



2023/KER/42045

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 25<sup>TH</sup> DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.A NO. 1046 OF 2018

CRIME NO.172/2015 OF ADIMALY POLICE STATION, IDUKKI  
CP 23/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS, (MUNSIFF  
MAGISTRATE COURT) ADIMALI

AGAINST THE JUDGMENT IN SC 355/2015 OF THE COURT OF IV<sup>th</sup>

ADDITIONAL SESSIONS JUDGE, THODUPUZHA

APPELLANT/2ND ACCUSED:

MADHU @ MADHU SOOTHAN @ RAGEESH GOUDA,  
S/O HANUMANDHARAYAPPA, C.NO.3935,  
CENTRAL PRISON, VIYYUR -680010.

BY ADVS.RENJITH B.MARAR  
LAKSHMI.N.KAIMAL  
ARUN POOMULLI  
BIJU VIGNESWAR  
MEERA M.  
SURABHI SANTHOSH

RESPONDENT/COMPLAINANT:

STATE OF KERALA  
REP. BY PUBLIC PROSECUTOR.

BY ADV SMT.AMBIKA DEVI S., SPL.PP, ATROCITIES AGAINST  
WOMEN & CHILDREN & WELFARE OF W & C

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON  
12.07.2023, ALONG WITH CRL.A.1352/2018 AND CONNECTED CASES, THE  
COURT ON 25/07/2023, DELIVERED THE FOLLOWING:



Crl.Appeal No.1046, 1047 and 1352 of 2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 25<sup>TH</sup> DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.A NO. 1047 OF 2018

CRIME NO.172/2015 OF ADIMALY POLICE STATION, IDUKKI  
CP 45/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS, (MUNSIFF  
MAGISTRATE COURT) ADIMALI

AGAINST THE JUDGMENT IN SC 355/2015 OF THE COURT OF IV<sup>th</sup>

ADDITIONAL SESSIONS JUDGE, THODUPUZHA

APPELLANT/3RD ACCUSED:

MANJUNATHA, S/O HANUMANDHARAYAPPA,  
AGED 20/15, C.NO.3936,  
CENTRAL PRISON, VIYYUR-680010.

BY ADVS.RENJITH B.MARAR  
LAKSHMI.N.KAIMAL  
ARUN POOMULLI  
BIJU VIGNESWAR  
MEERA M.  
SURABHI SANTHOSH

RESPONDENT/COMPLAINANT:

STATE OF KERALA  
REP. BY PUBLIC PROSECUTOR  
BY ADV SMT.AMBIKA DEVI S., SPL.PP, ATROCITIES  
AGAINST WOMEN & CHILDREN & WELFARE OF W & C

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING  
ON 12.07.2023, ALONG WITH CRL.A.1352/2018 AND CONNECTED  
CASES, THE COURT ON 25/07/2023, DELIVERED THE FOLLOWING:



Crl.Appeal No.1046, 1047 and 1352 of 2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 25<sup>TH</sup> DAY OF JULY 2023 / 3RD SRAVANA, 1945

CRL.A NO. 1352 OF 2018

CRIME NO.172/2015 OF ADIMALY POLICE STATION, IDUKKI  
CP 45/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS, (MUNSIF  
MAGISTRATE COURT) ADIMALI

AGAINST THE JUDGMENT IN SC 355/2015 OF THE COURT OF IV<sup>th</sup>  
ADDITIONAL SESSIONS JUDGE, THODUPUZHA

APPELLANT/1<sup>st</sup> ACCUSED:

RAKHAVENDRA@ RAKHAVA @ RAGU,  
AGED 22/15,  
S/O.RAJANNA, H.NO.BKL 8951, INDIRA NAGAR,  
BHAGAM BOOKA PATTANAM POST, SIRA TALUK, THUMKUR,  
KARNATAKA, C.NO.3934, CENTRAL PRISON, VIYYUR,  
THRISSUR.

BY ADVS.SRI.P.MOHAMED SABAH  
SMT.SAIPOOJA  
SHRI.SUMESH A.R.

RESPONDENT/COMPLAINANT:

STATE OF KERALA,  
REP. BY PUBLIC PROSECUTOR.

BY ADV SMT.AMBIKA DEVI S, SPL.PP, ATROCITIES  
AGAINST WOMEN & CHILDREN & WELFARE OF W & C

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HERAING  
ON 12.07.2023, ALONG WITH CRL.A.1047/2018, 1046/2018, THE  
COURT ON 25/07/2023, DELIVERED THE FOLLOWING:



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**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**Crl.Appeal Nos.1046 of 2018,  
1047 of 2018 and 1352 of 2018**  
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**Dated this the 25<sup>th</sup> day of July, 2023**

**J U D G M E N T**

**C.S.Sudha, J.**

These appeals under Section 374(2) Cr.P.C. have been filed by the accused, three in number in S.C.No.355/2015 on the file of the Court of Session, Thodupuzha, through the Superintendent, Central Prison and Correctional Home, Viyyur, Thrissur under Section 383 Cr.P.C. challenging the conviction and sentence passed against them for the offences punishable under Sections 449, 302, 392, 201 r/w 34 IPC.

2. The prosecution case is as follows- the father of PW1, Kunjumuhammed was conducting a lodging business in the name and style 'Rajadhani Tourist Home' at Adimali. Kunjumuhammed, his wife Ayisha, and her mother Nachy were residing on the first floor of the tourist home, which had three floors excluding the ground floor. The tourist home was being conducted on the first, second and the third floors. The ground floor



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consisted of shop rooms.

2.1. The accused, three in number, with the intention of committing robbery and murder, on 09/02/2015 and on days before that, criminally conspired together to carry out their plan. Pursuant to the conspiracy, the first accused (A1) on 08/01/2015 and on other days came to the tourist home and checked himself into room no.302 by entering a false name in the register. He used to stay in the tourist home to watch the activities of Kunjumammed and his family. On 09/02/2015, all the three accused persons started from Sira in Karnataka, and as planned by them, all three of them switched off their respective mobile phones. They reached the tourist home on 12/02/2015 at 12:30 a.m. All three of them checked into room no.302. They had purchased MO.31 knife as part of their plan. On 12/02/2015 at 11:45 p.m., they called Kunjumammed to the room on the pretext that a pipe in the bathroom was leaking. When Kunjumammed went to the room, they tied his hands and legs as well as mouth with pieces of cloth. With the cloth torn from the curtain of the room, they strangulated and smothered him to death. They then went to the first floor and murdered Ayisha and Nachy by strangulating and smothering them by using pillows, towel (തോർത്ത്) and with their bare hands. The accused robbed 19½



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sovereigns of gold ornaments that were worn by Ayisha and Nachy. They stole an amount of ₹5,000/- that had been kept in the almirah and in a trunk box. They also stole a Rado watch worth ₹35,000/- of Kunjumammed and two mobile phones worth ₹5,000/-. Thus, they robbed properties worth ₹4,90,000/-. The accused persons tore off some of the pages of the register of the tourist home. The torn pages along with the dress worn by them were abandoned in a bus going from Mysore to Dhavankara, thus destroying evidence in the case. Hence the accused are alleged to have committed the offences punishable under Sections 120B, 449, 302, 392, 201 read with Section 34 IPC.

3. Based on Ext.P1 FIS given by PW1 on 13/02/2015 at 7:00 a.m., Crime no.172/2015 of Adimali police station, that is, Ext.P32 FIR was registered by PW43, the then S.I., Adimali. Investigation was conducted by PWs.43, 28, 33 and 53. PW54, the then Circle Inspector, Adimali verified the records and submitted the final report before the jurisdictional magistrate against A1 and the third accused (A3). The case on committal, was taken on file as S.C.No.355/2015. Subsequently, the second accused (A2) was apprehended by PW33. The final report against him was filed before the jurisdictional magistrate and the case was committed to the Court



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of Session. The said case was taken on file as S.C.No.267/2016. Thereafter, both the cases were clubbed together and tried.

4. On appearance of the accused before the Court of Session, they were furnished with copies of all the prosecution records. On 21/02/2017 the trial court framed a charge for offences punishable under Sections 120B, 449, 302, 392, 201 read with Section 34 IPC, which was read over and explained to the accused to which they pleaded not guilty. The prosecution examined PWs.1 to 54 and got marked Exts.P1 to P77 series and MO.1 to MO.56. After the closing of the prosecution evidence, the accused were questioned under Section 313 (1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused denied all those circumstances and maintained their innocence. As the Sessions Court did not find it a fit case to acquit the accused under Section 232 Cr.P.C., they were asked to enter on their defense and adduce evidence in support thereof. No oral or documentary evidence has been adduced by the accused. Exts.D1 to D5 are the contradictions brought out in the testimonies of the prosecution witnesses.

5. On a consideration of the oral and documentary evidence and after hearing both sides, the trial court by the impugned judgment found the



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accused guilty of the offences punishable under Sections 449, 302, 392, 201 read with Section 34 IPC and hence they have been convicted thereunder. They have been found not guilty of the offence punishable under Section 120B IPC and hence have been acquitted under Section 235(1) Cr.P.C. They have been convicted and sentenced to undergo imprisonment for life and to a fine of ₹10,000/- each and in default of payment of fine to undergo rigorous imprisonment to six months for the offence punishable under Section 302 read with Section 34 IPC; to rigorous imprisonment for life and to a fine of ₹10,000/- each and in default of payment of fine to undergo rigorous imprisonment for six months each for the offence punishable under Section 449 read with Section 34 IPC; to undergo rigorous imprisonment for ten years each and to a fine of ₹5,000/- each and in default of payment of fine to undergo rigorous imprisonment for three months each for the offence punishable under Section 392 read with Section 34 IPC and to rigorous imprisonment for seven years each and to a fine of ₹2,500/- each and in default of payment of fine to undergo rigorous imprisonment for 45 days each for the offence punishable under Section 201 read with Section 34 IPC. The sentences imposed under Sections 392 and 201 have been directed to run concurrently. On completion of the term of sentences





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awarded for the said offences, the punishment under Section 302 read with Section 34 IPC and Section 449 read with Section 34 IPC has been directed to commence.

6. The only point that arises for consideration in these appeals is whether the conviction entered, and the sentence passed against the accused by the trial court is sustainable or not.

7. Heard Sri.Renjith B.Marar, the learned counsel for the appellants in Crl.Appeal No.1046 and 1047 of 2018 ; Ms.Sai Pooja, the learned counsel for the appellant in Crl.Appeal No.1352 of 2018 and Ms.Ambika Devi S., the learned Special Public Prosecutor.

8. The prosecution relies on the testimonies of PWs.47 to 49, Exts.P39 to 41 postmortem reports and Exts.P4 to P6 inquest reports to prove that the death of Kunjumammed, Ayisha and Nachy were homicides. PWs.47, 48 and 49 are the surgeons who conducted the postmortem of the deceased persons. According to PW47, Ext.P39 is the postmortem report of deceased Ayisha in which the injuries noted are -

“INJURIES (ANTE-MORTEM)

1. Multiple small contusions over an area 4x3cm on left side of forehead, ranging from 0.3x0.3x0.1cm to



*0.6x0.5x0.2cm, 2cm outer to midline and 2cm above eyebrow.*

*2. Abrasion 0.3x0.2cm on forehead in the middle, 1cm above root of nose.*

*3. Abrasion 0.3x0.3cm on bridge of nose 2cm below root of nose.*

*4. Curved abrasion (nail mark) 0.5x0.2cm with its convexity outwards and downwards on left ala of nose.*

*5. Curved abrasion (nail mark) 0.6x0.1cm with its convexity outwards and downward on left side of face 1cm outer to ala of nose.*

*6. Abrasion 0.5x0.2cm, horizontal, on left side of face, its inner end 1.5cm above angle of mouth.*

*7. Abrasion 0.5x0.2cm, horizontal, on left side of face its inner end 1.3cm outer to injury No (6).*

*8. Abrasion 0.3x0.1cm, vertical on front of left ear lobule, 1cm above lower extent of ear lobule and 1cm outer to its attachment with face*

*9. Curved abrasion (nail mark) 0.9x0.1 to 0.3cm on left side of face with its convexity downwards and outwards, 3cm outer to angle of mouth.*

*10. Abrasion 6x0.2 to 0.5cm obliquely placed on right side of face, its upper inner end just outer to angle of mouth.*

*11. Abrasion 1.5x1cm on right side of front of neck 3.5cm below jaw bone and 3cm outer to midline.*

*12. Abrasion 2.5x1cm, vertical, on right side of front of neck, 5cm below jaw bone and 4.5cm outer to midline.*



13. Two abrasions 0.7x0.2cm and 0.9x0.2cm each, horizontal aligned 0.2cm apart, on right side of front of neck, inner end of inner one 4cm outer to midline and 8.5cm below jaw bone.

14. Abrasion 0.8x0.2cm, obliquely placed on right side of front of neck; its upper inner end 2cm outer to midline and 8cm below jaw bone.

15. Abrasion 2x1cm, oblique on left side of front of neck, its lower inner end 2cm outer to midline and 2cm below jaw bone.

16. Abrasion 0.7x0.2cm oblique on left side of front of neck its lower inner end 2.5cm outer to midline and 7cm below jaw bone.

17. Abrasion 1x0.5cm on left side of front of neck, 2.5cm outer to midline and 10.5cm below jaw bone.

Flap dissection of neck was done under bloodless field. The subcutaneous tissue under the abrasions on front of neck (injuries No.11 to No. 17) showed infiltration of blood. Left sternocleidomastoid muscle showed contusion (3x2x0.5cm) 2cm above its clavicular attachment. Thyroid cartilage showed fracture of superior horns on both sides.

18. Curved abrasion 1x0.2cm with its convexity downwards on left side of front of chest overlying collar bone and 8cm outer to midline.

19. Abrasion 2x 1cm on back of right hand 2.5cm above cleft between thumb and index finger.

20. Contusion 1.8x0.5x0.3cm on outer aspect of left elbow.

21. Contusion 1.8x0.5x0.3cm on front of left forearm 3cm below elbow.



22. *Contusion 2x1.5x0.3cm on front of left forearm 5cm below elbow.*

*Brain was congested and oedematous. Air passages were congested. Lungs were congested and oedematous. Stomach contained two handful of soft rice mixed with other unidentifiable food materially having no unusual smell. Mucosa was congested. Uterus and adnexae were missing. Urinary bladder was empty.*

*Nail clippings from both hands separately, hair (scalp hair, pubic hair, body hair separately), gauze dipped in blood of the deceased and dried were handed over the CPO 3297.*

*Sample of blood, viscera and vaginal swab and smear were preserved and sent for chemical analysis.*

*OPINION AS TO CAUSE OF DEATH:*

*DEATH WAS DUE TO COMBINED EFFECT OF SMOTHERING AND STRANGULATION.”*

PW48 deposed that he had conducted postmortem examination on the body of Nachi and Ext.P40 is the postmortem report, in which the injuries noted are-

*“INJURIES (ANTE MORTEM)*

1. *Contusion of back of head 5x3x0.5cm overlying occiput 13cm above root of neck. Skull, dura normal. Brain congested.*
2. *Contusion 1x0.5x0.2cm on the front aspect of right side of lower lip 1cm outer to midline corresponding to lateral incisor tooth.*
3. *Contusion 1x0.5x0.2cm on the inner aspect of right side of upper lip and adjoining gum above lateral incisor tooth.*



4. *Abrasion 1.5x0.5cm oblique on right side of front of neck 4cm below mandible (jawbone) and 3cm outer to midline. Flap dissection of neck was done under blood less field, subcutaneous tissue showed infiltration with blood, and fracture of right superior horn of thyroid cartilage. Strap muscles appeared normal.*
5. *Curved abrasion 2x0.5cm (with convexity upwards) on the left side of front of neck, 7cm outer to midline and 5cm below jaw bone.*
6. *Abrasion 1x0.3cm, oblique on left side of front of neck 5cm outer to midline and 3cm below jawbone.*
7. *Abrasion 2x9.5cm oblique on the left side of front of neck its lower inner extent 4cm to midline and 6cm below jaw bone.*
8. *Pressure abrasion 5x1cm, oblique on the left side of front of neck, its front inner extent 4cm below mandible, and outer to midline., Flap dissection of neck showed, haemorrhage under the pressure abrasion. Hyoid bone, and strap muscles appeared normal.*

OTHER FINDINGS: *Air passages were congested. Right and left lung weighed 309 and 244gm, congested. Stomach was one fourthful with rice and other unidentifiable food particle having no unusual smell, its mucosa congested. Aorta showed atheromatous streak. Uterus and its appendages were atrophic. Urinary bladder was empty. All other internal organs were congested, otherwise appeared normal. Viscera and blood were collected preserved and sent for chemical examination. Hair sample and nail clipping of deceased were collected handed*



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*over to charge WCPO 3063 in sealed packet. Golden earring and ear studs of deceased were handed over to charge WCPO 3063.*

*OPINION AS TO CAUSE OF DEATH:*

*DEATH WAS DUE TO COMBINED EFFECTS OF STRANGULATION AND SMOTHERING.”*

PW49 deposed that he had conducted the postmortem examination on the body of Kunjumuhammed and the injuries noted in Ext.P41postmortem report are-

*“B.INJURIES (ANTE-MORTEM)*

- 1. Pressure abrasion 40cm long and 0.6 to 0.9cm broad present around the neck, being placed over thyroid cartilage. The pressure abrasion was 5cm below right ear lobe (0.6cm broad), 6cm below chin (0.9cm broad) 5.5cm below left ear lobe (0.5cm broad) and 7cm below occiput (0.8cm broad).*
  - 2. Pressure abrasion 39.8cm long and 0.5 to 1cm broad present around the neck; being placed below thyroid cartilage. The pressure abrasion was 9cm below right earlobe (0.8cm broad) 7.5cm below chin (1cm broad), 10cm below left ear lobe (0.5cm broad) and 11cm below occiput (0.9cm broad).*
- Flap dissection of neck was done in a blood less field. The subcutaneous tissues beneath the pressure abrasion showed infiltration with blood, and the sternocleidomastoid muscles contused. Fracture of left greater horn of hyoid bone and right*



*cricoid cartilage present.*

*3. Contusion 2x1x0.5cm on left side of front of neck 3cm outer to midline and 5.5cm below angle of jaw bone.*

*4. Abrasion 1.8x0.3cm, curved with its convexity facing upward on right side of front of neck 6.5cm outer to midline and 5cm below angle of jaw bone.*

*5. Abrasion 1x0.5cm on right side of chin 3cm outer to midline.*

*6. Abrasion 0.5x0.5cm on right alae of nose.*

*7. Abrasion 0.5x0.5cm on forehead in midline 3cm above root of nose.*

*8. Lacerated wound 1.8x0.5x0.5cm overlying left eyebrow 5.5cm outer to midline.*

*9. Contusion 7x5x1cm on right frontotemporal region of head 4cm outer to midline and 6cm above eyebrow.*

*10. Abraded contusion 2x2x0.5cm on right side of back of head 2.5cm outer to midline and 14cm above root of neck.*

*11. Abrasion 2x0.5cm on left side of front of chest 7cm outer to midline and 11cm below nipple.*

*12. Lacerated wound 1x0.5x0.3cm oblique on back of right middle finger 4.5cm above its tip.*

*13. Abrasion 3.5x0.5cm on front of right arm 11cm above elbow.*

*14. Contusion 2.5x2x0.5cm on front of right forearm 8cm above wrist.*

*15. Contusion 3x2x0.5cm on back of right hand 1.5cm above root of index finger.*



- 16. Contusion 6x2x0.5cm on front of right wrist.*
- 17. Abrasion 3x0.5cm, oblique on back of right arm 5cm above elbow.*
- 18. Abrasion 3x0.5cm on front of right leg 15cm below knee.*
- 19. Contusion 2x2x0.5cm on front of left arm 12cm above elbow.*
- 20. Abrasion 1x1cm on front of left forearm 1cm above wrist.*
- 21. Abrasion 0.5x0.5cm on back of left ring finger 2cm above its tip.*
- 22. Lacerated wound 0.5x0.5x0.3cm front of left hand 1cm below wrist.*
- 23. Abrasion 1x1cm on front of left knee.*
- 24. Linear abrasions 7 in number 3cm, 4cm, 5cm, 2.8cm, 5cm, 3cm and 2cm, obliquely placed, one below other 2.5cm, 2.3cm, 2cm, 2cm and 1.8cm apart on left side of front of abdomen the upper one 8cm outer to midline and 28cm below collar bone covered with reddish scab.*

**OTHER FINDINGS:** *Skull and dura was intact. Brain congested. Air passages were congested. Right and left lung weighed 380 and 310gms and congested. Stomach contained one hand full of partially digested soft rice and other unidentifiable food materials having no peculiar smell and its mucosa congested. Urinary bladder empty. Heart walls, valves, chambers and coronaries appeared normal. All other internal organs were congested otherwise normal.*

*Blood and viscera collected preserved and sent for chemical analysis. Hair sample and nail clippings of*





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*deceased collected and handed over to charge Senior Civil Police Officer 2254 in sealed packets.*

*OPINION AS TO CAUSE OF DEATH:*

*DEATH WAS DUE TO STRANGULATION.”*

9. PW2 and PW3 are attestors to Ext.P4 inquest report of Kunjumammed. PWs.4 and 5 are the attestors to Exts.P5 and P6 inquest reports of Ayisha and Nachy respectively. The aforesaid evidence establishes that the death of all three of them was in fact a case of homicide.

10. The incident came to light when PW6, the grandson of the deceased, reached the tourist home. PW6 deposed that when he arrived, the front door of the lodge was not closed and that there was also light at the entrance. When he entered the area where his grandparents were residing, he saw his grandmother Ayisha motionless on the floor. He went to the next room and there he saw his great grandmother Nachy lying motionless on a cot. He immediately informed PW1, his father, over the phone and while he was on the phone, he heard the door of the dormitory slam shut. He closed the door of the dormitory and then he saw a lady heading out of the lodge. PW1 supports the case of his son that the latter had called him and informed him over the phone. Pursuant to receiving the call from PW6, he



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along with his brother-in-law Salam, his sister Laila (PW7), his wife Nabeesa and his daughter reached the lodge. When they reached the portion of the lodge where his father and mother were staying, they saw his mother lying motionless on the floor. His mother had an injury on her forehead. When he went to the room where his grandmother Nachy was sleeping, he found her lying on the bed. The mosquito net was found slightly pulled up. There was some discharge from her mouth. He then tried calling his father on the latter's mobile bearing number 9446192415. The phone was switched off. They went to room number 302 on the third floor of the lodge. They found the room locked from outside. When he looked through the gap in the door, he saw a part of his father's leg on the floor. They broke open the lock and on entering the room saw his father lying on the floor with his mouth, hands and legs tied with pieces of cloth. There was a wound near his father's left eye. He realized that someone had stolen the gold ornaments worn by his mother and grandmother and had murdered all three of them. The cupboard placed next to the room where his grandmother was found lying open.

11. The case of conspiracy has been disbelieved by the trial court and the accused acquitted for the offence punishable under Section 120B



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IPC. No appeal has been filed by the State against the said verdict. Hence, we are not referring to the evidence regarding the same. However, the learned Special Public Prosecutor pointed out that though the conspiracy angle/theory need not be looked into, the testimony of PW50 and PW51 requires to be looked into, which would show that there was a close nexus between the three accused and that they had interchangeably used their mobile phones; that there were also several calls made among the three during the period from 10/02/2015 to 13/02/2015 and that as part of the plan, the accused persons had switched off their mobile phones before they started from Karnataka, their home State. Before we go into the said argument, we will first refer to the various mobile numbers relied on by the prosecution and their IMEI numbers.

Stated to be used by	Mobile/Sim No.	IMEI No.	MO
i. A1 ii.A1	8867970971 9995654531 (In the name of Sarojamma, m/o.PW40)	358413058233084/0	MO.35 - Samsung phone seized when A1 arrested- no SIM
A2	7760602587 (in the name of PW16)	—	—
A3	8105105149	911372954052321/0	MO.49 - Carbon mobile phone seized when A3 arrested- no SIM
Kunjumuhammed	—	358103055729784/0	MO.13 - Kunju-



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– Ext.P2 Nokia		35810305572972/0	muhammed
Ayisha – Ext.P3 Videocon	–	911385600030731/0 911385600234739/0	MO.12 - Ayisha

11.1. PW50, Nodal Officer, Tata Tele Services Ltd. deposed that as per the direction of the District Police Chief, Idukki, he had produced Ext.P42 series to Ext.P45, that is, the customer application form with ID proof; address and call details, for the period from 08/02/2015 till 16/02/2015, with the necessary certification relating to mobile no.8867970971. This SIM as per Ext. P42 series has been issued in the name of A1. PW50 explained that in the CDR, only 14 digits of the IMEI no. would be taken into consideration and that the last digit would not be considered and hence the reason why the last digit is shown as ‘0’ in the CDR. The 15<sup>th</sup> digit in the CDR will always be ‘0’.

11.2. PW52, Nodal officer, Bharathi Airtel stated that as directed by the District Police Chief, Idukki he had given the subscriber details, call details etc. of Airtel mobile numbers 7760602587; 8105105149 and 9995654531. The aforesaid documents with the necessary certification are Ext.P46 to Ext.51 series. As per Ext.P47 series, SIM no. 8105105149 has been issued in the name of A3. The CDR of the said number is Ext. P48



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series. He deposed that the IMEI number of MO.49 (according to the prosecution, MO.49 phone was seized from A3 when he was arrested) is 911372954052321/0. The IMEI number in Ext.P48 series and the IMEI number of MO.49 is one and the same. PW52 also deposed that only 14 digits of the IMEI number will be taken into consideration and that the last digit would be taken as '0'. PW52 also stated that as per Ext.P49 series, SIM no. 7760602587 has been issued in the name of PW16 and Ext.P50 series is the CDR of the said number. According to PW52, the IMEI number of MO.12 series is 911385600234739/0 (this phone as per prosecution case belonged to deceased Aysha). He also deposed that the IMEI number of MO12 phone and that of the phone referred to in Ext.P50 CDR is the same. According to PW52, SIM no. 9995654531 has been issued in the name of one Sarojamma (mother of PW40) and that Ext.P51 series are its call details.

11.3 The testimony of PWs.50 and 52 will show that SIM bearing no.8867970971 was issued in the name of A1; SIM no.7760602587 in the name of PW16; SIM no.8105105149 in the name of A3 and SIM no.999565431 in the name of Sarojamma, the mother of PW40.

11.4. Prosecution relies on the testimony of PWs.16 and 17 to connect



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A2 with SIM no.7760602587, which as per Ext.P49 series was issued in the name of PW16, the mother-in-law of PW17, who in turn is none other than the brother of A2. PW16 deposed that she is using a mobile phone which has a SIM of the Airtel company; that she does not remember her mobile number; that about three years back she had given her SIM to A2, which was never returned by the latter and that as she required the same mobile number to get gas cylinders, she got another SIM with the same number. She identified A2 in the box. In the cross-examination she deposed that all along till date she has been using the very same SIM number she had given to A2. In the re-examination also she reiterated that she is using the very same number. At this point, it is seen that her phone was handed over to the prosecutor, who with the said phone made a call to the interpreter who was translating her deposition. Her number was found to be a different one, that is, 8105333063. To a question whether the said SIM was the one she had taken, after she had given the earlier SIM to A2, PW16 answered in the affirmative.

11.5. PW17, the son-in-law of PW16 and brother of A2, supports the prosecution case that PW16 had given her SIM to his brother. To a question whether he remembers the SIM number he answered it is 776060



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and that the last digit is '7'. To a question as to why PW16 had given the SIM to A2, PW17 answered that it was because A2 did not have one. He also deposed that they never thought that A2 would do this. (ഇങ്ങനെ ചെയ്യുമെന്ന് അറിയാത്തതില്ലായിരുന്നു... See page 4 of his deposition).

11.6. PW40, the maternal uncle of A1 was examined to prove that SIM no. 9995654531 was taken in the name of his mother, Sarojamma. According to the prosecution case, it was this number that was used by A1 while he had stayed in the lodge on 08/01/2015. However, PW40 turned hostile and denied having given the SIM to A1. He stated that he does not remember the number of the SIM taken in the name of his mother. He deposed that his mother did have a mobile; that she had not used the said number for 4 years; that he does not remember whether the number was 9995654431 and that he has not given the said SIM to A1. To a question whether the SIM taken by his mother is exclusively used by her or whether it is used by somebody else also, he answered that he is sure that his mother has not come to Adimali in the last 2 years. He further deposed that he does not know whether his mother's SIM had been used by someone else also. His mother is laid up and for the last 1 ½ years, the SIM card has not been in the possession of his mother. PW40 was then asked if the SIM number



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issued in the name of his mother had been used in the range of mobile tower Adimali in January 2015, it would not be by his mother, he answered that it would not be his mother.

11.7. From the testimony of PW50 it is evident that SIM number of A1 is 8867970971 and that it was used not only in MO.35 handset with IMEI no.358413058233084/0, but also in other handsets also. MO.35 according to the prosecution is a mobile phone seized from the person of A1 when he was arrested. It is true that PW40 does not support the prosecution case. However, he admits that his mother did have a mobile phone, which she is not using. The testimony of PW52 will show that SIM no. 9995654531 was in fact issued in the name of PW40's mother and that as per Ext.P51 series call details, the said SIM during January 2015, had been used in MO.35 handset. Ext.P51 series call details are for the period from 05/01/2015 till 15/01/2015. PW52 deposed that the call records would also show the mobile tower limits within which it had been used. He was then asked whether at the relevant time, the said phone had been in use in places like Chittirapuram, Adimali, Koombanpara in Idukki district, to which he answered that when his statement had been recorded, he had stated so after checking the records of the company. The answers elicited by putting





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leading questions in the chief examination are liable to be eschewed from consideration. In addition to that the record that PW52 is stated to have checked is also not before the court. Hence the statement of PW52 that the SIM had been in use in Adimali cannot be relied on. Even if the said statement is ignored, we still have the testimony of PW52 to the effect that the aforesaid SIM was in fact used in MO.35 mobile phone of A1.

11.8. The testimony of PW16 and PW17 proves that the former did hand over her SIM to A2. Ext.P49 series proved through PW52 shows that SIM bearing number 7760602587 had been issued to PW16. The testimony of PW52 proves that as per Ext.P47 series, SIM bearing no.8105105149 had been issued to A3 and that it had been used in MO49 mobile as well as in other handsets. MO.49 mobile phone is stated to have been seized from the person of A3 when he was arrested. The testimony of PW50 also shows that A1 and A2 had made several calls between them; that no calls had been made from SIM 8867970971 for the period from 10/02/2015 14:40:08 hours to 19:21:47 hours on 13/02/2015; that on 13/02/2015 at 19:21:47 hours, when SIM no. 8867970971 was switched on, it was in MO.35 phone/handset bearing IMEI no. 358103055729784/0 and that on 13/02/2015 from 19:21:47 hours till 20:46:56 hours, 8867970971(A1) SIM



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in the handset referred to in Ext. P2 was used somewhere in the State of Karnataka. According to the prosecution, the Nokia phone referred to in Ext.P2 is of deceased, Kunjumuhammed, to which aspect we will come to shortly. The testimony of PW52 establishes that several calls were made by A1 to A3 among themselves; that SIM no. 8105105149 was not used from 11/02/2015 11:31:10 hours to 20:08:55 hours on 15/02/2015; that on 15/02/2015 at 20:08:55 hours when the said SIM was switched on, it was in MO49 phone; that SIM 7760602587 did not receive any calls from 11:59:31 hours on 11/02/15 till 13:47:10 hours on 13/02/2015 and that MO12 phone was used in the State of Karnataka with SIM no.7760602587(A2).

12. In addition to the testimony of PWs.50 and 52, we also have the testimony of PW12 and PW13, who have deposed that they are acquainted with the accused persons from their childhood days and that A2 and A3 brothers, are close friends of A1. Here it must be noticed that PW13 is none other than the maternal uncle of A1. Therefore, the aforesaid evidence, as pointed out on behalf of the prosecution, certainly establishes the fact that the three accused persons knew each other well or rather they were closely associated with each other and that they did make several calls



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among themselves and that the mobile phones had been used interchangeably. It is true that A2 and A3 are brothers and so siblings calling each other may not be of much consequence if there are no other incriminating circumstances against them.

13. According to the prosecution, A1 in furtherance of their sinister plan had come to Kerala on 08/01/2015 and checked into room no.302 of the lodge under a false name and identity, to watch and observe Kunjumammed and family. PW53, the investigating officer, seized Ext.P52 series, that is, copies of driving licenses and Aadhar cards seen in the counter of the reception of the lodge as per Ext.P13 mahazar. PW25 is an attester to Ext.P13 mahazar. MO.33 and MO.33(a) are the registers of the lodge seized as per Ext.P11 mahazar. PW24 is an attester to Ext.P11 mahazar. According to PW53, investigation was conducted relating to the call details and address of the mobile numbers, seen recorded in the registers of the lodge. From that, they received a lead/clue regarding people who buy old clothes from Kerala and sell them in Karnataka and other places. When the copy of an Aadhaar card found from the reception of the lodge was examined, it was found that it was that of PW39 Shashikumar. The registers seized from the lodge contained entries of the



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persons who had checked in to the lodge. PW53 deposed that A1 on 08/01/2015 had stayed in Rajadhani lodge. A1 had checked into the lodge under the name 'Sha Kumar'. It was A1 who had written the name and address in the register on the said occasion. To prove the same, he took the specimen handwriting of A1 to be sent for examination by a handwriting expert, for which he submitted Ext.P66 standard requisition form. As per the requisition, the expert has been requested to examine the entry in serial no.198 dated 08/01/2015 in the admission register of Rajadhani Tourist home relating to room number 301-304, which has been encircled with red pencil and marked as 'Q1' and 'Q2'.

13.1. PW35, Scientific Assistant, Documents, deposed that she had compared the questioned handwriting with the standard documents and issued Ext. P28 report. The questioned documents, according to her were carefully and thoroughly examined and compared with the standard documents in all aspects of handwriting identification and detection of forgery with modern scientific instruments at the State Forensic Science Laboratory, Thiruvananthapuram. The questioned writings and signature marked 'Q1' and 'Q2' are the entries appearing at serial no.198 in page 20 of MO.33 admission register of Rajadhani Tourist home. Ext.P29 series,



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that is, the standard writings and signatures marked 'S1' and 'S2', were compared with Q1 and Q2. On examination she found that S1 and S2, the standard writings and signature, and Q1 and Q2, the questioned handwriting and signature, were written by the same person.

14. It was submitted by the learned counsel for A1 that in the light of Section 311A Cr.P.C., PW53 could not have directly taken the specimen handwriting and signature of A1 without getting necessary orders from the jurisdictional magistrate. The argument advanced is that the act of the investigating officer in taking the specimen signature of A1 is hit by S.162 Cr.P.C and that it also amounted to testimonial compulsion so as to violate the guarantee contained in Art.20(3) of the Constitution. The matter is no longer res integra and has been concluded by the decision in **State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808**, wherein it has been held that by giving finger impressions or specimen handwriting, the accused person does not furnish evidence against himself. So, when an accused person is compelled to give a specimen handwriting or impressions of his finger, palm, or foot, it may be said that he has been compelled to be a witness; but it cannot however be said that he has been compelled to be a witness against himself. It has also been held that merely taking a specimen



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handwriting does not amount to giving a statement under S.161 Cr.P.C so as to be hit by S.162 Cr. P.C. (See also **State of U. P. v. Boota Singh, AIR 1978 SC 1770** and **State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru, AIR 2005 SC 3820**). That being the position the argument advanced on behalf of A1 is only liable to be rejected.

14.1. It was submitted that the authenticity of Ext.P29 series itself is disputed because it does not contain any details as to when, how and where it was taken and so it cannot be relied on. This argument is apparently incorrect because it is stated in Ext.P29 series that the specimen writing of A1 involved in Crime No.172/2015 of Adimali police station has been taken on 10/03/2015. It is true that Ext.P29 series has not been marked through PW53 who had taken it, but the same was marked through PW35, the expert. It would certainly have been ideal to have it marked through PW53. However, it must be noted that the marking of Ext.P29 series through PW35 was never objected to. Therefore, at this late stage such an argument cannot be advanced. Moreover, PW53 did state that he had taken the specimen handwriting of A1, though he did not specifically refer to Ext.P29 series. Ext.P29 series specimen writings are seen encircled with black pencil and marked as 'S1' and 'S2'. PW35 deposed that she had



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examined the materials involved in Crime 172/2015 of Adimali police station received from JFCM, Adimali and had compared it with the standard documents supplied to her. In addition, the testimony of PW53 that he had taken the specimen writing of A1 has not been challenged, disputed or discredited. Likewise, the testimony of PW35 has also not been challenged. In fact, none of the accused persons have cross-examined PW35. Therefore, there is no reason to disbelieve PW53 that he had in fact taken the specimen writings of A1. This testimony coupled with the unchallenged testimony of PW35 establishes the fact that the entry at serial no.198 in page 20 of MO.33 admission register of Rajadhani Tourist home had in fact been made by A1. As per this entry, A1 did stay in the tourist home on 08/01/2015. We have already referred to the testimony of PW52, which establishes that as per Ext.P51 series, SIM no. 9995654531 had been issued in the name of Sarojamma, mother of PW40 and that the said SIM had been used to make calls from MO.35 mobile phone of A1 with IMEI no. 358413058233084/0 during January 2015.

15. Further, according to PW53, when he arrested A1 on 09/03/2015, he had seized MO.35 Samsung phone; MO.36 Micromax mobile phone; Ext.P17, the original driving license of A1; Ext.P18, the



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original Aadhaar card of PW39; MO.38 series currency notes kept in MO.37 purse from the person of the accused. These articles are stated to have been seized as per Ext. P16 mahazar. PW28, a police officer present in the team with PW53 is an attestor to this mahazar. The articles seized from A1 include Ext.P18 original Aadhar card of PW39. PW39 when examined does not support the prosecution case. PW39 deposed that he had stayed in the lodge for a few days and at that time he had given a xerox copy of his Aadhaar card at the reception. PW39 has a case that his original Aadhaar card was taken from him when he was summoned to the police station for questioning. However, the testimony of PW28 and PW53, whom we find no reasons to disbelieve, shows otherwise. A1 has not explained how he came in possession of Ext.P18 card of PW39.

16. In addition to this, we have the testimony of PW7, sister of PW1 and daughter of deceased Kunjumammed and Ayisha, who deposed that she had seen A1 on earlier occasions also in the lodge. According to PW7, A1, an occupant of the lodge was in quite close terms with her parents and that A1 used to address her parents as ‘amma’ and ‘achan’. This aspect of her testimony has not been challenged in any way. Here we also refer to the testimony of PW10, conducting a hotel near the lodge. He





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deposed that he knows A1 and A2. He identified them in the box. According to PW10, A1 and A2 used to dine at his hotel, and they were last seen by him on 12/02/2015, when they came to his hotel 2-3 times to have food. On the 13<sup>th</sup> at about 08:00 am he came to know of the incident. After 3 to 5 days, he went to the police station and informed the police that 2- 3 people who had stayed in the lodge had come to his hotel to have food and that after the incident, they were not to be seen and so he entertains doubts about them. PW10 deposed that the two had come to his hotel along with Kunjumuhammed also. He had described them to the police. According to him one of them was lean and the other obese. He had also told the police that he could identify them. A week after he gave his statement to the police, he was summoned to the police station at which time he identified A3 who was first arrested. After about a week thereafter, he was called again to the police station and then he had identified A1. After about 3 months he identified A2 before the police. He also stated that A1 knew little bit of Malayalam. In the cross examination he deposed that two of them were permanent residents of the lodge and so when they were not seen after the incident, he entertained doubts; that the said persons would sometimes go home and then return and that they had some business in clothes. It was



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pointed out on behalf of A1 that PW10 puts forward a case that there were permanent residents in the lodge which is against the version of PW7, who has no such case. This argument is also not correct. PW7 to a question whether she knows any permanent residents of the lodge, answered in the negative. (സ്ഥിരമായി ആ lodge ൽ താമസിക്കുന്ന ആരെങ്കിലും അറിയാമോ? ഇല്ല See page 16 of her deposition.) PW10 in his cross-examination deposed that two out of the accused persons who are permanent residents of the lodge goes home occasionally and then comes back. They are engaged in some business in clothes. (2 പേർആlodge ൽ സ്ഥിരം താമസക്കാരാണ് ഇടക്ക് വീട്ടിൽ പോകും വരും. അവർക്കെന്തതുന്നിയുടെകച്ചവടംകൊണ്ടാണ് See Page 11 of his deposition.) We do not find any inconsistency in the testimony of the witnesses as argued on behalf of A1. The aforesaid evidence thus supports the case of the prosecution that A1 did come to the lodge on 08/01/2015 as part of their plan and had checked into one of the rooms of the lodge.

17. As per the prosecution case, A1 to A3 had started from Sira, Karnataka, their native State, on 09/02/2015 and had reached Kerala on 12/02/2015 at 04:30 a.m. They are alleged to have travelled from Aluva to Adimali in a KSRTC bus. PW11 a bus conductor of Munnar depot since



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2015 deposed that on 11/02/2015 he was on duty in the bus going from Munnar to Ernakulam. The bus passes through Aluva, Perumbavoor, Kothamangalam and Adimali. On the return journey from Ernakulam, on 12/02/2015 at about 02.15 am, the 3 accused persons had boarded the bus from Aluva. A1, the tall man, who spoke Malayalam, on behalf of all the three, took the ticket to Adimali. They got off at Adimali at around 04.30 a.m. PW30, Inspector, KSRTC Unit, Munnar deposed that as requested by the police he had given Ext.P23 computer printout of the journey report dated 12/02/2015 of bus bearing no. T.P.185. As per Ext.P23, on 12/02/2015 three passengers had traveled from Aluva to Adimali and the bus had started its journey from Ernakulam to Munnar at 01:30 am. The passengers had together taken the ticket, the number of which is 031553. Stage 9 and Stage 44 referred to in Ext.P23 are Aluva and Adimali respectively. The passengers had paid ₹180/- for the ticket. The ticket was issued at 02:22 am. According to PW30, PW11 was the conductor of the bus at the relevant time and Ambi selvam was the driver.

18. Ext.P23, the computer printout of the ticket brought in evidence through the testimony of PW30, is relied on by the prosecution to establish that all the three accused had travelled from Aluva to Adimali.



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However, Ext.P23 is objected to by the accused on the ground that in the absence of certification contemplated under Section 63B of the Evidence Act, the same is inadmissible in evidence. It is true that Section 63B certification is not there in Ext.P23. Now, even if Ext.P23 is ignored, we still have the testimony of PW11, the conductor who in the chief examination deposed that on the said day it was a tall person speaking Malayalam who had taken the ticket for all three of the accused. He identified the said person by pointing to A1 in the box. By 04-4.30 a.m., when the bus reached Adimali, all three of them got off. Two weeks thereafter the police summoned him and then he gave a statement. On the said day A3 was present in the station. He was asked whether he knew A3. He then told the police that A3 had travelled in his bus along with two others. He was thereafter summoned to the police station twice. The second time he went, he identified A1, which must have been two weeks thereafter. The third time he identified A2, which was after several days. In the cross-examination on behalf of A1, PW11 deposed that he was not shown CCTV footage by the police. It was after A3 had been identified by him at the police station, he gave his statement. Apart from a general suggestion that without any bona fides he is deposing falsehood as instructed by the police,



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which he emphatically denied, there is no challenge to his testimony that the accused did travel in his bus. When PW11 was cross-examined on behalf of A2 and A3, he deposed that he came to know about the incident on the 14<sup>th</sup>. To a question whether he doubted the persons who had travelled in his bus, he answered in the negative. To a question whether he had any reason to suspect them, he again answered in the negative. He was then asked whether he had spoken to the three accused persons, he answered in the negative. PW11 also deposed that the tall person speaking in Malayalam had taken the ticket. He deposed that he does not remember whether the photos of the suspects had been published in the newspaper. He also deposed that he does not know whether the photos of the persons connected to the crime had been exhibited in the bus stand at Adimali town. He had not seen the photos. To a suggestion that none of the accused persons had travelled in the bus and that he is deposing falsehood as per the directions of the police, he answered that he has no reason to depose falsehood. He has no enmity towards them. (നിങ്ങൾ duty ചെയ്ത bus-ൽ പ്രതികളാരും Aluva നിന്നു അടിമാലിക്കു യാത്ര ചെയ്തില്ല കേസിൽ ഒരു story ഉണ്ടാക്കുൻ വേണ്ടി police പറഞ്ഞ പ്രകാരം കളവു പറയുകയാണ്? കള്ളു പറയേണ്ട കാര്യമില്ല എനിക്ക് അത്ഭുതമു



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വിരോധമില്ല കളവല്ല See page 13 of his deposition). We find no reasons to disbelieve the testimony of PW11, the conductor, especially when there is no serious challenge seen raised against his testimony.

19. A1 to A3 are alleged to have reached the lodge by 4.30 a.m. and checked into the very same room, that is, room no.302, where A1 had stayed earlier. There are no witnesses to testify to the fact that the three had checked into the lodge in the early hours of 12/02/2015. It is the prosecution case that the relevant pages in MO.33 and MO.33(a) registers, wherein entries were made by the accused persons had been torn off and the same abandoned along with the dress worn by them in a bus going from Mysore to Dhavankara. Of course, no evidence has been adduced to substantiate the same. PW9 has been examined to prove the identity of A3. PW9, conducting a business in the name and style 'P.K.P Stores' identified A3. PW9 deposed that on 12/02/2015 around noon A3 came to his shop, took MO.31 knife from the tray on which it was displayed and asked in Hindi, the purpose for which it could be used. PW9 replied that it could be used for cutting bananas. A3 purchased the knife for ₹60/-. On 02/03/2015 after A3 was apprehended, he had identified the former at the police station. In the cross examination, PW9 was asked whether the



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police had shown him any CCTV footage and photos of the same, he replied in the negative.

20. According to the prosecution, after the commission of the crime, when the accused persons left the lodge, their images were captured in the CCTV camera installed in the nearby shop of PW14. PW14, running a wholesale provision store in the name and style 'Nanthiyattu Trading Company' in Adimali town deposed that there are 4 CCTV cameras installed in his shop. The police had recorded the CCTV footage in a DVD, which was seized as per Ext.P7 mahazar, in which he is an attester.

21. PW32 deposed that while he was working in the Cyber Cell, Idukki, on 14/022015 at around 11.30 am, he had copied the CCTV footage from 12/02/2015 evening to 13/02/2015 morning, captured on the third outdoor camera of the shop of PW14 to a DVD. PW12 and PW13 have been examined to prove that they had identified A1 to A3 in the CCTV footage that was seized from the shop of PW14. The CCTV footage was not marked or brought in evidence when PW46, Assistant Director, Physics Division, FSL, who is stated to have examined the CCTV footage and issued Ext.P38 report, was examined. PW46 deposed that on 24/04/2015 she had examined several pieces of cloth recovered from the scene of



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occurrence. Her report has been marked as Ext.P37. In the cross examination PW32 stated that he had examined the CCTV footage that had been copied into a DVD. Two items were sent to him for examination, of which, item no.2 contained photographs and videos of Rakhavendra (A1) and Manjunatha (A3). He was not able to identify the persons in item no.1 video clipping as the video was not clear. Ext.P38 is the report of PW46's examination of the video clipping. On examination of the DVD, that is, item no.1, it was found to contain five video files of mp4 format. Out of the same, only the 3<sup>rd</sup> video file, contained the video footage for the period - Friday 00.41.56 hours to 00.42.02 hours on 13-02-2015. On examining the subjected parts of the video referred to in the forwarding note, three people came to the view of CCTV camera on 13-02-2015 at 00.41.54 hours. The above-said visuals of the video files during mid-night were not clear and the same could not be enhanced as the resolution of the recording device was very poor. The videos had been recorded in dim light and some of the frames were lost either because it was recorded in compressed format or due to the physical damage found on the DVD contained in item no.1. The position of the face of the people was far from the view of the cameras. Due to the said reasons, it was not possible to give the individual characteristics





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of the people seen in the videos. Hence no opinion could be given regarding the identification of the people seen in the video footage. In the re-examination, PW46 was asked whether the persons seen in the video clipping could be identified by their gait, movements etc., to which he answered, that if one is acquainted with the persons seen, it would be possible. (പരിചയമുള്ളവർക്ക് ഒരുങ്ങുന്നതും, ചെന്നും മറ്റും കണ്ട് വീഡിയോ തിരിച്ചറിയൻ പറ്റുമോ? പരിചയമുള്ള ആൾക്ക് സ്ഥിരം). In the light of this testimony of PW46, the learned Public Prosecutor relied on the testimony of PW12 and PW13 to identify the accused persons.

22. It is true that PW12 and PW13, latter being the maternal uncle of A1, supports the prosecution case that the persons seen in the CCTV footage are the accused persons. On going through the testimony of PW46, we find that the prosecution never intended to rely on the CCTV footage stated to have been recovered from the shop of PW14. This probably must be due to Ext.P38 report of PW46 to the effect that the video was not clear. No attempt is seen made while PW46 was examined in chief to bring the CCTV footage in evidence. It was only during the cross-examination, Ext.P8 was marked and the opinion of PW46 relating to the examination of



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CCTV footage brought in evidence. The prosecutor probably did not attempt to bring in the same in evidence in the light of PW46's Ext.P8 report. As the CCTV footage is not available and has not been brought in evidence, the testimony of PWs.12 and 13 to the effect that they had identified the accused persons from the CCTV footage, loses its significance.

23. The prosecution relies on the testimony of two autorickshaw drivers, namely, PW8 and PW42 to prove that after the commission of the crime, the accused persons left Adimali in the auto of PW8. According to PW8, on 13/02/2015 night at about 01:00 am, the three accused hired his auto for going to Aluva stating that they wanted to attend a marriage. One of them was carrying a bag on his shoulder. The three of them got off at the railway station, Aluva. The next day the police summoned him to the station to enquire about the trip. It was then he came to know of the incident. He had stated the number of persons who had traveled in his auto and their identification marks to the police. According to PW8, one among the three, was a dark-complexioned lean man about 5.5 feet tall with a beard. The second one was short and obese with a thin mustache, and the third one was a fair complexioned young man of about 20 years. PW8



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deposed that he could easily identify the bearded man as A1 from the footage shown to him by the police, as A1 was carrying a bag on his shoulder and was wearing a blue T-shirt and pant. He stated that he identified all the 3 accused persons before the police.

24. PW42, another auto driver, deposed that he generally plies his auto between 07:00 in the evening till morning. On the date of the incident, the accused persons had called him for a ride to Aluva, which he refused as he was not willing to take a long trip. They then hired PW8 Joy's auto. He identified the accused before the police. In the cross examination he deposed that when a crime of this nature happens, normally the police would question the drivers of the auto stand to ascertain whether they had gone for any trips on that day. In this case, the police had not called them, instead they had voluntarily gone to the station to inform the police about the ride given by PW8. He had seen the photographs of the accused in the newspaper. He could not recollect whether their photos had been affixed at the auto stand.

25. To corroborate the version of PW8 that he had in fact taken the accused persons to Aluva, the prosecution relies on the testimony of PW32 also. PW32 deposed that the call details from various service providers



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relating to the case was obtained by him and sent to the investigating officer. According to him, mobile no. 9495125653 belongs to PW8. The call details of the said number from 12/02/2015 till 14/02/2015 is Ext.P42 series. As per P42 series, on 13.02.2015 at 01:07:05 hours there was an incoming call received in this number, at which time the mobile was within the limits of Adimali mobile tower range. On 13/02/2015 at 03:06:23 hours; 03:06:49; 03:07:21; 03:7:53 and at 03:08:25 hours SMS had been received in the mobile, at which time the mobile was in the limits of Pump junction, Aluva. Another SMS was received at 03:53:49 hours while it was in the limits of Revenue Tower, Kothamangalam. At 06:26:01 hours, an incoming call was received while it was still in the limits of the Revenue Tower. Thereafter incoming calls were received while it was in Nellimattom, Adimali mobile tower range.

26. It was pointed out on behalf of the accused that in the absence of the certification contemplated under Section 65B of the Evidence Act, Ext.P42 series is inadmissible in evidence. It is true that Ext.P42 series does not contain the necessary certification as contemplated under the Evidence Act. However, that is no reason to believe PW8 and PW42 who had seen the accused persons on the said day. Even assuming that PW42 might not



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have had sufficient time to notice the features of the accused to identify them at a later point of time, that cannot be said of PW8. PW8 deposed that on 13/02/2015 at about 1.00 a.m., the three accused persons had hired his auto for going to Aluva. PW8 pointing to A1 in the box deposed that it was A1 who had spoken about the trip. A1 spoke in Malayalam. However, it was not like how we speak Malayalam. (നമ്മൾസംസാരിക്കുന്നപോലെ clear ആയിട്ടല്ല മലയാളം പറഞ്ഞത് See page 3 of his deposition.) He asked them the purpose of the trip to which A1 answered that they are going home to attend a marriage. PW8 then told them that the fare would be ₹1,150/- to which they agreed. On the way they stopped at a petrol pump from where diesel for ₹500/- was filled. The amount was paid by the accused. They went directly to Aluva railway station, and he dropped them there. Balance ₹650/- was then given to him. When they reached Aluva it was about 03.00 a.m. He then returned to Adimali by about 10.00 a.m. On the way he had slept in the auto for some time at Kothamangalam. He went home and slept. By dusk he got up. It was when the police came to his house, he came to know about the incident. He was asked to appear before the police the next day morning. The next day morning he went to the station. He was questioned about the previous day's trip. He was then



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asked whether he had stated the number of passengers and their identifying features, to which he answered in the affirmative. According to PW8, one person was a dark-complexioned lean man about 5½ feet tall with a beard. The second one was a short stocky man with a thin mustache. The third one was a fair young man of about 20 years. Police had shown him a video clipping. He was then convinced that the people seen in the video are the persons who had travelled in his auto. He was able to quickly identify the bearded person as he had a bag on his shoulder. The bearded man was wearing a blue T-shirt and pant. After about a week he was again called to the police station and shown the photo of A1. He identified the person in the photo. His statement was taken. On March 2<sup>nd</sup>, he was called to the police station. He then identified A3 who was present there. On 10<sup>th</sup> march, he was called to the police station. He identified A1 who was present in the police station. Thereafter in January 2016 he was again summoned to the police station. He then identified A2. The police took his statement. In the cross examination he deposed that at the office of the Circle Inspector, he was shown photos on a mobile. The enlarged colour photos of the accused were pasted at the police station. He was able to clearly identify the accused from the photographs. It was before that he had



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given his statement. He was then asked whether he had given his first statement before the photographs were shown to him to which he answered that he does not remember clearly as he was in a troubled state of mind. (ഞാൻ വല്ലാത്ത മാനസിക അവസ്ഥയിലായിരുന്നു). The next day when he went to the police station, the photographs were not on the walls. Only CCTV footage was there. On further questioning by A2 and A3, he deposed that at the auto stand there was light from the bunk shops and from the light on the name boards of the shops situated nearby. He denied the suggestion that as instructed by the police, he is deposing falsehood that it was the accused who had travelled in his autorickshaw. PW8 asserted that it was the accused persons who had travelled in his vehicle.

27. It was argued on behalf of the accused persons that in the absence of a test identification parade (TIP) being conducted before a magistrate, the identification of the accused persons made by the witnesses before the police is inadmissible. Without a TIP, the identification of the accused persons for the first time before the court also cannot be relied on as it is a weak piece of evidence. None of the witnesses have prior acquaintance with the accused persons. PW8, PW10, PW11 and PW42 never noticed any distinguishing features or identification marks with



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which they could have identified the persons they are alleged to have seen, at a later point of time. They have not stated any identifying features of the persons they had seen, to the police. It was also pointed out by the learned counsel for A2 and A3 that the statement of PW8 that he had stated the number of persons who had travelled in his auto and their identifying features to the police, was elicited by a leading question put to him by the prosecutor and hence the same is liable to be eschewed. It was also pointed out that the testimony of the witnesses would show that photos and video clippings were shown to the accused before they identified the accused before the police. Therefore, the argument is that the identification of the accused by the witnesses for the first time in court is totally unreliable. Reference was made to the decisions in **Laxmipat Choraria v. State of Maharashtra, 1968 KHC 635; Mohanlal Gangaram Gehani v. State of Maharashtra, (1982) 1 SCC 700 ; Ravindra v. State of Maharashtra, (1998) 6 SCC 609 ; Suresh v. State, 2003 KHC 216 ; Amitsingh Bhikamsing Thakur v. State of Maharashtra, AIR 2007 SC 676 and Rameshwar Singh v. State of J & K., AIR 1972 SC 102** in support of this argument.

28. TIPs belong to the stage of investigation, and there is no





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provision in the Cr.P.C., which obliges the investigating agency to hold, or confer a right upon the accused to claim, a TIP. As a general rule, the substantive evidence of a witness is the statement made in Court. It is true that the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. Failure to hold a test identification parade would not always make inadmissible the evidence of identification in Court. The weight attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification without insisting on corroboration. (**Malkhansingh v. State of M.P., 2003 KHC 1069: AIR 2003 SC 2669; Meesala Ramakrishan v. State of A.P., 1994 KHC 1182 : (1994) 4 SCC 182).**



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29. It is true that it would have been ideal had a TIP been conducted before a magistrate for identification of the culprits. But as held in the aforesaid decisions failure to hold a TIP would not always make inadmissible the identification of the accused in the court. It was not a fleeting glance that PW8, the auto driver, or PW10, the hotel owner, or PW11, the conductor had of the accused. Same is the case with PW9 also. Nothing has been brought out in their examination to discredit their testimony. Hence, we do not find any reasons to disbelieve them. There are other pieces of evidence also on which the prosecution relies to prove the case. Therefore, we will consider whether the said evidence is satisfactory and not rest our conclusion merely based on the identification made by the witnesses.

30. Now coming to the scene of occurrence. The scene of occurrence is room no.302 situated on the third floor of the building in which the lodge was being conducted as well as the hall and a bedroom on the first floor of the building where the deceased were residing. Ext.P12 is the scene mahazar prepared by PW53 and PW25 is an attestor to the same. PW15 is the owner of the building in which deceased Kunjumammed was conducting the lodge. PW15 deposed that he had leased out the



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building to Kunjumammed, his uncle, for a monthly rent of ₹20,000/-.

He had last seen his uncle and family on 12/02/2015 at about 9.15 pm.

31. As noticed earlier, PW6, the grandson of Kunjumammed and Ayisha and great grandson of Nachy, was the first person to arrive at the scene of occurrence after the incident. PW6 deposed that he had called PW1, his father, and informed him that his grandmother and great grandmother were lying motionless on the first floor of the building, that is the portion of the lodge where his grandparents were residing. According to PW6, the front door of the lodge was not closed and there was also light at the entrance. A woman in purdah was seen walking down the steps leading out of the lodge. He does not know from where she came. While he was on the phone with PW1, he heard the door of the dormitory slam shut. He closed the door of the dormitory, and it was then he saw the lady heading out.

32. PW1, son of deceased Kunjumammed and Ayisha and grandson of deceased Nachy, in Ext.P1 FIS recorded on 13/02/2015 at 07:00 am by PW43, S.I., Adimali Police Station states thus - his father was running a lodge named Rajadhani at Adimali. All the three deceased were residing on the first floor of the building in which the lodge was being



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conducted. His son Mahin (PW6) is studying in a college in Tamil Nadu. On 13/02/2015, at around 5.30 am, PW6 came to Adimali for his vacation. When PW6 reached the lodge, he found his grandmother Ayisha lying on the floor. PW6 immediately called him over the phone and told him that Ayisha was lying unconscious and asked him to immediately come over. He along with his brother-in-law Salam, his sister Laila (PW7), his wife Nabeesa and his daughter reached the lodge. When they reached the portion of the lodge, where his father and mother were staying, they saw his mother lying motionless on the floor. His mother had an injury on her forehead. When he went to the room where his grandmother Nachy was sleeping, he found her lying on the bed. The mosquito net was found slightly pulled up. There was some discharge from her mouth. He then tried calling his father on the latter's mobile bearing number 9446192415. The phone was switched off. They went to room number 302 on the third floor of the lodge. They found the room locked from outside. When he looked through the gap in the door, he saw a part of his father's leg on the floor. They broke open the lock and on entering the room saw his father lying on the floor with his mouth, hands and legs tied with pieces of cloth. There was a wound near his father's left eye. He realized that someone had stolen the gold ornaments



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worn by his mother and grandmother and had murdered all three of them. The cupboard placed next to the room where his grandmother was found lying open.

33. PW1 when examined stands by the case narrated by him in Ext. P1 FIS. According to him, the ornaments worn by his mother and grandmother; the Rado watch of his father; an amount of ₹ 50,000/- as well as a Nokia and Videocon mobile phones used by his father and mother respectively were found missing. The phones had been bought from a mobile shop called Self Tech and were worth ₹5,000/-. A knife, which must have been brought by the intruders, was found on the table in the room where his mother was lying. He identified Ext.P2 and Ext.P3, the user manual and warranty cards of the phones. He identified MO.1 to MO.11series gold ornaments of his mother and grandmother. According to PW1, MO.12 series and MO.13 series are the broken pieces of the Videocon and Nokia phones used by his mother and father respectively. MO.14 is the battery of the Nokia phone. In the cross examination he deposed that he does not know whether there were occupants in any of the rooms of the lodge. He did not see anyone else apart from PW6 in the lodge.



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34. We also refer to the testimony of PW7, the sister of PW1. She supports the version of PW1. She also identified MO.1 to MO.11 series and MO.26 gold ornaments; MO.12 series and MO. 13 series pieces of mobile phones, MO.14 battery and MO.27 to MO.29 dress and MO.30 towel (തോർത്ത്) of Ayisha. She identified A1, whom she had seen a few times as an occupant of the lodge. According to her, A1 used to address her parents as ‘achan’ and ‘amma’.

35. When PW53 conducted the inquest, certain articles were seized from the scene of crime. PWs.2 to 5, the attestors of Exts.P2 to P4 inquest reports, also support the prosecution case that at the time of inquest, certain properties, i.e., MO.15 ring; MO.16 pipe; MO.17 series footwear; MO.18 curtain clothes, MO.19 series pieces of cloth with which Kunjumammed was found tied had been seized. PW53 also deposed that he had seized MO.31 knife from the scene of crime. This was seized as per Ext.P13 mahazar. PW25 is an attestor to Ext.P13. The case of the prosecution that MO.31 knife was seized from the scene of crime is also supported by the testimony of PW1.

36. MO.15 ring, according to the prosecution, belongs to A2 in this case. PW17, who is none other than the brother of A2, was shown



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MO.15 ring and asked whether he could identify the same and say the person to whom it belongs. PW17 answered that the said ring had been put by his late mother in the ear of A2 and that it was being used by his brother, A2. He was then asked whether the police had shown MO.15 to him, to which he answered in the negative. He also deposed that he had not stated to the police that the ring was being used by his brother as the police had never asked him. It was pointed out on behalf of A2 that PW17 has been cited as a witness in the final report to prove that PW16, his mother-in-law, had handed over a SIM to his brother, A2. PW17 was neither shown MO.15 ring by the police during investigation nor his statement recorded that he had identified the ring to be that of A2. Therefore, when PW17 for the first time identified MO.15 claiming it to be that of his brother in the box, A2 was taken by surprise/caught off guard, as he never had notice of the fact that the prosecution intended to prove this aspect also through PW17. This has caused prejudice to A2. This aspect is conspicuously absent in the 161 statement of PW17, which is a significant omission amounting to contradiction and hence the identification of MO.15 as the ring of A2 is a new story attempted to be brought in evidence by the prosecution, which is liable to be rejected. However, we notice that when MO.15 was shown to



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PW17 by the prosecutor in the chief examination, the same was never objected to. Added to this, there is also no challenge whatsoever to the testimony of PW17 that MO.15 ring is that of A2. PW17 is not seen cross examined on this aspect. Therefore, it is too late in the day to contend now that the testimony of PW17 relating to MO.15 ring cannot be looked into.

37. Now coming to the recoveries stated to have been effected in this case. A3 was the first person to be arrested in this case. According to PW53, Ext.P8(a) is the disclosure statement given by A3, which led to the recovery of MO.9 series, MO.11 series gold ornaments and MO.32 gold ingot from the shop of PW18. To prove this recovery, prosecution relies on the testimony of PWs.18 and 19. PW18, owner of SLN jewelry, Sira, Karnataka, failed to identify any of the accused in the case. According to him, police from Kerala had come to his shop asking for a bangle given by the thief. (കളങ്ങൻ തന്ന വള മേടിക്കാൻ വന്നു. See page 2 of his deposition). He does not remember the person who gave him the bangle. It was about two years back. When the police came to his shop, the thief was also present along with them. According to PW18, the thief had given him MO.9 series, MO.11 series gold ornaments as well as a bangle. When the police came, except for the bangle, all the remaining items were given in





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the same form. The bangle had been converted to MO.32 gold ingot.

38. PW19 has been examined to prove the recovery of the gold ornaments stated to have been made from the shop of PW18 at the instance of A3. PW19, identified A3 in the box. According to PW19, he had seen A3 when the Kerala police had brought A3 for recovery of the gold ornaments from the shop of PW18. He saw PW18 and the police engaged in a conversation. PW18 admitted to the police that he had taken the gold and that he is ready to return it. After about an hour, PW18 brought the gold and placed it on the table in front of the police. He and PW18 are the attestors to Ext.P8 mahazar prepared when MO.9 series, MO.11 series and MO.32 were seized. The time was about 11-11.30 am. when he attested the mahazar. In the cross-examination PW19 deposed that when the police arrived in their Innova car at 9.00 a.m., he was present in his shop, which is situated near the shop of PW18. There was a driver, two policemen and A3 in the Innova car. When the police arrived, PW18 alone was present in the shop. He does not know from where PW18 had brought the gold after about an hour. He did not see the gold being taken from any almirah or shelf in the shop of PW18. He also did not see the gold being weighed.

39. It was argued that Ext.P8(a) itself says that the disclosure



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statement stated to have been given by A3 in Kannada was translated to Malayalam by a translator by name, Arun Varghese. The said Arun Varghese has not been examined as a witness in the case. Hence Ext.P8(a) is inadmissible in evidence. In support of this argument, reference was made to the decisions in **Sanjay Oraon v. State of Kerala, 2021 (5) KHC 1** and **Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra, 2023 KHC 6605**. In these decisions, it has been held that if the disclosure statement made under Section 27 of the Evidence Act is not in the language spoken to by the accused, the same cannot be admitted in evidence. The exact words of the accused are to be recorded and the translation of the same must be appended. Even if the translation is not produced, if the interpreter is examined, then that would be sufficient compliance and that there would be no prejudice.

40. PW53 has no case that he is conversant in Kannada. That apparently is the reason why he availed the services of the translator-Arun Varghese. However, the said translator has not been examined as a witness in this case. Therefore, as held in the aforesaid decisions, Ext.P8(a) cannot be admitted in evidence.

41. Even if Ext.P8(a) is inadmissible in evidence, the conduct of



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the accused in leading the police to shop of PW18 and the recovery of gold ornaments, which have been proved to be that of the deceased, would be admissible under Section 8 of the Evidence Act. According to the learned defence counsel, Section 8 is not applicable in this case because it is based on Ext.P8(a) information/statement given by A3, the latter is alleged to have led the police to PW18 from whom the ornaments were recovered. When the said information itself is inadmissible in evidence, then the so-called conduct of the accused in leading the police to PW18, is also inadmissible, goes the argument.

42. We disagree with this argument advanced by the learned defence counsel. Here we refer to the dictum in **A.N.Venkatesh v. State of Karnataka, (2005) 7 SCC 714** in which it has been held that by virtue of S.8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under S.8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to



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such conduct falls within the purview of S.27 or not. Even if it is found that the disclosure statement made by the accused is not admissible under S.27 of the Evidence Act, still it is relevant under S.8. (See also **Prakash Chand v. State (Delhi Admn.), (1979) 3 SCC 90** and **State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru, 2005 (11) SCC 600**).

43. A further argument was advanced that if the conduct of the accused is relied on by the prosecution to prove the recovery, the said fact ought to have been put to A3 when he was questioned under Section 313 Cr.P.C. As he has not been questioned on that aspect, the same cannot be relied on. We disagree. We find that question no.164 put to A3, is sufficient compliance of the provision of law. The gold ornaments recovered from PW18 have been identified by PW1 and PW7 to be that of their mother and grandmother. A3 has not given any explanation for being in possession of the same.

44. The second person to be arrested is A1, from whom MO.1 to MO.4 and MO.26 gold ornaments were recovered as per Ext.P9(a) disclosure statement. The recovered ornaments were seized as per Ext.P9 mahazar which mahazar is proved through PW20, who is an attester to the same. PW20 was examined to prove the recovery effected from the house



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of A1. According to PW20, a neighbour of A1, he brings plastic vessels from Bangalore to Sankarankulam and exchanges them for old clothes. A month before Vishu he returned home to Bukkapattanam. He saw the police coming in an Innova car along with A1 to the house of the latter. A1's house was locked. A1 broke open the lock and took the police inside. A1 handed over MO.1, MO.2 series, MO.3, MO.4 and MO.26 gold ornaments, which were wrapped in an old shirt and a cloth gold in color. He is an attester to Ext.P9 seizure mahazar prepared when the gold ornaments were seized from the house of A1. The prosecution also relies on the testimony of PW28, a police officer, who was present in the team with PW53 when the recovery was effected.

45. When A1 was arrested on 09/03/2015 at 16.15 hours, PW53 had seized MO.35 Samsung phone; MO.36 phone; Ext.P17 driving license; Ext.P18 Aadhaar card of PW39; MO.38 series currency notes and MO.37 purse from him as per Ext.P16 mahazar in which PW28 is an attester. The gold ornaments seized from A1 have also been identified by PW1 and PW7.

46. PW53 also deposed that MO.13 series pieces of Nokia phone and MO.14 battery were recovered based on Ext.P19(a) disclosure statement made by A1. MO.13 series and MO.14 were seized as per



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Ext.P19 mahazar. PW28 is stated to be an attestor to Ext.P19 mahazar. It was argued on behalf of A1 that in the light of the dictum in **Subramanya v. State of Karnataka, AIR 2022 SC 5110**, two independent witnesses ought to have been present when the disclosure statement of A1 is stated to have been recorded. However, no independent witnesses have been examined to prove Ext.P19(a). It was also submitted that going by the prosecution case MO.13 series and MO.14 were recovered soon after the alleged recovery of gold ornaments made as per Ext.P9(a). Therefore, if PW20, an independent witness, was present at the time of the alleged first recovery from A1, then the police could have taken PW20 along with them when they proceeded to the spot with A1 to recover MO.13 series and MO.14. The absence of independent witnesses is suspicious. Therefore, the argument is that in the light of the dictum in **Subramanya (Supra)**, Ext.P19(a) is liable to be ignored.

47. It is true that no independent witnesses were present when Ext.P19(a) disclosure statement of A1 was recorded by PW53 and no independent witnesses have been examined to prove Ext.P19 mahazar prepared when the recovered articles were seized. Here we refer to the dictum in **H.P.Administration v. Om Prakash, AIR 1972 SC 975**



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wherein it has been held that the evidence relating to recoveries is not similar to that contemplated under S.103 Cr.P.C. where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situated. In an investigation under S.157, the recoveries could be proved even by the solitary evidence of the investigating officer if his evidence could otherwise be believed. It cannot as a matter of law or practice be laid down that where recoveries have to be effected from different places the information furnished by the accused, different sets of persons should be called in to witness them. We also refer to the dictum in **State of Himachal Pradesh v. Jeet Singh, AIR 1999 SC 1293: 1999 SCC Online SC 282**. In the said case the circumstance of recovery was repelled by the High Court on the ground that the witness who was present when the recovery was made, said that the accused had not made any disclosure statement. It must have been during the interrogation of the accused that he would have made the disclosures. It has been held that it is not necessary that other witnesses should be present when the accused was interrogated by the investigating officer. On the contrary, investigating officers interrogate the accused persons without the presence of others. So, the mere fact that any witness to the recovery did



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not overhear the disclosure statements of the accused is hardly sufficient to hold that no such disclosures were made by the accused.

48. MO.13 series and MO.14 are stated to be pieces of the Nokia phone and the battery respectively purchased by Kunjumuhammed from the shop of PW2, which phone was found missing after the incident. To prove this aspect, the prosecution examined PW21, owner of Cell Tech, a mobile phone shop. PW21 deposed that he knows deceased Kunjumuhammed. He identified Ext.P2 and P3 as the user manual and warranty cards given when MO13 Nokia phone and MO.12 Videocon phone were purchased by Kunjumuhammed. He identified MO.14 battery also. PW27, is an attester to Ext.P15 mahazar prepared when Exts.P2 and P3 were seized. It was argued on behalf of the accused that this piece of evidence has been manipulated after the arrest of A1. However, we do not find any reason to disbelieve PW21. The IMEI number of the Nokia phone referred to in Ext.P2 is 358103055729784/0. According to PW50 there will no other phone/handset with the same IMEI number of the phone referred to in Ext.P2. His testimony will show that on 13/02/2015 from 19:21:47 hours to 20:48:56 hours SIM bearing no. 8867970971 of A1 was used in phone with IMEI no. 358103055729784/0 to make several calls. Thereafter the said





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SIM from 10:48:15 hours on 14/02/2015 was used in phone with IMEI no. 358413058233084/0, which is MO.35 phone of A1 seized when A1 was arrested by PW53. PW50 also deposed that when SIM no. 8867970971 of A1 was used in phone/handset bearing IMEI no. 358103055729784/0 on 13/02/2015 from 19:21:47 hours till 20:46:56 hours, it was somewhere in the State of Karnataka. The testimony of PW21 coupled with the testimony of PW50 to the effect that the phone was used somewhere in Karnataka during the relevant period, also lends assurance to the prosecution story.

49. Now coming to the recovery effected from A2. According to PW53, MO.6 to MO.8 gold ornaments were recovered at the instance of A2 based on Ext.P20(a) disclosure statement given by A2. The testimonies of PW28 and PW38 support the prosecution case regarding this aspect. PW38, Manager, hotel Uppaharavaidya, Madnanayakhalli, Bangalore, identified A2. According to PW38, A2 had worked in the hotel for about one and half months. A2 had pledged MO.5 chain for ₹ 2,000/- stating it to be his mother's, taken the money and left the next day. A2 was thereafter brought to the canteen by Kerala police after 6 about months at which time he handed over the chain to the police. The prosecution has a case that MO.12 series are the broken pieces of Videocon phone of deceased Ayisha,



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which like MO.13 went missing after the incident. The testimony of PW21 shows that Ext. P3 warranty card was given to Kunjumammed when MO.12 phone was sold to him. The testimony of PW53 shows that MO.12 series were recovered based on Ext. P20(a).

50. We also refer to the testimony of PW29, PW34, PW41 and PW51. PW29 deposed that about two to three years back she along with PW34 had occupied a room in the lodge of Kunjumammed. They spent the night in the lodge. By 06:00 a.m., when she got up, she heard somebody calling – 'umma... umma...'. She woke up PW34, both of them got ready and came out of the room. On the way out, they saw a person standing above the steps near the door of the lodge. She also deposed that the police had called her on the next day and inquired whether she had stayed in the lodge. The police informed her about the murder of Kunjumammed and family. PW29 in the cross examination deposed that she comes with PW34 to Adimali twice a month and then they stay at Rajadhani lodge. She would inform the lodge owner over the phone in advance before they went there. She also deposed that on all occasions they had stayed at the lodge, they had occupied the room adjacent to the one occupied by the owner. The room rent is ₹ 300/-. She never used to write



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her name in the register or give her identity card. The room rent would be paid in advance and so they could vacate the room at any time. The last time they went to the lodge, the rent was paid by PW34. On the said day she started from home after lunch between 01:00 - 01:30 pm. Before she started, she had called the owner and said that they would be coming and hence a room was required. She traveled to Adimali by bus. From the bus stand, the lodge is situated about half a kilometer away. Both of them hired an auto and reached in front of the lodge. She bought a towel (അറ്റർത്ത്) and waited for PW 34 who went to buy food and brandy. When they reached the lodge, it was 04:00 pm. After they checked-in, they never came out of the room. PW29 deposed that though the conversation from the adjacent room is audible, the same would not be clear. There is only a wall separating the 2 rooms. By 10:30 pm they went to sleep. She woke up on hearing someone calling 'umma, umma....'. She does not know from where exactly the voice came. She did not hear anybody knocking on the door. At that time, they did not feel that anything unusual had happened (അങ്ങനെയൊരു അസ്വാഭാവികതയും അപ്പോൾ അന്നിയില്ല See page 18 of her deposition). She woke up PW34, got dressed and left the place. They had left the room before dawn. They left quickly as they did not



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want to be recognized by people known to them. (അൻപതു വർഷങ്ങൾ ആൾക്കർ കാണും, അതുകൊണ്ട് വേഗം പോയി. വല്ല പരിചയവുമുള്ളവർ കണ്ടാൽ മോശമാകും അതുകൊണ്ട് ഇറങ്ങിപ്പോയി. See pages 20 and 21 of her deposition).

51. PW34 deposed that he occasionally visits Adimali and has been to the lodge run by Kunjumuhammed thrice, which was about 2 years back. The last time he stayed in the lodge was with PW29, that is, during the night the incident took place. They left by 05.30 am and had left the door of the room occupied by them open. In the morning they heard somebody knocking and calling- ‘umma umma’. When PW34 was asked the purpose of his stay, he replied that it was to sleep with / spend the night with PW29, which they have done on earlier occasions also. He used to book rooms for his nocturnal activities in other districts away from his home to avoid being recognized and also because he is a married man. The room rent had been handed over to deceased Ayisha. He used to stay in room no. 102, which room is adjacent to the portion where Kunjumuhammed resided. He deposed that from his room it was possible to hear noises from the adjacent rooms. However, he did not hear anything unnatural/unusual from Kunjumuhammed’s room on the said night. On all



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the occasions he had not shown his ID proof or filled up the register at the reception when he had stayed in the lodge. During his previous visits, it was his name and address that was written in the register and not that of PW29.

52. PW51 is stated to be the last person who had seen Kunjumammed alive. He stated that on the day prior to the incident, on the request of Kunjumammed he had gone to the lodge by about 11-11.30 p.m. to give him pepper. PW51 came to know about the incident the next day.

53. PW41, who runs a bunk shop (റബ്ബർഷാപ്പ്) at Palco junction Adimali, from 02:00 am till 07:00 am, deposed that he used to buy milk from Kunjumammed, whose landlord has a farm. The milk would be brought to the lodge, Kunjumammed would keep the milk outside the lodge from where he would collect it. He used to collect the milk from the lodge by 02.15am. The last time he collected milk was the day on which the incident took place.

54. PW6 refers to a lady in purdah passing by when he reached the lodge. This lady, according to the prosecution, is PW29. The prosecution relies on circumstantial evidence to establish the case. Therefore, it was argued on behalf of the accused that it is the duty of the prosecution to



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show from the circumstantial evidence that it is none other than the accused persons present at the scene of occurrence, who had committed the crime. The circumstantial evidence on record must also lead to the only hypothesis that it is the accused and the accused alone, who had committed the crime. In this case the same has not been established because the testimony of PW29 and PW34 shows that they were present in the room adjacent to the scene of occurrence. Therefore, the presence of others at the scene of occurrence has come on record. In such circumstances, it cannot be concluded that it could only be the accused persons who had committed the crime. Reference was made to the statement made by PW53 in Ext.P4 inquest report that the sniffer dog after picking up scent from room bearing no.302, where the body of Kunjumammed was found, went to room no.102 (where PW29 and PW34 had spent the night), climbed on to the bed and picked up scent. This fact is admitted by PW53 when examined. Referring to the dictum in **Lalit Kumar Yadav v. State of U.P., (2014) 11 SCC 129** and **Dinesh Borthakur v. State of Assam, (2008) 5 SCC 697**, the argument is that this is a relevant piece of evidence in favour of the accused. In a case involving circumstantial evidence, prosecution cannot rely on the false defence or false plea of the accused and that it can succeed



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only if the circumstances unfailingly point to the guilt of the accused. In this case evidence has come on record that the place of occurrence was accessible to one and all and that there were other persons also in the vicinity or near the place of occurrence. Hence the involvement of others cannot be ruled out. The circumstances do not unerringly point to the guilt of the accused. Suspicion, however strong, cannot take the place of proof, and hence the argument is that the accused are entitled to the benefit of doubt.

55. As held in **Lalith Kumar Yadav** (*Supra*) the law is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused. There are inherent frailties in the evidence based on sniffer or tracker dogs. The possibility of an error on the part of the dog or its master is the first among them.... The possibility of a misrepresentation or a wrong inference from the behaviour of the dog cannot be ruled out. Last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals.... Investigating exercises can afford to make attempts or forays with the help



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of canine faculties but judicial exercise can ill-afford them. Moreover, in **Lalith Kumar Yadav** (*Supra*), the sniffer dog after picking up scent from the place of occurrence, tracked down the house of the accused and barked at him. The accused in the said case was not convicted on the ground that the sniffer dog tracked down the accused and had barked at him. There were other pieces of evidence as well, against him. The position in the case on hand is different. It may be that the sniffer dog had gone to the room occupied by PW29 and PW34. But nothing further transpired.

56. We have already referred to the testimony of PW29 and PW34 which has not been discredited in any way. Not even a suggestion is seen put to PW29 or PW34 that they had any role to play in the crime. It was argued that it was unnecessary for the defense to have done that, because it was sufficient for the accused to bring on record the presence of others also in addition to the accused, which would throw doubt on the prosecution story. It was also argued by referring to the dictum in **Juwarsingh v. State of Madhya Pradesh, 1980 Supplemental SCC 417** that cross-examination is not the only method of discrediting a witness. If the testimony on the face of it is unacceptable, the court is not bound to accept the testimony merely because there was no cross-examination. The





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decision referred to is not applicable to the facts of the present case because here is a case where the prosecution has examined the two people who were present near the scene of occurrence. They explained their presence in the lodge. Their testimony has also not been discredited. The accused persons on the other hand have been unable to explain the various incriminating circumstances brought against them in the evidence by the prosecution. Apart from the bald denial made by the accused when they were examined under Section 313, no plausible explanation or explanation for that matter has been given by the accused regarding the incriminating articles found in their possession.

57. Further, the prosecution is expected to only prove the case beyond reasonable doubt. A criminal trial, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection, that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material. **(Anant Chintaman Lagu v. State of Bombay, AIR 1960 SC 500).**

58. Here we deem it appropriate to quote paragraph 6 of the



decision in **Om Prakash** (*Supra*), which reads: -

*“While it is not the function of this Court to determine who other than the person who has been charged with the murder had committed it, the line which the defence adopted was to establish that the witnesses referred to above had an interest in implicating the accused or at any rate to create uncertainty and doubt sufficient to give the benefit to the accused. It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross examination or by the marshalling of that evidence in the manner in which the emphasis is placed there on. But what has to be borne in mind is that penumbra of uncertainty in the evidence before a Court is generally due to the nature and quality of that evidence. It may be the witnesses are lying or where they are honest and truthful, they are not certain. It is therefore difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against the accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt, the doubt which rational thinking men will reasonably honestly and conscientiously entertain and not the doubt of a timid mind which fights shy, though unwittingly it may be or is afraid of the logical consequences, if that benefit was not*



*given or as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. It is for this reason the phrase has been criticised. Lord Goddard C. J. in Rex v. Kritz, (1950) 1 KB 82 at p. 90 said that when in explaining to the juries what the prosecution has to establish a Judge begins to use the words "reasonable doubt" and to try explain what is a reasonable doubt and what is not, he is more much likely to confuse the jury than if he tells them in plain language. "It is the duty of the prosecution to satisfy you of the prisoner's guilt". What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt. This then is the approach." (Emphasis supplied).*

59. The prosecution also relies on Ext.P71 FSL report which states that MO.31 knife, purchased by A3 from the shop of PW9 and later seized



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from the scene of occurrence, contained fibers similar to MO.18 curtain cloth found at the scene of occurrence. However, the report only says that the fiber found was similar and does not say it was identical. Therefore, in the light of the dictums in **Biju Kumar v. State of Kerala, 2022 (1) KHC 463 (DB)** and **Muhammed Yousaf @ Sajid v. State of Kerala, 2023 KHC online 136** the same cannot be relied on. Likewise, MO.50 is a piece of cloth in which the gold ornaments found in the house of A1 is alleged to have been wrapped in. MO.50 is stated to be part of MO.18 curtain cloth recovered from the scene of occurrence. However, Ext.P7 report of PW46 only says that MO.50 is similar to MO.18 cloth. Therefore, the said piece of evidence cannot also be relied on.

60. The evidence on record establishes the prosecution case that all the accused persons knew each other and that as part of their plan, A1 had initially come to Adimali and stayed in the lodge on 08/01/2015 under a false name. This is established by the entries in Ext.P33 register made in the handwriting of A1 and recovery of Ext.P18 Aadhaar card of PW.39 from A1 at the time of his arrest. The testimony of PW50 and PW52 and the CDRs of the mobile phones of the accused show that they had switched off their mobile phones before coming to Adimali. The testimony of PW11 shows



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the accused persons had travelled in a KSRTC bus from Aluva to Adimali in the early hours of 12/02/2015. The testimony of PW9 and PW10 establishes the presence of accused persons in Adimali on 12/02/2015. The testimony of PW8 and PW42 establishes that the accused left Adimali in the early hours of 13/02/2015. The testimony of PW50 and PW52 and the records referred to by them establish that Exts.P2 and P3 phones were used by accused after the incident in the State of Karnataka. The testimony of PW21 establishes that MO.12 and MO.13 phones were sold to the deceased Kunjumohammed. After arrest, MO.1 to MO.11 series gold ornaments were recovered from A1 to A3 on different occasions, MO.12 and MO.13 phones were recovered from A1 and A3. They have been unable to give any plausible explanation or explanation for being in possession of the aforesaid articles. Hence, we find that the evidence on record establishes the case put forward by the prosecution in the final report. Therefore, we find that the trial court was right in convicting the accused for the offences punishable under Sections 449, 302, 392, 201 r/w 34 IPC.

61. This is a case in which three unarmed persons were murdered for gain. We do not think that the direction of the trial court that the sentence of imprisonment for the offence punishable under Section 302 IPC



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will commence after the accused have served the remaining sentences, requires any modification. There is no infirmity in the impugned judgment calling for an interference.

In the result, the appeals fail and the same are dismissed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-  
**P.B. SURESH KUMAR**  
**JUDGE**

Sd/-  
**C.S.SUDHA**  
**JUDGE**

ami/ak/Jms