

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI

&

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN

MONDAY, THE 18TH SEPTEMBER 2006 / 27TH BHADRA 1928

Death Sentence Ref. No. 5 of 2005

SC.154/2004 of SPECIAL COURT (SPE/CBI)-1,
AND III ADDITIONAL SESSIONS COURT, ERNAKULAM

PETITIONER/COMPLAINANT :

STATE OF KERALA
(SUPEINTENDENT OF POLICE,
CBI/SCB/ CHENNAI).

BY PUBLIC PROSECUTOR SRI. NOORJI NOUSHAD.
BY STANDING COUNSEL FOR CBI SRI.S.SREEKUMAR.

RESPONDENT/ACCUSED:

M.A.ANTONY @ ANTAPPAN, AGED 39 YEARS,
S/O.AUGUSTY, MANJOORAN HOUSE,
VATIKAN STREET, ALUVA WEST VILLAGE,
ERNAKULAM.

BY ADV. SRI.K. RAMAKUMAR.

THIS DEATH SENTENCE REFERENCE HAVING BEEN FINALLY HEARD
ALONG WITH CRLAPPEAL NO. 385 OF 2005 ON 01/09/2006, THE COURT
ON 18/09/2006 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN**

MONDAY, THE 18TH SEPTEMBER 2006./ 27TH BHADRA 1928

CRL APPEAL No. 385 of 2005(C)

**SC.154/2004 of THE SPECIAL COURT (SPE/CBI)-I AND
III ADDL.SESIONS COURT, ERNAKULAM**

APPELLANT/ ACCUSED

**M.A. ANTONY @ ANTAPPAN,
S/O.AUGUSTY, MANJOORAN HOUSE, VATIKAN STREET,
ALUVA WEST VILLAGE, ERNAKULAM.**

**BY ADVS. SRI.K.RAMAKUMAR,
SRI.T.RAMPRASAD UNNI,
SRI.RAJIV NAMBISAN
SRI.SARATH CHANDRAN
SRI.P.RAJKUMAR
SMT.SARITHA DAVID CHUNKATH &
SRI.SAGAR P.U.**

RESPONDENTS/STATE & COMPLAINANT

**1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**2. THE SUPERINTENDENT OF POLICE,
CBI/SCB/CHENNAI.**

**R1 BY PUBLIC PROSECUTOR SMT. NOORJI NOUSHAD.
R2 BY ADV. SRI.S.SREEKUMAR, STANDING COUNSEL FOR CBI**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ALONG WITH
DSR NO.5 OF 2005 ON 01/09/2006, THE COURT ON 18/09/2006
DELIVERED THE FOLLOWING:**

V.K.BALI, C.J. & M.RAMACHANDRAN, J.

D.S.R.No. 5 of 2005 and
Crl. Appeal No. 385 of 2005

Dated, this the 18th day of September, 2006

JUDGMENT

V.K. Bali, CJ.

On the intervening night of 6th and 7th of January, 2001, when inmates of Aluva Municipal Town of Ernakulam District in the State of Kerala were in deep sleep, Manjooran House located in the midst of the town became a scene of ghastly crime. Six members of one family in the Manjooran House lost their lives in a matter of three hours. Antony @ Antappan, the appellant herein, in search of greener pastures abroad for which purpose he needed money but was refused to be paid by the members of the Manjooran family, as per the prosecution version, knifed, axed, electrocuted and strangled Kochurani and Clara at about 10 in the night of 6.1.2001 and Augustine, his wife Mary, and their children - Divya and Jesmon at midnight. The Manjooran House full of life at 10 in the night by the stroke of midnight became a graveyard. The appellant after causing the death of Kochurani and Clara is said to have waited for the arrival of other four members of the family who had gone to see a cinema show. On their arrival he turned them

into corpses. He waited for their arrival to kill them as he knew that for the two murders committed earlier by him he would be suspected by them, as he was in the house when they left the house for the cinema show. The prosecution alleges that all these murders were cold blooded, planned and executed with precision and the appellant ensured that there is no trace of life left in them before he left the scene of occurrence. When put to trial for hexagonal murders, the appellant, however, pleaded innocence and claimed trial.

2. Sri.B.Kemal Pasha, the learned Special Judge (S.P.E./C.B.I.)-I, Ernakulam vide judgment dated 31st January, 2005 found the appellant guilty of the offences under Sections 449, 379, 380, 302 and 201 of Indian Penal Code and after hearing on the question of sentence, vide order dated 2nd February, 2005 sentenced him to be hanged by neck till he is dead under Section 302 of IPC. He has also been sentenced to undergo imprisonment for life under Section 449 of IPC, rigorous imprisonment for seven years under Section 380 of IPC and rigorous imprisonment for seven years under Section 201 of IPC.

No separate sentence was imposed for the offence under Section 379 of IPC. Vide the same order, the learned trial Judge sent the entire proceedings of the case to this Court for confirmation of death sentence under Section 366(1) of the Code of Criminal Procedure. Meanwhile, the appellant has filed Criminal Appeal No.385 of 2005 against the order of conviction and sentence referred above. By this order, we dispose of both the Death Sentence Reference No.5 of 2005 and also the Criminal Appeal.

3. Joseph @ Rajan on 7.1.2001 at 11.30 p.m. gave information to the Aluva Police Station of Ernakulam District that his sister, brother-in-law and their children were murdered by someone at sometime between 6 p.m. on 6.1.2001 and 10 p.m. on 7.1.2001 within Manjooran House, where his brother-in-law Augustine @ Baby, sister Mary @ Baby, children Divyamol and Jesmon, brother-in-law's sister Rani (Kochurani) and mother Rahel were living as a family. He requested for action in the matter. In the first information, Ext.P1, got recorded by N.V.John, Sub Inspector of Police, the first informant Joseph stated that he had come to inform that someone had killed his

sister-Mary, brother in law-Augustine and their children-Divyamol and Jesmon in their residence at Aluva. He belongs to Christian community and is residing with his father, mother, wife and children. It was stated by him that he was running a stationery store there and his sister Mary was married to Augustine of Manjooran House. His brother in law was running a hardware shop at Aluva. Both the children were school going. On 6.1.2001, his sister had come home to take his father who was sick to the hospital. His sister told that she would come on 7.1.2001 by 9.30 a.m. to stay with them, as his wife was going to her house. Saturday morning his wife went to her home. At that time, Lizy, his immediate sister was in the house. Baby wanted to come as Lizy had to go to her house. Since his sister was not seen even after 10 O'Clock, he tried to contact her over phone. Though the phone was ringing, nobody picked it up. Around 2 p.m. he telephoned Jose at Neerikode and asked him to enquire and inform as nobody was lifting the phone at his sister's residence. After some time Jose informed over phone that when he sent the son of elder brother Jose to his sister's residence,

the house was found locked without anyone being there and also their vehicle was not seen. As she also wanted to participate in a function in connection with Christu Jayanthi 2000, thinking that she would have gone for that, they waited till 8 p.m. and thereafter again contacted Jose over phone and requested him to enquire again. After sometime, Jose called back and told that Sebastian informed him that both his sister and brother-in-law were not seen. To know about their whereabouts, he along with his 4th brother in law Sunny, came to the house of his sister around 10 p.m. The vehicle was available in the courtyard. There was no light in the verandah. Then he entered the sit-out and lifted the curtain to knock the door, he saw one of the doors kept open. When he lighted the torch, immediately he saw the legs of Jesmon, son of his sister. He was lying on the floor. There were blood stains near his body. In the adjacent room, he saw the legs of Divyamol, who was lying on her chest down; his sister in a sitting posture with her head down and adjacent to that his brother in law, lying on his back. There was no response when he called. They appeared to be dead.

Immediately, they came out of the house and went to the house of Jose, his cousin and informed him. Jose called Robin and they all came in Robin's car to the station. Apart from his sister, brother in law and their children, his brother in law's mother and sister were also staying with them. He did not know what had happened to them. They were not seen there. The dresses of his brother in law, sister and their children were those they used to wear while going out. There was no financial liabilities to his brother in law. When his brother in law laid the foundation for constructing a new house, he had a case with his family and as per his sister, they were expecting its judgment in the near future. His brother in law and his elder brothers are having dispute with regard to their property. He was not aware of any enemies from outside to his brother in law. The morning newspaper and milk were lying on the verandah of the house. The incident occurred between 6 p.m. of 6.1.2001 and 10 p.m. of 7.1.2001.

4. From the statement made by the first informant, it appears that murder of six persons were noticed for the first time

around 9 p.m. to 10 p.m. on 7.1.2001 and the matter was reported to the police at 11.30 p.m. on the same day.

5. Dr. J. Nelson examined as PW 64 conducted autopsy of the dead bodies of Augustine, aged 49 and Mary, aged 42 on 10.1.2001. He proved the post-mortem certificate with regard to Augustine as Ext.P55. The doctor found the following eight ante-mortem injuries on the body of Augustine.

- "1. Incised wound with contused margins, 3.5 cm. long obliquely placed on the middle of forehead, 5.cm. above the bridge of nose (bone deep).
2. Incised wound with contused margins, 1.8 cm. long, on the left side of forehead, 3 cm. above the middle of eyebrow, (bone deep).
3. Incised wound with contused edges, 2.5 cm. long, obliquely placed on the left side of head, 10 cm. above the middle of eyebrow (bone deep).
4. Incised wound with contused edges, 3.5 cm. long obliquely placed, on the right side of top of head, 12 cm. above the ear, with a side cut 2 cm. long at the middle of the wound (bone deep).

The skull bone underneath the above injuries

on the scalp were found cleanly cut and broken into fragments. The maxillary bones on both sides and nasal bones were fractured into fragments. The skull bone in between the eyebrows were found fractured.

The brain was found liquified and showed evidence of intra cranial bleeding. Base of skull In the anterior cranial fossa was found fractured into fragments.

5. Lacerated wound, 0.5 x 0.5 x 0.3 cm. on the inner aspect of the upper lip, on its right side, corresponding to the right upper lateral incisor.
6. Lacerated wound, 1.5 x 0.4. x 1 cm. through and through on the right side of upper lip corresponding to the right upper lateral incisor.
7. Lacerated wound, 1 x 1 x 1 cm. on the middle of inner aspect of upper lip at its junction with the gum.
The upper two incisors, two lateral incisors and both the canines (6 teeth) were broken at their roots and were missing.
8. Five lacerated wounds, on the inner aspect of lower lip, 0.5 x 0.3. x 0.3 cm. corresponding to the teeth in the lower set. Lower central and lateral incisors of both sides and right canine found broken at their roots and found separately lying in the mouth cavity."

In the opinion of the doctor, Augustine died due to injuries

sustained by him on the skull and brain, i.e. Injury Nos. 1, 2, 3 and 4. He also stated that injury Nos.1 to 4 could be caused by cutting with MO.12, whereas, injury Nos.5 to 8 in the opinion of the doctor, could be caused by striking with the blunt edge of MO.14. Injury No.4 was necessarily fatal. Injury Nos.1, 2, 3 and 4 were independently sufficient in the ordinary course of nature to cause death.

The doctor found the following nine ante mortem injuries on the body of Mary.

- "1. Contusion of scalp, on the left side of forehead, 3 cm. above the middle of eyebrow, 8 x 6 cm. Skull underneath showed fissured fracture, 8 cm. long transversely placed which extended into the base of skull in the anterior cranial fossa and caused fracture fragmentation of the base of skull.
2. Incised wound with contused margins, obliquely placed, 2.5 cm. long, 0.5 cm. bone deep, on the left side of back of head, 2 cm. to the left of midline, and 10 cm. above the level of ear. The bone underneath showed a cut.
3. Incised wound with contused margins, 7 cm. long x 1 cm. obliquely placed, over middle of top of head. The inner end showed a bevelling with a

- flap towards the right side (bone deep) the skull bone underneath showed a cut.
4. Incised wound with contused edges, obliquely placed 3 x 0.5 cm. bone deep over left side of top of head, 1.5 cm. behind injury No.3. Bone underneath cut.
 5. Incised wound contused edges, obliquely placed, 2.5 x 0.5 cm. bone deep over left side of back of head, 9 cm. behind the ear. Bone underneath was cut.
 6. Incised wound with contused margins, obliquely placed 3.5 x 1 cm. over middle of back of head, 5 cm below the external occipital protuberance. Bone underneath cut.
 7. Incised wound with contused margins, obliquely placed 5 x 1 cm. bone deep over the right side of head, 7 cm. above the ear. Bone underneath cut.
 8. Contusion of scalp 8 x 6 cm. on the middle of the back of head, skull bone underneath was found fractured into fragments involving the posterior cranial fossa up to foramen magnum and right side of cranial fossa, Brain liquified and blood-stained (bleeding).
 9. Skin deep incised wound, 4.5 cm. long, transversely placed, over the right side of back of neck, 6 cm. behind the ear".

In the opinion of doctor, Mary died due to injuries sustained on the skull and brain (i.e. Injury Nos.1 to 8).. Injury

Nos.1 to 8 could be caused by striking with the butt of MO.12. Injury No.2 to 7 could be caused by cutting with the sharp edge of MO.14. Injury No.9 could be caused by forcibly snatching away a gold ornament worn by the deceased from her neck. Injury Nos.1 to 8 were necessarily fatal. He also stated that injury Nos.1 to 8 independently were sufficient in the ordinary course of nature to cause death. He proved the post mortem certificate of deceased Mary as Ext.P57.

6. Dr.Johny Cyriac, examined as PW.72 stated that on 9.1.2001, he conducted the post mortem examination on the body of Rani (Kochurani) aged 37 years. The doctor found the following six ante mortem injuries on her person.

- "1. A ligature mark was seen around the neck transverse, over the thyroid cartilage, not very clear due to putrefaction and made a circumference of 34 cm. and a width of 1-2 cm. The subcutaneous tissue underneath the mark showed contusion. The body of thyroid cartilage was comminutely fractured. The right superior horn of thyroid cartilage was also fractured.
2. Incised wound right side of forehead 3 x 0.5 cm. x 0.5 cm obliquely placed with its lower outer end at the right corner of eye.

3. Incised wound 6 x 2 x 1 cm. left side of head transverse 8 cm. above the left ear.
4. Incised wound 6 x 3 cm. x 2 cm. transverse over the front of right forearm 3 cm. above the wrist cutting the radial artery, nerves and muscles underneath.
5. Incised wound 4 x 1 x 1 cm. over the front of right forearm transverse 1 cm. below the injury No.4 and cutting the tissues underneath.
6. Incised wound with ragged edges 9 x 1-5 x 2 cm. transversely oblique on the upper part of back of head crossing the midline with the right lower end 7 cm. above the tragus at 11 O' Clock position. The whole of scalp was contused. Fracture skull, transverse 15 cm. long crossing the midline and involving both parietal bones was present underneath the wound. A chip fracture of right parietal bone 3 x 1.5 cm. x 0.2 cm., 3 cm. right to the midline with its back outer end touching the former fracture line. Subdural collection of blood with clots around 100 ml. was present on the right half. Bilateral subarachnoid haemorrhage present. Infiltration with brownish red blood was present around the fracture site".

In the opinion of doctor, Kochurani/Rani died due to multiple injuries. He proved the post mortem certificate of Kochurani as Ext.P79. He stated that injury Nos.1, 4, 5 and 6 were independently sufficient in the ordinary course of nature to cause death. The ligature found on the dead body was caused by MO.57

and MO.58. Injury No.6 was necessarily fatal. Injury No.2 could be caused by cutting with MO.13. Injury Nos.3, 4 and 5 also could be caused by cutting with MO.13. The ligature could be caused by cutting with MO.57 and MO.58. Injury No.6 was an incised looking lacerated injury. It could be caused by striking with a heavy blunt weapon. Injury No.6 could be caused by striking with MO.5 or MO.12. He further stated that the pubic hairs and vaginal smear were taken and handed over to the investigating officer. If human spermatozoa was found in the pubic hair or vaginal smear, there was a chance of sexual intercourse prior to death. It was possible that such sexual intercourse occurred some hours or days prior to the death. In a living person, spermatozoa could be found up to 26 hours and sometimes up to two or three days and in dead body it might be found up to 1 or 2 weeks.

The doctor stated that he had conducted post mortem examination on the body of Divya, aged about 14 years. The doctor found the following five ante mortem injuries on the body of her person.

- "1. Skin deep incised wound obliquely placed over left side of neck 9 x 2 cm., both end. Sharp cut with its front lower end 4 cm. above the inner end of collar bone. Outer end showed a tailing of 2.5 cm.
2. Lacerated wound 2.5 x 1 x 1 cm. over left parietal area 11 cm. above pinna 5 cm. outer to midline. The scalp was contused underneath. Bilateral subarachnoid haemorrhage was seen over parietal lobes. The skull was intact. Brain showed early stage of liquifaction.
3. Incised wound 5 x 3 cm. x 2 cm. transverse over the front of left forearm 2.5 cm. above the wrist. The radial artery and superficial tendons and nerves were cut, underneath the wound.
4. Incised wound 3 x 1 x 1 cm. oblique over inner half of left palm with its upper left end at the wrist.
5. Incised wound 2.5 x 1 x 1 cm., curved on the back of right index finger, with its inner lower end 1 cm. from the tip".

In the opinion of the doctor, Divya died due to injury Nos.2 and

3. He proved the post mortem certificate of Divya as Ext.P 81.

He stated that injury Nos. 2 and 3 were independently sufficient in the ordinary course of nature to cause death. When combined together, injury Nos. 2 and 3 will become more fatal. Injury Nos.1, 3, 4 and 5 could be caused by cutting with MO.13. Injury

No.2 could be caused by striking with the butt of MO.12.

On the same day he conducted the post mortem examination on the body of Jesmon, aged 13 and found the following two ante mortem injuries on his person.

- "1. The whole of the scalp was contused. Fracture skull separating both parietal bones as a single piece from the rest of the skull. Dura was intact. Brain showed liquifaction and structures could not made out clearly. Base of skull was fractured through the junction of anterior and middle cranial fossae extending the whole width of the base. Externally two contusions each measuring 8 x 7 cm. over both parietal areas. The liquified brain matter was found stained with blood.
2. Incised wound, transverse 5 x 3 x 2 cm. on the front of right forearm 3.5 cm. above the wrist. Radial artery and tendons and nerves were cut, underneath the wound. Inner end was sharp cut, outer end showed three incised superficial limbs, 0.5 cm. each close to each other".

In the opinion of the doctor, Jesmon died of injury Nos.1 and 2. He proved the post mortem certificate of Jesmon as Ext.P83. He stated that injury No.1 was necessarily fatal. Injury Nos.1 and 2 were independently sufficient in the ordinary course of nature to cause death. Injury No.1 could be caused by striking with the butt of MO.12 whereas injury No.2 could be caused by cutting

with MO.13.

On the same day, he conducted post mortem examination on the body of Clara, aged 78. He proved the post mortem certificate of Clara as Ext.P 85. The doctor found the following five ante mortem injuries on her person.

- "1. An area of contusion over the forehead 14 x 7 cm. bilateral, black eye was present.
2. Incised wound with ragged edges 8 x 5 x 3 cm. involving the right eye and adjoining part of face transverse with its outer end 5 cm front to the right tragus. Right maxilla bone was comminutely fractured. Frontal bone was fractured, where it joints with the frontal process of maxilla.
3. Incised wound with ragged edges right side of head 3 x 1 x 1 cm. obliquely placed with its front upper end 8 cm. from midline and 7 cm. behind the right eye brow. Scalp was contused over an area of 7 x 6 cm. underneath the wound. Brain was liquified and the brain matter was found stained with blood.
4. Incised wound 4 x 1 x 2 cm. obliquely placed involving the right of upper lip, right ala of nose and adjoining part of right side of face with its inner lower end on the upper lip in the midline. The maxilla was comminutely fractured underneath loss of teeth No.11, 12, 21 and 22.
5. Incised wound 2 x 1 x 2 cm. obliquely placed on

the left half of chin with its upper inner end on the oral margin of lower lip. The mandible was fractured underneath with loss of teeth No.41, 42, 43 and 44 ".

In the opinion of the doctor, Clara died due to injuries on skull and brain. Injury Nos.2, 3 and 4 were independently sufficient in the ordinary course of nature to cause death. These injuries were independently fatal as well. Injury Nos.1, 2 and 3 could be caused by striking with the butt of MO.12 or by striking with MO.5. Injury Nos.4 and 5 could be caused by cutting with the sharp edge of MO.12 axe or by cutting with MO.14.

7. We need not refer anything in the cross examination adverted to Dr. J. Nelson and Dr. Johny Cyriac, examined as PW.64 and PW.72 respectively, as nothing based thereon has been urged before us by the learned counsel appearing for the appellant.

8. No eye witness became available to the prosecution, may be, for the reason that the occurrence had taken place in a house at night, which may not have attracted anyone to take note of it and all the inmates of the house were

killed, the prosecution thus relies upon circumstantial evidence in its endeavour to secure conviction against the appellant.

9. Mr. Ramakumar, learned counsel appearing for the appellant contends that in the so called links in the chain of circumstantial evidence, there are many a chink and it cannot be said that such circumstances which may ultimately be held to have been proved, the inference from such circumstances could lead to only one hypothesis, i.e. guilt of the accused. Mr. Sreekumar, learned Public Prosecutor, on the other hand, joined serious issues with the contention raised by the learned counsel for the appellant and contended that every circumstance as relied by the prosecution stands fully established and even if one or two circumstances may be doubtful, the other circumstances would form a complete chain leading to an irresistible conclusion that the appellant alone is guilty of the crimes alleged against him. In the context of rival contentions made by the learned counsel for the parties, circumstances and the evidences to prove such circumstances has necessarily to be noted, examined and analysed.

10. The prosecution, in order to secure conviction against the appellant relies upon the following circumstances:

- (i) Motive that actuated the appellant to commit the crime.
- (ii) Presence of the appellant in the house of deceased persons at the relevant time on 6.1.2001.
- (iii) Evidence showing the appellant coming out of Manjooran House in the early morning of 7.1.2001.
- (iv) Absence of the appellant from his house in the intervening night of 6th and 7th January, 2001.
- (v) Recovery of clothes of appellant pursuant to a statement made under Section 27 of the Indian Evidence Act.
- (vi) Finger prints lifted from the scene of occurrence which matched with that of the appellant.
- (vii) Recovery of scalp hair of the appellant from the body of deceased Jesmon.
- (viii) Extra judicial confession made by the appellant before the jail wardens and the doctor, (Dr. Anilakumari - PW 60). *partly.*
- (ix) Extra judicial confession of the appellant to his wife, contained in MO 11 and MO 11(a) inland letters.
- (x) Confession made by the appellant before the magistrate, vide statement recorded under Section 164 Cr.P.C.
- (xi) The recovery of gold ornaments belonging to some of the deceased. As per the prosecution version, the appellant had removed gold ornaments worn by some of the deceased, handed over the same to Suresh, PW 74, who in turn pledged the same to Gangadharan, PW 25. and;
- (xii) Recovery of weapons of the offence.

11. Before we may advert to the various circumstances noted above, we may mention certain broad facts which too have some bearing on the point in issue, which are not in dispute. Manjooran House at Aluva was owned by Augustine. His mother Clara aged 74 years was residing with him in the same house. So is also true with regard to his sister, Kochurani, aged 37 years. Mary, aged 42, was the wife of Augustine and the couple was blessed with two children, Divyamol, aged 14 years and Jesmon, aged 13 years. The appellant was desirous of procuring an employment in Gulf and was making all efforts for the same. In fact, he had before the date of occurrence, gone to Bombay and attended the interview and paid the advance to his travel agent for going to Damam. It is also not in dispute that even though he had paid part of money so settled to his travel agent, a substantial amount had still to be paid. He was a part time driver in Aluva Municipality and was under financial constraints. He had borrowed money from the people in the town on occasions prior to the occurrence. The appellant is related to the family of the deceased and was presumably a

frequent visitor in the Manjooran House. These are the broad and undisputed facts.

12. The prosecution examined P.I. Ummer as PW 67. He stated that he is running a travel agency in the name and style of "White Way Air Travels" at Vatanappilly in Thrissur . It functions as a sub-office of Bombay Recruiting Office. He stated that he knew the appellant who along with his friend Hari had approached him for the purpose of going to Gulf and he had told him if he came to Bombay, he would arrange Visa. He took the appellant and Hari to Bombay in the first week of December, 2000. The appellant came back after interview and medical examination and after paying the advance amount. The appellant paid an advance amount of Rs.25,000/- and he had promised to send the appellant on 10.1.2001 a driver's Visa. He had demanded Rs.64,000/- for arranging the Visa and the ticket for the appellant. On December 31, 2000, he informed the appellant that Visa was ready and that he could go to Gulf on 10th January, 2001, for which purpose he had to start for Bombay on 7.1.2001. On 5.1.2001, the appellant came to Thrissur and gave

him a further amount of Rs.20,000/- and told that balance would be paid on reaching Bombay. On 7.1.2001, the appellant, Hari and five others along with him started from Thrissur in a train through Konkan route. The appellant and Hari did not have reservation, but the others had reservation. Therefore, appellant and Hari travelled in a general compartment. They started from Thrissur at 4 p.m. on 7th January, 2001 and reached Bombay at 9.30 p.m. on 8th January, 2001. At Bombay, the appellant paid him an amount of Rs.18,000/- on the night of 8.1.2001. Later, the appellant had gone to Damam on 10.1.2001 in the morning flight. On 11.1.2001, one Circle Inspector of Police contacted him over phone and asked him whether the appellant was in Bombay or had already gone abroad. In the cross examination, he stated that the police had questioned him at Bombay 2 to 3 days after they arrived Bombay. When the appellant and others reached Bombay on 8.1.2001, Suresh was there. When the police came to Bombay, they questioned him and Suresh. Later it was with the police that he returned to Kerala. Police had taken him and Suresh to Aluva where he was questioned and is

said to have given the statement. He did not know whether
Suresh had produced anything before the Police.

13. Suresh examined as PW 74 stated that he was
working at Saudi Arabia and he knew the appellant. On
2.12.2000, he had gone to Bombay in connection with his
journey to Gulf. While so travelling, the appellant, Hari and 5 or
6 others were with him in the train. All of them had been taken
by Ummer, PW 67. In Bombay, they stayed in the P.K.M. Lodge
run by J.J.Hospital. He did not get through the interview
whereas, the appellant and others got through. His Visa was not
okeyed. Some of them returned to Kerala, but he stayed at
Bombay. Later, on 8.1.2001, Ummer, appellant, Hari and others
came back to Bombay. It was at 8.30 in the night that he met
the appellant. With regard to the remaining part of the evidence
given by this witness, reference shall be made in the later part of
the judgment.

14. Jemma Antony, the wife of the appellant
examined as PW 19, who turned hostile, however, stated in the
examination in chief that when she married the appellant, he was

a driver in the Municipality. She knew the family of Augustine. They were distant relatives of her husband. Her husband was a frequent visitor to Augustine's house. She too had gone there two or three times. On 2.12.2000, the appellant had gone to Bombay for attending the interview for going to Gulf. He went for the interview through an agent to go to Saudi Arabia. He came after the interview. The appellant had told her that he had given Rs.25,000/- to the agent by borrowing money from Hari, who was working with him. He told that the job was confirmed and they will intimate later. The call came on December 23, 2000 asking the appellant to reach Bombay by 7.1.2001. They told that for the Visa, Rs.60,000/- would be required. She, of course, then stated that money was arranged with the help of her two sisters. But, she further stated that appellant came at about 7 p.m. on 6.1.2001. He had brought with him two litres of kerosene for household use. He also gave her Rs.10,000/- which her sister had given. He thereafter went saying that he was going to Perumbavoor and would come back immediately. He went at 6 p.m. on Saturday, 6.1.2001 and that night, he did

not come back. The next morning, she sent her cousin Tessy, to call the elder brother of the appellant who was residing in Kombara. Five minutes after Tessy had gone, at about 5.30 when day light broke, the appellant came in an auto rickshaw along with Tessy. She also stated that later at about 8.30 a.m., a person named Raman Nair had come enquiring about appellant.

He came by saying that he wanted to see the appellant and it was relating to a money transaction. She told that he had gone to Perumbavoor, upon which Raman Nair said that he would have gone to his house. The appellant when examined under Section 313 Cr.P.C. stated that he was working as a temporary driver at Aluva Municipality. On getting information by the end of December, 2000 that his Visa to Damam was ready, he had visited the house of deceased Augustine (Baby Chettan) on 5.1.2001 as part of his bidding good-bye to his relatives. At that time, deceased Baby Chettan was not present in the house. On the next day, i.e. on 6.1.2001, he went to the shop of Augustine (Baby) for bidding good bye. Then Baby Chettan asked him how he collected money for going to Gulf, for which he told Augustine

that he got an amount of Rs.25,000/- from Yohannan on interest at the rate of 10% per month and also the amount of Rs.10,000/- from Raman Nair. He told Augustine about the interest being paid on that amount also. Baby Chettan asked him how could he repay the said loans. He replied that he was intending to bid his Chitty at 'Dharma Deepthi' or by raising funds after reaching Gulf. Then Baby Chettan told him that he need not pay interest for the said loans and Baby Chettan would pay the amount for repaying the loans and that he need only pay the amount by bidding the Chitty or after reaching Gulf. Baby Chettan further directed him to go to the house of Baby Chettan and to obtain the amount from Mary Chechi by assuring that Baby Chettan would inform the matter to Mary Chechi over phone. Thereafter in the evening he purchased Kerosene for household use and after giving it to his wife and telling her that he was going to Perumbavoor, he went out of his house with the intention of going to the house of Mary Chechi to avail the amount in order to pay it to Raman Nair and Yohannan at Perumbavoor. At about 7 O'clock in the evening, he reached the

house of Baby Chettan. At that time, from there he came to know that Mary Chechi had not returned from her family house at Ernakulam and therefore he returned to the town. He went to a hotel and had food and prior to 8 O'clock he went to the shop of Baby Chettan and met him. Then Baby Chettan gave him Rs.35,000/- from the shop by telling that he could not entrust the amount with Baby Chechi as she had not returned from her family house. At about 8.30 in the night, he went to Perumbavoor by bus for proceeding to the house of Yohannan at Thottuva for repaying the amount. He hired an autorickshaw from Perumbavoor as it was night and as he had no acquaintance with that place and proceeded to Thottuva by it. There were two persons in the driver's seat of the autorickshaw. He apprehended that they would snatch the money. They stopped the autorickshaw when it reached a lonely place and attempted to extort money from him. He became frightened and ran away from there and hid himself in a dilapidated building. At about dawn, he managed to escape from there with difficulty and reached his house and after telling his wife about the incident, he

proceeded to St.Antony's Church situated near the Railway Station.

15. Ramachandran Nair, examined as PW 24, stated that he was working in Perumbavoor Rayons Company. He had received Rupees Two Lakhs as gratuity and other things. He used to lend money for interest. He knew Pidambaran who had been working in the Aluva Municipality. Through Pidambaran, he had lend money for interest to many in the Municipality. He knew the appellant, Antony, and was introduced by Pidambaran. At first, he had lent only Rs.1,000/- to the appellant. Later, in about 5 to 8 times, he had lent Rs.10,000/- to the appellant. The appellant used to regularly give interest. He told him that he would be going to Gulf for work. On January 1 or so of 2001, the appellant told him that he would be going to Gulf on January 7th. He went to the house of the appellant to know about the arrangement of the money on 7.1.2001, the day on which the appellant was going. He went at about 9.30 a.m. The appellant was not present there. The wife of the appellant was there and when he told that he was coming from Perumbavoor to see the appellant, she told that the appellant had gone to Perumbavoor with the money. While he was returning, he saw the appellant coming in

an auto rickshaw and when he saw him, he made the auto rickshaw to slow down and the appellant told him that money had been given at his house. At house, he came to know that appellant had given the money to his son, Jayachandran. The appellant had paid the entire amount of Rs.10,000/-. He showed the account book showing the money given to the appellant, marked as Ext.P21. In cross examination, he stated that there was understanding that either the money would be repaid before going or else, it would be sent after going to the Gulf.

16. Jayachandran.R., son of Ramachandran Nair, examined as PW 40 stated that appellant had come to the house at 8.30 a.m. on 7.1.2001. The appellant had come with money. The appellant had come to give money to his father. He received Rs.10,000/- that the appellant gave him. No cross examination was adverted to this witness. C.P.Yohannan, examined as PW 23 stated that the appellant had come to his house between 9.15 a.m. and 9.30 a.m. on 7.1.2001 in an autorickshaw. The appellant gave him Rs.22,500/- saying that Rs.500/- was given as interest and the balance amount of Rs.3000/- would be given within two months. There was nothing in the cross examination even suggesting that

the statement made by him was incorrect.

17. Tessy Varghese, examined as PW 20 stated that the appellant, his wife and children were residing in their Tharavadu house. She knew that appellant was trying to go to Gulf. She heard about the death of Augustine and his family members on Monday morning. On Sunday, after 5.30 a.m. appellant's wife had sent her to the house of the brother of the appellant at Kombara by stating that appellant had not reached home on the previous day and hence she should go to Kombara and come back with George, who was the elder brother of the appellant. She went in an auto rickshaw and saw the appellant coming at Aluva below Power House. She stopped the auto, took the appellant with her and returned to the house of the appellant. She had seen the appellant coming with 10 litres of Kerosene to the house in the evening of Saturday. She knew that the appellant was in the effort of raising money to go to Gulf.

18. From the broad features of the case which have not been disputed and the evidence reference whereof has been given above, it is absolutely clear that the appellant working as a part-time driver in Aluva Municipality had financial stringency. He was unable to manage the affairs of his house for which purpose he had to borrow

money from time to time. It is also clear that the family of the deceased also used to provide him some assistance as he was not only acquainted to the family members of Manjooran house, but was also related to them. It is proved beyond shadow of reasonable doubt that the appellant in his effort to raise money sufficiently enough to cater for him and his family was highly interested in going abroad. It is also proved that he made arrangements to go to Damam, his Visa was cleared, he was to leave Aluva by 7.1.2001 so as to reach Bombay on time and to go to Damam on 10.1.2001. It is further clear that he had to pay substantial amount to his travel agent without which he would not clear him to go to Damam and that he was in need of money. The appellant actually paid Rs.18,000/- to Ummer, his travel agent, at Bombay on his reaching Bombay. Before that he gave Rs.10,000/- to PW 40, the son of Ramachandran Nair, PW 24. The amount paid by him to Ramachandran Nair through his son stands not only proved by oral evidence but also documentary evidence. It is also clear that the appellant had paid Rs.22,500/- to C.P.Yohannan, PW 23, on 7.1.2001. The appellant in fact left Aluva on 7.1.2001 and left for Damam on 10.1.2001. These are proved facts and there is hardly any argument made by Mr.Ramakumar, learned

counsel for the appellant, which may even remotely suggest that the evidence mentioned above has any blemish whatsoever. That being so, the motive for the appellant, to commit the crime stands fully established.

19. The next circumstance relied upon by the prosecution is the presence of appellant at Manjooran House in the intervening night of 6th and 7th of January, 2001 and his coming out of the house around 5 to 5.30 in the morning of 7.1.2001. In addition to this circumstance prosecution also relies upon the circumstance that the appellant was not at his house on the intervening night of 6th and 7th of January, 2001.

George M.T., examined as PW 15 states that, Augustine was his immediate younger brother. Before 5.45 in the morning of Sunday, 7.1.2001, his wife Shiny, daughter Sakhi and he went out from his house to go the Church. Since his daughter was going for entrance coaching in Trichur, he walked before them for taking the season ticket for her. Since there was not enough cash for taking the season ticket, he had to take a ticket for that day. He needed eleven rupees. Since, he had no one rupee coin

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evid

with him, he came back to the way from which his daughter and wife would go to the Church. At that time, the appellant was coming from the opposite direction. He saw the appellant clearly in the light of Sodium Vapour lamp. At that time, it was about 5.45. He saw the appellant about one furlong away from the Augustine's house. He asked the appellant as to whether he was going to the Church, but the accused walked towards the Church side without minding it. He collected one rupee from his wife and went to the railway station, whereas his wife and daughter went to the Church. In cross examination, he denied the suggestion that he had not seen the appellant.

20. Shynnee George, examined as PW 16, stated that she knew the appellant. He used to regularly come to the Tharavadu i.e. Augustine's house. At 5.45 a.m. on 7.1.2001, PW 15, daughter and she were going to Church. Her daughter was studying in Thrissur for Entrance coaching. PW 15 walked before them for taking season ticket for their daughter from the railway station. When she and her daughter reached near the

gate of their house, they saw the appellant proceeding towards the north from the front side of the gate. The occurrence house of Augustine was situated 200 metres to the south from their house. She called the appellant by making "sh" "sh" sound, but he walked away without hearing it. The appellant was walking in front of them. When they reached the gate of the Church, they saw the appellant coming from the Church through the gate. In cross examination, she denied the suggestion that she had made a false statement.

21. Noorjahan, examined as PW 17, stated that she knew the appellant. At 5.45 a.m. on Sunday of 7.1.2001, she and her father-in-law were going to the hospital. They were going to Karothukuzhi Hospital on hearing that the mother of her mother-in-law was in a critical condition. They were walking towards the old stand. At that time, she saw the appellant coming to the road towards the railway station by getting out from near the gate of deceased Augustine's house. She saw the appellant 10 feet away. The appellant was going in a great hurry. In the cross examination, she stated that usually they

used to go after finishing household works after 10 O' clock in the morning. On that day, they went in the early morning itself as the mother-in-law's brother's son informed that illness has worsened.

22. We have already referred to the statement made by Smt.Jemma Antony – PW 19, the wife of the appellant who in the examination in chief herself stated that the appellant was not in the house in the intervening night of 6th and 7th of January, 2001. In that connection we have also made mention of the statement made by Smt.Tessy Varghese, PW 20. Nazar.C.A., examined as PW 38, stated that he knew the appellant, who was a driver of Aluva Municipality. He had seen him at 7 p.m. on 6.1.2001, when the appellant was getting inside the gate of the house of Augustine. But for suggesting him that he was deposing falsehood, there is nothing in the cross examination which may require a mention.

23. The depositions made by the witnesses mentioned above once again prove to the hilt that the appellant was seen going to the house of Augustine at Manjooran House

around 7 p.m. in the evening on 6th January, 2001 and further
that he was seen coming out of the house or near the house
between 5.30 and 5.45 in the morning on 7th January, 2001.

There may be some criticism with regard to the deposition made
by George M.T. and Shynee George, as they are related to the
deceased and may be thus interested in supporting the
prosecution case and further that the reason of their coming out
of the house at 5.30 a.m. may be made up one, but there cannot
be any criticism whatsoever with regard to the statements made
by Noorjahan, PW17. Her statement, beside being that of
independent witnesses is corroborated by none other than
Jemma Antony, PW 20, the wife of the appellant who had stated
that the appellant was not in his house on the intervening night
of 6th and 7th of January, 2001. The appellant also admits in the
statement under Section 313 Cr.P.C that he was not in his house
at the said time, even though he has his own explanation to
offer that he had hid himself being afraid that the money with
him may not be snatched by the driver of the auto rickshaw and
his companion. The circumstance of the appellant having been

seen going to the Manjooran House of Augustine and others sometime before the occurrence took place and his coming out from the said house or having been found near the said house in the morning of 7.1.2001 sometime after the occurrence stands fully established. We may mention that nothing at all has been urged by the learned counsel appearing for the appellant that may create any doubt with regard to the said circumstance.

24. The next circumstance relied upon by the prosecution is the recovery of clothes of the appellant pursuant to the statement made under Section 27 of the Indian Evidence Act. For proving this circumstance, prosecution relies upon the statement of Ismail examined as PW 68 and T.P.Jose Paulose examined as PW73, as also the statement made by the accused, Ext.P47(a) under Section 27 of the Evidence Act. Ismail stated that he had signed Ext.P47 as a witness. It is a recovery memo (mahazar) for recovery of dress. It was recovered from a compound by the road side near the Assissi Bus stop along the Aluva-Perumbavoor route. He found the appellant seated in the jeep. Police and a moderate gathering of people were there.

There was a distance of about 75 metres from the jeep to the spot from where the cover was taken. The cover contained two socks, one kerchief, one pants and a shirt (MO's. 75 to 79). There was growth of bushes all over the area. In the cross examination, he stated that his house was 3 Km. away from the spot of recovery. He was an auto rickshaw driver. He had gone to the place on hearing that the appellant had been brought there in a jeep. It was about 4 or 5 pm. The plastic cover containing the articles was recovered from within the compound. He had seen blood in the kerchief but not on other articles. T.P.Jose Paulose stated that he was engaged in contract work and he had put his signature to Ext.P47 mahazar prepared by Aluva Dy.S.P. He was going from Aluva to his house in a bike. When he reached the spot, he stopped the bike on seeing the police jeep and the crowd. The appellant, Dy.S.P., C.I. and policemen together entered that compound through its damaged gate. The appellant was in the front. The appellant searched the compound, took out a cover and handed over the cover to

the police. It was a plastic cover. There was a pant, a shirt, a kerchief and socks inside the cover. He identified MO 79 plastic cover and MO's 75 to 78 articles found inside the same. He stated that there were blood stains on MO's 75 to 78. In the cross examination, he stated that the appellant himself had taken out the packet and he had seen blood stains on all the items. With regard to this circumstance and all others hereinafter to be mentioned, the contentions raised by the learned counsel appearing for the parties would be noted in the later part of the judgment.

25. The next link in the chain of circumstances is the finger prints of the appellant found at the scene of occurrence. Before we may deal with the finger prints and other scientific evidence brought on record by the prosecution, we would like to mention that sample blood of the deceased was collected by P.Jameela - PW 54, Assistant Director of Serology Division, Forensic Science Laboratory, Trivandrum. She prepared the report, Ext.P38 as mentioned above. As per the report, the sample blood of the deceased belong to 'O' group and the sample

blood of the appellant collected by PW 60, Dr.Anilakumari on 18.2.2001 at 6.30 p.m. was of blood group 'B+'. There is no dispute on this aspect.

26. On 8.1.2001, PW 6 - V.O.Jose, photographer of Police Department along with Yogeendra Sakhya, PW 7, visited the scene of occurrence. PW 7 developed nine chance finger prints and one palm portion. One finger print marked as A3 was blood stained. PW 6 took the photographs of developed finger prints by PW 7, who received the finger prints on 10.1.2001. PW 7 compared the finger impressions with that of deceased and found them not matching. The finger prints were compared with the entire finger prints of crime record bureau but remained untraced. On 12.1.2001, these finger prints were sent for comparison with computerised data base finger prints but remained untraced. The chance finger prints were sent to all district bureau of the State for comparison, but were untraced. On 19.2.2001, PW 7 received the finger print slip of the appellant from PW 59, Dy.S.P., Aluva. On comparing the finger print of the appellant with the blood stained chance finger print marked as

A3 in Ext.P8, it was found to be the left thumb impression of the appellant and the matter of identification was informed to Dy.S.P.

Aluva on 20.2.2001. On 18.4.2001 as per the request of the

Testor Inspector, PW6 had taken Ext.P9, the photographic enlargement of the specimen finger impression of the appellant from the specimen finger print slip and it was sent to Testor Inspector on 22.4.2001. PW 7 prepared the report, Ext.P11 dated 28.4.2001. Ext.A3 blood stained finger print taken from the left door post of scene of occurrence when compared with the finger print of the accused were found to be similar.

27. The prosecution also relies on the recovery of scalp hair of the appellant from the body of deceased Jesmon. The case of the prosecution is that the said hair matched with the scalp hair of the appellant. Raghavan Pillai, PW 51, conducted inquest on the dead body of Jesmon. At that time, PW 53, Parameswaran Nair, Assistant Director, Biology Division, Forensic Science Laboratory, Trivandrum and PW 61, M.K.Ajith Kumar, Scientific Assistant, Police Mobile Laboratory were conducting scene examination report on 8.1.2001 between 1.30 and 5.30

p.m. at the scene of occurrence. PW 53 while examining the deceased Jesmon found a thick black hair in the left hand which was collected and packed. PW 61 detected two hairs in the body of Jesmon, one below the cheek and one at the neck. Those two hairs were directed to be collected by PW 51. PW 53 prepared the reports, Exts.P35 and P36. Ext.P36 report would show that item 31(a) were the two hairs collected from the neck and cheek of Jesmon. Item 31(b) was the hair collected from the left hand of Jesmon. Item 32 is the twelve hairs of the appellant collected by Dr.C.Anilekumari, PW60, on 18.2.2001, as per Ext.P36 report of PW 33. Items 31(a) and 31(b) were similar to item 32. What thus transpires is that the twelve hairs collected from the appellant and shown as item 32 were found similar to the hair found in the neck and cheek of Jesmon and on the left hand of Jesmon.

28. The next circumstance relied upon by the prosecution is the extra judicial confession said to have been made by the appellant before C.C.Varghese, K.A.Salim and V.K.Rajeevan, the wardens of the jail where the appellant was

remanded, as PWs. 55, 56 and 57 respectively and also before the doctor, Smt.Anilakumari, PW 60. C.C.Varghese, PW 55, stated that he was working as warden in Aluva Sub Jail. He knew the appellant as the accused in Manjooran Murder case. When he asked the appellant about this case, he stated that he admits the guilt. In the cross examination, it was suggested to him that he was deposing falsehood, which he denied. Similar are the statements made by K.A.Salim (PW 56) and V.K.Rajeevan (PW 57). Dr.C.Anilakumari, examined as PW 60, stated that she was working as Assistant Surgeon, Taluk Head Quarters Hospital, Aluva on 18.2.2001. She examined the appellant at the request of Deputy Superintendent of Police, Aluva and prepared and issued a certificate, marked as Ext.P48. The appellant had the following two injuries on his person.

- "1. Scar mark lateral side of index finger 0.5 x 0.5 cm. at the tip.
2. Healed scar mark 0.5 x 0.5 cm. below the said scar mark No.1".

The history and cause of injury was that on 6.1.2001 at 9 O'clock the appellant had hit Kochurani with a stool and while doing so,

injury was caused by the knife on his finger. The history and alleged cause of injury was stated to her by the appellant and in her opinion, it could be as alleged. She took the blood of the appellant and sent for grouping and Rh typing. The blood group was found to be B+. The scalp hair of the appellant was also taken and was sent for analysis. In the cross examination, she stated that the age of the injury could be four weeks or more prior to the date of her examination, which fact has not been noted in her certificate. The scar mark was the result of a healed wound. She denied that the appellant had never given the history and alleged cause of injury. She rather stated that appellant had stated so before her.

29. In addition to the extra judicial confession mentioned above, the prosecution also relies upon the confession made by him to his wife vide letters marked as MO 11 and MO11 (a). The case of the prosecution is that Thomas Mathew, PW71, Superintendent of Police, Crime Branch, Ernakulam, conducted search of the house of the appellant on 17.4.2001 and seized besides other articles MO 11 and MO 11(a) letters, which

were then sent to the handwriting expert along with Ext.P31 log book of the tractor in the handwriting of the appellant, marked as Ext.P31(a). Ext.P33 is a specimen handwriting of the appellant. The specimen handwriting of the appellant was taken, marked as S1 to S6 in Ext.P33. Ext.P31, Ext.P33 and MO.11 and MO.11(a) were sent to Ravidas, (PW.46), Assistant Director (Document), for comparison who prepared the report, Ext.P32 and also the detailed reasons, Ext.P32(a). As per the report, Ext.P32, questioned documents marked as Q1(a) to Q1(n) in MO.11 and Q2(a) to Q2(h) in MO 11.(a), and Exts.P31 (a) and P33 were written by the same person. Peethambaran, PW44, who worked as a driver of Aluva Municipality along with the appellant, identified the handwriting of the appellant in Ext.P31 (a). The appellant when examined under Section 313 Cr.P.C. admitted the handwritings in Ext.P31-(a) as that of his, as per question No.110. The case of the prosecution is that in the two inland letters MO.11 and MO11 (a), the appellant has confessed his guilt.

30. The prosecution then relies upon the confession

made by the appellant before Jayanthi, 11th Judge, Court of Small Causes, Chennai, examined as PW 65. She stated that, on 9.10.2002 she was working as 19th Metropolitan Magistrate, Egmore, Chennai. On instructions from Chief Metropolitan Magistrate dated 9.10.2002, she recorded the confession statement of the appellant. As per instructions, she summoned the appellant and he appeared before her at 11 a.m. on 22.10.2002. Except herself, the translator and the typist, no one was present in the Court Hall and she allowed the appellant to rest for ten minutes. She narrated to the appellant about the procedure and also explained to him that he was not bound to give evidence and later it may go against him. He agreed, and said that he was giving the evidence without any compulsion or coercion and was giving it on his own accord and voluntarily. After all legal formalities, she recorded the statement of the appellant. The appellant was not able to speak in Tamil and therefore a translator was brought. All the statements made by the appellant were in Malayalam and the entire statement recorded was read over and translated to the accused, who
not examined

agreed to it as stated by him and signed it. She also signed it. She had followed all the formalities contemplated under Section 164 of Cr.P.C.. She made it clear to the appellant before recording the confession that it may go against him, but he wanted to make the statement and she was satisfied that it was a voluntary statement. She proved the confession statement as Ext.P59. She identified the appellant who had made the statement before her. The appellant gave the confession statement in Malayalam, and it was translated into Tamil by the translator. In the cross examination, she stated that she had explained everything to the appellant and gave a warning and she was satisfied that the statements were voluntary. The translator was brought by the C.B.I. The statement was recorded verbatim. She denied the suggestion that appellant never made the statement before her and that Ext.P59 is not the true version of the statements alleged to have been made by the appellant. In her re-examination, she stated that she could speak and understand Malayalam and she knew Tamil and English languages, but she could not write Malayalam. The statement

made by the appellant before the Magistrate, PW 65 – Jayanthi,
reads as follows:

"I am a resident of Manjooran House, Vatican Street, Aluva. I have studied upto X Std.. I was working as a Driver in the Municipality. I have only one child. Deceased Augustine is my father's elder brother's son. On 6.1.2001, I went to the house of Augustine at 7 p.m. Augustine's wife Baby, younger sister Kochurani, mother Clara, daughter Divya and son Jesmon were there. While I was talking to them about my trip to abroad, Augustine came there. Children suggested to go for a movie. I was also invited for the movie. Since I wanted to make some calls to Mumbai regarding my trip, I told them that I am not coming. Augustine, his wife and children (around 13 and 16 years) went for the movie. My aunt told me to go after having food. Myself, Kochurani and Clara had food. They asked me whether I wanted some water. I told yes and they gave me lime juice, I drank that and after sometime went to the bathroom. While coming back I saw Kochurani sitting alone in the dining hall. At that time it came to my mind that after killing Kochurani I can take the money from her and utilize it towards the expenses for my journey abroad. Clara went to her bedroom for sleeping. At that time I went to the kitchen and took a knife used for cutting fish (about 1 ft. long) and with that cut the neck of Kochurani. At that time, Kochurani shouted. During that time the knife slipped from my hand and fell down. On hearing the sound, Clara who was in her bedroom came there. On sustaining cut injury,

Kochurani sat down. Clara caught hold of me and Kochurani also caught hold of my legs. By holding me they shouted murder murder. When I wriggled out of their clutches my aunt fell down. On seeing this, Kochurani took the knife which had fallen down and came ferociously towards me. ~~On seeing this I took a stool from nearby and hit Kochurani on her head. On hitting, Kochurani fell down unconscious. Since Clara was lying down unconscious and thinking that she is dead and what will happen if those who had gone for movie returns, I decided to kill Kochurani. I took a wire from Clara's bedroom and after connecting it to a plug in the dining hall and tying the other end to the leg of Kochurani, switched on the plug to pass current to Kochurani. At that time, Kochurani shouted and I then removed that wire. I again went to the kitchen and took a chopper and cut Kochurani. I repeatedly cut her on the head and neck, even then Kochurani did not die. I again looked around the house, took an axe from a room and with that cut Kochurani on her head. Thereafter she did not make any sound. After keeping the axe in the room I came to the scene and heard my aunt wailing. Though I cut her with the knife and hit her with the stool, she did not die. I again took the axe and attacked Clara in the same manner as I attacked Kochurani. Thereafter she did not make any sound. I was confused whether I should leave the place as such or do something else. Then I had a doubt that those who had gone for the movie will suspect me on their return and hence I decided to stay back and kill them also and as such decided to go to a far off place and commit suicide after killing them also. Thereafter, I~~

dragged Kochurani and Clara to the kitchen. Later I came to the dining room and cleaned the area. I then closed and locked the dining room. Then I went to the store room and waited there for Augustine to come. I took the axe from the store room. At that time I heard the sound of those returning home after the movie. I then stood on the mortar in the store room. I was hiding there with an intention to cut Augustine while he enters. When Augustine opened the door and came to the store room, I attacked him with the axe. On hitting Augustine fell unconscious. I again hit him with the axe. He became unconscious. When his wife Baby came to the dining room, I hit her with the same axe. On receiving the hit injury she squatted. I again attacked her with the same axe. At that time, Divya was coming from the bedroom to the drawing room and I hit Divya also on her head with the same axe. On receiving hit, she fell there itself. Another son Jesmon came running and caught hold of me. I wriggled out and attacked him with the same axe. He also fell down unconscious on being attacked. I took the gold chains of everyone and the golden anklets of Kochurani and kept it on a table. I do not know the weight of those ornaments. After some time, Divya wailed. Then I took a knife from there and cut her. She shouted. Immediately, I took a wire, tied it on her neck and hanged her on the hinges of the door. I had a doubt whether all of them were dead. Therefore, I cut the wrist of all them except my aunt. Thereafter I sat there and started brooding. Thinking that I would repay the money of those who have helped me to go to Gulf, I opened the bureau in the house. In that

there were bundles of notes and coins also. I took a few notes from that. Afterwards when I counted it was Rs.52,000/-. After taking the money, I sat on the sofa there. I heard the siren at 5 a.m. I again checked whether everyone is dead. At that time, I heard Kochurani making sounds. I again hit Kochurani with an axe on her head. I removed the wire with which Divya was tied and hanged Kochurani on the hinges of the door. I then took a handkerchief drew a bow and arrow on the wall after dipping it with the blood found on the floor. Then around 5.45 a.m. after taking the ornaments and cash I came a Church near the house, stood there for sometime and came back. Then I boarded a bus to Perumbavoor. Midway, thinking that my people will be searching for me, as I had left the house the previous day, I got down from the bus to go home. I again went to Perumbavoor with the cash and ornaments. Thereafter I paid back Raman Nair and Yohannan and returned home. At that time, as I was going abroad, my relatives had come to see me off. I boarded a bus to Trichur at 12 noon. The agent who arranged my travel to Gulf is at Trichur. From there I along with the agent reached Mumbai. The name of that agent is Ummer. I got introduced to Suresh at Mumbai while attending the test in connection with my travel to Gulf. To that Suresh, I gave 3 chains and one pair of anklets. Another chain was given to a person from Tamilnadu when he wanted help as he was not having money. Next day I left abroad by flight. I reached Damam. About a week after joining for duty at Damam, I received a phone call from my wife. She informed me that Police

is suspecting me in connection with Augustine murder case. Telling that she will explain me in detail later, she gave the phone to the police. Police spoke to me and after giving a telephone number they asked me to call back. After 4 days my wife again telephoned me and cried that police is troubling her. For that I replied her that I am coming back home. Immediately I was taken to my sponsor by my Arabian employer. I came to Mumbai after giving it in writing to the sponsor that I am going on my own. I was caught by the police at Mumbai airport. Next day I was brought to Kerala. After a week, I was produced before the Court. Then I was sent to jail. Later I was taken to the house where murder took place and enquired about the manner in which I committed the murder. I told them the details and the way in which I committed the murder and also showed them the axe and chopper to the police. Before leaving for Mumbai, from the amount which I stole, I gave Rs.32,000/- to Raman Nair and Yohannan. I spent the rest of the money. I spent Rs.3,000/- for flight charges from Mumbai to Kerala. The distance between my house and Augustine's house is only 10 minutes by walk. On suspicion, when the police enquired my neighbours they came to know that I have committed the crime. When the police enquired me about the crime, I admitted that I committed the murder and gave my statement to the Police. When I received a Subpoena from the XIX Metropolitan Magistrate, Chennai, I appeared on my own and gave the statement without any compulsion. I understand Tamil a little".

31. The next circumstance relied upon by the prosecution is recovery of gold ornaments belonging to some of the deceased, at the instance of the appellant. The appellant was arrested on 18.2.2001 by Abraham Cherian, (PW 59), Deputy Superintendent of Police. On the information given by the appellant on 20.2.2001, Ext.P24(a), that the gold ornaments were entrusted to Suresh, PW 74, the Dy.S.P. along with the appellant went to Mullurkara, where the appellant identified Suresh, PW 74. The said witness informed Dy.S.P. that 'gold ornaments were pledged with Poomala Financiers, Mullurkara, Thrissur, owned by Gangadharan, PW 25. Dy.S.P. along with appellant and Suresh then went to Poomala Financiers. PW 25 produced MO.1 series gold anklets, MO.2 series gold chain (large) and MO.3 series gold chain (small). The same were seized as per Ext.P24 mahazar on 20.2.2001 at 1.30 p.m. by the Dy.S.P. The mahazar was witnessed by Abdul Salam, PW26 and Vinod, PW 27. As per Ext.P26, the Dy.S.P. had seized the token for pledging MO.1 to MO.3 as produced by PW 74 on 20.2.2001 at 1 p.m. Ext.P26 was witnessed by Abdul Salam and Vinod,

PW 26 and PW 27 respectively. Ext.P25 bond prepared by PW 25 for pledging the gold ornaments was seized by Dy.S.P.. It was again witnessed by PW 26 and PW 27. The gold ornaments were identified by Kochumary, (PW 45), the sister of deceased Augustine and deceased Kochurani and daughter of deceased Clara as MO.1 anklets of Kochu Rani, MO.2 gold chain of Mary and MO.3 gold chain of Kochurani.

32. In the course of investigation, the police recovered the weapons of the offence. As per Ext.P38 report made by PW 54, MO.4 (item 39 in Ext.P38) contain blood 'O' group. The weapons recovered were MO.12 axe, MO.13 knife, MO.14 Chopper (Vakkathy), MO.15 knife, MO.57 electric code wire and MO.58 pin plug code wire, which were seized by Circle Inspector of Police, PW 58, from the scene of occurrence near the dead body and were sent for chemical examination. As per report Ext.P37, items 28, 29 and 30 contained 'O' group blood.

33. With regard to the first four circumstances enumerated in paragraph 10 of the judgment, as mentioned above, there is no contention raised by the counsel for the

appellant, even though, it is urged by him that these circumstances in the absence of proof of others would be of no meaning and consequence and so far as the other circumstances are concerned, the prosecution miserably failed to prove the same. Time is now ripe to evaluate the contentions raised by the learned counsel with regard to other circumstances mentioned in paragraph 10.

34. With regard to recovery of clothes of the appellant pursuant to the statement made by him under Section 27 of the Indian Evidence Act, it is urged by the learned counsel that the place of recovery of clothes said to be belonging to the appellant is accessible to all and sundry. It was not such a place which may be known to the appellant alone. It is further urged by him that the statement made by two recovery witnesses, PW 68 and PW 73, is discrepant in material particulars. We find no substance in the contentions raised by the learned counsel as noted above. Ismail, PW 68, stated in his examination in chief that the place of recovery has growth of bushes all over the area. There was no cross examination even to be suggestive that the

statement made by him was incorrect. T.P.Jose Paulose, PW 73, stated that the appellant, Dy.S.P. and the policemen had together entered the compound through its damaged gate. In his cross examination, he stated that the gate was fastened using a chain and locked using a padlock. That was old and there was wild growth of plants and when it was given a pull, it opened. The padlock of the gate was pulled open by him and another young man. The spot where the packet was lying was 6 to 7 metres away from the gate. The cover was lying under the bushes and was not visible from outside. This witness was also not cross examined even to be suggestive that the place from where the recovery was made was not full of bushes and the gate leading to that place was not locked. He was also put no question in cross examination to show that the place was accessible to all.

35. Abraham Cheriyan, Dy.S.P. examined as PW 59, who investigated the case, stated in the examination in chief that on the basis of the statement made by the appellant, police had reached the place and they recovered a plastic kit from the

bushy area shown by the appellant from a bushy plot area with no human dwelling. We have not been shown any cross examination adverted to this witness that may show that the place of recovery was accessible to all. The contention of the learned counsel for the appellant as noted above, is thus factually incorrect. In so far as the discrepancy in the statement made by PW 68 and PW 73 is concerned, all that has been urged is that whereas Ismail stated that they had not seen blood on any other article but for the kerchief, T.P.Jose Paulose stated that all items taken from the plastic cover were blood stained. The statement of these witnesses were recorded on 9.11.2004 and 25.11.2004 after more than three years from the date of occurrence. It is possible that whereas in the memory of one, all the clothes taken out from the cover were blood stained, in the memory of the other, only one item might have been blood stained. Both the witnesses are absolutely independent. They had no connection whatsoever with any of the deceased nor they had any enmity with the appellant. The statements made by them, but for the discrepancy as pointed out by the learned counsel, are consistent

and inspire confidence. This circumstance in considered view of this court stands fully established.

36. With regard to finger prints lifted from the scene of occurrence which matched with that of the appellant, all that has been urged by the counsel for the appellant is that the prosecution lead no evidence to show as to from which place from the house of the deceased the finger prints were lifted and whether the report of the expert is based upon the lifted finger prints or photographic prints. In that connection, it is urged by the learned counsel that chance finger prints found in the scene of occurrence could be taken either by photograph or by lifting. Even though PW 7 has deposed that chance print found on the scene of crime was a visible one, he took those prints by photograph and also by lifting and therefore, the lifting of the finger prints from the scene of occurrence and the comparison of the said finger prints with that of the appellant is doubtful as is also an outcome of a defective procedure. We find no substance in the aforesaid contention of the learned counsel. We have already mentioned that sample blood of the deceased was

collected by P.Jameela, PW 54. She prepared the report, Ext.P38, according to which the sample blood of the deceased belong to O+ and the sample blood of the appellant is B+ and that this aspect of the case remained undisputed. On 8.1.2001, V.O.Jose - PW6, photographer of Police Department along with Yogeendra Sakhya, PW7, visited the scene of occurrence. Photos of nine chance print and one palm portion were marked after inspecting the scene. On 18.2.2001, left thumb impression of the appellant was taken from the specimen finger print slip. The photographic enlargements of the chance print marked as A-3 and of the left thumb impression taken on 18.4.2001 were given to the Testor Inspector on 22.4.2001. PW 7 who was with PW 6 and inspected the scene of crime had developed and marked nine chance fingerprints and one palm portion from different places and articles. From among the nine chance fingerprints, one fingerprint marked as A-3 was bloodstained. The developed finger impressions were photographed by PW 6. A-3 was also photographed. The photocopies of the chance fingerprints were received from PW 6 on 10.1.2001. On examination, it was

found that five chance fingerprints among the nine fingerprints were unfit for comparison, for want of sufficient ridge peculiarities. As a part of elimination process, the comparable chance fingerprints were compared with the finger impressions of the six deceased. No fingerprint had been eliminated. Later, the fingerprints capable of comparison were compared with the entire bureau records but still remained untraced. On 12.1.2001, the photocopies of the comparable chance fingerprints were sent to the Director, Fingerprint Bureau, Trivandrum for comparison in the computerised data base, but they remained untraced. On 18.1.2001, the photocopies of the chance prints were forwarded to all District Fingerprint Bureaus. They still remained untraced. The chance fingerprints were also compared with finger impressions of 157 suspected persons received from the Dy.S.P., Aluva. But they still remained untraced. The fingerprint slip of the appellant was received from the Dy.S.P. on 19.2.2001 and on comparison with the fingerprint slip the blood stained chance fingerprint developed and marked as A-3 from the left door post of a door of the scene of crime was identified as the left thumb

impression of the appellant. It is absolutely clear from the statement made by PW7 that marked A-3 chance fingerprint of scene of crime was taken from the left door post of the door, which was identified as the left thumb impression of the appellant. The contention of the learned counsel that no evidence was led to show as to from where the chance fingerprints were lifted is thus not correct. Even though, as mentioned by the learned counsel as noted above, in the present case fingerprints from the scene of occurrence were taken by both methods as mentioned above, but nothing further has been mentioned as to how this procedure was defective and how such method adopted by the investigation agency would not lead to a proper comparison with the fingerprint of the appellant. It is too well known that science of identifying thumb impression is an exact science and does not admit of any mistake or doubt. There is no forgery possible with regard to the thumb impression, whereas an expert in forgery can write exactly like the original handwriting of another person. Reference in this connection be made to the judgment of the Supreme Court in **Jaspal Singh v. State of**

Punjab, AIR 1979 SC 1708.

37. With regard to the recovery of scalp hair of the appellant from the body of deceased Jesmon, learned counsel contends that PW 53 biologist would say that himself and physicist had jointly inspected the scene of crime on 8.1.2001 and prepared the report. It is further stated that during the examination in chief, PW 53 deposed that he found three scalp hairs in the body of Jesmon with the help of magnifying glass and he instructed the officer who was preparing the inquest to seize it. But in the report, it is stated that he has noticed only one black hair on the dead body. In the cross examination, PW 53 admitted that he could not go beyond the report and only one hair was taken from the body. This discrepancy in the report and the oral statement made by PW 53 would create a doubt with regard to the three hairs found on the body of Jesmon; thus contends the counsel. In the context of the facts of the case, we find no substance in this contention of the learned counsel as well. Raghavan Pillai, PW 51, conducted the inquest on the

dead body of Jesmon. At that time, PW 53 - Parameswaran Nair, Assistant Director of Biology Division and PW 61 - M.K.Ajith Kumar, Scientific Assistant were also present and had conducted the scene examination report on 8.1.2001. PW 53 while examining deceased Jesmon found a thick black hair in the left hand which was collected and packed. PW 61 detected two hairs in the body of Jesmon, one below the cheek and one at the neck. Those two hairs were directed to be collected by PW 51. The report, Ext.P36 would show that item 31(a) were the two hairs collected from the neck and cheek of Jesmon, whereas item 31 (b) was the hair collected from the left hand of Jesmon. From the evidence as mentioned above, it is thus clear that PW 53 had found a thick black hair in the left hand of deceased Jesmon and PW 61 found two hairs, one below the cheek and one at the neck. Those two hairs were also collected by PW 51. There is no manner of doubt that the scene was inspected and hairs lifted from the dead body of Jesmon on 8.1.2001 far before the appellant was arrested. Once, there is no dispute with regard to lifting of hair on 8.1.2001, the mere fact that in the report the

mention was of one hair would be of no meaning and consequence, particularly when the reports Exts.P35 and P36 would show collecting and packing of three hairs from the body of Jesmon. Learned counsel while pointing out the above discrepancy, has referred to the scene examination report, Ext.D12. It is no doubt true that in the said report mention is of a thick black hair found in the left hand of Jesmon, but it could be a case of inadvertent omission and satisfactorily explained by the two other witnesses. Assuming, however, that only one thick black hair was collected from the left hand of Jesmon, it would not make the least difference as even if one hair was found in the left hand of Jesmon which matched with the hair of the appellant, it would lead to the same conclusion.

38. The extra judicial confession said to have been made by the appellant before C.C.Varghese, K.A.Salim and V.K.Rajeevan, the wardens of the jail where the appellant was remanded has been very seriously criticised by the learned counsel appearing for the appellant. He contends that these

confessions are wholly inadmissible being made to jail wardens when the appellant was in custody. All the three jail wardens made a stereo type statement which for that reason alone would inspire no confidence. There appears to be substance in this contention of the learned counsel. Indeed, the appellant was in judicial custody. There was no occasion for the appellant at that stage to confess his guilt and that too before such persons who would far from helping him would rather be interested in success of the prosecution case. Normally extra judicial confessions are made before persons who may be in a position to help the accused. All the jail wardens have made similar statements which again go to show that the appellant may not have confessed his guilt before them. There does not appear to be any reason for the appellant to have made a confession before three jail wardens. Having confessed before one jail warden, there would have been no occasion for the appellant to have done the same before other jail wardens.

39. In so far as the extra judicial confession made by the appellant to his wife through two inland letters is concerned, the same again appears to be doubtful. MO 11 and MO 11(a) are the two inland letters. Both these letters have been posted from Bombay. The seal of the postal authorities at Bombay bears the date on both the letters as 11.2.2001 whereas the seal of the postal authorities at Aluva on both the letters is 17.2.2001. P.P.Alexander, examined as PW 42, stated that the house of the appellant was searched by police. The police had prepared the search list and he signed in it as witness. He made a mention of the items recovered during the search which includes two inland letters. He also stated that the two inland letters in torn condition were recovered from beneath the bed. N.A.Vinod Kumar, PW 43, the postman stated that MO 11 letter was posted from Bombay and according to the seal, the date is seen as 11.2.2001. According to the seal, it was received in Aluva Post Office on 17.2.2001. MO 11(a) letter was also posted from Bombay. The date in the seal is not clear. However, it was received in Aluva Post Office on 17.2.2001. These two inland

letters were delivered to the addressee by him. Peethambaran, examined as PW 44, who knew the appellant identified his handwriting through the log book of the vehicle. He stated that the letters, MO 11 and MO 11(a) were in the handwriting of the appellant. Ravidas, the hand writing expert, examined as PW 46, on comparison found the inland letters - MO 11 and Mo 11(a) contained the handwriting of the appellant. In so far as writing of letters, MO 11 and MO 11(a) by the appellant is concerned, it is not disputed. The appellant admits that, but states that he was forced to write these letters. The letters were posted from Bombay and reached Aluva at the residence of the appellant also is not in dispute. But what however is seriously disputed is whether the letters were voluntarily written by the appellant or forced upon him, by putting him into physical torture as is the case of the appellant. The appellant had reached Bombay from Damam on 9.2.2001. He was brought to Calicut and then to Aluva from Bombay on 10.2.2001 by the police. The investigating officer, PW 59 admitted in the cross examination that the appellant was questioned in Bombay on 9.2.2001 and

later, on many days he was summoned and questioned. He was questioned on 11.2.2001, 13.2.2001, 16.2.2001, 17.2.2001 and 18.2.2001. He was formally arrested on 18.2.2001. The two inland letters, it is absolutely clear from the postal seal of Bombay were written and posted when the appellant was under interrogation by the police. Surely, he was not formally arrested by the police up to 17.2.2001. That would mean the police had not made up its mind to arrest him and therefore, it is quite natural that he would not confess the guilt by that time. During serious interrogation when the appellant had not admitted his guilt, it is not probable that he would have created evidence against him by writing letters to his wife and given the same to Shajudeen-CW 144 and Majeed - CW 145, for posting it from Bombay as is the prosecution case. Both Shajudeen and Majeed were not examined by the prosecution and so much so, even though declared hostile, Jemma Antony, PW 19, the wife of the appellant was not cross examined with regard to receipt of these inland letters. In the circumstances as mentioned above, it is not possible to believe that the appellant made the extra judicial

confession by letters MO 11 and MO 11(a). No reliance can be placed on this piece of circumstantial evidence.

40. In so far as, however, the extra judicial confession made by the appellant to Dr.C.Anilakumari, PW60, is concerned, the same has been proved and there is hardly any contention raised with regard to the deposition made by her, who is absolutely an independent witness. While deposing as PW 60, she stated that she was working as Assistant Surgeon in Taluk Headquarters Hospital, Aluva on 18.2.2001. She examined the appellant as per the request of the Dy.S.P. and prepared and issued a certificate, Ext.P 48. She found two injuries on the person of the appellant, mention whereof has already been made. She further stated that history and alleged cause of injury given to her was that on 6th January, 2001, at 0 O'Clock when the appellant hit Kochurani with a stool, he received an injury on his finger with the knife. The said history and alleged cause of injury was stated before her by the appellant. In the cross examination, she stated that they do record the alleged cause of injury and history being given by the injured, if oriented. If not

oriented, they would record the name of such person who gives the history and alleged cause. She denied the suggestion that the appellant had never given the information noted in certificate. She rather stated that the appellant had himself stated it before her. With regard to some overwriting at the top of Ext.P48, she stated that she had forgotten at first to keep the carbon for getting the carbon copy. Then she put it and wrote that portion again and that was why such overwriting occurred at that portion. Nothing at all could be elicited from the cross examination adverted to her that may detract her from her sworn testimony. We have already mentioned that she is an independent witness and could not be under the influence of police to falsely record the injury and alleged cause of injury. This circumstance stands fully proved.

41. The next chain in the circumstances is the confession made by the appellant before PW 65. Jayanthi, 11th Judge, Court of Small Causes, Chennai, examined as PW 65. We have already made a mention of the statement made by her. All that has been urged by the learned counsel for the appellant is

Confession
to PW 65

that no time was given to the appellant to reflect and further that the appellant would not know Tamil. He only knew Malayalam and further that there was no occasion for the police to have taken him to Chennai. There is no merit whatsoever, in the contention of the learned counsel as noted above. The Magistrate clearly stated that she had summoned the appellant who appeared before her at 11 a.m. on 22.10.2002. Except herself, the translator and the typist, no one was present in the court hall. The appellant was allowed to rest for ten minutes. She had narrated to the appellant about the procedure and explained to him that he was not bound to give evidence and later it may be against him. He agreed and said that he was giving the evidence without any compulsion or coercion. He voluntarily made the statement. She had complied with all legal formalities. She herself had stated that the appellant could not speak in Tamil and therefore a translator was brought. The statement recorded was explained to him in Malayalam. It was read over to him and he agreed to it and signed it. In the cross examination, she stated that the translator was brought by the CBI and the

statement of the appellant was recorded verbatim. She also stated in re-examination that she could speak and understand Malayalam, even though she could not write Malayalam. But for giving her a suggestion that she had not complied with the legal formalities, nothing worthwhile was put to her in the cross examination. There could be no occasion or reason for a Judicial Magistrate to make a false statement nor it has been so suggested. In so far as the formalities are concerned, it appears she complied with the same. Sufficient time was given to the appellant to reflect and he made the statement voluntarily. The appellant having been taken to Madras creates no suspicion whatsoever. It may be recalled that it was at the instance of the appellant that he was taken to Madras as he never wanted to make any statement within the State of Kerala. Be that as it may, the statement made by the appellant before the Magistrate at Madras rather inspires more confidence. This circumstance relied upon by the prosecution also stands proved.

42. In so far as recovery of gold ornaments belonging to some of the deceased on the basis of information furnished by

the appellant himself is concerned, the same does not appear to have been satisfactorily proved by the prosecution. It may be recalled that it is on the basis of the statement given by the appellant that the police contacted Suresh, PW 74, who as is the case of prosecution, had pledged the gold ornaments on asking by the appellant. He had pledged gold ornaments to Gangadharan, PW 25. The mahazar witnesses of the recovery of gold ornaments are Abdul Salam, PW 26 and Vinod, PW 27. MO 1 is an anklet weighing 16 grams, MO2 is a big chain of 55 grams whereas MO3 is a small chain of 15 grams. None of these ornaments were recovered on the basis of the statement made under Section 27 of the Evidence Act. As mentioned above, the appellant informed that he had handed over gold ornaments to Suresh, PW 74, for pledging the same for raising money and asked him to deposit it in his bank account. The prosecution is also not relying upon the recovery of gold ornaments pursuant to the statement made by the appellant u/s.27 of the Evidence Act. That being so, the evidence of Suresh, PW 74 and Gangadharan, PW 25 shall have to be

critically examined. As per the statement made by PW 74, it was on 8.1.2001 that the appellant met him at Bombay. On that date itself this witness knew that series of murders had taken place at Aluva. He had seen in the TV news. It is on the next day that the appellant called him and took out a plastic cover from the pocket of his pants and told him that there were two chains and pair of anklets and requested him to send money to the appellant's bank account after selling it or pledging it. He did not accept it saying that he was not familiar with bank procedures. Again in the evening, he met the appellant who told him that he was going in the morning of the next day and he should sell or pledge the gold ornaments and deposit the amount in the bank and if he needed any money, he too can take it from the same. He received the gold ornaments. He came to Kerala on 16.1.2001 and on 31.1.2001 he pledged the gold handed over to him to Poomala Financiers and then wrote a letter to the wife of the appellant stating therein that appellant has entrusted gold to him and had pledged it and the same could be released by her. Later, on 20.2.2001 the police came to his house with the

appellant and he told the police that he had been entrusted with the gold ornaments which he had pledged. Police took him and the appellant to Poomala Financiers from where the gold ornaments were recovered. In the cross examination, he stated that he does not remember whether he had told the police that he learned from the newspaper at Bombay that a person by name Antony was a suspect in this case and he suspected whether that person was appellant who gave him the gold. But when confronted with the statement he stated that the police might have recorded it, but the same was not correct. He further stated that on reaching Kerala, seeing newspapers, he doubted whether the appellant could be the suspect in the mass murder case. However, he did not feel that the gold ornaments given to him would have any connection with the murders. When he came back to Kerala, he did not tell anyone that the appellant has entrusted gold ornaments to him. He pledged the gold ornaments secretly without knowledge of the members of his family. He did not remember if he was made to sign any document by PW 25. From the deposition made by this witness,

it is quite clear that he had come to know about the mass murders in Aluva Town where the appellant resided. A suspicion did arise that the gold ornaments entrusted to him for pledging might have some connection with the murders. He had made a statement to that effect, even though he backed out from that and was confronted with the same. He did not talk anything about the gold ornaments handed over to him by the appellant and secretly pledged them. It appears rather doubtful, in these circumstances, he would have run the risk of himself becoming a suspect for a heinous crime. It may be recalled that he had pledged ornaments on 31.1.2001, far after the murders were committed and at that time, it was known to all concerned that the appellant was a suspect in the commission of the crime. Gangadharan, PW 25, deposed that concerned entry of pledging of gold was on the 52nd page in the register regarding gold loans. The ornaments were pledged for Rs.5,000/- on 31.1.2001. The police had taken the Register, Ext.P22, from him. They took the application form of the pledge. In the cross examination, he stated that the pledge register should be maintained and the

bond written for that should be kept. There is also a copy of the daily accounts and the daily transactions are accurately entered into the day book. The day book was also shown to the police but they did not take it with them. He stated that he would not remember whether he had told the police that ledger could not be produced because it was not received after printing. Ext.P22 register was not received after printing on 6.1.2001 and 20.2.2001. From the statement made by this witness, it is quite apparent that no details of the pledge was mentioned in the ledger and register Ext.P22 was not available as it was not received after printing on 6.1.2001 and 20.2.2001. That apart, what really clinches the issue is the statement made by Joseph, examined as PW1. He stated that two days after the incident he had gone to the house of the deceased with the police. On searching the house, Savings Deposit Receipts worth Rs.45 lakhs were recovered from the steel almirah of Augustine's bedroom, gold ornaments worth 55 sovereigns were recovered from the almirah and currency notes worth Rs.1½ lakhs were also recovered from that room from a small suitcase in a mat. In the

next room where the Augustine's mother used to sleep, currency notes worth Rs.45,000/- and 45 sovereigns of gold ornaments kept inside the almirah were also recovered. It is the case of the prosecution that the appellant was in need of money and had taken money after committing crimes. There was lot of currency and gold ornaments available in the house. The appellant, if his motive might have been to enrich himself, would have surely taken the cash and gold ornaments lying in the house. It rather appears that he took that much of money only which was required to be paid to the travel agent and others from whom he had borrowed. If that be so, there was no occasion for him to have removed the gold ornaments worn by the deceased from the dead bodies. There was no dearth of gold ornaments in the house which could have been easily taken. What, however, completely nails this circumstance is the statement made by Mary, PW 45, who admitted in the cross examination that the gold ornaments which she has identified in the court were shown to her by the police in the police station after the appellant was arrested. It may be true that Mary would surely identify the gold

ornaments belonging to her sister and other relatives as ladies do know the ornaments purchased and worn by their near relatives. But, once the ornaments were shown to her by the police without formalities of identifying the same from amongst other similar gold ornaments, it becomes highly doubtful whether the gold ornaments belonged to the deceased even if it is assumed that they were recovered by the police, in the way and manner as suggested. This circumstance relied upon by the prosecution cannot be accepted.

43. Before we may part with the discussion on evidence based upon the contentions raised by the learned counsel for the parties, we may mention that Mr.Ramkumar, learned counsel for the appellant throughout the arguments has been criticizing the prosecution story by urging that massive killing in one night could not be handiwork of an individual and the occurrence could not have taken place in the way and manner as suggested by the prosecution. With a view, however, to make the argument good all that is urged is that a petition in

the nature of public interest during the course of investigation came to be filed in this court complaining that the police is not proceeding to book all the culprits as taking into account the nature of the crime, one person alone could not be involved. Indeed, such a petition was filed and this Court had in fact ordered investigation of the case by the C.B.I. but, it is the conceded position that the C.B.I. after investigation also had reached the same conclusion arrived at by the police in arresting and prosecuting the appellant. In so far as the evidence is concerned, the aforesaid contention is sought to be supported only on one count. By referring to the postmortem report of Kochurani where the doctor has stated in his examination in chief that pubic hair and vaginal smear were taken and handed over to the investigating officer and if human spermatozoa was found in the pubic hair and vaginal smear, there was a chance of sexual intercourse prior to death; it was urged that there must be at least one more person who would have committed forcible sexual intercourse with Kochurani prior to her death. There

appears to be no merit in the aforesaid contention of the learned counsel. We may mention that even though the investigation was handed over to the C.B.I. by the order passed by this Court, no different conclusions followed. In fact, the C.B.I. confirmed the investigation made by the police. In the investigation carried out by the C.B.I. the conclusion arrived was that the appellant alone was responsible for the murders. It is no doubt true that Dr.Johny Cyriac, PW 72, in his examination in chief stated that pubic hair and vaginal smear were taken and handed over to the investigating officer and if human spermatozoa was there in the pubic hair or vaginal smear, there was chance of sexual intercourse prior to death. It is not clear from the statement made by the doctor in examination in chief that pubic hair and vaginal smear handed over to the investigating officer on further examination revealed presence of human spermatozoa. No question was put to the doctor in cross examination which may show that on examination of pubic hair and vaginal smear, human spermatozoa was in fact found. Assuming it to be so, the statement made by the doctor who

further stated that it was possible that the sexual intercourse occurred some hours or days prior to death and in a living person, spermatozoa could be found up to 26 hours and sometimes up to two or three days and in dead body it may be found up to one or two weeks cannot be ignored. Kochurani, aged 37 years, as mentioned above was living with her brother at the relevant time. If spermatozoa was found in the pubic hair and vaginal smear, which could indeed be found up to 26 hours and sometimes up to two or three days and in dead body it may be found up to one or two weeks, it cannot be concluded that Kochurani had sexual intercourse with consent or otherwise immediately prior to the occurrence. The DNA test exonerated the appellant and Augustine, and enquiry to her rendezvous on the past day thereby becomes irrelevant.

44. The recovery of items including the weapons of offence from the scene of occurrence may not be of much use to the prosecution case and therefore no arguments have been raised on such circumstance by either of the sides.

45. From the discussion made above, we hold that whereas the circumstances enumerated as (i) to (vii), part of serial No.(viii) regarding extra judicial confession to PW 60, (x) and (xii) in paragraph 10 mentioned above stand proved, the prosecution could not prove circumstances enumerated as part of serial No.(viii) regarding extra judicial confession to jail wardens, (ix) and (xi) in the said paragraph.

46. It is too well settled proposition of law that when a case rests upon circumstantial evidence, such evidence must satisfy three tests, viz., (1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) 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. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The

circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. Reference in this connection be made to the decision of the Supreme Court in **Gambhir v. State of Maharashtra**, 1982 S.C.C. (Cri) 431. Another proposition of law that too is well entrenched is that when a case is based upon circumstantial evidence, it is the combined effect of all the proved facts which is taken together to find out that it is conclusive in establishing the guilt of the accused. In the process of such evaluation if some of the circumstance may not be proved but the rest of the circumstances that may be proved which may lead to an irresistible conclusion that on the basis thereof conviction can be recorded, such circumstances being conclusive of the guilt of the accused, the mere fact that one or two circumstances may not be proved would not justify an order of acquittal. Reference in this connection be made made to the decision of the Supreme Court in **State of A.P. v. I.B.S.Prasada Rao and others**, AIR 1970 SC 648.

47. In the present case, it is no doubt true that the circumstances enumerated at Sl.No.8 regarding extra judicial confession made to jail wardens, (ix) and (xi) in paragraph 10 have not been proved. But this Court is of the considered view that the other circumstances mentioned in paragraph 10 which have been conclusively proved lead to an irresistible conclusion that the appellant alone committed the crimes. The combined effect of proved circumstances taken together is conclusive in establishing the guilt of the appellant. The appellant had motive to commit the crime. He was present in the house of the deceased persons at the relevant time on the intervening night of 6th and 7th of January, 2001. He was absent from his own house in the intervening night of 6th and 7th of January 2001. The prosecution further proved the blood stained finger print taken from the scene of occurrence that matched with that of the appellant, which fact would directly connect the appellant to the crime. The science of identifying thumb impression is a perfect science and would admit no mistake or doubt. The finger prints of no two human beings in the world are identical and it is for

that reason the science of identifying fingerprint of the thumb impression is exact. The proof of finger print impression on the left door post smeared with blood, lends credence to the prosecution case. The recovery of scalp hair, may be one or three, from the body of Jesmon which hair or hairs tally with the scalp hair of the appellant once again shows that appellant alone committed the crime. The two circumstances as mentioned above, in fact, in our view, coupled with the first four circumstances enumerated in paragraph 10 would be enough to return a positive finding of guilt. However, in the present case, the prosecution has further proved recovery of clothes of the appellant pursuant to the statement made by him under Section 27 of the Evidence Act which clothes it may be repeated were found to be blood stained containing blood group 'O' that belong to deceased persons and 'B+' belonging to the appellant. The extra judicial confession made by the appellant to Dr.Anilakumari and the confession made by him before the Magistrate, would completely seal the fate of the case. It is said that men may lie but the circumstances do not. A criminal case depending upon

eye witnesses sometimes may fail as there is scope depending upon the statement made by the said witness to believe or disbelieve him, but when circumstances such as the one in the present case are proved, there would be no scope whatsoever to disbelieve or even to suspect. The only irresistible conclusion would be to return a finding of guilt.

48. In all fairness to Mr.Ramakumar, learned counsel for the appellant, we may mention that he has referred to certain judicial precedents, but inasmuch as such judicial precedents are by and large on the contentions that we have already accepted, there is no need to burden this judgment further to make reference thereof. We may also mention that after arguing at full length, Mr.Ramakumar, on conclusion of the arguments of the State Counsel has given written arguments. We have gone through the same and to the extent we have found some relevance therein, we have made a mention thereof.

49. On the question of sentence all that has been urged before us by Mr.Ramakumar is that the present is not a 'rarest of rare' case where the appellant should be given capital

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punishment. No arguments have been raised to show any mitigating circumstances. We have reconsidered and yet reconsidered every aspect of the case. On every reconsideration, our view gets more and more strengthened that in the present case, death penalty has to be imposed. It is indeed a rarest of rare case. In this country of seers and sages, even a worm unconsciously trampled under the foot is considered to be a sin. Guided and motivated by tradition of non-violence, people in this Country do not even think of physically harming anyone. Mahatma Gandhi, the Father of the Nation and many other stalwarts brought freedom to this Nation from the British Empire by fighting a bloodless war of independence. The appellant has trampled these lofty ideals and traditions of this country under his foot. He extinguished all members of a family in a most cruel and gruesome manner. He became instrumental in causing black and unmitigated tragedy and caused shudders to the society. In causing death of six members of a family, he acted in a most cruel and diabolical manner. He used every possible instrument in the house to cause their death. As the confession

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goes if knives would not be enough to kill the inmates, he would use furniture in the house to strike them, and if that be not enough he would axe them, and even if that be not enough he would electrocute them and if still not enough he would strangle them. In cruelty and brutality, he exceeded all limits. It is unimaginable, unthinkable and difficult to believe that after causing six murders by splashing blood all around the house, he would sit in the same house for almost five hours as if he was not sitting amongst six dead people, but amongst trophies won by him in a prestigious event. He has no respect, no care, no dignity, no mercy for human life. His living in this world is most dangerous to the society. We need not refer to various judicial precedents as every case has its own facts, but would hasten to make reference to only one case which appears nearest on facts of the present case. In **Dayanidhi Bisoi v. State of Orissa**, 2003 CrL.L.J. 3697 (SC), a case which was based upon circumstantial evidence, accused was related to the deceased. He was enjoying hospitality and kindness of deceased in the evening. He killed entire family of deceased which included a

three years child in the night. Murders were committed when the victims were sleeping and there was no provocation from the victims. The motive was only to gain financial benefits. The Supreme Court found it to be case of cold blooded murder with premeditated approach of accused. It was held to be a rarest of rare case. The accused was sentenced to death.

In view of the discussions made above, we accept reference, D.S.R.No.5 of 2005 made by the Sessions Judge and confirm the death sentence. The appeal preferred by the appellant, Criminal Appeal No.385 of 2005, is dismissed.

Sd/-
V.K. BALI,
CHIEF JUSTICE.

TRUE COPY

DK.

Sd/-
M. RAMACHANDRAN,
JUDGE.


Section Officer

~~(True copy)~~

PA to Judge