



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 24TH DAY OF SEPTEMBER 2024 / 2ND ASWINA,

1946

CRL.A NO. 981 OF 2021

AGAINST THE JUDGMENT DATED 13.03.2020 IN SC NO.1084 OF
2017 OF THE COURT OF SPECIAL JUDGE FOR THE TRIAL OF
OFFENCES AGAINST WOMEN AND CHILDREN (ADDITIONAL
SESSIONS JUDGE-I), THALASSERY.

APPELLANT/ACCUSED:

ANSAR V.K., AGED 28 YEARS,
S/O.HAMEED, VALIYA KATTIL HOUSE,
PERINGALAM AMSOM, KARIYAD, PULIYANABRAM,
KANNUR DISTRICT, NOW LODGED IN CENTRAL
JAIL & CORRECTION HOME, C NUMBER
213/2020, PALLIKUNNU P.O.,
KANNUR DISTRICT - 670 004.

BY ADV T.U.SUJITHKUMAR

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
PIN- 682 031.



Cri.A. No.981 of 2021

:2:

2024:KER:70519

2 THE STATION HOUSE OFFICER
CHOKLI POLICE STATION,
KANNUR DISTRICT, PIN - 670 672.

BY ADVS.

SRI. ALEX. M THOMBRA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
24.09.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

“CR”

Raja Vijayaraghavan, J.

This appeal has been preferred by the accused in S.C.No.1084 of 2017 on the file of the Special Judge for the Trial of Offences Against Women and Children (Additional Sessions Judge-I), Thalassery.

2. In the above case, the appellant was charged for having committed offences punishable under Sections 376A, 392, 397, and 302 of the IPC.

The incident:

3. On 14.8.2017, Reeja, a loving wife and mother, left her home in Kariyad to perform the most ordinary of tasks—buying fish for her family and for her sister-in-law. Her family would have expected her return in a short while, unaware that this journey would tragically be her last. As Reeja walked towards Puthiya Road, traversing the familiar dirt path she had likely taken countless times before, she was allegedly intercepted by the accused. The prosecution alleges that at this moment, in broad daylight, an unspeakable horror unfolded. The appellant, with criminal intent, attempted to commit sexual assault on Reeja. She resisted valiantly, but he got the better of her and



he is alleged to have cruelly smothered her nose and mouth, leaving her unconscious. The accused is alleged to have committed penetrative sexual assault while she lay in the water channel unconscious. As if the brutality was not enough, the prosecution further alleges that the accused forced Reeja's head into the shallow waters, leaving her to drown. He also snatched the gold ring and gold chain thereby breaking the chain into two pieces. One piece was left in the drain. Everything happened within 150 meters of her residence and near to scores of houses situated within a distance of 100 meters or less. This is the tragic sequence of events that led to the charge against the accused.

Registration of the Crime and it's aftermath:

4. Kottur Balan (PW1), the Municipal Counsellor of Panoor Municipality, was informed over the phone at about 4:00 p.m. that a lady was lying dead in the Kelothuthazhe paddy field under the culvert. He immediately rushed to the Chokli Police Station and lodged information, based on which, Ext. P30 FIR in Crime No. 768 of 2017 of the Chokli Police Station was registered at 5:40 p.m., on 14.08.2017 under Section 174 of the Code of Criminal Procedure. The Sub Inspector of Police, Chokli Police Station, (PW36), reached the spot and prepared Ext.P2 inquest report at about 5:50 p.m. and concluded the same at 7:20 p.m. on 14.08.2017. It is stated in Column No. 12



of the inquest that some injuries are found on the body of the deceased, and some ornaments have been lost. However, at that point of time, no one was being suspected. The investigation was taken over by the Inspector of Police, Panoor Police Station (PW38), on 15.08.2017 at 9:30 a.m. He prepared the scene mahazar. He forwarded a report to the court adding Section 302 of the IPC. Within about 24 hours from the time the crime was registered, the Investigating Officer zeroed in on the appellant as the likely killer. At about 7:00 p.m. on 15.08.2017, the appellant was arrested. Items found in his possession, such as two mobile phones (MO20 & MO21), a SIM card (MO22), purse (MO15), Currency notes (MO16 series), Aadhar card (MO17) and Driving Licence (MO18), were seized as per Ext.P33 Inspection Memo. On the next day, the appellant is alleged to have given a disclosure statement, based on which MO3 ring and MO4 a piece of gold chain were recovered from the terrace of a three-storeyed building, where the establishment by name "Marva Timber Syndicate" was functioning. On the same day, at about 11:00 a.m., based on the disclosure made by the accused MO6 T-shirt, MO7 pair of shoes, and MO8 underwear, alleged to have been worn by the appellant at the time of the commission of the crime, were seized from the precincts of his residential home, kept concealed under a stone, as per Ext. P5 mahazar. The clothes as well as the shoes were found smeared with mud. The Investigating Officer



obtained the services of the scientific expert to collect the soil from the scene of the crime, and the same was seized as per Ext.P20 Seizure mahazar. The blood sample and nail clippings of the appellant were collected by PW25, Assistant Surgeon, General Hospital, Thalassery, and the same was seized as per Ext.P22 Seizure Mahazar. PW24, Professor, Forensic Medicine, Pariyaram Medical College, who conducted the autopsy, also collected vaginal swabs and blood smears of the deceased and forwarded the same to the Forensic Science Laboratory, through the court. In the course of the investigation, Ext.P44 report was submitted incorporating Section 376 of the IPC, and Ext.P46 report was submitted incorporating Sections 302 and 392 of the IPC. After the completion of the investigation, the final report was laid before the Judicial First Class Magistrate, Thalassery. The committal proceedings were initiated and the case was committed to the Court of Sessions, Thalassery, from where the case was made over to the Special Judge for the Trial of Offences Against Women and Children (Additional Sessions Judge-I), Thalassery.

Evidence let in:

5. The prosecution examined PWs 1 to 38 to prove its case and through them, Exts.P1 to P46 were exhibited and marked. Material Objects were produced and identified as MOs 1 to 22. After the close of the prosecution



evidence, the incriminating materials were put to the accused under Section 313 of the Cr.P.C. He emphatically denied the circumstances brought out against him and maintained his innocence. On finding that the accused could not be acquitted under Section 232 of the Cr.P.C., he was called upon to enter his defence. No evidence was adduced by the defence.

Findings of the learned Sessions Judge:

- 6(a) The evidence let in by the prosecution established beyond a semblance of doubt that the death of Reeja was a clear case of homicide.
- 6(b) The evidence tendered by Sri. Balan V.T (PW9), Sri. Dinesan. P (PW10), Sri.C.P Gangadharan (PW11), and Smt.Pushpa. E (PW13) establishes that the appellant was seen in and around the scene of the crime, at or about the time when the deceased had come out of her house to go to Puthiya Road to buy fish.
- 6(c) PW9, PW11, PW12, and PW17 had stated that the clothes worn by the appellant were untidy, and they had noticed the presence of mud in his clothes. The presence of mud on the dress of the appellant, coupled with the specific case of the prosecution that the deceased was sexually violated and after pushing her into the water channel, her face was



pushed down to force her to drown in the shallow water, is a gravely incriminating circumstance.

6(d) Recovery of the MO3 wedding ring, containing the inscription 'GOPI' and MO4 a piece of gold chain from the terrace of 'Marva Timbers Syndicate', based on the disclosure statement given by the appellant is a seriously incriminating circumstance. Ext.P28 report is to the effect that MO1 and MO4 are pieces of the same gold chain.

6(e) Failure of the accused to offer sufficient explanation for the three injuries noted by the Assistant Surgeon, Community Health Center, Panoor (PW20), after examining the appellant immediately after his arrest.

6(f) Presence of mud in MO5 to MO8 clothes, allegedly worn by the appellant at the time of occurrence, seized based on the disclosure statement given by him. Failure of the appellant to offer a proper explanation for the presence of mud in his clothes is an incriminating circumstance.

6(g) Presence of spermatozoa in MO8 underwear of the accused and the presence of spermatozoa in the vaginal swab collected from the body of the deceased is a strong link in the chain of circumstantial evidence.

6(h) The evidence let in by PW6, PW7 and PW13, brings out an incident that



took place a couple of days earlier, wherein, the appellant had attempted to sexually assault the deceased. The statement made by the deceased to her daughter and Smt. Pushpa is admissible under Section 32(1) of the Indian Evidence Act, 1872 as a statement relating to the circumstances of the transactions that resulted in the death of the deceased.

6(i) Some injuries were found on the body of the appellant which can only be injuries caused by the deceased while she was being violated.

The sentence imposed:

7. The accused was found guilty and was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- under Section 302 of the IPC and in default to undergo rigorous imprisonment for one year; to undergo RI for life and to pay a fine of Rs.1,00,000/- under Section 376A of the IPC and in default of payment of fine to undergo RI for one year; to undergo RI for 10 years and to pay a fine of Rs.25,000/- under Section 392 of the IPC and in default of payment of fine to undergo RI for six months.

The contentions of the appellant:

8. Sri. Sujithkumar T.U, the learned counsel appearing for the appellant, submitted that none of the circumstances relied on by the learned



Special Judge/Additional Sessions Judge-I could be considered as reliable enough to point unerringly toward the guilt of the appellant. He referred to the observations in **State of Gujarat v. S.D Soni**¹, and it is urged that the circumstances established was not consistent with the hypothesis of the guilt of the accused. The learned counsel urged that the learned Sessions Judge totally erred in relying on the evidence of PW9, PW10, PW11, and PW13, particularly when a reading of the evidence showed that they were lying on material points. They had also embellished their evidence extensively while deposing before the Court. A proper evaluation of their evidence would have revealed that no incident of the nature alleged by the prosecution had in fact taken place. The appellant was implicated solely on the basis of the statement given by Balan (PW9) that the appellant was seen standing near a shop room in the vicinity of the place of occurrence, that the arrest of the appellant was recorded at 7:00 p.m. on 15.08.2017. It is argued by the learned counsel that the prosecution narrative is implausible and defies logic. The suggestion that the appellant approached the victim in an area quite near to her home and in the near vicinity of PW9 and PW10 and several houses, that he rendered the victim unconscious by smothering her, then committed sexual assault in an open area, followed by pushing her into a water channel to drown, and

¹ [AIR 1991 SC 917]



thereafter proceeded to visit a timber shop and a mosque wearing the same clothes used during the crime, only to later conceal these clothes under a wall near his house, is nothing short of a fabricated and far-fetched story. Such a sequence of events is highly improbable, making it difficult to accept as a believable account of the incident. After the arrest of the appellant, a false recovery was set up to link him with the crime. The learned counsel would point out that two mobile phones were seized from the possession of the appellant. However, no scientific investigation was carried out to ascertain whether the appellant was in the vicinity of the murder scene at 12 noon or thereafter. It is urged that Ext.P15 call details revealed that the last call made by the appellant from his mobile phone was at 11:47 a.m., and no data was collected to show the location of the appellant thereafter. It is submitted that the portion of the gold chain which was allegedly seized from the body of the deceased on 14.08.2017 and the gold ornaments which were seized based on the disclosure statement given by the appellant on 16.08.2017, were not sent to the court forthwith. Instead, Ext.P40 report was submitted before the jurisdictional Magistrate by the Investigating Officer on 16.08.2017, stating that the gold ornaments seized based on the disclosure statement and the clothes worn by the accused could not be forthwith forwarded to the court, as the same was required for showing it to the witnesses for identifying the same.



This aspect is highlighted by the learned counsel to advance his contention that the attempt of the Investigating Officer was to concoct false evidence. It is further submitted that it cannot be believed that the accused would leave out the longer portion of the gold chain at the scene of the crime itself, and take only a smaller portion, so as to enable the Investigating Officer to recover the same at a later stage. Relying on the principles laid down in **Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh**² and in **Subramanya v. State of Karnataka**³, it is urged that the prosecution had failed to comply with the requirement of law, before accepting the evidence of discovery. The absence of the authorship of concealment in the disclosure statement, the non-recording of the exact words attributed to the accused, and the failure to prove the contents of the Mahazar, are all highlighted by the learned counsel to contend that the learned Sessions Judge was not justified in placing reliance upon the circumstance of recovery of ornaments and the clothes. The learned counsel would point out that, though samples were taken for DNA analysis, there is total absence of materials to conclude that the spermatozoa found in the underwear of the accused and the one found in the vaginal swab relate to the one and the same person. Even the mud allegedly found on the clothes of the appellant did not tally with the mud sample taken from the place where the

² [2022 SCC OnLine SC 1396]

³ [2022 SCC OnLine SC 1400]



deceased was found. Instead of holding that the appellant had no role to play in the rape and murder of the deceased, the learned Sessions Judge has convicted the appellant on the basis of flimsy evidence.

Submissions made by the learned Public Prosecutor:

9. Sri. Alex M. Thombra, the learned Public Prosecutor submitted that the incriminating circumstances relied on by the learned Sessions Judge established beyond any semblance of doubt, that it was the appellant who had committed the heinous act. He would refer to the evidence of PWs 9, 10, 11, and 13, and it is urged that despite searching cross-examination, the witnesses stuck to their earlier version and spoke about the presence of the appellant in and around the scene of the crime. The evidence of PWs 7 and 13 is also relied on and it is urged that a few days back, the appellant had in fact tried to molest the deceased and it was by a whisker that the deceased had saved her honour. The recovery evidence of the ornaments and the clothes at the instance of the appellant was also highlighted as a strong piece of evidence to link the appellant with the crime. The presence of spermatozoa in the underwear and in the body of the deceased is also emphasized by the learned Public Prosecutor as another strong circumstance. Reliance is placed on the observation in **Joseph v. State of Kerala**⁴, and in **Padala Veera Reddy V.**

⁴ [AIR 2000 SC 1608]



State of Andhra Pradesh⁵, and it is argued that the chain of circumstances cumulatively and unequivocally points towards the guilt of the appellant.

Principles governing the evaluation of cases resting on circumstantial evidence:

10. The finding of guilt of the appellant is grounded entirely in circumstantial evidence. Before proceeding to analyze and assess the circumstances that have influenced the decisions of the learned Sessions Judge, it would only be appropriate to refer to the precedents that may provide guidance on the handling and evaluation of cases based on circumstantial evidence. In **Sharad Birdhichand Sarda v. State of Maharashtra**⁶, a three-Judge Bench has laid down five golden principles which constitute the “panchsheel” in respect of a case based on circumstantial evidence. Referring to the decision in **Shivaji Sahebrao Bobade v. State of Maharashtra**⁷, it was opined that it is a primary principle that the accused “must be” and not merely “may be” guilty before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions. Thereafter, the Bench proceeded to lay down that the facts so established should be consistent only with the hypothesis of the guilt of the

⁵ [AIR 1990 SC 79]

⁶ [(1984) 4 SCC 116]

⁷ [(1973) 2 SCC 793]



accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; that the circumstances should be of a conclusive nature and tendency; that they should exclude every possible hypothesis except the one to be proved; and that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. The very same principles were reiterated in **Padala Veera Reddy** (supra).

11. In **Balwinder Singh v. State of Punjab**⁸, it was observed as follows in paragraph No. 4 of the judgment:

“4. ... 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 a 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, howsoever strong they may be, to take the place of proof.”(emphasis supplied)

⁸ [1996 SCC (Cri) 59]



12. In **State of U.P. v. Ashok Kumar Srivastava**⁹, it was held that it is the duty of the court to take care while evaluating circumstantial evidence. If the evidence adduced by the prosecution is reasonably capable of two inferences, the one in favour of the accused must be accepted. That apart, the circumstances relied upon must be established and the cumulative effect of the established facts must lead to a singular hypothesis that the accused is guilty.

13. In **Ram Singh v. Sonia**¹⁰, while referring to the settled proof pertaining to circumstantial evidence, this Court reiterated the principles about the caution to be kept in mind by the court. It was observed as follows in paragraph No. 39 of the judgment:

“39. ... in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts.”(emphasis supplied)

14. We shall now endeavor to determine from the maze of evidence

⁹ [(1992) 2 SCC 86]

¹⁰ [AIR 2007 SC 1218]



as to whether the circumstances from which the conclusion of guilt has been drawn have been fully and conclusively proved, and whether those circumstances are sufficient to connect the appellant to the crime. It is essential that the conscience of the Court is satisfied that the various circumstances highlighted by the prosecution in the chain of events have been clearly established. This chain must be complete and unbroken, ruling out any reasonable likelihood of the innocence of the appellant. In conducting this exercise, we shall ensure not to allow suspicion to substitute for legal proof and avoid being influenced by emotional considerations, however compelling they may be, in place of objective evidence.

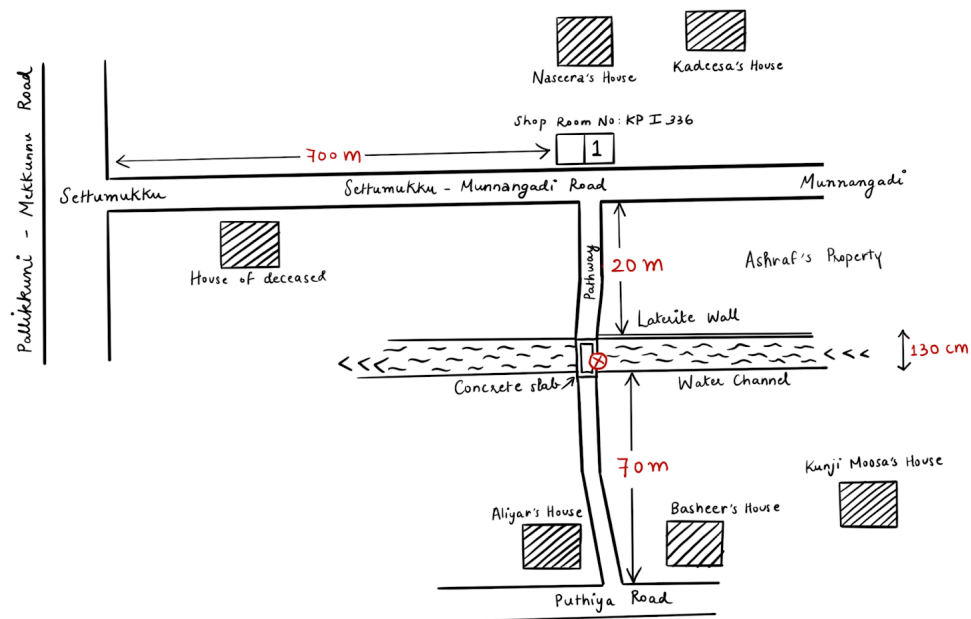
Cause of Death:

15. It has come out from the evidence of PWs 1, 2, 3, 5, 6, and 9, that Reeja was found lying dead in the water channel, under a slab, in a place called 'Kelothuthazhe Vayal'. PW24, Professor, Forensic Medicine, Pariyaram Medical College, conducted the Autopsy. He noted 24 antemortem injuries. He said before the court that the postmortem findings were consistent with death due to drowning in an unconscious state. He also noted that the evidence of the application of blunt criminal force on the body, prior to death. The accused does not dispute that the death of the deceased was homicidal.



Presence of the accused in and around the scene of crime:

16. One of the key factors relied upon by the learned Sessions Judge in convicting the appellant is his alleged presence near the scene of the crime around 11:00 a.m., as observed by PWs 9, 10, and 11. Before delving into the evidence provided by these witnesses, it is important to first examine the scene plan and the description of the crime scene, as detailed in Ext.P10 (the site plan prepared by PW23, the Village Officer) and Ext.P3 (the Scene Mahazar prepared by the Investigating Officer). For clarity, a replica of the site plan is provided below for reference.





17. According to the site plan, the house of the deceased is situated near Settumukku. The scene mahazar notes that the distance from Settumukku junction to the shop room numbered KP-I/336 is approximately 700 meters. From the shop room to the concrete slab, under which the body of the deceased was found, the distance is recorded as about 20 meters. A water channel, flowing east to west, runs beneath the slab and is approximately 130 cm wide. The concrete slab itself measures about 2.10 meters in length and 1.13 meter in width, as seen from the scene mahazar. A laterite wall, approximately 137 cm in height, borders both sides of the pathway leading to the slab for a short distance. The distance from the concrete slab to Puthiya Road is recorded as about 70 meters. The northern side of the scene, both to the north-east and north-west, is largely clear of vegetation. In contrast, the southern side is noted for its thick cultivation, featuring coconut palms, arecanut trees etc. The scene mahazar further indicates that there are no visual obstructions for up to 50 meters to the north-east and north-west of the crime scene. The house of Nazeera is situated about 75 meters to the north, with Khadeesa's residence located 25 meters east of Nazeera's house. To the south, the homes of Aliyar, Basheer, and Kunjumoosa are noted to be approximately 100 meters from the crime scene. While there are minor discrepancies between the details shown in the sketch and the scene mahazar,



the description provided above closely aligns with the information presented in both the site plan and the scene mahazar.

18. With the above context in mind, we shall advert to the evidence presented by the prosecution. The key witness regarding the appellant's presence at or near the crime scene is Balan V.T. (PW9). In his testimony, he stated that he raises cows for a living. About 3-4 days before 14.8.2017, while taking his cows for grazing, he saw the accused sitting on a slab beside the water channel. He had no prior acquaintance with the accused. The appellant allegedly asked whether the cows belonged to him and if there were any calves, to which he responded that the calves were at home. After this encounter, PW9 saw the appellant again on 14.8.2017 at about 11:00 - 11:15 a.m., near an old shop, speaking on his mobile phone. The appellant was wearing pants and a long-sleeve T-shirt resembling a military-style outfit, and he was seen walking towards the concrete slab. The witness let the cows graze freely in the field and sat on a nearby stone. At around 12:00 noon, he heard the horn of a fish vendor. Sometime later, the accused was seen walking towards Puthenpally and his clothes were found smeared with mud. The appellant did not engage in any further conversation with the witness. PW9 stayed there until 2:30 p.m., when he left to return home for milking his cows. Later that evening, around 5:00 p.m., someone informed him that a body was



found under the slab, and he later learned it was that of the deceased. The following day, PW9 was called to the Police Station, and when he reached the Station, the appellant was found there. He also mentioned that after the appellant left, a person named Rajan passed by the same way. During cross-examination, PW9 admitted that he had not heard any cries or screams while sitting in the adjacent field. He also acknowledged that he had not provided any identifying marks of the appellant. The nearest house, belonging to Surendran (PW13's husband), was about 120 meters from the crime scene. An analysis of PW9's testimony reveals that although he was the only witness to see the appellant walking towards the concrete slab, by the time he arrived at the Police Station the following day, the appellant had already been apprehended. However, the prosecution does not clarify how the investigating officer concluded that the appellant was involved in the crime. Moreover, the prosecution specifically contends that the accused was positioned on the pathway leading to Puthiya Road, while the deceased was approaching from Settumukku-Munnangadi Road with the intention of purchasing fish from a vendor who had just arrived at Puthiya Road and sounded the horn to announce his presence. The topography of the area reveals that the concrete slab in question is only 20 meters from the northern road, where several houses are located. According to the scene mahazar, it is evident that the



northern side of the concrete slab is devoid of vegetation, offering a clear and unobstructed view of anyone standing there to anyone approaching from the north. Given the prior incident of attempted molestation, which occurred a few days earlier, the deceased would have likely raised an alarm if the appellant had indeed been present. Such an alarm would have alerted PW9, who was seated by the roadside, as well as the nearby residents on either side of the concrete slab. It is also evident from the scene plan that there are numerous houses in the vicinity. Additionally, during cross-examination, it was revealed that PW9 had not mentioned the mud on the accused's clothes in his original statement to the police. His claim that the accused walked past him after committing the murder, particularly when his presence was already noted by him earlier, raises doubts about the credibility of his testimony. At any rate, the mere presence of the accused in and around the scene of crime cannot be relied upon to conclude that he was the person responsible for the heinous act without any other corroborating evidence.

19. PW10 is another witness who testified regarding the presence of the appellant near the crime scene. He stated that he is a tailor by profession and had prior acquaintance with the family of the deceased. On 14.8.2017, he went to Kelothuthazha road to invite certain individuals in the locality to a wedding. Upon arriving there, he saw the appellant coming from the



Puthenpalli area. When he inquired about the presence of the appellant in the locality, the appellant allegedly responded that he had come to see the paddy field. They walked together for a short distance. During their conversation, when PW10 mentioned his intent to invite Surendran and his wife to the wedding, the appellant informed him that they would not be at home, as they were working at his house. When he came out from Surendran's house, he saw the appellant standing in front of a shop. PW10 asked the appellant to accompany him, but the appellant told him to continue with his work. The witness noted that the appellant was wearing a military green T-shirt and jeans on that day. PW10 further stated that the police questioned him on 16.8.2017, he admitted that he did not initially mention in his statement to the police the specific clothes the appellant was wearing. He also disclosed that his house is located about 600 meters from the house of the deceased and that he had known the deceased's family closely for over a decade. Additionally, he confirmed that he was present during the inquest. If PW10 had met the appellant while he was on his way to Surendran's house, he would certainly have seen PW9 as well. The witness does not even speak about the presence of PW9, who was sitting by the side of the road from 11 a.m. to 11.30 a.m. Neither of the witnesses speak about the presence of the other. Furthermore, the testimony of PWs 9 and 10 would reveal that they are both having close



acquaintance with the deceased and her family and that the house of Surendran, as well as PW10 are within 600 meters from the house of the deceased. While tendering evidence, it is made to appear that he had come from a far off place whereas, he is a resident of the same area. With regard to the presence of mud in the clothes of the appellant, the witness had no such case in his earlier statement to the police and it was brought out as an embellishment. The witness has however denied the question put in cross-examination that the accused is a total stranger and his services were availed by the prosecution to place the accused in and around the scene of crime.

20. PW11, C.P. Gangadaharan, stated that he is a coolie by profession. At about 1:30 p.m., on 14.08.2017, when he reached in front of the house of Surendran, he saw a bearded person, wearing a green coloured crew neck banyan and pants smeared in mud. He stated that he is residing near to Reeja's home. He also stated that he had spoken about spotting mud in the clothes of the appellant when he saw him. On the next day, he saw the appellant at the Police Station. He admitted that no other person was shown to him and no Test Identification Parade was conducted by the police.

21. PWs 9, 10 and 11 are the three witnesses upon whom strong



reliance was placed by the Trial court to come to the conclusion that the appellant was found in and around the scene of crime and that when they saw him, they all noticed the presence of mud in his clothes. PWs 9 and 11 are total strangers and they never had an occasion to see the accused earlier. PW10 is also a nearby resident and he claimed that he is having prior acquaintance with the accused. However, nothing turns out from the evidence as regards the involvement of the appellant in the crime. It can only be through the evidence of these three witnesses that the finger of suspicion could have pointed to the appellant. However, these witnesses stated that when they reached the Police Station, the appellant was already there. As to how PW38 zeroed in on the appellant is not discernible from the prosecution evidence. We are of the view that it was after fixing the appellant as the assailant, the nearby residents were made to speak about his unusual presence near to the scene of crime. To make him complicit, all the witnesses were made to state that his clothes were smeared in mud. We do not think the evidence of the witnesses above are credible enough to fix the presence of the appellant in and around the scene of crime as one of the links in the chain of evidence. Even if the evidence of these witnesses are taken to be true, it would only show that they had chanced to meet the appellant and nothing more.



Previous incident of alleged attempted molestation:

22. PW6 is the brother of Gopi, the husband of the deceased. In his evidence, he stated that on hearing about the incident involving her mother, Swathi, the daughter of the deceased, became unwell. She was taken to the hospital. When she regained her consciousness, she stated to the witness that about four days back, a young man, who is a resident of the Mathiparambu area, attempted to catch the hands of Reeja and that when she abused and screamed for help, the molester left the place. Swathi also stated to him that two days prior to the incident, her mother pointed out the said person to Swathi. The learned counsel appearing for the appellant pointed out that the evidence of the witness is pure hearsay. PW7 is the daughter of the deceased. She stated that on 14.08.2017, she had gone to Thalassery for PSC coaching. She returned at about 2 p.m. and found that her mother was not at home. She went to the house of Pushpa to enquire about her mother. Her aunt Reji, who is residing close by, told her that her mother would return soon. At about 5:30 p.m., she was informed that her mother was no more. As she felt dizzy, she was taken to the hospital and she was admitted as an inpatient. She informed her uncle that her mother had told her that about a few days back a young man had attempted to grab her and when she screamed for help, the assailant left her alone. The witness said that the mother had informed about



the incident to her friend Pushpa as well. When a specific question was asked by the learned Prosecutor as to whether she was aware of the person who attempted to molest her mother, she initially said that she was unaware. A leading question was then put to the witness as to whether she had occasion to see the individual who had attempted to molest her mother. To the said question, she answered that about two days back, while they were travelling in an autorickshaw, her mother had pointed out a young man with a beard and told her that the said individual had attempted to molest her. The witness then pointed out that the accused was the person that her mother had pointed out. In cross-examination, the witness stated that neither her mother nor she had complained about the incident that took place about four days back to any person of authority. She stated that she did not have any previous acquaintance with the accused. She was questioned by the police on 14.08.2017 and 15.08.2017 and she admitted that she had not given any hints so as to identify the person who had attempted to molest her mother. She also stated that this fact was not informed to her father.

23. PW13 is Pushpa, wife of Surendran. She stated that the deceased was her friend. She is residing within 200 meters of the house of Reeja. According to her, on 14.08.2017, she along with her husband went to the house of the accused to fix up a gate. She had worked for a week in the



house of the appellant earlier. At about 9 a.m., they reached the house of the appellant. The appellant was at home till 10.30 a.m. at which time, he left the house. After finishing the work at about 3 p.m., they went back home. After some time, PW7 came to her house and enquired about the deceased. Later, at 5 p.m., she received information about the murder of Reeja. She stated that Reeja had told her about a recent incident where a young man had attempted to molest her and how she managed to save herself. When Pushpa advised her to inform her husband, Reeja discouraged her, saying that her husband would feel bad. Days after the incident, she realised that PW9, 10 and 11 had seen a young man near to the scene of crime and she realized that appellant was the man who had tried to molest Reeja. During cross-examination, it was revealed that in her previous statement to the police, she had not mentioned that the deceased had informed her of the identifying marks of the accused. She also admitted that, despite being part of a closely-knit community, they had not reported the incident involving the appellant to anyone. If the appellant had continuously employed her, and if the deceased had confided in her about the molestation attempt, it raises the question as to why, as a close friend, this witness was unaware that it was the appellant who had committed the act and despite the same, she went to his home for employment. A careful evaluation of the evidence reveals that the witness is lying on material points and she was



introduced to link the appellant with the murder.

24. A thorough examination of the evidence reveals that the investigating agency primarily relied on the appellant's presence at the crime scene on 14.08.2017 to attribute the murder to him. Subsequently, it appears that the agency shaped the witnesses' statements to fit this narrative. Significantly, the prosecuting agency missed crucial opportunities for a more rigorous and scientific investigation. They could have easily established the appellant's culpability by conducting DNA analysis to confirm if the semen found on the victim's body matched the appellant. Additionally, two mobile phones were seized from the appellant, yet the agency failed to obtain tower dump and location details, which could have corroborated his presence at the crime scene. Moreover, the soil samples collected from the clothes allegedly hidden by the appellant were found to be inconsistent with both the soil from the crime scene and the soil on the victim's body and clothing. The testimony of Pushpa, a friend of the deceased, who was called to prove that the appellant had employed the victim on the day of the incident, lacks credibility. The murder is alleged to have occurred around noon on 14.08.2017, and the appellant was taken into custody based largely on the Investigating Officer's assumptions. We are not convinced that on the basis of evidence let in by PWs 7 to 10, and 13, it can be concluded that the appellant committed this



gruesome murder.

Scientific Evidence:

25. It would be relevant to note that the specific case of the prosecution is that the appellant intercepted the deceased at about 12 noon on 14.08.2017, smothered her and made her unconscious, pushed her into the water channel, subjected her to rape and then pushed her head inside and made her to drown. Witnesses are made to speak about the mud on his clothes to probablise this version. However, none of these witnesses in their earlier statement to the police spoke about the presence of mud in the clothes of the accused or that it was wet. It was on 16.08.2017 at 11:00 a.m. that MO5 Jeans, MO6 T-shirt, MO7 pair of shoes, and MO8 underwear were seized from under a stone in the house of the accused, as per Ext.P5 Mahazar. Ext.P37 is the property list, which is dated 16.08.2017 relating to the above material objects. At the time of the conduct of the inquest, a piece of a gold chain weighing about 10.50 grams, and two studs weighing about 2 grams were seized from the body of the deceased. MO10 Maxi, MO11 Bra, MO12 skirt, MO13 panties, and MO14 Hawai Sandals, belonging to the deceased were found near the body, and were seized at the time of the inquest for the purpose of analysis. The nail clippings and blood sample of the accused were



collected by PW25, the Assistant Surgeon attached to the General Hospital, Thalassery. The Doctor who conducted the autopsy had collected the vaginal swab and blood smear and forwarded the same to the Forensic Science Laboratory. PW33, the Assistant Director (Biology), State Forensic Science Laboratory, Thiruvananthapuram, examined the samples and Ext.P25 report submitted by her. The Biologist has stated that semen was detected in MO12 skirt, MO13 panties, and MO8 underwear. Ext.P26 report issued by PW33, Assistant Director (Biology), revealed that the vaginal swabs taken from the body of the deceased contained human spermatozoa. However, on conducting DNA Typing Examination, PW32, the Assistant Director, (DNA), State Forensic Science Laboratory, Thiruvananthapuram, issued Ext.P24 report that the spermatozoa in the items were insufficient for DNA Profiling. Insofar as nail clippings are concerned, it is stated in Ext.P24 report that the same contained only cells and tissues of Ansar. Soil particles were also collected from MO10 Maxi, MO11 Bra, MO12 skirt, MO13 panties, MO1 gold chain belonging to the deceased, and MO15 purse, MO5 jeans, MO6 T-shirt, MO8 underwear, and MO7 pair of shoes of the appellant. MO4 pieces of gold chain seized based on the disclosure statement given by the appellant were also forwarded for analysis. Ext.P28 report issued by the Scientific Officer (Physics), Forensic Science Laboratory, Thiruvananthapuram, revealed that no soil could be detected in



MO8 underwear worn by the accused. The report also revealed that the soil particles contained in MO10 Maxi, MO11 Bra, MO12 skirt, MO13 panties, MO5 jeans, MO6 T-shirt, and MO7 pair of shoes, were dissimilar to the sample soil. It is also reported that MO4 and MO1 are the pieces of the same gold chain. Ext.P6 Seizure Mahazar would reveal that the piece of gold chain seized based on the disclosure statement was having a length of about 33 cms and weighing 9 gms, whereas the ring containing the inscription "Gopi", weighed about 3.900 gms. The piece of gold chain, which was found at the scene of crime was having a length of 36 cms. The scientific evidence available before the court would clearly show that though semen was found in the underwear of the accused, and the panties and skirt of the deceased, the semen found on the skirt and panties could not be linked to that of the appellant. Tissues or blood of the deceased was not found in the nail clippings of the accused. The mud found on the clothes of the accused were found to be dissimilar to the soil seized from the place of occurrence and also the soil found on the clothes of the deceased. In other words, the scientific evidence collected by the prosecution does not in any manner link the appellant with the crime but on the other hand exculpates him. The learned Sessions Judge has opined that the presence of semen in the underskirt and panties of the deceased coupled with the presence of semen in the underwear of the appellant will link him



positively with the murder. We cannot agree. The appellant is not bound to explain as to how semen was found in the underskirt of the deceased. If on DNA profiling the body fluids had matched, then it would have conclusively proven his involvement in the murder.

26. The Apex Court in **NHRC v. State of Gujarat**¹¹, proclaimed unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are the *raison d'être* for their existence. If the main purpose is to be served, the agency entrusted with the investigation will have to fulfill their duties with all diligence, competence and skill at their command.

27. Adverting to the role of the Police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in **Manohar Lal Sharma v. Union of India**¹² that the aim of investigation is ultimately to search for truth and to bring the offender to book. The observations of Lord Denning in his rendering in 'The Due Process of Law', First Indian Reprint, 1993, p. 102 were alluded to as under : (SCC p. 553, para 25)

"25. ... 'In safeguarding our freedoms, the police play a vital role.

¹¹ (2009) 6 SCC 767

¹² (2014) 2 SCC 532



Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust : and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.”

28. In **Pooja Pal v. Union of India**¹³, the Apex Court highlighted the avowed purpose of criminal investigation and its efficacious prospects with the advent of scientific and technical advancements by observing as under in paragraph No. 96 of the judgment.

96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsised in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation — Basic Perspectives by Paul B. Weston and Renneth M. Wells:

“Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum

¹³ (2016) 3 SCC 135



inquiry.

Successful investigations are based on fidelity, accuracy and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognising that even a minor contradiction or error may destroy confidence in their investigation.

97. The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime—the certainty that a criminal will be discovered, arrested and convicted.”

29. It is pertinent to emphasize the critical role that DNA and semen analysis play in modern criminal investigations, particularly in cases involving



sexual offenses or where bodily fluids have been recovered from the crime scene or the victim's body. DNA profiling stands as one of the most precise and reliable methods for linking an accused to a crime or excluding them from suspicion. The samples, if properly collected, preserved and analyzed, can conclusively establish facts which may not be possible otherwise. In the present case, despite semen being detected on key items, such as the skirt and panties of the deceased and the underwear of the appellant, the prosecution failed to utilize the evidence to pin the accused with the crime. The DNA Typing Examination report from the Forensic Science Laboratory indicated that the spermatozoa found in the samples were insufficient for DNA profiling. This scenario could have been avoided if the collection and analysis of the samples was conducted with the necessary diligence, care, and by adhering to scientific protocols.

30. The responsibility to ensure the proper collection and handling of evidence rests squarely on the Investigating Officers and Scientific Experts. DNA evidence, particularly from delicate sources like semen or bodily fluids, must be handled with extreme precision to prevent contamination or degradation. In this case, forensic experts were unable to perform a conclusive DNA analysis on the spermatozoa found in the vaginal swabs and other articles of the deceased's clothing, likely due to improper collection techniques, storage



conditions, or other procedural lapses, resulting in insufficient sample material. A proper sampling and analysis could have yielded a match between the spermatozoa found on the deceased's garments and the appellant, conclusively linking him to the crime. Conversely, if there had been no match, it would have bolstered the defense and highlighted the importance of thorough investigation. This lapse in evidence collection and analysis undermines the integrity of the investigation as a whole.

31. Equally concerning is the Investigating Officer's failure to utilize critical information available from the mobile phones seized from the appellant. Location data and tower dumps are indispensable tools in modern criminal investigations. Had the investigators retrieved mobile tower location details, they could have potentially placed the appellant at or near the crime scene, adding a crucial link in the chain of circumstances. The last call made by the appellant, as evidenced by Ext.P15, was at 11:37 a.m. on 14.8.2017, and the prosecution could have easily obtained cyber evidence to track the appellant's location thereafter. By neglecting to secure this data, the prosecution missed a significant opportunity to substantiate their claims regarding the appellant's whereabouts on the day of the crime. Furthermore, the forensic analysis of soil samples taken from the appellant's clothing further exemplifies the prosecution's investigative shortcomings. The soil on the clothing allegedly



hidden by the appellant did not match the soil from the crime scene or the soil found on the victim's body and clothing. This inconsistency weakens the prosecution's attempt to link the appellant to the murder. Soil analysis is a precise but often underutilized forensic tool. Had the soil on the appellant's clothing matched the soil from the crime scene, it could have served as compelling evidence of his involvement.

32. The investigating agency must recognize that scientific evidence is the cornerstone of modern criminal proceedings, especially in cases involving sexual assault or murder, where forensic evidence can definitively prove or disprove allegations. This case underscores the pressing need for Investigating Officers and Forensic Experts to exercise the highest degree of care, diligence, and precision in the collection and analysis of evidence to ensure that justice is served and the actual perpetrator is identified. The tools necessary for solving such crimes exist, but they must be employed properly and consistently to achieve justice.

Recovery of ornaments at the instance of the accused:

33. Now, we turn to the evidence concerning the recovery of the clothes and the gold ornaments. The recovery of gold ornaments based on the disclosure statement given by the appellant is another incriminating



circumstance against him. The prosecution had examined Abdul Kareem (PW12), to prove that, on the day when a lady was found dead in the area, he was at the Puthenpalli Juma Masjid at about 12:45 p.m., when he went to wash his hands and legs in the bathroom, he found that the bathroom door was closed. When he knocked on the door, the appellant opened the door and came outside. He found that the clothes worn by the appellant were smeared with mud, and he looked very untidy in an outfit similar to the one worn by military personnel. As he looked unkempt, he did not ask the appellant anything. The appellant looked perplexed. If the version of this witness is believed, after committing the brutal murder, the appellant directly went to the Mosque, wearing wet clothes smeared in mud. However, PW9, PW10, and PW11 had no such case in the earlier statement. Another important witness is PW17 Ramees. He stated that he was working as a Sales Man in a timber shop by name 'Marva Timbers'. The accused is his friend. On 14.08.2017, at about 2:30 p.m., while he was going to have his lunch, he saw the accused outside his shop room. He stopped his car and enquired with the appellant whether he was joining him for lunch. The accused answered in the negative. The appellant went to the timber shop and sat there on a stool. At about 4:00 p.m., PW17, along with Askar, the owner of the shop and the appellant went to the nearby Mujahid Mosque for offering their prayers. At that time, the witness



noticed the presence of mud on the trousers, legs, and pants of the appellant. During cross-examination, the witness admitted that Askar, the owner of the shop, will be in the shop from 10:00 a.m. onwards till the closing of the shop. It was brought out in cross-examination that the witness had no case when the statement was recorded by the police that there was mud on the clothes and leg of the appellant. Furthermore, the case of the prosecution is that the appellant, a total stranger, would have gone up to the 3rd floor of the building to conceal the robbed gold, while the witness had gone for lunch. However, the witness stated that the owner of the shop would be there in the shop room from morning itself. The owner was the best person to speak about the manner in which the appellant had gone up to the terrace to conceal the gold. However, the owner of the shop was not examined.

34. PW15 is the attestor to the recovery mahazar. He stated that on 16.08.2017, while he was standing in front of the MRA Bakery and having a conversation with his friend, some police personnel came in a jeep. The Officer sitting in the front seat called PW15 and his friend and informed them that he was the Officer investigating the murder of Reeja, that the accused was in the jeep, and that the accused had confessed that he had concealed the gold robbed from the deceased and asked them to board the vehicle to witness the recovery. They were taken to the establishment by name 'Marva Timbers' and



the accused is alleged to have led them to the third floor and took out MO3 ring and MO4 a piece of gold chain. In cross-examination, some discrepancies with regard to the building where the ornaments were concealed were brought out. PW14, in his evidence, that on 16.08.2017 at about 11:00 a.m., while he was at the Mathiparambu town, police personnel came in a jeep and told him that the clothes worn by the accused at the time of the commission of the crime were kept by the accused in his house, and they were asked to enter the vehicle to witness the recovery. He stated that the accused led them to the boundary wall and from underneath the stone, MO5 jeans, MO6 T-shirt, and MO7 a pair of shoes were taken out by the accused. Ext.P5 Mahazar was prepared in his presence. Both the witnesses denied that the Mahazar was signed by them at the Police Station.

35. In this context, it is necessary to refer to Ext.P35 extract of true confession which reads as under:

“മോതിരവും ചെയിനും ഒരു സ്ഥലത്ത് ഒളിച്ചു വെച്ചിട്ടുണ്ട്.
എന്റെ കൂടെ വന്നാൽ, സ്ഥലം കാണിച്ചുതന്ന്
മോതിരവും ചെയിനും എടുത്തു തരാം.”

Insofar as Ext.P5 Mahazar relating to the recovery of MO6, MO7 and MO8 is concerned, the extract of the confessional statement as recorded in Ext.P5 are as under:



“വസ്ത്രങ്ങൾ ഒരു സ്ഥലത്തു ചുരുട്ടി വച്ചിട്ടുണ്ട്. എന്റെ കൂടെ വന്നാൽ, സ്ഥലം കാണിച്ചുതന്ന് വസ്ത്രങ്ങൾ എടുത്തു തരാം.”

In both the Mahazars, it is stated that the disclosure was made by the accused, while at the Office of the Circle Inspector of Police. None of the witnesses were present when the confession statements were given by the accused. What emerges from the evidence of the investigating officer is that the appellant/accused stated before him while he was in custody that ornaments and clothes have been concealed and the accused is alleged to have volunteered to take the Investigating Officer to enable him to discover the place. This statement does not indicate or suggest that the appellant/accused indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, lest it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of the weapon is that the appellant disclosed



that he would show the ornaments and clothes [See: **Subramanya v. State of Karnataka** (supra)].

36. In **State of Rajasthan v. Bhup Singh**¹⁴, the Apex Court has observed the following as the conditions prescribed in Section 27 of the Evidence Act, 1872 for unwrapping the cover of the ban against the admissibility of the statement of the accused to the police (1) a fact should have been discovered in consequence of the information received from the accused; (2) he should have been accused of an offence; (3) he should have been in the custody of a police officer when he supplied the information; (4) the fact so discovered should have been deposed to by the witness. The Court observed that if these conditions are satisfied, that part of the information given by the accused which led to such recovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence.

37. The aspect which this Court has to consider in the present case is whether these recoveries have been made in accordance with law and whether they are admissible in evidence or not, and most importantly, the link with and effect of the same vis-a-vis the commission of the crime. At this juncture, it would be profitable to bear in mind the observations of the Apex Court in **Subramanya v. State of Karnataka** (supra) wherein the Apex Court has

¹⁴ [(1997) 10 SCC 675]



delineated the principles that are to be borne in mind by the Court while confronted with the question of admissibility of recovery effected at the instance of the accused. It was observed as follows in paragraph Nos. 77 and 78 of the judgment:

"77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the



independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.”

38. In **Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh**¹⁵, the principles were clarified further and it was observed as under:

“56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also

¹⁵ 2022 SCC OnLine SC 1396



accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

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70. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving the contents of the panchnama (Exh.5), the trial court as well as the High Court was not justified in placing reliance upon the



circumstance of discovery of weapon

7. If it is the case of the prosecution that the PW2, Chhatarpal Raidas, s/o Rameshwar Raidas had acted as one of the panch witnesses to the drawing of the discovery panchnama, then why the PW2, Chhatarpal Raidas in his oral evidence has not said a word about he having acted as a panch witness and the discovery of the weapon of the offence and blood stained clothes being made in his presence. The fact that he is absolutely silent in his oral evidence on the aforesaid itself casts a doubt on the very credibility of the two police witnesses i.e. PW6 and PW7 respectively.”

39. In the case on hand, when the Investigating Officer was examined, he merely stated that the accused while in custody furnished a statement and nothing more. In his evidence, he has not proved the contents of the recovery mahazar. He has also not mentioned that he had procured the presence of independent witnesses of the locality to witness the search. In other words, the recovery of ornaments and clothes at the instance of the accused will not advance the case of the prosecution.

40. It is also beyond comprehension that if the appellant had no reservations about walking directly in front of PW9, who was seated near the scene of the crime, proceeding to a nearby mosque for prayers, and then spending hours in Ramees's shop, wearing clothes soaked with water and mud, there would be no logical reason for him to hide his own wet and muddy



clothes under a stone near the boundary of his house. If his clothes were indeed wet and muddy, he could have easily gone home, changed them, and then proceeded to the mosque and the timber shop after disposing of the clothes. It is thus apparent that the attempt of the Investigating Officer was to recover the same and thereafter record the statements of the witnesses to somehow link the appellant with the crime. On a thorough examination of the entire case records as requested by the learned counsel appearing for the appellant, we find that the statements of most of the witnesses were recorded only after the appellant's arrest, and notably, none of these statements are dated. In a case of this nature, such irregularities raise serious concerns, casting doubt on the integrity of the investigation, which appears to be marred by suspicious circumstances.

41. There is also a serious discrepancy with the custody of the gold ornaments and the clothes seized based on the disclosure statement given by the accused. Ext.P5 and Ext.P6 are Mahazars prepared at 9:00 a.m. and 11:00 a.m. on 16.08.2017. One would have thought that the gold ornaments and the clothes would have been sealed in accordance with law and the same would have been forwarded to the analyst. However, Ext.P40 report submitted by the Investigating Officer, before the Jurisdictional Magistrate on 16.08.2017, endorsed by the Magistrate on 17.08.2017, would reveal that the Investigating



Officer had sought time to produce MO3 to MO8 before the Court. The excuse offered is that the gold is required to be identified, and the clothes of the accused are wet and smeared in mud and that it needs to be dried up, before production in Court. As to when it was ultimately produced, whether the produced items were the ones recovered based on the confessional statement and whether they were the objects which were forwarded to the analyst are not discernible from the case records. In other words, the prosecution has not properly proved the chain of custody of the material objects after the same were seized.

Non-explanation of the injuries noted on the body of the accused:

42. After arresting the accused, he was produced before PW20, Assistant Surgeon, Community Health Center, Panoor, who examined him and issued Exhibit P7 certificate. The doctor has noted an abrasion of 1 cm on the right hand, an abrasion of 3 cm on the back of the chest and an abrasion having a length of 1 cm over the scalp. However, when he was examined before the court, the doctor opined that he had not noted the age of the injuries. He also stated that he was not in a position to say whether the injuries noted are old or new. He also stated that if the person itches similar injuries can be caused. The nail clippings of the accused were sent for analysis and the



report revealed that the samples contained the tissues of the appellant. In that view of the matter, this piece of evidence cannot be used to link the appellant with the murder. There is yet another matter. The specific case of the prosecution is that the deceased became unconscious when she was smothered by the accused. The accused is alleged to have committed rape on the deceased. However, PW24, the doctor who conducted the postmortem has not noted any injuries in the external genitalia. The accused was also examined by PW25, the Assistant Surgeon attached to the General Hospital, Thalassery. He has also not noted any tell tale signs on his penis. If it was a case of forcible sexual intercourse on an unconscious adult woman by a 24 year old man, one would have noted some indications of the same in the private organs of both the persons. This also throws serious doubt on the case of the prosecution.

Conclusion:

43. In view of the discussion above, we hold that the prosecution has failed to prove any of the circumstances from which the conclusion of guilt is to be drawn. We are convinced that the circumstances presented by the prosecution are not of a conclusive nature so as to exclude every hypothesis, but the guilt of the accused. The chain of evidence does not show that within



all human probability the act must have been done by the accused and the accused alone. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken, the accused must get the benefit thereof. There is paucity of legal evidence to reach the exclusive conclusion regarding the guilt of the appellant. We are of the opinion that the present is in fact a case of no evidence.

In the result, this appeal will stand allowed. The conviction and sentence of the appellant in S.C.No.1084 of 2017 passed by the Court of Special Judge for the Trial of Offences against Women and Children (Additional Sessions Judge-I), Thalassery, are set aside. We acquit the appellant and direct that he be set at liberty forthwith, if his continued incarceration is not required in any other case.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

Sd/-

**G. GIRISH,
JUDGE**