IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR.JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 26TH DAY OF OCTOBER 2023/4TH KARTHIKA, 1945

CRL.A.NO.136 OF 2018

AGAINST THE ORDER IN S.C.NO.425/2009 OF III ADDITIONAL SESSIONS JUDGE, ERNAKULAM IN CRIME NO.RC 9/S/07/CBI/SCB/CHENNAI OF CENTRAL BUREAU OF INVESTIGATION DATED 07.02.2011

APPELLANT/ACCUSED:

K.BABU
AGED 35 YEARS
S/O.KUNJUKUTTAN, KIZHAKKEVEEDU,
THARUVAKURISSY WEST, KANNADI,
PALAKKAD DISTRICT.

BY ADV.SRI.RENJITH B.MARAR
BY ADV.SMT.LAKSHMI.N.KAIMAL

RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR (CBI),
HIGH COURT OF KERALA, ERNAKULAM.

BY SRI.K.P.SATHEESAN (SR), SC, CBI

THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON 20.10.2023, THE COURT ON 26.10.2023 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The accused in S.C.No.425/2009 before the III[rd] Additional Sessions Court, Ernakulam (CBI) is the appellant before us in this Criminal Appeal that impugns the conviction and sentence awarded to him by the trial court which found him guilty of the offences punishable under Sections 302, 383, 449, 397, 392, 201 of the Indian Penal Code [IPC].

The case of the prosecution:

2. The prosecution case was that on the night of 5.12.2006 between 18.45 hours and 19.00 hours, the accused trespassed into the residence of Kumaranunni Nair and Anandavally Amma with the intention of killing them. During a scuffle that occurred inside the house, he strangulated Kumaranunni Nair who became unconscious and fell down. When Anandavally Amma arrived at the scene hearing the noise, the accused inflicted multiple injuries on her with a Billhook/Koduval and murdered her. He thereafter murdered Kumaranunni Nair who had regained consciousness in the meanwhile, by inflicting multiple injuries on him as well using the same Koduval. The accused then cut and

removed two gold bangles from Anandavally Amma's hands and also took a gun and cash of Rs.550/- that belonged to Kumaranunni Nair. He then sprinkled kerosene and coconut oil on the bed sheets and pillows and lit fire to it after putting it on the dead bodies and also sprinkled the compound of Pepsi Entrine and Phenol all over the area where he had moved so as to destroy any evidence of his presence at the scene.

3. The crime was detected only on the morning of 06.12.2006 and an FIR was registered by the police on the same day. After an initial investigation done by the local police, the investigation was transferred to the CBI. The accused was arrested on 12.05.2009, and produced before the court below that remanded him to custody. The case was committed to the IIIrd Additional Sessions Court, Ernakulam (CBI), and was numbered as S.C.No.425/2009. The trial started on 07.01.2010, closed on 21.01.2011 and the sentence was passed on 07.02.2011.

Proceedings before the Trial Court:

4. PW1 to PW34 were examined by the Prosecution and Exts.P1 to P64 documents were marked as were MO's 1 to 36. On the side of the defence, Exts.D1 to D10 were marked. After closing the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure. Both the Prosecutor and the defence counsel were heard under Section 232 of the Code of Criminal Procedure, and finding

no reason to acquit the accused at that stage, the court below proceeded to consider the evidence of the defence. No witness was however called by the defence.

5. After hearing the prosecution and defence, the court below found the accused guilty of offence under Sections 302, 383, 449, 397, 392, 201 of IPC. In arriving at the said findings, the trial court relied entirely on circumstantial evidence. In particular, it relied on the testimony of PW1 Prasanna Kumari, the daughter of the deceased, PW4 Baby, the maid who worked in the house of the deceased and PW5 Kunjikuttan, the father of the appellant/accused to find that the accused was a person who was well known to the deceased couple and that he had gained their trust over the years, and that he had on many occasions driven them to the bank and to the houses of their relatives in his autorickshaw, and therefore he also knew that the couple had money and gold ornaments kept in their house. The testimony of Kunjikuttan and PW10 Ramesh Kumar, the business partner of the appellant was relied on to establish that the accused was in need of money on account of failed business ventures in the immediate past and that the need for money was the motive for the trespass and murder of the deceased couple and the theft of the money, gold bangles and gun from the house. The testimony of Baby who saw the accused near the house of the deceased couple earlier in the evening of the murder, as also the testimony of the neighbours PW2 E. Narayanan and PW3 Karthiyani who had heard a cry

from the house of the murdered couple, were relied upon to find that the murders had been committed by the accused between 18.45 and 19.00 hours. The testimonies of Kunjikuttan, PW6 Balakrishnan and PW7 Mani Mannadiyar [both of whom were passengers in the autorickshaw of the appellant/accused] were relied upon to find that the accused had left early the next morning to go to Tirupur and that he did not return home till the Police asked him to come there for questioning. The testimonies of PW13 Saravanan and PW14 Thiruvenkada Kumar, who were the salesman and owner respectively of a Jewellery in Tirupur were relied upon to find that the accused had sold the bangles worn by Anandavally Amma, that he had cut and removed from her body, to the Jewellery at Tirupur. Saravanan had also identified the accused at a TI parade conducted by the Magistrate PW26. The confession statement of the accused that led to the recovery of the murder weapon was relied upon to the extent permitted under Section 27 of the Evidence Act, as was the testimony of the Police Surgeon PW29, read with documents Exts.P38 and P39 and the testimony of the Forensic expert PW27 James Philipose, Director, FSL to find that the recovered weapon was capable of inflicting the injuries found on the bodies of the deceased couple as also making the tool marks on the Almirah in the house of the deceased. The trial court also found that the accused had purchased Pepsi and Entrine, traces of which were found at the scene of crime to infer the presence of the accused thereat. Based on the said findings, the trial court directed the accused to undergo rigorous imprisonment for a term of 10 years for the offence

under Section 449 of IPC, rigorous imprisonment for a term of 10 years for the offence under Section 397 of IPC and rigorous imprisonment for a term of two years for the offence under Section 201 IPC. The sentence under Section 397 IPC and under Section 449 of IPC were to run consecutively. For the offence under Section 302 IPC he was sentenced to undergo rigorous imprisonment for a term for life and he was also directed to pay a fine of Rs.10,000/-. The sentence under Section 302 of IPC was to run concurrently with the other above sentences. It was made clear that the sentence under Section 302 of IPC would be undergone only after the accused had undergone the sentence under Section 449 and 397 of IPC, which were also consecutive in nature.

The Arguments of Counsel:

6. In the appeal before us, Adv. Sri.Renjith B. Marar, the learned counsel appearing on behalf of the appellant, would refer to the chain of circumstances that is relied upon by the prosecution and argue that the prosecution has not discharged its burden of showing that they point unambiguously to the guilt of the accused as charged. In particular he would submit that while some of the circumstances alleged by the prosecution such as the fact that the appellant was very closely attached to the family of the deceased and was aware of the wealth in the family, that he was in need of money owing to the failure of his bakery business in Tirupur, and that he had left for Tirupur in the early hours of 6.12.2006

- the day following the day of the murder, were never in dispute, there were serious infirmities in the evidence adduced to suggest that (i) the appellant was seen in the vicinity of the deceased couple's house nearer to the time of the alleged incident, (ii) that he had sold two broken golden bangles belonging to the the deceased Anandavally Amma at a Jewellery shop in Tirupur the next day (iii) that the salesman in the Jewellery shop had identified him as the person who sold the broken gold bangles in a TI parade conducted by the Magistrate (iv) that the billhook/koduval recovered pursuant to his confession statement before the CBI officials was the murder weapon (v) that he had sprinkled kerosene and coconut oil on the bed sheets and pillows and lit fire to it after putting it on the dead bodies and (vi) that he had also sprinkled the compound of Pepsi Entrine and Phenol all over the area where he had moved so as to destroy any evidence of his presence at the scene. It is his submission that in respect of the above six circumstances, there is no evidence that points to the presence of the appellant at the scene of the crime on the fateful evening. On the aspect of sentencing, it is the submission of the learned counsel that the appellant has been sentenced to undergo RI for 10 years under Section 449, RI for 10 years under Section 397, RI for 2 years under Section 201, and imprisonment for life and to pay a fine of Rs.10,000/- (SI for 1 year in default). That the trial court directed that the sentence under Sections 449 and 397 shall run first, and that the same shall be consecutive in nature, and only after that would the sentence under Section 302 would start to run. The sentence under

Section 201 is directed to run concurrently. According to the learned counsel, such an approach, whereby the term sentences are directed to be served before the life sentence under Section 302 would start to run is not just and proper. He relies on the judgment in **Shibu & Anr. v. State of Kerala - [2010 (4) KHC 62]**, that holds that in all such cases, the term sentences, as well as the life sentence should be directed to be served concurrently.

7. Per Contra, Adv. Sri.K.P.Satheesan, the learned counsel for the CBI, that prosecuted this case before the trial court, drew support from the findings of the court below to maintain that the prosecution had succeeded in discharging its burden of proving its case beyond reasonable doubt. He points out that the instant was a most heinous crime committed on an elderly couple, and in the absence of any eye witness the prosecution had to rely entirely on circumstantial evidence and they have succeeded in connecting the links in the chain of circumstances despite the limitations faced owing to the belated entrustment of the investigation of the case to them. He also filed an argument note reiterating the points mentioned during the hearing and placing reliance on the following decisions viz. **Pakala Narayana Swami v. Emperor – [AIR 1939 PC 47]; Mathew Zacharia v. State of Kerala – [1974 KLT 42 (DB)]; Mahabir Mandal and Others v. State of Bihar – [(1972) 1 SCC 748]; Nandini Satpathy v. P.L. Dani and Another – [(1978) 2 SCC 424]; Shakila Khader & Others v.**

Nousheer Cama & Others – [(1975) 4 SCC 122]; State v. Ammini and Others – [1987 (1) KLT 928]; Ammini v. State of Kerala – [AIR 1998 SC 260]; Mohammed Inayatullah v. State of Maharashtra – AIR 1976 SC 483]; Rijo v. State of Kerala – [2009 KHC 1145]; Balbir Singh v. State of Punjab – [AIR 1957 SC 216]; Mohan Lal v. Ajit Singh – [AIR 1978 SC 1183], Shankar Gajanan Kalan v. State of Maharashtra – [(1996) 11 SCC 151]; Padala Veera Reddy v. State of A.P. And Others – [AIR 1990 SC 79]; State of Goa v. Sanjay Thakran & Another – [(2007) 3 SCC 755].

What the Law Says:

8. Before we proceed to analyse the evidence before us in the backdrop of the submissions made by the learned counsel, we deem it apposite to notice the principles that must guide us while adjudicating the guilt of an accused against whom only circumstantial evidence is led by the prosecution. It is trite that the guilt of a person can be proved by circumstantial evidence also **[Vilas Pandurang Patil v. State of Maharashtra - [(2004) 6 SCC 158]]**; as evidence there is no difference between direct and circumstantial evidence. The only difference is that, as proof, the former directly establishes the commission of the offence whereas the latter does so by placing circumstances which lead to irresistible inference of guilt **[Daya Ram v. The State (Delhi Administration) - [AIR 1988 SC 615]]**. The standard of proof required

to convict a person on circumstantial evidence is that the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and further it must be such as to show that within all human probability the act must have been done by the accused **[Bakshish Singh v. The State of Punjab – [AIR 1971 SC 2016]; Hanumant Govind Nargundkar and another v. State of Madhya Pradesh - [AIR 1952 SC 343]]**. When deciding the question of sufficiency, what the court has to consider is the total cumulative effect of all proved facts each one of which re-inforces the conclusion of guilt **[State of U.P. v. Ashok Kumar Srivastava – [AIR 1992 SC 840]**. If two views are possible on the evidence adduced in a case of circumstantial evidence, one pointing to the guilt of the accused and the other to his innocence, the court should adopt the view favourable to the accused **[Charan Singh v. The State of U.P. – [AIR 1967 SC 520]; Harendra Narain Singh v. State of Bihar – [AIR 1991 SC 1842]]**. The evidence must satisfy the following tests viz. (a) the circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established; (b) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (c) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else **[Abubucker**

Siddique and Another v. State - [(2011) 2 SCC 12]]; and (d) the circumstantial evidence in order to sustain conviction 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 the accused but should be inconsistent with his innocence **[Ashok Kumar Chatterjee v. State of M.P. – [AIR 1989 SC 1890]; Sharad Birdhichand Sarda v. State of Maharashtra - [AIR 1984 SC 1622]; State of U.P. v. Dr. Ravindra Prakash Mittal - [AIR 1992 SC 2045]; Vithal Eknath Adlinge v. State of Maharashtra - [(2009) 11 SCC 637]].**

Analysis and Findings:

9. At the outset we may advert to some salient features of this case that have influenced us while appreciating the evidence adduced by the prosecution. While the gruesome murder of the elderly couple apparently took place in the evening hours on 05.12.2006, and the investigation was initially entrusted with the local police department, the investigation was later transferred to the Crime Branch (CBCID) of the State Police department on 15.03.2007. Thereafter, at the instance of the family of the deceased couple, the High Court directed the investigation to be entrusted to the CBI. The judgment of the High Court clearly reveals that up to that stage, the investigation in the matter had not progressed to a satisfactory level and it was therefore that the Court was inclined to

transfer the investigation to the CBI. The CBI lodged Ext.P58 FIR on 14.11.2007 and formally commenced its investigation on 20.11.2007. The Investigation Officer (PW34) has deposed that he visited the crime scene on 13.12.2007. The accused, however, was arrested only on 12.05.2009 and it is thereafter, based on his confession statements that MO11 was recovered from a shed outside his residential house on 15.05.2009, as recorded in Ext.P28 seizure mahazar. In fact, much of the evidence relied upon by the prosecution, pertains to the period after the arrest of the accused in May, 2009.

10. To recapitulate; the chain of circumstances relied upon by the prosecution before the trial court was that the appellant accused, who was a person in need of money, and who was quite close to the deceased couple and therefore knew that the couple had money with them, went to the house of the deceased couple sometime between 6.45 and 7 pm, after the maid working there (PW4) had left for the day, and committed the murder of the couple using a billhook/vettukathi. He then sprinkled kerosene and coconut oil on the bed sheet and pillows and lit fire on the bodies and also sprinkled the compounds of Pepsi Entrine and Phenol on the places where he had moved, before leaving the house with Kumaranunni Nair's gun, Gold bangles cut and removed from the wrists of Anandavally Amma, and Rs.550 cash. He also attempted to pry open a steel almirah that was present in the house without any success. Early next morning he left for Tirupur where he sold the gold bangles for

Rs.12,000/- at a Jewellery Shop.

11. Towards proving the said chain of circumstances, the appellant's need for money was sought to be established through the evidence of PW8 Mahesh who was the room mate of the appellant in Tirupur, PW9 Suresh who sold his bakery to the appellant, and PW10 Ramesh Kumar who was the appellant's business partner, all of whom deposed that the appellant had a bakery business that closed down in November 2006, after which he was working as an employee in another bakery. He had plans to start another bakery for which he needed cash. That the appellant knew that the deceased couple had money with them is sought to be established through the evidence of Prasanna Kumari, the daughter of the deceased couple, Baby, the maid who worked in the house of the deceased, and Kunjikuttan, the appellant's father, all of whom testified that the appellant was closely attached to the family of the deceased and that he often took the deceased couple, on their monthly visits to the bank and for grocery shopping, in his autorickshaw and brought them back to the house after stopping over at the houses of near relatives; their depositions also suggest that Anandavally Amma used to wear gold ornaments while stepping out of the house on these trips, and even when she was inside the house and these would have been noticed by the appellant. The evidence as regards familiarity of the appellant with the deceased couple is also used to suggest that it could have been the reason for there being no signs of forced entry into the house on the

evening of the murders. The recovery of MO11 pursuant to information given by the appellant during his confession to the CBI is read along with the evidence of PW21 Prameela, the FSL Analyst and PW29 Dr. P.B Gujaral, the doctor who conducted the post mortem, to suggest that MO11 was capable of causing the prying marks on the steel almirah, as well as causing the injuries found on the bodies of the deceased. The evidence of the maid, PW4 Baby, who deposed that she saw the appellant in the vicinity of the house of the deceased on the evening of the murders, is used to establish the presence of the appellant at the scene around the time of the murders. His absence at the scene of the crime, and his departure for Tirupur the next morning, as deposed by Balakrishnan and Mani Mannadiar, who travelled along with the appellant in his autorickshaw on 05.12.2006 are used to demonstrate the unusual conduct on the part of the appellant who was quite close to the deceased couple. The deposition of Saravanan, the salesman who worked at the Jewellery Shop of Thiruvenkada Kumar in 2006, that the appellant had sold broken gold bangles at the shop on 06.12.2006, as well as his subsequent identification of the appellant at a TI Parade conducted by the Magistrate (PW26) are used to connect the appellant with the bangles that were found missing from the body of Anandavally Amma.

12. It can be seen from the above that the mainstay of the prosecution case is (i) the testimony of PW4 Baby that she saw the appellant near the scene of the crime that evening, (ii) the identification

of the appellant by Saravanan, who at the TI parade conducted by the Magistrate identified the appellant as the person who had sold him cut gold bangles on 06.12.2006 at Tirupur and (iii) the recovery of the billhook/koduval from a shed near the appellant's residence based on his confession statement before the CBI officials. The said three pieces of evidence are the main links that hold together the chain of circumstances that the prosecution presented before the trial court. But how strong is this evidence, and will it suffice to form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant herein and none else? For the reasons that follow, we think not.

13. *De hors* the evidence of the jewellery salesman Saravanan, the conduct of the appellant in travelling in the morning of 06.12.2006 to Tirupur, where he had a business interest, accords with the normal conduct of one who is ignorant of the gruesome happenings of the previous evening. The evidence of PW6 who travelled in the auto plied by PW5 and the appellant, that while he was walking to Kannanur, the appellant came in the auto, stopped beside him and invited him to get into the auto does not at all accord with the normal conduct of a culprit who is trying to abscond from the place of occurrence after committing a double murder. PW5 deposed that the appellant had stated to him even on the morning of 05.12.2006 that he would return to Tiripur on the following day. He had come back to Palakkad on 07.12.2006, in the

evening, along with PW10 and made himself available for interrogation on 16.12.2006. His failed business venture and his need for money has been spoken to by many of the witnesses who were close to him and even by his own father Kunjikuttan. It has also come out through the testimony's of PW32 Baburaj, the Investigating Officer of the Local Police force and PW33 Safarali Khan, the Investigating Officer of the Crime Branch of the State Police that there was no strong evidence to implicate the appellant when they were investigating the case. In fact, Baby the maid had not stated anything before the said Investigating Officers, about seeing the appellant near the house of the deceased on the evening of the incident. Her deposition to that effect to the CBI Investigating Officer PW34 Surendran, as well as before the trial court, was much later, in 2009, after the CBI had arrested the appellant.

14. The testimony of PW4 Baby makes for interesting reading and casts doubts on her credibility as a reliable witness. She has deposed that when she came to the house of the deceased couple the next morning, she found the back door open and when she called out to the couple, there was no response. At that stage, instead of going inside the house where she had been working for the past many years, and searching for the couple, she left the place supposedly because she perceived a bad smell from inside the house and wanted to call someone for help. She returned to the crime scene much later, after having changed her clothes in between. Her testimony before the trial court that she saw the

appellant in the vicinity of the house of the deceased nearer to the time of the gruesome murder is an improvement from her earlier statements to the Investigating Officers attached to the Local Police and the CBCID wherein she did not state so. Her case that she did not enter the house as there was a bad smell is also an omission amounting to material contradiction. In fact, the entire case of PW4 has been generated only after the CBI took over the investigation. Overall, her testimony does not inspire confidence in us since her conduct does not appear to be that of an ordinary prudent person who we would have thought would have either gone into the house to ascertain what happened or at the very least taken immediate steps to report the matter to the Police. It is highly unsafe to rely on the evidence of a witness whose conduct is suspicious **[Surjit Singh and Another v. State of Punjab - [1994 KHC 1272]]**. We also find the improvements in her testimony in court to be targeted against the appellant who had been arrested and arrayed as an accused by then.

15. The other link connecting the appellant with the scene of the crime is the testimony of Saravanan who states that the appellant had come to the Jewellery Shop of Thiruvenkada Kumar, where he was employed as a salesman in 2006, and sold him two cut gold bangles for Rs.12,000/-. The suggestion of the prosecution is that the gold bangles were the ones that were found missing from the body of Anandavally Amma. It has come out in evidence that on the day when the

Investigating team took the appellant to Tirupur to collect evidence, and went to the shop of Thiruvenkada Kumar that was pointed out by the appellant, Saravanan was not there. He had left the employment of Thiruvenkada Kumar much earlier. The gold bangles that were allegedly stolen by the appellant from the body of the deceased Anandavally Amma were not recovered from the jewellery shop. What was recovered from the jewellery shop was certain gold coins (MO12 series). The prosecution does not have a case that the MO12 series coins are in fact the melted gold ornaments recovered from the appellant. On a perusal of Ext.P15 recovery mahazar, it comes out that CBI officials and PW14 went to the President of the Tiripur Jewellery Owners' Association and took out the rate card of the year 2006, and PW14 merely forwarded gold coins of the equivalent on the basis of gold price of the year 2006. The gold thus recovered could never be stated to be the gold that is alleged to have been stolen by the appellant. Therefore, there is no fact discovered pursuant to the alleged confession statement to bring it within the ambit of Section 27 of the Evidence Act. Further, it was Thiruvenkada Kumar who mentioned to the Investigating team on 15.05.2009 that Saravanan was in his employment in 2006 and based on the said information, Saravanan was also interrogated. The statements of Saravanan and Thiruvenkada Kumar under Section 161 of the Cr.PC were not produced alongwith the final report and were not available before the trial court. The statements of Saravanan and Thiruvenkada Kumar before the Magistrate were on 22.07.2009 and Saravanan's identification of the

appellant in the TI parade was on 25.07.2009. Quite surprisingly, Saravanan deposed that he remembered the appellant from over two years ago, as the man who sold him cut gold bangles, simply because he was then dressed in the attire of a Sabarimala pilgrim. He then proceeded to identify him in a TI parade conducted two months later. When it is apparent that Saravanan had no prior acquaintance or subsequent dealings with the appellant we are constrained to view the said testimony with suspicion. We cannot also rule out the possibility of Saravanan having been shown a photograph, or given a description, of the appellant by Thiruvenkada Kumar who had seen the appellant when he was taken to his shop by the investigating team on 15.05.2009. In our opinion, the delay in obtaining the evidence of Saravanan and Thiruvenkada Kumar, as also in holding the TI parade wherein the appellant was identified by Saravanan, vitiates the said evidence and renders it insufficient to connect the appellant with the gold bangles taken from the body of Anandavally Amma which, in any event, was never recovered. It is trite that the test identification parade has to be conducted within a reasonable time after the commission of the offence and the evidence regarding the TI parade loses its significance when held after enormous delay. **[See: Hasib v. State of Bihar – [AIR 1972 SC 283]; Mahabir v. State of Delhi – [AIR 2008 SC 2343]; Hari Nath v. State of UP – [1988 KHC 849]; Girija Shankar Misra v. State of UP – [AIR 1993 SC 2618]]**. The object of holding a TI parade is two-fold. Firstly, it is to enable the witnesses to satisfy themselves that the prisoner

whom they suspect is really the one who was seen by them in connection with the crime. Secondly, it is to satisfy the investigation authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence **[See: State of Maharashtra v. Suresh – [(2000) 1 SCC 47]]**. In the instant case, the enormous delay of almost 3 years, between the date on which Saravanan saw the appellant and then identified him at the TI parade, coupled with the possibility of information relating to the appellant having passed from Thiruvenkada Kumar to Saravanan renders the evidence of Saravanan weak in character, in the absence of further corroboration.

16. The prosecution also fails miserably in its attempt to connect the Billhook/Koduval to the appellant. While it is no doubt true that the said billhook was recovered based on the confession statement given by the appellant before the CBI officials, what can be attributed to the appellant by virtue of Section 27 of the Evidence Act is only the knowledge of concealment of the billhook at the place where it was found ie. the shed near the house of the appellant. Although the recovered billhook contained traces of blood on it, the FSL report does not link it to the scene of the crime. In fact there is nothing to suggest that the blood traces found were of human blood at all. We also find it improbable that a billhook used for the crime would be concealed, by the perpetrator of the crime, at the shed from where it was eventually found almost three years later, when the gun that was taken from the house of the deceased couple

on the same day was thrown into the well behind the said house, along with some passbooks, as was deposed to by PW32 Baburaj who was the first investigating officer in the case. One would assume that a perpetrator of a crime involving a billhook, who leaves the house of his victims with the billhook and a gun stolen from the house would, on choosing to discard the objects so as not to be seen with them, discard them together in a well rather than selectively discard the gun in the well and conceal the billhook at a shed near his residence some distance away from the scene of the crime. The version of the prosecution to the contrary does appear to us to be fanciful.

17. It is also trite that no inference can be drawn against an accused under Section 27 of the Evidence Act only on the basis of discovery of a material object pursuant to the disclosure statement made by him to a police officer. The burden really lies on the prosecution to establish a close link between the discovery of the material object and its use in the commission of the offence **[See: Mustkeem @ Sirajudeen v. State of Rajasthan - [AIR 2011 SC 2769]]**. Except in cases in which the possession or concealment of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in the manner allowed by law. **[See: Pulukuri Kottaya and others v. Emperor - [AIR (34) 1947 PC 67]]**. We do not find any corroborating

circumstances in the instant case that can be used to suggest that the appellant had used MO11 billhook to commit the murder. For the same reason, we find ourselves unable to subscribe to the prosecution version that the appellant had used the billhook to try and pry open the Almirah at the house of the deceased. Though the presence of Almirah at the scene of occurrence is seen described in Exts.P6 and P7 inquest report as well as in Ext.P47 scene mahazar prepared by the local police on the next day of the incident, the description of such a prying mark on the Almirah is completely absent in those documents. The said case was developed after CBI took up the investigation. It may be that there is evidence to suggest that marks of the nature found on the almirah could have been made by using a weapon such as MO11. There is however no evidence that would establish beyond reasonable doubt that the appellant was there at the house at the time of the murders.

18. When read together, the evidence of PWs 5 and 12 would suggest that the appellant was away from the scene of occurrence during the alleged time of the incident. PW5, the appellant's father, deposed that the appellant had taken the autorickshaw for the day's work at around 8.00 – 8.30 a.m. in the morning of 5/12/2006 and that he had returned by around 7 p.m. in the evening. He further deposed that at 8.00 p.m., the appellant went to the Arts Club to remit his chit subscription and returned at 8.30 p.m. He specifically deposed that the appellant was at home before leaving for the Arts Club. PW12 who runs the chit business

deposed that the appellant had joined his chitty and paid Rs. 200/- towards chitty subscription for the month on 5/12/2006 at 8.30 pm as per Ext.P11 receipt. Therefore, what comes out from the conjoined reading of the evidence of PWs5 and 12 is that the appellant reached his house at 7.00 p.m., after that, he went to the Arts Club to pay chit subscription at 8.00 p.m., returned home at 8.30 p.m., and left to Tiripur on the next morning. It is true that PW5 was declared hostile by the prosecution. However, it cannot be said that he was completely disloyal to the prosecution. He admitted the recovery of MO11 from his house at the instance of the appellant. He also admitted the appellant's close relationship with the deceased's family and that the appellant needed money to start a bakery business. Merely because the witness turned hostile, his evidence cannot be rejected in its entirety. That portion of the evidence of a hostile witness, who spoke in favour of the prosecution or the accused, which is consistent with the case of the prosecution or defence can be relied upon **[State of U.P. v. Ramesh Prasad Misra - [AIR 1996 SC 2766]** and **State of Gujarat v. Anirudhsing [AIR 1997 SC 2780]]**.

19. According to the prosecution, the motive of the crime was to commit robbery of gold ornaments and cash. It is alleged that the appellant knew that the deceased persons were in possession of cash and gold at the time of the offence. But only two bangles of the deceased Anandavally Amma wore were cut and removed. It has come out in

evidence that a sizeable amount of cash and gold was kept in the Almirah. At the time of the inquest, it was reported that valuables were not missing from the Almirah. If the motive was to rob the deceased couple of cash and gold, the natural conduct of the assailant would have been to open the Almirah and take the cash and gold ornaments. That apart, no investigation was conducted by any of the investigation agencies to find out what the accused had done with the money he allegedly received from selling the bangles. Motive assumes great significance where a conviction is sought to be predicated on circumstantial evidence alone. Its absence can tilt the scale in favour of the accused, where all the links are not avowedly present **[Nagaraj v. State - [(2015) 4 SCC 739]]**.

20. While on the subject of admissible evidence under Section 27 of the Evidence Act, we might highlight an aspect of this case that has left us truly appalled. While listening to the arguments of the prosecutor it appeared to us that mention was being made of facts that we had not come across in the depositions of the various witnesses examined by the prosecution. On probing the matter further with reference to the marked exhibits in the case, we were flabbergasted to find that under the guise of marking the relevant portions of the confession statement of the accused before the CBI officials, to the extent permitted by Section 27 of the Evidence Act, what was done before the trial court was to produce the entire confession statement and selectively highlight the admissible portions within brackets. Effectively, therefore, the entire confession

statement was admitted in evidence, although with the fervent hope and expectation that the trial court would rely only on the bracketed portions as evidence against the accused. In our opinion, this defeated the very purpose and object of Sections 25 and 26 of the Evidence Act that bans the admission of confessions made to the police, or by persons in police custody. Section 27 being in the nature of an exception to the prohibition imposed by Sections 25 and 26 of the Evidence Act, has to be construed strictly so that statements that are hit by the provisions of Sections 25 and 26, and which have a tendency to influence and prejudice the mind of the court do not find their place on the records of the case. **[See: Venkatesh @ Chandra & Anr v. State of Karnataka – [2022 KHC 6440]; In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials – [2017 KHC 6234] and Naresh alias Nehru v. State of Haryana – [2023 SCC OnLine SC 1274]]**. As observed by *Justice Anna Chandy* in **Mohammed v. State of Kerala – [1962 KLT 120]:**

> *"It is very easily said that the incriminating portion of a lengthy confessional statement should be excluded. But it is a very difficult mental process to close your eyes to the details in the confessional statement and see only the bracketed portions and remain uninfluenced by the confession of the accused. This feat is possible of performance only by a few specially trained experts. There is no reason why the overburdened judicial officers should be saddled with an additional burden which has not the support of law or procedure."*

21. While in the instant case, we have found that the prosecution has not succeeded in establishing that the evidence in relation to the

chain of circumstances leads only to the conclusion of guilt of the appellant, we have reason to suspect that the findings of the trial court were considerably influenced by the contents of the confessional statement of the appellant that were not admissible in evidence, for the findings of the trial court at paragraphs 20 and 23 of the impugned judgment suggest that undue reliance was placed on the disclosure statement of the appellant before PW34, the Investigating Officer of the CBI. To cite specific instances, although the prosecution alleges that the appellant had purchased a bottle of the pesticide 'Entrine' from a hardware shop operated by PW16 Jagadish, the latter did not depose to that effect. He only stated that he came to know that the appellant had purchased the pesticide from his shop. There was also no recovery of 'Entrine' or Pepsi Bottle pursuant to any confession made by the appellant before the CBI. There is therefore no evidence to connect the appellant with either the pepsi or the entrine found at the scene of the crime. In the absence of any recovery, the statements in the disclosure statement of the appellant that deal with the pepsi bottle or Entrine could not have been relied upon. Yet the trial court places reliance on the depositions of PW34, the Investigation Officer of the CBI, as regards the disclosure statement of the appellant before him, to find that there was evidence to connect the appellant with the pepsi-entrine found at the scene of the crime. Similarly, although the prosecution alleges that the appellant had worn socks on his hands to ensure that there were no fingerprints left behind by him, no such socks was ever recovered nor

was the purchase of such socks by the appellant proved. PW15 Suresh who is the owner of the shop from where, according to the prosecution, the appellant allegedly purchased the socks, turned hostile to the prosecution's case when he denied that the appellant had purchased socks from his shop. Here again, despite there being no recovery pursuant to the disclosure statement of the appellant, the trial court places reliance on the depositions of PW34, the Investigation Officer of the CBI, as regards the disclosure statement of the appellant before him, to find that there was evidence to suggest that the appellant had worn socks on his hands while committing the murders. We believe that without the aid of the confessional statement, a prudent man acting on the admissible evidence could not have arrived at the above findings against the appellant.

22. Since we find that the practice of wholesale acceptance of confession statements of accused persons, albeit for introduction of the relevant statement under Section 27 of the Evidence Act, continues even today, notwithstanding the plethora of judgments of the High Courts and the Supreme Court since the 1960's that have deprecated the practice, we feel that perhaps the time has now come to hold that the admission into the evidence, of such confessional statements of the accused as are hit by Sections 25 and 26 of the Evidence Act, and not saved by the provisions of Section 27 of the Act, would, without anything more, vitiate the trial against the accused and entitle him/her to an acquittal. The

breach of a statutory provision that is designed to protect a citizen from self incrimination and arbitrary deprivation of life and personal liberty must necessarily have serious consequences for the prosecution. Constitutional safeguards cannot be rendered a teasing illusion by the very State that is obliged to uphold them.

23. We are mindful of the fact that the murders committed in this case were most gruesome and inhumane and have caused insurmountable grief to the dear and near of the victims. We cannot however ignore the duties attached to our calling that require us to ensure that no person is deprived of his life or personal liberty unless his guilt is firmly established beyond reasonable doubt. As observed by the Supreme Court in **Rahul v. State of Delhi, Ministry of Home Affairs and Another – [(2023) 1 SCC 83]**:

> *"**42**. It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures or otherwise."*

The upshot of the above discussion is that we find the prosecution to have failed in proving any acceptable chain of circumstantial evidence

which points compellingly and conclusively to the guilt of the appellant who, admittedly does not have any criminal antecedents. We, therefore, allow this appeal by setting aside the conviction and sentence passed against the appellant accused, and acquit him of all the charges brought against him. He will be set at liberty forthwith.

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

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

prp/