IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

CRL.A NO. 239 OF 2025

CRIME NO.2177/2015 OF Perumbavoor Police Station, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED 20.03.2024 IN SC NO.823 OF 2015 OF ADDITIONAL DISTRICT & SESSIONS COURT,MUVATTUPUZHA

APPELLANT/ACCUSED:

ABDUL HAKKIM, AGED 39 YEARS, S/O. HASRATH ALI, LAMDING POLICE STATION LIMIT, MOUSADARGAR GRAMAM, NOUGAVU, ASSAM, NOW LODGED IN CENTRAL PRISON, KANNUR, PIN - 670004

BY ADVS.
T.U.SUJITH KUMAR
WINSTON K.V.

RESPONDENT/STATE & COMPLAINANT:

1 **STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM DISTRICT, PIN - 682031**

2 **THE INSPECTOR OF POLICE, PERUMBAVOOR POLICE STATION, PERUMBAVOOR, ERNAKULAM DISTRICT, PIN - 683542**

BY SMT. AMBIKA DEVI S., SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 08.04.2025, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

JUDGMENT

Jobin Sebastian, J.

The sole accused in S.C. No.823/2015, on the file of the Additional District & Sessions Court, Muvattupuzha, has preferred this appeal challenging the judgment of conviction and the order of sentence passed against him for the offence punishable under Section 302 of the Indian Penal Code.

2. The facts of the case in brief are as follows:

The accused and Mahmooda, the deceased in this case, hailing from Assam were residing together as husband and wife in a rented house belonging to CW1. They had a minor child born on 25.02.2015. During their cohabitation, the accused developed relationships with several women through phone calls. Upon knowing about the same, Mahmooda reprimanded the accused. Enraged by the same and to avoid Mahmooda and his child from his life as well as to continue the relationships with other women without any hindrance, the accused with an intention to kill Mahmooda and his child, took them from the above-said rented house to an uninhabited rubber estate after deceiving Mahmooda that he was taking them to their native place at

Assam. Thereafter, the accused committed the murder of Mahmooda and his child by slitting their throats with a knife at 1.00 a.m. on 22.05.2015 inside the said rubber estate belonged to one Ibrahim and disposed of the dead bodies in the adjacent paddy field. Thus, the accused is alleged to have committed the offence punishable under Section 302 IPC.

3. On completion of the investigation, the final report was submitted before the Judicial First Class Magistrate Court-I, Perumbavur. Being satisfied that the case was one triable exclusively by the Court of Session, the learned Magistrate after complying with all the necessary formalities committed the case to the Sessions Court, Ernakulam under Section 209 of the Criminal Procedure Code. After taking cognizance, the learned Sessions Judge made over the case for trial and disposal to Additional Sessions Court-I, Muvattupuzha.

4. On production of the accused before the court, the learned Sessions Judge, after hearing both sides under Section 227 of the Cr.P.C., and perusal of records, framed a written charge against the accused for the offence punishable under Section 302 of the Indian Penal Code. When the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried.

5. The prosecution in its bid to prove the charge levelled against the accused has altogether examined 25 witnesses as PW1 to PW25. P1 to P48 are the documents exhibited and marked. After completion of prosecution evidence, when the accused was questioned under Section 313 of the Cr.P.C., he denied all the incriminating materials brought out against him in evidence. Since it was not a fit case to acquit the accused under Section 232 of the Cr.P.C., the accused was directed to enter on his defence and adduce any evidence, he may have in support thereof. But no evidence, whatsoever, was adduced from the side of the accused.

6. After trial, the accused was found guilty of the offence punishable under Section 302 of the IPC and convicted and he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,00,000/- (Rupees one lakh only) with a default clause to undergo rigorous imprisonment for one year for committing murder of Mahmooda. Moreover, the accused was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,00,000/- with a default clause to undergo rigorous imprisonment for one year for committing the murder of his minor child. The substantive sentences were ordered to be run concurrently. The said judgment of conviction and order of

sentence is under challenge in this appeal.

7. The law was set in motion in this case on the strength of the FIS given by one Assinar, who claimed to have seen the dead bodies of Mahmooda and her minor child first. When the first informant was examined as PW1, he deposed that he was a rubber tapper. According to PW1, on 22.05.2015, in the morning, while he was tapping rubber trees in the rubber estate belonging to Ibrahim, a boy who was grazing buffalos in the said rubber estate approached him and handed over a mobile phone, stating that he got the same from the rubber estate. Then, he made an attempt to trace the owner of the mobile phone, by contacting one of the phone numbers found in the contact list. But, as he could not understand the language of the person who had attended the above call, he continued rubber tapping. After around five minutes while he was tapping rubber trees, another person approached him and asked whether he had got a mobile phone. Then he handed over the mobile phone to him. When he reached the southwestern side of the property by tapping the rubber, he saw a feeding bottle lying there. Moreover, blood stains were also found on the premises. On looking around, he found the dead body of a woman lying in the paddy field abutting the rubber estate. It was around 7.45 a.m., when he saw the

dead body, immediately, he rushed to the person to whom he had given the mobile phone and thereafter, when both of them came to the place where the dead body of the woman was found, another dead body of a minor child was also found lying there. The dead body of the woman was found lying face down. The minor child's dead body was found covered with a turkey(towel). Then PW1 contacted his employer and informed the matter. Thereafter, he gave a statement to the Police. According to PW1, Ext. P1 is the statement that he had given to the Police. PW1 identified the mobile phone handed over to him by the boy who was grazing buffaloes in the rubber estate and the same was marked as MO1. The feeding bottle found in the rubber estate was also identified by him and marked as MO2.

8. The landlord of the house, where the accused was residing on rent was examined as PW2. PW2 testified that the accused was residing in the rented house along with his wife Mahmooda and child. According to PW2, he owned two houses built on a property having an extent of 10 cents and he was residing in one of the said houses along with his mother, wife, and children, and the other house was occupied by the accused on rent. While so, on 21.05.2015, the accused vacated the house and stated that he is going to his native place in Assam

along with his wife and minor child. According to PW2, the accused left the house at around 10.00 p.m. on 21.05.2015 after bidding farewell to him. When the accused left the house along with his wife Mahmooda and their child, PW2 as well as his wife came out of their house and saw them leaving. The accused was then carrying a sack containing household articles. Thereafter, on the next day, while PW2 was going to a hospital along with his wife, one of his neighbors contacted him over phone and informed him that one woman and a child were found lying dead. Thereafter, the Police also contacted him over the phone. Then, he quickly returned from the hospital, and on the way, he found the dead bodies of a woman and a child, kept in an ambulance. He identified the woman as Mahmooda and the deceased child as her daughter. He identified Mahmooda by the churidar that she was wearing. Similarly, he identified the minor child from the healed wound marks on the buttocks of the said child. PW2 further deposed that the accused and his wife used to quarrel with each other frequently. According to PW2, as he was not familiar with the language of the accused, he used to communicate with the accused and his wife through gestures and signs. According to PW2, at the time when the accused left his house, the accused was wearing a T-shirt and a dhoti

having a marking 'No.10' on the front side of the said T-shirt. PW2 identified the said T-shirt and dhoti before the court and were marked as MO5 and MO6 respectively. PW2 identified the churidar top found on the dead body of Mahmooda and the turkey used to cover the dead body of the minor child. The said churidar top and the turkey were marked as MO3 and MO4 respectively. He also identified MO1 as the mobile phone used by the accused.

9. The wife of PW2 was examined as PW3. On examination before the court, PW3 deposed that the accused resided in their rented house along with Mahmooda and their child for 28 days. According to PW3, she saw the accused, Mahmooda and their child last on 21.05.2015, and on that day she causally talked with them. According to PW3, it was between 6.00 p.m. and 7.00 p.m. she met them. Thereafter, she did not see them. Thereafter, she came to know that Mahmooda and her child were murdered. According to PW3, when the accused left their rented house, she was not at her home at that particular time. According to PW3, the accused used to frequently quarrel with Mahmooda and she occasionally heard loud outcry from their house. On 21.05.2015, while she causally talked with the accused

and the deceased Mahmooda, they told her that they were going to the native place.

10. The Circle Inspector of Police who conducted the investigation and laid the final report after the culmination of the entire investigation in this case was examined as PW24. According to PW24, after taking over the investigation, he forwarded a request to RDO, Muvattupuzha to conduct the inquest of Mahmooda and in turn, the RDO instructed the Tahsildar, Muvattpuzha Taluk (PW13) to conduct the inquest. Thereafter, on 22.05.2015 at 10.30 p.m., he along with the police party reached the place of occurrence and by that time, the Tahasildar (PW13) also reached there to conduct the inquest. Thereafter, PW13 conducted the inquest of the deceased Mahmooda and PW24 conducted the inquest of the minor child in the presence of independent witnesses. The inquest report prepared by PW24 was marked as Ext. P3. According to PW24, he recovered a turkey towel clotted with blood and mud, one frock, and an old piece of small cloth found on the body of the minor child. PW1 identified the said items as MO4, MO17, and MO19 respectively. The Scientific Assistant collected blood-stained soil found near the dead bodies, one hair found on the body of the child as well as a hair found on the body of Mahmooda and

handed over the said items to him in sealed packets. According to PW24, the Tahsildar who conducted inquest of Mahmooda recovered a blood-stained churidar top (MO3), churidar bottom (MO7), an undergarment (MO20), brasier (MO22), mobile phone (MO1), feeding bottle (MO2), baby powder container (MO9), chappals (MO10) from the body of the Mahmooda and from the premises where the dead bodies were found. According to PW24, he had produced all the items recovered in this case before the court along with a property list. Thereafter, he forwarded the dead bodies for post-mortem examination. PW24 further deposed that on 22.05.2015 he also prepared a scene mahazar and Ext.P26 is the said mahazar. A bag, mirror, kajal tin, nighty, and an undergarment which were found at the scene of occurrence were also recovered by him after describing in Ext.P26 scene mahazar. PW24 identified the said items which were marked as MO13 to MO16 and MO25 respectively. Moreover, he also recovered a blood-stained dothi (MO6) and a full-sleeve shirt (MO26) from the crime scene. According to PW24, the items recovered as per Ext.P26 scene mahazar were duly produced before the court along with a property list. The nail clippings, hair sample, tissue for DNA analysis, bone marrow samples, and blood-soaked gauze, etc. of both

Mahmooda and the child collected by PW21, the Doctor who conducted post-mortem examination, were forwarded to PW24 through a Civil Police Officer and the said items were seized by him after describing in Ext.P25 seizure mahazar. Thereafter, he filed a report before the jurisdictional magistrate incorporating Section 302 IPC and deleting Section 174 Cr.P.C. and Ext.P48 is the said report.

11. According to PW24, the MO1 mobile phone recovered from the crime scene contained two sim cards, having phone numbers 9605191186 and 8811904468. On verification of the call records and subscriber details of the said mobile numbers it was revealed that mobile phone No.9605191186 was taken in the name of one Mugal Hussain and one Shahida Beegum was the subscriber of mobile phone No.8811904468. On investigation, it was revealed that the said mobile phone as well as the sim cards contained in it which were seized from the crime scene were originally used by the accused though the subscribers of the said sim cards are different persons. On verification of call detail records (CDR) of the above mobile phone numbers it was revealed that several calls were made to different mobile numbers subscribed in the names of various ladies and one of the frequent calls was made to mobile phone No.8133947597. When the CDR of the said

phone number was verified it was revealed that from 23.05.2015, i.e., on the next day of the incident in this case onwards, frequent calls had come to the said number from mobile No.8128893602. On further verification it was seen that the location of the mobile phone No.8128893602 was at Dimapur in Nagaland. Hence he deputed the Sub Inspector of Police, Perumbavur Police Station (PW15), and a Civil Police Officer(PW14) attached to the said Police Station (PW14) to go to Nagaland to trace out the person using mobile phone No.8128893602. Accordingly, PW14 and PW15 went to Nagaland and with the assistance of the Nagaland Police, they traced out the accused as the person using the said mobile phone number. Thereafter, PW15 interrogated the accused and arrested him on 29.07.2015 from Dimapur in Nagaland. At the time of the arrest, a mobile phone (MO12), bag (MO11), identity card (Ext.P19), and a train ticket (Ext.P21) found in the possession of the accused were taken into custody. According to PW24, Ext.P21 train ticket revealed that the accused had travelled on 22.05.2015 from Thrissur to Lumding junction railway station, Assam. Thereafter, PW15 obtained a transit warrant from the judicial magistrate at Assam and produced the accused before PW24. According to PW24, on 05.08.2015, he produced the accused

before the Judicial First Class Magistrate, Perumbavur. After obtaining police custody it was revealed that the accused does not know Malayalam but he knows Hindi. Hence, PW24 interrogated the accused with the help of PW25, a Civil Police Officer who is proficient both in Hindi and Malayalam. On interrogation, the accused gave a confession statement and disclosed that "കത്തിയും ടീഷർട്ടും ഒരു പ്ലാസ്റ്റിക് കവറിലാക്കി പെരുമ്പാവൂരിലേക്ക് വരുന്നവഴി വഴിയരികിൽ ഒരു കുറ്റിക്കാട്ടിൽ ഒളിപ്പിച്ചുവച്ചിട്ടുണ്ട്. എന്നെ കൊണ്ടുപോയാൽ ഞാൻ അത് എടുത്തു തരാം". According to PW24, on the strength of the said disclosure statement made by the accused and as led by the accused he reached the property of one Ibrahim and from inside a bushy area in the said property, the accused took a polytene cover and handed over the same to PW24. On verification of the said cover after opening it, a T-shirt and a knife were kept inside it and the knife was found covered using the T-shirt. According to PW24, he recovered the said items after describing in Ext.P27 recovery mahazar. The relevant portion of the confession statement given by the accused and recorded in Ext.P27 recovery mahazar is marked as Ext.P27(a). PW24 identified the plastic cover, T-shirt, and knife recovered as per Ext.P27 mahazar and those items which were marked as MO18, MO5 and MO8 respectively.

12. PW24 further deposed that when he asked about the knife, the accused stated that he had purchased it from a shop in Perumbavur and if he was taken he would point out the shop from which the knife was purchased. According to PW24, on the basis of the said information and as led by the accused, he reached a shop at Perumbavur, and the salesman in the said shop (PW9) and the accused herein identified each other. According to PW24, PW9, the salesman in the shop said that the accused purchased the knife on 14.05.2015, and at the time of the purchase, though PW9 had prepared a bill in the computer, the accused left the shop without receiving the bill. According to PW24, thereafter, PW9 produced the above bill in his office on 09.08.2015 and he seized the said bill after describing in Ext.P5 mahazar. According to PW24, he thereafter sent the accused to the Taluk Hospital, Perumbavur for medical examination and to collect samples of his blood for sending for DNA profiling and other expert examination. According to PW24, it was PW31, a Senior Civil Police Officer, who took the accused for medical examination. After the medical examination, the Doctor (PW11) collected two blood samples and entrusted the same in sealed packets to PW31 who produced the same before PW24. The said blood samples were taken into custody

by him after describing in Ext.P22 mahazar. Thereafter, he recorded the statement of the Doctor (PW21) who conducted the postmortem examination. PW24 further deposed that, the Doctor who conducted the postmortem examination had collected vaginal swabs and smears from the dead body of the deceased Mahmooda and directly sent the same to the chemical examination lab. The chemical analysis report received after the examination of the vaginal swab and smear is marked as Ext.P33. According to PW24, on the said examination, it was found that the vaginal swabs and smears contained human semen and spermatozoa and that he made a request to the chemical examination division of the FSL Laboratory to hand over the remaining vaginal swabs and smears for comparing the same with the blood sample of the accused. Accordingly, the remaining vaginal swabs and smears were sent to him from the chemical examination lab in a sealed packet through a Civil Police Officer. PW24 took the same into custody on 19.08.2015 after describing in Ext.P34 seizure mahazar and produced before the court after describing in Ext.P32 property list. Moreover, he prepared Ext.P43 forwarding note and produced the same before the court for sending the DNA sample of the deceased minor child, the blood sample of the accused, vaginal swabs and smears for

examination in the Forensic Science Laboratory. According to PW24, it was he who completed the investigation in this case and laid the final report before the court.

13. The Doctor who conducted the autopsy of Mahmooda and her minor child was examined as PW21. According to PW21, on 23.06.2015 he conducted the postmortem examination on the body of a lady aged 26 years as well as the body of a minor infant aged about six months and issued a postmortem certificate. The postmortem certificate pertaining to the examination of the body of the deceased Mahmooda is marked as Ext.P28. Referring to Ext.P28, PW21 deposed that 12 ante-mortem injuries were noted by him in the postmortem examination. PW21 opined that the death was due to the injuries sustained to the neck (injury No.1). Moreover, referring to the post-mortem certificate pertaining to the examination of the body of the minor child, PW21 deposed that he had noted 3 ante-mortem injuries in the autopsy of the infant child. PW21 further opined that the death of the child was due to the injury sustained on the neck (injury No.1). The Doctor further deposed he collected bone marrow samples, nail clippings, and tissue for DNA analysis and handed over the said items to a Civil Police Officer in a sealed container. When confronted

with the MO8 knife PW21 deposed that, the injuries noted in both the dead bodies could be caused by using a weapon like MO8. Ofcourse, a conjoint reading of the evidence of PW21, the Doctor, and the postmortem certificate issued by him clearly shows that the death of Mahmooda and her child were homicides.

14. This is admittedly, a case in which there is no direct evidence to prove the occurrence. Instead, the prosecution relies on circumstantial evidence to establish the accused's guilt. Before delving into the details of the circumstantial evidence presented in this case by the prosecution, it is essential to examine the principles and guidelines governing the evaluation of such evidence.

15. In **Sarad Birdhichand Sarda v. State of Maharashtra** [AIR 1984 SC 1622] the Hon'ble Apex Court discussed the nature, character, and essential proof required in a criminal case which rests on circumstantial evidence alone and held as under:

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) 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.

16. A similar view has been reiterated by the Apex Court in **Bodh Raj alias Bodha v. State of Jammu and Kashmir** [AIR 2002 SC 3164], **State of Uttarpradesh v. Satish** [AIR 2005 SC 1000] and **Subramaniam v. State of Tamilnadu** [(2009) 14 SCC 415].

17. In cases built upon circumstantial evidence a complete and unbroken chain of evidence is a requisite. This chain must inevitably lead to the conclusion that the accused, and none other than the accused, could have committed the offence. In other words, to sustain a conviction, circumstantial evidence must be comprehensive and incapable of explanation of any hypothesis other than the guilt of the accused. Thus, such evidence must not only be consistent with the accused's guilt but also inconsistent with his innocence.

18. Keeping in mind the above principles, the crucial question in the case on hand is whether the prosecution has fully and exhaustively established the circumstances relied upon to prove the charge levelled against the accused. Furthermore, it must be ascertained whether these circumstances lead inexorably to the conclusion of the accused's guilt, to the exclusion of any other plausible explanation including innocence.

19. Before delving into the circumstances pressed into service from the side of the prosecution it is to be noted that the prosecution has not produced any documentary evidence to show that the deceased Mahmooda was the legally wedded wife of the accused. However, when the brother of the deceased was examined as PW4, he deposed that in the year 2014 his sister was found missing and hence his father lodged a complaint before the Police. In the cross-examination, PW4 deposed that, three months prior to the death of his sister, she contacted him over the phone and demanded some money. According to PW4, his sister said that she was then residing with one Hakkeem, the accused in this case and she is pregnant. Similarly, the evidence of PW2 and PW3 clearly shows that the

deceased and the accused were residing as husband and wife in their rented house with their minor child during the period of occurrence in this case. The evidence of PW2 and PW3 in this regard remains unchallenged in the cross-examination. Moreover, in the birth certificate of the deceased minor child, marked as Ext.P6, it is specifically stated that the mother of the minor child is Mahmooda and the father of the child is Abdul Hakeem. Therefore, notwithstanding the absence of any documentary evidence to prove a legal marriage between the deceased and the accused, it is demonstrably clear that the accused and the deceased were residing together as husband and wife along with their child in the rented house.

20. One of the circumstances relied upon by the prosecution to prove the charge levelled against the accused is that he was having a strong motive to kill his wife. The motive alleged is that the accused wanted to eliminate his wife and child to continue his relationships with other ladies. According to the prosecution, the deceased Mahmooda reprimanded the accused on knowing about his relationships with other ladies, and enraged by the same, the accused decided to do away with his wife and child to remove all hindrance to continue his illicit relationships. However, close scrutiny of the evidence adduced in this

case clearly shows that the prosecution failed to produce convincing materials to show that the accused maintained illicit relationships with other ladies and it was in order to continue the said relationships without any obstacles, he murdered his wife and child. Nevertheless, the evidence adduced in this case clearly establishes the fact that the relationship of the accused with the deceased was not a cordial one. The evidence of PW2 and PW3 clearly reveals that the accused used to pick up frequent quarrels with his wife. PW2 had gone to the extent of testifying that on several occasions she heard outcries of the deceased from the rented house following the quarrel between the accused and the deceased. The evidence of PW2 and PW3 in the above regard need not be doubted especially when there is nothing to show that they harbor any animosity towards the accused that would motivate them to falsely implicate the accused in this case. Therefore, we are of the view that it is established from the evidence that the accused and the deceased were not on good terms during their joint lives in the rented house though the motive alleged by the prosecution is not as such proved.

21. One of the important circumstances relied on by the prosecution to connect the accused with the offence alleged in this

case is that it was in the company of the accused, the deceased and his minor child were last seen alive and the accused failed to offer any plausible examination as to what happened to his wife and child or when he left their company. The prosecution is having a definite case that on the previous day of the incident at about 10 p.m., the accused took his wife and child from the rented house under the pretext that he along with his wife and child were going to Assam, their native place. It was on the next day morning, the dead bodies of his wife and child were found lying in a paddy field adjacent to a rubber estate. The time gap between the deceased found alive in the company of the accused and later they were found dead, is remarkably short. In order to prove the said circumstance, the prosecution is relying on the evidence of PW2 and PW3. As already discussed PW2 is the landlord of the house where the accused was residing on rent and PW3 is PW2's wife. The evidence of PW2 shows that he owned two houses built on a property having an extent of 10 cents and he was residing in one of the said houses with his mother, wife, and children, and the other house was occupied by the accused on rent. While so, on 21.05.2015, the accused vacated the house and stated that he is going to his native place in Assam along with his wife and minor child. According to PW2,

it was on 21.05.2015 at around 10.00 p.m., the accused left the house. When the accused left the house along with his wife Mahmooda and his child, PW2 as well as his wife came out of their house and saw them leaving. The accused also took household articles with him in a sack. Ofcourse, the said evidence of PW2 unequivocally establishes the fact that it was in the company of the accused the deceased Mahmooda and her child were last seen alive.

22. However, the learned counsel for the appellant vehemently contended that the evidence of PW2 in the above regard is inconsistent with the evidence of PW3 and hence, it is unsafe to rely on the evidence of PW2. According to the counsel, what PW3 deposed is that she last saw Mahmooda and her minor child alive between 6 p.m. and 7 p.m. on 21.05.2015. Relying on the said evidence of PW3, the learned counsel contended that if the evidence of PW3 in the above regard is believed, the evidence of PW2, that he saw the accused going with his wife and child at 10 p.m. and at that time, PW2's wife (PW3) was also with PW2 cannot be believed at all. However, we cannot agree with the contention of the learned counsel for the appellant in this regard. It is true that on examination before the court, PW3 deposed that on 21.05.2015 between 6 p.m. and 7 p.m., she met the deceased

Mahmooda, the accused, and their child and she exchanged a few words with them. Moreover, PW3 admitted that, at the time when the accused left his rented house along with Mahmooda and their child, she was not at home. The evidence of PW2 is that on 21.05.2015 at about 10 p.m., the accused left his rented house with his wife and the minor child stating that they were going to their native place in Assam. According to PW2, the accused left so after bidding farewell to him, and at that time, PW3 was also with him. Notably, the evidence of PW3 shows that she was not present in her house at the time when the accused left the rented house with his wife and child. Therefore, at most, it can be concluded that PW2's claim that PW3, his wife, was with him when the accused left the rented house, is not credible. However, this does not justify disbelieving PW2's testimony that he saw the accused leave the house with his wife and child at 10:00 p.m. on May 21, 2015**.** PW3's testimony does not invalidate PW2's evidence, especially since PW3 does not assert that the accused did not leave the rented house with Mahmooda and his minor child. Moreover, as already stated even the accused is not having a case that either PW2 or PW3 has any axe to grind against the accused so as to implicate him in a serious case of this nature. Therefore, the evidence of PW2 and PW3 is

deemed credible, leading us to the considered conclusion that the prosecution has successfully established that the deceased Mahmooda and her minor child were last seen alive in the company of the accused.

23. Eventually, in view of the provision contained under Section 106 of the Indian Evidence Act, it is for the accused to explain what actually transpired after his deceased wife and child were last seen alive in his company. Nevertheless, no explanation, whatsoever has been offered from the side of the accused as to what happened to his wife and child thereafter, or when he parted ways with them. At this juncture, it is noteworthy that the accused is having a case that, on 20.05.2015 itself he went to Assam. But the said case canvassed from the side of the accused is established to be false by the convincing evidence of PW2 and PW3. Therefore, the absence of any plausible explanation from the side of the accused, certainly leads to an adverse inference against the accused. The said circumstance will certainly form an important link in the chain of evidence.

24. Another circumstance that throws light on the complicity of the accused in the commission of the offence is that immediately after the commission of the offence, the accused absconded to Assam. The evidence of the investigating officer clearly shows that it was from

Dimapur in Nagaland the accused was apprehended on 29.07.2015. Moreover, the railway tickets recovered from the bag possessed by the accused at the time of his arrest and marked in evidence as Ext. P20 clearly reveals that on 22.05.2015, the accused travelled to Assam from Thrissur. The act of the accused in absconding after the commission of the offence is a conduct relevant under Section 8 of the Indian Evidence Act and the same will form an additional link in the chain of evidence presented in this case by the prosecution.

25. Another crucial material relied on by the prosecution is the recovery of the weapon of offence allegedly effected by the strength of the disclosure statement given by the accused. When the investigating officer of this case was examined as PW24, he deposed that after obtaining police custody of the accused, he interrogated the accused and on interrogation, the accused gave a disclosure statement and on the strength of the said statement given by the accused and as led by the accused he reached at an uninhibited property of Ibrahim and from inside a bushy area of the said property, the accused took a plastic cover and handed over the same to PW24. According to PW24, inside the said plastic cover a knife as well as a T-shirt were found kept. The said items were taken into custody by PW24, after describing in

Ext.P27 recovery mahazar. The relevant portion of the statement which led to the recovery of the knife and T-shirt recorded in Ext.P27 mahazar and proved through PW24 was marked as Ext.P27(a). PW24 identified MO8 as the knife and MO5 as the T-shirt recovered by him as per Ext.P27 mahazar. More pertinently, when a salesman in a shop, from where the accused allegedly purchased the said knife was examined as PW9, he deposed that on 14.05.2015, the accused came to his shop and purchased a knife. PW9 also identified MO8 as the knife purchased by the accused. According to PW9, though a bill was generated on the computer, the accused left the shop without receiving the bill. The evidence of PW9 in the above regard also will lend some assurance to the case of the prosecution. Moreover, in Ext.P31, the chemical examination report reveals that the said knife and T-shirt which were shown as items Nos.4 and 5 respectively were subjected to examination, and on examination, blood was detected in item No.4 and item No.5. However, the origin of the blood contained in item No.4 knife, could not be determined, as the blood contained was insufficient. On the other hand, the blood contained in item No.5 T-shirt, was determined to be human origin.

26. Now the prime question that requires to be addressed is whether the recovery of the aforementioned knife, the weapon of offence, will come under Section 27 of the Indian Evidence Act. It is noteworthy that as per Section 27, the only information given by the accused that can be proved is the information that distinctively leads to the recovery of a fact. The said information gains guarantee or gets confirmed by the subsequent recovery of a fact. Therefore, the first thing is that the exact information which led to the recovery of the fact must be proved sufficiently before the court. The investigating officer must record and later depose the exact words said by the accused before the court. Then only it can be said that the information given by the accused is proved. In the case at hand, it is established that the accused is hailing from Assam and he is not proficient in Malayalam. However, the statement of the accused which allegedly led to the recovery of the knife as well as the T-shirt are seen recorded in the recovery mahazar in Malayalam.

27. A Division Bench of this Court in **Sanjay Oraon v. State of Kerala** [2021 (5) KLT 30], held that

> "recovery effected as per the statement of the accused - not recorded in the language as spoken by the accused is not proper. In such circumstances, the exact words of the accused have to be recorded and translation to be appended."

However, in a subsequent decision [**Siju Kurian v. State of Karnataka**, 2023 (14) SCC 63] the Apex Court, dealing with a similar situation, held that

> "when the statement is being recorded in the language not known to the accused, the assistance of an interpreter if taken by the Police cannot be found fault with. The ultimate test of the said statement made by the accused having been noted down as told by the accused or not would be of paramount consideration. If the answer is in the affirmative then necessarily said statement will have to be held as passing the test of law as otherwise not".

28. Keeping in mind the above principle while reverting back to the facts in the present case it can be seen that admittedly the accused does not know Malayalam but he is proficient in Hindi. However, PW24, the investigating officer categorically deposed that after obtaining the accused in police custody it was revealed that the accused does not know Malayalam but he knows Hindi. According to PW24 in order to get over the language barrier, he interrogated the accused with the help of PW25, a Civil Police Officer who is fluent both in Hindi and Malayalam. Moreover, PW25, who translated the disclosure statement testified that, the confession statement given by the accused in this case in Hindi was truly and correctly translated by him in Malayalam to the investigating officer. According to PW25, it was with his help, the

investigating officer interrogated the accused and it was he who translated the matter said by the Circle Inspector in Malayalam to the accused in Hindi. PW25 identified the accused before the court as the person who made the disclosure statement. Therefore, we have no hesitation to hold that the disclosure statement recorded in Malayalam which led to the recovery of a fact can very well be proved against the accused as spelled out under Section 27 of the Indian Evidence Act. Undoubtedly, the recovery of the murder weapon based on the accused's disclosure statement significantly strengthens the prosecution's case. Furthermore, the previously discussed scientific evidence, confirming the presence of blood on both the MO1 knife and the accused's T-shirt worn during the commission of the offense, provides compelling corroboration of the prosecution's narrative.

29. In short, The compelling circumstances meticulously examined above, inexorably lead to the conclusion that it was the accused who murdered the deceased Mahmooda and her child. These circumstances are fully and convincingly established and are collectively sufficient to rule out the hypothesis of the accused's innocence. The scientific evidence, together with the recovery evidence presented in this case, also provides significant support for the prosecution's case.

Resultantly, we confirm the finding, conviction, and sentence passed by the learned Additional District and Session Judge in S.C. No.823/2015 on the file of Sessions Court, Muvattupuzha, for offence punishable under Section 302 of the Indian Penal Code and hence the appeal stands dismissed.

Sd/-

P.B. SURESH KUMAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

ncd/ANS