
Pradeep Vs State of Kerala

Criminal A.No. 1376 of 2008 (Against the Judgment in SC. 285 of 2007 of Sessions Court, Thrissur)

Court: High Court Of Kerala

Date of Decision: Feb. 15, 2013

Citation: (2013) 4 KerLJ 554

Hon'ble Judges: Mr. K.T. Sankaran and Mr. M.L. Joseph Francis, JJ.

Bench: Division Bench

Advocate: P. Vijaya Bhanu and P. Maya, Advocates, for the Appellant; Shri Gikku Jacob, Public Prosecutor, for the Respondent No. 1; Sri. R. Ranjith, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

K.T. Sankaran, J.â€”The appellants in the appeals, (Crl. Appeal Nos.547 of 2012, 1386 of 2008, 1749 of 2008, 1542 of 2008 and 1376 of

2008) who are accused Nos.1 to 5 respectively in S.C. No.285 of 2007 on the file of the Court of Session, Thrissur, challenge the conviction and

sentence passed by the court below under Sections 143, 147, 342, 302 and 201 read with Section 149 of the Indian Penal Code (for short, "the

I.P.C.").

2. The prosecution case is that the accused persons, who were members of an unlawful assembly, with the common object of committing murder

of Jinto, pushed him into a thodu after tying rope around his neck and smothered him and also strangled him with the rope and caused his death

and thereby committed the offence under Section 302 of the I.P.C. It is also alleged that the accused persons committed the offences under

Sections 143, 147, 342 and 201 of the I.P.C.

3. Deceased Jinto belonged to Chembu near Vaikom. His mother is PW1 Susan George. Father of Jinto is working in a Coal Mine at Sincroli in

Madhya Pradesh. Jinto was studying at the M.T.I. Polytechnic, Thrissur for Diploma in Electronics. He was staying in the hostel of M.T.I. at

Thrissur. Jinto used to go to his native place on every Friday and he used to return to Thrissur by Sunday evening. On 21.7.2006, Jinto came to his

house at Chembu. He stated to his mother that he has holidays for a week. On 23.7.2006, he went to Church, came back and after breakfast, left

for Vaikom to meet PW17, his cousin brother. While he was with PW17 (Didimos), Jinto received a telephone call from Thrissur. Jinto told

PW17 that he had to go to Thrissur. Jinto returned to his house and had meals with his mother and sister. At that time also, he received a call from

Thrissur. Jinto told his mother that he had some urgent work in respect of a project at Thrissur and that he would return on the next day. After

taking meals, Jinto left for Thrissur.

4. At about 5 p.m. on 23.7.2006, Jinto contacted his mother over phone and stated that he reached at Thrissur. As promised, Jinto did not return

to his house on the next day, i.e., on 24.7.2006. Therefore, PW1 tried to contact him over phone, but she did not succeed in that attempt. PW1

contacted PW17, who also made attempts to contact Jinto over mobile phone. The mobile phone of Jinto was in a switched off mode and

therefore, they could not contact him.

5. Thereafter, PW1 contacted the hostel authorities and realized that Jinto had not reached at the hostel. On realizing this, PW1 decided to make

enquiries. On 26.7.2006, PW1 along with PW17 (Didimos) and another relative went to the hostel and college and enquired about Jinto. They did

not get any worthwhile information.

6. The father of Jinto advised PW1 to approach the Police. Accordingly, she reported the matter at Vaikom Police Station on 27.7.2006. Crime

No.520/06 was registered at Vaikom Police Station for man missing.

7. On the direction of the Superintendent of Police, Thrissur, the Circle Inspector of Police, Town East Police Station, Thrissur made enquiries

about Crime No.520/06 of Vaikom Police Station regarding the missing of Jinto. Enquiries were made with respect to the persons with whom

Jinto had acquaintance and with whom he was moving. The Police came to know that Jinto had intimate friends outside the college and that

accused No.1 was a close friend of Jinto. On 4.8.2006, the Circle Inspector of Police, Town East Police Station, Thrissur (PW39) called accused

No.1 and questioned him. On getting information that Jinto was no more, he registered Crime No.517/06 of Thrissur Town East Police Station for

the offences under Sections 143, 147, 148, 302 and 201 of the I.P.C. read with Section 149 of the I.P.C.

8. Accused No.1 was arrested and on the basis of the confession statement of accused No.1, he was taken to the place of occurrence. On the

request made by the Circle Inspector of Police, the Sub Divisional Magistrate (PW22) and other witnesses were also present at the place.

Exhumation of the dead body of Jinto was made in the presence of Police Surgeon of Medical College, Thrissur and the Sub Divisional Magistrate.

The dead body was found in a room in a partly constructed house at a place called Parakulam. The place was pointed out by accused No.1 and

digging was done at that spot. The dead body of Jinto was found there. He was wearing only an underwear. Inquest was conducted by the Sub

Divisional Magistrate (PW22) in the presence of witnesses. PW21 conducted post-mortem and he issued Ext.P18 post-mortem certificate. The

observations and findings in Ext.P18 post-mortem certificate are the following :

A. General:

Body of a moderately built and nourished male of height 171 c.m. and weight 37 k.g. In mild to moderate degree of decomposition. Eyes opened

and eyeballs protruded: conjunctivae and corneae were in a state of early decomposition. Tongue protruded out for 4 c.m. outer to teeth margin.

Reddish brown sand particles were seen filled in both ears and was found sticking to the entire body. Cuticle completely peeled off and hairs were

loose. There were degloving of both palms and soles. The deceased was found having multi coloured underwear in situ. Both scrotum and penis

showed early decomposition changes. The left central incisor on the upper jaw showed broken occlusive margin involving the crown. The area of

broken margin was oblique, the length at its outer end was 0.8 c.m. and inner end was 1 c.m. The length of the right central incisor on the upper

jaw was 1.2 c.m. Scalp hairs 10 c.m. long and black. A rift of black hairs of length 0.4 c.m. was found over an area 5 x 3 c.m. at the chin.

B. Injuries (Antemortem)

1. Dermal contusions 14x13 c.m. on forehead and top of head of varying depth of 0.2 to 0.5 c.m., lower margin at supra orbital ridge and right

margin 3 c.m. outer to midline.

2. Dermal contusion 5 x 4 c.m. on forehead root, bridge and sides of nose, upper margin 2.5 c.m. above root of nose.

3. Dermal contusion 7 x 2 c.m. on left side of face vertical of varying depth 0.5 to 1 c.m., upper margin 0.2 c.m. below and 3 c.m. outer to root of

nose.

4. Contusion 4 x 0.5 c.m. x 0.2 to 0.5 c.m. on the right half of upper lip corresponding right central incisor to 1st premolar.

5. Contusion 4 x 0.5 c.m. x 1 c.m. x 0.2 on left half of upper lip and angle of mouth corresponding to 1st premolar to left central incisor.

6. Contusion 6 x 1.5 c.m. x 0.5 to 1 c.m. on lower lip corresponding to 1st premolar on left side to lateral incisor on right side.

7. Contusion 8 x 1 x 0.2 to 0.5 c.m. on right side of face just in front of ear, lower margin at jaw margin.

8. Two contusions 2.5 x 0.5 x 0.2 c.m. and 1 x 0.5 x 0.5 c.m. on the right and left ear lobule respectively.

9. Contusion 4 x 2 x 0.2 c.m. to 0.5 c.m. on tip of tongue and its anterior surface.

10. Multiple dermal contusions over an area 10 x 2 c.m. vertical on the inner aspect of right upper arm of varying size 1.5 x 1 c.m. to 4 x 1 c.m.,

lower end 2 c.m. above elbow.

11. Multiple contusions over an area 11 x 2 c.m., vertical on inner aspect of left upper arm of varying size 3 x 1 c.m. to 2 x 1 c.m., lower end 2

c.m. above elbow.

12. There were 100 gms. of altered blood clot in the skull cavity, found adherent to anterior cranial fossa with reddish brown stain on its surface.

There was altered blood in the region of cerebellum and brain stem.

Neck Findings: A jute rope of diameter 1 c.m. was seen tied around the neck loosely with a reef knot on the right side of neck. The circumference of the loop was 28 c.m. There were multiple knots 7 c.m. away from the reef knot. The long free portion was 28 c.m. long with

splitting of fibers and short free portion 4 c.m. long.

Underneath the ligature mark there was a grooved ligature mark 29 c.m. long all around the neck. It was placed 6.5 c.m. below chin (1 c.m.

width), 3.5 c.m. below right angle of jaw (1 c.m. wide), 4.5 c.m. below right ear lobule (1.2 c.m. wide), 7.5 c.m. below right mastoid process (1.2

c.m. wide), 10 c.m. below occipital protuberance on back of head (1.2 c.m. wide), 7.5 c.m. below left mastoid process (1 c.m. wide), 5 c.m.

below left ear lobule (1 c.m. wide) and 5 c.m. below left angle of jaw (1 c.m. wide).

There were no infiltration of blood underneath the ligature mark. Hyoid bone was found in three pieces (due to decomposition). Thyroid cartilage

and other neck structures were intact.

C. Other Findings: Skull intact. Brain liquefied. Trachea and bronchi empty. Lungs right 80 gms, left 70 gms, dark due to decomposition. Both

chest cavity contained 100 m.l. of reddish brown fluid with smell of decomposition. Heart 100 gms, flabby and softened due to decomposition,

walls, valves and chambers were normal except for decomposition changes. Liver 300 gms, spleen 20 gms, kidneys right 30 gms, each, pancreas

and adrenals showed moderate degree of decomposition changes otherwise normal. Stomach contained 50 gms of partially digested food material

(rice) in yellowish medium with smell of decomposition. Mucosa decomposed. Intestine and mesentery normal. Urinary bladder empty. Genital

organs normal except for decomposition. Spinal column and cord intact. All other organs showed moderate to severe degree of decomposition,

otherwise normal.

Viscera and mud particles from the scene of crime preserved for chemical analysis. Sternal bone marrow and water brought by the police

preserved for diatom test. Sternum was also preserved.

Opinion As To Cause Of Death

The deceased died due to combined effect of head injury and smothering. The possibility of ligature strangulation and drowning contributing to

cause of death could not be ruled out.

9. PW39, the Circle Inspector of Police, Town East Police Station realized that the crime was conducted within the territorial limits of Viyyur

Police Station and accordingly, the file was transferred to Viyyur Police Station. PW42, Thrissur Town West Circle Inspector conducted the

investigation after re-registering the crime as Crime No.281 of 2006 of Viyyur Police Station.

10. Accused Nos.2 and 3 were arrested by PW42 on 5.8.2006 and accused Nos.4 and 5 were arrested by PW42 on 8.8.2006. Accused No.3

was arrested from the compound of a tile factory at Peringavu. Accused Nos.2, 4 and 5 were arrested at 4.30 a.m. on 8.8.2006 while they were

found sleeping in the veranda of Arya Vaidya Pharmacy building situated on the eastern side of Parthasarathy Temple, Guruvayoor.

11. The prosecution case is that after the arrest of the accused, they made confession statements and on the basis of the confession statements,

recovery of several material objects were made. As stated earlier, the dead body of Jinto was recovered on the basis of Ext.P35 admissible part

of the confession statement made by accused No.1.

12. As stated earlier, accused Nos.2, 4 and 5 were arrested at 4.30 a.m. on 8.8.2006 from the veranda of Arya Vaidya Pharmacy near

Parthasarathy Temple, Guruvayoor. On the basis of Ext.P22(a) confession made by accused No.2 and as led by him, MO6 mobile phone

belonging to Jinto was recovered from PW6, to whom it was sold by accused No.2. Ext.P22 mahazar was prepared in respect of the same. On

the basis of the confession made by accused No.3 [Ext.P12(a)], MO1 shirt and MO3 pants belonging to Jinto were recovered from a marshy

place near the house of PW12 Suresh, as pointed out by accused No.3 and as led by him. MO4 bag belonging to Jinto was seized from the

possession of accused No.4 by PW42 on 8.8.2006 and Ext.P6 mahazar was prepared. MO4 bag was being used by accused No.4 as a pillow

for sleeping. From inside MO4 bag, recovery of MO7 telephone diary, MO11 series bath towels, MO12 double dothi, MO13 series racer and

cover and MO15 currency note with denomination of Rs. 20/- was made as per Ext.P6 mahazar. MO7 telephone diary belonged to deceased

Jinto. On the basis of Ext.P11(a) confession made by accused No.4 and as led by him, MO16 crow bar and MO17 spade were recovered from

the rear side of the house of PW24 Ayyappan in the presence of PW11 (S.K. Dasan). As per Ext.P16(a) confession made by accused No.4 and

as led by him, the Investigating Officer, in the presence of PW18 (Venu) recovered MO18 pick axe from the rear side of a partly constructed

house belonging to Radhakrishnan. Accused No.5 was found in possession of MO8 watch at the time of his arrest and it was recovered as per

Ext.P6 mahazar by the Investigating Officer, in the presence of PW5. Accused No.5 gave Ext.P13(a) confession statement on the basis of which

the MO5 series chappals worn by Jinto were recovered as per Ext.P13 mahazar in the presence of PW13 Thankarajan, from a bushy place near

Parathodu. The place from where MO5 series chappals were recovered was pointed out by accused No.5 to the Investigating Officer.

13. Mos.1 to 9 belonged to deceased Jinto and they were identified by PW1 Susan George, the mother of Jinto. There was no challenge to the

said identification by any of the accused.

14. In the present case, none of the accused disputed the identify of Jinto. There is no dispute regarding the exhumation of the dead body of Jinto

from the room in the partly constructed house, as spoken to by the witnesses. The dead body of Jinto was identified by PW37, his paternal uncle.

The court below held, on the basis of the evidence on record, particularly Ext.P18 post mortem certificate and the evidence of PW21 (the

Assistant Police Surgeon of the Department of Forensic Medicine, Medical College, Thrissur) that Jinto's death was homicidal. None of the

accused has challenged the finding that the death of Jinto was homicidal.

15. Jinto was at his residence till about noon on 23.7.2006. It has come out in evidence that he received telephone calls from Thrissur. Jinto stated

to PW17, his cousin brother and to PW1, his mother, that the calls were from Thrissur and that he had to urgently go to Thrissur in connection with

a project work. The prosecution relied on Ext.P27 call details in respect of the mobile phone No.9895863626 which belonged to Jinto with

Unique Identification No.356166004862090. Ext.P27 was proved in accordance with law and PW36, legal head of Airtel was examined in this

regard. The court below held that Ext.P27 was duly proved and there is no challenge to the same by any of the appellants. Ext.P27 shows that at

11.53 a.m. on 23.7.2006, Jinto received a call while he was at Vaikom. That was from the land phone No.4873205432 which belonged to PW26

(Bosco), who runs Bosco Stores at St. Thomas College Road, Thrissur. PW26 deals with stationery, cool drinks, Photostat and an STD booth.

PW26 stated that his Telephone Number is "3205432" and the STD code is "0487". The tower position as shown in Ext.P27 shows that the

person in possession of the mobile phone No.9895863626 travelled from Vaikom to Chembu and then to Maharaja's Ground, Ernakulam, Bank

Junction, Aluva, Kodakara, Pudukkad, Chembukavu, Peringav, East Fort, Round North, East Fort, Mukkattukara, Round North and Peringavu.

Ext.P27 shows that at 13.34 hrs. and 14.18 hrs., Jinto received two calls from the mobile phone No.9895805888. According to the prosecution,

these calls were made by accused No.1 to Jinto. The evidence of PW29 is relied on by the prosecution in this regard. PW29 (Krishnakumar) is

the ID Proof Collector of Airtel Company. Airtel Company had provided a mobile phone to PW29 bearing No.9895805888. PW29 stated that

he knew accused Nos.1, 3 and 4 and he identified them while giving evidence. PW29 stated that on 23.7.2006, while he went to the house of his

friend Krishnakumar at Kalladimoola, he could not find him and while coming back, he met his friends, Sani, Mahesh and Santhosh. PW29

remained at Kalladimoola talking to his friends, Sani, Mahesh and Santhosh. At that time, accused Nos.1, 3 and 4 came to Kalladimoola Junction.

Accused No.3 approached PW29 and requested him to give his mobile phone to enable accused No.1 to call one of his friends. PW29 obliged.

He enquired whether the call was to be made to Airtel number. On getting an answer in the affirmative, PW29 stated that accused No.1 can call

for any length of time as there will be no billing for a talk from Airtel to Airtel. Accused No.1 made the call at a little distance away from where

PW29 was standing. After making the call, the mobile phone was returned to PW29. After about 45 minutes, accused No.3 approached PW29

and made a similar request that accused No.1 had to make a call to his friend and it was to ascertain whether the boy whom accused No.1 called

earlier was about to reach the place. PW29 entrusted the phone with accused No.3 and accused Nos.1, 3 and 4 remained at a little distance away

from that place and made the call.

16. PW29 further stated that after about 3 days, accused No.3 called him in his mobile phone and stated that he wanted to meet PW29 urgently.

On a query by PW29 as to what was the purpose, accused No.3 stated that the matter could not be divulged over phone. Thereafter, accused

No.3 met PW29 and enquired whether anybody had contacted him over phone. Accused No.3 directed PW29 that if any Policeman contacts him

and enquires about any call, PW29 need only state that he had called to Telephone Number with respect to which a missed call was found in his

mobile phone. Accused No.3 specifically directed PW29 that he should not tell the Police that the call was made by accused No.1. Later, PW29

came to know that the boy was murdered by the accused. PW29 gave Ext.P24 statement under Section 164 of the Code of Criminal Procedure

before the learned Magistrate.

17. Two incoming calls are seen made to the telephone of Jinto at 14.26 hrs. and 15.09 hrs. on 23.7.2006 from Telephone Nos.4873252609 and

4872331513. On investigation, it was found that these numbers belonged to PW20, who runs Hero Hotel at Palace Road, Thrissur. He runs an

STD booth also. He identified accused No.1 and stated that he knew accused No.1 before. PW20 stated that accused No.1 used to come to the

hotel for taking meals and to make telephone calls. PW20 also knew Jinto. The witness stated that Jinto used to come with accused No.1 to the

hotel and telephone booth to make telephone calls. PW20 stated that he owns two BSNL telephone connections with Numbers "2331513" and

"2332764" and a Reliance Land Phone with Number "2322715". Ext.P27 clearly establishes that on 23.7.2006, Jinto left Chembu near Vaikom

and went to Thrissur. The call details also indicate that after 26.7.2006, no call was attended in the Telephone Number belonging to Jinto. On

26.7.2006, two calls are seen to have been made to the mobile phone of Jinto and the prosecution has a definite case that it was from the

telephone of Ijas Ahammed. Ijas Ahammed was not examined as a witness. On 24.7.2006, 12 messages had gone to the telephone of Jinto. The

evidence of PW1 and PW17 clearly establishes the fact that they could not contact Jinto over phone after 23rd July, 2006. On 23.7.2006, when

PW17 tried to contact Jinto over phone in the evening, the witness heard some vague voice and he could not identify who answered the call.

Thereafter, whenever call was made either by PW1 or by PW17, it was found that Jinto's mobile phone was switched off.

18. PW4 (Dhanya) is a sales girl at Kalyan Silks, Thrissur. She stated that her father was in the Intensive Care Unit in a hospital. Her brother and

sister-in-law were attending the patient at the hospital. Since Dhanya's brother had no shirts to wear, he contacted a shop near his house and

asked them to send shirts with a person whom he knows. The evidence of Dhanya would disclose that accused No.4 brought MO2 shirt and

another shirt at the hospital and entrusted to Dhanya. Since she found that the shirts were smudged in mud, they were not used. Later, the shirts

were taken to her house and washed. MO2 shirt was recovered as per Ext.P10 mahazar from the house of Dhanya in the presence of PW10

(John). MO2 shirt was stitched in the tailoring shop of PW7 and he identified the shirt as that one which belonged to Jinto.

19. PW6 Sabarinath is the Manager of Gulf Traders, a duty paid shop at M.G. Road, Thrissur. PW28 Ajith is the employer of PW6. The

evidence of PW6 and PW28 indicate that they used to purchase and sell old and new mobile phones. PW6 stated that MO6 mobile phone

belonging to Jinto was sold by accused No.2 in the Mobile Shop for a sum of Rs. 1,600/-. PW6 furnished a statement under Section 164 of the

Code of Criminal Procedure to the Magistrate about these aspects. However, he did not identify second accused in Court. PW6 was declared

hostile and he was cross examined by the learned Public Prosecutor.

20. PW8 Sreeraj stated that he knew accused No.1, who is his neighbour. PW8 stated that on 26.7.2006, accused No.1 approached him and

requested to give his mobile phone. At that time, accused No.1 was having a SIM card with him and he was not having a phone. Accused No.1

wanted to note the contact numbers in the SIM card. On an enquiry by PW8 as to why it was needed, accused No.1 stated to him that one of his

friends was missing and the contact numbers were required for the use of his parents. Accused No.1 also stated to PW8 that the missing boy was

Jinto. PW8 gave the mobile phone to accused No.1 and after some time, it was returned to him by accused No.1.

21. PW9 Joshy stated that he runs a stationery shop and cool bar. On 23.7.2006, at about 7.30 p.m., accused No.3 purchased Soda and lemon

from his shop. PW9 stated that he knew accused No.3 for the last several years. PW9 gave Ext.P9 statement to the learned Magistrate under

Section 164 of the Code of Criminal Procedure. PW15 Radhakrishnan is a Painter by profession. He is a close friend of accused No.2. They used

to take liquor together. On 23.7.2006, he met accused No.2. At that time, accused No.5 was also with accused No.2. PW15 used to take liquor

with accused No.2 and his friends on Sundays near Kadavu. On 23.7.2006, accused No.2 stated that on that day, there was no programme

meaning thereby that there was no drinking programme. The witness realized that the attempt of accused No.2 was to avoid him and he left the

place.

22. PW16 Vipin was studying in Kerala Varma College for Plus Two course during 2006. He knew deceased Jinto. Jinto was in M.T.I. Hostel.

PW16 used to meet Jinto at the playground near his house and also in a tea shop. The witness stated that Jinto was friendly with everybody. The

witness had a Bajaj Pulsor Motorcycle and it was being used by Jinto also. The witness stated that accused No.1 was a common friend of him and

Jinto. During 2006, Jinto was always seen in the company of accused No.1. The witness had gone to the house of Jinto and he had disclosed that

information to accused No.1. Accused No.1 keenly enquired to the witness about the details of Jinto's house and surroundings. Accused No.1

used to enquire to the witness as to whether Jinto's parents were having great love and affection towards him and whether they would give

whatever Jinto asked to him. The witness told accused No.1 that the parents of Jinto loved him very much and they would give anything and

everything Jinto asked. Accused No.1 also asked the witness as to whether Jinto's house was a big one and whether he was financially sound. On

26.7.2006, Jinto's mother and relatives came to the house of the witness and stated that Jinto was missing. PW16 also stated that he knew

accused No.3 and he used to see Jinto in the company of accused Nos.1 and 3. The witness also had seen accused Nos.4 and 5 in that company.

The witness identified MO6 mobile phone as that of Jinto. He stated that MO6 mobile phone was purchased in his name for Jinto as per Ext.P15

bill.

23. PW25 (Dasan) is a Cook in Hotel Vishnu at Peringavu. On 15th August, 2006, accused No.4 was brought to the hotel by the Investigating

Officer and the witness identified him. PW25 stated that accused No.4 used to come to the hotel. About three weeks before 15.8.2006, accused

No.4 came to his shop and purchased Chappathi and beef curry.

24. PW27 is a headload worker. He is engaged in money lending business also. PW27 stated that he knew accused Nos.1 and 5. He stated that

on 21.6.2006, accused Nos.1 and 5 met him and demanded a loan of Rs. 10,000/- and offered to pledge a motorbike. Accused No.1 borrowed

the amount agreeing to repay within one month. Accused No.5 was the guarantor. The evidence of PW16 also shows that accused No.1 had

pledged his motorbike. The questions put to PW27 in the cross examination of accused No.5 clearly suggest the pledging of the vehicle by

accused No.1, that accused No.5 was known to PW27, that money was not repaid within time, that accused No.5 was beaten by PW27 and that

there was enmity between accused No.1 and accused No.5 on account of the transaction. The questions put in the cross examination by accused

No.5 would also indicate that accused Nos.1 and 5 were close friends.

25. PW33 (Unnikrishnan) was a student in M.T.I. Polytechnic, Thrissur and he was a room-mate of Jinto in the hostel. He stated that Jinto was a

sportsman and he had friends inside the college and outside the college. PW16 Vipin and accused No.1 were friends of Jinto and they were found

together on many occasions. The witness had seen Jinto last on 21.7.2006 while Jinto was about to go to his house from the hostel. The evidence

of PW33 also indicates that there was a one week holiday for the college. The dead body of Jinto was found in a buried state in the partly

constructed house belonging to PW34 Rajesh. The property originally belonged to PW35 Sujith Sreenivasan. Sujith Sreenivasan entered into an

agreement for sale with Rajesh and later, executed the registered document on 1.8.2006. The dead body of Jinto was exhumated from a room in

that house on 4.8.2006. That house was part of a larger extent of 6½ acres which belonged to PW35 and situated at Parathodu. PW35 was

engaged in real estate business. He sold a plot to PW34. PW35 has also constructed another house. There is also a shed in the property having an

extent of 6.5 acres which is known as "motherland". PW35 also stated that the three sides of "motherland" are bounded by thodu. The plot

belonging to Rajesh (PW34) is having an extent of 5 cents. The plan prepared by the Village Officer shows that on the northern side of the house

in question, there is a thodu and on the further north, there are two houses. On the southern side and western side, roads are there. On the

southern side of the house, paddy land is also situated.

26. PW35 stated that he knew accused Nos.3 and 4 and he identified them while in court. He stated that he knew the other accused also. He

stated that accused Nos.3 and 4 used to come near the thodu for taking bath and for fishing. The witness also added that once accused No.1 was

found inside the partly constructed house and the witness questioned the same.

27. DW1 was examined on the side of accused No.5 to establish that accused No.5 was arrested not on 8.8.2006, as stated by PW42, but on

3.8.2006. DW1 is a Councilor of Thrissur Municipality and a neighbour of accused No.5. The evidence of DW1 was discussed in detail in

paragraphs 67 to 70 of the judgment of the court below. The court below held that DW1's evidence cannot be relied on at all.

28. PW42, the Investigating Officer stated that on the arrest of accused No.4, he was subjected to medical examination by a Forensic Surgeon

(PW21), who issued Ext.P19 certificate. In Ext.P19 certificate, three healing wounds were noted on the body of accused No.4, which are the

following :

1. Healing wound 0.3 x 0.3 c.m. on the back left little finger 2.5 c.m. above with epithelisation at the margin.

2. Healing wound 0.5 x 0.5 c.m. on back of proximal phalanx of left ring finger 4 c.m. below knuckle with epithelisation at the margins.

3. Healing wound 0.5 x 0.5 c.m. on back and inner aspect of left middle finger 2.5 c.m. above tip with epithelisation at the margins.

According to PW21, the aforesaid injuries noted in Ext.P19 would be caused in an attempt to strangle a person forcibly and in such attempt, if

the fingers come into contact with hard and rough surface or objects.

29. The prosecution relied on the circumstances mentioned above, as revealed from the documentary and oral evidence in the case. The

prosecution also relied on the recovery of the material objects on the basis of the confession statements made by the accused persons. It was

contended on behalf of the prosecution that the circumstantial evidence unerringly leads to the inference of guilt. The chain of circumstances is so

complete that in all human probability, the crime was committed by the accused persons. The court below accepted the contentions put forward by

the prosecution and rejected the contentions put forward by the accused and the accused were found guilty for the offences alleged against them.

All the accused persons were sentenced to undergo imprisonment for life under Section 302 of the I.P.C., rigorous imprisonment for six months

under Section 143 of the I.P.C., rigorous imprisonment for two years under Section 147 of the I.P.C., rigorous imprisonment for one year under

Section 342 of the I.P.C. and rigorous imprisonment for seven years under Section 204 of the I.P.C. However, in the matter of fine, accused

Nos.1 and 2 were sentenced to pay a fine of Rs.2,00,000/- each and in default to undergo rigorous imprisonment for four years each under

Section 302 of the I.P.C., while accused Nos.3, 4 and 5 were sentenced to pay a fine of Rs.1,00,000/- each and in default to undergo rigorous

imprisonment for three years under Section 302 of the I.P.C. The court below also held that the substantive sentences shall run concurrently.

30. The learned counsel for the appellants submitted that going by Ext.P27 call details, it cannot be established that any of the accused persons

contacted Jinto over phone and that Jinto came to Thrissur at their behest. The learned counsel for accused No.1 stated that there is no case for

the prosecution that accused No.1 was contacted by any of the relatives of Jinto in spite of their knowledge that accused No.1 was the friend of

Jinto. The learned counsel also pointed out some of the inconsistencies in the telephone numbers in Ext.P27. For example, the evidence of PW8

shows that his handset was used by accused No.1 to find out the contact numbers using the SIM card of Jinto's mobile phone. The IMEI Number

of PW8's handset is "356207002814896". It is submitted that going by Ext.P27, the last digit of the IMEI Number with respect to the call on

26.7.2006 is "0" and not "6". The evidence of PW36 indicates that in the 15 digit IMEI Number, the last digit is likely to change and that is not

relevant for identifying the handset. It was contended that there is nothing to connect accused No.1 with the SIM card and handset of Jinto's

mobile phone. It is contended that there is no evidence to corroborate the evidence of PW29. According to the appellants, there is no evidence to

show that Jinto was seen with any of the accused on 23.7.2006. The counsel also raised a contention that the motive alleged by the prosecution is

not established. It is submitted that since the prosecution relies only on circumstantial evidence, motive assumes significance. The learned counsel

for the appellants submitted that there is no case that any theft or robbery was committed by any of the accused or that they received stolen

property. That some of the accused were found together at various places on various occasions would not by itself enable the court to arrive at the

conclusion that they were involved in the offences. The accused persons are neighbours and they are known to each other. (It is interesting to note

that accused No.2 stated that he does not know any of the accused and that none of the accused has any contact with him).

31. The learned Public Prosecutor submitted that the circumstantial evidence established in the case unerringly point to the guilt of the accused. The

material objects and the tools used for burying the dead body of Jinto were recovered based on the confession statements made by the accused.

Even after the date of offence, accused Nos.2, 4 and 5 were moving together and they were arrested by PW42 at Guruvayoor. Valuables

belonging to Jinto were also recovered from the accused. The accused could not account for the possession of the mobile, the watch and the dress

of Jinto. They did not state anything as to how did they come into possession of these articles. The learned Public Prosecutor submitted that proof

of possession of the incriminating articles belonging to Jinto are sufficient to establish that the accused persons committed the murder of Jinto and

thereby they came into possession of these articles. It is submitted that even the dress worn by Jinto when he left his house (MO1 and MO3) were

found from a place as shown by accused No.3.

32. The learned counsel for the appellants submitted that the case rests upon circumstantial evidence and the circumstance do not unerringly point

towards the guilt of the accused.

33. It is well settled that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.

(ii) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.

(iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human

probability the crime was committed by the accused and none else; and

(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of

guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

(See Ashok Kumar Chatterjee v. State of Madhya Pradesh (A.I.R. 1989 S.C. 1890); Gambir v. State of Maharashtra (A.I.R. 1982

SC 1157); Rama Nand v. State of Himachal Pradesh (A.I.R. 1981 S.C. 738); Prem Thakur v. State of Punjab (A.I.R. 1983 S.C. 61);

Earabhadrapa v. State of Karnataka (A.I.R. 1983 SC 446); Gian Singh v. State of Punjab (A.I.R. 1987 S.C. 1921); Balvinder Singh v.

State of Punjab (A.I.R. 1987 S.C. 350); State of U.P. v. Dr. Ravindra Prakash Mittal (A.I.R. 1992 S.C. 2045))

34. We are of the view that the facts and circumstances proved in the case form a complete chain so as to unerringly establish the guilt of the

accused. The circumstances are inconsistent with the innocence of the accused. All the ingredients mentioned above are established in the case.

35. The learned counsel for the appellants submitted that the prosecution failed to prove any motive. It is submitted that proof of motive assumes

importance since the case rests upon circumstantial evidence.

36. In Tarseem Kumar v. The Delhi Administration (A.I.R 1994 S.C. 2585), it was held:

Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an

accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out

by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the

Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the

accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for

purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission

of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was

the immediate impelling motive on the part of the accused which led him to commit the crime in question.

37. In Mulakh Raj and others v. Satish Kumar and others (1992(3) S.C.C. 43), the Supreme Court held that failure to prove motive is not

fatal as a matter of law and it was held thus:

The case is based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of

circumstances to connect the accused. We find no force in the contention. Undoubtedly in cases of circumstantial evidences motive bears

important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without

motive. The failure to discover the motive of an offence does not signify its non- existence. The failure to prove motive is not fatal as a matter of

law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore,

absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the

prosecution case.

38. In *Krishna Pillai Sreekumar v. State of Kerala* (A.I.R. 1981 S.C. 1237) and in *Rajayyan Samuvel v. State of Kerala* (1992 (2)

K.L.T. 234), it was held that it is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other

evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it.

39. The court below held in paragraph 110 of the judgment that the motive alleged by the prosecution was proved. On a careful consideration of

the evidence, we concur with the reasoning and conclusion arrived at by the court below.

40. The prosecution could establish that MO2 shirt, MO4 bag, MO6 mobile phone and MO8 watch belonged to the deceased and they were

found in the possession of the accused. The court below arrived at the finding that these articles were removed from the body of the deceased after

causing his death. The accused had no explanation to offer as to how they came to be in their possession.

41. In *Vasudevan v. State of Kerala* (1993 (1) K.L.T. Short Notes 5, it was held:

As indicated early, the explanation offered by the accused for possession of MO11 is not acceptable. In such circumstance, accused being in

possession of the stolen property is naturally presumptive proof of his having committed the theft and also to his having committed the murder as

the theft and murder are so intimately connected to form part of the same transaction. Where robbery and murder are so connected as to form part

of the same transaction the recent and unexplained possession of the stolen property will not only be presumptive evidence against the accused on

the charge of robbery but also on the charge of murder.

42. In *Peria Rajendran v. State* (2007 Cr.L.J. 1242), the Madras High Court held thus:

That apart, there is no explanation coming from the hands of the accused how they came to be in possession of the jewels within a few days from

the date of murder. The recovery of the jewels from the accused, which were actually worn by the deceased at the time of the occurrence and that

too, following the confessional statements, would be pointing to the nexus of the crime with the accused. Thus, the prosecution had sufficient

circumstances to place before the Court.

43. In *Kuttappan v. State of Kerala* (1960 K.L.T. 829) it was held:

It is well settled that in cases where robbery and murder are so connected as to form parts of the same transaction, the recent and unexplained

possession of the stolen property will not only be presumptive evidence against the accused on the charge of robbery but also on the charge of

murder.

44. We have carefully gone through the evidence of the witnesses and the documentary and the oral evidence in the case. On a careful

consideration of the oral and documentary evidence in the case, we do not find any ground to interfere with the findings rendered by the court

below. The court below was right in holding that the prosecution established the guilt of the accused. The circumstances proved by the prosecution

unerringly lead to the conclusion that the accused are guilty. From the circumstances proved in the case, it is not possible to infer any other

hypothesis other than the guilt of the accused.

45. As regards sentence also, we are of the view that the sentence imposed by the court below was just and proper and no interference is called

for.

46. Accused No.2, who was the appellant in CrI. Appeal No.1386 of 2008 died after the appeal was filed. A Division Bench of this Court, as per

the order dated 25.5.2012 suspended the sentence imposed on accused No.2 and he was granted bail. It was found by the Division Bench that

accused No.2 was suffering from cancer of salivary gland and he was not able to take any food in the normal way while he was in jail. On perusing

the medical certificates and reports issued by the Medical Officers of Central Prison, Viyyur, the Division Bench was pleased to suspend the

sentence and grant bail to accused No.2.

47. None of the legal representatives of accused No.2 have come forward to get themselves impleaded to continue to prosecute the appeal.

Section 394 of the Code of Criminal Procedure reads as follows :

394. Abatement of appeals

(1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant :

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the

appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal;

and if leave is granted, the appeal shall not abate.

Explanation.- In this section, ""near relative"" means a parent, spouse, lineal descendant, brother or sister.

The proviso to sub section (2) of Section 394 enables the near relatives of the appellant to apply to the appellate court for leave to continue the

appeal. If such leave is granted, the appeal shall not abate. The general rule is that an appeal under Sections 377 and 378 of the Code of Criminal

Procedure shall abate on the death of the accused. Appeal under Section 377 is an appeal that can be preferred by the State challenging the

inadequacy of the sentence. An appeal under Section 378 of the Code of Criminal Procedure is an appeal against acquittal. Appeals other than the

appeals under Sections 377 and 378 are dealt with under sub section (2) of Section 394. Those appeals also would abate on the death of the

appellant except where appeal is from a sentence of fine. Under Section 70 of the I.P.C., the death of the offender does not discharge from the

liability to pay fine, any property which would, after his death, be legally liable for his debts. In the present case, the appeal in question was filed by

accused No.2. The sentence includes fine. Even if the sentence does not include fine, the near relatives of the second accused could apply for leave

to continue the appeal, as provided under the proviso to Section 394 (2) of the Code of Criminal Procedure. But, none of the near relatives has

come forward and made any application. That the appeal will not abate in the case of an appeal from a sentence of fine does not mean that the

appeal cannot be disposed of without bringing on record the near relatives of the appellant. It only means that the near relatives of the appellant can

continue to prosecute the appeal on getting leave from court.

48. In *Lakshmi Shanker Srivastava v. State (Delhi Administration)* (AIR 1979 S.C. 451), the appellant in the appeal died and leave was

granted to continue to prosecute the appeal by the near relatives. A contention was put forward on behalf of the State that they concede to set

aside the sentence of fine and that would have the result of setting aside the order granting leave to continue the appeal against the substantive

sentence. The Supreme Court repelled this contention and held thus :

7. The present case would, therefore, be governed by sub-section (2) of Section 394, Criminal Procedure Code. It becomes clear from the

proviso to Section 394 (2), Cr. P. C. that where the appeal is against the conviction and sentence of imprisonment and the appellant dies during

the pendency of the appeal, any of his near relatives may, within the time prescribed therein, apply to the appellate court before which the appeal is

pending for leave to continue the appeal and if the leave is granted the appeal shall not abate. The appellant has preferred the appeal against his

conviction and sentence of imprisonment as also sentence of fine. After his death his near relations as contemplated in the Explanations to sub-

section (2) of Section 394, Cr. P. C. applied by Criminal Miscellaneous Petition No. 589 of 1978 to continue the appeal and this Court granted

substitution of such near relations by its order dated 28th March 1978 and thereby granted leave to continue the appeal. Therefore, the near

relations of the deceased can continue the appeal and even if the respondent State concedes that the sentence of fine be set aside yet the appeal

would not abate because the appeal against conviction and sentence of imprisonment would not abate if leave is granted to the near relations of the

deceased to continue the appeal. Such leave having been granted, the appeal would not abate. There is thus no merit in the preliminary objection

and it must be negatived.

49. In the present case, it is clear that the second accused was suffering from cancer and he died a few days after the order dated 25th May,

2012, while he was in the hospital. Accused No.2 was aged only 35 years at the time of his death. His wife was pregnant at the time when he was

questioned under Section 313 of the Code of Criminal Procedure. In the peculiar facts and circumstances of the case, we are of the view that the

fine imposed on the second accused (appellant in CrI. Appeal No.1386 of 2008) is liable to be set aside.

50. Accordingly, all the appeals are dismissed and the conviction and sentence imposed on the appellants are confirmed, except the sentence of

fine imposed on accused No.2 (appellant in CrI. Appeal No.1386 of 2008). The sentence of fine imposed on accused No.2 is hereby set aside.