

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

CRL.A.No.1286 of 2010 (G)

AGAINST THE JUDGMENT IN S.C.NO.119/2006 OF THE COURT OF THE SESSIONS
JUDGE, WAYANAD, KALPETTA DATED 27-10-2006

APPELLANT/ACCUSED:

UBAIDU,
S/O.KUNJABDULLA,
MANJAPALLY HOUSE,
THUDIYANVAYAL, VYTHIRI.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT/STATE:

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

BY PUBLIC PROSECUTOR SMT.PRAICY JOSEPH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R.”

**K.T.SANKARAN &
RAJA VIJAYARAGHAVAN V., JJ.**

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Dated this the 7th day of September, 2015

JUDGMENT

K.T.Sankaran, J.

The appellant challenges the conviction and sentence in S.C.No.119 of 2006 on the file of the Court of Sessions, Wayanad, Kalpetta, by which the appellant was found guilty for the offence under Sections 302 and 392 of the Indian Penal Code. The appellant was sentenced to undergo imprisonment for life and to pay a fine of ₹25,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year for the offence under Section 302 IPC. He was sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for six months for the offence under Section 392 IPC. Though the appellant was also charged for the offence under Section 366 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the trial court acquitted him of those charges.

2. The victim, namely, Santha, who belonged to a scheduled caste community was a maid servant in the house of PW7 Advocate Edathody Radhakrishnan at Beypore. Santha was employed by him for the last three years. Santha's husband abandoned her. Her two children were no more. Occasionally, she used to visit PW6 Gopalan and his wife, the brother-in-law and sister of Santha. After 2 - 3 days of stay with them, she used to return to the house of PW7. On occasions where Santha did not return to the house of PW7 within time, PW7 used to send his 'Karyasthan' (PW8) to the house of PW6 to fetch Santha.

3. On 8.7.2000 at about 5 p.m., Santha left the house of PW7 stating that she was going to the house of PW6. Even after a few days, she did not return. Therefore, PW7 sent his 'Karyasthan' (PW8) to enquire about the whereabouts of Santha. PW8 went to the house of PW6, but he was informed that Santha had not arrived at the house of PW6 on 8.7.2000. On the next day, PW8 brought to the notice of PW7 about a newspaper report that an unidentified body of a female was found under the culvert near Pookkode lake in

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Wayanad District. Thereupon, PW6, PW7 and PW8 went to the Medical College Hospital and saw the dead body at the mortuary. They identified the dead body as that of Santha.

4. The prosecution case is that Santha was taken by the accused from Beypore in Kozhikode District to the place near Pookkode Lake in Vythiri Taluk in Wayanad District and caused her death near a culvert at Pookkode Lake by strangulating her by using her saree and also by gagging her mouth and thereby committed the offence under Section 302 IPC. The prosecution further alleged that in the course of the same transaction, the accused committed robbery of MO1 gold chain weighing 1.25 sovereigns of gold, which was worn by Santha and thereby he committed the offence punishable under Section 392 IPC.

5. The trial court found the accused guilty of the offence and he was accordingly sentenced as mentioned above.

6. On behalf of the prosecution, PW1 to PW30 were examined, Exts.P1 to P29 were marked and MO1 to MO17 were

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identified. On behalf of the defence, Exts.D1 to D5 were marked through the witnesses examined on the side of the prosecution.

7. There is no eye witness to the incident. The prosecution relies on the circumstantial evidence to bring home the guilt of the accused.

8. In the morning hours of 9.7.2000, PW5 Ansar saw the dead body of Santha under the culvert while he went to that place to collect green leaves for his goats. Ansar reported the matter to PW1, a boatman at Pookkode Lake, who was residing nearby. PW1 went to the spot along with Vinod and Manoj, who were also working with PW1 at Pookkode Lake. PW1 reported the matter to the police and gave Ext.P1 First Information Statement at 10.30 a.m. to PW27, the Sub Inspector of Police. PW27 registered Ext.P1(a) FIR. PW27 conducted the inquest on the dead body of Santha and he made arrangements to take the dead body to the mortuary at the Medical College Hospital, Kozhikode. The postmortem was conducted by PW23. PW27 seized the dresses worn by the deceased, collected samples of blood and the cellophane tapes containing the finger

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prints of the deceased for the purpose of chemical analysis. PW27 conducted the inquest. The accused was arrested on 20.7.2000 at 3 p.m. from Thalipuzha in Wayanad District. The accused made Ext.P9(a) disclosure statement to the investigating officer. As led by the accused, the investigating officer went to the house of PW12 Nasar and seized MO7 umbrella (belonging to the deceased) from him. PW12 Nasar disclosed that the accused had entrusted MO1 gold chain to him for the purpose of sale, which he had sold at Gopika Jewellery belonging to PW16. The accused, PW12 Nasar and the investigating officer proceeded to Gopika Jewellery and seized MO1 gold chain as produced by PW16. The shirt and dothi worn by the accused were seized by the investigating officer on his arrest, as per Ext.P10 seizure mahazar. The shirt and dothi of the accused, the hair and nail clippings collected from the dead body of Santha and the cellophane tape prints taken from the fingers of Santha were sent for chemical analysis. As per Ext.P27 report, it was found that blood was seen in the saree and underskirt worn by Santha. Ext.P27 also shows that the fibres of dothi and shirt of the accused were found in the samples taken from the fingers of the

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deceased. PW28 took over the investigation on 4.7.2001, verified the investigation and filed the charge sheet.

9. PW1 to PW5 saw the dead body of Santha under the culvert near Pookkode Lake. PW3 was a witness to Ext.P3 observation mahazar. PW4 Nasar.T. witnessed Ext.P4 inquest report.

10. PW6 Gopalan is the husband of the sister of the deceased. He stated that Santha used to come to his house during every month and she used to stay for 3-4 days with them. Santha would be taken back to the house of PW7 either by PW6 or by PW8, the Karyasthan of PW7. PW6 stated that for the wedding of his son Ramesan, Santha had come along with the accused and at that time, the accused said that he belonged to Wayanad. PW6 also stated that Santha did not pay any amount at the time of marriage of his son and she stated that money was taken by the accused and he did not return the money. At that time, Santha was wearing a gold chain and ear studs, which were identified by PW6 as MO1 and MO2. When PW8 came to the house of PW6 enquiring about

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Santha, he stated to PW8 that Santha did not come to his house. Thereupon, PW6 and CW13 went to the house of Choolan, brother of Santha, and enquired whether she was available there. Santha had not gone to the house of Choolan as well. PW6, PW8 and Choolan met PW7. Thereafter, when the newspaper report about the unidentified dead body of a woman was brought to the notice of PW7, all of them, namely, PW6, his son Ramesan, Choolan, PW7 and PW8 went to the mortuary at the Medical College Hospital, Kozhikode and identified the dead body. PW6 stated that when he met the accused at the time of marriage of his son and when the accused stated that he belonged to Wayanad, PW6 had suspicion about the relationship between the accused and the deceased. PW6 also identified the sarees, blouse and chappals which were used by the deceased.

11. PW7 is a lawyer practicing at Kozhikode. His house is at Baypore. Santha was employed by him for the last three years. She was staying at the house of PW7. Santha used to go to the house of PW6 occasionally. PW8 used to bring her back. Santha left the house of PW7 at 5 p.m. on 8.7.2000. Thereafter, she did not return.

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On 14.7.2000, PW7 sent his Karyasthan to the house of PW6, but he was told that Santha had not come to that house. PW7 narrated the events which took place after seeing the news item in the Malayala Manorama newspaper about the unidentified dead body of a woman near Pookkode Lake. He identified the dead body at the mortuary. PW7 had purchased a gold chain and gifted the same to Santha, which he identified as MO1. PW7 stated that he knew the accused as he was employed in the construction activities of the flat of PW7 which was only 25 metres away from his house. The accused was residing at Marad. PW7 stated that the accused had married a lady from Marad also. Since it was raining when Santha was about to leave on 8.7.2000, she took the umbrella of Rahul, son of PW7, which was identified by PW7 as MO7.

12. PW8 Subramanian also narrated the incident as stated by PW6 and PW7. Apart from that, PW8 stated that Santha, the deceased, used to make tea for taking the same to the employees working at the construction site of the flat of PW7. The tea was being taken by the accused. PW8 had also seen the accused and Santha talking together. He had also seen Santha and the accused

having money transactions and the accused borrowing money from Santha.

13. PW9, the construction contractor, stated in evidence that the accused was a worker at the construction site of the flat for PW7. He also stated that after the disappearance of Santha, the accused had not attended the work at his work site.

14. PW11 Subhash had acquaintance with the accused when the accused was engaged in the construction activities of the house of Das, a neighbour of PW11. The witness had also seen the accused being engaged at the construction site of the flat of PW7. The witness also knew Santha. At about 5.30 p.m. on 8.7.2000, when PW11 was returning home after work, he saw the accused and Santha together at B.C.Road, Beypore. The accused and Santha boarded a bus. He also stated that the accused was wearing a white dothi and blue shirt, as identified as MO10 and MO9. He also stated that Santha was wearing a white blouse and a meroon coloured saree. He identified the saree and blouse also.

15. PW12 Nasar belongs to Vythiri in Wayanad. He was born and brought up there. He knew the accused. The accused had married a lady from Thalipuzha near Pookkode Lake and in that wedlock the accused has two children. The witness stated that the accused abandoned that lady. At about 7-7.30 a.m. on a Sunday in 2000, the accused came to the house of the witness and took black tea prepared by his wife. The accused stated to the witness that he got an umbrella from the bus and insisted the witness to take that umbrella, which was identified by the witness as MO7. PW12 stated that the accused told him that he wanted to sell a gold chain which was pledged to him by somebody. Since the accused insisted for sale of the gold chain, the witness agreed to help him and sold the gold chain at Gopika Jewellery. A sum of ₹3,380/- was paid as value of the gold chain and it was given to the accused, out of which he gave ₹100/- to the witness. The witness further stated that when the police came to his house along with the accused, he produced MO7 umbrella to the police and also took the police to Gopika Jewellery from where MO1 gold chain was recovered. The evidence of PW12 also shows that the accused wanted to marry another woman and requested the witness to find out a woman for him. The evidence of

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PW13 proves conclusively that MO1 gold chain was sold by him to PW7 and his wife.

16. PW14 Anilkumar was working as a conductor in the KSRTC bus during 2000. He was working in Sulthan Bathery Division. He stated that the police showed him the photograph of a person and asked whether that person had travelled in the bus in which he was working as conductor. PW14 identified the man and said that he was travelling in the bus on 8.7.2000 along with a lady whose photograph was also shown by the police to the witness. PW14 stated that the accused and the lady boarded the bus from Kozhikode and they got down near Dwaraka Hotel at Vythiri. In cross examination, PW14 stated that there were only two or three passengers left when the bus was about to reach Vythiri and he noticed the accused and the lady with him talking and their behaviour showed that they are not husband and wife.

17. On the basis of the above evidence, the prosecution sought to prove the circumstances connecting the accused with the crime. According to the prosecution, the circumstances have been

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proved and that the proved circumstances would constitute a complete chain which does not admit of any hypothesis other than the guilt of the accused.

18. The trial court accepted the prosecution case and held that the circumstances alleged by the prosecution have been proved and that those circumstances proved the guilt of the accused.

19. We have gone through the entire oral evidence in the case and also heard the arguments of Sri.S.Sachithananda Pai, the learned counsel appearing for the appellant and also Smt.Praicy Joseph, the learned Special Public Prosecutor.

20. Ext.P15 postmortem certificate issued by PW23 shows the following ante-mortem injuries:

“B. INJURIES (ANTEMORTEM)

1. Contusion 4x2.5 cm inner aspect of upper lip on right half.
2. Contusion inner aspect of lower lip middle 2.5x1.5 cm with central laceration 0.1x0.1x0.4 cm overlying right lower central incisor tooth.

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3. Contusion 1x1 cm inner aspect of right angle of mouth.
4. Abrasion 4x1 cm right side of face 5 cm in front of tragus of ear and 2 cm behind right eye.
5. Abrasion 2x2 cm back of right elbow.

NECK

1. Pressure abrasion 30 cm long transverse mainly on front and sides of neck, other areas not very clear. On front of neck the mark was 5 cm above supra-sternal notch, on left side the mark was 7 cm below ear and on right side the mark was 6 cm below ear. Neck was dissected in bloodless field.
2. Contusion 6x7x0.2 cm on right side of neck, 5 cm above collar bone.
3. Contusion 8x4x1 cm left side of neck, 4 cm below ear lobule, 5 cm below chin.
4. Contusion 1x1x0.3 cm left side of neck at the level of thyroid cartilage.
5. Contusion 3x2x1 cm right side of neck involving thyroid muscle and the fascia underneath. Just outer to midline above the left superior horn or thyroid cartilage, contusion 2x2x1 cm.
6. Contusion 4x2x0.5 cm left side of neck at the back of pharynx and back of thyroid cartilage. Superior horns of thyroid cartilage fractured on right and left side with infiltration around.”

The opinion as to cause of death is shown thus:

“Postmortem findings are suggestive of ligature strangulation.”

PW23 stated in evidence that saree can be used as a ligature material for strangulation. He also stated that other injuries like contusions, abrasions, etc. could have been caused at the time of struggle.

21. Ext.P16 certificate issued, after “examination of potency and injuries” of the accused, shows that the accused had sustained the following injuries:

- “1. Two linear abrasions 2.5 cm long & 0.8 cm apart on back of left shoulder 10 cm outer to midline and 3 cm below top of shoulder. Scab almost fallen off.
2. Four linear abrasions 2 cm long and 0.8 cm apart, very superficial scab formed and partially fallen off 3 cm outer to midline and 3 cm below root of neck on back of left shoulder.
3. Three linear abrasions, scab fallen off 3 cm long & 0.8 cm apart back of right chest 2 cm outest to midline and 10 cm below root of neck.
4. Five linear abrasion scab partially fallen off on right shoulder blade 10 cm outer to midline and 11 cm below to of shoulder.
5. Two linear abrasion 2 cm long scab formed showing slight erythema 1 cm outer to previous injury.

6. Contusion 3.5x 3 cm reddish brown on top of left shoulder. Injury No.5 & 6 are more recent than other injuries.”

The history of the injuries stated by the accused to the doctor was the following:

“History of causation of injuries on the body - Subject says that the injuries on the body are caused by the scratching of his wife when he attempted to have a sexual intercourse roughly around 1.7.2000, who has delivered few weeks back.”

The Assistant Professor and Deputy Police Surgeon who issued Ext.P16 stated his opinion with respect to the injuries as follows:

“2. Injuries in the body don't tally with the history given by subject and are more recent than alleged incidence. Injury 5 & 6 are more recent than rest.”

22. Ext.P27 chemical analysis report shows that two white fibres of MO10 dothi belonging to the accused were detected in the cellophane tape of the right ring finger of the deceased. Ext.P27 further shows that the three blue fibres detected in the cellophane tape of the left ring finger of the deceased are identical and similar to the fibres of MO9 shirt of the accused.

23. The medical evidence available in the case conclusively establishes that the death of Santha was homicidal and it was as a result of strangulation. Ext.P27 would show that the fibres of the shirt and dothi belonging to the accused and the fibres found on the fingers of the deceased were identical and similar.

24. The accused as well as the deceased were seen together by PW11 Subhash at 5.30 p.m. on 8.7.2000. He saw the accused and the deceased boarding a bus from the bus stop. The bus stop was very near to the house of PW7. PW11 stated that at that time the accused was wearing a blue shirt and a white dothi, which were identified as MO9 and MO10. He also stated that Santha was wearing a meroon coloured saree and a white blouse, which were identified as MO3 and MO5. The evidence of PW14 shows that the accused and the deceased were travelling in a KSRTC bus and they boarded the bus at Kozhikode and alighted at Vythiri during night. PW14 identified the photograph of the accused as shown by the police within two or three days of the incident. The photographs of the deceased were also shown to him by the police and they were

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identified. The evidence of PW14 corroborates the evidence of PW11. The court below applied the last seen together theory and held that the evidence in the case proves that the accused and the deceased were last seen together on the date of the incident by PW11 and PW14.

25. In **Amit alias Ammu v. State of Maharashtra [(2003) 8 SCC 93]**, relying on the decision in *Mohibur Rahman v. State of Assam [(2002) 6 SCC 715]*, the Supreme Court held that where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. It was also held that the question whether in the circumstances noticed such an irresistible conclusion can be reached will depend on the facts of each case. In Amit's case, the accused and the deceased were last seen together by about the time the death took place. No explanation was offered in the statement by the accused under Section 313 of the Code of

Criminal Procedure. Since the defence was a complete denial, the Supreme Court held that the conviction of the accused under Sections 302 and 376 was legal and proper.

26. In **State of U.P. v. Satish [(2005) 3 SCC 114]**, it was held that:

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

27. In **Ramreddy Rajesh Khanna Reddy v. State of A.P. [(2006) 10 SCC 172]**, the same view was taken by the Supreme Court, but it was also held that even in such a case the courts should look for some corroboration. The decisions in **State of U.P. v. Satish [(2005) 3 SCC 114]** and **Ramreddy Rajesh Khanna Reddy v. State of A.P. [(2006) 10 SCC 172]** were quoted with approval by the Supreme Court in paragraph 24 of the decision reported in **Ramesh v. State through Inspector of Police [(2014) 9 SCC 392]**.

28. In **Sahadevan alias Sagadevan v. State represented by Inspector of Police, Chennai [2003 SCC (Cri) 382]**, the Supreme Court held thus:

“19. This Court in more than one case has held, that if the prosecution, based on reliable evidence, establishes that the missing person was last seen in the company of the accused and was never seen thereafter, it is obligatory on the accused to explain the circumstances in which the missing person and the accused parted company.”

In the facts and circumstances proved in the case, a heavy responsibility is cast on the accused to explain in what circumstances he was found in the company of Santha, the deceased. Santha was residing in Kozhikode District while her dead body was found in Wayanad District, a far away place. The house of the wife of the accused is in Wayanad, near the place of occurrence. There is no material to show that Santha was found in the company of any other person other than the accused on the date of incident. The accused was bound to speak in these circumstances, but he did not speak. He did not explain the incriminating circumstances

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brought out against him. His case was a total denial. In these circumstances, we are of the view that the court below was fully justified in applying the last seen together theory, in the facts of the present case.

29. The accused made a disclosure statement to the investigating officer on the basis of which MO7 umbrella was recovered from the possession of PW12 Nasar. PW12 gave evidence that the umbrella was given by the accused to him. The accused stated to Nasar that he found that umbrella as abandoned in the bus and it was not necessary for him to keep the umbrella. On MO7 umbrella there is inscription of the letters 'ER', which, according to PW7, represents Edathody Rahul, the name of his son. The umbrella was identified by PW7 as belonging to his son. PW8 also identified the umbrella as that of the son of PW7. Pursuant to the disclosure statement made by the accused, the investigating officer met PW12 Nasar and as led by him, the investigating officer could seize MO1 gold chain from Gopika Jewellery run by PW16. MO1 gold chain was identified by PW6 and PW7 as that of the deceased. The evidence of PW13 shows that MO1 gold chain was sold by him

to PW7. The evidence of PW7 is that MO1 gold chain was given by him to his maid servant, the deceased. It is proved in the case that MO1 belonged to Santha. How did it happen that MO1 gold chain was entrusted by the accused to Nasar, who in turn sold the same at Gopika Jewellery? There is no explanation. The only irresistible conclusion that could be drawn is that the accused had requested PW12 to sell MO1 gold chain at the jewellery and the accused entrusted MO1 gold chain to PW12 for that purpose. The question would arise as to whether Section 27 of the Evidence Act would apply when the discovery was not directly attributable to the statement of the accused and the act of the accused in discovering the same. In the present case, MO1 chain was not directly sold by the accused to PW16. The accused entrusted the gold chain to PW12 for sale, who in turn sold MO1 to PW16. PW12 gave necessary information and he led the investigating officer to the jewellery of PW16 and PW16 handed over MO1 gold chain to the investigating officer.

30. In **Ayyappan v. State of Kerala (2004 (3) KLT 254)**, the question which arose for consideration was whether the information

furnished by the accused in his confession statement that he has handed over the stolen articles for disposal to another accused is admissible in evidence under Section 27 of the Evidence Act. The learned single Judge in 2004(3) KLT 34 (*supra*) relied on the Division Bench decision in **Raveendran and others v. State (1989 (2) KLJ 534)** and held that there can be no doubt that the information furnished by the accused in the course of his confession statement that he had entrusted the stolen articles to other specified persons for clandestine disposal is certainly admissible, provided the truth of that information is established. In **Raveendran and others v. State (1989 (2) KLJ 534)**, a Division Bench of this Court held that if the information leading to discovery of a fact is relating to concealment of an incriminating object, it can be by concealment in a place or by entrustment with a person (emphasis supplied). The Division Bench also held :

“19. That decision also approved *Pulukuri Kottaya's case* (A.I.R.1947 P.C.67) and said that what should be discovered is the material fact and the information that is admissible is that which has caused the discovery so as to connect the information and the fact with each other as the cause and effect. That

information which is not distinctly connected with the fact discovered or that portion of the information which only explain the material thing recovered is not admissible under Section 27 and cannot be proved. If the information leading to discovery of a fact is relating to the concealment of an incriminating object it can be by concealment in a place or by entrustment with a person. Information concerning the where-about of a person who is not in any way connected with the concealment or entrustment is not a relevant information at all coming under Section 27. What makes the information leading to the discovery of the witness admissible is the discovery of the 'fact', the connotation of which has been clearly laid down in *Pulukuri Kottaya's case* (A.I.R. 1947 P.C. 67). That is what *Jaffer Husain Dastagir v. State of Maharashtra* (A.I.R. 1970 SC 1934) also said. In that case, the police already knew that the diamond was with the third accused but did not know where he was to be found. The information which led to the discovery of third assured was held to be not information under Section 27 because it could at the best only amount to information as to the whereabouts of A3 which is not a relevant fact under Section 27. The fact discovered must be connected with the crime charged and discovery of the fact must be the direct outcome of the information, the

truth of which is thereby accused. Only then the embargo on the statement of the accused to the police is removed. For the application of Section 27, there is practically no difference between the information that the article is kept concealed in a particular place and the information that the article is given to a particular person. The only difference is that the named person is substituted for the place. In neither case the article is the fact discovered. That decision also accepted the connotation of 'fact' as interpreted in *Pulukuri Kottaya's case* (A.I.R. 1947 P.C.67)."

31. In **State of Maharashtra v. Damu S/o.Gopinath Shinde and others** (2000 SCC (Cri) 1088), the Supreme Court held:

"35. 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 in 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 non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting

the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of Privy Council in *Pulukuri Kottayya v. Emperor*, AIR 1947 PC 67 is the most quoted 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.

36. 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. In this case, the fact discovered by PW44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motor cycle."

32. From the facts proved in the case, it is clear that the information given by the accused that MO1 and MO7 were entrusted by him to PW12 was confirmed by the recovery of MO7 from the house of PW12 and the recovery of MO1 from PW16, the proprietor

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of Gopika Jewellery. The recovery of MO1 and MO7 are directly attributable to the information given by the accused. The court below was right in believing the evidence of PW12 and PW16 in this regard.

33. It is well settled that when the prosecution relies on circumstantial evidence, all the circumstances from which the conclusion of guilt is to be drawn should be established. The fact so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be conclusive and definite, unerringly pointing towards the guilt of the accused. The circumstances should be such as to exclude every hypothesis of innocence of the accused. It is also well settled that it is not necessary that each and every circumstance should be conclusively established but the circumstances should cumulatively 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 hypothesis, then the accused must have the benefit of that hypothesis. However, in adducing the evidence, imaginary probabilities have no role to play.

34. The following circumstances are proved in the case: (i) The deceased was working as a maid servant in the house of PW7, Advocate Edathody Radhakrishnan. (ii) The accused and the deceased were having close acquaintance and intimacy. It is proved in the case that the accused used to borrow money from the deceased. (iii) MO1 gold chain was given to the deceased by PW7, he having purchased it from the shop of PW13. (iv) On 8.7.2000 at about 5.30 p.m., the deceased left the house of PW7. At that time, it was raining and MO7 umbrella belonging to the son of PW7 was given to the deceased. (v) The deceased and the accused were seen together when they boarded the bus at about 5.30 p.m. at a road junction near Beypore, as spoken to by PW11. (vi) That the accused and the deceased travelled in a KSRTC bus plying from Kozhikode to Sunthan Bathery and they boarded at Kozhikode and alighted at Vythiri is proved by the evidence of PW14. The accused and the deceased were thus last seen together by PW14. He could also identify the dress worn by the accused as well as the deceased. (vii) After PW14 saw the accused and the deceased together, nobody else had seen them together. (viii) On the next day morning,

the dead body of the deceased was found under the culvert by PW5, who informed the same to PW1. PW2, PW3 and PW4 also saw the dead body of the deceased at that place. (ix) MO1 gold chain was missing from the dead body of Santha when the body was found under the culvert and at the time of inquest. (x) The dress which Santha was wearing at the time when she left the house of PW7 was found on the dead body of Santha on the next day morning. (xi) MO7 umbrella was given to the deceased when she left the house of PW7. That umbrella was recovered from the house of PW12 on the basis of the information given by the accused. There is no reason why the umbrella should be available in the house of PW12. The disclosure statement made by the accused would show that he had handed over the umbrella to PW12 and this fact is proved by the evidence of PW12. (xii) The deceased was wearing MO1 gold chain at the time when she left the house of PW7. That gold chain was missing at the time when PW5 and others saw the dead body of Santha under the culvert. MO1 gold chain was seized from the jewellery shop of PW16 as led by PW12, to whom the gold chain was handed over by the accused. The discovery of MO1 was on the basis of the disclosure statement made by the accused. (xiii) The

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deceased belonged to a place in Kozhikode District. Her dead body was found near Pookkode Lake in Wayanad District. She had no relative or friend at that place. The house of the wife of the accused is near Pookkode, the place where the dead body of Santha was found. There was no necessity for Santha to travel from Beypore to Vythiri and to Pookkode in Wayanad District unless there was any reasonable cause for the same. (xiv) The dead body of Santha was found at a place within a few kilometres away from the place where the accused and the deceased alighted from the KSRTC bus, in which PW14 was the conductor. (xv) The death of Santha was caused by ligature strangulation. The medical evidence would show that the saree of Santha could be used as a ligature. (xvi) The soil found on MO9 shirt and MO10 dothi was identical to the soil taken from the scene of occurrence. (xvii) Materials collected by using cellophane tape from the fingers of the deceased at the time of inquest contained blue fibres identical to the fibres collected from MO9 shirt worn by the accused. The white fibres found on the cellophane tape were identical and similar to the white fibres taken from MO10 dothi belonging to the accused. (xviii) The accused did not offer any explanation as to the possession of MO1 gold chain

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and MO7 umbrella by him.

On a re-appraisal of the evidence in the case, we do not find any ground to interfere with the conviction and sentence of the accused. In the result, the Criminal Appeal is dismissed.

K.T.SANKARAN
Judge

RAJA VIJAYARAGHAVAN V.
Judge

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