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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 11TH DAY OF MARCH 2026/20TH PHALGUNA, 1947

CRL.A.NO.1737 OF 2025

CRIME NO.340/2016 OF HARIPPAD POLICE STATION, ALAPPUZHA
AGAINST THE JUDGMENT DATED 21.06.2019 IN S.C.NO.438 OF 2016 OF
ADDITIONAL SESSIONS COURT - III, MAVELIKKARA

APPELLANT(S)/ACCUSED:

RATHEESH
AGED 41 YEARS
S/O.PUSHKARAN NEDIYATHU VEETIL VETTUVENI MURI
KARTHIKAPPALLY VILLAGE, ALAPPUZHA DISTRICT, PIN - 690516

BY ADV.SRI.S.SHANAVAS KHAN
BY ADV.SMT.S.INDU
BY ADV.SRI.GOVIND H. NAIR

RESPONDENT(S)/STATE/COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

BY SRI.T.R.RENJITH, SR. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02.03.2026, THE COURT ON 11.03.2026 DELIVERED THE FOLLOWING:



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"C.R."**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

The sole accused in Crime No.340 of 2016 of Harippad Police Station is the appellant before us in this Crl. Appeal that impugns the judgment dated 21.06.2019 of the Additional Sessions Judge - III, Mavelikkara, in S.C.No.438 of 2016.

2. The prosecution case, as borne out by the final report, is that on 06.03.2016, at about 9.00 p.m., the accused, who was on inimical terms with the deceased Danesh @ Kannan, trespassed into the courtyard of the house where the deceased was residing, and assaulted him with a shock absorber. Danesh, although taken to the Taluk Headquarters Hospital, Harippad was declared as brought dead thereto.

3. Ext.P1 F.I. Statement was given by PW1 Vipin V.P. and was recorded at 11 p.m. On 06.03.2016. The FIR [Ext.P11] was registered by PW19 Baiju S.S., the Station House Officer of the jurisdictional Police Station. The accused was arrested on 07.03.2016, and pursuant to the investigation that followed, the final report was laid before the Judicial



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First Class Magistrate Court - I, Harippad. The accused was supplied with the copy of the final report and the supporting documents submitted by the prosecution and the case was committed to the Court of Session, Alappuzha, in terms of Section 209 of the Code of Criminal Procedure [Cr.PC]. The Sessions Court took cognizance of the matter and made over the case to the Additional Sessions Judge - III, Mavelikkara for trial and disposal.

4. On the production of the accused before the trial court, the prosecution and defence were heard under Section 227 Cr.P.C. On the trial court finding that there were sufficient grounds to proceed against the accused, the charges were framed, read out and explained to the accused in Malayalam, to which, he pleaded not guilty. In the trial that followed, the prosecution examined PW1 to PW24, marked Exts.P1 to P27 series documents and identified MO1 to MO6. On closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. While denying the incriminating circumstances alleged against him based on the prosecution evidence, the accused also filed an additional statement as follows:

“The deceased Danesh is the son of his uncle. He had very cordial relationship with deceased. During the festival at Pallipadu temple deceased Danesh consumed alcohol and quarreled with opposite side.



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While deceased was coming to house some one followed him and murdered. On account of enmity of families of Danesh and wife, he is implicated in the present case. PW13 is enmical with mother of the accused. At no point of time he had occasion to go to her dwelling house. On account of enmity PW13 deposed before the court. The recovery of shock absorber has no connection with him. While he was in custody police brought the shock absorber and kept in his hand. His information is that PW13 has repentance on account of putting him behind the bar. He is innocent.”

5. The trial court then proceeded to consider the case of the accused under Section 232 Cr.P.C and finding that he was not entitled to the benefit of an acquittal at that stage, called upon him to enter his defence. No evidence was produced on behalf of the accused in defence. The trial court therefore proceeded to hear the learned Prosecutor and the learned counsel for the defence and thereafter convict the accused for the offence under Section 302 of the Indian Penal Code [IPC]. The accused was however found not guilty of the offence punishable under Section 447 IPC and acquitted in relation to that offence. Thereafter, after hearing the arguments on sentencing, the accused was sentenced to undergo life imprisonment and pay fine of Rs.50,000/- in default to undergo simple imprisonment for three months. The fine amount, if realised, was directed to be paid to PW12 Chitra P, the wife of the deceased, as compensation under Section 357(1)(c) Cr.P.C. The accused was also given the benefit of set off from 07.03.2016 in the event of an order being passed under Section 433A Cr.P.C by the competent authority.



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6. In the appeal before us, we have heard Sri.S.Shanavas Khan, the learned counsel for appellant/accused and Sri.T.R.Renjith, the learned senior Public Prosecutor for the respondent/State. We have also meticulously gone through the evidence on record and considered the arguments of the learned counsel and the precedents relied upon by them.

7. At the very outset, we might observe that the evidence of PW16 Dr. Umesh A.K., who conducted the postmortem of the body of the deceased and issued Ext.P6 certificate gives the details of the injuries that were found on the body of the deceased. The injuries noted by PW16 are as follows:

- 1) Lacerated wound, 5.5 x 0.5 x 0.4 cm, bone deep, almost vertical, on top of head with its front end 13.5 cm above root of nose in midline.
- 2) Lacerated wound, 2.5 x 0.3 cm, bone deep, obliquely placed on top of head, with its lower front end 10 cm above root of nose in midline.
- 3) Avulsed lacerated wound, 3.5 x 1x 1.5 cm, involving the root of left ear and partially separating the pinna of ear from its attachment.
- 4) Lacerated wound 2.3 x 0.3 cm, involving its whole thickness separating the pinna into two halves in its middle. Underneath the above injuries, the vault of skull showed an irregular comminuted fracture involving the left frontal and part of temporal bones. Another linear fracture with partial displacement was seen extending along the midline, in between the parietal bones from the vertex region to the frontal area, which was seen merging with the fracture line along the frontal bone. The fractured frontal and temporal bones were in a depressed state and showed abnormal free mobility.
- 5) Lacerated wound, 3 x 0.9 cm, bone deep, obliquely placed on left side of forehead with its upper inner end 5 cm outer to midline and 3 cm above



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eye brow.

6) Abraded contusion, 4 x 3.5 cm on left side of face overlying the outer end of eye brow.

7) Contusion 4.5 x 3.8 cm involving the whole thickness on left side of face, just below the level of left eye and 3 cm outer to midline.

8) Fracture and displacement of nasal bone and nasal spine.

9) Abraded contusion, 10 x 5.3 cm, incorporating a lacerated wound (2.8 x 0.9 x 1 cm) on left side of face overlying the prominence of cheek bone, 8 cm outer to midline and 4 cm below eye brow.

Underneath the injury nos.5 to 9, a part of left maxilla (upper jaw bone), zygomatic arch and the lower orbital margins showed fracture with fragmentation; the bones were in a depressed state. The base of skull also showed fracture with fragmentation involving the floor of left side of anterior and middle cranial fossae.

10) Lacerated wound with a surrounding contusion, 2 x 0.8 x 1 cm, involving the middle of upper lip. Another contusion, 3 x 1.8 cm, incorporating a lacerated wound (1.5 x 0.3 x 0.8) was seen on left side of lower lip, just inner to the angle of mouth. Underneath the left maxilla and mandible (lower jaw bone) showed fracture in the same oblique line (which was almost vertical) with separation of fractured ends. The fracture line was seen extending in between the central incisor teeth on upper jaw and the left central and lateral incisor teeth on the lower jaw, in an oblique manner. Another fracture line was seen running in between the 1st and 2nd premolar teeth on left side of upper jaw leaving a freely mobile fractured segment in between. The left upper central incisor tooth and a major portion of the right upper lateral incisor tooth were missing (fresh loss with clots at the sockets). The left maxilla and the left half of mandible showed fracture; which were in a compressed and pushed inwards state. The lower jaw bone showed fragmentation at multiple sites. Brain showed bilateral, thick subdural and subarachnoid haemorrhages. Superficial lacerations of brain were seen over the left fronto temporal regions, mainly over the under and outer aspect. There were features suggestive of brain edema.

11) Abraded contusion, 9 x 4.8 x 0.3 cm, overlying the lower part of left side of face and partially overlying the adjoining part of neck, obliquely placed, 3.5 cm outer to midline.

12) Lacerated wounds, 3 in number, irregularly placed, 1x 0.2 x 0.3 cm, 1.6 x 0.2 x 0.3 cm and 1.9 x 0.3 x 0.3 cm, over an area 7 x 2 cms, almost in a same oblique line, overlying the lower jaw margin, the innermost one 1 cm to the left of midline from the tip of chin.

13) Abraded contusion, 6 x 0.6 x 0.3 cm, almost horizontal, on outer aspect of left arm with its lower front end 11 cm below tip of shoulder.

14) Abrasion, 1.3 x 0.6 cm on back of left hand, 3.5 cm above root of thumb.



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PW16 has also confirmed that the death was caused due to multiple blunt injuries sustained to the head. It is evident therefore that the death of the deceased was a clear case of homicide, and when taken together with the nature of the injuries and the parts of the body on which they were inflicted, it is a clear case of culpable homicide amounting to murder. The question, however, is by whom the murder was committed ?

8. The instant is a case where there is no direct evidence with regard to the incident that occurred at 9.00 p.m. on 06.03.2016. The evidence is entirely circumstantial in nature. It is trite that in a case where circumstantial evidence is used to enter a finding of conviction for murder against an accused, the evidence must satisfy the following tests, namely, (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances, taken cumulative, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (iv) the circumstantial evidence must be complete and incapable of explanation on any other hypothesis other than that of the guilt of the accused and such evidence should not only be consistent with the guilt of



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the accused but should also be inconsistent with his innocence **[Hanumant Govind Nargundkar & another v. State of Madhya Pradesh - [AIR 1952 SC 343], Shivaji Sahebrao Bobade & another v. State of Maharashtra - [(1973) 2 SCC 793], Sharad Birdhi Chand Sarda v. State of Maharashtra - [(1984) 4 SCC 116], Ashok Kumar Chatterjee v. State of M.P. - [AIR 1989 SC 1890], State of U.P. v. Dr. Ravindra Prakash Mittal - [AIR 1992 SC 2045], Vithal Eknath Adlinge v. State of Maharashtra - [(2009) 11 SCC 637] and Raja Naykar v. State of Chhattisgarh - [(2024) 3 SCC 481]].**

9. Based on the above principles, when we look to the evidence on record, we find that while the prosecution had built its case against the accused, based largely on the statements recorded from PW1 Vipin V.P., who gave the F.I Statement based on hearsay knowledge, PW2 Ansar B., PW3 Sajitha, the sister-in-law of the accused, PW4 Vilasini, the mother of the accused, PW5 Bhargavan, PW9 R. Sreekumar, the witness to Ext.P3 recovery mahazar under cover of which MO1 shock absorber was recovered and PW13 Beena S., a neighbour, who identified MO1 shock absorber as recovered from her house, PW1 to PW5 turned hostile to the case of prosecution at the stage of trial. Being witnesses bearing close relationship to the accused, they may or may not be trying to protect the



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accused. We cannot, however, speculate on that aspect. The fact is that there is no valid evidence let in through them that would implicate the accused in the crime that was committed.

10. As per the evidence of PW9 and PW13, their depositions are material to prove the recovery of MO1 shock absorber that is stated to be the weapon used for committing the crime, and the recovery of which was supposedly based on the confession statement of the accused. The prosecution relies on Section 27 of the Evidence Act to prove that part of the statement of the accused in his confession while in police custody, leading to the recovery of the weapon, as a material circumstance implicating the accused. While PW9's signature appears on Ext.P3 recovery mahazar under which MO1 was recovered, during trial, he turned hostile to the case of the prosecution when he deposed to having signed the mahazar at the police station and not at the site of alleged recovery. He went on to identify MO1 shock absorber in court as the object that was shown to him for the first time in the police station.

11. We are aware that the hostility shown by independent witnesses to a recovery mahazar is not always fatal to the prosecution if the evidence of the investigating officer regarding the recovery is convincing and



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reliable. In the present case, however, PW20, the fingerprint expert who allegedly collected chance prints from MO1 shock absorber, deposed that he collected the chance prints from the police station. No explanation has been offered by the prosecution as to why no attempt was made by the investigating officer to ensure the collection of chance prints from the place of recovery itself. Viewed in this background, we find no reason to disbelieve the evidence of PW9 that he affixed his signature on the seizure mahazar relating to the recovery of MO1 shock absorber at the police station. This circumstance assumes significance because if important aspects, including the collection of fingerprints, were in fact carried out at the police station, the probative value of the evidence gets eroded. Moreover, the evidence of PW9 has not been impeached through any question put to him by the prosecution.

12. As for PW13 Beena S., she is the owner of the property from where MO1 was recovered, and she even deposed to having seen the recovery as also blood stains on MO1 shock absorber. Curiously, however, she was not made a witness to the seizure mahazar. When read with the deposition of PW9 R. Sreekumar, who stated that his signature on Ext.P3 mahazar was put at the police station, the testimony of PW13 whose deposition regarding her presence at the time of recovery, does not inspire



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confidence in us, does not appear to be worthy of credence, particularly when she is not a signatory to the seizure mahazar.

13. The learned Prosecutor would point to the fingerprint match found by PW20 Ajith G. and PW21 Nasir K.M., both fingerprint experts, who found that the left hand palm print of the accused matched with the fingerprints found on MO1 shock absorber. However, in the light of the discrepancies noticed in the recovery of MO1 itself, clearly based on the confession statement of the accused, we cannot find it in ourselves to attach any relevance to this evidence. MO1 having been seen by PW9 at the police station while the accused was in custody, the presence of the fingerprints of the accused on MO1 can be explained through other hypotheses. For the same reason, the blood stains found on MO1 belonging to Group 'B', the same as that of the deceased, whose postmortem report reveals that he had blood of Group 'B^{+ve}', cannot be of much significance in the wake of the finding that the recovery of MO1 itself is not validly proved. In essence, therefore, we find that the entire case of the prosecution hinges on the legality of the recovery effected. It is the said recovery that we have found as not proved in the instant case. We find, therefore, that the prosecution has not been able to discharge its burden of proving a complete chain of circumstances that would point

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unerringly to the guilt of the appellant/accused and which excludes all other hypotheses other than that of the guilt of the appellant/accused. This burden of the prosecution not having been discharged, we have no other option but to set aside the conviction of the appellant/accused as entered by the trial court and acquit the appellant/accused of the offence punishable under Section 302 IPC. We do so, and direct that the appellant/accused be set at liberty forthwith, unless his continued custody is required in connection with any other case.

The Crl. Appeal is allowed as above.

**Sd/-
DR.A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
JOBIN SEBASTIAN
JUDGE**

prp/