

T A B U L A R F O R M

1. Serial Number : Sessions Case No. **366/2011**
2. Name of the Police Station and : Crime No. 153/2010 Peringome
Police Station.

DESCRIPTION OF THE ACCUSED

SL No.	3. Name	4. Father's Name	5. Occupation	6. Residence	7. Age
1.	Younas	Abdulla		Moolakkadu House, Peringome amsom, Korangadu.	28/10
2.	Ali Akbar @ Ali	Hamza		Chappante Akath House, Kooveri amsom, Edakkom.	29/10

DATE OF

8. Occurrence	: 21.03.2010
9. Complaint	: 21.03.2010
10. Apprehension of the accused	: 28.03.2010 (A1) 28.03.2010 (A2)
11. Release on bail	: (A1) 21.06.2010 (A2) 22.09.2011
12. Commitment	: 31.05.2011
13. Commencement of trial	: 13.07.2015
14. Close of trial	: 20.11.2017
15. Sentence/Order	: 27.11.2017
16. Service of copy of judgment or finding on Accused	: 27.11.2017
17. Explanation for delay	: Vide separate sheet attached

Addl. Sessions Court-II,
Thalassery, Dated: 27.11.2017.

ADDL. SESSIONS JUDGE-II

IN THE COURT OF SESSION, THALASSERY

Present :- Sri. P.N.Vinod, Addl. Sessions Judge-II,

Monday, the 27th November, 2017/ 06th Agrahayana, 1939.

SESSIONS CASE No. 366/2011

(Committed by Sri. S. Sajikumar, LL.B., Judicial First Class
Magistrate, Payyannur in C.P. No. 20/2011 - Crime No. 153/2010
of Peringome Police station)

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Complainant	:	State : Prosecution conduct by Smt. Bineesha. K.P, Additional Govt. Pleader & Public Prosecutor, Thalassery.
Accused	:	1) Younas, S/o Abdulla, Aged : 28/2010, Moolakkadu House, Peringome amsom, Korangadu. 2) Ali Akbar @ Ali, S/o Hamza, Aged : 29/2010, chappante Akath House, Kooveri amsom, Edakkom.
Accused defended by	:	Sebastian K. Jacob & C.A Joseph (A1) T. Jagadeesh (A2)
Charge	:	U/s. 452, 392 & 302 r/w 34 of IPC.
Plea of the accused	:	Not guilty
Finding of the Judge	:	The accused are found not guilty u/s. 452, 392 & 302 r/w 34 of IPC.
Sentence/Order	:	The accused are acquitted u/s.235(1) of Cr.P.C.

J U D G M E N T

This is a case charge sheeted by C.I of Police, Payyannur against the accused alleging commission of offences punishable u/s. 451, 392 & 302 r/w. 34 of IPC.

2. The summary of the prosecution case as can be gathered from the final report is as follows.

The deceased Thankamma was residing alone at the house namely Thazhevila Puthen Veedu near a Public cemetery near the CRPF camp at Peringome. On 21.03.2010 in between 11.30 A.M and 1.00 P.M, the accused in furtherance of their common intention committed house trespass into the house of the deceased. The accused and the deceased together consumed liquor. At that time, A1 hit on the head of the deceased with an iron rod. A2 committed theft of two gold chain, rings and pair of gold ear rings worn by the deceased and an amount of ₹. 3,000/- which was kept inside the inner wear of the deceased. The accused thereby committed robbery. Thereafter, the accused tied the legs of the deceased by using a twine and put the body of the deceased into the nearby well. Thereby, the accused in furtherance of their common intention murdered deceased Thankamma. Originally, case was registered as Crime No. 153/2010 of Peringome Police station. After the completion of investigation, final report was filed against the accused alleging commission of the above mentioned offences.

3. The final report was filed before the court of Judicial First Class Magistrate, Payyannur. The case was taken into the file of the said court as CP 20/2011.

4. A1 appeared before the court below. A2 who was under judicial custody was produced before the court below.

5. The court below after complying with the procedural requirements committed the case to the Court of Session. A2 was remanded under judicial custody.

6. A1 appeared before this court. A2 was produced before this court. A2 continues to be under judicial custody. A2 is represented by his counsel.

7. This court after hearing both sides framed charge against the accused u/s. 452, 392 and 302 r/w. 34 of IPC. Charge was read over and explained to the accused to which they pleaded not guilty.

8. On the side of the prosecution, PW1 to 29 were marked and Ext. P1 to P28 and MO1 to MO 17 series were marked.

9. When the accused were questioned u/s. 313 of Cr.P.C, they denied the incriminating circumstances appearing in evidence against them and stated that they are innocent.

10. Thereafter, both sides were heard u/s. 232 of Cr.P.C. This court was of the opinion that sufficient ground was not made out at that stage to acquit the accused . Therefore, the accused were called upon to enter on their defence.

11. On the side of A1, DW1 was examined and Ext. D1 was marked.

12. No evidence was adduced by A2.

13. I have heard the learned Public Prosecutor and the learned counsel for the accused.

14. The following points arise for determination in the case.

- 1) Whether the death of the deceased was a case of homicide?
- 2) Whether the accused committed murder of the deceased Thankamma?
- 3) Whether the accused committed robbery as alleged?
- 4) Whether the accused committed house trespass into the house of the deceased after having made preparation to commit theft and murder of the deceased?
- 5) Whether the above acts were committed by the accused in furtherance of their common intention?
- 6) If found guilty, what is the proper sentence to be awarded?

15. **Point No. 1** :- The deceased was leading a lonely life. She was residing alone at her house. Her body was found drowning in a well near her house. The prosecution contends that the death of the deceased was homicide.

16. The evidence adduced has to be analyzed in order to decide whether the prosecution case in this regard has been proved beyond doubt. It

will be convenient to refer to the evidence adduced before proceeding to analyze the question whether the death of the deceased is proved to be a case of homicide.

17. PW1 is the first informant. The case was registered on the basis of Ext.P1 first information statement lodged by PW1. The evidence of PW1 is as follows.

At the relevant time, PW1 was collecting cashew nuts from the cashew plantation. At that time, foul smell was noticed. PW1 by looking for the source of the smell reached the house of Thankamma. The house was seen locked from outside. When PW1 looked into the well, something was seen of having fallen into the well. PW1 called witness No. 4. When they looked into the well, it was found out that the object seen in the well was a human body. The matter was informed to the police. The police along with fire force arrived at the place. The body was recovered from the well. The body had decomposed and was beyond identification. PW1 further stated that the deceased used to wear ornaments such as chain, ring and ear rings. PW1 identified MO9 series as the rings and MO10 series as the ear rings of the deceased. PW1 saw the deceased for the last time on a Sunday before the dead body was seen in the well. PW1 saw the deceased at 08.30 A.M. At that time, the deceased had worn the ornaments. PW1 stated in the cross examination that he has got a shop which situates at a distance of 200 meters from the house of the deceased and the deceased used to sell ganja and people used to visit the house of the deceased to purchase ganja.

18. PW2 signed in Ext.P2 inquest report. He admitted his signature therein.

19. PW3 is a neighbor of the deceased. She stated that she had gone to see the dead body of the deceased. She further stated that the deceased used to wear one chain, ear rings and ring and the said ornaments were not seen on the dead body of the deceased.

20. PW4 stated that the deceased used to sell liquor and ganja and PW4 used to go to the house of the deceased to consume liquor. He had visited the house of the deceased for the last time at about 04.00 P.M. PW4 does not remember the year. At that time, witness No. 9 and A1 were present at the house of the deceased. PW4 remained there upto about 08.00 P.M and he had consumed liquor. When PW4 was having conversation with witness No. 9 by sitting on the top of a rock, sound was heard from the house of the deceased. When PW4 looked from outside, A1 was seen at the place. The deceased was seen lying nearby. She was drunk. PW4 along with A1 and witness No. 9 left the place. PW4 had seen ornaments like chain and earring at the time when he saw the deceased. It is seen that a portion of S.161 statement of PW4 was marked as Ext.P3 in the chief examination.

21. According to PW5, the deceased was engaged in the business of sale of liquor and ganja. On 17.03.2010 at 02.30 P.M, PW4 along with A1 reached the house of the deceased and consumed liquor. At that time, A1 caught hold of the hand of the deceased. PW4 and others pushed them away. Thereafter, all of them left the place.

22. PW6 stated that he had gone to the place after coming to know about the death of the deceased. It was two days after the incident. Both accused were present at the time when the police arrived at the place. A2 was

seen pointing out a culvert to the police and the police recovered two keys from beneath the culvert. PW6 further stated that he signed in Ext.P4 mahazar.

23. PW7 more or less repeated the evidence of PW6 with regard to A1 pointing out the culvert to the police and the police recovering two keys from beneath the culvert.

24. PW8 is running a jewelery. According to him, on 29.03.2010, A2 sold two rings and one pair of ear ring at the jewelery. On the next day, the police came to the jewelery along with the accused and recovered the ornaments sold by A2 at the shop.

25. According to PW9, he witnessed the recovery of ear ring and other ornaments by the police from the shop of PW8 and at that time, the accused were present along with the police. PW9 signed in Ext.P5 mahazar which was prepared in this regard.

26. PW10 is a neighbor of the deceased. According to him, he can identify the gold ornaments of the deceased. He identified MO9 series and MO10 as the gold ornaments of the deceased. PW10 explained in the cross examination that the deceased had handed over the gold ornaments to PW10 for pledging and the ornaments were pledged at the Peringome Co-operative Bank on two occasions.

27. PW11 stated that she is a neighbor of the deceased. The deceased used to wear rings and ear rings. On 21.03.2010 at 08.30 A.M, PW11 saw the deceased getting down from the bus and going to her house.

28. According to PW12, he reached the place 28.03.2010. At that time, the police along with the accused were present. The police recovered MO1 pipe, MO2 series glasses , MO3 cup and MO4 plate. PW12 signed in Ext.P6 mahazar which was prepared in this regard.

29. PW13 is the husband of the younger sister of the wife of A1. He stated that he signed in Ext.P7 seizure mahazar. At the same time, he stated that he did not witness the seizure of any article.

30. PW14 was Police constable attached to Peringome Police station. He stated that he went to Medical College Hospital at Pariyaram in connection with the postmortem examination of the dead body of the deceased. At that time, the police Surgeon handed over a plastic twine which was seen on the body of the deceased to PW14. The said twine was marked as MO5.

31. PW15 was police officer attached to Peringome Police station. He stated that he witnessed the seizure of MO5 twine and he signed in the mahazar prepared in this regard.

32. PW16 is a neighbor of the deceased. According PW16, he had gone to the house of the deceased to assist in wiring works. At that time, MO1 pipe was seen at the house.

33. PW17 was Professor of Forensic Medicine attached to Medical College Hospital, Pariyaram. He conducted postmortem examination of the dead body of the deceased and issued Ext.P10 certificate. The following antemortem injuries were noted.

- (1) lacerated wound 6 X 5 cm, raising a skin flap on the left side of top head, the lower end being 6cm above the lower being 6cm the left eye bro
- (2) lacerated wound 5X 5cm on the for head. Just above the right eye brow.
- (3) Two lacerated wound 1X 1cm and 2 X 1cm on the head
- (4) Underneath the above injuries, scalp tissues showed brownish black discoloration on the front and left side of neck suggesting infiltration of blood.
- (5) Skull showed a vertical fissured fracture starting from the left temporal bone and terminating the frontal bone.
- (6) Split laceration 3 X1 cm horizontally placed on the chin slightly to the left.

Postmortem injuries noted were three bone punctures on the lift side top of head.

34. With regard to the cause of death, Ext.P10 states that postmortem findings suggest that death was due to drowning. It was further stated that there is evidence of blunt violence sustained to the head prior to drowning. PW17 opined that the time of death was more than three days and less than 5 to 7 days. He further opined that if an unconscious person is put in water, the person will die drowning and the injury on the head can be inflicted by using MO1.

35. PW18 stated that he signed in Ext.P11 mahazar as per which MO6 shirt, MO7 pants and MO8 chapels were seized.

36. PW19 was police constable attached to Peringome Police station. He stated that he signed in Ext.P12 mahazar as per which burned cigarettes and blood stained stones were seized.

37. PW20 was police photographer. According to him, he went to the place of occurrence on 26.03.2010 along with finger print expert and took different photos. The photos and the CD were marked through PW20 as MO9 series.

38. It is seen that the number MO9 series was assigned to the gold ornaments which were marked through PW1. It is further seen that no specific property was marked as MO15. In the said circumstance, MO9 series marked through PW20 have been marked as MO15 series by correcting the number assigned to the material objects marked through PW20.

39. PW21 was Civil Police officer attached to Cyber Cell of Kannur District. He collected call details of mobile phone No. 9497045822 from 17.03.2010 till 22.03.2010. The said details were marked as Ext.P13.

40. PW22 stated that he signed in Ext.P14 mahazar as per which photographs and CD's were seized.

41. PW23 was Tester Inspector attached to the finger print Bureau, Malappuram. He stated that he examined finger print collected in the case and issued Ext. P15 certificate. It certifies that the chance print collected is identical with the right index finger impression of A2.

42. PW24 was Village Officer, Peringome. The site plan issued by him was marked as Ext. P16.

43. PW25 was ASI of police Peringome. He recorded Ext.P1 F.I.S and registered the case vide Ext.P1 (a) F.I.R.

44. PW26 was ASI of Police attached to the office of C.I of Police, Taliparamba. He reached Hotel "Prethu Regency" at a place called Mangalapuram Kottaram and inspected the register at the lodge and seized the same and thereafter returned the same with direction to produce before the same before court as and when ordered.

45. PW27 was S.I of Police, Peringome. He took over the investigation in the case. On 26.03.2010, he conducted inquest of the dead body of the deceased. He prepared Ext.17 series property lists after recovering properties from the place of occurrence. He filed Ext.P18 report. The seized pillow, the seized shirt, the seized skirt and the seized innerwear were marked through PW27 as MO11 to MO14.

46. PW28 was C.I of Police, Payyannur. He took over the investigation in the case on 28.03.2010. He questioned the witnesses. He arrested the accused. Ext.P19 series are arrest memos and Ext.P20 series are the inspection memos. When A1 was questioned under police custody, he gave Ext.P21 confession statement. On the basis of the said confession and as led by A1, PW28 reached a well near the place of occurrence. The water in the well was dried and the properties seen in the well were recovered as per Ext.P6 mahazar. A1 while questioned under police custody gave Ext. P22 confession statement. On the basis of the said confession statement and as led by A1, PW28 seized

keys as per Ext.P4 mahzar. When A2 was questioned under police custody, he gave Ext.P23 confession statement. On the basis of the said confession and as led by A2, PW28 reached a jewelery and seized ring and ear rings. PW28 filed Ext. 24 report. The finger prints of the accused were sent for analysis. The accused were produced before court vide Ext.P25 remand application. PW28 prepared Ext.P26 series property lists . MO16 bottle and MO17 series dresses were marked through PW28. Copy of forwarding note, seizure mahazar with regard to call details of the mobile phone of A1 and ownership certificate relating to the house of the deceased were marked through PW28 as Ext.P26 to P28. It is seen that the forwarding note was marked as Ext.P26 due to mistake because Ext. P26 was already marked. Therefore, the marking of the forwarding note has been corrected and number has been assigned as Ext.P29 to the said document.

47. DW1 is the manager of Peringome Service Co-operative Bank. The computer print out of gold loan ledger relating to gold loans availed by PW10 produced by DW1 were marked as Ext. D1.

48. What is brought out by the evidence adduced is that the body of the deceased was found in a well near her house. It was PW1 who is proved to have seen the dead body for the first time in the well. According to him, he was collecting cashew nuts from his property and he reached the property of the deceased upon getting foul smell and the house of the deceased was seen locked from out side. It was when PW1 looked into the well that the body was spotted. That led to PW1 lodging Ext.P1 F.I.S.

49. While considering the question as to whether the death was a case of homicide, the oral evidence of PW17 and Ext.P10 postmortem certificate are

relevant to be considered. PW17 gave evidence to the effect that a twine was found tied around the angles of the body with a slip knot.

50. Ext.P10 states that the postmortem findings suggest that death was due to drowning. At the same time, it is further recorded that there is evidence of blunt violence sustained to the head prior to drowning. The injury on the head is described as a vertical fissured fracture starting from left temporal bone and the frontal bone and terminating the frontal bone.

51. The learned Public Prosecutor contended that the oral evidence of PW17 coupled with Ext.P10 prove that the deceased was fatally wounded and her angles were tied and the deceased was thrown into the well and that led to the death. Considering the nature of injuries and the opinion given by PW17 regarding the evidence of blunt violence to head prior to drowning and the fact that the angles were tied with slip knot, I am inclined to accept the contention of the prosecution case in this regard.

52. In this context, it will be relevant to refer to the decision of the Hon'ble Supreme Court in State of *Rajasthan v. Shera Ram*(AIR 2012 SC 1). Therein, the Hon'ble Supreme Court held that the question as to whether the particular injury was sufficient in the ordinary course of nature to cause death is a question of fact which will have to be determined in the light of facts, circumstances and evidence in a given case.

53. In the given case, after taking into consideration the oral evidence of PW17 and Ext.P10, it is my considered view that the acts committed by the assailants by which vertical fissured fracture was caused on the skull of the deceased and the angles of the deceased were tied and body of the deceased

was put into well prove beyond doubt that the said acts were committed with the intention of causing death. The facts that vertical fissured fracture was inflicted on the skull and angles were tied prove that the deceased would not have fallen into the well without the intervention of human agency. The possibility of the deceased falling into the well except by intervention of others is completely ruled out by the evidence adduced. The evidence adduced prove that the death of the deceased was a case of clear homicide. No other conclusion is possible from the evidence on record.

54. In the light of the above discussion, I hold that the prosecution succeeded in proving that the death of the deceased was a case of homicide.

Point No. 1 is answered in favour of the prosecution.

55. **Point Nos. 2 to 5** :- The said points are considered and answered together.

Once it is found that the death of the deceased was a case of homicide, the next question that arises for consideration is whether the prosecution succeeded in proving that the accused murdered the deceased. The question as to whether the allegations of commission of house trespass and robbery alleged against the accused have been proved are also to be considered and decided along with the question as to whether the accused murdered the deceased.

56. Admittedly, no direct evidence is forthcoming to prove the involvement of the accused in the commission of the offences. The prosecution is relying upon circumstantial evidence to prove the involvement of the accused in the commission of offences. The prosecution relies upon items of evidence

which are directed against A1 and A2 separately and against A1 and A2 jointly. Firstly, I propose to consider the evidence adduced by the prosecution to connect A1 with the case.

57. The case of the prosecution is that it was A1 who was seen with the deceased for the last time and therefore, the Last Seen Theory will come into play.

58. In this context, it will be relevant to refer to the decision of the Hon'ble Supreme Court in State of UP v. **Satish (AIR 2005 SC 1000)**. Therein, the Hon'ble Supreme Court while dealing with the principle of Last Seen Theory held that the last seen theory will come 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 small and the possibility of any person other than the accused being the author of crime becomes impossible. The evidence adduced in this case has to be analyzed to decide whether there is any scope for applying the principle of Last Seen Theory in this case.

59. The prosecution relies upon the oral evidence of PW4 and PW5 to contend that it was A1 who was last seen with the deceased. The evidence of PW4 and PW5 is to the effect that the deceased was a vendor of liquor and ganja and PW4 and PW5 used to visit the house of the deceased for consuming liquor. According to PW4, he went to the house of the deceased on the 17th day of the month of March. He does not remember the year. According to PW5, he went to the house of the deceased on 17.03.2010. It is clear that it was on the said date that PW4 and PW5 claim to have finally visited the house of the deceased. Both PW4 and PW5 referred to the presence of A1 at the house. According to PW5, it was along with A1 that PW5 reached the house of the

deceased. PW4 stated that while he was sitting on a rock, he heard sound of quarrel from the house of the deceased and when he looked at the place, he saw that the deceased was lying at the place and the deceased was in a drunken condition. According to PW5, he saw A1 catching hold of the hand of the deceased. Thus, the evidence of PW4 and PW5 brings out the presence of A1 at the house of the deceased. But, it is significant to note that PW4 and PW5 were unanimous in stating that when they returned from the house of the deceased, they were accompanied by A1. Thus, going by the evidence of PW4 and PW5, A1 along with PW4 and PW5 left the house of the deceased on 17.03.2010.

60. In this context, the evidence of PW11 has to be considered. PW11 stated in the chief examination that she saw the deceased alive for the last time on 21.03.2010 at 08.30 A.M at a time when the deceased got down from the bus and was going to her house. According to PW4 and PW5, it was on 17.03.2010 that they saw A1 at the house of the deceased. It is clear that even subsequent to 17.03.2010, the deceased had been alive and was seen by PW11.

61. In the said situation, the presence of A1 at the house of the deceased on 17.03.2010 is not a circumstance inviting the application of the Last Seen Theory. The time gap between the point of time when the deceased was seen along with the accused and when the deceased was found dead is rather long. Hence, the presence of A1 at the house of the deceased on 17.03.2010 is not a circumstance helping to prove the prosecution case against A1.

62. The learned Public Prosecutor contended that S. 106 of the Evidence Act casts burden of proof upon A1 to explain as to what transpired at the house of the deceased on 17.03.2010. The said contention cannot be

accepted. What is brought out by the evidence of PW4 and PW5 is that A1 left the house of the deceased along with PW4 and PW5. At that time, the deceased was alive. She was again seen alive on 21.03.2010. No evidence is forthcoming to prove that A1 visited the house of the deceased or was seen along with the deceased at any point of time subsequent to 17.03.2010. Therefore, the case attempted to be built up by the prosecution in this regard is liable to be fail.

63. The evidence of PW4 and PW5 brings out that the deceased was engaged in the sale of arrack and ganja. Naturally, she would have had several customers. There is every possibility that many persons would have gone to the house of the deceased in between 17.03.2010 and 21.03.2010. The said aspect definitely affects the prosecution case sought to be developed against A1 by highlighting the presence of A1 along with the deceased on 17.03.2010.

64. The prosecution attempts to connect A2 with the case by highlighting two items of evidence. Firstly, the evidence of PW23 is relied upon to contend that the finger print that was found on a liquor bottle kept at the house of the deceased matched with the finger print of A2. Ext.P15 is the report filed by PW23 in this regard.

65. After carefully going through the evidence adduced in the context of Ext.P15, I find grounds to feel suspicious about the said part of the evidence tendered by the prosecution. As pointed out by the learned counsel for A2, PW27 admitted in the cross examination that several liquor bottles were seen kept at the house of the deceased. If the prosecution case is to be accepted, what has to be concluded is that the liquor bottle from which finger print was collected would have been kept among several liquor bottles. It is not clear as

to how the said particular liquor bottle alone could have been collected by PW27. It is also significant to note that no direct evidence is forth coming to prove that A2 had at any point of time gone to the house of the deceased. Therefore, it appears to me as highly unbelievable that the finger print of A2 would have been collected from one among the liquor bottles. A2 contends that his finger print was planted upon a liquor bottle in order to create false evidence. It is a contention which looks believable and probable in the light of the attending circumstances.

66. The prosecution also relies upon the evidence of PW28 to the effect that MO9 and MO10 gold ornaments were recovered in pursuance of the disclosure statement given by A2. The prosecution contends that the said gold ornaments belonged to the deceased.

67. The prosecution in order to succeed by relying upon the evidence relating to recovery of MO9 series and MO10 series gold ornaments had to prove that the said gold ornaments belonged to the deceased. After going through the evidence adduced, I am of the considered view that the prosecution failed to prove the said crucial aspect.

68. The prosecution is relying upon the oral evidence to contend that MO9 series and MO10 series gold ornaments used to be worn by the deceased. PW1 through whom MO9 series and MO10 series were marked stated that he used to see the deceased wearing the said gold ornaments. I find it difficult to accept the said part of the evidence of PW1. It is true that PW1 was a neighbor of the deceased. But, no circumstance under which he might have noticed and identified the ornaments of the deceased has been brought out in evidence. No special connection or intimacy between PW1 and the deceased is brought out.

MO9 series are rings and MO10 series are ear rings. The said ornaments by their nature would not have been conspicuous. PW1 has no case that the said ornaments had any special feature or identifying mark so as to catch the attention of others. Therefore, the version of PW1 to the effect that he had seen and identified MO9 series and MO10 series as worn by the deceased is difficult to be accepted.

69. The evidence of PW10 is to the effect that he had gone to the house of the deceased to do construction works of the house and the well and it was thereupon that he could identify MO9 series and MO10 series. He stated in the cross examination that the deceased used to get the said gold ornaments pledged through him. He explained that he pledged the gold ornaments at Peringome Co-operative Bank during 2009.

70. The evidence of DW1 assumes significance in the above context. DW1 who is the Manger of the Co-operative Bank referred to by PW10 stated that PW10 pledged gold ring of 1.9 gram and two gold ear rings of 4 gram. DW1 was giving evidence on the basis of loan ledger. What is brought out by the evidence of DW1 is that ring of 1.9 gm and ear rings of 4 gm were pledged by PW10. As pointed out by the learned counsel for A2, the description of gold ornaments pledged by PW10 does not match the description of MO9 series and MO10 series ornaments. As per Ext.P26 series property list, the two seized rings are of 2.450gm and the pair of ear rings is of 3.050 gm. It is very evident that the gold ornaments pledged by PW10 could not have been MO9 series and MO10 series gold ornaments.

71. Further, the evidence of PW8 to the effect that he purchased the above gold ornaments from A2 appears to me as not believable. According to

PW8, he is running a jewelery. He stated in the cross examination that several persons will come to the shop to sell and purchase gold and he does not maintain register for the same. The said version cannot be accepted. It is not at all believable that PW8 who is a professional jeweler will not be maintaining registers to prove the transactions at his shop. Going by the evidence of PW8, he purchased gold ornaments from A2 without recording the same in any register. It is a case which is difficult to be accepted.

72. The prosecution contends that MO9 series and MO10 series were recovered in pursuance of the disclosure statements given by A2. The learned Public Prosecutor relied upon the decision of the Hon'ble Supreme Court in *Charandas Swami v. State of Gujarath (2017 KHC 6289)*. That was a case where the disclosure statement was made by the accused about the location where the dead body of the deceased was dumped by him. The Hon'ble Supreme Court held that the disclosure statement made by the accused is admissible u/s. 27 of the Evidence Act. The factual situation in the present case is entirely different. This is a case where the identity of MO9 series and MO10 series as the properties of the deceased has not been proved beyond reasonable doubt. Therefore, S. 27 of the Evidence Act cannot come to the aid of the prosecution.

73. It is my view that the evidence relating to the recovery of the gold ornaments cannot incriminate the accused.

74. The prosecution relies upon the evidence of PW28 relating to the recovery of MO1 iron rod. According to PW28, MO1 was recovered in pursuance of Ext.P21 confession statement given by A1. The learned Public Prosecutor pointed out that PW17 opined that the injuries noted in Ext.P10

could be caused by using MO1. But, as contended by the learned counsel for the accused, there is no satisfactory evidence to show that the murder was committed by using MO1. What was suggested by PW17 was only a possibility and nothing more. It was pointed out that no expert evidence was adduced to prove that MO1 was used in the commission of offences. The learned counsel for A1 relies upon the decision of the Hon'ble Supreme Court in ***Majenderan Langeswaran v. State (NCT of Delhi) (2013 (7) SCC 192)*** Therein, The Hon'ble Supreme Court while dealing with the evidence relating to the recovery of the alleged murder weapon held that neither medical or forensic opinion was sought for with respect to the question whether the wounds on the body of the deceased would have been caused by the alleged murder weapon alone. Here, no forensic evidence is forthcoming in this regard. PW17 is not proved to be an expert to furnish opinion about the weapon. What has to be concluded is that the prosecution failed to prove that MO1 was the murder weapon. Therefore, the evidence relating to the recovery of MO1 is not sufficient to uphold the charge levelled against the accused.

75. The learned counsel for A1 also relied upon the decision of the Hon'ble Supreme Court in ***Vijay Thakur v. State of Himachel Pradesh (2014 (4) KLT SN 79)***. Therein, the Hon'ble Supreme Court held that the discovery evidence cannot be wholly relied upon, when the chain of events relating to circumstantial evidence is incomplete. The same is the position in this case.

76. The prosecution also attempted to place reliance upon the evidence of PW18 relating to the recovery of two keys from beneath a culvert on the basis of Ext.P22 disclosure statement allegedly given by A1. It is seen that the allegedly seized keys were not tendered in evidence. Further, as contended by the learned counsel for the accused, the keys are not proved to be the keys used

to lock the house of the deceased. Therefore, the said part of the evidence also cannot incriminate the accused.

77. The evidence of PW21 coupled with Ext.P13 which is the call details relating to mobile phone connection No. 9497045822 is relied upon by the prosecution. The learned Public Prosecutor contended that A1 is the subscriber of the said Mobile phone connection number and the mobile phone connection number of A2 is 9747235889. The prosecution contends that Ext. P13 will bring out the tower location of both accused on 22.03.2010 as Taliparamba and the call details will bring out frequent mutual phone calls made by the accused. The said contentions are resisted by the learned counsel for the accused by contending that the accused are not proved to be the subscribers of the said mobile phone connections. It is a contention that is liable to be accepted. Ext.P13 will not bring out the details of the subscribers of the above mobile phone connections. Unless and until the said mobile phone connections are proved to have been subscribed by the accused, no reliance can be placed upon the same. The said part of the evidence adduced by the prosecution is also liable to be rejected.

78. As already stated, this is a case where the prosecution attempted to adduce circumstantial evidence to prove the involvement of the accused in the commission of the offences. It is my considered view that the evidence adduced by the prosecution does not bring out the involvement of the accused in the commission of offences beyond reasonable doubt.

79. The learned Public Prosecutor relied upon the decision of the Hon'ble High Court of Kerala in ***Raju v. State of Kerala (2012 KHC 316)***. The Hon'ble High Court in the facts of the said case held that the circumstances

established by the prosecution point safely and in all human probability to the guilt of the accused. That is not the situation in the given case.

80. The learned counsel for A1 relied upon the following decisions. In *Jose v. S.I of Police, Koyilandy (AIR 2016 SC 4581)*, the Hon'ble Supreme Court held that the chain of circumstantial evidence was not completed in the said case and suspicion however grave cannot take the place of proof. In the said case, the Hon'ble Supreme Court by dealing with the recovery of articles belonging to the deceased at the instance of the accused held that non identification of the articles by any family member of the deceased was significant. In *Kanhaiyalal v. State of Rajasthan (2014 (4) SCC 715)*, the Hon'ble Supreme Court held that where a case rests squarely on circumstantial evidence, inference guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of the accused or guilt of any other person. The same dictum was laid down in *Nizam v. State of Rajasthan (2016 (1) SCC 550)* as well.

81. This is a case where commission of serious offences including offence punishable u/s 302 of IPC has been alleged against the accused. When more serious is the offence, the stricter has to be the degree of proof. It is my considered view that the attempt of the prosecution to rely upon circumstantial evidence alone to prove the culpability of the accused has failed. The prosecution case is liable to be rejected as not proved beyond reasonable doubt.

82. In the light of the above discussion, I hold that the prosecution failed to prove beyond reasonable doubt that the accused in furtherance of their common intention committed house trespass into the house of the deceased and committed robbery and committed murder of the deceased.

Point Nos. 2 to 6 are answered against the prosecution.

83. **Point No.6:-** In the light of my findings on point Nos. 2 to 6, I find the accused not guilty u/s. 452, 392 and 302 r/w 34 of IPC. Therefore, the accused are acquitted u/s. 235(1) of Cr.P.C.

84. The bail bond of A1 is cancelled and he is set at liberty forthwith. A2 will be released from custody forthwith, unless his continued detention is required in connection with any other case.

85. All the material objects except MO9 series and MO10 series being valueless will be destroyed after the appeal period is over. No body has claimed right over MO9 series and MO10 series. Therefore, the said properties will be confiscated after the appeal period is over.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open Court, this the 27th day of November, 2017).

ADDITIONAL SESSIONS JUDGE - II

WITNESSES FOR THE PROSECUTION

PW1.	14.07.2015	Sri. Hareesh
PW2.	14.07.2015	Sri. Chandran
PW3.	14.07.2015	Sri. Sharadha
PW4.	14.07.2015	Sri. Rajesh
PW5.	13.07.2015	Sri. Biju. P
PW6.	14.07.2015	Sri. Latheef
PW7.	14.07.2015	Sri. Faisal
PW8.	14.07.2015	Sri. Renjith (Jewelery owner)
PW9.	14.07.2015	Sri. Joseph
PW10.	14.07.2015	Sri. Mohanan
PW11.	--	Smt. Suchitra
PW12.	15.07.2015	Sri. Anwar
PW13.	15.07.2015	Sri. Ashraf C.V
PW14.	15.07.2015	Sri. Pavithran. P.V (Police Constable, Peringome Police station)
PW15.	15.07.2015	Sri. Hemanth Kumar (Police, Peringome, Police station)
PW16.	15.07.2015	Sri. Joseph. K.C
PW17.	16.07.2015	Dr. S. Gopalakrishna Pilla (Prof. Of Forensic Medicine, Medical College Hospital, Pariyaram)
PW18.	16.07.2015	Sri. Mathew
PW19.	16.07.2015	Sri. Abdul Rasheed (Police Constable, Peringome Police station))
PW20.	16.07.2015	Sri. Ragavendran (DCRB, Police photographer)

PW21.	16.07.2015	Sri. Sreejit. M (Civil Police officer)
PW22.	16.07.2015	Sri. Rajesh K.V
PW23.	16.07.2015	Sri. E. Madhusudanan (Tester Inspector, Finger Print Bureau, Malappuram).
PW24.	16.07.2015	Sri. Baji P.C (Village Officer, Peringome)
PW25.	16.07.2015	Sri. N.K Antony
PW26.	16.07.2015	Sri. Raveendran M.P (ASI of Police, Taliparamba)
PW27.	17.07.2015	Sri. M.E Rajagopalan (SI of Police, Peringome)
PW28.	03.08.2015	Sri. P.K Sudhakaran. (C.I of Police, Payyannur)

EXHIBITS FOR THE PROSECUTION

P1.	26.03.2010	: F.I.S.
P1(a).	26.03.2010	: F.I.R.
P2.	26.03.2010	: Inquest Report.
P3.	13.05.2010	: portio of S.161 syayement of PW4
P4.	28.03.2010	: Seizure Mahazar.
P5.	29.03.2010	: Seizure Mahazar.
P6.	28.03.2010	: Seizure Mahazar
P7.	29.03.2010	: Seizure Mahazar.
P8.	29.03.2010	: Portion of S.161 statementof PW13.
P9.	26.03.2010	: Seizure Mahazar.
P10.	27.03.2010	: Postmortem certificate.
P11.	29.03.2010	: Seizure Mahazar.
P12.	26.03.2010	: Seizure Mahazar.
P13.	27.01.2011	: Call details.

P14.	16.11.2010	: Seizure Mahazar.
P15.	22.04.2010	: Finger print report.
P16.	09.04.2010	: Sketch plan.
P17.	29.03.2010	: Property list.
P18.	28.03.2010	: Section Alteration Report.
P19.	28.03.2010	: Arrest Memo (Series)
P20.	28.03.2010	: Inspection Memos.
P21.	28.03.2010	: Disclosure statement.
P22.	28.03.2010	: Disclosure statement.
P23.	29.03.2010	: Disclosure statement.
P24.	28.03.2010	: Section adding Report.
P25.	29.03.2010	: Remand Report.
P26.	27.01.2011	: Property List (series).
P27.	13.05.2010	: Forwarding Note.
P28.	24.01.2011	: Seizure Mahazar.
P29.	06.04.2010	: Ownership Certificate.

WITNESS FOR THE DEFENCE

DW1	28.09.2017	: Surendran (Secretary of Peringome Service Co-operative Bank).
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WITNESSES AND EXHIBITS FOR THE DEFENCE

D1.	23.09.2017	: Loan Ledger Computer Print.
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MATERIAL OBJECTS

MO1.	:	Pipe
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MO2.	:	Glasses (series)
MO3	:	Steel Cup.
MO4.	:	Plate.
MO5.	:	Rope.
MO6.	:	Shirt.
MO7.	:	Pants.
MO8.	:	Chappels.
MO9.	:	Ring.
MO10.	:	Ear Rings.
MO11.	:	Pillow.
MO12.	:	Shirt.
MO13.	:	Skirt.
MO14.	:	Innerwear.
MO15.	:	Photographs with CD.
MO16.	:	bottle.
MO17	:	Dresses (Series).

COURT EXHIBITS

- NIL

ADDL. SESSIONS JUDGE-II

IN THE COURT OF SESSION
THALASSERY
SESSIONS CASE No. **366/2011**

J U D G M E N T

DATED: 27.11.2017.

To

1. The Registrar, High Court of Kerala,
Ernakulam, Kochi - 682031.
2. The Judicial First Class
Magistrate, Payyannur.
3. The District Collector, Kannur.
4. The Supdt. of Police, Kannur.
5. The Chemical Examiner,
Thiruvananthapuram.
6. The Supdt. Central Prison, Kannur.
7. The Public Prosecutor, Thalassery.
8. The Accused.
