



2026:KER:13921

Crl.A.No.94/2020 and Crl.A.(V) No.10/2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 17<sup>TH</sup> DAY OF FEBRUARY 2026 / 28TH MAGHA, 1947

CRL.A NO. 94 OF 2020

CRIME NO.191/2002 OF KUNNAMANGALAM POLICE STATION,

KOZHIKODE

AGAINST THE JUDGMENT DATED 26.11.2019 IN SC NO.1056 OF 2018

OF 1ST ADDITIONAL SESSIONS COURT, KOZHIKODE

APPELLANT/ACCUSED:

V.MANOJ  
AGED 44 YEARS  
S/O.ACHUTHAN, VENDARIYIL HOUSE,  
PULAKODE AMSOM, CHOOLOR.

BY ADV.  
SRI.NANDAGOPAL S.KURUP

RESPONDENT/COMPLAINANT:

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



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BY ADVS.  
ADV. NEEMA T.V., SENIOR PUBLIC PROSECUTOR  
SRI.S.RAJEEV  
SRI.K.K.DHEERENDRAKRISHNAN  
SRI.V.VINAY  
SHRI.ANAND KALYANAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
07.01.2026, ALONG WITH CRA(V).10/2020, THE COURT ON  
17.02.2026 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 17<sup>TH</sup> DAY OF FEBRUARY 2026 / 28TH MAGHA, 1947

CRA(V) NO. 10 OF 2020

CRIME NO.191/2002 OF KUNNAMANGALAM POLICE STATION,  
KOZHIKODE

AGAINST THE JUDGMENT DATED 26.11.2019 IN SC NO.1056  
OF 2018 OF 1ST ADDITIONAL SESSIONS COURT, KOZHIKODE ARISING  
OUT OF THE JUDGMENT IN CP NO.52 OF 2006 OF JUDICIAL  
MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM

APPELLANT/VICTIM:

AISWARYA SIVAN, AGED 23 YEARS  
D/O. K.SIVADASAN (LATE), SREE PADMAM,  
T.P.KUMARAN NAIR ROAD, NELLIKODE,  
CHEVAYOOR P.O., KOZHIKODE

BY ADVS.  
SRI.S.RAJEEV  
SRI.K.K.DHEERENDRAKRISHNAN  
SRI.V.VINAY  
SRI.D.FEROZE  
SHRI.ANAND KALYANAKRISHNAN



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**RESPONDENTS/STATE/ACCUSED:**

- 1 STATE OF KERALA  
REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM-682 031, (CRIME NO.191/2002 OF  
KUNNAMANGALAM POLICE STATION, KOZHIKODE DISTRICT)
  
- 2 V.MANOJ  
AGED 44 YEARS  
S/O.ACHUTHAN, VENDRAYIL HOUSE, POOJAKKODU AMSOM,  
CHOOOLUR, KOZHIKODE-673 601

BY ADV.  
ADV. NEEMA T.V., SENIOR PUBLIC PROSECUTOR

THIS CRL.A BY DEFACTO COMPLAINANT/VICTIM HAVING BEEN  
FINALLY HEARD ON 07.01.2026, ALONG WITH CRL.A.94/2020, THE  
COURT ON 17.02.2026 DELIVERED THE FOLLOWING:



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**JUDGMENT****K. V. Jayakumar, J.**

These appeals are preferred impugning the judgment of the learned Additional Sessions Judge-I, Kozhikode dated 26.11.2019 in S.C. No.1056 of 2018. Criminal Appeal No.94 of 2020 is preferred by the accused, and Criminal Appeal (V) No. 10 of 2020 is preferred by the victim, daughter of the deceased. The appellant/accused stood for trial for the offence punishable under Section 302 of the Indian Penal Code.

2. By the judgment under challenge, the appellant/accused was found guilty of the offence punishable under Section 302 IPC and was sentenced to undergo imprisonment for life and to pay a fine of ₹25,000/- with a default clause. It was further directed that if the fine amount is realised, ₹20,000/- shall be paid to the daughter of the deceased.

**Prosecution case**

3. In this case, the prosecution portrays the story of the heinous murder of one Sivadasan by his close friend, Manoj, purportedly motivated by the latter's intent to continue his illicit relationship with the wife of the deceased. At the time of the commission of the alleged crime, Sivadasan was aged 36 years, and the accused was aged 26 years. The deceased had a daughter aged 9 years.



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4. The crux of the prosecution allegation is that the accused was a close friend of the deceased and was a frequent visitor to the deceased's house. Over time, as their friendship developed, the deceased borrowed money from the accused, as a result of which, the accused became a familiar and welcome presence in the household, even in the absence of the deceased. Taking advantage of this access, the accused developed an illicit relationship (love affair) with PW13, the wife of the deceased. The accused and PW13 allegedly expressed their mutual affection through letters exchanged between them. Upon coming to know that the accused was visiting his house during his absence, the deceased instructed PW13 not to permit the accused to enter their house. The prosecution further alleges that the deceased thereby became an obstacle for the continuation of the illicit relationship between the accused and PW13. On 03.10.2002, at about 6:30 a.m., the accused visited the house of the deceased, took him away, and thereafter hacked and committed his murder.

5. Since the deceased did not return by 05.10.2002, PW13 (Reena), the wife of the deceased, informed PW1 and other relatives that the deceased was missing. PW1 (Balakrishnan Nair), along with PW4 (Pradeep), conducted a search, but they could not find him. On 06.10.2002, PW4 and one Gopi Nair found the dead body of the deceased from a vacant house, owned by one Gopalan Nair, which was about 500 meters away from the house of the accused. In the meantime, they informed the matter to PW1. PW1 came to the scene of the occurrence and identified the



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body of the deceased.

### **The Registration of FIR and the Investigation**

6. On the basis of Ext.P1 FIS lodged by PW1, Balakrishnan Nair, PW17 (Muhammed Hussain K.V.), the Sub Inspector of Kunnamangalam Police Station registered Ext.P1(a) FIR. On 06.10.2002, PW24 (C.V. Chandran), the Circle Inspector of Police, took up the investigation. Thereafter, on 07.10.2002, he visited the place of occurrence and conducted the inquest of the body of the deceased and prepared Ext. P2 inquest report. He seized the dresses worn by the deceased. Thereafter, he seized MO4 (shirt), MO5 (lungi) and MO11 series (chappal) of the deceased. He also seized MO14 plastic sack, MO15 jute sack and MO16, three sheets of Mathrubhumi newspaper, which were found on the body.

7. As per Ext.P9 seizure mahazar, he seized MO8 chopper, Ext.P7 series three diaries and Ext.P8 hard cover of a diary, which were recovered from a well situated near the house wherein the body was found. MO12 and MO13, two concrete pieces collected by the scientific officer from the place where the body was found, were seized by him as per Ext.P6 seizure mahazar on 07.10.2002. He questioned the witnesses and recorded their statements. Thereafter, he arrested the accused on 07.10.2002, after preparing Exts. P34 and P35 arrest memo and inspection memo respectively. Ext.P36 report was filed to incorporate the name and address of the accused in the case records. PW24 has recorded the



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confession of the accused. As per the disclosure statement of the accused, the Investigating Officer seized a shirt (MO4), brown coloured lungi (MO5), and MO-10 series chappals from the house of the accused. PW24 had also seized dresses of the deceased (MO1, MO2 and MO9) from the shop of PW12 (Bhaskaran Nair). Those articles were kept in MO3 plastic cover. On 16.10.2002, Exts.P15 and P16 letters were produced by the father of the accused before him at the Chevayoor Office. He had seized those letters as per Ext.P14 seizure mahazar. On 19.10.2002, he seized Ext.P4 teaching note, which was produced before him in his office by PW6 as per Ext.P5 seizure mahazar. PW23 (Shanavas), the CI of Police completed the investigation and filed the chargesheet.

### **Proceedings before the trial court**

8. After completing the preliminary steps, the case was committed to the Sessions Court, Kozhikode. Initially, the case was taken on file as S.C. No. 1225/2006. The learned Sessions Judge, after hearing the learned Public Prosecutor and the defence counsel, has framed the charge under Section 302 of the IPC. The charge was read over and explained to the accused. He pleaded not guilty and claimed to be tried.

9. When the case was posted for trial, the accused absconded, and thereafter the case was transferred to the long-pending register as L.P. No. 12/2009. Later, the accused was arrested and produced on 05.12.2018 and the case was renumbered as S.C. No.1056/2018 and the trial was resumed.



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10. Before the trial court, on the side of the prosecution, PWs. 1 to 25 were examined and Exts.P1 to P38 were marked. MOs.1 to 16 series were identified and marked. After the close of the prosecution evidence, the accused was examined under Section 313(1)(b) of the Cr.P.C. The accused denied the incriminating circumstances put to him and maintained his plea of innocence. No defence evidence was adduced. On the side of the defence, Ext.D1 was marked.

11. The learned Sessions Judge, after a careful evaluation of the evidence, both oral and documentary, has convicted and sentenced the accused as aforesaid.

**The submissions of the learned counsel for the appellant in**

**Crl. A. No. 94/2020**

12. The learned counsel for the appellant/accused, Sri.Nandagopal S. Kurup assailed the judgment of the trial court, urging several grounds. It is submitted that the prosecution has failed to prove the motive for the alleged crime. PW13 was examined to prove the alleged motive of the crime, but the said witness deposed that the motive which prompted the accused to commit murder is animosity. Her version is inconsistent with the prosecution case.

13. The learned counsel further submitted that this is a case, wherein there is no direct evidence. In a case of this nature, which is solely based on circumstantial evidence, the prosecution must prove the motive for the commission of the crime.



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14. Furthermore, counsel emphasized that there is a significant time gap between the last time the deceased was alleged to have been seen together with the accused and the occurrence of death. This gap undermines the credibility of the prosecution's case based on the "last seen together" theory.

15. The learned counsel would then point out that the prosecution in this case miserably failed to connect the accused with MO-8 (chopper), weapon of the offence. The recovery of MOs-8, 6 and 10 is also not proved by the prosecution. It is further submitted that, at any rate, the trial court ought to have granted the benefit of doubt to the accused.

16. The learned counsel further submitted that there are material inconsistencies and contradictions in the evidence adduced by the prosecution. The trial court has overlooked the vital contradictions and discrepancies in the evidence of material witnesses.

**The submissions of the learned counsel for the appellant in**

**Crl. Appeal (V) No.10 of 2020**

17. Sri. S. Rajeev, the learned counsel appearing for the appellant in Crl. Appeal (V) No.10/2020 would submit that the trial court ought to have awarded distinct compensation pursuant to Section 357 of the Criminal Procedure Code and imposed more stringent penal sanctions. He contends that the circumstances of the case, characterised by premeditated and cold-blooded murder, warrant a severe punitive response, as such an offence has devastated the entire family of the deceased, particularly



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impairing the future prospects of the appellant, the daughter of the deceased and PW13.

### **The Submissions of the learned Public Prosecutor**

18. The learned Senior Public Prosecutor, Smt. Neema T. V. submitted that the impugned judgment of the learned Sessions Judge is legally sustainable and no interference is warranted in this matter. The learned Public Prosecutor further contended that the prosecution has succeeded in proving the charge against the appellant/accused beyond a reasonable doubt. The chain of circumstances is complete and leads to only one hypothesis as to the guilt of the accused. The evidence of PW2 (Chandran), PW3 (Kunhan), PW9 (Choyi), PW12 (Bhaskaran Nair) and PW13 (Reena) would convincingly prove the prosecution narrative.

### **The evidence let in by the prosecution**

19. PW1, Balakrishnan Nair, is the distant relative of the deceased. On 05.10.2022, PW13 (Reena), the wife of the deceased, informed him over the phone that her husband (Sivadasan) was missing. PW13 told him that on 03.10.2002, the deceased went outside along with Manoj (accused). PW12 (Bhaskaran Nair), who was running a tea shop in Choolur centre, told him that the accused came at 8.30 a.m on 03.10.2002 and kept a plastic bag inside his teashop on a stand. Thereafter, he did not see the accused. PW1 took the cover from the shop and inspected it. It contained a shirt, a pair of trousers and an underwear. PW1 enquired about



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the matter with PW4 (Pradeep), PW12 (Bhaskaran Nair), and some others. The next day, at about 11.30 a.m., PW4 and Gopi Nair came to his house and told him that an unidentified dead body was found inside a vacant house owned by an Advocate Clerk, which is situated near the house of the deceased. PW1, along with PW4 and Gopi Nair, rushed to the place of occurrence. When they entered the house, they saw the dead body of the deceased lying in a prone position, partly covered with a plastic bag, gunny sack, and newspapers. PW1 has noted blood stains in the kitchen. The body was in a decomposing state covered with maggots. PW1 then proceeded to Kunnamangalam Police Station and gave Ext. P1 F.I. Statement to PW17 Sub-Inspector at 15.45 hours on the same day. PW1 identified MO1 pants, MO2 green underwear, and MO3 plastic cover in which those were kept, along with a shirt.

20. PW2 (Chandran) was examined to prove the last seen together theory. He deposed that he is residing on the northern side of the house of the deceased. On 03.10.2002 at about 6 a.m., he went to a small pond situated in Kollisseri Paramba, near his house. This land was owned by one Devaki teacher, who was the maternal aunt of the deceased. While he was on his way to the pond, he saw the deceased in the company of the accused. Both were walking towards the western side of the ridge in the fields situated adjacent to Kollisseri Paramba. PW2 identified the accused and also a lungi and a country towel worn by the accused as MO6 and MO7, respectively. He would depose that at that time the deceased had worn MO4 (shirt) and MO5 (lungi). He identified MO8 (chopper) as the



one used by the accused for plucking coconuts.

21. PW3, Kunhan @ Vasudevan, deposed that he is a cousin of the deceased. On 03.10.2002 at about 8 a.m, he saw the accused coming from the house of the deceased with a plastic cover in his hands.

22. PW4, Pradeep, deposed that he conducted a search as requested by PW1 on 05.10.2002. On the next day, the search team found a dead body inside the house of Advocate Clerk (Gopalan Nair). They have sensed a foul smell from the house. When they peeped through the window of the house, they saw a dead body inside. Immediately, they informed the matter to PW1. Thereafter, they returned to the spot along with PW1. Since the kitchen door was open, they entered the house through that door and found the body of the deceased inside a room of the house covered with sacks and newspaper. PW1 identified the body as that of the deceased, Sivadasan.

23. PW5, Abdurahiman, is the attester to Ext.P2 inquest report. He stated that on 08.10.2002, he had also witnessed the seizure of MO1 to MO3 and MO9 from the shop of PW12 by the Investigating Officer. He would say that articles were seized by the Investigating Officer, after preparing Ext.P3 seizure mahazar.

24. PW6, Praveen, deposed that he produced Ext.P4 teaching notes of PW13 before the Investigating Officer. The police seized Ext.P4 as per Ext.P5 mahazar.

25. PW7, Haridasan, is an attestor to Ext.P6 seizure mahazar for the seizure of concrete pieces from the scene of occurrence. He did not



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support the prosecution case.

26. PW8, Peethambaran, stated that he had gone to the house where the dead body was found at about 11.30 -12 hours on 07.10.2002. The Police party was also there. PW8 entered the well, drained it and made a search and found a chopper and three diaries along with a hard cover of a diary. All the articles were taken out by him. He identified MO8 (chopper) as the one retrieved by him from the well, Ext.P7 series of diaries (three in number), and Ext.P8 single hard cover of diary.

27. PW9, Choyi, a blacksmith, deposed that he made MO8 chopper as per the request of PW11 (Sathyan), a friend of the accused. PW9 would say that the accused had learned the trade from Sathyan (PW11). As requested by Sathyan, he made a chopper for plucking coconuts and gave it to Sathyan, and received ₹350/- as charges.

28. PW10, Sudhakaran, is an attestor to Ext.P9 seizure mahazar as to the seizure of MO8, Exts.P7 series diaries and Ext.P8. PW10 also witnessed the seizure of MO6, MO7, and MO10 series. He also identified MO6, MO7, and MO-10 series, a pair of chappals. He is the attestor in Ext.P10 seizure mahazar.

29. PW11, Sathyan, was examined to prove that MO8 chopper was made by PW9 upon his request for the use of the accused, as the accused wanted a bigger chopper for plucking coconuts. However, PW11 did not support the prosecution story.

30. PW12, Bhaskaran Nair, deposed that he was running a tea shop at Choolur Centre during the time of this incident. He deposed that on



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03.10.2002, the accused came to his shop at about 8.30 a.m and entrusted a plastic cover on a stand in the shop and told him that he would collect the parcel after a while. Thereafter, he did not see the accused until he was brought to his shop by the police on 08.10.2002 at 4 p.m. Police seized those articles after preparing Ext.P3 seizure mahazar at the instance of the accused. He identified MO1 to MO3 and MO9 as the articles seized from the shop of PW12.

31. PW13, Reena, is the wife of the deceased Sivadasan. She testified that the accused, Manoj, is known to her. Her marriage with late Sivadasan was solemnised on 04.04.1992 and thereafter she resided along with her husband at Poolur. She had a daughter, named Aiswarya Sivan, in her marital relationship with Sivadasan. The daughter was aged 9 years in 2002 and a student of 3rd standard. Her pet name is 'Ponnootty'. She is a teacher in an aided school at Pulpally.

32. PW13 deposed that her husband was an LIC agent. The accused is a friend of her husband and used to visit their house. The accused had some financial dealings with the deceased. The deceased told her that he used to borrow money from the accused. Initially, the visit of the accused was not objected to by the deceased. Later, her husband raised objections about the frequent visits of the accused to their house.

33. Her husband asked her to approach her father and make a request to give an amount of Rs.50,000/-. But her request for financial help was turned down by her father. She used to share her financial difficulties with the accused, Manoj. On a Gandhi Jayanthi day, the accused came to



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their house and had a discussion with the deceased. Thereafter, her husband told her that their discussion was with respect to a transaction of gold biscuits. PW13 further stated that she dissuaded the deceased from indulging in such illegal business.

34. PW13 further stated that on the next morning, at about 6.00 a.m., she woke up on hearing the sound of a ringing bell. The deceased opened the front door and she went to the kitchen. Sivadasan told her that he wanted to visit a place to see certain persons as directed by the accused. At about 6.15 a.m., Sivadasan went out along with them wearing a shirt and lungi. Sivadasan and Manoj proceeded towards the back side of their house. At about 8.00 am, the accused came back to her house and made a request to hand over the shirt and pants of the deceased. When she asked about the purpose, the accused told her that the deceased wanted to visit a place along with some others, and he needed a set of dresses. Accordingly, PW13 had handed over a shirt, pants and underwear in a plastic cover to the accused.

35. Thereafter, Manoj came back at 10.00 a.m. with a toddy bottle and made a request to keep it in the fridge. At that time, she made some queries to the accused with respect to the proposed business. Thereafter, the accused left their house at about 11.45 a.m. The deceased did not come back on that day. On the next day, she informed the matter to her parents and uncle Balakrishnan Nair (PW1). They rushed to their house. On 6<sup>th</sup>, she got information that the accused was also missing. On that day, the accused contacted her through land phone. At that time, she made a query



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about her husband, and the accused replied that he would come along with Sivadasan.

36. On 6<sup>th</sup> October, she came to know that her husband was murdered. According to her, the accused is responsible for the murder of her husband. She added that her husband had interdicted the accused from visiting their house and that such animosity might have prompted the accused to commit the offence.

37. She admitted that she used to send letters to the accused and he also reciprocated. She identified the dresses, which she handed over to the accused and the plastic cover in which they were carried as MOs.1 to 3 and MO9, respectively. She had also identified the dresses worn by the deceased when he left the house, as MO4 and MO5. She further identified MO11, a pair of chappals belonging to her husband.

38. Ext.P4 are her teaching notes. She identified Ext.P11 letter written by the accused from Jail which was sent to her address at Chelari. She testified that the accused put his signature in the last portion of the letter and on the outer portion of it. She identified the handwriting in the letter as that of Manoj. She further testified that when she had gone through the letter, she realised that her husband was murdered by the accused.

39. In cross-examination, she would say that she does not know the educational qualification of the accused. She denied the suggestion that she was in a relationship with the accused. She admitted that she and Manoj used to exchange letters. When Ext.P7 series diaries were shown to



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the witness, she gave some evasive answers as to the contents of the diary. When Ext.P4 teaching notes were confronted to her, she would say that the handwriting therein is similar to her handwriting.

40. Some portions of Ext.P15 letter were shown to the witness such as “എന്നെ ഉപേക്ഷിക്കാൻ നി തീരുമാനിച്ചുവെന്നറിയുകയാം. എന്തിനുവേണ്ടിയെന്നറിയില്ല”, “നി ഇല്ലാതെ പിന്നെ എന്തിനാണ് ഞാൻ, നിനക്കു വേണ്ടി എന്തു വേണമെങ്കിലും തൃജിക്കാൻ ഞാൻ സന്നദ്ധയാണ്”, “എന്തെല്ലാം നഷ്ടപ്പെടുത്താൻ ഞാൻ ഒരുക്കമാണ്. ഇപ്പോൾ നഷ്ടപ്പെട്ടത് എത്ര നിസ്സാരമാണ്, എനിക്ക് നിന്നെ മതി”. She admitted the above contents of Ext.P15 letter. Further, she admitted that in the second page of Ext.P15, she wrote “എന്റെ ജീവൻ അതും ഞാൻ നൽകാം; പക്ഷേ എന്നെ പിരിയരുതേ”. Further she admitted that in the fourth page of Ext.P15 she wrote that “എന്നിൽ നിന്നും ഒറ്റയ്ക്ക് അകലാൻ നിനക്ക് എങ്ങനെ മനസ്സു വന്നു”. Ext.P15 letter indicates the strong relationship between PW13 and the accused.

41. Even though she admitted that she wrote some letters to the accused, she would deny that she made such correspondence when the accused decided to quit their relationship. She admitted that Ext.P11 letter was addressed to “Reena Aiswarya, S/o.Balakrishnan Nair, Perumthottathil House, U-city, Paanambra, Malappuram”. She denied the suggestion that Ext.P11 letter is a fabricated document. She denied the suggestion that the murder of Sivadasan was committed by someone else in connection with gold smuggling. She asserted that the murder was committed by the accused, Manoj, who took her husband from their house.



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42. PW14, Dr. Dolly Mathew, Department of Forensic Medicine, Government Medical College Hospital, Kozhikode, conducted the postmortem examination on the body of the deceased Sivadasan and issued Ext.P12 postmortem certificate. PW14 opined that the deceased died due to sharp cut injuries sustained to the neck by a heavy cutting weapon. The injuries noted in Ext.P12 could be caused by a weapon like MO8. He had noted the following ante-mortem injuries in the post-mortem certificate:

“1. Incised wound, 5x1.5cm (gaping) with contused margine on top head left side, extending on to left forehead to 3cm above left eyebrow and 5cm outer to midline. This injury was skull deep, showed a superficial linear cut 4cm long in the frontal bone, underneath.

Incised wound 6x0.8cm (gaping)x0.8cm, muscle deep over left side of top of head (left parietal region) 4cm behind and in line with the above mentioned incised wound, slightly curved at its middle portion with concavity to left side, the front end 6.5cm outer to midline. On reflecting the scalp, the skull directly underneath was intact, 2cm behind the external limit of the injury, a triangular chip of bone (parietal bone left, close to sagittal suture) seen chopped off, involving the outer table of skull, the apex being directed towards back.

Total length 15cm (5+4+6)

2. Incised gaping (3.5 to 4.5cm) wound, 29cm long, obliquely placed across front of neck, right end 4cm below right ear lobe and left end crossing midline causing a bevelled extension on the under chin area stopping short over the jaw line 3cm below and outer to left corner of mouth. The depth of the wound varied and was maximum on the right end, had cut the right common carotid artery and internal jugular vein (



major blood vessels). At middle it had cut the trachea almost transecting it 2cm below thyroid cartilage. The apex of right lung as seen projecting at the depth of the wound.

An incised wound 1.3x0.3x0.5cm was found on the chin right side, 2cm above the injury.

3. Incised wound, 13x10cm, muscle deep, over front of right forearm, oblique, upper outer end at elbow, lower inner end at 11cm below elbow.

4. Incised wound, 7x1.5x1.2cm, transverse, on back of left hand 6cm below wrist.

5. Incised wound, 19cm long, transverse with 2cm gaping on anatomical position on left side of back of lower neck right end 5cm to the right of midline, the left end 4cm below left ear lobe. Soft tissues, muscles vertebral column between 1st and 2nd cervical vertebrae and the spinal cord found out at its depth. All injuries showed sharp clear cut ends and edges with minimal contusion.”

43. PW15, Subramanian, is the Village Officer of Poolakode, who prepared Ext.P13 sketch of the scene of occurrence. PW16, Sathyan, is a Constable of Kunnamangalam Police Station and the attesor to Ext.P5 seizure mahazar. He is also the attesor to Ext.P14 seizure mahazar by which Exts.P15 and P16 letters were seized.

44. PW19, Annamma John, is the Scientific Assistant who inspected the scene of occurrence and collected MO12 (sample of blood-stained concrete area inside the kitchen) and MO13 (control sample).

45. PW20, Prema Joyes, is the Secretary of Chathamangalam



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Grama Panchayath, who issued Ext.P27 ownership certificate with regard to house no. VII/83 of Chathamangalam Panchayath. According to him, as per Panchayath records, the house is owned by one Chinnammu Amma of Karivillikavu.

46. PW21, Parameswaran Namboothiri, Junior Superintendent of Kunnamangalam Judicial First Class Magistrate Court, is an additional witness examined on the side of the prosecution. He deposed that on 23.10.2002, Kunnamangalam police produced properties which were received as PR 216/02. Those articles were then kept in the property room of the Court until dispatched to the Forensic Science Laboratory. Ext.P29 series of two forwarding notes was received seeking chemical examination of the properties so produced. All the properties were in the custody of the Court until they were dispatched to the Forensic Science Laboratory and Sessions Court.

47. PW22, Sreekumar M, is another additional witness, who was the Property Clerk of the Sessions Court at Kozhikode during the relevant period. He deposed that he received properties involved in this case from the Judicial First Class Magistrate, Kunnamangalam. There were two bundles, one bundle was from the Trivandrum Forensic Science Laboratory and the other from the Regional Chemical Examiner's Laboratory in Kozhikode. After recording the receipt of property in red ink, those were handed over to the Junior Superintendent, K. Jayachandran, who was holding the charge of the Senior Superintendent of Sessions Court, Kozhikode.

**Defence Version**

48. According to the appellant, he is innocent and falsely implicated in this case. He had submitted a written statement wherein it is stated that he maintained a relationship with PW13; however, such a relationship was prior to the incident in question. He further stated that he had ceased this relationship a considerable time prior to the occurrence, particularly after the daughter of the deceased observed him in the company of PW13. He maintained that his involvement in the relationship persisted only until August 2001.

**Analysis****Whether the death homicidal?**

49. PW14, Dr. Dolly Mathew, conducted the autopsy of the deceased, and has noted as many as five ante-mortem injuries on his body in Ext.P12 postmortem certificate. According to PW14, the cause of death is the sharp cut injuries sustained to the neck by a heavy cutting weapon, and the injuries noted in Ext.P12 could be caused by a weapon like MO8. There is overwhelming evidence to indicate that the death was homicidal. On going through the evidence of PW14, we agree with the finding of the learned Sessions Judge that the death of Sivadasan was homicidal.

50. The first submission of the learned counsel for the appellant is that the prosecution has miserably failed to prove the motive for the alleged commission of the crime. According to the prosecution, the motive



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behind the crime is that the accused and PW13 are in a relationship and they wanted to reside together. In order to fulfill their wish to live together, the accused wanted to do away with the deceased.

51. In **Stalin v. State**<sup>1</sup>, three judge bench of the Hon'ble Apex Court, relying on the observation in **Jafel Biswas v. State of W.B.** [(2019) 12 SCC 560] observed that the absence of motive does not disperse a prosecution case if the prosecution succeeds in proving the same. The motive is always in the mind of the person authoring the incident. Motive not being apparent or not being proved. Only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. When there is definite evidence proving an incident and eyewitnesses' accounts prove the role of the accused, the absence in proving the motive by the prosecution does not affect the prosecution case.

52. In **Surinder Singh v. State (UT of Chandigarh)**<sup>2</sup>, the Hon'ble Apex Court observed as follows:

**23.** It is significant to note that “motive” is distinct from “object and means” which innervates or provokes an action. Unlike “intention”, “motive” is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing “motive” is akin to an exercise of manual brain-mapping. At times, it becomes Herculean task to

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<sup>1</sup> (2020) 9 SCC 524; 2020 SCC OnLine SC 723

<sup>2</sup> (2021) 20 SCC 24



ascertain the traces of a “motive”.

**24.** This Court has time and again ruled : (*Bipin Kumar Mondal case*, SCC p. 97, para 23)

*“23. ... that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.”*

**25.** We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eyewitnesses to the occurrence of a malfeasance are on record.”

53. Guided by the principles laid down in the above dictums, we have evaluated the evidence with respect to the motive. PW13 gave evidence to the tune that she and the accused are maintaining a close relationship with each other. Ext.P7 diary extract recovered by the Police from the well near the place of occurrence contains the correspondence between the accused and PW13, Reena, which would throw some light on



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the relationship between them. Moreover, Ext.P15 letter, which is written in the handwriting of PW13, would also indicate the close relations between PW13 and the accused. PW13 in her evidence would categorically say that the accused has committed the murder of her husband due to the anguish which the accused had with the deceased, when the latter interdicted the visit of the former to her house.

54. On a close evaluation of the evidence, we agree with the findings of the learned Sessions Judge that the appellant/accused had a strong motive to eliminate the deceased, who is a hurdle in maintaining his relationship with PW13, Reena.

55. Yet another argument advanced by the learned counsel for the appellant is that there is no direct evidence to prove the charge against the accused. The chain of circumstances is not fully established and would not unerringly point out the guilt of the accused.

56. In **Suresh v. State of Haryana**<sup>3</sup>, the Supreme Court, relying on precedents such as **Sharad Birdhichand Sarda v. State of Maharashtra**<sup>4</sup>, **Hanumant v. State of M.P.**<sup>5</sup>, **Deonandan Mishra v. State of Bihar**<sup>6</sup> and **Charan Singh v. State of U.P.**<sup>7</sup> held that circumstantial evidence must form a complete and unbroken chain, be fully established, consistent only with the guilt of the accused, and exclude every other hypothesis.

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<sup>3</sup> (2018) 18 SCC 654

<sup>4</sup> (1984) 4 SCC 116

<sup>5</sup> (1952) 2 SCC 71

<sup>6</sup> (1955) 2 SCC 150

<sup>7</sup> 1959 SCC OnLine SC 67



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57. In **Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra**<sup>8</sup> reiterating the Golden Principles, the Hon'ble Apex Court held that when a case is governed by circumstantial evidence, the evidence must point singularly to the guilt of the appellant, closing out the possibility of all other hypotheses.

58. The learned Sessions Judge, after a detailed evaluation of evidence, has relied on the following circumstances to arrive at a conclusion that the chain of circumstantial evidence is fully established and it would unerringly point out the only hypothesis as to the guilt of the accused. Those circumstances are stated in paragraph 77 of the judgment which reads thus:

“77. So much so, proved circumstances which emerge from the evidence discussed above are:

(1) There was love affair between accused and PW13. Both were deeply involved in the said affair and even had physical relations.

(2) Deceased had come to know about illicit relations between his wife and accused and had forbidden entry of accused in his house in his absence.

(3) Accused was therefore unable to continue his affair with PW13, though he had maintained contact with deceased and his wife as deceased was owing money to him and was depending him for his financial needs.

(4) He had a motive to remove deceased who stood in his way in continuing his illicit affair with wife of deceased.

(5) Deceased was last seen in the company of accused

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<sup>8</sup>

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on 3/10/2002 at 6.00 a.m.

(6) Body of deceased with cut injuries was found in a vacant house in the locality where accused and deceased were residing on 06/10/2002 at 11a.m. There is no time gap between date when deceased was last seen with accused and the date when murdered body of deceased was found.

(7) P7 series of dairies kept and possessed by accused were dumped by him in the well near to the house where body was found.

(8) Accused has no satisfactory explanation for the death of deceased after he was seen together with accused just three days before the murder.

(9) Accused has given a false statement that he was present in his house premises for the whole day on 3 and that he had gone to the house where body of deceased was found on 6/10/2002 and again on 7/10/2002.

(10) Deceased was murdered by infliction of incised cut injuries with a heavy cutting weapon with sharp edge like M.O.8 which is used by coconut pluckers.

(11) Accused, apart from other menial work was also adept in coconut plucking and as a tool of his trade in possession of chopper similar to M.O.8.

(12) Accused had absconded after the incident.

(13) He had written P11 from jail to PW13 and her daughter apologising for grave wrong committed by him which is punishable with his life or imprisonment for life.

(14) He implores in P11 to PW13 that she should give evidence against him and also ready her daughter to give evidence against him.”

59. Now, we shall proceed to analyze the evidence in the light of the argument advanced by the counsel for the appellant. The material



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witnesses in this case are PWs.2, 3, 5, 9, 12, and 13. PWs.2 and 3 are the witnesses who had last seen the accused and the deceased together. According to PW2, Chandran had seen the accused at about 6 a.m. on 03.10.2002 at Kollissery Paramba near a small pond. He had identified MOs.6 and 7, the dresses worn by the accused at that time. Likewise, he had also identified the dresses worn by the deceased (MO5 lungi and MO4 shirt). He had also identified MO8 chopper, which was used by the accused for plucking coconuts. PW3 Kunhan @ Vasudevan noticed the accused coming from the house of the deceased on 03.10.2002 at about 8 a.m.

60. According to PW13, the wife of the deceased, at about 8 a.m. the accused came back to her house and demanded a set of dresses of the deceased. Accordingly, she gave MOs.1 to 3 dresses of the deceased in MO9 plastic cover. PW12, Bhaskaran Nair, a nearby teashop owner would testify that the accused came to his shop at about 8.30 a.m. on 03.10.2002 and entrusted a plastic cover. According to PW12, thereafter, the accused was found missing. Later, the Investigating Officer recovered those dresses and plastic cover from the shop of PW12, Bhaskaran Nair, in the presence of PW5, Abdurahiman, on 08.10.2002 at the instance of the accused.

61. If the evidence of PWs.2, 3, 5, 12 and 13 is cumulatively considered, we are of the view that the prosecution has successfully established the 'last seen together' theory. It is pertinent to note that on 03.10.2002, the accused absconded and the deceased was found missing.

62. Yet another important link to connect the accused with the



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crime is that Ext.P7 series diaries, which contain the extract of letters between the accused and PW13, Reena, were recovered on the basis of the disclosure statement of the accused. Ext.P7 series diaries would point out that PW13 and the accused were in a relationship.

63. Yet another important circumstance connecting the accused with the offence is Ext. P11 letter allegedly written by him from jail, wherein he virtually admitted the commission of the crime, though not in specific terms. In the said letter, he seeks pardon from PW13 and the daughter of the deceased for the heinous act committed by him. He states that he wrote the letter in order to obtain peace at least for a moment and to get a good sleep.

64. Ext.P11 letter contains the name and signature of the accused on the inner and outer side. It was addressed to 'Reena Aiswarrya'. PW13 categorically admitted that this letter was in the handwriting of the accused. The evidence given by a person who is acquainted with the handwriting of another, is relevant under Section 47 of the Indian Evidence Act.

65. The next contention of the learned counsel for the appellant is that Ext.P11 letter is a statement and therefore, cannot be considered as a subsequent conduct under Section 8 of the Indian Evidence Act 1872.

66. It would be useful to extract Section 8 of the Indian Evidence Act.

**“8. Motive, preparation and previous or subsequent conduct.**



Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

*Explanation 1.* - The word "conduct" in this section does not include statements; unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

*Explanation 2.* - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.”

67. Explanation 1 would make it explicitly clear that a statement cannot be considered as a subsequent conduct; however, the fact that the accused wrote a letter to PW13 and posted it to her from Jail can very well be considered as a subsequent conduct. Moreover, the handwriting of Ext.P11 letter is identified as that of the accused and marked through PW13.

68. The recovery of MO8 chopper from a well in the compound of the place of occurrence is yet another significant link in this matter. According to PW9, Choyi, he manufactured MO8 chopper for plucking



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coconuts as directed by Satyan (PW11) and he received Rs.350/- as the making charges. It is pertinent to note that the accused is a coconut plucker by profession and MO8 is a special type of chopper normally used for coconut plucking.

69. The defence version that he is innocent and falsely implicated in the case appears to be false. The learned counsel for the appellant would urge that the possibility of the commission of crime by some other persons cannot be ruled out in this case.

70. Under section 106 of the Indian Evidence Act, the accused has the burden to explain the matters which are within his exclusive or special knowledge. In the instant case, as rightly held by the learned Sessions Judge, the accused has failed to discharge this burden. The accused has failed to explain what happened to the deceased after they had seen in the company on 03.10.2002, how Ext.P7 diaries were found in the well near the place of occurrence and in what circumstances he wrote Ext.P11 letter to PW13 Reena.

71. It would be apposite to refer to Section 106 of the Evidence Act.

**“106. Burden of proving fact especially within knowledge.**

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

72. The Apex Court in **Sabitri Samantaray v. State of Odisha**<sup>9</sup>,

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<sup>9</sup> (2023)11 SCC 813



observed as under:

“18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events.”

73. The Apex Court in **State of Rajasthan v. Kashi Ram**<sup>10</sup>,

observed in paragraph 23 as under:

23.....The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen

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<sup>10</sup> (2006)12 SCC 254



with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain.”

74. Insofar as the enhancement of compensation as claimed by the appellant in Criminal Appeal (V) No. 10/2020 is concerned, and pursuant to the provisions of Section 357A of the Code of Criminal Procedure, we find it appropriate to increase the quantum of compensation. Section 357A of Cr.P.C. was inserted by Act 5 of 2009 with effect from 31.12.2009. The object of the Victim Compensation Scheme is to ensure adequate compensation for the victims/dependents who have suffered loss or injury as a result of the crime, for their rehabilitation. Section 357A reads as follows:

**“357A. Victim compensation scheme – (1) Every State**



Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”



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75. The trial Court has imposed a fine of Rs. 25,000 under section 357 Cr.P.C. It is further directed that if the fine amount is realised Rs. 20,000 shall be paid as compensation to the victim. It is manifest from the circumstances of the case that the incident has caused profound devastation to the entire family of the deceased, significantly impairing the future prospects of the appellant in Crl.A(V).No.10/2020, the compensation ie, Rs.20,000/-, is found to be grossly inadequate in the light of the facts and circumstances of this case. Accordingly, we deem it just and proper to direct that a sum of Rs. 5,00,000/- (Rupees Five Lakh Only) be awarded as compensation to the appellant/victim, to be disbursed by the District Legal Services Authority, within three months from the date of this judgment.

### **Conclusion**

76. We have re-assessed and judicially evaluated the evidence let in by the prosecution, both oral and documentary. The chain of circumstantial evidence in this case is complete, which would lead to only one hypothesis as to the guilt of the accused. The trial court has correctly appreciated the evidence on record and arrived at a proper conclusion, in our view. We do not find any good grounds to interfere with the findings of the learned Sessions Judge as to the finding of guilt, conviction and the sentence. The Crl.Appeal No.94/2020 is devoid of any merit and liable to be dismissed, in our view.

In the result,



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- i. The Crl. Appeal No appeal No.94/2020 is dismissed.
- ii. The conviction and sentence imposed by the learned Sessions Judge under Section 302 of IPC are confirmed.
- iii. The fine imposed by the trial court is enhanced to Rs.2,00,000/- (Rupees Two Lakhs Only) from Rs.25,000/-. It is made clear that if the fine amount is realised, it shall be paid to the appellant in Crl.Appeal(V) No.10/2020.
- iv. The Crl.Appeal(V) No. 10/2020 is allowed.
- v. The State Government is directed to pay a compensation of Rs.5,00,000/- (Rupees Five lakhs only) to the victim in Crl.A.(V) No.10/2020, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

**RAJA VIJAYARAGHAVAN V  
JUDGE**

Sd/-

**K. V. JAYAKUMAR  
JUDGE**

Sbna/