxxxxx

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. 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. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

11. **Closing Thoughts:**

a) Before concluding this case, we must express our profound distress over the manner in which the investigation was conducted and the accused

were subjected to trial. Although we recognize that the appellants are not saints, it is abundantly clear from the facts and circumstances that the investigating officer deliberately and consciously fabricated false evidence against the accused. The prosecution has not acted fairly. Accusing a person of a grave crime punishable under Section 302 of the IPC demands an honest, sincere, and unbiased investigation. Only the person genuinely suspected of the crime should be charged. In this case, there was a conscious attempt to plant evidence and avoid presenting crucial pieces of evidence that would have supported the prosecution's version. The failure to procure the 65B certificate for the admissibility of electronic evidence, the introduction of PW7 after nearly seven years, the fabrication of recovery evidence, the failure to identify the exact crime scene, and the introduction of new facts by witnesses in court that were not stated in their initial statements are clear demonstrations of prosecutorial misconduct.

b) We are bewildered as to how accused Nos. 2 to 5 were implicated in this case. Except for the obviously planted recovery, no evidence whatsoever has been let in by the prosecution to link them to the crime. Regarding the 1st accused, in addition to the dubious recovery, the alleged

statements made by the deceased to his friends are clearly embellishments brought in at a later stage. Such fabrication of records by the investigating officer is deplorable and would undermine the public confidence in the prowess of investigative agencies. However, as we are informed that the investigating officer is no more, we refrain from passing strictures against him.

c) We acknowledge that heinous crimes are committed under great secrecy, making the investigation a challenging and arduous task. However, the liberty of a citizen is a precious right guaranteed under Article 3 of the Universal Declaration of Human Rights and Article 21 of the Constitution of India, and its deprivation can only be in accordance with law. Impartial and truthful investigation and a fair trial are imperative. A fair trial, as envisaged by Articles 20 and 21 of the Constitution of India, includes a fair investigation. The role of the police is to protect the life, liberty, and property of citizens, and the investigation of offences is one of its foremost duties. The accused is entitled to a fair and true investigation and trial, and the prosecution is expected to play a balanced role in the trial of a crime. Investigations should be judicious, fair, transparent, and expeditious to ensure compliance with the basic rule of law. These

principles align with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India [See **Kishore Chand** (supra)].

d) We must also highlight the role of the Public Prosecutor in cases of this nature. We need to elaborate no more than refer to the observations in **Dodda Brahmanandam v. State of Andhra Pradesh**[9], wherein Jagannadha Rao, J. (as he then was), while referring to the office of the Public Prosecutor, as observed in Kenny's Outlines of Criminal Law and various English and Indian decisions, ultimately summed up his views as under:

> "The Prosecuting Counsel stands in a position different from that of an advocate who represents the complainant. He does not represent either the defacto complainant or the police. He is a representative of the State and is part of the Court and in that sense called a minister of justice. His function is to assist the Court in arriving at the truth. It is not his duty to obtain a conviction at any cost but simply to lay before the Court the whole of the facts of the case and the law. The State too has no interest in procuring a conviction. It's only interest is that the guilty must be punished and justice should be done. It is regarded as proper for the prosecution to acquaint the defence as to any relevant information so that the defence may have the opportunity to use it if they so desire and so that no unfairness is meted out to the

[9] [(1986) 1 Andh LT 141]

> accused (See also Kenny's Outlines of Criminal Law, 19th Ed (196) (p.611-612). The position of the prosecutor is thus quasi-judicial and one of trust."

We hope and expect that the observations made by us are taken note of in its true spirit and appropriate measures are taken so that such misadventures do not happen in the future.

12. **Conclusion:**

Having carefully evaluated the entire evidence, we are of the view that the prosecution has totally failed to prove any one of the circumstances against the appellants. The circumstances, we are afraid, do not cumulatively form an unbroken chain of events linking the accused with the crime. The prosecution has also failed to prove as a primary fact, the circumstances projected by them, much less beyond all reasonable doubt, to bring home the guilt to the accused, and to prove that the accused had committed the offences under Section 302 r/w. Section 34 of the IPC and Section 120B and under Section 201 r/w. Section 34 of the IPC. There is no evidence to show that the accused had entered into a conspiracy and that they had caused the disappearance of evidence. Therefore, the appellants are entitled to the benefit of doubt.

2024:KER:60223

These appeals are allowed. The conviction and sentence of the appellants for the offences under Section 302 r/w. Section 34 and Section 120B and Section 201 r/w. Section 34 of the IPC are set aside. The appellants are on bail granted by this Court. The bail bond shall stand cancelled. They shall remain at liberty if their incarceration is not required to be resumed in connection with any other case.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-
G. GIRISH,
JUDGE

PS & APM**/03/08/24**