

## TABULAR FORM

1. Serial Number	] Sessions Case No. <b>304/2014</b>
2. Name of Police Station and Crime No. of the offence	] Kuthuparamba Police Station ] Crime No.859/2013

### DESCRIPTION OF THE ACCUSED

3. Name	4. Father's Name	5. Occupation	6. Residence	7. Age
Muhammed Azad	Muhammed Muthalab	--	1/6F, Jeevankrishna Khosh Road, Belgachiya, Calcutta-37, West Bengal.	19/13

### DATE OF

8. Occurrence	] 16-07-2013
9. Complaint	] 22-01-2014
10. Apprehension of the accused	] 22-07-2013, 15-12-2019
11. Release on bail	] 23-09-2014, 07-10-2020
12. Commitment	] 26-03-2014
13. Commencement of trial	] 12-02-2022
13A. Commencement of evidence	] 19-02-2024
14. Close of trial	] 25-04-2026
15. Sentence/Order	] <b>30-04-2026</b>
16. Service of copy of judgment or finding on accused	] <b>30-04-2026</b>
17. Explanation for delay	] B diary extract attached
18. Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C.	] From 22-07-2013 to 23-09-2014 ] From 15-12-2019 to 07-10-2020 ] From 29-04-2026 till this date ]

Addl. Sessions Court -I, Thalassery,  
Dated: 30-04-2026

Sd/  
ADDITIONAL SESSIONS JUDGE-I

**IN THE COURT OF SESSIONS, THALASSERY DIVISION**

Present: Sri. Philip Thomas, Addl. Sessions Judge-I, Thalassery  
Thursday, the 30<sup>th</sup> day of April, 2026/10<sup>th</sup> Vaisakha, 1948

**SESSIONS CASE No.304 OF 2014**

(Committed by Smt. Jalajarani M T, Judicial First Class Magistrate,  
Kuthuparamba in C.P. No. 09/2014 in Crime No.859/2013 of  
Kuthuparamba Police Station)

Complainant	]	State: SHO, Kuthuparamba Police Station (Prosecution conducted by Sri.Jayaramdas.E., Addl. Public Prosecutor, Thalassery)
Accused	]	Muhammed Azad, S/o Muhammed Muthalab, aged 19/13, 1/6F, Jeevankrishna Khosh Road, Belgachiya, Calcutta-37, West Bengal.
	]	(Accused defended by Advs.K Lal Mohan and C Nisha)
Charge	]	U/ss. 302 and 392 IPC.
Plea of the accused	]	Not Guilty
Finding of the Judge	]	Guilty u/s.302 IPC Not guilty u/s.392 IPC
Sentence/Order	]	1) The accused is sentenced to undergo imprisonment for life and to pay a fine of ₹50,000/- (Fifty thousand only) under u/s.302 IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of six months. If the fine amount is realised, it shall be paid to the wife and children of the deceased Muhammed Shamsudeen; (2) Set off is allowed under S.428 Cr.PC from <b>22.07.2013 to 23.09.2014, from 15.12.2019 to</b>

	]	<p><b>07.10.2020 and from 29.04.2026 till this day</b>, the period that has already been undergone by the accused as undertrial prisoner, subject to remission or commutation, if any, granted by the competent authority;</p> <p>(3) MOs 1 to 7 and 9 to 11 being valueless shall be destroyed. MO8 knife will be broken up and sold as per Rule 268 of Criminal Rules of Practice.</p> <p>(4) The District Legal Service Authority (DLSA), Kannur at Thalassery is recommended to provide compensation to CW13, who is the wife of deceased Muhammed Shamsudheen and their two daughters under the Victim Compensation Scheme. Send a copy of the judgment, FIR with FIS, and memo of evidence to the Secretary DLSA.</p> <p>5) The accused is found not guilty of the offence u/s.392 IPC and he is acquitted of that offence u/s.235(1) Cr.P.C.</p>
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### **J U D G M E N T**

This case is chargesheeted by the Police Inspector, Kuthuparamba, in Crime No.859/2013 of Kuthuparamba Police Station, against the accused alleging the offence under sections 302 and 392 IPC.

2. The prosecution case is that on 16.07.2013 at 23.00 hours, the accused, on account of the enmity that he had towards Muhammed Shamsudheen (deceased), who brought him to the sack repairing godown having Door No.IV/572 (Revision No.XXII-395) of Kuthuparamba Municipality, owned by CW3 for work, as Muhammed Shamsudheen not permitted him to go back to his native place and caused hurt to him in the scuffle with regard to the failure of giving the wages as promised to him, the accused made Shamsudheen unconscious by throatling him by using a laundry line while he was cooking in the kitchen and dragged him from the

kitchen to the bedroom and from there the accused inflicted cut injury on his throat using a knife and murdered him. Also, the accused committed robbery of the SBI ATM card having No. 31876776098 in the possession of Shamsudheen with deposit of ₹54,666/-, and a purse containing ₹100/- and the mobile phone. Hence, the accused committed the above offence.

3. The final report was filed before the Judicial First Class Magistrate Court, Kuthuparamba and the case was taken on file as CP9/2014. After completing all the legal formalities, the case was committed to the Hon'ble Sessions Court, Thalassery. In the Sessions Court, the case was numbered as this case and was made over to the Addl. Sessions Court-III for trial.

4. The accused was produced from custody. He was defended by a counsel of his own choice. Thereafter the accused was released on bail. Heard. Charge was framed under sections 302 and 392 IPC. The charge was translated, read over and explained to the accused in Hindi, the language known to him. He pleaded not guilty.

5. Thereafter, as per Order No.A3-530/17088/2023 dated 26.08.2023 of the Hon'ble District & Sessions Court, Thalassery, the case was transferred to this Court for trial.

6. The Prosecution cited CWs 1 to 43, and out of them CWs 4, 5, 19, 34, 35, 36, 42, 31, 33, 2, 15, 18, 3, 29, 25, 37, 38, 41, 28, 40, 43 and 39 were examined as PWs 1 to 22. Exts.P1 to P37 and MOs 1 to 11 series were marked. CWs1, 6, 14 and 30 were reported to be dead. The Additional Public Prosecutor gave up the remaining witnesses.

7. After closing the prosecution evidence, the accused was questioned under section 313 Cr.PC. He was able to understand Malayalam and when there arose difficulty for him to understand, those questions were translated to him through the translator who was present throughout the examination of the accused under section 313 Cr.PC. He denied all the incriminating evidence adduced against him by the Prosecution and stated that he has not committed any offence and he did not go there on that day.

8. Heard under Section 232 of the Code of Criminal Procedure. As there was evidence against the accused, it was found that the accused was not entitled to be acquitted u/s.232 Cr.PC. Hence, he was called upon to enter on his defence evidence and to adduce evidence. No oral or documentary evidence adduced on the side of the defence side.

9. Heard.

10. The following points arise for determination: -

- (i) Whether the accused caused the death of Muhammed Shamsudheen as alleged by the Prosecution?
- (ii) Is the accused guilty of murder of Muhammed Shamsudheen as alleged by the Prosecution?
- (iii) Whether the accused robbed the SBI ATM card having No.31876776098 in the possession of Shamsudheen with deposit of ₹54,666/-, and purse containing ₹100/- and the mobile phone of the deceased Muhammed Shamsudheen as alleged by the Prosecution?
- (iv) What is the order or sentence to be passed?

11. **Point Nos. (i) to (iii):** - For sake of convenience and to avoid repetition of discussion of evidence, these points are considered and determined together.

12. The first aspect to be decided is whether the death of Muhammed Shamsudheen was a homicide. Ext.P9 is the inquest report, and Ext.P8 is the postmortem certificate relating to Muhammed Shamsudheen. The antemortem injuries noted in Ext.P8 are the following:

*1. Gaping incised wound, 13x6.5cm on the front of neck, mostly towards the left side of midline; the right end of the wound was 6cm to the right of midline and 8cm below the angle of lower jaw the left end was 8cm below the left mastoid. There were no hesitation cuts seen, at the beginning of the injury. Three tailing were seen at the right end of the wound, close by (2cm, 2.5cm and 1cm respectively). A superficial cut 7x0.5cm horizontal involving the skin alone was seen 1.5cms above and parallel to the upper border of the main injury; it was mostly on the right side of front of neck, the left end being 1.5cm to the left of midline. Trachea was found cut into two, 3cm below the Adam's apple. Jugular vein and carotid artery were severed on the left side (they were intact on the right side). Sternomastoid muscle on the left side was also cut into two. Oesophagus, thyroid cartilage, spine and hyoid bone were intact.*

*2. Pressure abrasion (ligature mark) encircling the neck, it was situated 6cms below the right ear (0.8cm wide), 8cm below the chin (width could not be measured since it blended with the upper border of the cut throat injury), 8cm below the left ear (0.7cm wide) 5.5cm below the right mastoid process (0.7cm wide) and just at the hairline at the back of head in the midline*

*(0.6cm wide). The 2 ends of the ligaturé mark were crossing each other (gap of 2cm in between) at the back, slightly to the left of midline. Subcutaneous tissues corresponding to the ligature mark were infiltrated with blood. Small muscle contusions were seen on the sides of neck, underneath the pressure abrasion. Contusion measuring 8x7cm was seen on the front aspect of the neck internally, just below the cut throat injury. Another contusion 3x2.5cm was seen on the inner aspect of the right sternomastoid muscle, corresponding to the ligature mark.*

13. There is no serious dispute that the death of Shamsudeen was a homicide. The Doctor opined that the deceased died of a cut throat injury. He also opined that there was an attempt of ligature strangulation prior to the cut throat. He further opined that injury No.1 is the fatal injury and that injury No.1 is sufficient to cause death in the ordinary course of nature. The neck was cut 4 times. The ligature strangulation did not cause death. Injury Nos. 1 and 2 are antemortem injuries. 5 to 10 seconds of strangulation will make a person unconscious. That is why there is no defence wound, though the throat was cut 4 times. A contusion having size of 3 x 2.5 cms corresponds to the ligature strangulation and the contusion measuring 8x7cm corresponds to the cut throat injury. These findings establish that his death was a homicide. Therefore, it can be safely concluded that the death of Shamsudeen was indeed a homicide.

14. As already stated, CW1 the de facto complainant who lodged Ext.P21, FI statement was no more and hence the FI Statement was marked through the Sub Inspector of Police, Kuthuparamba who recorded the same.

15. PW10, is the Supervisor (മേന്യൂറി) in the godown at Naravoor, Kuthuparamba, where the deceased and the accused had joined for work. He deposed that Yousuf (PW13), his mother's elder sister's son, was the owner of the sack business in which old sacks were transformed into large sacks after untying their stitches and restitching them. These works were carried out in a building taken on rent. On 16.07.2013, the deceased and the accused came to the godown for work. Earlier, the deceased had worked in their godown. As another employee from West Bengal namely, Bipin did not return after going home, PW13 summoned the deceased again for work. At that time the deceased was working at Kozhikode and he came for work along with the accused. They came together for work on 16.07.2013 at 11.30 am. As soon as they came, he told his master and as instructed by his master, he made arrangements for their food. He further deposed that on 16.07.2013, when they came for work in the godown PWs1, 2 and CW6 were there in the godown for work and their working hour was 9.00 am to 5.00 pm. On that day at 6.30 pm, while he was about to leave the godown, the accused and the deceased wrote down two mobile numbers on a paper, handed it over to him and demanded to recharge those mobile phones. Later, he handed over that paper to the Investigating Officer. He had recharged those mobile phones. He further deposed that at 6.30 pm, while he left the godown, the deceased and the accused were alone in that godown. On the next day at 11.00 am, when he came back to the godown three women workers were found engaged in their work, sitting outside the godown, and on his enquiry about the accused and the deceased, the women replied that they might be sleeping inside the godown. According to him, usually all workers from Bengal rose up late at about 11.00 am as they would play on their phones late at night. He entered the godown and found the room in which the deceased and the accused were sleeping was locked. So, he called them, but there was no response, and he understood that the room was locked from outside. So, he

went to the backside of that room and peeped into it through the window which was open. Inside the room, the light and fan were switched on, and he found the deceased lying on the floor in a pool of blood while the accused was not in the room. Though he searched for him, he could not find him at or near the godown premises. So he intimated the matter to his master, PW13, over phone, who in turn informed it to his brother, CW1. Later, CW1 called him and obtained an appraisal of the matter from him. Thereafter, he went to the Police Station and CW1 also arrived. The Police came and opened the door of the room in which Shamsudheen was found in a pool of blood. As the accused was not found in the godown, he suspected him to be the person who murdered Shamsudheen. PW10 further deposed that when Police brought Azad there for collection of evidence, he identified him to the Police. He identified the accused who stood in the dock as Muhammed Azad. He also testified that the deceased Shamsudheen was engaged in supplying labourers as required by them.

16. PWs 1 and 2 are the women workers who were employed in the godown. PW1 deposed that she was aware of the incident in which Shamsudheen was murdered. She further deposed that she was engaged in untying the stitches of the gunny bags in the godown, and that the deceased would thereafter convert them into larger gunny bags. She further deposed that the Proprietor of the godown was PW13, Yousuf. She also deposed that PW2 and CW6 also worked with her. CW6 is no more. On 16.07.2013, the deceased and another person came to the godown for work. On 17.07.2013, when they reached the godown, Shamsudheen was not there, and he and the accused were residing in the godown. When they reached the godown, it was found closed. They worked, as usual, sitting outside the godown. Their working time was from 9.30 am to 5.30 pm. By 11.00 am, PW10 came and enquired about the deceased and the accused, and she told him that she did

not see them. PW10 waited for them. As they did not come, he knocked on the door in the godown and it was not opened and there was no response and so he looked into the room through the window and found Shamsudheen in a pool of blood, and he told them about. So, they left the place immediately. She further deposed that as another worker Bipin did not return for work after he had gone to his native place PW13 engaged Shamsudheen in work. She also deposed that on 17.07.2013, Muhammed Azad was also not found in the godown. She identified the accused who stood in the dock.

17. PW2, Vanaja, was another worker in the godown. She deposed in tune with the evidence of PW1. She also deposed that the deceased Shamsudheen was known to her and that she came to know of the death of Shamsudheen on 17.07.2013. She further deposed that she and one Kousu worked there, that PW13 was their Master and PW10 was the Supervisor. She further deposed that the deceased and the accused belonged to Bihar and therefore they resided in the godown at night. She worked there for 7 years and when she joined for work there, the deceased was already an employee there in the godown. Thereafter, he came for work on the day previous to his death. She further deposed that on 17.07.2013, she came for work at 9.15 am and that she and Kousu engaged in their work sitting in the courtyard. The grill of the godown was lying open. At about 11 am, PW10 came there and asked about the accused and the deceased and they told him that they did not know. PW10 knocked on their room, and as there was no response, PW10 went to the western side of the room and peeped into the room through the window and found the deceased lying in a pool of blood and he conveyed the matter to them. She also deposed that on 17.07.2013 they did not see Azad (accused). Kousu peeped into the room but she and PW1 did not do so and they returned to their homes. She identified the accused who stood in the dock. She further deposed that she first saw the accused on

16.07.2013 and thereafter saw him on the date of her examination in Court. As the accused was missing from the place, she felt that it was the accused who committed the murder of Shamsudheen. To a Court question she clarified that by the window on the western side she meant the side window.

18. PW13 was the owner of the sack business in which PW10 was the supervisor and PW1 and PW2 were the employees. He further deposed that he had taken on rent a house and the same was being used as godown for his business. Earlier, Shamsudheen had worked with him and thereafter he left his job and later he came for work again with another person as demanded by him. It was on the previous day, to the death of Shamsudheen, he came with another worker. He also deposed that Shamsudeen came in the month of July 2013 and it was PW10 who had looked after the business in the godown. At that time he was not there in the godown and hence he instructed PW10 to give them food and engage them in work. Also, he instructed PW10 to give necessary accommodation for them in the godown itself. He also testified that he came to know about the death of Shamsudeen while on his way to Manathavady. On getting information about it, immediately he telephoned Firaad, his brother's son, and instructed him to do the necessary things. Later, he came to know that the accused strangled Shamsudeen and thereafter his throat was cut.

19. The case is solely based on circumstantial evidence. The Apex Court laid down the five principles to be followed in deciding a case based on circumstantial evidence in **Sharad Birdhichand Sardar v. State of Maharashtra (AIR 1952 SC 343)**. These five principles (*panchsheel principles*), as propounded by the Apex Court, are as follows:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;

2. 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;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved;
5. There must be a chain of circumstances 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.

20. Thus, in a case based on circumstantial evidence, it is well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, however strong they may be, to take the place of proof. It is in the context of the above settled principles, the evidence led by the prosecution is to be analysed.

21. The prosecution relied on the following circumstances pointing to the guilt of the accused person:

- (i) The accused and the deceased were last seen together at the house-the place of occurrence-where they stayed;
- (ii) After the incident the accused absconded from the place of occurrence in night and left to his native place in West Bengal;
- (iii) The accused has no explanation for leaving the house where he was staying with the deceased in the night;
- (iv) The accused surrendered before the Ultadanga Police Station in connection with this case;
- (v) False plea taken by the accused that he did not go to the place of occurrence on that day.

22. Though, the motive alleged by the Prosecution to commit the offence by the accused is that the deceased failed to pay the agreed amount for his work and the deceased did not allow him to return him to his native place. But the Prosecution failed to prove the motive of the accused alleged by them. Here it is pertinent to note that the present case completely rests upon the circumstantial evidence. In that circumstance it is not easy to prove the motive alleged in the case against the accused and the accused alone knows what was his motive in committing the offence. In **G Parshwanath v. State of Karnataka (2010 (8) SCC 593)** and **Chetan v. State of Karnataka (2025 KHC 6563)**, it was held that while proof of motive strengthens the Prosecution case based on circumstantial evidence, failure to prove the same cannot be fatal. So, the failure of the Prosecution to prove the motive is not fatal to the Prosecution case.

23. As already stated PW10 deposed that the deceased and the accused came to the godown around 11.30am on 16.07.2023, and that they stayed together therein. He further deposed that he informed PW13 over phone regarding their arrival, and as instructed by PW13, he purchased provisions

for their food, going to the shop along with the accused. He left the godown at 6.30pm and at that time the accused and the deceased were alone in the godown. On the next day, when he came to the godown, he found Shamsudeen dead and the accused missing. PW10 also deposed that when he left the godown as required by the accused and the deceased, he recharged their mobile phones for ₹100/- each.

24. PW1 deposed that their working hours were from 9.30am to 5.30pm and on 16.07.2013, the deceased and the accused came to the godown for work, and on 17.07.2013 at 9.30am when she came to the godown for work, Shamsudeen and the accused were not found in the godown. PW2 also deposed that on 16.07.2013, the deceased and the accused came there for work and in the evening at 5.45pm when she returned after work, the accused, the deceased and PW10 were there in the compound. On 17.07.2013 at 9.15am, when she came to the godown for work, she did not find the accused and the deceased there and at 11am when PW10 came and enquired about them, she and other workers told him that they did not know about them.

25. The facts that the accused arrived along with the deceased to the godown for work, that they were last seen together and that the accused was missing from the godown on the morning of 17.07.2013, stand proved through the testimonies of PWs 1, 2, and 10. Their evidence corroborates one another and establishes these circumstances beyond doubt. Further, the evidence of PW10 that he informed PW13 regarding the arrival of the deceased and the accused is corroborated by the testimony of PW13. The evidence of PW10 concerning the arrival of the accused with the deceased on 16.07.2013 is corroborated beyond doubt by the testimonies of PWs 1 and 2, as well as by the evidence of PW13. The fact that the deceased was last seen

along with the accused is also proved beyond doubt by the evidence of PW10. During the cross examination of PWs 1, 2, and 10, the defence did not have serious cross examination as to the arrival of the accused with the deceased to the godown but only a mere denial during the cross examination of PW10 that the accused did not come with the deceased to the godown. Therefore, the plea of the accused that he did not go to the place of occurrence on the date of the incident stands disproved as false.

26. The defence counsel assailed the Prosecution case on the ground that the name of the accused in the final report and in the First Information Statement is different. It is true that in Ext.P21, the name of the accused was stated to be Muhammed Yasil by CW1, whereas in the final report his name is recorded as Muhammed Asad. It is to be noted that Ext.P21 FIS was lodged by CW1 based on the information passed to him by PW13, who received the information over phone from PW10. CW1 had also ascertained facts directly from PW10. Even in such circumstances, there exists the possibility and probability of a mistake when CW1 furnished the First Information Statement. However, the evidence of PWs1, 2 and 10 is very credible. Moreover, all these witnesses had identified the accused as the person who had come with the deceased Shamsudheen. So, the difference in the name of the accused and the name of the person stated by CW1 in Ext.P21 who reached the godown with Shamsudheen is of no avail to the defence side.

27. The defence counsel further pointed out that PW1 deposed that the details of the sack repairing would be noted in a book. But, the Police did not care to take that book into custody during the investigation. PW2 also deposed that all persons would enter the details of their work in a book. It is true that PWs1 and 2 deposed in cross-examination that after their work

women workers would enter in a book, how many sacks they have unstitched. But, PW1 deposed that she did not know what was being done in the case of men workers. However, the failure of the Investigating Officer to take into custody that book about which PW1 had been deposed is not a fatal one because that book has no direct connection between the deceased or the accused in the case.

28. The next contention raised by the defence counsel is that the identification of the accused by PW10 is not reliable because of her testimony in cross-examination that she did not know anyone other than the deceased and the accused who had come there from other States for work, and her further evidence that she could not identify the persons who worked there earlier. But in further cross-examination she deposed that she had seen the accused when he came with the deceased. Here it is pertinent to note that the accused and the deceased came to the godown at 11.30 am and thereafter PW1 was with them till 5.30 pm. In that circumstance, PW1 had sufficient opportunity for at least 4 or 5 hours to see the accused on 16.07.2013 and got his face inscribed in her mind. In that circumstance the contention of the defence that the identification of the accused by PW1 is not credible is not at all sustainable.

29. The defence found fault with the investigation, in the failure of the Investigating Officer to take into custody the book in which the details of the persons who newly joined for work is recorded. But according to the defence, the Investigating Officer failed to take that book into custody in which PW10 recorded the details of the persons who newly joined for work. He did depose that he had stated this fact to the Investigating Officer. But the investigating officer did not take that book into custody. But for this failure of the investigating officer, the Prosecution case that the accused came to the

godown for work with the deceased cannot be disbelieved because as already stated there is ample evidence to prove that the accused had reached the godown for work along with the deceased.

30. The next contention raised by the defence counsel is that the Prosecution failed to prove that such a business was being conducted at the godown. The basis of the contention is that the Prosecution has not produced the licence or the rent note of the building in which the business had been running by PW13. PW13, the owner of the business deposed that he was not having any licence to run the business conducted by him. PW10 deposed that there was a rent deed for taking the building on rent and that there was receipt for the payment of rent also. He also deposed that he did not show these documents to the Police. But the fact that such a business was being conducted in the building which was the place of occurrence in the case is credibly deposed by PWs1, 2, 10 and 13. Further from Ext.P10, scene mahazar, it can be seen that there were plenty of gunny bags kept in the building suggesting that such a business, as deposed by PWs 1, 2, 10 and 13 was being run there in the building. Also, PW3 a neighbour to the godown, deposed that such a business was being run there in that building. So, the Prosecution has succeeded in proving that PW13 was conducting such a business there in the building and that PWs1 and 2 were the workers in that business and PW10 was its Supervisor. So, the failure of the Prosecution to produce the rent note of the building is not fatal to the Prosecution case.

31. Again, the defence contended that the Investigating Officer failed to produce the lock which was broken and was deposed to have been taken into custody by the Police. But, PW20 deposed that the broken lock was there on the door itself. Moreover, breaking open the door by the Police is credible because from the evidence of PW10 it is evident that the door of the

room was locked, and that was why he went behind the room and peeped into it through the window and found Shamsudheen lying dead in a pool of blood inside the room. In that circumstance there is nothing to disbelieve the evidence adduced by the Prosecution that the door of the room where the dead body was found was locked from outside. So the failure of the Investigating Officer to take into custody the broken lock and not producing the same cannot be found to be fatal.

32. The Prosecution further relied on the confession statement of the accused, Ext.P1(a), on the basis of which MO1 jeans and MO2 baniyan and MO3 sandals were recovered. According to the Prosecution MOs1 and 2 were clothes worn by the accused at the time of the commission of the crime. These material objects were sent to RFSL for forensic examination ( Item Nos.7 and 8 in Ext.P32). From Ext.P32 RFSL report it is seen that there was no blood either on item No.7 jeans or item No. 8 baniyan. In that circumstance, there is nothing to connect these material objects with the crime. Moreover, there is no witness in the confession statement recorded as that of the accused and in that circumstance on the basis of the decision of the Apex Court in *Subramanya v. State of Karnataka (2022 KHC 7088)* the alleged confession is not admissible in evidence.

33. When the Prosecution has successfully proved that the accused came to the godown with the deceased on 16.07.2013, and that the deceased was last seen in his company, the accused is under a duty to explain what happened to the deceased who was last found with him, and to clarify why he left the place of occurrence and went to his native place in West Bengal. No explanation has been offered on these matters.

34. PW18 deposed that on 22.07.2013 while he was working as Sub Inspector of Police Ultandanga Police Station (West Bengal) at 20.55hrs, the accused surrendered in his Police Station. He informed the matter to the Kerala Police and he got a reply from Kerala Police by email stating that the person surrendered was wanted in Cr.No.859/2013 of Kuthuparamba Police Station u/s.302 IPC. So he arrested him in connection with the case at 21.45 hours on the same day after preparing Ext.P14 arrest memo and Ext.P15 inspection memo. To prove the surrender of the accused in his station Exts.P16 and P17 extracts of the GD in his station were also marked through him. He also deposed that PW 7 and two other Civil Police Officers visited his Police Station in connection with the investigation of the case and Ext.P18 extract was proved through him to prove the visit of PW7 and the two Civil Police Officers, PWs6 and 16. Also, through PW18, Ext.P19 remand prayer filed by him before the Additional Chief Judicial Magistrate Court, Sealdah, South 24 Pargana was proved. Exts.P14 to P19 documents clearly establish that the accused had surrendered in Ultandanga Police Station before PW18 in connection with this case. He has no explanation as to why he surrendered in the Police Station in connection with this case. Surrender of the accused in the Police Station in connection with this case is also to be taken as a circumstance against the accused because he had no explanation for his conduct of surrendering before the Police Station, when no Police was reached in search of him at his native place in connection with the case.

35. Moreover, the false plea taken by the accused that he never came to the place of occurrence on 16.07.2012, is also a circumstance that can be used against the accused.

36. In such circumstances, the only inference that can be drawn is that the accused left the place after causing the death of Shamsudheen. The facts established as per the above evidence are consistent only with the hypothesis of the guilt of the accused. So, on an overall analysis of the evidence adduced in the case, it can be safely concluded that it was the accused who caused the death of Shamsudheen as alleged by the Prosecution.

37. PW9, the Professor of Forensic Medicine and Police Surgeon in Pariyaram Medical College who conducted the postmortem of Shamsudheen opined that Shamsudheen died of the cut throat injury and also that there was an attempt of ligature strangulation prior to the cut throat. Ext.P8 would show that Shamsudheen had sustained the following injury :-

*(i) Gaping incised wound, 13x6.5cm on the front of neck, mostly towards the left side of midline; the right end of the wound was 6cm to the right of midline and 8cm below the angle of lower jaw the left end was 8cm below the left mastoid. There were no hesitation cuts seen, at the beginning of the injury. Three tailing were seen at the right end of the wound, close by (2cm, 2.5cm and 1cm respectively). A superficial cut 7x0.5cm horizontal involving the skin alone was seen 1.5cms above and parallel to the upper border of the main injury; it was mostly on the right side of front of neck, the left end being 1.5cm to the left of midline;*

*(ii) Pressure abrasion (ligature mark) encircling the neck, it was situated 6cms below the right ear (0.8cm wide), 8cm below the chin (width could not be measured since it blended with the upper border of the cut throat injury), 8cm below the left ear (0.7cm wide) 5.5cm below the right mastoid process (0.7cm wide) and just at the hairline at the back of head in the midline (0.6cm wide). The 2 ends of the ligaturé mark were crossing each other (gap of 2cm in between) at the back, slightly to the left of midline.*

*Subcutaneous tissues corresponding to the ligature mark were infiltrated with blood. Small muscle contusions were seen on the sides of neck, underneath the pressure abrasion. Contusion measuring 8x7cm was seen on the front aspect of the neck internally, just below the cut throat injury. Another contusion 3x2.5cm was seen on the inner aspect of the right sternomastoid muscle, corresponding to the ligature mark.*

38. Also, it is seen that trachea was found cut into two, 3cm below the Adam's apple and the jugular vein and carotid artery were severed on the left side and the sternomastoid muscle on the left side was also cut into two.

39. PW9 deposed that the pressure abrasion noted in Ext.P8 can be caused by MO7 string and that injury No.1 could be caused by MO8 knife. He also deposed that injury No.1 was the fatal injury, and the same was sufficient to cause death in the ordinary course of nature. MO8 knife is one taken into custody from the place of occurrence. Ext.P32, RFSL report would show that there was presence of blood on MO8 ( Item No.5) and the group of that blood was 'O'. From Ext.P8 postmortem certificate and as deposed by PW9, it can be seen that the blood group of the deceased was O<sup>+ve</sup>. In that circumstance it can be safely concluded that the assailant had used MO8 knife in causing the death of the deceased.

40. Every person knows that infliction of cut injuries on the vital part of the body, namely neck, of a man, would definitely cause the death of the person. So, it is well evident that the intention of the accused in inflicting the injuries to Shamsudeen was with the intention of causing his death.

41. Now, the remaining question is whether the accused is entitled to get the benefit of the 1st exception to section 300 IPC.

42. In the evidence of the Investigating Officer, PW21, it has come out that as the deceased failed to pay the agreed wage to the accused, he got ready to go back to his native place and there occurred an exchange of words and altercation between them and the deceased did not allow him to go home and the deceased told him that he had spent ₹1,000/- to bring him there. and that he would allow him to go only after paying that amount. In continuation of these exchange of words, the incident in the case happened according to the Investigating Officer, as had been revealed in the confession of the accused. It is to be noted that the confession had been elicited in cross examination by the defence counsel and it might have been to have the benefit of the first exception to section 300 IPC to the accused. (വാശാന പ്രകാരം കൂലി ആവശ്യപ്പെട്ട്, നൽകാത്തതിനാൽ പ്രതി നാട്ടിലേക്ക് തിരിച്ചു പോകുമെന്ന് പറഞ്ഞതിനെ തുടർന്ന് മരിച്ച ആളും പ്രതിയും തമ്മിൽ വാക്കുറ്റവും കയ്യുറ്റവും ഉണ്ടായി എന്നും, തിരിച്ച് നാട്ടിലേക്ക് പോകാൻ അനുവദിക്കാത്തതിൽ വെച്ചുള്ള വിരോധത്തിൽ വെച്ച് പ്രതി കൊലപാതകം നടത്തിയതാണ് എന്നുള്ള വിവരം എങ്ങനെയാണ് ബോധ്യപ്പെട്ടത് (Q) ഞാൻ പ്രതിയെ വിശദമായി ചോദ്യം ചെയ്ത സമയം 450 രൂപ നൽകാമെന്നാണ് മരണപ്പെട്ട ആൾ പറഞ്ഞിരുന്നത്. എന്നാൽ ഇവിടെ വന്ന് ജോലി ചെയ്യാൻ തുടങ്ങിയപ്പോൾ 150 രൂപ മാത്രമേ കൊടുക്കൂ എന്ന് പറഞ്ഞു. ഇത് സംബന്ധമായി അവർ തമ്മിൽ വാക്ക് തർക്കം ഉണ്ടായി. മരണപ്പെട്ട ആൾ അയാളെ അടിച്ചു എന്നും, അയാൾ പ്രതിയുടെ ഉമ്മയെപ്പറ്റി മോശമായ പദപ്രയോഗം നടത്തി എന്നും അതിൽ പ്രകോപിതനായി താൻ നാട്ടിലേക്ക് തിരിച്ചു പോകുമെന്നു പ്രതി പറയുകയും, അപ്പോൾ മരണപ്പെട്ട ആൾ പ്രതിയോടെ നിന്നെ കൊണ്ടുവരാൻ എനിക്ക് 1000 രൂപ ചെലവായി എന്നും അത് തന്നാൽ മാത്രമേ വിടുകയുള്ളൂ എന്ന് പറഞ്ഞു എന്നും അതിനെ

തുടർന്നാണ് ഈ സംഭവം നടന്നത് എന്നും പ്രതിയെ ചോദ്യം ചെയ്തതിൽ നിന്ന് ലഭിച്ച കുറ്റസമ്മത മൊഴിയിൽ നിന്നുമാണ് എനിക്ക് മനസ്സിലായത് (ANS)).

43. To the question put to the Investigating Officer by this court whether he was convinced of the cause of the murder as confessed by the accused, PW21 deposed that he had been convinced of it. (കൊലപാതകത്തിന് കാരണമായി പ്രതി നൽകിയ കുറ്റസമ്മത മൊഴിയിൽ പറഞ്ഞിരുന്ന കാര്യങ്ങൾ ബോധ്യപ്പെട്ടോ അന്വേഷണത്തിൽ (Q) അവർ തമ്മിലുള്ള കൂലി പ്രശ്നവും, പ്രതിയുടെ ഉമ്മയെക്കുറിച്ച് മരണപ്പെട്ട ആൾ മോശമായി സംസാരിച്ചതിൽ വെച്ചും, അയാളെ നാട്ടിലേക്ക് തിരിച്ചു പോകാൻ അനുവദിക്കാത്തതിൽ വെച്ചുണ്ടായ പ്രകോപനം കാരണമാണ് പ്രതി ഷംസുദ്ദീനെ കൊന്നതെന്നാണ് അന്വേഷണത്തിൽ മനസ്സിലായത് (ANS)). So, it is evident that the incident of murder happened as a sequel of an altercation between the deceased and the accused. Now, the question arising is whether this fact would help the accused to find his guilt to be treated as one of culpable homicide not amounting to murder invoking the first exception to Sec.300 IPC.

44. It is pertinent to note that the specific case of the accused during his examination under section 313 is that he never came to the place of occurrence on that day ie., on 16.07.2013 or in other words he is pleading alibi. He has not adduced any evidence to prove his plea of alibi. Moreover, he has no case even in the alternative that he caused the death of the accused being deprived of the power of his control by grave and sudden provocation. The evidence that there was an altercation between the accused and the deceased alone is not sufficient for the accused to get the benefit of the first exception to section 300 IPC, because in most of the murder cases the crime

follows an altercation. Only when the accused succeeds in establishing that being deprived of the power of his control by grave and sudden provocation, he caused the death of the deceased, he cannot get the benefit of the first exception to section 304 IPC. In that circumstance, the accused is not entitled to get the benefit of the first exception to Sec.300 IPC. So, it is found that the Prosecution has succeeded in proving that the accused committed the murder of Shamsudheen, as alleged.

45. Though the Prosecution alleged that the accused committed the robbery of an ATM card and an amount of Rs.100/- from Shamsudheen, there is no evidence to prove the alleged robbery. In that circumstance, it is to be found that the Prosecution has failed to prove that the accused committed the robbery as alleged by the Prosecution.

46. On the basis of the above discussion of evidence, Point Nos.(i) and (ii) are found in favour of the Prosecution while Point No.(iii) is found against the Prosecution.

47. **Point No.(iv):-** On the basis of my findings on point Nos.(i) and (ii), the accused is found guilty of the offence u/s.302 IPC and he is convicted thereunder, and on the basis of finding on Point No.(iii), the accused is found not guilty of the offence u/s.392 IPC and he is acquitted of that offence u/s.235(1) Cr.P.C. The accused is taken into custody and is remanded to judicial custody till 30.04.2026.

(Dictated to the Confidential Assistant transcribed and typed by her corrected and pronounced by me in open Court on the 29<sup>th</sup> day of April, 2026).

Sd/  
ADDL. SESSIONS JUDGE – I

TAKEN ON THIS THE 30<sup>th</sup> DAY OF APRIL, 2026 AND  
PRONOUNCED THE FOLLOWING

48. The accused is heard on the question of sentence. The accused submitted that he had his mother, wife and a child aged 9 years to support and that his father is drunkard and he is not looking after the family and prayed for leniency.

49. Heard the learned Addl. Public Prosecutor and the learned defence counsel. The learned Addl. Public Prosecutor honestly admitted that it is not a case falling within the category of rarest of rare cases warranting a sentence of death.

50. The punishment for murder is provided under Sec.302 IPC and it is as follows:-

Section 302 Punishment for murder - Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

51. Now the law is well settled by the pronouncement of judgment in the case, ***Bachan Singh v. State of Punjab, (AIR 1980 SC 898)*** has held that the extreme punishment of death sentence for the prescribed offences shall be imposed only in the rarest of rare cases and where the alternate punishment of life sentence is unquestionably foreclosed. Therein, it was also held that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Sec.302 of the IPC, the Court should not confine its consideration principally or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

52. In the light of the above-stated proved factual position in the instant case, as pointed by the Addl. Public Prosecutor, this Court is also of the considered opinion that this is not a case that could be categorized as a "rarest of rare case" warranting imposition of sentence of death and that the alternative punishment of life imprisonment and fine would be sufficient to meet the ends of justice. I think life imprisonment and fine of ₹ 50,000/- would be sufficient to meet the ends of justice.

53. Hence, the accused is sentenced to undergo imprisonment for life and to pay a fine of ₹ 50,000/- (Fifty thousand only) under u/s.302 IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of six months. Set off is allowed under S.428 Cr.PC from **22.07.2013 to 23.09.2014, from 15.12.2019 to 07.10.2020 and from 29.04.2026 till this day**, the period that has already been undergone by the accused as an undertrial prisoner, subject to remission or commutation, if any, granted by the competent authority;

54. Though a total fine of ₹50,000/- is imposed upon the accused, the chance for paying or recovering the same is remote. Also, that amount is not sufficient to compensate the dependents, if any, who have suffered the loss due to the death of their kin. On going through the records (section 161 statement of CW13-the wife of the deceased), it is seen that the deceased Muhammed Shamsudheen has a wife and two daughters. So, they have to be compensated and rehabilitated. In that circumstance, under section Sec.357A of Cr.PC, this Court recommends the District Legal Services Authority, Thalassery to pay compensation to the wife and children of Muhammed Shamsudheen under the Victim's Compensation Scheme.

**In the result,**

(1) The accused is sentenced to undergo imprisonment for life and to pay a fine of ₹50,000/- (Fifty thousand only) under u/s.302 IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of six months. If the fine amount is realised, it shall be paid to the wife and children of the deceased Muhammed Shamsudeen;

(2) Set off is allowed under S.428 Cr.PC from **22.07.2013 to 23.09.2014, from 15.12.2019 to 07.10.2020 and from 29.04.2026 till this day**, the period that has already been undergone by the accused as undertrial prisoner, subject to remission or commutation, if any, granted by the competent authority;

(3) MOs1 to 7 and 9 to 11 being valueless shall be destroyed. MO8 knife will be broken up and sold as per Rule 268 of Criminal Rules of Practice.

(4) The District Legal Service Authority (DLSA), Kannur at Thalassery is recommended to provide compensation to CW13, who is the wife of deceased Muhammed Shamsudheen and their two daughters under the Victim Compensation Scheme. Send a copy of the Judgment, FIR with FIS, and memo of evidence to the Secretary DLSA.

(Dictated to the Confidential Assistant transcribed and typed by her corrected and pronounced by me in open Court on the 30<sup>th</sup> day of April, 2026).

Sd/  
ADDITIONAL SESSIONS JUDGE-I

**WITNESSES FOR THE PROSECUTION:-**

Rank	Name	Eye witness/ police witness/ expert witness/ Medical witness/other witness.
PW1	Smt. Usha N	- Other Witness
PW2	Smt. Vanaja C	- Other Witness
PW3	Shri. Divakaran E K	- Other Witness
PW4	Shri. Chandra Bhanu K, Supdt., Kuthuparamba Municipality	- Other Witness
PW5	Shri. Dinesan Alakkadan, Village Officer, Koothuparamba.	- Other Witness
PW6	Shri. Raphy Ahammed, SCPO, Irikkur Police Station	- Police Witness
PW7	Shri. Unnikrishnan C H, Addl.SI of Police, Koothuparamba PS.	- Police Witness
PW8	Shri.Preman E V, CPO, Koothuparamba PS	- Police Witness
PW9	Dr.S Gopalakrishna Pillai, Professor of Forensic Medicine and Police Surgeon, Pariyaram Medical College	- Medical Witness
PW10	Shri. M V Mayan	- Other Witness
PW11	Shri. U V Assoo	- Other Witness
PW12	Shri. N V Asees	- Other Witness
PW13	Shri. Yousaf	- Other Witness
PW14	Shri. Subhash K, CPO, Koothuparamba PS	- Police Witness
PW15	Shri. Anil Kumar K, Deputy Manager, SBI, Thalassery	- Other Witness
PW16	Shri. Mathew Jose, Senior CPO	- Police Witness
PW17	Shri. Majeed C, SCPO, Koothuparamba PS	Police Witness
PW18	Shri. Tridib Banerjee, SI of Police, Ultandanga Police Station	- Police Witness
PW19	Shri. Deepesh K, Scientific Assistant, DCRB, Kannur	- Expert witness

PW20	Shri. Sudhakaran K, SI of Police, Koothuparamba	-	Police Witness
PW21	Shri. K V Babu, CI of Police, Koothuparamba	-	Police Witness
PW22	Shri. Marshal D Cunha, Nodal Officer, Tata Teli Services Limited	-	Expert Witness

**EXHIBITS FOR THE PROSECUTION:-**

Sl. No.	Date	Exhibit number	Description
1	26-07-2013	P1/PW3	Seizure Mahazar (Jeans, Baniyan and Foot wear)
2	26-07-2013	P1(a)/PW21	Confession extract in Ext.P1 seizure mahazar
3	26-07-2013	P2/PW3	Seizure Mahazar (ചരട്)
4	26-07-2013	P2(a)/PW21	Confession extract in Ext.P2 seizure mahazar
5.	26-08-2013	P3/PW4	Ownership certificate of building No.572/IV of Kuthuparamba Municipality.
6.	Date nil	P4/PW5	Site plan
7	14-08-2013	P5/PW6	Seizure Mahazar (Mobile phone Nokia)
8	23-07-2013	P6/PW7	Application for transist remand time for producing accused.
9	15-12-2019	P7/PW7	Arrest details.
10	19-07-2013	P8/PW9	Postmortem certificate.
11	17-07-2013	P9/PW11	Inquest report
12	19-07-2013	P10/PW12	Scene Mahazar
13	17-07-2013	P11/PW14	Seizure Mahazar (Blood sample)
14	13-12-2013	P12/PW15	Bank account statement of MD Shamsuddin for the period from 01-07-2013 to 31-07-2013 issued from SBI
15	27-08-2024	P13/PW15	65 B certificate for Ext.P12 Bank account statement.
16	22-07-2013	P14/PW18	Arrest memo
17	22-07-2013	P15/PW18	Inspection memo

18	23-07-2013	P16/PW18	GD extrtact of GD No.1703 of Uttadanga Police Station.
19	22-07-2013	P17/PW18	GD extrtact of GD No.1710 of Uttadanga Police Station.
20	23-07-2013	P18/PW18	GD extrtact of GD No.1741 of Uttadanga Police Station.
21	23-07-2013	P19/PW18	Remand prayer filed before ACJM, Sealdah, Kolkata
22	17-07-2013	P20/PW20	First Information Report
23	17-07-2013	P21/PW20	First Information Statement
24	18-07-2013	P22/PW20	Report regarding section 174 CR.PC deleted and section 302 IPC added.
25	25-07-2013	P23/PW21	Report regarding correct name and address of deceased.
26	21-07-2013	P24/PW21	Seizure Mahazar (metal ring)
27	25-07-2013	P25/PW21	Accused details report.
28	23-10-2013	P26/PW21	Forwarding note
29	28-02-2014	P27/PW21	Report regarding section 397 IPC deleted and section 302, 392 IPC added.
30	08-01-2014	P28/PW21	Seizure Mahazar (Photos of dead body and scene of occurance)
31	Date nil	P29/PW21	Photo of knife
32	Date nil	P29(a)/PW21	Photo of dead body
33	Date nil	P29(b)/PW21	Photo of dead body
34	Date nil	P29(c)/PW21	Photo of dead body
35	Date nil	P29(d)/PW21	Photo of room
36	Date nil	P29(e)/PW21	Photo of room
37	Date nil	P29(f)/PW21	Photo of room
38	Date nil	P29(g)/PW21	Photo of building
39	Date nil	P30/PW21	Compact Disc
40	22-01-2014	P31/PW21	Report regarding time of occurance.
41	31-12-2014	P32/PW21	Forensic Scinece Lab Report
42	12-09-2013	P33/PW22	Call details of mobile No.8891561907 from 01-07-2013 to 30-07-2013 issued from Tata Tele Services Ltd.
43	Date nil	P34/PW22	65 B certificate for Ext.P33 call details report.
44	11-01-2012	P35/PW22	Photocopy of Prepaid customer

			application form in the name of Jashik Ali issued from Tata Tele Services Ltd.
45	12-01-2011	P35(a)/PW22	Photocopy of Driving Licence of Jashik Ali
46	Date nil	P36/PW22	65 B Certificate for CAF and ID proof of mobile No.8891561907
47	12-09-2013	P37/PW22	Cell ID List of mobile No.8891561907 from 01-07-2013 to 30-07-2013 issued from Tata Tele Services Ltd.

**WITNESS FOR THE DEFENCE:- None**

**EXHIBITS FOR THE DEFENCE:- Nil**

**MATERIAL OBJECTS:-**

1.	MO1	: Jeans
2.	MO2	: T Shirt
3.	MO3	: Red Footwear
4.	MO4	: ചരട്
5.	MO5	: Mobile phone
6.	MO6	: Ring
7.	MO7	: ചരട് (തൂണിയുടെത്)
8.	MO8	: Knife
9.	MO9	: ലൂക്കി (Victim)
10.	MO10	: Shirt (Victim)
11.	MO11	: Blood stain packets
12.	MO11(a)	: Blood stain packets

Sd/  
ADDITIONAL SESSIONS JUDGE-I

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**IN THE COURT OF SESSION,  
THALASSERY**

**SESSIONS CASE No.304/2014**

**JUDGMENT**

SC 304/2014

**DATED: 30.04.2026**

1. The Registrar, (Subordinate Judiciary),  
High Court of Kerala, Kochi-682031.
2. The District Collector, Kannur.
3. The Supdt. of Police, Kannur.
4. The Chemical Examiner, Kannur
5. The Supdt., Central Prison, Kannur.
- 6 The Public Prosecutor, Thalassery.
- 7 The District Legal Service Authority  
(DLSA), Kannur at Thalassery
- 8 The Accused