

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN  
&  
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYASHTA, 1937

CRL.A.No. 30 of 2011

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AGAINST THE JUDGMENT IN SC 942/2009 of ADDL.SESIONS JUDGE-  
I,MAVELIKKARA DATED 30-10-2010

APPELLANT(S):

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RAJAN, C.NO.5621,CENTRAL PRISON,  
THIRUVANANTHAPURAM.

BY .SRI.GRASHIOUS KURIAKOSE (SR.)  
SRI.GEORGE MATHEWS

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SRI. BINDU GOPINATH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**V.K.MOHANAN & RAJA VIJAYARAGHAVAN, JJ**

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Crl.Appeal. 30 of 2011  
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Dated 11<sup>th</sup> June, 2015  
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**JUDGMENT**

Raja Vijayaraghavan. J.

1. The appellant challenges the Judgment, conviction and sentence passed against him in S.C.No. No.942/2009 on the file of the Additional Sessions Judge-I, Mavelikkara. As per judgment impugned, the accused stands convicted and he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.15,000/- under Section 302 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for one year.

2. The prosecution case in brief is as follows :-

2(i). The accused and the deceased are construction workers from Tamil Nadu and they were working for PW1

who is a building Contractor. On 19.4.2009 at about 2 P.M. the accused went to take a nap in the Hall room of the Building bearing No 160 in ward No XIX of Chengannor Municipality known by the name Leela Offset Printers. The deceased Vigil did not permit the accused to sleep and pulled his dhoti and stamped on him. This resulted in a fracas between the accused and the deceased, and the accused is alleged to have hit the deceased with MO1 hammer several times on the right side of the head and left side of forehead causing fatal injuries resulting in his death. Thereafter the accused dragged the dead body of Vigil towards the western side of the house through the front door and laid the dead body near to a water pipe on the western side of the property and thereby committed the offence.

2(ii). PW1, who was away in Tamil Nadu gave Ext.P1 statement based on which Exhibit P1(a) First Information Report was registered by PW18, the Sub Inspector of Police, Chengannur Police Station. Thereafter, PW19, who

is the Sub Inspector of Police, took over investigation and prepared Ext.P12(a) inquest over the dead body of the deceased. The scene was identified as pointed out by PW 1 and Ext.P2 scene mahazzar was prepared. Assistance was sought and obtained from the Finger Print Expert and also from the Dog Squad to comb the place for scientific evidence. MO's 2 to 4 and 6 to 9 were seized from the scene of occurrence as revealed from Exhibit P13, P14 and P15 . The complicity of the accused was confirmed on investigation and he was arrested on 20.4.2009 at 9.30 P.M. Based on the disclosure statement made by the accused on 21.4.2009 at 9 A.M. , MO1 hammer, MO5 dhoti and MO 10 plastic cover were seized .The accused was produced before the learned Magistrate and he was remanded. Ext.P11 scene plan was prepared by the Village officer and the accused was identified by the witnesses.On the culmination of investigation PW20, laid the final report before the learned Jurisdictional Magistrate.

2(iii). The learned magistrate initiated committal proceedings as C.P.No.202/2009 and the case was committed to the Court of Sessions, Alappuzha. The Sessions Court took cognizance of the offence against the accused and the case was registered on file as S.C.No.942/2009.

3. On appearance of the accused, the learned Sessions Court, after hearing the prosecution and the accused, framed charge for the offence under Section 302 of Indian Penal Code. When the charge was read over and explained to the accused, he pleaded not guilty. To prove the case of the prosecution, PW's 1 to 20 were examined and Exts.P1 to P24 were marked. MO's 1 to 10 were produced and identified.

4. On completion of the prosecution evidence, the incriminating materials arising out of the prosecution case was put to the accused under Section 313 of the Code of Criminal Procedure. He also filed a statement of his

version of the incident under 313 (5) of the Code. In the statement filed, the accused denied his involvement in the offence and stated that himself, deceased Vigil, Carlos, David, Gopi, PW3-Krishnan, Sree and PW4 - Suresh were the workers of PW1 - Vijaya Kumar. According to him, on the date of occurrence, except for Vigil all others went for work. PW 3 and Vigil had quarreled over this fact. At noon PW3 went back to the room at Leela Offset Printers from the work site and returned back after an hour and on his return he said he was not feeling well and sat idle till 4.00 PM. At about 5.45 p.m., PW3 Krishnan and PW4 Suresh went back to the room. The accused and Sree returned in a bus and when they reached their place of residence, they could see PW3 - Krishnan and PW4 - Suresh standing outside the building. They did not permit the accused to enter the premises and locked the gate. Later PW 3 and 4 revealed that the room at Leela Printers was splattered with blood all over. On the next day they went back to the Leela Offset Printers at about 8'O' clock in the morning and found PW1 and others along with

police personnel . Only then did he realize that Vigil had been murdered.He went and saw the dead body, but Krishnan did not accompany them. According to him, the police had assaulted him and had framed him in this case.On the side of the defense, Exts.D1 to D8 case diary contradictions were marked. No oral evidence was adduced.

5. The learned Sessions Judge upon consideration of evidence adduced by the prosecution and after referring to various judgments on circumstantial evidence, found that all the circumstances suggested by the prosecution against the appellant have been proved beyond reasonable doubt and form a complete chain pointing to the guilt of the accused and on those findings, convicted the appellants for the charge under S.302 IPC.

6. We have heard the learned Senior Counsel Sri.Grashious Kuriakose and Smt.Bindu Gopinath, the learned Public Prosecutor appearing for the State. The

learned counsel for the appellants would forcefully argue the following points to justify that the conclusion of guilt arrived at by the learned Sessions Judge as per the impugned Judgement is unsustainable. According to him :

- a. The prosecution has failed to prove any of the circumstances narrated in para 6 of the lower court Judgment.
- b. There is no question of applying the "Theory of Last Seen" in the instant case as the evidence let in by prosecution through its witnesses confutes with each other .
- c. The recovery of MO1 hammer and MO5 dhoti made on the basis of an alleged disclosure statement of the appellant is falsified by the very prosecution case itself .
- d. The prosecution has failed to prove any motive as has been held by the learned Sessions Judge .
- e. The failure of the prosecution , either through the doctor who conducted the post mortem or by any other mode , to prove the approximate time of death of the deceased will prove fatal as any variance of the alleged time of occurrence will uproot the pedestal of the prosecution case.
- f. The evidence let in by the prosecution through PW 1 , 3 and 4 is suspect and their conduct is suspicious .
- g. Investigation has been conducted by a Sub Inspector ignoring the mandate

that crimes of a grave nature like in the instant case ought to have been investigated by a Senior Police officer not below the Rank of a Circle Inspector of Police.

h. Fair Investigation and Fair Trial is a Constitutional Right of the Accused and the same has been violated.

On these grounds, the learned Senior Counsel has prayed that the appeal be allowed and the accused be acquitted.

7. On the other hand, the learned Public Prosecutor would argue that the prosecution has succeeded in proving its case beyond the shadow of doubt. According to the learned counsel, all the circumstances have been fully established and the circumstances so established is consistent only with the hypothesis of guilt of the accused. According to the learned Public Prosecutor the learned Sessions Judge has considered the law facts and evidence in its proper perspective and there is no reason for interference.

8. Before we analyse the various circumstances relied

on by the learned Sessions Judge to arrive at the finding as to whether the prosecution has established its case beyond the shadow of reasonable doubt, we deem it appropriate to first advert to the evidence let in by the prosecution.

9. PW1 deposed before court that he is a building contractor and the deceased and the accused, who are natives of Tamil Nadu , are his workers. He had taken premises, known as Leela Offset press, belonging to PW12 temporarily on a rental basis for accommodation . He along with his workers which included among others , the accused , deceased , PW 3 and PW 4 used to occupy the premises. According to him, the incident had taken place on 19.04.2009.He had gone to Kanyakumari on 18.04.2009 to visit his relatives. While so he was called by PW4 over phone and he was told that he saw blood on the floor in the room in which they were residing. PW4 requested that the workers be permitted to go to their work site at Cheriyanadu for the night. PW1 granted them

permission. On the next day, he along with his workers namely David, Carlos and Gopi reached the Leela Offset Printers premises at 4.45 AM and opened the door with the spare key. The floor, walls and the clothes hanged on the hanger were splattered with blood. There was blood on the cot inside the room. Under the impression that presence of blood was as a result of some cut injury sustained after a drunken brawl, he cleaned up the room with water. After washing away the blood he slept in the cot. Gopi, Carlos and David who are his co workers and who had come back from Tamil Nadu along with him slept in the same room. He woke up at 6.15 a.m. and when he went near the water pipe outside for brushing his teeth, he could see blood all over the place. He could also see drag marks in the ground and following the drag marks, he saw one person lying near to a pipe. He identified the person as the deceased. He was lying in a pool of blood wearing only a blue banyan. According to him, he immediately went to the Chengannur police station and gave Exhibit P 1 statement. The police took the workers

and PW1 including the accused to the police station. When the Sub Inspector of police questioned the accused, the accused is said to have confessed that it was he who committed the murder of Vigil. According to PW1, the accused told the Sub Inspector that while the accused was sleeping, the deceased had kicked him and did not permit him to sleep and in that event, the accused had taken out a hammer and hit Vigil on the head . Later, the Circle Inspector of police also had come to the scene and before the said officer also, the accused is alleged to have confessed to the crime. During cross examination , the witness had stated that after having washed the whole room with water he had chanced across a blood stained hammer lying under the bed and he asserted that the hammer was given to the officer who had come to the scene for investigation. He further stated that after washing the room, he had locked the door and had slept till 6.15 a.m.Only after 6.15 a.m, he had opened the door. Nobody could enter the room prior to that.According to the said witness, no other person other than PW1 and the

3 workers namely, Carlos, David and Gopi were inside the room and no other person could have entered the room before 6.15 A.M. He further stated that he went to the police station in his bike and reached the police station at 7- 7.30 AM. Ext P1 statement was recorded based on the statement given by him. The police had come to the scene of occurrence at 7.30 – 8 AM. He came after the police personnel arrived. Vigil was working with him for the past one month and the accused has been with him for more than one year. In cross examination, he stated that in addition to the accused and the deceased about five workers work under him. According to him, it was at 10.45 pm on 19.04.2009 that he started from his native place. Along with him, Carlos, David and Gopi were there. He stated that Carlos and Gopi were accompanying him for the first time. He further stated that when he saw the dead body of Vigil, the above persons were with him. He further stated that Carlos, Gopi and David had returned back on 23.04.2009 and he had accompanied them. He pleaded ignorance when asked whether that

Carlos, Gopi and David were notorious criminals of Tamil Nadu. It was further stated by him that in the same premises and in the same building, two other persons also resided. According to him, on the southern side of the building, there are coconut palms and other vegetation and there are public roads on the eastern and western sides of the building. According to the witness, the public road on the western side is on the same level and the road on the eastern side is lying about one metre below. He further stated that there are boundary walls on all sides of the properties. He admitted that he had stated before the police that when Suresh told him that there was blood in the room he directed them to go to the work site at Cheriyanad. PW1 stated that in spite of presence of blood in the room, he did not ask Suresh- PW4 to inform the police because he was under the impression that his workers might have entered into a brawl and might have injured themselves. He also stated that there has never occurred an incident of similar nature before. He stated in cross-examination that PW4 did not tell him

anything about the deceased. He denied having stated so to the police. When his attention was invited to his earlier statement that PW4 had told him about the absence of Vigil when he had called PW1, he denied the same and this contradiction was marked as Ext.D1. He stated further that he had washed off the presence of blood in the room and when asked whether he had cleaned anything else found in the room, he stated that there was a hammer which was lying under the cot and when he had cleaned the cot with water, it had fallen on the hammer as well. When asked in cross examination whether he had seen the hammer before he cleaned the cot, he responded by saying that it was after cleaning the cot that he had noticed the presence of the hammer. He further stated that when police had come to the scene, he had handed over the hammer to the Officer and they had taken away the same. When asked as to whether he had noticed the presence of blood on the hammer, PW1 stated that he did not notice. He further stated that he had drawn water from the well for the purpose of washing

the room and that he had used a towel which was found in the room to wipe off the blood stains. He further stated that he did not mention about this fact to the three persons who had accompanied him. He further stated that the blood stains found on the cot, in which he had slept later, was cleaned by him and he did not wash away completely, the remnants of blood. When asked as to why he did not intimate the police after he had seen blood in the room, he responded by stating that he was under the impression that somebody might have been injured after consuming alcohol. He stated that, he along with three persons who came with him had slept in the same room. The well situated in the premises was at a distance of about 20 feet from the place where he had slept. After washing the whole area off blood, he closed the door and slept till 6.15 am. He asserted that nobody could have entered the room before 6.15 am. He further stated that other than the three persons who came with him and himself there was nobody in the room till 6.15 am when he had got out for brushing his teeth. He stated that it

was before the police that he had mentioned for the first time that Vigil was seen in a pool of blood. He went to the police station in a bike at about 7 - 7.30 am and gave this information. He further stated that the distance between Leela Printers premises and the police station was two kms. According to him, the police had recorded his statement and thereafter, came with him to the scene of occurrence. He stated that no money was due from him to the deceased. He admitted that the deceased was a very strong and healthy individual and he was addicted to alcohol. In the usual course, it was not possible for a person to overpower Vigil according to him.

10. PW2 is Vijayamma and is a neighbour to the Leela offset Press printers building. She resides on the southern side. She was cited and examined to prove the fact that on 19.04.2009 at about 2.30 p.m, she had occasion to see the accused standing near the well and taking his bath. She stated in cross examination that she is not previously acquainted with the accused, but identified the accused

when the police had brought him to her house. She stated that she is also not acquainted with the deceased. She stated that the distance from the place she stood to the place where the accused was allegedly taking his bath was about 50 metres away.

11. PW3 is also a worker of PW 1. He is a native of Nagercovil. He is also residing at the Leela offset printers building. He has been working with PW1 for the past 1<sup>3</sup>/<sub>4</sub> years. Along with him, the deceased, the accused, PW4 Suresh and Sree were working. He identified the accused. According to him, on 19.04.2009, he along with Sree, PW4 Suresh, the accused and deceased Vigil had gone to the Parvathi Hotel for taking tea. When Sree, Suresh and himself entered the shop for taking tea, the deceased and the accused were standing outside. They did not join them. They were seen walking together towards the transport bus stand. After taking tea, PW3, PW1 and Sree went for work. At 6.30 p.m., on the same day, he went back to the room and Sree was with him. There was light

inside the room and when it was pushed open he found blood splattered all over the place, and the accused was seen lying nude in the adjacent room .They immediately went and stood near the gate and telephoned PW1. It was PW4 who had called PW1. PW1 was told that they were scared of sleeping in the said room and requested permission to go to the work site to spend the night and he granted them permission. The said witness along with Sree and PW4 went to the work site at Cheriyanadu and he was taken there by Suresh. While they were about to leave Leela Offset Printers premises, the accused came outside wearing a dhothi and he requested that he also be taken to the work site to spend the night. When the accused was asked as to where the deceased was, he pleaded ignorance. The accused told PW3 that he was in an intoxicated condition and that he was not aware as to where Vigil was. He also said that Vigil might be lying somewhere in an inebriated condition. On 20.4.2009 at about 7 a.m., he along with Suresh came to the house at Mundankavu. Sree and the accused came in a bus. When

they reached the said house, PW1 informed him that Vigil was lying dead there. They went and looked at Vigil. Vigil was lying 50 feet away from the house. Rajan did not go near the deceased. Police Officers and police dog were there at the scene of occurrence. The police dog went inside the room and after sniffing Vigil, barked at the accused and bit his hand. According to the witness, it was at that time that they realized that the accused was behind the murder of the deceased . When PW1 enquired with the accused in the presence of the police officers , he confessed to the crime. According to him, he reached the scene of occurrence at 7 - 7.30 am. Carlos, Gopi and David were standing next to PW1. The witness stated that he is not aware of as to whether PW1 had gone somewhere and had returned back. The witness denied his earlier version that PW4 had pushed open the door on 19.04.2009 and that contradiction was marked as Ext.D3. He stated that they saw the presence of blood standing outside the door. When asked as to why he had not intimated to the police about the splattering of blood in

the room, PW3 stated that he was ignorant of the legal formalities . He admitted in cross-examination that in addition to the workers of PW1, one malayalee was also residing in the building. The press was not functioning and he also stated that he did not mention about the presence of blood to any persons of the locality . He did not enquire about Vigil in the vicinity because he was not very much acquainted with the place. He further stated that he did not check the surroundings to ascertain whether Vigil was lying anywhere inside or outside the building. He further stated that they had spent about ten minutes in the Leela Printers premises in the evening on 19.04.2009. He denied his earlier statement that it was Suresh who had taken Sree and the accused to the Cheriyanad work site in a bike. According to the witness, Suresh did not know to ride a bike and it was PW3 who took Suresh and the accused to the work site. This portion of his earlier statement was marked as Ext.D4. He also denied in cross-examination his earlier statement that Sree, his co-worker is also known by the name 'Sreedharan' and that

portion was marked as Ext.D5.

12. PW4 is another worker of PW 1 and he stated before Court that he along with other workers of PW1 namely PW3, Krishnan, Sree, the accused, deceased and PW1 used to reside in the Leela Printers building. He would further state that Gopi, Carlos and David also used to reside in the building. During Easter, PW1 David, Carlos, Gopi, himself, Krishnan, the accused and Rajan had gone to their native place. Himself, the accused, Sree and PW3 had returned back on various days. On 18.04.2009, he along with Rajan, Vigil, Krishnan and Sree had gone to Cheriyanad and Pennukara for work. At noon, PW1 gave the days wages and went back to his native place. On 19.04.2009, which was a Sunday, the accused, Sree, Krishnan, the deceased and himself went to Parvathy hotel at Chengannur for breakfast. They reached the hotel at 7.30 am. PW3, PW4 and Sree went and had breakfast but the accused and deceased did not go along with them. They were seen walking towards the KSRTC

road. PW4, PW3 and Sree went to Cheriyanad to attend to their work. After the work at about 6 – 6.30 pm they purchased food from Parvathy hotel and returned back to the Leela Printers building. There was light inside the room and the door was not locked. PW4 entered the room through the door and when he looked inside he could see blood on the walls, and on the cot. Immediately he came out and he felt that something was sticking on to his hand. He saw the accused lying nude in the hall room. Seeing blood he became afraid and immediately came out. He called PW1 over phone. When he went out, the accused also came out with him. At that time the accused was wearing a saffron coloured dhoti. When PW1 asked the accused as to the presence of blood, the accused responded by saying that he did not know anything. He also stated that the accused informed them that he was drunk. The witness further stated that he had called PW1 and told him about the presence of blood and said that it was not possible for them to spend the night there. PW4 requested permission from PW1 to go to the work site at

Cheriyanaad to which he readily agreed. At the time, the accused also said that he was also coming along. Thereafter, PW4 was taken to Cheriyanaad by PW3 in a bike and after dropping PW3 returned back and took Sree and the accused in his bike to Cheriyanaad. According to the witness, the food purchased was eaten by PW4 Krishnan and Sree but the accused did not consume anything. When PW4 enquired with the accused about the deceased, the accused is said to have informed him that the deceased might be lying somewhere under the influence of alcohol. On the next day, ie., on 20.4.2009, PW3 and 4 returned back to the Leela Printers premises at Mundankavu. At that time, PW1, David, Carlos and Gopi were there. PW1 informed them that Vigil was lying dead there. After sometime, the accused and Sree came there. PW3, Sree and PW4 went and took a look at the dead body but the accused did not accompany them. After sometime, PW1 returned with some policemen. According to PW4, Vigil was wearing a blue banyan and there was a pool of blood from the injury on the head. Vigil was not

wearing any other clothes. The policemen came with a police dog and the dog after sniffing Vigil came to the place where the accused stood and bit the accused on his hand. At that time, the policemen questioned the accused and the accused is alleged to have confessed to the commission of crime. In cross-examination, the witness stated that his statement was recorded by the police on 20.4.2009. He further stated that his statement was recorded after 7 - 7.45 am. Even before recording his statement, the police dog was brought to the scene of occurrence. He also stated that the police dog came to the scene after all the officers had come. The witness stated that he was present at the scene of occurrence till noon on 20.4.2009 and thereafter, he never went there. The witness further stated that he was unaware as to who had taken Vigil's body from the place and the time. He stated that he had gone for work on 21<sup>st</sup> and 22<sup>nd</sup> and went back to his native place in Tamil Nadu on 23<sup>rd</sup> after laying the stone at a place called Mangalam. He specifically stated that Krishnan had driven the bike and

he was the pillion rider. It is stated by him that when PW1 saw the dead body of Vigil on 20.4.2009, he was not present. It is further stated that on 19<sup>th</sup> when he had come to Leela printers premises only Krishnan was with him. He entered the room first in point of time and nobody else entered. He found pool of blood on the floor and also on the walls. According to him, he did not inform this fact either to the police or to the neighbors. He stated that the accused was lying in the hall room lying adjacent to the room where the blood was found. He denied the statement given by him to the police to the effect that Krishnan had also entered the room where the blood was found and this portion was marked as Ext.D6. He also stated that he does not remember whether he stated to the police that the accused expressed his desire to go with them to the work site to spend the night and also the fact that the accused was wearing a saffron dhoti. In cross-examination the witness admitted that on the back side of the building another person is residing. There are several houses on the back side of the Leela Printers

building. He also stated that he had seen the dead body of Vigil about 10-50 feet from the building near to the place from where they used to draw water. The well is situated on the back corner of the building. He stated that in spite of seeing blood all over the place he did not care to enquire about Vigil. Though PW4 had stated to PW1 that Vigil was missing, PW1 did not direct him either to search for Vigil or to inform the police. He stated that the fact that Vigil was missing was not informed by him to anybody. PW4 and PW1 belonged to Nagercovil. He also stated that Vigil used to drink a lot and used to pick up quarrel. He denied the suggestion of the defense that he was stating falsehood before Court.

13. PW5 is a tailor and residing in the Industrial Estate. He was examined to prove that he is residing on the southern side of the Leela Offset Printers Press and he admitted that he had seen the dead body on 19.04.2009.

14. PW6 is a mason and he was examined to prove

Ext.P2 scene mahazar which was prepared on 20.04.2009 of which he is an attestor. He is also an attester to Ext.P3 seizure mahazar prepared on 21.04.2009. According to him, on 21.04.2009, the accused was brought by the police to the Leela Offset Printers premises and a plastic cover was recovered from among the firewood kept in front of the house. According to him in the plastic cover recovered, there were two wooden pieces, one hammer and a dhoti. In cross examination, he has admitted that he is a resident of Tamil Nadu at Marthandapuram and is known to PW1 for the last 8 years. According to him, he had signed on Ext.P2 mahazar at 3.30 - 4.30 p.m. on 20.04.2009. He fairly stated that he had gone to the place of occurrence as directed by PW1. When he reached the place, the police and the local people were there. The witness was present there till 6 p.m. He stated further that on the next day at 8.a.m., he was asked to go the premises by P W 1. At about 9.A.M. the police had come and he gave the key to the police. He stated further that he had seen the wooden pieces and hammer and stated

further that there was blood on the wooden pieces and hammer. He admitted further that it was as directed by PW1 that he had gone to the place and stood as attester to Exts.P2 and P3.

15. PW7 to P W10 were examined by the prosecution to prove that early in the morning on 19.4.2009 , the accused and the deceased were moving together . All of them turned hostile to the prosecution and nothing is there in the evidence tendered to connect the accused .

16. PW11 was examined to prove that the workers of PW1 were carrying out the construction work of the house being constructed by her son Omanakuttan and that the workers requested to grant them permission to spend the night at the work site on 19.4.2009. She identified the accused as one among them.

17. PW12 is one Leelamma, who is the owner of Leela Offset Press building. According to her, construction

workers of PW 1 were granted lease on a temporary basis to occupy her premises known as Leela Offset Printers.

18. PW13 is the Village Officer of Chengannur Village and he stated before Court that he had gone to the scene and had prepared the scene plan which was marked as Ext.P11. He stated during cross-examination that he had also noticed the blood stains in the room and did not note the well situated in the property.

19. PW14 was the dog handler of the Pathanamthitta Dog Squad whose service was sought by the Investigating Officer. According to him, on the date of incident, he came with his dog to the scene of occurrence and the dog, after smelling the clothes of the deceased and also after sniffing the room, had come out and barked at the accused who was standing outside and also bit his leg. He identified the accused as the person who was bitten by the police dog. In cross examination it is stated that, he reached the place of occurrence at 10.40 am. It is stated

in cross-examination that if the person who was murdered was wearing the clothes of another person, the dog would naturally come towards the owner of the clothes.

20. PW15 is the police constable who had taken the body to the Medical College hospital for post-mortem. PW16 is the Secretary of a Co-operative Bank who stated before the Court that the employees of PW1 had carried out construction work in the house of his friend Joy George who was working in Gulf. The said witness used to supervise the work. According to him, on 19.4.2009 at 10.30 am, the accused, the deceased and three others had come forward. Since there occurred a dispute between the workers in connection with their pay, the workers had left without engaging themselves in the work. He further stated that the accused and the deceased were drunk when they had come to the house and he did not permit them to do the work. He would further say that, at 11.00 am the workers had gone back. When the police had come with the accused, he had

identified the accused on that day. In cross examination, he stated that, when the police questioned him he had stated to the police that the five workers who had come for work had gone back together.

21. PW17 is Dr. Renju Raveendran who was working as Assistant Professor of Forensic Medicine in the Medical College hospital, Alappuzha. He stated before Court that he had conducted the post-mortem examination on the body of Vigil aged 33 and issued Ext.P12 post-mortem certificate in which he had noted the following ante-mortem injuries :-

(i). Contusion 6x5x0.6 cm on left side of face 0.5 cm in front of tragus of left ear. Fracture of mandible with separation between incisors on left side.

(ii). Lacerated wounds 3x1 cm, bone deep on left side of forehead overlying outer end of eyebrow.

(iii). Lacerated wound 4x3x0.5 cm on left side of forehead just above inner end of left eye brow.

(iv). Lacerated wound 7x3 cm bone deep, horizontally placed, on the left of forehead, inner extent being 2 cm above root of nose in the mid line. Underlying frontal bones were depressed, fractured and fragmented over an area of 6x 5x2 cm exposing the dura and crushed brain matter, the fracture seen extended to involve the floor of left side of anterior and middle cranial fossa, and further extending horizontally across the pituitary and right middle cranial fossa.

(v). Contusion 13x9x0.5 cm involving left side of back of head in and around parietal eminence.

(vi). Lacerated wound 9x2 cm bone deep sagittally placed on the right side of back and adjacent right side of head with its front extent being 6 cm above the top of ear.

(vii). Lacerated wound 4x1 cm bone deep, on the right side of back of head, obliquely placed with its lower inner end in the midline at the level of occipital.

The underline occipital bone under neath injuries No.7 and 8 showed a roughly circular depressed fracture of dimension 4.5x4x2 cm.

(viii). Lacerated wound 2x1x1 cm on the middle of back of head 2 cm below occipital protuberance. The brain was soft, oedematous with diffuse subdural and subarachnoid haemorrhages and crushing of his

left frontal lobe.

(ix). Abrasion 0.5x0.5cm on left side of neck 3cm below angle of jaw.

(x). Two abraded contusions, roughly circular of size 4x4x0.2 each seen side by side their inner portions. Overlapping each, placed on right side of front of chest, 13cm below collar bone and 4cm outer to midline.

(xi). Multiple small abrasions over an area of 15x15 cm on left side of back of trunk, 5cm below top of shoulder and 9cm outer to midline.

(xii). Multiple small abrasions, over an area of 10x4 cm on middle of back of trunk 11 cm above natal cleft

(xiii). Abrasion 8x5 cm on middle of back of trunk just above natal cleft.

(xiv). Graze abrasion 12x5 cm, obliquely placed on right side of back of trunk inner lower end 5cm outer to midline and 12cm above upper fold of buttock.

(xv). Abrasion 1x1 cm on right side of root of penis.

(xvi). Contusion 8x7x1cm on front of right thigh just below groin fold.

(xvii). Abrasion 1.5x1cm on back of right elbow.

(xviii). Abrasion 11x10 cm on outer aspect of right ankle and adjacent foot.

According to PW14, injuries 1 to 8 and 10 could be caused by hitting with a hammer . He further stated that the injuries noted as item no 11 to 14 could be caused if the body of the victim is dragged through a rough surface and

injury No 17 and 18 could be caused by forcible contact with a hard and rough object. He further stated that injuries No 1 to 8 are sufficient in the ordinary course of nature to cause death.

22. PW18 was the Sub Inspector of Chengannur police station who, based on the statement given by PW1 Vijayakumar at 9.45 am on 20.10.2009, had registered Ext.P1(a) FIR. He identified the signature contained in Ext.P1.

23. PW19 was the Sub Inspector of police, Chengannur police station. He took over investigation on 20.4.2009 and on that day, he had conducted Ext.P12(a) inquest over the dead body of the deceased Vigil and Ext.P2 scene mahazar. He had obtained the certificates of the finger print expert and the Scientific Assistant and also from the dog Squad of Pathanamthitta district. The scientific Analyst had obtained specimens from the scene and the list of property was forwarded to the Court as per

Ext.P14 and P15. He also had seized MO Nos. 2, 3, 4, 6, 7, 8 and 9 from the scene of occurrence and also from the room where the occurrence is said to have taken place. He questioned the witnesses and identified the accused on 20.04.2009 at 9.30 pm. He arrested the accused as per Ext.P16 arrest memo. He also claims to have recorded the confessional statement of the accused. According to him, the accused had disclosed that he had hidden the weapon used and the clothes worn by him at the time of occurrence and basing on the disclosure statement, a saffron dhoti and a hammer was recovered as per Ext.P3 mahazar. Based on the disclosure statement of the accused, MO1 hammer and MO5 dhoti kept in MO10 cover was seized and the same was forwarded to the Court. The accused was remanded after producing him before the Magistrate. Thereafter, as per his directions Ext.P11 scene plan was prepared by the Village Officer. He further obtained the custody of the accused from 29.04.2009 till 01.05.2009 and conducted investigation. After completion of investigation, it was PW 20 who laid the final report

before Court. In cross examination, he stated that he did not seize any other hammer from the premises other than MO1. He denied the question put by the defense that MO1 hammer was handed over to him by PW1. He stated that he did not enquire about the criminal antecedents of PW1 and three employees by name Carlos, David and Gopi.

24. The entire prosecution case rests on circumstantial evidence. The learned Sessions Judge has founded the conviction based on the following circumstances .

(i). Homicidal death of Vigil.

(ii). The accused and the deceased were residing together along with other co-workers in the premises owned by PW12.

(iii). The accused and the deceased were last seen together by PW's 3 ,4 and 16.

(iv). The presence of the accused proximate to the alleged occurrence in the premises where the body of the deceased was seen.

(v). The presence of the accused after

the alleged occurrence in the room adjacent to the room where blood was seen by PW's 3 and 4.

(vi) Time of death tallies with the version of the witnesses and the last seen circumstance.

(vii). Recovery of MO1 and MO5 on the basis of the disclosure made by the appellant.

(viii). Subsequent conduct of the accused.

(ix) Motive

Legion are the case law with regard to appreciation of Evidence in a case based on Circumstantial Evidence . We will remind ourselves of the golden principles before we make an assessment of the proven circumstances .

[28]. In **Tomaso Bruno and others V State of UP ,(2015 KHC 4047)** the Apex Court has , after referring to celebrated judgments on the subject has laid down as follows :

**In Padala Veera Reddy v. State of A.P. and Others (1989 KHC 828) : (1989 Supp (2) SCC 706) : (AIR 1990 SC 79) : (1989 BBCJ 121),** it was laid down

that in a case of circumstantial evidence such evidence must satisfy the following test:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;  
(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;  
(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and  
(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra* (1982 (2) SCC 351))."

**In *Vijay Kumar Arora V State* ( 2010 (2) SCC 353 )** the Apex Court has stated as follows -

It is not in dispute that the case against the appellant rests on circumstantial evidence. It would be advantageous to restate the well settled law relating to appreciation of circumstantial evidence. The evidence tendered in a Court of law is either 'direct' or 'circumstantial'. Evidence is said to be 'direct' if it consists of an eye witness account of the facts in issue in a criminal

case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum.

Essential ingredients to prove the guilt of an accused by circumstantial evidence are:

16.1 The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that 'men may tell lies, but circumstances do not'.

16.2 In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle, a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them, on the other. In regard to proof of primary facts, the Court has to Judge the

evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies.

16.3 Although, there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the Court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case.

16.4. The Court thereafter has to consider the effect of proved facts. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis, except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence

alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be.

16.5 There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and where the various links in a chain are in themselves complete, then a false plea or a false defense may be called into aid only to lend assurance to the Court.

25. The first circumstance is the Homicidal death of Vigil. PW 17, the Assistant Professor has conducted the post mortem examination of the deceased and has issued P 12 certificate in which he has opined that injuries 1 to 8 and 10 are sufficient in the ordinary course of nature to cause death. There cannot be any dispute with regard to this aspect .Hence, we hold that the prosecution has succeeded in establishing the fact that the deceased Vigil had met with a homicidal death.

26. The second circumstance is that the accused and

the deceased were residing together along with other co-workers in the premises owned by PW12 which was taken on lease by PW1, the building contractor. The evidence of PW1, PW3, PW4 and PW12 will succinctly prove the fact that the deceased and the accused and other workers of PW1 namely, Sree, Krishnan, Suresh were residing in the building belonging to PW2 .

27. The circumstance Nos. (iii) (iv) (v) and (vi) will have to be considered together. The prosecution case is that on 19.4.2009, PW3, PW4, Sree, the accused and the deceased proceeded to Parvathy hotel at Chengannur for taking breakfast. PW3 and PW4 have deposed before Court that the accused and the deceased did not join them for breakfast but instead they were seen walking together towards the KSRTC road. According to these witnesses, thereafter, they had gone to the work site of PW11 at Cheriyanad and returned back only at 6 – 6.45 pm on 19.4.2009. The evidence of PW3 and 4 are banked on by the prosecution to prove the fact that the accused

and the deceased were moving together from 7.30 am and the deceased was last seen in the company of the accused.. The learned Sessions Judge have also given much emphasis to this aspect in paragraph 12 of the judgment. The learned Sessions Judge went on to hold that the last seen theory will apply on all fours in the light of this evidence. Interestingly enough PW3 and 4 have no case whatsoever that they had occasion to see either the accused or the deceased after they had parted ways in front of the Parvathy hotel .

28. The prosecution examined PW16, the Secretary of Service Co-Operative Bank to prove the fact that the accused and the deceased along with the other workers of PW1 came to the work site of his friend Joy George on 19.4.2009 at 10.30 am and there was a dispute with regard to wages. The witness further stated that the deceased and the accused were drunk and he did not permit them to work. Obviously, the workers who were with the deceased and the accused were PW3, 4 and

Sree. The evidence of PW16 cuts the root of the evidence tendered by PW3 and 4 to prove the last seen theory. In fact, according to PW16, there were five workers and they had gone together. Though the prosecution attempted to bring out that the deceased and the accused had gone first, it was brought out as an omission during cross-examination. In view of the contradictory evidence let in by the prosecution, it will be hazardous to place reliance on the evidence of PW3 and PW4 to the effect that the accused and the deceased left without joining work at 7.30 am on 19.4.2009.

29. The prosecution examined PW2 a neighbour residing on the southern side of the Leela Offset Press building to prove that on 19.4.2009 between 2.30 and 3.00 pm she had seen one person drawing water from the well situated in Leela Press premises and taking bath. She stated that the person who took the bath was wearing spectacles and she identified the person as the accused. According to her, she had seen the accused from a

distance of about 50 metres. The evidence of the said witness was relied on by the learned Sessions Judge to conclude and establish the fact that the accused was found in the premises where the dead body was found by PW1 at 6.30 am on 20.4.2009. The evidence tendered by PW2 would have had some relevance if there was unimpeachable evidence about the approximate time of death of the deceased, which incidentally is absent in this case.

30. As regards the theory of 'Last Seen', the Apex Court in **State of U.P. v. Satish [2005 (3) SCC 114]** has held as follows:

"The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last 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. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons

coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

Further in **Ramreddy Rajesh Khanna Reddy v. State of A.P. [2006 (10) SCC 172]** it was held as follows:

"The last seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and 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. Even in such a case the courts should look for some corroboration".

In **Lakhanpal V State of M.P. (1979 SCC (Cri ) 944 )** the Apex Court has held that the mere fact that the appellant and the deceased were together in the field does not lead to the irresistible inference that the appellant must have murdered the deceased.

31. Keeping in mind the above principles we find it difficult to place implicit reliance on the evidence of PW 3

and 4 to conclude that the prosecution has established the fact that the time gap between the point of time when the accused and the deceased were last seen alive and 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. This is because of the contradictory evidence let in by prosecution through PW 16 . We also consider it as hazardous to place reliance on the evidence of PW 2 to conclude that the presence of the accused has been established .In the light of the above we conclude that the prosecution has failed to positively establish that the deceased was last seen in the company of the accused.

32. The next circumstance relied on by the prosecution is the alleged presence of the appellant in the Leela printers premises at 6.45 pm on 19.4.2009 when PW3 and 4 had come back after work and found the presence of blood in the front room. It is their specific case that the accused was sleeping in the adjacent room without

wearing any clothes. The case of the prosecution as is revealed from the evidence of PW1 is that on getting a call from PW4 about the presence of blood in the front room of Leela printers premises he arrived at Chengannur at 4.45 am on 20.4.2009. PW3 and 4 who saw blood at 6.45 am splashed all over the room immediately leaves the place after obtaining permission from PW1 and goes to the work site of PW12. Though this fact is hard to believe some allowance can be given because of the fact that they are workers from Tamil Nadu and it is their case that they are unaware as to the formalities. But as far as PW1 is concerned, he is a building contractor and has been working at Chengannur for the past several years. From his evidence it has come out that the incident narrated to him was serious enough for him to start at 10.30 pm from Nagercovil to reach the Leela printers premises as early as possible. There is no evidence as to how he had reached Chengannur. But it has come out that he was accompanied by three persons, Carlos, David and Gopi. These persons are material witnesses who were

with PW1 when he had reached Leela Printers premises at 4.45 am on 20.4.2009. For reasons best known, those persons have not been cited or examined. This is a very suspicious circumstance according to us. Even if this fact is ignored, the modus operandi adopted by PW1 on seeing the blood splattered all over the room confounds us. At 4.45 am he enters the room and finding blood all over the place, he draws water from the well and cleans the whole room, the cot and the walls. He also states that he found a blood stained hammer under the cot and while washing the cot, water had fallen over the hammer as well. After having done that, he goes to sleep in the same bed where blood was seen. Even at the time of the preparation of Ext.P2 scene mahazar, and Ext.P11 scene plan, blood stains are noted all over. It would be next to impossible to believe the case of PW1 that after cleaning the floor, walls and cot, he along with his three unknown friends had slept in the comfort of the same room. The witness states that he woke up at 6.30 am and when he came out to the sit out, he found blood on the pillars and

the steps leading to the house. He also sees drag marks and pools of blood leading to the place where the dead body was found. On analyzing the evidence of PW1 minutely it can be seen that the witness is not truthful and the version before Court cannot be relied on without proper corroboration. At this juncture we pause and shall target out attention to the evidence tendered by PW17, the Doctor who conducted the autopsy.

33. We notice that the prosecution has not made any endeavour to bring out through the doctor as to the approximate time Vigil was murdered. In the FIR which was registered on 20.4.2014, it is seen stated that the incident might have occurred in between 12 P.M. on 18.4.2009 and 6.45 P.M. on 19.4.2009 . The evidence of PW 3 and 4 is relied on by the prosecution to prove that the deceased and the accused were moving together after 7.30 AM on 19.4.2009. The evidence of PW 16 is relied on by the prosecution to prove that the accused and the deceased along with the other workers had gone to the

house of one Joy for construction activities at 10.30 AM . The body of the deceased was seen by PW 1 on 20.4.2009 at 6.15 AM . A lot of assumptions need to be made to come to the conclusion that the time of death is at 2 P.M as alleged by the prosecution banking on the evidence of PW2, who is the neighbor and who claims to have seen the accused taking bath in the Leela printers premises between 2.30 and 3.00 pm on 19.4.2009 . The learned Sessions Judge in para 16 of the Judgment has got over this situation by stating thus :

“Coming to the question relating to the time of death of Vijil, Ext.P12 is postmortem certificate. Postmortem examination was conducted on 21.4.2009 between 9.35 AM and concluded at 10.35 AM. The approximate time of death is not stated by PW17 in Ext.P12. PW17 on his examination also did not state anything about the time of death. According to the prosecution the death might have occurred in between 2 and 2.30 PM on 19.4.2009. PW2 asserted on her examination that she saw the accused taking bath approximately in between 2 and 2.30 PM on the same day. Thus the time of death can only be between 2 and 2.30

PM on 19.04.2009. There is no dispute as to the place of occurrence."

34. We are afraid that we are unable to accept the above finding of the learned Sessions Judge. We feel that the possibility of Vigil being done away with in the night by some other persons in some other manner is also a possible hypothesis. It is also a possible hypothesis that Vigil was murdered at night by some other person and the evidence being destroyed by cleaning the place with water. It has not been brought out either through the Doctor or by any scientific means that the death of Vijil had happened sometime prior to 6.45 pm as stated by PW3 and 4. There is also a distinct possibility that PW3 and 4 are narrating a false version so as to place the burden of guilt on the appellant.

35. There is a vacuum as to what happened between 4.45 AM and 6.15 A.M. on 20.4.2009 on which day the body of the deceased was found by PW1 along with three of his

friends. Absence of medical evidence with regard to the approximate time of death of Vijil would exasperate things further.

36. The evidence of Dog Handler cannot be given much reliance as he himself has stated that if the deceased was wearing the clothes of someone else, the dog would certainly go to the person who is the owner of the clothes. So far as the evidence of a Sniffer Dog is concerned, the Apex Court had this to say in **Dinesh Borthakur V State of Assam ( 2008 (5) SCC 697 ) :-**

“There are three objections which are usually advanced against reception of the evidence of dog tracking. First since it is manifest that the dog cannot go into the box and give his evidence on oath and consequently submit himself to cross examination, the dog's human companion must go into the box and the report the dog's evidence and this is clearly hearsay. Secondly, there is a feeling that in criminal cases the life and liberty of a human being should not be dependent on canine inference...”

Yet again in **Gade Lakshmi Mangaraju**

**alias Ramesh v. State of A.P (2001 (6) SCC 205)**, this Court opined:

'There are inherent frailties in the evidence based on sniffer or tracker dog. The possibility of an error on the part of the dog or its master is the first among them. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Last, but not the least, is the fact that from scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Investigation exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them.

The law in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused. This will also not aid the prosecution in the absense of other materials to connect the appellant with the offense.

37. The next circumstance relied on by the prosecution is the evidence of recovery of MO1 hammer and MO5 Dhoti worn by the accused covered in MO 10 plastic cover on

the strength of the disclosure statement made by the accused. PW1 is the contractor who on receiving information from PW 4 reaches Leela Printers Premises at 4.45 A.M. on 20.4.2009 . He enters the room using his spare key and sees blood splattered all over the room . He sees pool of blood on the floor , on the walls and also on the cot .On entering the room along with his three coworkers , namely Gopi, Carlos and David , who were not examined by the prosecution, and finding blood , he cleans the whole area including the floor, walls and cot with water. While washing the cot he sees a blood stained hammer under the cot. The head part of the hammer contains profuse blood stains. He swears in evidence that the said blood stained hammer found under the cot was handed over to the Investigating officer who had come to the place of occurrence at 7.30- 7.45 A.M. on 20.4.2009. It is the consistent case of the PW 1 , 3 and 4 that immediately after the officers had come to the scene after recording his statement, at 7.30 AM on 20.4.2009 , the appellant had confessed to the crime in the presence of

the police officers . Pertinently the crime is registered at 9:45 AM on 20.4.2009 and the accused is arrested only at 9.30 P.M on 20.4.2009. It defies logic and sense as to what prevented the officer from arresting the accused even after all these things had taken place in his presence, as per the prosecution version. Exhibit P 2 scene Mahazzer was prepared at 3.30 pm on 20.4.2009 as per which several items were seized among which MO6 wooden pieces also formed a part. According to the prosecution , the accused on questioning at 9.00 AM on 21.4.2009 discloses to the police officer that he has concealed the hammer and the dhoti worn by him in between the firewood stored on the western side of the Leela offset printers premises and based on the same recovery of MO 1 ,MO5 and MO 10 was carried out . The question is whether the same can be believed .

38. Though PW1 deposes that he had handed over a blood stained hammer found under the cot where the alleged occurrence had taken place and had handed the

same to the Investigating officer on the 20.4.2009 itself, no such hammer is produced before court. PW 6 is a worker of PW1 and is the attester to both Exhibit P 2 and Exhibit P 3 . Exhibit P 2 was prepared on 20.4.2009 at 3.30 P.M. whereas P3 was prepared on 21.4.2009 at 9. A.M. He fairly admitted that he was directed by PW1 to accompany the officers and it was as per the direction of PW 1 that he stood as an attestor. In his evidence PW 6 would assert that from the plastic cover, in addition to MO1 hammer and MO6 dhoti, two wooden pieces were also recovered. This contradicts the prosecution version . These wooden pieces stained with blood were seized when the scene mahazzer was prepared as per the evidence of the Investigating officer. We have no doubt in our mind that MO 1 was handed over to PW 19 on 20.4.2009 by PW 1 as asserted by him and M0 6 wooden pieces were seized at the time when the scene Mahazzer was prepared . It makes no sense to believe that the appellant who is alleged to have confessed about the commission of the crime at 7.45 A.M. on 20.4.2009 before

the investigating officer was not arrested till 9.30 PM on the said day and he could be persuaded to give a disclosure statement only at 9 AM on 21.4.2009 . It is also blatantly clear from the evidence that Exhibit P 3 and P 3 (a) was brought into existence on the next day to forge an additional and strong link to fix the culpability on the accused. The explanation that there will be several hammers in a place where construction workers live cannot be countenanced in view of the positive assertion by PW 1 that he had in fact handed over a blood stained hammer to the investigating officer. The evidence tendered by PW 6 also is not trust worthy . In view of the serious discrepancies, contradictions and the attempt of the prosecuting agency to create false clues and fabricate evidence, we reject the prosecution evidence relating to Exhibit P3(a) and the consequent recovery of MO5 , MO6 and MO10. The prosecution has failed to establish that the appellant did make the disclosure statement as alleged by the prosecution or led to the recovery of the weapons of offense in the manner suggested by the prosecution.

This piece of circumstantial evidence, therefore, has not at all been established, much less conclusively.

39. The next circumstance relied on by the prosecution is the motive . The learned Sessions Judge after evaluating the evidence has concluded that the prosecution has not been successful in establishing any motive . This aspect will also have to be held against the prosecution.

40. We have immense reservations with regard to the conduct of PW1, PW 3 and PW 4 .It fails comprehension as to why PW 19, a Sub Inspector of Police had carried out the investigation in a case involving a grave crime of murder. There is no explanation why Gopi , Carlos and David were not cited as witnesses. Failure to assess the approximate time of death has dealt the fatal blow to a case of instant nature where there are innumerable circumstances throwing doubt on the prosecution version. The act of PW 1 in washing off all the trace evidence from the room after he had seen blood splattered all over the

area throws much doubt on the prosecution case . The recovery effected on the next day in respect of a hammer which was handed over by PW 1 on the previous day to the Investigating Officer makes the prosecution case suspect. It has come out that several others were staying in the other rooms of the Building but none have been cited or examined .

41. On due appreciation of the entire evidence on record we find that the circumstances set forth by the prosecution have not been fully established. Doubts in the form of sharpnells disturb the judicial conscience of the court and the contradictory evidence let in through the its witnesses has not helped in dispelling the doubts . The recovery said to have been effected is doubtful and the possibililty of a stage managed recovery as contended by the learned Senior Counsel appears to be correct and this fact is clearly brought out from the prosecution evidence itself . Motive has not been proved and the conduct of the accused , in the light of the evidence let in, cannot be

said to be suspicious warranting his conviction. It is true that a few fingers of suspicion do however point towards the accused but it is settled by now that the suspicion however, grave cannot take place of proof. It is also equally well settled that there is a long distance between 'may be true" and "must be true". The circumstances brought out by the prosecution in this case are not of a conclusive nature. They do not unerringly point to the guilt of the accused. There are various other possibilities in the chain of evidence .The evidence let in cannot be said to be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused .

42. In **Kiriti Pal and Ors. Vs.State of West Bengal and Ors (2015 (5) SCALE 319)** the Apex Court held thus .

"In a case based on circumstantial evidence, the court must adopt a very conscious approach and should record conviction only if all the links in the chain are complete pointing to the guilt of the

accused. All the links forming complete chain must be firmly established by the prosecution. Each link taken separately may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the accused. All the circumstances must be firmly established and must be consistent only with the hypothesis of the guilt. But that is not to say that the prosecution must meet each and every hypothesis put forward by the accused however far fetched it may be”.

43. For the foregoing reasons we are unable to sustain the conviction of the appellant on the above set of circumstantial evidence and the conviction entered against the appellant deserves to be set aside.

44. Therefore, we have no hesitation to hold that the prosecution has failed to establish that the appellant has caused the death of deceased Vigil in the manner alleged. Consequently, we set aside the conviction and sentence passed by the learned Additional Sessions Judg-I, Mavelikkara.

45. The Appeal is allowed. Conviction and sentence passed by the Additional Sessions Judge-I, Mavelikkara, in S.C.942 of 2009 is set aside. The appellant/accused is found not guilty of the offences charged. He is acquitted and set at liberty. He shall be released from prison forthwith, if not wanted in any other case.

Sd/-

**V.K.MOHANAN.**  
**Judge**

Sd/-

**RAJA VIJAYARAGHAVAN. V.**  
**Judge**

MrCs

/True Copy/

P.S. To Judge