

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

CRL.A.No. 15 of 2011 ()

**AGAINST THE JUDGMENT IN SC 51/2002 OF I ADDITIONAL SESSIONS JUDGE, THRISSUR
DATED 19-11-2010**

APPELLANT/ACCUSED (IN CUSTODY):

**RAMACHANDRAN
S/O. KIZHAKKOOTTUPARAMBIL GOPALAN EZHUTHACHAN,
NEAR MAHILASAMAJAM
VELLATTANJOOR VILLAGE AND DESOM, THRISSUR DISTRICT.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.JOSEPH GEORGE(MULLAKKARIYIL)**

RESPONDENT/RESPONDENT/STATE:

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

BY PUBLIC PROSECUTOR SRI. K.K. RAJEEV

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

C.T. RAVIKUMAR & K.P. JYOTHINDRANATH, JJ.

Criminal Appeal No.15 of 2011

Dated this the 21st day of November, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the judgment dated 19.11.2010 in S.C.No.51/2002 on the file of the First Additional Sessions Judge, Thrissur by the sole accused. The conviction is under Sections 302 & 201 of the Indian Penal Code. The appellant/accused is sentenced to undergo life imprisonment and to pay a fine of Rs.1 lakh under Section 302 of IPC and in default of payment of fine, he is ordered to undergo rigorous imprisonment for three years. The appellant/accused is further sentenced to undergo rigours imprisonment for three years and also to pay a fine of Rs.10,000/- for the offence under Section 201 of IPC and in default of payment of fine, he is also ordered to undergo rigorous imprisonment for six months.

2. This case is charge sheeted by the Detective Inspector C.B.C.I.D., Ernakulam in crime No.145/1998 of Erumapetty Police Station. The Judicial First Class

Magistrate Court, Kunnamkulam received the charge and committed the case to the Court of Sessions by its order in C.P. No.78/2001. Taking cognisance of the offence, Sessions Court issued summons to the accused and after hearing the prosecution and defence, court framed charge.

3. The gist of the charge framed against the accused is that on 12.10.1998, due to enmity towards the deceased Jayan, accused inflicted injuries by a chopper on different parts of the body of the deceased at about 8.30 p.m. at Puliyanur on the road margin of Thayyur Public Road and thereafter at the property of CW14, 15, 16 and thereby committed the murder of said Jayan. Thereafter he tied the hands of the deceased by making use of the banyan which was worn by the deceased and also tied legs by using dhoti worn by the deceased and attached heavy stones on the dead body of Jayan and put the dead body in the Kechery River in order to destroy the evidence.

4. PWs1 to 20 were examined and Exts.P1 to P18 were marked, MO1 to MO15 were also marked. Exts.D1 and

D2 were marked on the side of defence. After appreciating the evidence, the court below convicted the accused and sentenced as stated above. Aggrieved by the above conviction and sentence, this appeal has been preferred.

5. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that this is a case which is solely relied upon circumstantial evidences by the prosecution. It is the submission that it is a case where the court below convicted the accused without any material much less any circumstantial evidence where the chain of evidence is complete. It is also the submission that no chain of circumstances, which will point to the guilt of the accused and ruling out their innocence produced by the prosecution in this case.

6. The learned counsel submitted before us that PW1 is the brother of the deceased who gave first information to the police. According to the witness, the deceased was staying with him in his house and on 12.10.1998 deceased had his meals and went to sleep. On the next morning, the

deceased was found missing and thereafter a dead body was seen in the river and he went therein and found that it is his brother's dead body. Thereafter he went to the police station and gave Ext.P1 statement. On the basis of the said statement, an FIR was registered. The submission of the learned counsel is that the evidence of PW1 will show that he is not a reliable witness. Even though PW1 got a case that the deceased went to sleep after taking meals, Ext.P12 post-mortem certificate which is marked by PW18 will show that either the version of the witness is a falsehood or the time of death is even after four or five hours after 9.0' clock. The submission is that as per the evidence of PW1, he went to sleep after taking food at about 9.30 p.m. But as per the court charge the estimated time is after 8.30 p.m. Only a reasonable variation can be given to time when a definite time of murder is given in the charge. It is the submission that when such a time alone is given it is materially prejudiced the defence.

7. It is the submission that the incriminating

evidences brought by the prosecution are: (1) when the appellant/accused was arrested there were injuries on the body of the accused (2) the age of the time will approximately tally with the time of incident alleged by the prosecution (3) There was recovery of blood stained dress on the strength of a statement given by the accused after arrest. That is, prosecution got a case that there were recovery of articles and fact under Section 27 of the Indian Evidence Act, 1872.

8. The submission of the learned counsel for the appellant is that as per the evidence tendered by the doctor, it can be seen that injury noted on the body of the deceased can be caused if the said part of the body comes in contact with bushes. It is the submission that there is evidence that the appellant was a coolie. Surely, he had given no explanation for the same, while he was examined under Section 313 of the Cr.P.C. But at the very same time he is entitled to make use of the materials which are already available in the case file. It is the submission that as per

the evidence of PW4, it can be seen that he is a manual labourer. If that is so, mild injuries which are not serious on the body of a coolie worker cannot be treated as an incriminating material to fix murder.

9. It is the further submission made before us that even though prosecution got a case that blood was detected on the weapon, which is marked as MO1, there is nothing to show that the blood detected therein belongs to the same group as that of the deceased. When the grouping of the blood is not therein, it cannot be said that it is an incriminating material. MOs 2 and 3 are the dresses allegedly taken by the accused and handed over to the police. It is also allegedly recovered under Section 27 of the Evidence Act on a disclosure statement given by the accused. But the relevant point is that there is nothing to show that the dress is actually belonging to the appellant. Even though prosecution examined PW8 to show that this dress belonged to the appellant herein, when he was examined before the court, his categorical evidence is that

the dress is tailored by him but he cannot say to whom it was given. The evidence is as follows:

“ഈ ഷർട്ട് പ്രതിക്ക് അടിച്ചു കൊടുത്തതാണോ എന്ന് പറയാൻ പറ്റില്ല.”

If that is so, the submission of the learned counsel for the appellant is that when there is no material to show that this shirt actually belongs to the appellant herein, it cannot be fastened with any evidentiary value. Thus it is the submission that apart from these materials there is no material that is highlighted by the prosecution to link the accused with the incident. Thus the submission of the counsel for the appellant is that this is a case where the appellant is entitled to an acquittal.

10. Learned Public Prosecutor submitted before us that here is a case which lies upon circumstantial evidence. The background of the case is to be appreciated. There is evidence to show that this appellant got animosity towards deceased as he was opposing the illicit relationship of the appellant with a woman. It is the categoric evidence now before the court that the house adjacent to the place where

blood was seen, belongs to one Thankamani, with whom the appellant was having some alleged connection. Surely, there cannot be a positive evidence in this regard. No married woman will come and depose before the court that "I am having illicit connection with so and so." Only other attending circumstances can be pointed out by the prosecution. It is the submission that in this case, PW4 who is a social worker deposed before the court that he had got so many complaints regarding the relationship of the appellant with the above Thankamani. The number of complaints received by him is alarming, which will come around 50, that also, brought out during the cross-examination. When the deceased opposed such a relationship and furthermore when there is evidence before the court that the deceased Jayan also opposed the sale of illicit liquor by the brother of the appellant, there was sufficient motive for the appellant to murder the deceased. In cross-examination, S.I. of Police who registered the FIR deposed that he got so many complaints regarding the illicit

sale of liquor by Muthu who is none other than the brother of the appellant herein. When there is evidence that deceased Jayan had opposed the same, naturally being the brother of the said Muthu the appellant will have motive to murder the deceased.

11. It is the submission that other circumstances are to be appreciated on the background of such a motive. The materials available before the court is that when the appellant was arrested, there were injuries on his body. The appellant was questioned and he gave statements which led to recovery of incriminating materials. More over there was injuries on the body of the appellant which was immediately examined by a doctor, who was examined before court as PW12. Doctor marked Ext.P9 wound certificate of the appellant. Witness categorically deposed before the court that he examined the appellant on 16.10.1998 at 9 a.m. The injuries noted by him are multiple abrasions on the right knee, liner in nature and age is noted as 3- 4 days, multiple liner abrasion on the right leg scratch marks and the age of

the injury is noted as 3-4 days and multiple spotted abrasion on the right palm and the age of the injury is also noted as 4 days. It is to be remembered that the dead body of the deceased was found on 13th October 1998. PW1 gave evidence to the effect that he was in his house in the night of 12th and the next morning he was seen missing and the dead body was seen in the river on 13th October 1998. Then what comes out is that the estimate age of the injuries noted by the doctor will tally with the time at which the deceased sustained injuries or when he was murdered.

12. The next submission made by the learned Public Prosecutor is that as per the evidence of PW19, the appellant herein was arrested by him on 15.10.1998 at 10.30 hours in the night. It is the submission that an arrest memo was prepared immediately on his arrest, which is marked as Ext.P13 and immediately thereafter he was examined by a doctor. The statement of the appellant was recorded by the Investigating Officer. He gave Ext.P16 statement which is admissible under Section 27 of the

Evidence Act. On the strength of the said statement, it can be seen that as the appellant led, they reached at a place about 20 mtrs. north - east of the house bearing No.VIII/323 in Veloor Panchayath and from under a palm tree, where there are full of bushes a shirt, a lungi and a chopper were taken and handed over to the Investigating Officer. It is the submission that, this recovery need not be doubted. There is no animosity for the Investigating Officer against this appellant. It is the submission that in this case, after effecting the recovery by the local police, there was also an investigation continued by the crime branch and it was counter checked by the crime branch and thereafter alone the charge was submitted. Here, for the recovery of the said articles, a mahazar was prepared, which is marked as Ext.P4. The said mahazar is proved by PW4, who was an attestor to the same. It is the submission that nothing is brought out to disbelieve the witness. It is also brought to our notice by the learned Public Prosecutor that not only the attesting witness to the mahazar but also the persons

who assembled at the scene of recovery were also deposed regarding taking of the articles by the accused and handing over the same to the police. PW1 as well as PW2 deposed the same facts even though they were not signatories to the mahazar.

13. It is the submission made before us that, as per the case of the appellant, there is no material to show that MO1 and MO2 belong to the appellant. But when the recovery is explicitly reliable and the recovery is from a concealed place, the burden is upon the accused to explain the same. When there is no explanation for the same and when he is not discharging his burden under Section 106 of the Evidence Act in this regard, an adverse inference can be drawn against him. In this case, it is proved that human blood was present in the shirt as well as on the chopper which are marked respectively as MOs 1 & 3. The FSL report is marked before the court as Ext.P17. These are all incriminating circumstances.

14. It is the submission of the learned Public

Prosecutor that the blood found on the weapon and dresses was proved as that of human blood. When human blood is present in these articles and those articles are recovered on the strength of the statement given by the accused and which are actually taken and handed over to the police by the accused, it is a very strong material and circumstance which will point towards the guilt of the accused. In this case apart from the same, it is also pertinent to note that when the dead body was recovered from the river it is seen that two stones were tied and a part of the palm leaf was attached, to the dead body. The relevant portion of the statement given by the appellant in this regard, which is marked as Ext.P16 is that “കല്ല് എടുത്ത സ്ഥലവും പാൽ വെട്ടിയ തെങ്ങിൻ തായും എന്നെ കൂട്ടികൊണ്ടുപോയാൽ കാണിച്ച് തരാം” and on the strength of the said statement they reached at a place very near to the motor shed of one Varuthunny and Ext.P6 mahazar was prepared. It is the submission that when a fact is recovered on the strength of a statement, it will fall under Section 27 of the Evidence Act and the fact revealed

under such statement can be made use as an evidence if the same can be connected with any other material evidence. It is the submission made by the learned Public Prosecutor that Ext.P6 will show that MO6 series are taken from therein. Thus it is the submission of the learned Public Prosecutor that in this regard the evidence of PW19 is admissible in evidence. Thus, his evidence before the court is that MO6 series are actually removed from the place as evident in Ext.P6. Surely the above said material was eaten by termites from the court and not marked. But the 151 form i.e. property list will show that it was actually sent to the court. A presumption can be drawn in such a matter in such a situation. The sum of the submission is that as per the statement of the appellant weapon, blood stained dress, materials used to disappear the evidence are seized by the police.

15. It is the submission of the learned Public Prosecutor that there is a very important aspect that MO1 weapon was not only seized on the information given by the

appellant but also it can be seen that it actually belonged to him. As per the evidence of PW4, he had previously seen the weapon with the appellant herein while working along with him for a sramadanam which is a concerted free work. It is the categoric evidence of PW4 that there were about 10 - 12 persons including him and this particular weapon was brought by the appellant on that day and the very same weapon was identified by him before the court. The submission of the learned Public Prosecutor is that if the weapon belonged to the appellant herein and the very same weapon was recovered on the strength of a statement given by him and when there is blood marks and there was injury on the body of the appellant, the dresses recovered are blood stained, the only inference that can be drawn is that the appellant is the person who committed the murder and removed the dead body to the river from where it was thereafter recovered.

16. Having taken note of the rival contentions we are of the considered view that it is only appropriate to refer to

the principles laid down in the matter of consideration of cases resting solely on circumstantial evidence before adverting to and appreciating the evidence on record. In **Gamparai Hrudayaraju v. State of A.P. (AIR 2009 SC 2364)** the Hon'ble Apex Court held that where a case rests squarely on circumstantial evidence, the inference of guilt could be justified only when all the incriminating facts and circumstances were found to be incompatible with the innocence of the accused or the guilt of any other person. Certainly, the onus is on the prosecution to prove that the chain is complete. In the decision in **Krishna Ghosh v. State of W.B. (AIR 2009 SC 2279)** the Hon'ble Apex Court held that the circumstances from which an inference as to the guilt of the accused could be drawn have to be proved beyond reasonable doubt and also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. It is thus obvious that in a case resting squarely on circumstantial evidence the chain of events should be complete and certainly, in such

circumstances, in case of a missing link which would render the chain incomplete the benefit should go to the accused.

17. In this case the doctor was examined as PW18. The post-mortem certificate is marked as Ext.P12. It can be seen that as per Ext.P12 certificate, there are five ante-mortem injuries, which are as follows:

1. Chop wound 26x5.5x7-5cm almost horizontal over the back, sides of neck, left ear and left side of face. Its right and 3.5 cm. below root of ear and its left and 8cm above the angle of mouth in 2 O' clock position. The muscles, vessels, nerves, IV cervical vertebra was cut (spinous transversal process) exposing the spinal cord. The vertebral arteries were found cut. The pinna of ear was found cut and completely separated. The mastoid process was chipped away over an area 2.5x2.3 cm.
2. Incised wound 5.6x2xbone deep horizontal over the right shoulder. Its inner and 9cm from the root of neck and its outer and 2cm behind the tip of shoulder. The carotid process was found cut for a length of 3.5cm. The superficial vessels, nerves and muscles was found cut.
3. Incised wound 6x1.7 muscle deep horizontal over the left side of neck; its inner and 3cm below left angle of jaw bone and its outer and 8cm to the front of midline on the back.
4. Superficial incised wound 11.5x0.5cm oblique over the back of neck; its inner and at the level of midline on the back and its outer and 4cm to the back to the middle of shoulder.
5. Superficial incised wound 8x0.2cm over the back of neck horizontal, its inner and intersecting the inner and of injury number (4) and its outer and 9.5cm below the root of right ear.

There are also four postmortem injures :

1. Postmortem graze abrasion 82x56cm over the back of entire chest, part of abdomen and both buttocks sparing an area 30x19cm between buttocks and lower part of abdomen, back and outer aspects of both upper limbs.
2. Postmortem graze abrasion 10x9 cm, 10x8cm over the right and left side of face respectively.
3. Postmortem graze abrasion 33x28 cm over the front and sides of abdomen and chest; its upper margin 8cm below; root of neck;
4. Postmortem graze abrasion 26x13, 29x10cm over the front of right and left thigh respectively; its lower margin 20cm and 13cm above the right and left knees respectively.

The direction graze could not be stated due to peeling of cuticle on the upper and lower margins with respect to postmortem injury numbers (1) to (4).

The doctor deposed before the court that the deceased died due to chopper wound sustained to back of his neck i.e. injury No.1 itself is sufficient in the ordinary course to cause the death. Injury No.1 as stated above, can be seen that it is a cut injury where muscles, vessels, nerves and IV cervical vertebra are involved. Thus from the injury itself it can be seen that it is a culpable homicide and further the intention to murder can also be gathered from the nature of the injury itself.

18. It can be seen that as per Ext.P5 scene mahazar the places described therein was stained with blood. When injury No.1 will cause heavy haemorrhage, it can be concluded that injury No.1 sustained to the deceased at a place which is described in Ext.P5. Now it can be further seen that by looking into the nature of injury No.1, a further expert opinion is not necessary regarding the fact that such an injury will cause immediate death. It can be further seen from Ext.P12 that there are post-mortem injuries. As per the evidence of the doctor, who is examined as PW18, the post-mortem injuries could be caused by dragging the body after death of the person. From these facts what can be inferred is that the death occurred at the place described in Ext.P5 and thereafter sustained the injuries described as post-mortem injuries. The dead body was dragged and removed.

19. Now, as per the evidence of PWs 1 and 2, the dead body was seen recovered from a river known as Kecheri River. From the above circumstances and materials

before the court it can be seen that after the death, the dead body of the deceased Jayan was taken to the river. PW1 and PW2 deposed to the effect that there was dragging mark from the place from where the dead body was seen to the place described in Ext.P5. It will link the place described in Ext.P5 with the place from where the dead body of the deceased was found. The evidence of PW18 is also to the effect that the post-mortem injuries can be caused by dragging. Thus, it can be safely concluded that after murdering the deceased he was dragged from the place of incident to the river from where the dead body recovered.

20. But, the question is that who murdered the deceased and after murder whether the murderer himself dragged him to the river and concealed. The submission of the learned Public Prosecutor in this regard is that as per the post-mortem certificate there is evidence to the effect that the deceased was only having a weight of about 44 Kg. and a single person can easily drag the dead body to the

place from where it was recovered. Surely the evidence adduced by the prosecution will show the complicity of the appellant/accused with the dead body. MO1 and MO2 are recovered by the investigating officer on the strength of a disclosure statement given by the appellant. It is relevant to note that even though MOs 1 and 2 are claimed to be that of the appellant, there is no positive evidence in this regard to show that it actually belonged to the appellant herein. His knowledge regarding the concealment cannot be equated with the ownership of the same. It is also to be considered that the blood marks on MOs 1 and 2 are not so extensive. We are saying so because here is a case where the injury sustained on the neck area of the deceased involved the major vessels therein. As per the evidence of the witnesses it was almost in a severed position. If that be so, there must have been profuse bleeding. We are not ruling out the possibility that the dress belonged to murderer. The possibilities that can be drawn are that it is belonged to the person who committed the murder or it

belonged to the person on whose statement it was recovered by the police. It is to be remembered that the blood marks found on the dress could have occurred when the body of the deceased was removed to the river.

21. On the strength of Ext.P16 and as the appellant/accused led, the Investigating Officer reached and found out the place from where MO6 series stones which were seen tied to the dead body were taken and prepared Ext.P6 mahazar. This piece of evidence is also an incriminating material pointing to the involvement of the accused in causing disappearance of evidence.

22. The other available evidence in this case is also relevant to be looked into. As per the evidence of the Prosecution, the house adjacent to the place of incident belongs to one Chandran and Thankamani. They were not seen examined. We perused the proceeding sheet of the lower court which revealed that Chandran was no more and the above said Thankamani was not seen examined before the court. Similarly the son of the above said Thankamani

who was aged only 14 years at the time of incident was also not seen examined. The submission of the defence counsel is that non-examination of the said witnesses are fatal in nature. It is the submission that they are material witnesses. It is the submission of the learned Public Prosecutor that the memo of evidence will show that they are not material witnesses and their non-examination will not affect the prosecution case. It is now seen by this court that the murder occurred adjacent to the said house in which they were living and even blood was seen splashed on the outer wall of their house. These witness cannot be said as not material witnesses. Withholding of the said witnesses by the prosecution will have its own effect in appreciating the materials before the court.

23. Now, a possibility is therein when the prosecution got a case that the appellant was having close nexus or relationship with the said house. PW9 deposed before the court that the appellant used to go therein. PW4 also deposed before the court that appellant got connection with

the said house. If that is so, the appellant reaching therein immediately after the incident also cannot be ruled out. It is to be remembered that in this case, there are no direct evidence before the court whatsoever regarding the presence of the appellant or the deceased at or around the place of incident. Only inference can be drawn from the circumstance. It is to be remembered that as per the evidence of PW1, the deceased was last seen by him while he was going to sleep. Regarding the presence of the appellant, there is no material from where he came or at what time he came. Thus there is also evidence of PW4 to the effect that people used to come at odd hours at Chandran's residence. He is not a hostile witness. Thus, appreciating all these materials, the possibility of murder by a third party or even a person belonging to the house of Chandran cannot be ruled out. It is to be remembered that there is evidence to the effect that the brother of the appellant Muthu also got animosity towards the deceased. The said Muthu is not a witness. At the very same time, it

can be seen that there is material before the court regarding the involvement of the appellant to the extent of causing disappearance of evidence. As per the evidence of the doctor the injuries on his lower limb and on the palm can be caused while dragging a person. The recovery of materials also tally with this hypothesis alone. The conclusion arrived at using the circumstantial evidence in regard to commission of an offence under Section 201 of I.P.C. cannot be extended to come to a conclusion of committing murder. With the help of presumption, the culpability of appellant cannot be extended to commission of murder. When there is a specific charge against the appellant under Section 201 of I.P.C. and the circumstantial evidence produced by the prosecution only prove the said offence, it cannot be automatically extend to come to a conclusion that he committed an offence under Section 300 of I.P.C. also when the guilt of any other person cannot be ruled out. There is no circumstantial evidence to connect the appellant with the murder. All materials produced by

the prosecution will only show his involvement with the disappearance of evidence. The evidence of PW4 that he had seen MO1 weapon earlier also in the hands of appellant is not inspiring confidence. Thus with the circumstantial evidence now before the court it can be seen that he cannot be fastened with causing murder of the deceased. Surely, there will be a very strong suspicion against the appellant herein regarding his involvement. But suspicion howsoever strong, it cannot be equated with legal evidence. We are only saying that legal evidence is missing to connect the appellant with the murder. But there are materials regarding his involvement in respect of concealment of evidence i.e. by removing the dead body to the nearby river by dragging the same. Thus, the conviction under Section 302 of IPC against the appellant will not lie. The conviction and sentence passed by the lower court under Section 302 of IPC against the appellant herein is hereby set aside. The conviction under Section 201 of IPC against the appellant will sustain. The conviction and sentence passed against

him under Section 201 of I.P.C. is confirmed i.e. he shall undergo rigorous imprisonment for three years for the offence under Section 201 of IPC and shall also pay a fine of Rs.10,000/- (Rupees ten thousand only) and in default of payment of fine he shall undergo rigorous imprisonment for six months.

Since there is no material before this Court, the compensation aspect is not considered.

Sd/-
C.T. RAVIKUMAR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE