IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

FRIDAY, THE 13TH DAY OF JUNE 2025 / 23RD JYAISHTA, 1947

CRL.A NO. 750 OF 2019

CRIME NO.237/2011 OF Aralam Police Station, Kannur

AGAINST THEJUDGMENT DATED 06.04.2019 IN SC NO.152 OF 2015 OF ADDITIONAL SESSIONS COURT - III, THALASSERY

APPELLANT/ACCUSED:

P.T.TOMY
AGED 48 YEARS
S/O.THOMAS, PANDARAPARAMBIL HOUSE,
ARALAM AMSOM, MANGOD, KANNUR.

BY ADV SRI.NANDAGOPAL S.KURUP

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

BY ADV PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.06.2025, THE COURT ON 13.06.2025 DELIVERED THE FOLLOWING:

JUDGMENT

K. V. Jayakumar, J.

This appeal is directed against the judgment in S.C.No.152/2015 dated 06.04.2019 of the Additional Sessions Court-III, Thalassery. The accused faced the trial for the offences punishable under Sections 302 and 392 of the Indian Penal Code. The learned Sessions Judge found the accused guilty, convicted and sentenced him to undergo imprisonment for life for the offence punishable under Section 302 of the IPC and to pay a fine of Rs.50,000/- and also sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.10,000/- for the offence punishable under Section 392 of the IPC. Impugning the judgment of the learned Additional Sessions Judge-III, Thalassery, the accused, P.T.Tomy, has preferred this appeal.

The prosecution case

2. The prosecution case in brief is that, on 15.09.2011 at about 8.15 p.m., the accused murdered the deceased, Ramachandran, by hitting him with MO1 stone and plunging his head into muddy water on the northern road margin of Vietnam – Keezhpalli Public Road, leading to HK estate road at Keezhpalli in Aralam Amsom. Further, the appellant/accused also robbed the gold chain of the

deceased, weighing 15 gms.

3. Based on the FIS lodged by PW1, Sunny, PW13 the Sub Inspector of Police, Aralam Police Station registered Ext.P8 FIR. After the investigation, the Circle Inspector of Police, Iritty submitted charge sheet.

4. The learned Judicial First Class Magistrate, Mattannur took cognizance of the offence as C.P.No.38/2014. Thereafter, the case was committed to the Sessions Court, Thalassery. The Court of Sessions, Thalassery made over the case to the Additional Sessions Court-III, Thalassery for trial and disposal.

Proceedings before the trial court

5. The accused, P.T.Tomy, entered appearance before the Additional Sessions Court, Thalassery. The charge was framed, read over and explained to him. The accused pleaded not guilty and claimed to be tried. The prosecution examined PWs.1 to 15 and marked Exts.P1 to P17. MOs.1 to 12 were also identified. Thereafter, the accused was examined under Section 313(1)(b) Cr.P.C. He denied the incriminating circumstances levelled against him. No defence evidence was adduced by the accused. The learned Sessions Judge, after a full fledged trial, found the accused guilty, convicted and sentenced him as aforesaid.

Contentions of the appellant

6. Adv.Nandagopal S. Kurup, learned counsel for the appellant/accused, submitted that the impugned judgment of the trial court is legally unsustainable. The entire prosecution story rests purely on circumstantial evidence. The learned counsel submitted that the prosecution has failed to establish the chain of circumstances to prove the accused's guilt beyond a reasonable doubt.

7. The recovery of MO4-gold chain worn by the deceased Ramachandran is illegal, and without observing the procedures laid down in **Ramanand @ Nandlal Bharti v. State of Uttar Pradesh**[1]. The 'last seen together theory' propounded by the prosecution is false and unbelievable. To prove 'the last seen theory', the prosecution relied on the evidence of PWs.2, 4, 8, 9, and 11. However, the evidence of those witnesses does not categorically prove that the accused was the person who was last seen with the deceased. The learned counsel submitted that the time gap between the death of the deceased and the last time the deceased was seen with the accused is too far apart.

8. Adv.Nandagopal S. Kurup further submitted that the recovery of MO1-stone, the weapon of offence, is from a public place and would not come within the purview of Section 27 of the Indian Evidence Act. The alleged recovery of MO9-umbrella from the deceased's autorickshaw is fabricated evidence against the accused. Adv.Nandagopal argued that there is no iota of

[1] 2022 KHC OnLine 7083

evidence to prove the motive for the commission of the offence.

9. It is submitted that there are vital contradictions and omissions in the story of prosecution, which make it highly improbable and unbelievable. Most of the witnesses are relatives of the deceased, and their version is unbelievable.

Submissions of the Public Prosecutor

10. Adv.T.V.Neema, learned Public Prosecutor submits that the impugned judgment of the learned Sessions Judge is legally sustainable and no interference from this Court is warranted. The chain of circumstances in the instant case is complete, without any missing link, and unerringly points to the sole hypothesis as to the guilt of the accused. The recovery of MO1-stone, the weapon of offence, and the recovery of MO4-gold chain worn by the deceased Ramachandran are crucial links to connect the accused with the crime.

11. Several witnesses have seen the accused immediately before the alleged commission of the crime. The learned Public Prosecutor submitted that, once the prosecution has succeeded in showing that the accused and the deceased were seen together before the incident, it is the bounden duty of the appellant/accused to come out with an explanation. The recovery of MO9-umbrella, wherein the name of the accused is written, is an important link to prove the involvement of the appellant in the crime. Adv.Neema submitted that the time gap between the alleged commission of the crime and the

witnesses last seen the accused and the deceased together is too short and that this probabalise the case of the prosecution.

Judicial Evaluation

12. To prove the guilt of the accused, the prosecution examined PWs.1 to 15 and marked Exts.P1 to P17. MOs.1 to 12 were also identified and marked. Admittedly, this is a case based on circumstantial evidence.

13. The deceased, Ramachandran, was an autorickshaw driver. The prosecution case is that, on 15.09.2011 at about 8.15 p.m., the appellant/accused had committed the murder of Ramachandran by inflicting injuries with MO1-stone and plunging his head into muddy water on the northern road margin of Vietnam-Keezhpalli public road, leading to HK estate, and robbed the gold chain worn by the deceased.

14. The learned counsel for the appellant submitted that the main circumstance relied on by the prosecution is that the deceased and the accused were last seen together on 15.09.2011. To prove this fact, the prosecution examined PWs.2, 4, 8, 9, and 11. The learned counsel submitted that the versions of those witnesses are not reliable and natural. Their version is contradictory and mutually destructive.

15. PW2, Sivaraman C.K., is the twin brother of the deceased Ramachandran. He testified that he had last seen his brother alive at about 7

p.m. on 15.09.2011 at the Edoor auto stand. At that time, the deceased told him that he was proceeding to Palapuzha on hire and would return late. The deceased also told him to intimate this matter to his wife. PW2 stated that, at that time, the deceased was wearing a Khaki shirt and a Ochre coloured lungi. The deceased also wore another shirt beneath the Khaki shirt. The witness would also state that the deceased was wearing a gold chain weighing 2½ sovereigns.

16. At about 8 p.m., he contacted Maya (PW11), wife of the deceased, and informed her that her husband would come late on that day. The next day, i.e., on 16.09.2011, one of his friends, namely Prabhakaran, contacted him and asked him to proceed to Edoor. When they reached the place of occurrence, they saw the dead body of Ramachandran lying in a prone position.

17. In cross-examination, he would say that he saw another person along with the deceased when he had seen him at the auto stand, Edoor and that fact was not stated to the police. He was not remembering the design of the chain worn by his brother.

18. PW4, Shiya Sunny, testified that she is residing at Vellari Vayal near Edoor. The deceased Ramachandran is known to her. On 15.09.2011, at about 6 p.m., she went to her house in the autorickshaw of the deceased. She entered the autorickshaw from Edoor town. At that time, the deceased asked her permission to take one more passenger into the autorickshaw. She answered affirmatively. Thereafter, another person also boarded the autorickshaw. She

stated that the other passenger wore a coffee-colored shirt and lungi. Thereafter, police came to her house and showed that man to her. She identified the co-passenger as the accused sitting in the dock.

19. In cross-examination, she has stated that the passenger travelling with her was wearing a coffee colour shirt. She has nothing to say if it is not seen written in her statement under Section 161 Cr.P.C. She has not noted any identification marks of the co-passenger/accused. She stated that she does not remember whether there was rain during that journey. She denied the suggestion that the deceased Ramachandran is a close friend of her father. She would further say that the said Ramachandran has refused to accept the auto charges.

20. PW8, A.S.Babu, is the salesman of a toddy shop at Kaaraparamba. He deposed that, on 15.09.2011 at about 4 p.m., the deceased Ramachandran went to the toddy shop and consumed alcohol along with a person named Tomy and spent about 10-15 minutes, and went back. He could identify Tomy, who accompanied Ramachandran on that day. The dress worn by Tomy was later shown to him by the police. He stated that MO2 and MO3 are the dresses worn by the accused, Tomy.

21. When police questioned PW8, he stated that another person came along with Ramachandran on that day. He is not in a position to remember the name of the other person. He saw the accused for the first time in the Court

after the incident. He cannot remember the dress worn by each person coming to his shop. He used to issue bills for the purchase of toddy. If that bill is produced, it would show what was the quantity of toddy purchased and what was the price paid by him.

22. PW9, Shijo Gopi, is the proprietor of an electrical shop named 'Sopanam Electricals'. On 16.09.2011 at about 9 a.m., he came to know about the demise of Ramachandran while he was taking his new motorcycle for registration. On 15.09.2011 at about 7.30 p.m, the deceased came to his shop. Seeing him, PW9 went out. At that time, the deceased Ramachandran said that he is going for a trip on hire. He noticed that a passenger was sitting in that autorickshaw. He remembered that the passenger was wearing a shirt and a lungi. He identified MO2 and 3 as the dress worn by the passenger on that day. Later, he came to know that the deceased had been murdered. In cross-examination, he would say that he does not remember whether he saw a passenger in the autorickshaw on the day of the occurrence. There are 10-30 shops near my shop. He could identify the passenger to some extent, but he clearly remembers the dress he wore. He has not stated this fact to the police since there was a drizzle. He could not see the face of the passenger.

23. PW11, Maya Chandran, is the wife of the deceased Ramachandran. She came to know about the death of her husband on 16.09.2011 at 10 a.m. She met her husband at their house the previous day at about 9 am. He wore a

lungi and a shirt at that time. He wore a chain weighing 2 sovereigns. She identified the dress worn by the deceased as MO5, MO6, and MO7. She also identified MO4 chain and MO8 wrist watch as that of her husband.

24. Her husband's brother, Sivaraman (PW2), informed her that her husband would come late, since he went on a trip on hire to Palappuzha. When she called her husband at about 10 p.m, the phone was switched off. On that day, her husband did not return to their house. At about 10 a.m., she got information that her husband had been assassinated. The accused Tomy is a friend of her husband. In cross-examination, she stated that she does not remember whether she stated before police that she contacted her husband at 10 p.m. on 15.09.2011.

25. MO4 chain was purchased by her and her husband 1½ months before the occurrence. There are no identification marks in the chain. It was purchased from Prince Jewellery, Iritty. The weight of the chain is about 2 sovereigns. She has not stated to the police that her husband used to wear a watch.

26. The prosecution story mainly hinges on the 'last seen together' theory. PWs.2, 4, 8 and 9 gave evidence to prove this circumstance. We have carefully evaluated and scrutinized the evidence adduced by the prosecution on this point. On such scrutiny, we are of the considered view that their testimonies are not reliable, credible, and trustworthy. PW2, Sivaraman, is the twin brother of the accused. None of the witnesses gave evidence to the tune that they had

properly identified the accused when they had seen the accused on that fateful day, nor did they have a previous acquaintance with the accused. Instead, they all spoke about the dress allegedly worn by the accused. PW15, the Investigating Officer, in cross-examination, would categorically say that the accused was not shown and identified by the witnesses during the investigation. Therefore, the first time identification of the accused in the dock cannot be stated to be either credible or reliable in establishing the case of the prosecution. Hence, we are of the view that the "theory of last seen' propounded by the prosecution is unbelievable.

27. The second submission by the learned counsel for the appellant is that the recovery effected by the prosecution under Section 27 of the Indian Evidence Act about MO1 stone, MO4 gold chain and MO9 umbrella are not legally admissible and therefore, the prosecution has failed to prove vital links to connect the appellant with the crime. According to the learned counsel for the appellant/accused, the alleged recoveries were at a public place and therefore, not relevant under Section 27 of the Evidence Act.

28. PW15, K Sudersan, is the Investigating Officer in this case. He took up the investigation on 17.09.2011. He testified that, he examined the call details of the deceased, he questioned the accused, and recorded his statement. The appellant/accused was arrested after preparing Ext.P13 arrest memo. Based on the disclosure statement of the accused and as led by the accused, they went to

HK estate and recovered MO1 (Kattu Kallu) as per Ext.P3 mahazar. Thereafter, as led by the accused, the police party went to the property of the accused and recovered MO4 gold chain as per Ext.P4 mahazar from a plastic pot placed on the north-western portion of his property. He also seized MO2 and MO3 dresses worn by the accused at the time of commission of the crime through Ext.P5 mahazar. He also submitted Ext.P14 report for adding Section 392 IPC. He produced MO1 and MO4 before the Court as per Ext.P15 property list and MO2 and MO3 before the Court as per Ext.P16 property list. He also produced Ext.P17 relevant extract of the disclosure statement.

29. On perusal of the evidence of PW15, the investigating officer, Ext.P17 relevant extract of the disclosure statement and Exts.P3 and P4 mahazars, it could be seen that the recovery of MO1 stone and MO4 chain was made from a public place. In **Abdul Sattar v. Union Territory, Chandigarh**[2], the Apex Court observed that if the recovery was made from a public place, it appears to have been very much accessible to the public, not an admissible recovery under Section 27 of the Indian Evidence Act. Moreover, authorship of concealment is also lacking in this case. In **Ramanand**'s case (supra), it is observed that mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon.

---

[2] 1985 KHC 484

> "68. What emerges from the evidence of the investigating officer is that the accused appellant stated before him while he was in custody, "I may get discovered the murder weapon used in the incident". This statement does not indicate or suggest that the accused appellant 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, least 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 weapon is that the appellant disclosed that he would show the weapon used in the commission of offence."

30. In cross-examination, PW15 would say that it is not stated in Exts.P3 and P4 recovery mahazars that MO1 and MO4 were not packed and sealed at the time of the alleged seizure. The weight of MO4 chain is 18 gms. MO4 reached the Court on 20.09.2011. It is not stated in the case diary that, through whom MO1 and MO4 were forwarded to the Court and in whose custody those articles were kept till such articles were produced before court. It is pertinent to note that, he has not produced the document to show that the property and house, from where MO4 was allegedly recovered belonged to the accused. PW15 further stated that, in Ext.P3 mahazar, it is stated that the 'Kaattukallu' is seized. However, in the description part, it is shown as 'granite stone' (Karinkallu). PW15

would further say that the CDRs of the mobile phones of the accused and the deceased were not obtained and analyzed by him. The Investigating Officer would further say that he has not shown the accused to the witnesses during the investigation.

31. We have re-appreciated and evaluated the evidence of the Investigating Officer and the witnesses to the recovery mahazars. It could be seen that the alleged recovery of MO1 stone and MO4 chain was effected from a public place. The alleged recovery was done based on a vague statement of the accused, without disclosing the authorship of the concealment. It is pertinent to note that no evidence is forthcoming to prove that MO1 and MO4 were packed and sealed at the time of the recovery.

32. The learned counsel for the appellant submitted that the recovery of MO9 umbrella belonging to the accused was recovered from the back seat of an autorickshaw, which was found 10 meters away from the place where the body of the deceased was seen. MO9 Popy umbrella with a writing 'Tomy' was recovered at the time of preparing Ext.P1 inquest report. The trial court found that the seizure of MO9 umbrella from the autorickshaw of the deceased is a vital link to connect the accused with the crime.

33. PW13, Manoharan P.K., was the Sub Inspector of Police who registered Ext.P8 FIR based on Ext.P7 FIS. Thereafter, he prepared Ext.P1 inquest report in the presence of the witnesses. He seized MO9 Poppy umbrella from the

autorickshaw, which is parked near the place of occurrence. He also recovered MO11 purse. The seizure of MO9 umbrella as per Ext.P1 inquest report is also found from a place accessible to the public.

34. On the entire assessment and judicial evaluation of evidence about the recovery of MO1 stone, MO4 gold chain and MO9 umbrella, we find merit in the argument advanced by the learned counsel for the appellant that the recovery of such material objects are not relevant to prove the fact in issue of this case.

35. The next submission by the learned counsel for appellant is that, there is no motive for the appellant to commit the alleged crime. Even according to the prosecution story, the accused and the deceased, Ramachandran, met in a toddy shop at Kaaraparamba at about 4 p.m., and consumed toddy. Adv.Nandagopal S. Kurup submitted that the story of prosecution about the theft of MO4-gold chain, which was hidden in the property of the appellant, is concocted and false. The learned counsel for the appellant/accused argued that the proof of motive has much significance in a case of this nature, which is purely based on the circumstantial evidence. The absence of proof of motive is fatal to the prosecution. On perusal of the evidence in this case, there is nothing on record to suggest an inference that the alleged crime was committed for robbing the gold chain of the deceased.

36. In **Vinod Kumar v. State (Govt. of NCT of Delhi)**[3], the Apex Court held that the absence of motive is very relevant in cases based on circumstantial evidence and should be considered as a factor in evaluating the strength of the prosecution's case. In **Jan Mohammad v. State of Bihar**[4], the Apex Court observed that, it is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused.

37. The learned counsel for the appellant further submitted that there is a material contradiction as to the weapon of offence ie, MO1-stone. Ext.P3 is the seizure mahazar through which MO1 stone was recovered. In Ext.P3, it is stated that it is a granite stone, whereas in the description portion, it is written as 'kaattukallu' covered with mud.

38. PW6, Jaison, a witness to Ext.P3 seizure mahazar would say that MO1 is a granite stone covered with mud. PW15 would say that, MO1 is a 'kaattukallu' (red stone).

39. On going through the evidence of prosecution, particularly the versions of PWs.6 and 15, and on perusal of Ext.P3 mahazar, it could be seen that the prosecution has no definite and concrete case as to the weapon of offence ie, MO1 stone. The contradiction concerning MO1 stone is material, relevant, and significant, in our view, in the adjudication of the fact in issue.

---

3 2025 KHC 7124

4 (1953)1 SCC 5

40. The learned counsel for the appellant invited the attention of this Court to the evidence of PW3 Dr. S. Gopalakrishna Pillai, Professor of Forensic Medicine, who conducted the autopsy of the deceased. In Ext.P2, postmortem certificate, PW3 has noted as many as 16 external injuries which are enumerated hereunder:

> "1) Lacerated wound 3.5x0.8cm on the forehead, 3 cm above the outer end of left eyebrow.
> 2) Three punctured lacerations, 1x0.5cm each, closely, on the left side of face, 1cm in front of the ear.
> Underneath the above injuries, the temporalis muscle on the left side of head was contused. There was a depressed comminuted fracture of the temporal bone underneath. A fissured fracture extended inwards from the depressed fracture to run through the floor of middle cranial fossa up to the left wall of pituitary fossa. The inner part of greater wing of sphenoid bone was found splintered. showed bilateral bleeding. Brain subdural and subarachnoid
> 3) Multiple small abrasions all over the face; more so on the cheek and forehead on the right side and jaw margin on the left side, close to the chin.
> 4) Fracture of the lower jaw at its centre; there was a corresponding laceration of the oral mucosa at its junction with the gum.
> 5) Multiple small abrasions 6x4 cm on the right side of front of neck.
> 6) Vague, linear, contused abrasion on the left side of front of neck, it was situated 1.5 cm below the adam's apple, and 5 cm below the left ear. It had a length of 8cm and width of 0.5cm -0.8cm and was directed obliquely upwards. Under neath, there was a contusion (0.5x0.5cm) in the left thyrohyoid muscle, at its upper end. Another

> contusion, 1x0.5cm, was seen at the upper end of right sternothyroid muscle. Cartilages and hyoid bone were intact.
> 7) Graze, with features of friction burns, 16x13cm on the lower part of front of chest.
> 8) Graze 11x3cm on the back of right elbow and forearm.
> 9) Multiple small abrasions all along the outer aspect of right thigh.
> 10) Multiple small abrasions (10 x 6cm) at the outer aspect of right knee."

PW3, Dr.Gopalakrishna Pillai, opined that the death was due to the combined effects of drowning and blunt violence sustained to the head. Injury no.1 could be caused by hitting with a blunt, heavy weapon like a stone. PW3 further opined that injury nos.1 and 2 could be caused by a weapon like MO1 stone.

41. It is pertinent to note that the doctor who conducted the autopsy opined that the injuries found on the body of the deceased were sufficient in the ordinary course to cause death. On perusal of Ext.P2 postmortem report and the evidence of PW3, it could be seen that the injuries noted are small abrasions, lacerations, and grazes. It appears that such injuries are insufficient to cause the death of a person, in the ordinary course. The prosecution has not adduced any evidence as to how the drowning happened in the instant case.

42. Last but not least, submission of Adv.Nandagopal S. Kurup is that the prosecution has failed to allege and prove the charge against the appellant beyond a reasonable doubt. The chain of circumstances was not fully established

by the prosecution. The learned counsel for the appellant/accused submitted that there are several missing links in the chain of circumstances which would also point out a hypothesis as to the innocence of the accused/appellant. He submitted that, if two views are possible, one pointing out the guilt of the accused and the other showing the innocence of the accused, the Court would prefer the latter. In **Sharad Birdhichand Sardar v. State of Maharashtra**[5]**,** the Hon'ble Apex Court observed that the circumstances from which the conclusion of guilt to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not reasonably support any other hypothesis except that the accused is guilty. There must be a chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. Paragraphs 152, 153, and 154 of **Sharad Sardar**'s case (supra) read thus:

> "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh (1952 SCR 1091 : AIR 1952 SC 343 : 1953 CriLJ 129). This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh (1969 (3) SCC 198 : 1970 SCC

5 1984 KHC 145 : AIR 1984 SC 1622

(Cri) 55) and Ramgopal v. State of Maharashtra (AIR 1972 SC 656 : (1972 (4) SCC 625). It may be useful to extract what Mahajan, J. has laid down in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 CriLJ 129) :

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793 : 1973 SCC (Cri) 1033 :1973 CriLJ 1783) where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

Certainly, 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.

(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, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

43. In the instant case, the learned counsel for the appellant/accused has pointed out several missing links which *inter alia* include the following:

1. The prosecution has failed to prove the motive for the alleged commission of the offence.

2. The recovery of MO1 stone MO4 gold chain and MO9 umbrella were from public place.

3. The theory of last seen projected by the prosecution is not reliable, credible, or trustworthy. The witnesses who were examined to prove the last seen had failed to identify the accused precisely, immediately prior to the alleged crime. The first time identification of the accused in the dock has no proactive nature.

4. There is a material contradiction as to the weapon of offence ie, MO1 stone, whether it is granite stone or a red stone.

5. According to PW3, Dr.Gopalakrishna Pillai, the injuries are minor abrasions and graze.

6. There is a lacuna in prosecution evidence as to the circumstances in which the deceased happened to be drowned.

7. The call records of the deceased and the accused were not taken, analyzed, and produced before the Court.

8. As per Ext.P12, the certificate of chemical analysis, blood was not detected in MO2 and MO3, the dress worn by the accused at the time of the alleged occurrence.

44. In **Renuka Prasad v. State represented by Assistant Superintendent of Police**, the Apex Court held that a conviction cannot be upheld based on presumptions or moral considerations in the absence of legally admissible evidence; relying on such grounds amounts to a complete departure from established principles of criminal jurisprudence. A conviction must rest on valid legal evidence, whether direct or circumstantial, which establishes the guilt of the accused. The relevant portion of the judgment is extracted hereunder:

> "We cannot but say that the High Court has egregiously erred in convicting the accused on the evidence led and has jumped into presumptions and assumptions based on the story scripted by the prosecution without any legal evidence being available. Truth is always a chimera and the illusion surrounding it can only be removed by valid evidence led, either direct or indirect, and in the event of it being circumstantial, providing a chain of circumstances with connecting links leading to the conclusion of the guilt of the accused and only the guilt of the accused, without leaving any reasonable doubt for any hypothesis of innocence. We can only accede to and share the consternation of the Division Bench of the High Court, which borders on desperation, due to the futility of the entire exercise. That is an occupational hazard, every judge should

> learn to live with, which cannot be a motivation to tread the path of righteousness and convict those accused somehow, even when there is a total absence of legal evidence; to enter into a purely moral conviction, total anathema to criminal jurisprudence. With a heavy heart for the unsolved crime, but with absolutely no misgivings on the issue of lack of evidence, against the accused arrayed, we acquit the accused reversing the judgment of the High Court and restoring that of the Trial Court."

45. We have carefully examined the evidence on record, both oral and documentary. On such careful reassessment and evaluation of evidence, we feel that the prosecution has failed to allege and prove the charge against the appellant/accused beyond a reasonable doubt. In the instant case, the evidence on record is insufficient to unerringly point out the guilt of the accused. The evidence adduced by the prosecution would probablize two views: one pointing out the guilt of the accused and the other indicating the innocence of the accused. The learned Sessions Judge has overlooked serious illegalities, infirmities, and contradictions while entering the finding. In such circumstances, we have no hesitation in accepting the latter view, ie, the one pointing out the innocence of the accused.

46. On the entire reassessment and scanning of evidence, we are of the considered opinion that the accused is entitled to an acquittal in this matter. The impugned judgment of the learned Sessions Judge is hereby set aside. The appellant/accused is set at liberty forthwith.

In the result,

(i) Criminal Appeal is allowed.

(ii) The impugned judgment of the learned Special Judge in S.C.No.152/2015 is set aside.

(iii) The appellant/accused is acquitted and he is set at liberty.

(iv) The bail bond, if any, executed by the accused stands cancelled.

(v) Fine, if any, paid by him shall be refunded.

Sd/-

RAJA VIJAYARAGHAVAN V
JUDGE

Sd/-

K. V. JAYAKUMAR
JUDGE

Sbna/