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ANNEXURE - P/1

IN THE COURT OF THE SPECIAL JUDGE (SPE/CBI)-I & III ADDITIONAL
SESSIONS JUDGE, ERNAKULAM

Present: B.Kamal Pasha, B.Sc., LL.B, Special Judge (SPE/CBI)-I

Monday, the 31st day of January, 2005/11th Magha, 1926

SESSIONS CASE NO. 154 OF 2004

Complainant: Superintendent of Police, CBI/SCB/Chennai

By Special Prosecutor Sri. Purushothaman Nair

Accused: M.A.Antony @ Antappan, aged 39 years, S/o. Augusty,
Manjooran House, Vatikan Street, Aluwa West Village,
Ernakulam

By Adv. Rajeev Nambeesan

Offences Charged: Under Section 449, 379, 302, 380 & 201 I.P.C.

Plea of the accused: Not guilty

Finding: The accused is guilty of the offences punishable under Sections
449, 379, 380 and 201 of the Indian Penal Code and convict him
thereunder.

Sentence or order: The accused is sentenced to be hanged by the neck till he is dead
under Section 302 IPC. The accused is further sentenced to
undergo imprisonment for life under Section 449 IPC. The
accused is further sentenced to undergo Rigorous Imprisonment
for 7 years under Section 380 IPC. The accused is further
sentenced to undergo Rigorous Imprisonment for 7 years under
Section 201 IPC. In view of the sentence imposed ie., under
Section 380, I.P.C., no separate sentence is imposed under
Section 379 IPC. All the substantiative sentences of
imprisonment shall run concurrently.

Description of the accused

Name of the Police Station and

Crime No. of the offence:

Crime No. 15/2001, Aluva Police Station

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Name: M.A.Anotny
Father's Name: Augusty
Occupation: Driver
Residence: Manjooran House, Vatikan Street,
Aluva West Village, Ernakulam
Date of:
Occurrence: 06.01.2001
Complaint: 18.05.2001
Apprehension: 18.02.2001
Released on bail: 25.01.2002
Commitment: 11.06.2001
Commencement of trial: 09.09.2004
Close of trial: 10.01.2005
Sentence of order 31.01.2005
Service of copy of judgment or
finding on accused. 02.02.2005
Explanation for delay: 17

This case came before me for hearing on 20.01.2005 and stood over for consideration to the 31st day of January 2005, the court on the same day found the accused guilty and stood over for hearing on the question of sentence on 2nd day of February, 2005, heard both sides and passed, the same day the following judgment.

S C No.154/2004

JUDGMENT

1. The accused namely Antony @ Antappan, aged 39, S/o Augusty, Manjooran House, Vathican Street, Aluva West Village, Ernakulam District, Kerala stands charge sheeted by the Superintendent of Police,

CBI/SCB/Chennai for the offences punishable under sections 449, 379, 302, 380 and 201 of the Indian Penal Code.

2. Greed of man knows no bound's. Necessity and greed together may transform humanity. Aluva Municipal Town woke up in the cold morning of 8.1.2001 with the blood chilling news that all the 6 members of the Manjooran House of Augustine at the heart of Aluva Municipal Town, are lying murdered in that house.
3. The accused was working as a driver at the Aluva Municipality on casual basis. The members of Manjooran family are his relatives. The accused was a frequent visitor at the house of deceased Augustine and family, known as Manjooran House, numbered as XII/597, Pipe Line Road, Aluva wherein deceased Augustine was residing along with his wife deceased Mary @ Baby, his children deceased Divya and deceased Jesmon, his mother deceased Clara and one of his sisters deceased Kochurani.
4. The accused was desirous in procuring an employment in Gulf and was making all attempts for the same. Finally he could not succeed in arranging a visa for Damam through PW67 Ummer who is an Agent conducting 'White Way Air Travels' at Vadanappilly, Thrissur. The accused had to pay an amount of Rs.62,000/- for the Visa. Amidst his severe financial constraints, the accused could arrange Rs.25,000/- for making the initial payment. After making the initial payment, he was frantically in search of money. For proceeding to Damam he had to leave for Mumbai on 7.1.2001. Others in the group of PW 67 had reserved their tickets by train to Mumbai. His ticket by train to Mumbai was not reserved, as he could not raise the money to be paid as balance amount.
5. The accused was closely associated with deceased Kochurani who had detached from her husband. The accused requested for funds from deceased Kochurani and she had offered to pay the amount. On 6.1.2001

around 7.30 p.m. the accused visited the aforesaid house of deceased Augustine with the intention of getting money either from deceased Kochurani or by stealing it or by any means. He engaged in conversation with deceased Kochurani, deceased Clara, deceased Mary, deceased Jesmon, and deceased Divya who were there till 8.30 p.m. At 8.30 p.m. deceased Augustine reached home after closing his shop. Then as insisted by deceased Divya and deceased Jesmon deceased Augustine went for a Malayalam Moovie namely 'Joker' at the nearby Cinema Theatre named 'Zeenath' theatre with his wife deceased Mary and children deceased Divya and deceased Jesmon. In fact, they had invited the accused also for the movie; but he declined. The accused remained there at the house and then had supper with deceased Clara and deceased Kochurani. With a view to getting the presence of Kochurani alone for obtaining the amount, the accused patiently waited there. By about 10.30 p.m. deceased Clara retired to bed. At that time deceased Kochurani was sitting on a stool opposite to the accused at the dining hall of the house and was cutting her finger nails by using a small knife while talking with the accused. On getting the presence of deceased Kochurani alone, the accused remained her about the funds offered by her. Deceased Kochurani flatly refused the request of the accused for funds. The whole edifice of expectation built by the accused in his mind for getting funds crumpled down. Then an idea cropped up in the mind of the accused that he could raise funds easily by doing away with deceased Kochurani. The accused went to the Kitchen, took a Knife, approached deceased Kochurani, and inflicted a cut on her neck. Kochurani screamed aloud. The knife slipped from the hand of the accused and fell down. On hearing the hue and cry, deceased Clara appeared there. Deceased Clara caught hold of the accused and Kochurani caught hold his legs. By holding him, deceased Clara and deceased Kochurani shouted.

The accused took MO.5 stool from nearby and hit deceased Clara on her head. On getting the blow she fell unconscious. He hit Kochurani also on her head with MO.5 stool thereby she also fell unconscious. On finding movements in Kochurani, the accused attempt to electrocute Kochurani by using MO.57 and MO.58 electric wire. On getting electric shock she screamed aloud and therefore the accused gave up that idea. Thereafter, the accused went to the store room of the house, took MO.12 axe, and inflicted fatal blows on the head of deceased Kochurani with MO.12. For ensuring the death of deceased Clara also the accused inflicted fatal blows on her head with Mo.12. The accused dragged the bodies of Kochurani and Clara from the dining hall to the kitchen of the house and then cleaned up the blood stains in the dining hall by using a piece of cloth. As the other family members who had gone for the film knew his presence at the house when they had left the house, the accused wanted to wipe out all possible evidence against him which transformed into an intention to do away with all of them.

6. The T.V. in the house was working. The accused switched of the lights in the dining hall and the bed rooms and waited for the appearance of those who had gone for the film. There was only the dim light of the working T.V. The accused awaited on a mortar fixed at the floor of the store room with MO.12 axe in his hands and was ready to inflict fatal blows on those who appear in front of the store room.
7. After the movie, when deceased Augustine home, the front door deceased Divya and deceased Jesmon reached home, the front door remained open; but they could not see Clara and Kochurani in the hall. In search of them, at first, deceased Augustine attempted to enter the Kitchen through the store room. The accused who was standing on the mortar ready with MO.12 axe, swiftly inflicted a fatal blow on the head of Augustine with MO.12. On getting the

blow Augustine staggered back and then the accused got down from the mortar and inflicted further blows on the head of Augustine with MO.12.

Seeing Augustine falling down, deceased Mary came running to the scene. On getting the presence of deceased Mary nearby, the accused inflicted a fatal

blow on her head with MO.12 axe. On getting the blow, she came to a squatting position at the entrance of the dining hall. Deceased Divya who had

gone to the bed room, came out on hearing the sound of the attacks by the

accused. On getting the glimpse of the accused standing with MO.12 ready in his hands, she retreated and ran back. The accused chased her and inflicted a

fatal blow on her head with MO.12. On getting the blow she also fell down.

On hearing the sounds, deceased Jesmon who had gone to the bedroom of Kochurani came out and tried to catch hold of the accused who was attacking

deceased Divya. The accused wriggled and extricated himself from the

clutches of deceased Jesmon and inflicted a fatal blow on the head of Jesmon

also with MO.12. After immobilizing all the said six occupants of the house,

the accused went on a killing spree and hit them many times with MO.12 on their head to ensure their death. The accused thereafter cut the veins of

Kochurani, Divya, Jesmon and Augustine using MO.13 as well as Mo.15

Knives. The accused further made use of MO.14 chopper and Mo.15 knife to

inflict injuries on the deceased. Mo.14 and Mo.15 were also taken by the

accused from the Kitchen of the house. The accused could notice movements

in Divya and in order to ensure her death, he cut her neck with Mo.13 knife.

Then she screamed. By using Mo.57 and Mo.58 electric wire, the accused

hanged her by the neck on the hinges of the door. Suspecting that Kochurani

did not die, he strangled her by using Mo.94 electric wire and hanged her

by the neck on the hinges of the door.

8. The accused ransacked the bed room of Augustine and took an amount from the cash found in the Almirah in the bed room. Then the accused removed the

gold chains worn by Clara, Augustine, Mo.2 gold chain worn by Mary and Mo.3 gold chain and Mo.1 series gold anklets worn by Kochurani. While snatching away Mo.2 gold chain from the neck of deceased Mary, by force Mo.6 "Thali" of Mary got detached from Mo.2 and fell near her dead body. Thereafter the accused remained in the house till the early hours of 7.1.2001. On 7.1.2001 in the early morning he went to the Kitchen, washed his hands and legs, and put his blood stained socks which he was wearing till then in a plastic kit. He dipped his handkerchief in the pool of blood from near the body of Augustine and drew a picture resembling "bow & arrow" on the wall between the dining hall and the store room, with a view to diverting the line of investigation. He then put his socks. By about 5.30 a.m. the accused slowly came out of the house with the aforesaid ornaments and cash. In a trice, he got out of the gate and walked down the road and reached near his house. By standing outside he could manage to take a pants and shirt from the cloth line in his through the window which remained open, without awakening PW19. He changed his clothes and kept the pants and shirts worn by him during the incident also in the aforesaid plastic it.

9. Then the accused walked down the road and reached St. Antony's church Aluva. However, he did not enter the church. After coming out of the church compound, he boarded a bus going to Chunangamveli with the intention of destroying the contents of the plastic kit. Before reaching Chunangamveli he threw the plastic kit with its contents in to the vacant land filled with bushes at the side of the road. After getting down he came back to Aluva by bus. The accused, then went to the houses of PW23 and PW24, returned the amounts which he had borrowed from them and came back to his house. Thereafter the accused joined in the company of PW67 and the group and proceeded to Bombay by train from Thrissur. They reached Bombay in the evening on 8.1.2001 and on the said night, the accused paid Rs.18,000/- being the balance

amount to PW67. On 9.1.2001 in the evening the accused entrusted MO.1 series, Mo.2 and Mo.3 to PW74 Suresh belongs to Mullorkkara, Thrissur who was also present at Bombay, with a request to sell it or pledge it and to deposit the amount after appropriating if PW74 wanted anything out of it, in the bank account of the accused in South Indian Bank Aluva. The accused gave PW74 his bank account number at the South Indian Bank, Aluva. By the morning flight of 10.1.2001, he proceeded to Damam and safely reached there.

10. On 6.1.2001 deceased Mary was present at her family house situated at the north end of the market road, Ernakulam along with her aged father PW2, aged mother and her brother PW1. As the wife of PW1 had gone to her house, deceased Mary had promised to reach the house again at 9.30 a.m. On 7.1.2001 for attending her aged parents. Even though Pw.1.... and his parents were awaiting for the presence of Mary on 2.1.2001 she did not come. When they telephoned to Manjooran house, nobody lifted the phone even though they heard its ringing sound. In the afternoon PW2 in his anxiety contacted PW10 who is the husband of the second sister of deceased Augustine named Lilly and informed him about it. After making some enquiries over the phone, PW10 rang back PW22 and informed him that the house remained closed and they might have gone out. Even after another attempt over the phone they could not get a concrete idea and the tension mounted in their minds. By about 8.30 p.m. On 7.1.2001 PW2 directed PW to go directly to the house of Augustine at Aluva. and to make an enquiry. By about 9.30 p.m. PW1 along with his brother in law named Sunny proceeded to Aluva and reached there at the house of Augustine by about 10 p.m. They could not see any lights in the house. A curtain was hanging in front of the front door. When they tried to knock the door they could realize that one of the planks of the front door remained open. It was not visible from outside on account of the door curtain. In the light of the torch they could see Mary sitting at the floor in a squatting

their body charts marked as Ext.P80 series, P82 series, P84 series and P86 series respectively.

12. On 8.1.2001 at 9.30 a.m. PW58 prepared Ext.P40 Scene Mahazar. As per the orders of the South Zone I.G, the investigation was handed over to PW59 Deputy Superintendent of Police, Aluva on 9.1.2001. At 9.00 a.m. On 9.1.2001 PW59 prepared Ext.P29 detailed Scene Mahazar and continued with the investigation.
13. Pw59 could bring back the accused from Saudi Arabia to Bombay on 9.2.2001 and then to his house via Karipoor. Thereafter on various dates the accused was questioned by PW59 by procuring his presence through Mo.51 series notices. PW59 placed the accused under arrest at 11a.m. On 18.2.2001 at the Inspection Bunglow of the Kalady Plantations. PW59 filed Ext.P45 report before court for incorporating sections 449, 379, 380 and 461 IPC and the name of the accused, in the crime.
14. The accused was produced before court and his custody was obtained. Through Ext.P46 Mahazar, he ^{Seized} serried MO.71 passport, MO.72 and 73 boarding passes and MO.73 series air tickets of the accused. On the basis of Ext.P47(a) information furnished by the accused, he recovered and seized MO.75 pants, MO.76 shirt, MO.77 Kerchief, MO.78 series socks and MO.79series Plastic Kits, through Ext.P47 mahazar at 5.30 p.m. On 18..2.2001. The accused was subjected to medical examination and his specimen scalp hair and blood sample were obtained for analysis and Ext.P48 medical certificate was obtained. On 19.2.2001 at 9.40 a.m., MO.5 stool was seized on the basis of Ext.P28(a) information furnished by the accused through Ext.P28 mahazar. On the basis of Ext.P24(a) information furnished by the accused, PW74 was traced out and consequently MO.1 series, MO.2 and MO.3 were recovered and seized from Poomala Financiers of PW25 through Ext.P24 Mahazar at 1.30 p.m. On 20.2.2001. On the basis of Ext.P499a)

position by touching her head on the floor. As they felt something untoward happened, immediately they went to the house of one K.R. Jose who is one of their relatives residing nere by, and informed the matter. K.R. Jose obtained the company of his brother in law named Robin also. All of them went to the Aluva Police Station and informed the matter. The Police came along with them to the house of Augustine. The Police entered the house and could see all the 6 persons lying murdered. Again PW1 went to the Aluva Police Station and furnished Ext.P1 First Information Statement before PW49 Sub Inspector of Police at 11.30 p.m. on 7.1.2001 itself.

11. On the basis of Ext.P1, PW49 registered crime No.15/2001 of the Aluva Police Station under section 302 IPC through Ext.P1(a) FIR. PW58 Circle Inspector of Police Aluva started investigation. PW51 Sub Inspector of Police conducted inquest of the dead body of Jesmon and prepared Ext.P3 Inquest Report. PW49 Sub Inspector of Police, Aluva conducted the inquest of Augustine and prepared Ext.P4 Inquest Report. PW50 Sub Inspector of Police, Aluva conducted inquest of the dead body of Divya and prepared Ext.P5 Inquest Report. PW58 Circle Inspector of Police Aluva himself conducted the inquest of Kochurani and Clara and prepared Exts.P13 and P14 Inquest Reports. PW47 Sub Inspector of Police, Aluva conducted inquest of Mary and prepared Ext.P17 Inquest Report. All the said inquests were conducted on 8.1.2001 and the bodies were sent for postmortem examination at the Medical College, Alappuzha. PW64 conducted the postmortem examinations on the body of Augustine as well as Mary and prepared Ext.P55 and P57 postmortem certificates respectively. He prepared their body charts Exts.P56 series and P58 series respectively. PW72 conducted the postmortem examination on the body of Kochurani, Divya, Jesmon and Clara and prepared Ext.P79, P81, P83 and P85 postmortem certificates respectively. He prepared

information furnished by the accused, Mo.80 series currency notes for Rs.5,500/- were recovered and seized from PW19 through Ext.P49 mahazar at 1.15 p.m. ON 24.2.2001. The accused was produced back before court on 28.2.2001.

15. As per the orders of the Hon,ble High Court of Kerala on OP's 7068/2001, 7821/2001 and 7213/2001, the CD file for the period up to 9.3.2001 was produced before the Hon,ble High Court and subsequently as per the orders of the Hon,ble High Court of Kerala the investigation was entrusted to a special team of CBCID, consequently PW17 Superintendent of Police, Crime Branch, Ernakulam conducted the investigation and he filed Ext.P62 report before court on 9.4.2001 for the same. On 17.4.2001 he searched the house of the accused after preparing Ext.P55 search memo and seized MO.7 to MO.11 series and MO.84 through Ext.P30 search list. He filed Ext.P67 report before court for incorporating the offences under sections 302, 394 and 449 IPC in the crime. Subsequently he filed Ext.P57 report before court on 14.5.2001 for incorporating section 201 IPC also in the crime. He completed the investigation and laid the charge against the accused for the offences punishable under sections 449, 302, 394 and 201 IPC on 18.5.2001. The charge sheet was taken on file by the Judicial First Class Magistrate's Court Aluva as CP 11/2001. The learned Magistrate committed the case to the court of sessions and the case was made over to the Additional Sessions Court, North Paravur. In the meantime, the accused was enlarged on bail on 25.1.2002 by the Additional Sessions Court, North Paravur.
16. While the case was pending before the Additional Sessions Court, North Paravur, PW1 and PW2 approached the Hon,ble High Court of Kerala through OP 2060/2001 seeking further investigation on the matter by the CBI. Vide Ext.P88(a) order dated 9.4.2002 in the OP, the Hon,ble High Court of Kerala directed the CBI to conduct further investigation in this case and consequently

PW77 Superintendent of Police, Special Crime Branch, CBI, Chennai registered this case on 14.5.2002 as RC 2(S)/2002 through Ext.P88 FIR and conducted further investigation on the points mentioned in Ext.P88(a). During interrogation by the CBI, the accused confessed to his having committed the offence by himself alone and expressed his willingness to give confession before a Judicial Magistrate, but requested that the same may please be arranged for in a place outside Kerala. Accordingly PW77 applied before the Chief Metropolitan Magistrate, Chennai and consequently PW65, the XIXth Metropolitan Magistrate, Chennai was nominated for the purpose. Sommons was issued to the accused and in turn he appeared before PW65 on 22.10.2002 and furnished Ext.P59 confession statement. The accused voluntarily undergone Polygraph examination at Bangalore FSL before PW66 on 12.11.2002. On the advice of PW66 the accused voluntarily undergone Brain Finger Printing examination at NIMHANS, Bangalore on 16th and 17th of April, 2003 before PW48. PW77 completed the investigation and laid the charge against the accused for the offences punishable under sections 449, 379, 302, 380 and 201 IPC on 20.11.2003.

17. The charge sheet was taken on file as Cp 1/2004 by the Chief Judicial Magistrate's Court Ernakulam. The learned Magistrate committed this case to the Sessions Court, Ernakulam where it was taken on file as Sessions Case No.154/04, from where this case has been made over to this court for trial and disposal.
18. The accused is defended by a counsel of his choice. The copies of all the documents and records were served on the accused. After hearing the prosecution and the accused, charges for the offences punishable under Sections 449,302,379,380 and 201 IPC were framed against the accused. The charges were read over and explained to the accused. The accused understood the charges, pleaded not guilty, and claimed to be tried.

19. On the side of the prosecution PW's 1 to 77 were examined and Exts.P1 to P90 were marked. MO's 1 to 94 were identified. Contradictions in section 161 Cr.P.C. statement of various witnesses were marked on the side of the accused as Exts.D1 to D16. After closing the evidence of the prosecution, the accused was examined under section 313 Cr. P.C. The accused denied most of the incriminating circumstances appeared in the evidence against him and as his statement under section 313 Cr. P.C. he filed a statement in writing purported to be one under section 233(2) Cr. P.C. even prior to the hearing contemplated under section 232 Cr. P.C. However, it has been filed with the records of this case and it has been considered as one forms part of his statement under Section 313 Cr.P.C. In the said statement in writing filed by the accused in Malayalam, it has been contended as follows:-

“ He was working as a temporary driver at the 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 Manjooran Augustine (Baby Chettan) on 5.1.2001 as part of his bidding good bye to the houses of his relatives etc. At that time deceased Clara' (Valliamma) gave him Rs.5,000/-. At that time Baby Chettan was not present at 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(Augustine) asked him as to how he had collected money for going to Gulf. He told deceased Augustine regarding the amount of Rs.25,000/- obtained from Yohanan on interest at the rate of 10% (per month) for going to Gulf and also the amount of Rs.10,000/- due from him to Raman Nair. He told Augustine about the fact that interest was being paid to that amount also. Then Baby Chettan asked him as to how could he repay the said loans. He replied that he was intending to repay the amounts by bidding his chitty at 'Dharma Deepthy' or by raising

amounts after going to Gulf. Then Baby Chettan informed him that he need not pay the interest for the said loans and that Baby Chettan would give him the amount for repaying the loans and that he need only repay the amount to Baby Chettan 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 the phone.

Thereafter in the evening he purchased Kerosene for the use at his house 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 Mary Chechi (Baby) to avail the amount in order to pay it to Raman Nair and Yohannan at Perumbavoor. At about 7.00 O' clock in the evening he reached the house of Baby Chettan. At that time, from there he came to know that Baby Chechi (Mary) 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 8.00 O' clock in the night he went to the shop of Baby Chettan and met him. Then Baby Chettan gave him Rs.35,000/- from the shop by telling him that he could not entrust the money with Baby Chechi as she had not returned from her family house at Ernakulam. With the said amount, 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 it was night and as he had no acquaintance with that place and proceeded to Thottuva by it. There were 2 persons at the drivers seat of the autoricksha. From his words they could gather that he was traveling with money and then they stopped the autoricksha when it reached at a lonely place in between

Vallam junction and Thottuva 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, through the pipeline road for attending 'Kurbana'. Thereafter he went to the house of Yohannan and Raman Nair and paid the amounts due to them. Yohannan appropriated Rs.2,500/- as interest for the first month out of the amount. Thereafter, he returned to his house and after bath he changed his dress and went to Thrissur for proceeding to Bombay. He proceeded to Damam from Bombay on 9th.

It was only after reaching Damam that he came to know about the murders of Baby Chettan and his family. Within days his wife informed him over the phone that the police was suspecting him and that his family members were being put to hardships and therefore he started attempts to come to his native place for making the police aware of the true State of affairs. Even though his sponser did not agree at first. Later gave permission when he made him aware of the State of affairs.

At last he landed at Bombay by flight, on 9.2.2001. He was taken in to custody by the Aluva Dy. SP and the hugs police party along with him from the airport itself. Subsequently he was taken to Karipur by flight and from where he was taken by jeep to a Government Guest House at Kodanad. He was physically and mentally torched by keeping him under illegal custody for about 9 days at Kodanad TB, Kalady Plantation IB and Floor F.A.C.T. Guest House. As torcher herams unbearable he agreed all what was narrated by the police even though the crime was not committed by him. His scalp hairs were snatched

away by the police. His blood was collected in a bottle. His pants, shirt, socks and kerchief were taken away by the police from his bag. He wrote down the matters narrated by the police in 2, 3 inlands as per the direction of the police. The police tutored him several times the mode of committing the crime and he was made to act according to their narrations. Secretly on one night he was taken to the house wherein the murders were occurred and was explained the mode of committing the crime and asked him to act according to the said narrations. Thereafter he was made to act like that in front of the public and media persons. He was threatened that his wife and elder brother George would be made co-accused if he reveal all these. He has no acquaintance with Suresh. He did not commit theft or robbery from the house of Baby Chettan. Apart from the amount voluntarily paid to him by Baby Chettan, he did not take any amount forcibly. There was no necessity for the same also. Even prior to that also there were many transactions between him and Baby Chettan. He and the persons murdered were living as a single family. Subsequently the CBI officers took him to Madras and Bangalore and by exerting threat and inducement took him to many offices and he was shown to many persons. The said persons asked him many thing in language which is not known to him. He was made to affix his signature in many papers, He has not committed any offence. He is innocent in this case. The Police deliberately implicated him as accused."

20. The prosecution and the accused were heard. Since no grounds were made out to acquit the accused under section 232 Cr. P.C., he was called upon to enter on his defence. On the side of the accused, Dw's 1 to 3 were examined and Exts.D17 to D22 series were marked. The arguments of the prosecution and the accused were heard.

21. In the nature of this case the following points arise for consideration:-

1. What is the cause of death of Augustine?
2. What is the cause of death of Mary?
3. What is the cause of death of Clara?
4. What is the cause of death of Kochurani?
5. What is the cause of death of Divya?
6. What is the cause of death of Jesmon?
7. Whether the accused committed house tress pass in to the house of deceased Augustine during the night of 6.1.2001?
8. Who caused the injuries found on the body of Augustine?
9. Who caused the injuries found on the body of Mary?
10. Who caused the injuries found on the body of Clara?
11. Who caused the injuries found on the body of Kochurani?
12. Who caused the injuries found on the body of Divya?
13. Who caused the injuries found on the body of Jesmon?
14. Who caused the death of Augustine?
15. Who caused the death of Mary?
16. Who caused the death of Clara?
17. Who caused the death of Kochurani?
18. Who caused the death of Divya?
19. Who caused the death of Jesmon?
20. Whether the accused committed theft of any gold ornaments from the body of deceased Augustine, deceased Mary, deceased Clara, and deceased Kochurani in the night of 6.1.2001 as alleged?
21. Whether the accused committed the theft of money from the house of deceased Augustine in the night of 6.1.2001?

22. Whether the accused caused the offence of the commission of any evidence to disappear with the intention of screening him from legal punishment?
 23. What, if any, are the circumstances proved by the prosecution against the accused?
 24. Whether such circumstances taken cumulatively, form a complete chain so as to establish the guilt of the accused?
 25. Is there any hypothesis that points towards the innocence of the accused?
 26. What, if any, are the offences committed by the accused?
 27. What should be the sentence or order?
22. Point No.1:- PW49, Sub Inspector of Police, Aluva conducted the inquest of the dead body of Augustine at 1.30 p.m. On 8.1.2001 and prepared Ext.P4 inquest report. PW4 and PW18 are the attestors to Ext.P4. PW4, PW18 and PW49 proved Ext.P4. The body of Augustine was thereafter sent for the postmortem examination, at the Medical College, Alapuzha. PW64 who was working as the professor in Forensic Medicine at the Medical College Hospital, Alapuzha and Police Surgeon, conducted the postmortem examination on the body of Augustine on 10.1.2001 and prepared Ext.P55 postmortem certificate. The findings in the postmortem examination are the following:-
- A. General:
- Body of a male, of height 170 cm, Rigormortis passed off from all over the body. Gas rigidity present. Postmortem staining not clear due to postmortem discolouration Face and the body bloated up and facial features distorted, but recognizable. Abdomen distended with gas. Penis and scrotum distended with gas. Bluish black discolouration of the skin of the face, upper limbs, abdomen and lower limbs. Skin slip at various places on body. Cuticle of skin peeled off. Moggots, 0.3 cm long, present on the head and face. Lips swollen. Tongue

protruded out. Scalp hairs loosened and easily detachable Nails not loosened.

Marbling of skin was present on both upper and lower limbs

B. Injuries (Antemortem)

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 clearly 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 fractures. The brain was found liquefied and showed evidence of intra cranial bleeding. Base of skull in the anterior cranical 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 canine.
6. Lacerated wound, 1.5 x 0.5 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 central 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, .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 mouth cavity.

C. Other findings:

Stomach was 1/4th full and contained nearly digested rice and food particles without any unusual smell. Its mucosa showed decomposition changes.
Urinary bladder empty. All other internal organs showed changes due to early decomposition.

Opinion as in the cause of death

His opinion as to cause of death is that the deceased died due to injuries sustained to the skull and brain, ie. injuries Nos. 1, 2, 3 and 4 noted in Ext. P55.

23. According to PW64, injury Nos.1 to 4 could be caused by cutting with MO.12 axe and injury Nos.5 to 8 could be caused by striking with the blunt edge of MO.14 Chopper. Further according to him, injury No.4 is necessarily fatal and injury Nos.1 to 4 are independently sufficient in the ordinary course of nature to cause death. He prepared Ext.P56 series body charts of Augustine showing the location of the injuries detailed in Ext.P55.
24. In fact, there is no challenge regarding the cause of death of Augustine. There is absolutely nothing to disbelieve the versions of PW64 and the contents of Ext.P55 regarding the cause of death. I come to the conclusion that the death of Augustine was caused due to injuries sustained to his skull and brain ie, injury Nos. 1 to 4 in Ext.P55 and that the death is homicidal. Point found accordingly.
25. Point No.2:- PW47, Sub Inspector of Police, Aluva conducted the inquest of the dead body of Mary @ Baby and prepared Ext.P17 inquest report. PW18 is one of the attestors to Ext.P17. PW18 and PW47 proved Ext.P17. The body of deceased Mary was thereafter sent for postmortem examination, at the Medical College, Alappuzha. PW64 himself conducted the postmortem examination on the body of deceased Mary on 10.1.2001 and prepared

Ext.P57 postmortem certificate. The findings in the post mortem examination are the following:-

A. GENERAL:

Body of a female, of height 160 cm. Rigormortis completely passed off. Postmortem staining not clear due to postmortem discolouration. Face and body bloated up. Facial features disorted but recognizable. Lips swollen. Tongue protruded out and biuish black discolouration of face, upperlimbs, chest, abdomen and lower limbs. Abdomen distended with gas. Cuticle of skin peeled off at various places. Nails and teeth not loosened. Scalp hairs, axillary and public hairs loosened. Marbling of skin of upper limbs, chest and lower limbs. Vulva and Vagina normal. Black eye on left side. Body was kept in cold storage.

B. Injuries (Antemortem)

1. Contusion of scalp, on the left side of forehead, 3 cm above the middle of eye brow, 8 x 6 cm. Skull underneath showed fissured fracture, 8 cm long transversely placed which extended in to 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, 7cm long x 1 cm obliquely placed, over middle of top of head. The inner end showed a beveling 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 with contused edges, obliquely placed, 2.5 x 0.5 cm bone deep over left side of back of head, 9 cm behind 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 8x 6 cm on the middle of the back of head, skull bone underneath was found fractured in to fragments involving the posterior cranial fossa up to foramen magnum and right side of cranial fossa, brain liquefied 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.

C. Other findings

Stomach was 1/4th full, contained partly digested rice and other food particles without any unusual smell. Its mucosa showed early stages of decomposition.

Urinary bladder was empty. All other organs showed early stages of decomposition, other wise normal. Uterus was normal in size and its cavity was empty.

Opinion as to the cause of death

His opinion as to cause of death is that she died due to injuries sustained to the skull and brain, ie, injury Nos. 1 to 8 in Ext.P57.

26. According to PW64, injury Nos. 1 and 8 noted in Ext.P57 could be caused by striking with the butt of MO.12, injury Nos. 2 to 7 in Ext.P57 could be caused by cutting with the sharp edge of MO.14 chopper and injury No.9 could be caused by forcibly snatching away a gold ornament worn by the deceased, from her neck. Further according to him, injury Nos. 1 to 8 in Ext.P57 are necessarily fatal and that injury Nos.1 to 8 in Ext.P57 are independently

sufficient in the ordinary course of nature to cause death. He prepared Ext.P58 series body charts of deceased Mary showing the location of the injuries.

27. In fact, there is no challenge regarding the cause of death of Mary. There is absolutely nothing to disbelieve the versions of PW64 and the contents of Ext.P57 regarding the cause of death. I come to the conclusion that the death of Mary was caused due to injuries sustained to her skull and brain ie, injury Nos. 1 to 8 in Ext.P57 and that the death is homicidal. Point found accordingly.
28. Point No.3:- PW58 Circle Inspector of Police, Aluva conducted the inquest of the dead body of Clara and prepared Ext.P14 Inquest Report at 1.30 p.m. On 8.1.2001. PW8 is one of the attestors to Ext .14 Inquest Report. PW8 and and PW58 proved Ext.P14. The body of Clara was thereafter sent for postmortem examination, at the Medical College Hospital, Alappuzha. PW72 while working as lecturer at the Dept. of Forensic Medicine at the Medical College, Alappuzha on 9.1.2001 conducted the postmortem examination on the body of Clara and prepared Ext.P85 postmortem certificate. The findings in the postmortem examination are the following:-

A. General

Body of a female, cold 163 cm long. Rigormortis not seen. Postmortem hypostasis not clear. Eyes were shrunken and decomposed. The skin showed brownish red discolouration, marbling and peeling of skin Abdomen and chest were distended with gas. External genitalia normal

i) Injuries (Antemortem)

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 5x 3 cm invoving the right eye and adjoining part of face transverse with its outer end 6 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 3x1x1 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 7x6 cm underneath the wound. Brain was liquefied and the brain matter was found stained with blood.
4. Incised wound 4x1x2 cm obliquely placed involving the right of upper lip right ala of nose and adjoining part of right side of face with sit 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 2x1x2cm 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.

C. Other Findings

The muscles, cartilages and bones of neck were intact. Diaphragm intact. Oesophagus and air passages had frothy fluid and brownish red mucosae. Lunga and heart were in a State of advanced decomposition. All the abdominal and pelvic viscera were in a State of advanced decomposition with brownish red discolouration and foul smell of putrefaction. Stomach contained one handful of partially digested rice and other food particles, emitting foul smell of putrefaction. Its mucosa was brownish. Urinary bladder was empty. Uterus was 4x2x2 cm atrophied. Ovaries atrophied. All other organs were decomposed.

Opinion as to cause of death

His opinion as to cause of death is that the deceased died due to injuries of skull and ~~brain~~.

29. According to PW72, injury Nos.2, 3 and 4 in Ext.P85 are independently sufficient in the ordinary course of nature to cause death and that considering the age of the victim these injuries are independently fatal. Further according to him, injury Nos.1, 2 and 3 noted in Ext.P85 could be caused by striking with the butt of MO.12 or by striking with MO.5 stool and that injury Nos.4 and 5 in Ext.P85 could be caused by cutting with the sharp edge of MO.12 or by cutting with MO.14. He prepared Exts. P88 series body charts of Clara showing the location of the injuries.
30. In fact, there is no challenge regarding the cause of death of Clara. There is absolutely nothing to disbelieve the version of PW7 and the contents of Ext.P85 regarding the cause of death. I come to the conclusion that the death of Clara was caused due to injury sustained to her skull and brain ie, injury Nos.2,3 and 4 in Ext.P85 and that the death is homicidal. Point found accordingly.
31. Point No.4:- PW58 Circle Inspector of Police, Aluva conducted the inquest of the dead body of Kochurani on 8.1.2001 at 1.30 p.m. and prepared Ext.P13 inquest report. PW8 is one of the attestors to Ext.P13. PW8 and PW58 proved Ext.P13. The body of Kochurani was thereafter sent for postmortem examination, at the Medical College, Alappuzha. PW72 conducted the postmortem examination on the body of Kochurani on 9.1.2001 and prepared Ext.P79 postmortem certificate. The findings in the postmortem examination are the following:-
- A. General
- Body of a female, cold 158 cm, long with closed eyes hazy cornea and dilated pupils. Rigotmortis not seen. Postmortem hypostasis not clear. Skin showed greenish discolouration, marbling and slipping of cuticles. Abdomen was distended with gas. A ligature was seen around the neck made of double

stranded electric wire folded in to two with a width of 1.5 - 2 cm and a circumference of 38 cm. Two free limbs came out through a loop at the left side of neck, and these were 135 cm. Long. Neck was very short, that the lower part of face was touching the clavicles. External genitalia normal. Hymen showed old tears.

A. Injuries (Antemortem)

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 3x0.5cm x0.5 cm obliquely placed with its lower outer end at the right corner of eye.
3. Incised wound 6x2x1 cm left side of head transverse 8 cm above the left ear.
4. Incised wound 6x3 cmx2 cm transverse over the front of right forearm 3cm above the wrist cutting the radial artery, nerves and muscles underneath.
5. Incised wound 4x1x1 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 9x1.5x2 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 0' 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 3x1.5 cm x0.2cm, 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.

A. Other Findings

Diaphragm intact. Oesophagus showed brownish red discolouration of its mucosa. Air passages showed brownish red discolouration of decomposition. Lungs were cedematous and discoloured brownish red. Heart was 200 gm, discoloured brownish red with patent coronaries. Aorta normal. All abdominal and pelvic organs were discoloured brownish red due to putrefaction. Stomach contained scanty amount of rice and other food particles emitting foul smell of putrefaction. Urinary bladder was empty. Uterus was 6x4x3 cm pale. Its cavity empty. Ovaries normal. All other organs were in a State of putrefaction.

Opinion as to cause of death

His opinion as to cause of death of Kochurani is that the deceased died due to multiple injuries sustained.

32. According to PW72, a ligature was seen around the neck made of a double stranded electric wire folded in to two with a width of 1.5-2 cm and a circumference of 38 cm. But, instead of showing MO.94 double stranded electric wire, MO.57 and MO.58 single stranded electric wire was mistakenly shown to the witness by the prosecution and got identified as the said ligature.

Later it has come out that MO.94 electric wire was the said double stranded electric wire and the same had not been returned from the Forensic Science Laboratory. MO.94 was later identified through PW77.

33. According to PW72, injury No.2, 3,4 and 5 in Ext.P79 could be caused by cutting with MO.13 knife and injury No.6 in Ext.P79 could be caused by striking with MO.5 or MO.12. Further according to PW72, injury No.6 noted in Ext.P79 is necessarily fatal and that injury Nos.1, 4, 5 and 6 are

independently sufficient in the ordinary course of nature to cause death. He prepared Ext.P80 series body charts of Kochurani showing the location of the injuries.

34. In fact, there is no challenge regarding the cause of death of Kochurani. There is absolutely nothing to disbelieve the versions of PW72 and the contents of Ext.P79 regarding the cause of death. I come to the conclusion that the deceased died due to multiple injuries noted in Ext.P79 and that the death is homicidal. Point found accordingly.
35. Point No.5:- PW50 Sub Inspector of Police, Aluva conducted the inquest of the dead body of Divya and prepared Ext.P5 inquest report PW5 is one of the attestors to Ext.P5. PW5 and PW50 proved Ext.P5. The body of Divya was thereafter sent for postmortem examination at the Medical College, Alápuzha. PW72 conducted the postmortem examination on the body of Divya on 9.1.2001 and prepared Ext.P81 postmortem certificate. The findings in the postmortem examination are the following.-

A. General

Body of a female, cold 162 cm long with closed eyes. Clear corneae and mid dilated pupils. Rigormortis not seen. Postmortem hypostasis not clear. Tongue was protruded out and bitten. Fluid blood was coming through mouth and nostrila. Trunk and upper limbs and face showed greenish discolouration. Abdomen was distended with gas Marbling was seen in lower limbs. Gas filled blisters of skin and slipping of cuticle was seen at place. Hymen was intact. External genitalia normal.

i) Injuries (Antemortem)

1. Skin deep incised wound obliquely pplaced over left side of neck 9 x 2cm, both end sharp cut with its front lower end 4cm above the inner end of collar bone. Outer end showed a tailing of 2.5cm.

2. Lacerated wound 2.5 x1x1 cm over left parietal area 11 cm outer to the 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 5x3cmx2cm 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 3x1x1 cm oblique over inner half of left palm with its upper left end at the wrist.
5. Incised wound 2.5x1x1 cm, curved on the back of right index finger, with its inner lower end 1 cm from the tip.

Other findings

The muscles, cartilages and bones of neck were intact. Diaphragm intact. Oesophagus was pale. Air passages contained blood stained mucous secretion. Its mucosa was pale. Lungs were pale. Heart was normal Coronaries patent. Aorta normal. Whole abdominal and pelvic organs were pale. All organs showed signs of decomposition.. Stomach contained scanty amount of partially digested rice and other food particles emitting foul smell of putrefaction. Its mucosa was pale. Intestines and mesentery were pale. Urinary bladder was empty. Uterus was 8x5x2cm. Its cavity was empty. Ovaries normal. Uterus pale.

Opinion as to cause of death

His opinion as to cause of death of Divya is that the deceased died due to injuries numbered as 2 and 3 in Ext.P18. He prepared Ext.P82 series body charts of Divya showing the location of injuries.

36. According to PW72, injury Nos. 1,3,4 and 5 noted in Ext.P81 could be caused by cutting with MO.13 and injury No.2 could be caused by striking with the

butt of MO.12. Further according to him, injury Nos.2 and 3 in Ext.P81 are independently sufficient in the ordinary course of nature to cause death and when combined together, injury Nos.2 and 3 will become more fatal.

37. In fact, there is no challenge regarding the cause of death of Divya. There is absolutely nothing to disbelieve the versions of PW72 and the contents of Ext.P81 regarding the cause of death. I come to the conclusion that the death of Divya was caused due to injury Nos.2 and 3 noted in Ext.P81 and that the death is homicidal. Point found accordingly.

38. Point No.6: - PW51 Sub Inspector of Police, Aluva conducted the inquest of the dead body of Jesmon and prepared Ext.P3 inquest report. PW3 is one of the attestors to Ext.P3. PW3 and PW51 proved Ext.P3. The body of Jesmon was thereafter sent for postmortem examination at the Medical College, Alappuzha. PW2 conducted the postmortem examination on the body of Jesmon on 9.1.2001 and prepared Ext.P83 postmortem certificate. The findings in the postmortem examination are the following:-

A. General

Body of a male, cold 157 cm. Long with protruding eyes, clear corneae and middilated pupils. Rigormortis not seen. Postmortem hypostasis not clear. The skin showed greenish discolouration, blisters and slipping of cuticle due to putrefaction. Abdomen and scrotum, were distended with gas. Marbling of skin all over. Blood stains were seen all over the body.

A. Injuries (Antemortem)

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 liquefaction 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 8x7cm over both parietal areas. The liquefied brain matter was found stained with blood.

2. Incised wound transverse 5x3x2cm 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, 0.5cm each close to each other.

C. Other findings

The muscles cartilages and bones of neck were normal and intact. Diaphragm intact. Oesophagus was pale. Air passages contained blood stained mucosa secretion. Its mucosa was pale. Lungs were pale. Heart was normal. Coronaries and Aorta normal. All abdomen and pelvic organs were pale and showed signs of putrefaction. Stomach contained 5 handful of rice and other food particular emitting no unusual smell. Its mucosa was pale. Intestines and mesentery were pale. Urinary bladder was empty. All other organs showed signs of decomposition.

Opinion as to cause of death

His opinion as to cause of death of Jesmon is that the deceased died due to injury Nos.1 and 2 in Ext.P83. He prepared Ext.P84 series body charts of Jesmon showing the location of the injuries.

39. According to PW72, injury No.1 in Ext.P83 could be caused by striking with the butt of MO.12 and injury No.2 in Ext.P63 could be caused by cutting with MO.13. Further according to him, injury No.1 in Ext.P83 is necessarily fatal and that it can also be said that injury Nos.1 and in Ext.P83 are independently sufficient in the ordinary course of nature cause death.
40. In fact, there is no challenge regarding the cause of death of Jesmon. There is absolutely nothing to disbelieve the versions of PW72 and the contents of Ext.P83 regarding the cause of death. I come to the conclusion that the death

of Jesmon was caused due to injury Nos.1 and 2 in Ext.P83 and that the death is homicidal. Point found accordingly.

41. Point Nos.7 to 25:- As the evidence adduced by the prosecution on all these points are so interconnected which cannot be separately discussed, I am constrained to discuss and decide all these points jointly. The case of the prosecution solely rests on circumstantial evidence. In order to prove the guilt of the accused on the basis of circumstantial evidence, the cardinal principles that 1), all such circumstances should be cogently and firmly established, 2), all such circumstances so established cumulatively taken together shall form a complete chain, 3), all such circumstances shall unherringly point towards the guilt of the accused and none else ie, all such inculpatory facts should be incompatible with the innocence of the accused, and 4) there should not be any hypothesis that should point towards the innocence of the accused, are strictly to be followed. Now the circumstances pointed out and proved by the prosecution through evidence, oral as well as documentary are to be considered.
42. The facts that all the deceased persons are the relatives of the accused, and that the accused was a close associate of all the deceased persons and further fact that the accused was a frequent visitor at the said house of deceased Augustine are clearly admitted by the accused in his statement in writing filed at the time of his examination under section 313 Cr. P.C., and also during his examination under section 313 Cr. P.C. The relationship among the deceased persons is also not challenged. Deceased Mary @ Baby is the wife of deceased Augustine @ Baby. Deceased Clara is the mother of deceased Augustine. Deceased Kochurani is one of the sisters of deceased Augustine and is the daughter of deceased Clara. Deceased Divya and Jesmon are the children of deceased Augustine and deceased Mary. It is the admitted fact the

accused used to call deceased Augustine as "Baby Chettan" and deceased Mary as "Baby Chechi".

43. It has been clearly admitted by the accused in his aforesaid statement in writing that he had gone to the house of deceased Augustine on 5.1.2001 and that on 6.1.2001 after purchasing Kerosine and giving it to his wife at his house and after telling her that he was going to Perumbavoor, he went to the house of deceased Augustine at about 7 p.m. It is his further admitted case that deceased Mary had gone to her family house at Ernakulam and by that time she had not returned. Therefore infact, any formal proof in respect of the above admissions, is not required.
44. PW1 is the brother of deceased Mary. He along with his aged parents and wife and children are residing at the north end of Market road at Ernakulam. His wife had gone to her parental house on 06.01.2001 and was absent at his house till 08.01.2001. Therefore, the presence of deceased Mary was required at his house in order to attend their aged parents. When deceased Mary went to her house at Aluva by the evening of 06.01.2001, she had promised that she would come at 9.30 a.m. on 07.01.2001. Her house at Aluva is situated about 20 kms. away from the house of PW1. Even though she and the parents were expecting deceased Mary to come by 9.30 a.m. on 07.01.2001, she did not come. When they rang for her repeatedly to the house at Aluva, nobody lifted the phone even though he ringing sound was heard. Around 2 p.m. PW2, who is the father of PW1 and deceased Mary contacted PW10, P.K.Jose residing at a place called Neerikode over the phone and informed the matter. After 5 minutes PW10 contacted PW2 over the phone and informed him that he had contacted PW14, Jose M.T., who is the elder brother of deceased Augustine

over the phone and came to know that the house of Augustine remained locked and they had gone out somewhere. Again by 8 p.m. PW2 contacted PW10 over the phone and requested him to make an enquiry through some other persons. PW10 agreed to make an enquiry through PW12, M.J. Sebastian. After sometime, PW10 contacted PW2 over the phone and again gave the very same information that the house remained locked. Dissatisfied with the aforesaid information, by about 8.30 p.m. on 07.01.2001 PW2 directed PW1 to go to Aluva and make an enquiry directly. Then by about 9.30 p.m. PW1 along with his brother-in-law Sunny went to Aluva and reached the house of Augustine by about 10 p.m. There were no lights at the house. As the curtain was hanging outside the front door. It was not possible to see whether the door remained open. When Sunny tried to knock on the door, they could realize that one of the planks of the front door remained open. In the light of the torch, they could see deceased Mary in a squatting position by touching her head on the floor of the dining room. They went to the house of K.R.Jose, who further contacted his brother-in-law Robin. All the four of them went to the Aluva Police Station and gave the information. Then for ascertaining the true state of affairs, police men came along with them by jeep. They reached the house and the police men came along with them by jeep. They reached the house and the police men switched on the lights and could see all the 6 persons lying dead. PW1 did not enter the house to see the dead bodies. Then PW1 again went to the Aluva Police Station and furnished Ext. P1 First Information Statement.

45. After 2 days the house was searched in the presence of PW1 and others and savings deposit receipts for about Rs.45 lakhs and current notes for Rs.1.50 lakhs and about 55 sovereigns of gold ornaments were seized from the bed room of deceased Augustine. From the next room which was being used by deceased Clara, currency notes for Rs.45,000/- and 45 sovereigns of gold ornaments were seized. For the said seizure Ext.P2 mahazar was prepared. At the time of such search, one of the sisters of deceased Augustine, PW45 Kochurani, the brother-in-law of PW1 named Sunny and PW10 were also present there.

46. In cross examination, PW1 deposed that regarding the dead bodies he had only the knowledge received from the police officers who went inside the house and saw it, When he furnished Ext.P1 First Information statement. When some contradictions in Ext.P1 were put to PW1, he deposed that his State of mind at that time was such that it was unable for him to give a clear description. When his attention was invited to the fact that he did not say anything about the dead bodies of Kochurani and Clara he answered that he does not remember whether he had mentioned about their dead bodies in such a State of mind. In cross examination he deposed that the house of PW12 and PW14 are situated just near the house of deceased Augustine. When he was asked whether the front portion of Augustine's house could be seen by standing at the house of PW12 and PW14, he deposed that the front courtyard of the house could be seen from the house of PW12. In cross examination he deposed that deceased Augustine and his brothers were not in cordial terms in connection with a dispute regarding the partition of their paternal property.

According to him, the brothers of deceased Augustine and their children were not in the habit of visiting the house of deceased Augustine on account of the said dispute.

47. PW2 who is the father of PW1 and deceased Mary supported the evidence of PW1. According to him, deceased Mary had departed from his house on 6.1.2001 at 6.30 p.m.
48. PW10 is residing at a place called Neericode about 10 kms away from Aluva. The second sister of deceased Augustine named Lilly was given in marriage to PW10. According to PW10, during the period of incident he was taking rest at home after having sustained injuries in a motor accident. During that period his son PW11, Tintu Jose was looking after the affairs at his shop. According to him, he came to know about the death of Augustine and his family members at about 2.30 a.m. on 08.01.2001. He further deposed that on 07.01.2001 in between 4 p.m. and 4.30 p.m. PW2 had contacted him over the phone and had enquired about the occupants of the house of Augustine. As PW2 was not in good terms with the brother of Augustine PW2 could not directly contact them. Therefore, on the request of PW2, PW10 contacted CW34 Jestine who is the second son of PW14 over the phone and asked him to make an enquiry. After 5 minutes CW34 rang him back and informed him that there was nobody at the house of Augustine. He passed on that information to PW2. By about 7 p.m. PW2 again contacted him over the phone and requested him to make an enquiry through PW12 Sebastian. When he contacted PW12 he informed him that all of them had gone for a tour in the morning. PW10 passed on that information to PW2. Even though the wife of PW10 tried to contact Augustine's house over the phone continuously till 10 p.m., nobody

lifted the phone even though the ringing sound could be heard. It was by about 2-2.30 a.m. on 08.01.2001 that the wife of PW14 rang them and informed him that police have rounded the house of Augustine, ~~and PW14 rang them and informed him that police have rounded the house of Augustine,~~ and PW14 and PW15 George who are the elder brothers of Augustine have gone to that place. Then PW10 also proceeded to the house of Augustine by his motor cycle and there he could see the police man from whom he came to know that all the six inmates of the house were lying murdered. The said house of deceased Augustine is known as 'Tharavad' house.

49. In cross examination he deposed that the father of Augustine died on 1.8.1997 and on the 41st day of the death, all the members of the family assembled at the Tharavad house. Then PW14 circulated the copies of a letter among his sisters. According to him, even though any quarrel did not occur, there were no contacts in between deceased Augustine and PW14 and PW15. But when the wife of PW14 was hospitalized at Ernakulam, deceased Augustine and his wife had visited them.
50. PW11, Tintu Jose is the son of PW10. According to him, during the period of incident, his father was taking rest as he had sustained injuries in a motor accident. During that time PW11 was looking after the affairs of the Hardware shop of PW10. As his mother was in hospital along with PW10, he used to have his lunch and evening tea from the house of Augustine. It was at 4 P.M.

On 6.1.2001 that he had visited the house of Augustine commonly called by them as 'Tharavad' lastly. According to him, he had entrusted a cassette of video game there and he went there for taking it back. When he reached there, Clara, Kochurani and Divya were the only persons there. Mary had gone to Ernakulam and Augustine was in the shop. Jesmon had gone for tuition. He obtained the cassette, took it to his shop and gave it to the second son of PW14. On that evening at 7 p.m. while he was going to the house of PW14, he saw Divya and Kochurani going to a shop for purchasing 'ribbon'. According to PW11, the accused used to visit 'Tharavad' frequently and he had seen him there. In cross examination he deposed that he did not State before the CBI that Clara, Kochurani, Baby W/o Augustine and Divya were at the house when he had visited the 'Tharavad' lastly. The said portion of the CD statement is marked as Ext.D2.

51. PW12 is the son of the father's brother of deceased Augustine. His shop is situated at the northern side of the pipeline road. The Tharavad of Augustine wherein the incident in this case occurred is situated at the southern side of the said pipeline road. The house of PW12 is also situated adjacent to his shop. He came to know about the death of Augustine and family members at about 2, 2.30 a.m. On 8.1.2001. According to him, on 7.1.2001 at about 8.30 p.m. PW10 had contacted him over the phone and asked about Augustine and family. Then he had informed PW10 that he did not see any of them on that day and they might have gone somewhere. It was because of the fact that at about 12, 12.15 p.m. on that day PW13 who is studying at the St. Antony's Monastery had approached him at his shop and told him that the priest of the church had asked for the presence of Jesmon along with his guardian on the next Sunday. It was so informed to him by PW13 that nobody was seen at the house of deceased Augustine when PW13 went to the said house. PW12 had

promised PW13 that he would pass on the information to the house of Augustine. That was why PW12 had informed PW10 that nobody was present at the house of Augustine.

52. According to PW12, he had lastly seen deceased Jesmon at about 6.45 p.m. on 6.1.2001 when deceased Jesmon came to the shop of PW12 for purchasing chicken. The accused is also a distant relative of PW12. On 6.1.2001 at about 7 p.m. the accused had reached the shop of PW12 and purchased 10 litres of Kerosene. At that time the accused told PW12 that he would be going to Gulf on the next day. The facts that the accused had gone to the shop of PW12, purchased 10 litres of Kerosene and informed PW12 regarding his going to the Gulf on the next day are clearly admitted by the accused. It was also admitted by the accused that it was PW12 who had arranged the job of driver for the accused at the Aluva municipality and that PW12 was the counselor of Aluva municipality.
53. The evidence of PW13 corroborate the evidence of PW12. According to him, deceased Jesmon did not attend in the Sunday class on 7.1.2001 and that the priest had directed PW13 to inform Jesmon to attend the PTA meeting on the next Sunday. PW13 went to the house of Augustine by about 12.30 p.m. on that day and called Jesmon by standing at the gate. As nobody responded, he thought that nobody would have been present there. Therefore, he went to the shop of PW12 and requested PW12 to pass on the said information. According to him, a curtain was hanging in front of the front door of the house and therefore he did not know whether the door remained open.
54. PW14 is the elder brother of deceased Augustine. According to him, on 8.1.2001 at about 1.30 a.m. PW12 called him by stating that thief had entered the house of Augustine and that police party had arrived. He informed the

matter to his younger brother PW15 also. All of them went to the Tharavad and subsequently came to know about the death of all the six persons.

55. According to PW14, there occurred a dispute regarding the burial of the dead bodies as PW1 and party demanded that the dead bodies were to be taken directly to the church instead of bringing in to the Tharavad after the postmortem examination. PW14, PW15 and others did not agree to it. A mediation was conducted and PW14 being the elder brother was entrusted with the duty to conduct all the rites. The dead bodies were brought to the Tharavad after the postmortem examination and then taken to the church and buried. The same was not liked by PW1. According to PW14, the accused is also one of his relatives and that his mother deceased Clara was very much fond of the accused and she loved the accused just as one of her sons. The accused had full freedom in the Tharavad. According to him, the accused had borrowed an amount of Rs.3,000/- from him for the betrothal of the accused and subsequently he repaid it. Thereafter the accused had requested for a loan of Rs.6,000/- from him prior to the marriage; but he did not give it. 3,4 days prior to the death of Augustine and family members, the accused had visited his house and informed him that he would be going soon to Gulf as all the papers were ready. Thereafter the accused had supper with him and went away.

56. In cross examination he admitted that there occurred a difference of opinion between deceased Augustine on the one side and him and PW15 on the other side regarding the payment of Rs.8 lakhs to be made to their sisters, on the 41st day of the death of their father. Deceased Augustine did not agree to the payment and therefore PW14 and PW15 went away from the Tharavad by stating that deceased Augustine could decide whatever he wanted to. Thereafter PW14 was not in the habit of visiting the Tharavad. But he went to

the Tharavad and informed about the hysterectomy of his wife in December 2000. Deceased Augustine and his wife had visited them 2, 3 times at the hospital and then at the house. According to him, Augustine and his sisters were in good terms. He admitted that he was not in cordial terms with the members of the wife house of deceased Augustine. On going through the deposition of PW14, I do not find anything to discredit or disbelieve his testimony.

57. PW15 is the younger brother of PW14. He is elder to deceased Augustine. On 8.1.2001 he also went to Tharavad with PW14 and came to know about the death of Augustine and family members.

58. PW18 is a practicing lawyer before the Hon'ble High Court of Kerala. On 8.1.2001 he went to the house of Augustine and the family members. There occurred a dispute regarding the burial as the members of Augustine's family demanded that the dead bodies should be brought to the Tharavad prior to the burial. However, the members of the wife house of Augustine had demanded that the dead bodies should be directly taken to the church after the postmortem, for burial. He mediated and solved the problem and PW14 was entrusted with the duty of conducting the rites. It was also decide to bring the dead bodies to the Tharavad after postmortem examination and before the burial.

59. PW28 is the son of PW14. According to him, PW10 had contacted him over the phone by about 4.30 p.m. on 7.1.2001 and asked him whether anybody was there at the Tharavad. He rang up to the Tharavad; but nobody had lifted the phone. Then he called back PW10 and informed him that there was nobody at the Tharavad and that they might have gone out. According to him, when his mother was hospitalized at Vijaya Hospital, Ernakulam for

hysterectomy, deceased Augustine and his wife had visited his mother at the hospital and the same was at about one month back to the incident in this case.

60. PW30 had attended the Sunday class on 7.1.2001. According to him, Jesmon did not attend the Sunday class on 7.1.2001. The priest had directed him to serve a letter of the next PTA meeting at the house of deceased Jesmon. He went to the house. As he did not find any calling bell he knocked on the door and called. As nobody came out, he placed the letter on the half wall at the verandah and went away. In cross examination he deposed that the two doors were remained closed. But according to him, when he passed through the road subsequently on that day he could see one of the planks of the front door remaining as opened. In re-examination he clarified that the door curtain did not reach the floor and that was why he could see from the road that one of the planks of the door remained open. From the deposition of PW30, it is evident that he might have knocked on the plank which remained closed and that was why he could not realize that the other plank remained open. As the curtain was hanging outside the front door, it was not possible to see that the other plank remained open. But subsequently he could see from the road through the portion beneath the curtain that one of the planks of the front door remained open.

61. PW31 is conducting a Beauty center at Aluva named Anna Beauty Centre. The said shop is situated near the house of deceased Augustine. According to him, Divya and Kochurani were lastly seen alive by him at about 7.30 p.m. on 6.1.2001 when they came to his shop for purchasing ribbon etc.

62. PW39 is the daughter of PW45 Kochurani who is one of the sisters of deceased Augustine. According to her, on 6.1.2001 at 8.45 p.m. Jesmon had telephoned her to her hostel. The said hostel belongs to the convent at Chengal, Kalady wherein she was residing then in connection with her studies.

Jesmon told her over the phone that all of them were going to the movie named 'Joker'. Over and above Jesmon, Divya, Kochurani and Mary also talked her over the phone. Thereafter she came to know about the death of all six persons on Monday by about noon.

63. PW70 is the Manager of 'Zeenath' theatre at Aluva. According to him, on 6.1.2001, deceased Augustine, deceased Mary and their two children came for the second show of Malayalam movie named 'Joker' starts at 9.30 p.m. Deceased Augustine took 4 tickets. PW59 seized MO.69 series which are the 4 cinema tickets through Ext.P29 scene mahazar prepared by him at 9 a.m. on 9.1.2001, from the scene of occurrence. It was on 8.1.2001 that PW70 came to know about the death of the said persons. PW70 is the outsider who lastly saw deceased Augustine, deceased Mary, deceased Divya and deceased Jesmon alive.
64. From the evidence discussed above, it has clearly come out that nobody from the house of deceased Augustine (Tharavad) were seen outside on 7.1.2001. Deceased Kochurani and deceased Divya had gone to the shop of PW31 for purchasing ribbon etc., and they were lastly seen alive by PW31 at 7.30 p.m. on 6.1.2001. Likewise they were seen proceeding to the shop of PW31 by PW11 also at about 7 p.m. on 6.1.2001. Deceased Jesmon was seen alive by PW12 at about 6.45 p.m. on 6.1.2001 when he came for purchasing chicken. Deceased Clara was lastly seen alive by PW11 around 4 p.m. on 6.1.2001. As I have stated earlier deceased Augustine, deceased Mary, deceased Divya and deceased Jesmon were lastly seen alive by PW70 around 9.30 p.m. on 6.1.2001 at the nearby cinema theatre named 'Zeenath' theatre at Aluva. The four cinema tickets identified as MO.69 series were seized by PW59 from the scene of occurrence. Therefore it is evident that deceased Augustine, deceased

Mary, deceased Divya and deceased Jesmon were alive atleast up to 12 midnight on 6.1.2001.

65. Ext. P3 inquest report of deceased Jesmon, Ext.P4 inquest report of deceased Augustine, Ext.P5 inquest report of deceased Divya and Ext.P17 inquest report of deceased Mary clearly show that the said persons were well dressed
which reveal that the said persons had reached the house from outside or they
were about to got for an outing At the same time Ext.P13 inquest report of
deceased Kochurani and Ext.P.14 inquest report of deceased Clara clearly
indicate that they were dressed in such a way that they were remaining at the house itself. Nobody had seen any of the deceased going out on 7.1.2001. It was after 10 p.m. on 7.1.2001 it was so revealed that all the inmates of the house were found lying murdered inside the house. Any of the deceased was not seen outside the house of 7.1.2001. When PW2 contacted PW10 over the phone to enquire about deceased Augustine and deceased Mary etc., he was informed by PW10 that they might have gone out and that there was nobody present at the house and that the house remained locked. The evidence discussed above clearly reveals as how PW10 got such an information. He got such an information from PW28 who is the son of PW14. According to PW28, after he received the telephone call from PW10 enquiring about deceased Augustine and deceased Mary etc he made an attempt to contact them over the phone and rang to the Tharavad. As nobody lifted the phone, he called back PW10 and informed him that there was nobody at the house and that they might have gone out. When PW10 again contacted PW12, the very same information was given by PW12 also as P.W.12 got such an information from PW13. As the said persons did not expect any untoward incident at the house of Augustine, simply they informed PW10 that the house remained locked and they might have gone out. It was the information gathered by PW10 which

was passed on to PW2. Even though one of the planks of the front door of the Tharavad remained open, it was not easily visible from outside as a door curtain was hanging outside the door. The said fact is evident from the evidence of PW1. It was when P.W.1 and his brother-in-law Sunny tried to knock on the door that they could realize that one of the planks of the front door remained open. It was admitted by P.W.14 that he was not in good terms with PW1, PW2 etc. That was the reason PW1 or PW2 could not directly contact PW14 or PW15. That was why enquiries were made through PW10 on 7.1.2001. The said enquiries made PW10 were considered by PW28 and PW12 as merely causal in nature without making any proper enquiries they passed on the information that the house remained locked and that the inmates might have gone out. Those informations were not infact made with a view to misleading PW10 or PW2. From all these circumstances it is quite clear that Augustine, Mary, Divya and Jesmon were attacked and done to death at the Tharavad immediately after they returned there after the movie.

66. The learned defence counsel pointed out that the involvement of the brothers of deceased Augustine in the incident cannot be brushed aside as they were in inimical terms with deceased Augustine regarding the partition of their paternal properties. Apart from a minor skirmish through a wordy altercation occurred at the Tharavad on the 41st day after the death of their father, in respect of an amount of Rs.8 lacs to be distributed among their sisters, there were no internecine quarrels between deceased Augustine on the one side and PW14 and PW15 on the other side. According to PW77, investigation revealed that though brothers of deceased Augustine were not in talking terms with him over the dispute relating to ancestral properties, the dispute was pertaining to the period dating back to 1990 and 1997 when their father expired. According to him, there was evidence that they were moving towards

cordiality in their relationship. The same is evident from the depositions of PW14 and PW28. When the wife of PW14 who is the mother of PW28 was admitted at the Vijaya Hospital, Ernakulam for hysterectomy, deceased Augustine along with his wife deceased Mary had visited them. From all the above, it is evident that there was no internecine quarrel in between them. There is absolutely nothing to suspect PW14 and PW15 in the incident. It is more so because of the fact that their sister Kochurani and mother Clara were also murdered in the incident along with a teenaged girl and teenaged boy of deceased Augustine and deceased Mary. The chance of involvement of PW14 and PW15 in the incident can be clearly brushed aside.

67. It is the case of the prosecution that the accused was in dire necessity of money for raising funds for his visa and for his travel to Kingdom of Saudi Arabia (K.S.A.). According to the prosecution, the accused had arranged the visa through PW67 and made the initial payment of Rs.25,000/- to PW67. But according to the learned counsel for the accused, the accused was not in such dire necessity or even not any necessity at all. According to the learned counsel for the accused, the accused was a subscriber of a chitty for Rs.50,000/- at the 'Dharma Deepthy' Chitty Company at Aluva and therefore the accused could have availed the prize amount of such a chitty for raising funds. Therefore the question to be looked in to at this juncture is whether the accused was in any such dire necessity of money. In short, the question to be examined is whether the accused had any motive to commit the murder of anyone or more or all of the deceased.
68. PW19 is the wife of the accused. According to her, deceased Augustine and family are the distant relatives of her husband, the accused. On 2.12.2000 the accused went to Bombay for attending the interview for his proposed job in KSA. According to her, after the interview the accused returned and told her

that he had paid an amount of Rs.25,000/- to the agent and that the said amount was borrowed through Hari who was the co-worker of the accused. It was also informed to her that he would get the job and that the date for travel would be intimated later. On 23.12.2000 they received a telephone call that the accused had to start for Bombay on 7.1.2001. An amount of Rs.60,000/- was to be paid for the visa alone. According to PW19, her two sisters helped them. One of her sisters gave her two gold bangles and a chain and asked her to appropriate the money either by pledging it or selling it. The other sister gave Rs.10,000/-. The said two gold bangles and chain were pledged at the Muthoot Banker's Aluva for Rs.11,000/-. Out of the said amount, Rs.5,000/- was used to redeem her gold ornaments which were earlier pledged and then the same were sold for Rs.20,000/-. On 5.1.2001 an amount of Rs.25,000/- more was paid to the agent at Vadanappally, Thrissur. According to her, they were having the balance amount of Rs.10,000/- which was paid by her sister. On 6.1.2001 by about 7 p.m. the accused reached home and had brought 10 liters of Kerosene for domestic purpose. The accused entrusted her the said amount of Rs. 10, 000/-. After telling her that he was going to Perumbavoor and assuring her that he would returned immediately, the accused left the house. Then she corrected by saying that the accused left the house at 6 p.m. on 6.1.2001. During that night the accused did not return. On the next morning she called PW20 Tessy who is the daughter of her mother's younger sister and sent her to the elder brother of the accused at Combara for bringing him. After about 5.30 a.m. when sun light spread, the accused came by an autorickshaw along with PW20. The accused was wearing a pants and shirt. After having tea the accused told her that the purpose for which he had gone to Perumbavoor did not materialize and therefore he would go to the church and then would ge Perumbavoor and would come back. By about 8.30 a.m. the accused

telephoned her by saying that he was at Perumbavoor. In the meantime PW24 Raman Nair had reached her house by stating that he had money transaction with the accused and therefore he wanted to meet him. When she told him that the accused had gone to Perumbavoor. By about 10 a.m. the accused reached home. After having breakfast the accused went to the houses in the neighbourhood for bidding goodbye. After that the accused went to the bus station along with her brother Sunny. Prior to that, the accused had entrusted an amount of Rs.7,500/- to her for expenses to be met at the house.

69. According to PW19, by about 7, 7.30 p.m. on 8.1.2001 the accused called her over the phone from Bombay and informed her that he would be going to Damam on 10th. Even though she came to know about the death of Augustine and family members in the morning of 8.1.2001, she did not inform the accused regarding the same. On 10.1.2001 at 7.30 p.m. the accused called her over the phone from Damam Airport. Subsequently the police reached their house in search of the accused in connection with the murder of Augustine and the family members, at about 7.30 p.m. on 10.1.2001. Thereafter she telephoned to the accused after 3 days as per the direction of Circle Inspector Sasidharan and asked him whether he came to know about the death of Augustine and family members. According to her, then the accused told her that he had come to know about it from one of his friends there. Further according to her, the accused had told her that he had gone to the house of Augustine prior to his proceeding to Gulf. On the next day, she again called the accused over the phone and asked him whether there was any other person along with him when he had visited the house of Augustine. The accused replied that there were no other persons with him. Then she informed the accused that she was being harassed by the police and was being questioned and asked him to come over here if he had any information

regarding the incident. After two weeks, Circle Inspector Sasidharan contacted her over the phone at her neighbouring house and informed her that the accused would be produced at the SP office at 4 p.m. on that day. But she did not go over there. After two weeks she was called to the office of the Dy. SP. There she could see the accused. Then she asked the accused as to for whom did he confess? But the accused did not give her any answer.

70. According to PW19, she had spent Rs.2,500/- out of the amount entrusted to her by the accused and she handed over the balance amount to the police. The police seized the said amount through a mahazar. As she deviated from her versions in the CD statements and denied that the accused had confessed to her, she was declared hostile by the prosecution and questions that could be put in cross examination were put to her. The contradictions in her CD statements were marked as Ext.P18, P18(a) and P18(b).

71. In cross examination PW19 deposed that they used to go to St. Antony's Church, Aluva and the same is situated near the Aluva Railway Station. They had to go to the church through the pipeline road. She deposed that she had 10 more sovereign of gold ornaments and that the accused had subscribed a chitty having a total 'Sala' of Rs.50,000/-. According to her when she asked the accused as to where was he during the night of 6.1.2001, the accused had told her that while he was proceeding by an autorickshaw to Perumbavoor 3, 4 persons obstructed the autorickshaw and they tried to extort his money and he took to heels and escaped from their clutches and hid himself in an old building. In re-examination she deposed that she did not tell the CBI or the Crime Branch that she had 10 more sovereigns of gold ornaments. When she was asked as to why she did not give those gold ornaments also to the accused, she deposed that as the accused told her on Friday that the required amount could be arranged, she did not give him the 10 sovereigns of gold

ornaments also. It is very strange to note that she has no case that deceased Augustine gave any amount to the accused. She has no case that the accused told her that deceased Augustine gave him any amount. If as a matter of fact deceased Augustine had paid any amount to the accused during the night of 6.1.2001, definitely in normal course he would have informed the matter to PW19. Even though the accused was a frequent visitor to the Tharavad house of deceased Augustine, it is pertinent to note that he had not discussed regarding the details of the death of Augustine and family with PW19, till she asked him about it.

72. In this context it is pertinent to note that when PW19 saw the accused for the first time after his arrest at the DY. SP Office, Aluva, she asked the accused as to for whom did he confess the guilt. Then the accused did not give any answer. This point was put to the accused when he was examined under section 313 Cr. P.C. The accused clearly admitted that part of the evidence adduced by PW19 as correct.
73. Now the version of the accused regarding the amount raised by him and the manner in which he raised it, has to be considered. According to him, on 5.1.2001 deceased Clara paid him Rs.5,000/-. He had earlier borrowed an amount of Rs.25,000/- from PW23 Yohannan at the interest rate of Rs.10% per month ie, 120% annum. Likewise he had owed an amount of Rs.10,000/- from PW24 Raman Nair. On 6.1.2001 around 8 p.m. deceased Augustine gave him Rs.35,000/-. According to the accused on 7.1.2001 in the morning he paid Rs.25,000/- to PW23 and Rs.10,000/- at the house of PW24. Therefore even according to the accused he had spend the whole amount of Rs.35,000/- alleged to have been given by deceased Augustine to him on 6.1.2001. It is the case of PW19 that he entrusted Rs.10,000/- to her on 6.1.2001 as well as Rs.7,500/- to her on 7.1.2001. The accused has no explanation as to how could

be raise the balance amount to be paid to PW67 for the visa as well as expenses for his journey to Gulf.

74. Now the evidence of PW67 Ummer, the agent who arranged visa for the accused, has to be considered. PW67 is conducting 'White Way Air Travels' at Vadanappally, Thrissur. The said office is functioning as the Sub office of the recruiting office at Bombay and also agency for arranging tickets for persons going abroad. He identified the accused. According to him, for procuring a visa for going to Gulf, the accused and his friend Hari had approached him. During the first week of December 2000 he took them to Bombay. After the interview and medical examination, the advance amount was paid and they returned after one week. The amount given by the accused as advance was Rs.25,000/- for the visa for the job of a driver. He had demanded a total amount of Rs.64,000/- from the accused for the visa as well as ticket. The fact that the visa was stamped was intimated to the accused on 31.12.2000. It was also informed that the accused had to go to Gulf on 10.1.2001 for which he had to proceed to Bombay atleast by 7.1.2001. On 5.1.2001 the accused approached him at Thrissur and paid an amount of Rs.20,000/- more. The accused told him that the balance amount would be paid after reaching Bombay and requested for a reduction of Rs.2,000/- from the balance amount. On 7.1.2001 he along with the accused, Hari and the other 5 persons in the group proceeded from Thrissur to Bombay by train via the Konkan route. The accused and Hari had no reservation ticket in the train and therefore both of them had traveled by the general compartment. As the journey of the accused and Hari could be finalized only on 5.1.2001, they did not get reservation. They started from Thrissur by 4 p.m. on 7.1.2001 and reached their room at Bombay by 9.30 p.m. on 8.1.2001. Then the accused paid him Rs.18,000/- at Bombay during the night of 8.1.2001, being the

balance amount of Rs.17,000/- after the reduction of Rs.2,000/- and also another amount of Rs.1,000/- which the accused had borrowed from him earlier. On 9.1.2001 in the morning he took the members of the group and the amounts to Cosmos International, Bombay. Thereafter he came to know that the accused had departed for Damam by the morning flight on 10.1.2001.

75. Further according to PW67, on 11.1.2001 a Circle Inspector of Police contacted him over the phone at Bombay and asked him whether the accused had gone to Gulf or remained at Bombay. In cross examination he deposed that the police had reached Bombay after 2, 3 days of his reaching Bombay. The police took him to Cosmos International from where they obtained the name and address of the sponsor of the accused. In cross examination he further deposed that he had arranged visa for PW74 Suresh of Mulloorkkara. When they reached their room at Bombay on 8.1.2001, PW74 was there at the room. On going through the deposition of PW67; I do not find anything to discredit or disbelieve his testimony. Even from the versions of PW67, it is evident that the accused was in short of money for making payments for the visa and expenses for his journey. If the accused was ready with the money, his tickets to Mumbai also would have been reserved. On the contrary the accused had to travel by General Compartment to Mumbai along with his friend Hari whereas the others in the group including PW67 travelled by reservation coaches. More over, the accused had even borrowed an amount of Rs.1,000/- from PW67, which he repaid only on reaching Mumbai. All these clearly reveals that the accused was in short of money.
76. The evidence of PW20 Tessy Varghese is also to be considered at present. She is the daughter of the younger brother of the father of the accused. During the period of incident the accused was residing at their family house with his wife PW19 and child. According to her, she knew that the accused had been

making attempts for going to Gulf. She came on the previous day ie, on Sunday after 5.30 a.m. PW19 has sent her to the house of PW9 George who is the elder brother of the accused at Combara for bringing PW9 as the accused had not returned home on the previous day. She proceeded by an autorickshaw and when she reached near the power house Aluva she saw the accused coming. She caused the autorickshaw to stop, the accused was also taken and they returned to the house of the accused. Further according to her, the accused had brought 10 litres of Kerosine to his house in the evening of Saturday. She clearly deposed that the accused was in his attempts to arrange money for going to Gulf. These aspects have not been challenged in the cross examination by the accused. Therefore from the evidence of PW20 also which stands unchallenged, it has clearly come out that the accused was in short of money.

77. PW23 Yohannan is a driver of the Aluva Municipality. According to him, the accused was working there at the Aluva Municipality as a driver on daily wages from 1995 onwards. According to him, he had money transactions with the accused and that the accused had borrowed an amount of Rs.25,000/- from him on agreeing to repay the same within 3 months. The said amount was borrowed in the month of December 2000 and that the accused represented that it was for making payment to the visa, He lent the money to the accused through Hari who is their common friend, as recommended by Hari. He had demanded that the accused should give documents for the amount prior to his leaving for Gulf. Hari had also told him to obtain sufficient documents from the accused as the accused was about to go to Gulf. He demanded a cheque as well as signed stamp paper for Rs.50/- from the accused. He saw the accused at the Thynoth Road at Aluva at 10 a.m. on 6.1.2001. Then he demanded the accused that the accused should give documents for the amount as the accused

was about to go to Gulf on the next day. Then the accused replied that he has no cheque book with him. Then PW23 told the accused that he would get the cheque book on deposit of Rs.250/- at the bank account of the accused. On that day at about 12.55 p.m. while he was coming back, he saw the accused standing with Hari near the gate of the Municipal office, Aluva. The accused had cheque book and stamp paper with him. the accused handed over Ext.P19 signed cheque leaf as well as Ext.P20 stamp paper for Rs.50/- to him. In Ext.P20 also the accused affixed his signature. According to him, subsequently he had handed over Ext.P19 and P20 to the Dy. SP Aluva.

78. Further according to PW23, on the next day i.e., on 07.01.2001 in between 9.15 a.m. and 9.30 a.m. the accused came to the courtyard of his house by autorickshaw. Then he asked the accused as to why did he reach there. The accused replied that he would be satisfied in proceeding to Gulf after making the payment to him. When PW23 asked the accused regarding the source of the said money, the accused told him that it was given to him from the house of the elder sister of his wife. According to PW23, the accused repaid an amount of Rs.22,500/- to him. He appropriated Rs.500/- out of it as interest and Rs.22,000/- as principal. The accused had agreed to repay Rs.3,000/- more within two months. The accused did not demand back the cheque leaf and stamp paper. He did not return it to the accused as the accused did not discharge the full amount. In the cross examination of PW23, the learned counsel for the accused has vehemently challenged the said transactions and the amount involved. But I do not find any merit in the said challenge in view of the clear admission of the accused regarding the said transaction. When the accused was examined under Section 313

Cr.P.C. the accused clearly admitted as answer to question No.77 that he had borrowed an amount of Rs.25,000/- in December 2000 from PW23 through his friend Hari and that he had handed over Ext.P19 signed cheque leaf and Ext.P20 signed stamp paper for Rs.50/- to PW23 at 12.55 p.m. on 06.01.2001 to PW23 near the gate of the municipal office, ALuva. As answer to question No.78 regarding the further transactions with PW23, the accused deposed that he had repaid Rs.25,000/- to PW23 and that PW23 appropriated Rs.2,500/- out of it as interest by telling him that he would not return Ext.P19 and Pw20 without making the payment of Rs.2,500/- more. In the statement in writing also the accused clearly admitted that he had borrowed an amount of Rs.25,000/- from PW23 for interest at the rate of 10% per month. He admitted the repayment of Rs.25,000/- also to PW23, in his statement in writing. It has been further admitted by the accused that PW23 had appropriated Rs.2,500/- out of it as interest for the first month. Matters being so there is absolutely nothing to disbelieve the versions of PW23 that the accused repaid only Rs.22,500/-. PW23 appropriated Rs.2,500/- as interest for one month for the amount of Rs.25,000/- and considered the repayment towards principal amount as Rs.22,500/-. PW23 retained with him Ext.P19 to P20 as an amount of Rs.2,500/- more was due to him by the accused.

79. According to PW24, Ramachandran Nair, ('Raman Nair' in the words of the accused), the accused had borrowed an amount of Rs.1,000/- from him at first. He identified the accused. According to him, later as 5 to 8 instalments the accused had in total borrowed an amount of Rs.10,000/- from him. according to him, the interest for the amount was being regularly paid by the accused. By about 1.1.2001, the accused had told him that he

would be going to Gulf on 7.1.2001. Therefore on 7.1.2001 by about 9.30 a.m. he went to the house of the accused for knowing about the repayment for the amount. Then the accused was not present there. The wife of the accused informed him that he had gone to Perumbavoor with the money. When these facts were put to the accused when examined under section 313 Cr.P.C. he clearly proved that the accused was in short of money. PW24 was living with the interest which was being obtained by lending an amount of Rs.40,000/- only with him. Out of that amount, the accused had borrowed an amount of Rs.10,000/- in total that too by way of 5 to 8 instalments. Such amounts were being obtained by the accused on interest. Any further evidence is not required to come to the conclusion that the accused was in short of money.

80. Further according to PW24, when he was coming back from the house of the accused, he saw the accused coming by an autorickshaw. On seeing him the accused caused the autorickshaw to slow down and the accused told him that he had paid the amount at the house of PW24. When PW24 returned at his house at 12 noon, his son PW40 told him that the accused had repaid Rs.10,000/- due to PW24. Ext.P21 is the 'Kuripu Book' in respect of the said amount borrowed by the accused from PW24. PW40 is the son of PW24. PW40 has supported the evidence of PW24 regarding the repayment of Rs.10,000/- by the accused at 8.30 a.m. on 7.1.2001. According to PW40, his Father PW24 was not present at his house at that time. When his father came after 12 noon he informed him regarding the repayment of Rs.10,000/- made by the accused. There is absolutely nothing to disbelieve the evidence of PW24. Moreover the accused in clear terms

admitted the borrowal as well as repayment. The contents of Ext.P21 also are unchallenged.

81. PW21 was the sales man at the hardware shop of deceased Augustine at Aluva. He had worked there till the death of Augustine. After that the said shop was closed. According to him, the accused is distant relative of deceased Augustine and he had acquaintance with the accused as the accused used to visit the shop. It was on 08.01.2001 that he came to know about the death of Augustine and family. On 07.01.2001 after 9 a.m. he had gone to his wife house at Thottuva. When he got down at Thottuva from the bus, the accused also got down there from the very same bus. When he asked the accused as to why the accused was there, he told him that he wanted to go to the house of PW23. The accused asked him whether he knew the house of PW23. As he did not know the house of PW23, PW21 asked an autorickshaw driver waiting with an autorickshaw at the autorickshaw stand regarding the house of PW23. as the driver knew the house, the accused got in the autorickshaw and proceed to the house of PW23. The place called Thottuva is situated 25 kms away from Aluva. When these evidence adduced by PW21 were put to the accused when examined under Section 313 Cr.P.C., the accused admitted all the said versions of PW21 as correct. Strangely enough no question was asked in the cross examination of PW21 as to whether the accused had visited the shop of Augustine on 06.01.2001 to bid goodbye, and further according to the accused he again visited the shop of deceased Augustine around 8 p.m. and then deceased Augustine gave him Rs.35,000/-. If the accused had such a bonafide contention, definitely questions regarding the presence of the

accused at the shop of Augustine on 06.01.2001 would have been put to PW21 in cross examination. No attempt was made by the accused in the cross examination of PW21 to ask whether the accused was present at the shop of Augustine on two occasions on 06.01.2001 and as to whether Augustine had paid any amount to the accused. Admittedly PW21 was the sales man at the shop of Augustine.

82. According to PW22, he had an autorickshaw of his own and after his working hours as a postman, he used to drive his autorickshaw. On 07.01.2001 which was a Sunday, he took the accused by his autorickshaw from Thottuva junction to the house of PW23. According to him, it was PW21 who approached him and asked whether he knew the house of PW23. When he replied that he knew the house of PW23, the accused got in the autorickshaw and proceeded to the house of PW23 by about 9 a.m. He clearly identified the accused. PW22 was vehemently cross examined by the learned counsel for the accused and his entire deposition was challenged. But I do not find anything in the cross examination in order to discredit or disbelieve the testimony of PW22. More over when the evidence adduced by PW22 were put to the accused when examined under Section 313 Cr.P.C., he admitted it as correct; but contended that he traveled by the autorickshaw but he does not know its driver. When the accused has clearly admitted that he went to the house of PW23 as well as PW24 and made the repayment, there is absolutely nothing to disbelieve PW22.
83. PW71. Superintendent of police, Crime Branch, Ernakulam took Ext.P69 certified extract of the cheque Issue Register and Ext.P70 certified extract

of the ledger entries of the account of the accused at the South Indian Bank. Aluva, through Ext.P68 mahazar. Ext.P70 shows that there was an amount of Rs.4304.75 in the said account of the accused as on 10th August 2000. It further shows that an amount of Rs.4,000/- was withdrawn by the accused on 18.8.2000 from the said balance amount. Thereafter on one occasion an amount of Rs.100/- and another occasion an amount of Rs.300/- were deposited by the accused. The balance in the account was Rs.716.75.

84. MO.11 inland letter contains the following statement:-

"From the time when I came to know that I would not get money from the bank onwards, I became worried as to from where I could get the money". According to the prosecution MO.11 letter addressed to PW19 was written by the accused from KSA and got posted at Mumbai through a person named Majeed. According to PW71, the accused entrusted the letters to one Sherif who is the younger brother of the said Majeed for handing over it to Majeed and for posting it at Mumbai. No date has been put in MO.11. But the postal seal contains the date. According to the learned counsel for the accused MO.11 is not admissible in evidence as the same is cooked up. It has been contended by the accused in his statement in writing that the police got 2 to 3 inland letters written by him as narrated by the police, while he was in police custody. As MO.11 is being challenged by the learned counsel of the accused. the date of which it was posted at Mumbai and the date on which it reached Aluva and the question whether it reached at the house of the accused are also to be considered.

85. According to PW71, he conducted the search of the house of the accused from 5 p.m. to 6 p.m. on 17.1.2001 and seized MO.7, MO.8, MO.9, MO.11 series and MO.84 air bag from the house of the accused through Ext.P30 search list. The search memo prepared for the same is marked as Ext.P64.
86. PW42 is one of the neighbours of the accused. According to him, he saw the police searching the house of the accused and preparing Ext.P30 search list in which he also affixed his signature. At that time PW19 and PW9 were there at the house. He identified MO.7 series, MO.8 series, MO.9 series, MO.10 and MO.11 series and a bag which he described as suitcase as the articles seized from the house of the accused through Ext.P30. According to him, MO.11 series are the pieces of two inland letters which were torn away and kept beneath the bed at the house of the accused. In cross examination he deposed that the bed was spread on the cot. MO.11 series were taken from the cot, beneath the bed.
87. PW43 is the post man of the Aluva Post Office who is engaged in delivering postal articles at Vathican street. He knows the house of the accused situated at Vathican street. He knows PW19 the wife of the accused also. According to him, MO. 11 and MO. 11(a) are addressed to PW19. Further according to him, MO. 11 was posted at Mumbai on 11.02.2001 and it reached Aluva Post Office on 17.02.2001 as is evident from the postal seals and likewise. MO. 11(a) was also posted at Mumbai and it reached Aluva Post Office on 17.02.2001. According to him, MO. 11 and MO.11(a) were delivered to the addressee by him. There is absolutely nothing to disbelieve PW43. PW43 being the post men has no special interest in the matter. He was doing his acts in the regular course of his official duties. As per Section 114 illustration (f) of the Indian Evidence Act, the court may presume that a letter has been received by the addressee after it is shown to have been posted in the correct address.

Here the accused had no dispute with regard to the address on MO. 11 and MO 11(a). As per the evidence of PW43 post man MO. 11 was posted on 11.02.2001 and the same reached Aluva Post Office on 17.02.2001. There is absolutely nothing to disbelieve the contents of Ext. P30 search list or the evidence of PW71 and PW42. The evidence of PW71 regarding the seizure of MO. 11 series from the house of the accused through Ext. P30 search list clearly stands corroborated by the evidence of PW2. The evidence of PW42 and PW71 on this aspect is further corroborated by the evidence of PW43 postman. MO. 11 and MO. 11(a) were recovered as torn pieces of two inland letters. The same were reconstructed by the expert, PW46.

88. PW44 is also one of the drivers of the Aluva Municipality. According to him, the accused had also worked along with him as driver and the Aluva Municipality. He knows the handwriting of the accused. According to him, he had occasions to see the accused writing the log box of the vehicle and that was how he was acquainted with the handwriting the accused. He identified MO. 11 and MO.11(a) letters as letters written the handwriting of the accused. He proved Ext. P31 log book of the tractor bearing registration No. KL7Q 7874 belong to the Aluva Municipality. He identified the contents of sheet No. 21212 of Ext. P31 as in the handwriting of the accused. The said page is marked as Ext. P31(a). This point was put to the accused as question No. 110 when he was examined under Section 313 Cr.P.C. He clearly admitted that the contents in Ext. P31(a) are in his own handwriting. Therefore, admittedly Ext. P31(a) is in the handwriting of the accused.
89. PW46 while working as Assistant Director, Documents of the Forensics Science Laboratory, Trivandrum, received certain document in this case from the judicial First Class Magistrate's court, Aluva, for examination. According to him, the questioned documents in this case were carefully and thoroughly

examined and compared with the standard documents in all aspects of handwriting identification and detection of forgery as well as examination of torn edges with scientific aids. After examination, he furnished Ext. P32 report. Ext. P32(a) is the report containing the detailed reasons for his conclusion. Afterwards the reports along with the documents were returned to the Judicial First Class Magistrate's Court, Aluva through Director, Forensic Science Laboratory, Trivandrum. The results of the examination are the following:-

1. The person who the blue enclosed standard writings and signatures stamped and marked S1 to S6 and A1 to A7 also wrote the red enclosed questioned writings similarly stamped and marked Q1(a) to Q1(n) and Q2(a) to Q2(h). Q1(a) to G1(n) occurs in No. 11 and Q2(a) to Q2(h) occurs I MO. 11(a). S1 to S are specimen writings stated to be written by Sri. Antony. Specimen writings are marked as Ext. P33 series. A1 to A7 occurs in Ext. P31 Serial No. 021212, (Ext. P31(a), 021221 (Marked as ext. P31(b) 021225 (Marked as Ext. P31(c), 021231 (marked as Ext. P31(d), 021233 (Marked as Ext. P31(e), 021234 (Marked as Ext. P31(f) and 021236 (Marked as Ext. P31(g).
- 2) The portions of paper bearing questioned writings marked Q1(a) to Q1(n) were parts of one and the same Inland Letter Card. Q1(a) to Q1(n) course in MO. 11.
- 3) The portions of paper bearing questioned writings marked Q2(a) to Q2(h) were parts of one and the same original Inland Card Q(2)(h) were parts of one and the same Inland Letter Card Q2(a) to Q2(h) occurs in MO. 11 (a).
90. In cross examination he deposed that MO. 11 are eight torn pieces of an inland letter card and he marked the writings on these eight pieces as Q1(a) to Q1(n). In MO. 11(a) some pieces were found missing and only six pieces were available in MO. 11(a). All the pieces in MO. 11 and the available pieces in

MO. 11(a) matched each other. Ext. P32(a) reveals that S1 to S6 were specimen writings and signatures of the accused obtained by PW71 on 08.01.2005 through the Judicial First Class Magistrate's Court, Aluva. The said specimen handwritings are marked as Ext. P33 series. The learned counsel for the accused challenged Ext. P33 series on the basis of the decision reported in AIR 1983 Supreme Court 791 wherein it was held that the court cannot take specimen writings at the stage of investigation and that the nature of Section 73 of the Indian Evidence Act does not permit a Court to give a direction to the accused to give specimen writings for the extended necessity of comparison in a proceeding which may later be instituted in the court. Ext. P32 clearly proves that for the purpose of comparison Ext. P33 series marked as S1 to S6 as well as the standard writings and signatures written in the normal course in Ext. P31 log book of a tractor with registration No. KL7Q 7874, marked as A1 to A7 by PW46 were used. Admittedly A1 to A7 are the contents of Ext. p31(a). The accused clearly admitted his handwriting in all the contents of Ext. P31(a). Even if Ext. P33 series are avoided, the comparison and analysis made by PW46 by making use of the contents of Ext. P31(a) which are admitted to be correct by the accused, can only be believed to be correct. Therefore, it clearly stands proved that MO. 11 and MO. 11(a) are written by the accused.

91. The contention of the accused that the police forced him to write down 2, 3 inland letters while in police custody also cannot be believed. The said vague contention might have been taken by the accused aiming at MO. 11 series. If it is aimed at MO. 11 series, the said contention taken by the accused is not believable. The accused reached Mumbai Sahar International Airport on 09.02.2001. When examined questioned in his statement under Section 313 Cr.P.C., the accused admitted the same as correct. Thereafter the accused

reached Karipoor Airport on 10.02.2001. It is practically impossible to get such letters written by the accused in the meantime and to post it on Bombay on 11.02.2001. The accused has not pointed out the date on which such letters were alleged to have procured from him by the police. Over and all the above the accused have no contention that he was asked to write down the name and address of his wife on the front portion of the inland letters. I do not find any reason to disbelieve PW42, PW43, PW44 and PW46.

92. The accused contended that he was taken in to custody by the police as and when he reached Mumbai and that he was kept in illegal custody till the recording of his arrest. According to ^{PW}PE59, the accused came to Karipoor Airport on 10.02.2001, from where he was placed under secret surveillance by the police, and all his movements were carefully and secretly noted by a Sub Inspector and party who were the members of the investigation team. According to PW59, on many occasions, the accused was summoned to the Forest IB, Kodanad, F.A.C.T. Guest House and Plantation IB at Kalady for interrogation, and was interrogated. The accused was placed under arrest by PW59 on 08.02.2001 at 11 a.m. at the Plantation IB at Kalady. On this point PW59 was vehemently cross examined by the learned counsel for the accused. In cross examination he deposed that the accused was summoned and interrogated on 11.02.2001, 13.02.2001, 16.02.2001, 17.02.2001 and 18.02.2001. When asked, PW59 deposed that the accused was summoned through notices issued in writing. PW59 submitted that the said duplicate notices showing acknowledgements by the accused are there in the CD file. The duplicate copies of the notices which were acknowledged by the accused were produced and marked as Ext. P51 series. The said notices were issued to the accused by PW59. In re-examination I was further clarified by PW59 that when the CD file was produced before the Hon'ble High Court of Kerala, Ext.

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P51 series were kept in the CD file. Ext. P51 series contain the signatures of the then Registrar of the Hon'ble High Court of Kerala. There is absolutely nothing to disbelieve Ext. P51 series. It is evident that Ext. P51 series were there in the CD file from the dates of such notices onwards and that was why the signature of the then Registrar of Hon'ble High Court of Kerala happened to be there on Ext. P51 series. Matters being so there is absolutely nothing to disbelieve the versions of PW57 regarding the said interrogation of the accused and subsequent arrest. Therefore there is absolutely nothing to doubt the genuineness of MO. 11 series.

93. MO. 11 written by the accused to his wife also clearly reveals that he was in short of money and that he was frantically in search of money. It further reveals that he was worried by thinking that from where could he raise the money as and when he came to know that he would not get the money from the bank. The evidence discussed above clearly reveal that the accused was frantically in search of money for making balance payment to PW67 for the visa and for making arrangements for his journey to K.S.A.
94. When the accused was striving hard for meeting source for raising funds, it cannot be believed that the accused would not have divulged the receipt of money, if any, from deceased Augustine, had it been willingly given to him by deceased Augustine. The accused has no case that he told PW19 regarding the receipt of such an amount of Rs. 35,000/- from deceased Augustine. Even in box PW19 has no case that deceased Augustine gave her husband an amount of Rs. 35,000/- during the night of 06.01.2001. PW19 has no case that the accused told her regarding the so called receipt of Rs. 35,000/- from deceased Augustine. From all these it is evident that the story narrated by the accused in his statement in writing regarding the so called receipt of Rs. 35,000/- from deceased Augustine around 8 p.m. on 06.01.2001, is false and misleading.

95. May be with a view to prove that the accused was not in short of money he examined DW1 who is the manager of a chitty company named 'Dharma Deepthy' at Aluva. He produced Ext. D17 chitty register of chitty No. 61. According to DW1, the accused started payment of instalments to the chitty on 04.09.2000 and instalments were so paid by the accused till 24.01.2001. Further according to him, all the said monthly instalments were regularly paid. In cross examination by the learned public prosecutor, DW1 admitted that the said chitty is not one registered as per the Kerala Chitty's Act whereas it is registered as per the Shops and Establishments Act of Jammu. Ext. D17 register need not be produced before any authority. Further he admitted that Ext. D17 would not show that the said chitty was registered as per the Shops and Establishments Act of Jammu & Kashmir. Further he admitted that two corrections are there in the name and address of the subscriber in Ext. D17(a). At first the name and address of the subscriber was shown as "Remya George by father M.A. George, Manjooran House, N.A.D. P.O., Nochima". Subsequently it was scored off and the name and address of the accused was written. Again the name and address of the accused was scored off and the name and address as "Mr. K.Domiic, Karakkattu, Nazreth, Alua" is written in Ext. D17(a). The handwriting in Ext. D17(a) is not that of DW1. According to him, the accused has paid the instalments from 1 to 5, and that an amount of Rs. 3716/- was returned to the accused on 05.12.2002 through Ext. D18 receipt issued by the accused.
96. According to DW1, Ext. D17 was not produced before any authority and that Ext. D17 will not show the period for which it has been kept and maintained. There is no certification regarding the period for which it has been maintained and the number of pages which it contain. In re-examination DW1 deposed that as the first subscriber 'Remya George was a minor, the accused was

substituted as the subscriber' and when the accused defaulted the payments of instalments, again another subscriber was substituted. In further cross examination by the learned public prosecutor he admitted that Ext. D17 or D17(a) do not show the Remya George was removed as she was a minor. To the questions put by this court. DW1 admitted that he has been keeping the day book and ledger which shows all the payments truly and correctly and that the day book and ledger are being audited and certified by the auditor. 'Thalavariyolas' of all the subscribers are also being kept and maintained. The day book and ledger are not produced.

97. When there are corrections and substitutions in the name and address of the subscriber to the said chitty, it is not possible to believe that the accused had paid the said five instalments to such a chitty. The accused being a person who was striving hard even for making both ends meet cannot be believed to have participated as a subscriber in such a chitty. For showing the payments, the accused ought have called for the day book and ledger. The versions of DW1 regarding the existence of such a chitty itself does not inspire confidence. Such a chitty is not registered as per the Kerala Chitty's Act. The repeated substitutions of the names and address of the subscribers in Ext. D17 and D17(a) and the manner in which Ext. D17 was being maintained and the fact that Ext. D17 has not been produced before any authority for verification or certification are sufficient to prove that the name and address of the accused is substituted in Ext. D17(a) falsely in order to help the accused and to cook up evidence for the accused. The versions of DW1 that the accused paid five instalments in a chitty and that an amount of Rs. 3716/- was returned to the accused etc. are unworthy of credit. Matters being so, this court is constrained to disbelieve DW1 and Exts. D17 and D17(a).

98. The accused has no explanation as to how he could raise the amount of Rs. 18,000/- admittedly paid to PW67 during the night of 08.01.2001 as and when he reached Mumbai. PW19 has given a detailed description as how the accused raised funds. According to her, Rs. 25,000/- was borrowed through Hari ie, the amount borrowed by the accused from PW23 on interest which the accused paid to PW67 as advance amount for the visa. The amount of Rs. 10,000/- borrowed from PW24 cannot be taken in to account as the same was borrowed much earlier that too 5 to 8 instalments. Further according to PW19, one of her sisters gave Rs. 10,000/- and another sister gave some gold ornaments which they pledged at Muthoot Banker's Aluva for Rs. 11,000/-. After paying Rs. 5,000/-, her gold ornaments which were earlier pledged were redeemed and sold for Rs. 20,000/-. Therefore the total amount they could raise was Rs. 36,000/-. Further according to her an amount of Rs. 25,000/- more was paid to PW67 on 05.01.2001. Therefore the balance amount should be Rs. 11,000/-. According to her, the accused gave her Rs. 10,000/- in the evening of 06.01.2001. Therefore, the balance amount should be Rs. 1,000/-. It is the further case of PW19 that on 07.01.2001 prior to the departure of the accused he gave her Rs. 7,500/- more by way of expenses at the house. PW19 has no explanation as to how the accused could raise such an amount. Then further PW19 has no explanation as to how the accused could pay Rs. 18,000/- to PW67 on his reaching Mumbai on 08.01.2001. Over and above all these, the accused paid Rs. 25,000/- to PW23 and Rs. 10,000/- at the house of PW24 in the morning of 07.01.2001. According to PW19, the accused reached home at 7 p.m. on 06.01.2001 with 10 litres of kerosene and then handed over Rs. 10,000/- which was with him to her and then went to Perumbavoor. From all the above it has clearly come out that the accused came into possession of a huge amount of money after 7 p.m. on 06.01.2001 and prior to his departure to

Mumbai on 07.01.2001. According to PW19, after handing over Rs. 10,000/- to her by the accused when he left the house at 7 p.m. by stating that he was going to Perumbavoor, there was no amount with the accused. Then on the next day prior to his departure to Mumbai ~~the accused gave Rs. 7,500/-~~ to PW19 and he paid a total amount of Rs. 35,000/- to PW23 and at the house of PW24. Over and above it, the accused paid an amount of Rs. 18,000/- to PW67 just after reaching Mumbai on 08.01.2001. There is absolutely no explanation either by the accused or PW19 regarding such an amount admittedly spent by the accused on 07.01.2001 and 08.01.2001. The contention resorted to by the accused that deceased Augustine had paid him Rs. 35,000/- at 8 p.m. on 06.01.2001, cannot be believed. Even if the said explanation is accepted there is no explanation as to how he could raise the other amounts. It has to be remembered that the accused had even borrowed an amount of Rs. 1,000/- from PW67, which he could repay just after reaching Mumbai. There is no meaning in contending that PW19 has not deposed regarding the amounts paid by the accused to PW23 and at the house of PW24 as she was not asked anything regarding the amount alleged to have obtained by the accused from deceased Augustine. It is to be noted that the accused has come forward for the first time with a story that deceased Augustine willingly paid Rs. 35,000/- to him at 8 p.m. on 06.01.2001, only when the accused filed the statement in writing as part of his statement under Section 313 Cr.P.C. No such contention was taken by the accused even during the cross examination of PW19. If such a fact was known to PW19, definitely the same would have been put to her during her cross examination. The prosecution cannot be found fault with in not asking anything regarding those things to PW19 because of the fact that the accused has cunningly resorted to such a false contention only at the end of the trial. From all the above, it

has clearly come out that a substantial amount of money came into the possession of the accused after 7 p.m. on 06.01.2001 and prior to his departure to Bombay before the noon of 07.01.2001.

99. According to PW21, the place called Thottuva is 25 kms away from Aluva. The said evidence of PW21 stands unchallenged. According to the accused, after obtaining the amount of Rs. 35,000/- from deceased Augustine, after 8 p.m. on 06.01.2001 he went to Perumbavoor by bus and then proceed to Thottuva by an autorikshaw. According to the accused, there were two persons at the driver's seat of the autorikshaw and they could realize from his words that the accused was traveling with money, and after proceeding to some distance from Vallam to Thottuva when they reached a lonely place, they stopped the autorikshaw and tried to extort money from him. According to the accused, he became frightened and ran away from there and hid himself in a dilapidated building. It is further contended by him that at dawn he managed to escape from there and reached his house. These are the versions given by the accused in his statement in writing, regarding his whereabouts during the night of 06.01.2001. The said explanation offered by the accused are even contrary to commonsense. It cannot even be imagined that a person traveling with money through a lonely place by an autorikshaw during night will divulge the information that he was carrying money especially when two unknown persons were present at the driver's seat of the autorikshaw. More over, apart from stating that he hid himself in a dilapidated building, no details are given by the accused regarding such a place wherein he alleged to have managed to hide himself. It cannot be imagined that during darkness in a lonely place which was not known to the accused he could trace out a dilapidated building to hide himself. Over and above all these, during dawn instead of going to the house of PW23 and to the house of PW24 for making

the payments, the accused returned to his house after traveling about 25 kms and then subsequently after attending 'kurbana' and all he again went to Thottuva to make the payments to PW23 and at the house of PW24. From all the above, it is evident that the said explanation offered by the accused is utter falsehood and is totally unbelievable. Apart from the above, the version of PW19 on this matter has also to be considered. It has clearly come out from the evidence of PW19 and Pw20 that the accused was not present at his house during the night of 06.01.2001. During the cross examination of PW19, the learned counsel for the accused attempted to bring out the explanation regarding the absence of the accused at his house during the night of 06.01.2001. PW19 in her cross examination deposed that on the next day when she saw the accused, she asked him as to where was he during the night on 06.01.2001. Then the accused told her that while he was going to Perumbavoor by an autorikshaw, 3, 4 persons came and obstructed the autorikshaw and attempted to extort money from him and that he escaped from their clutches by running away and he hid himself inside an old building. This explanation alleged to have given by the accused to PW19 is quite contrary to the aforesaid explanation offered by the accused in his statement in writing. In his statement in writing the accused has stated that he went to Perumbavoor by bus. According to PW19, the accused had told her that he went to Perumbavoor by an autorikshaw. According to the statement in writing by the accused, the two persons who were in the driver's seat of the autorikshaw tried to extort money from him. But according to PW19, the accused told her that while he was proceeding to Perumbavoor and tried to extort money from him. From all these, it is crystal clear that the said explanation offered to PW19 and the explanation in his statement in writing

regarding his whereabouts on 06.01.2001 are contradictory. Further the said versions are contrary to common sense, unbelievable and absolutely false.

100. The learned public prosecutor argued that the accused has resorted to a false contention 'alibi', the correctness of which the accused has failed to prove and therefore the same will militate against the accused. The learned public prosecutor invited my attention to the decision in Harshan Vs. State of Kerala reported in 1989 (1) KLT 105 wherein it has been held as follows:-

"If alibi is successfully established that will be an item of evidence inconsistent with the prosecution case and its evidence. But the plea of alibi will have to be proved by the accused with absolute certainty. It is not sufficient that the plea is established with preponderance of probability as in the case of proving general exceptions or other circumstances. That is because the prosecution case is failing only on account of satisfactory proof of alibi by which alone the prosecution evidence is being shattered".

101. The learned counsel for the accused argued that the aforesaid contention taken by the accused cannot be considered as a plea of 'alibi' because the place at which he alleged to have hid himself is not a place where from he could not have reached the place of offence on the date and at the time of its commission. The learned counsel for the accused invited my attention to the decision in Subhash Chand Vs. State of Rajasthan reported in (2002) 1 Supreme Court Cases 702 wherein it has been held in paragraphs 20 and 21 as follows:

"The purpose of asking questions during examination under Section 313 Cr.P.C. is to afford the accused personally an opportunity of explaining any incriminating circumstance so appearing in evidence against him. The accused may or may not avail the opportunity for

offering his explanation. The accused did not avail the opportunity and stood short by simply stating that the statement of the cinema – owner that he was on leave on the fateful day was not correct. The accused has not stated during his statement under Section 313 Cr.P.C. and nowhere suggested during cross-examination of prosecution witness that at the time of the incident he was at a place wherefrom he could not have reached the place of the offence on the date and at the time of the incident he was at a place wherefrom he could not have reached the place of the offence on the date and at the time of its commission.

Literal meaning of 'alibi' is "elsewhere". In law this term is used to express that defence in a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime charged against him, offers evidence that he was in a different place at that time. The plea taken should be capable of meaning that having regard to the time and place when and where he is alleged to have committed the offence, he could not have been present. The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. Denial by an accused of an assertion made by his employer that the accused was on leave of absence from duty on the date of offence does not amount to pleading of alibi.

It must, therefore, be held that the accused-appellant had not taken a plea of alibi and therefore the question of finding it false, and then drawing an inference adverse to him, does not arise at all.'

102. The facts and circumstances of the case noted supra and contention taken by the accused therein are not identical to the facts circumstances of this case or the contention taken by the accused her in regarding his whereabouts on 6.1.2001. In this case the accused contended that after 8 p.m. till the dawn of

7.1.2001 he was from place of the incident in this case and that he hid himself in a dilapidated building which is situated about 25 km away from the scene of occurrence. According to him, after 8 p.m. on 6.1.2001 he started from the shop of Augustine to Perumbavoor and then proceeded to thottuva and then he reached his house directly from there after 5.30 a.m. on 7.1.2001. This is nothing but a clear contention of 'alibi' resorted to by the accused which is not at all identical or similar to the circumstance detailed in the decision noted supra.

103. The learned counsel for the accused invited my attention to the decision in Thankamma Vs. State of Kerala reported in 1987(2) KLT 1039 wherein it has been held as follows:-

"As the initial burden is on the prosecution to establish its case beyond reasonable doubt the failure to prove the alibi set up by the accused cannot at all be highlighted as a circumstance to prove the prosecution case. Alibi, Latin for "elsewhere" is the defence resorted to in criminal prosecution, where the accused pleads that he was so far distant at the time from the place where the crime was committed that he could not have been guilty. To successfully establish the alibi pleaded the accused has to prove that he was elsewhere at the moment of the crime and that in all reasonable probability he could not have been present at the place of occurrence. With regard to the burden of discharging the plea of alibi accused can raise reasonable doubt or by a preponderance of evidence and probabilities show that he was not at the place of occurrence during the relevant time. In a case where alibi has been set up by the accused and he failed to prove it the prosecution cannot jump to the conclusion that as the alibi has been disproved the only conclusion possible is to accept its case. In a case where there is

preponderance of probabilities and evidence in favour of the prosecution case, failure of a plea of alibi by the accused would be an added adverse circumstances against the defence case. That will not be so in a case where there is utter lack of evidence on the side of the prosecution. The plea of alibi set up by the accused even if it failed to click does not matter in a case where the prosecution has failed to establish its case. The weakness or falsity of an alibi is not sufficient to hold that the prosecution case is there by strengthened or improved."

104. My attention was also invited to the decision reported in Jayantibhai Bhenkarbhai Vs. State of Gujarat reported in (2002)8 SCC 165 wherein it has been held in paragraph 19 as follows:-

"The plea of alibi flows from section 11 and is demonstrated by Illustration (a) Sarkar on Evidence (15th Edh., p.258) states the word "alibi" is of Latin origin and means "elsewhere". It is a convenient term used for the defence taken by an accused that when the occurrence took place he was so far away from the place of occurrence that it is highly improbable that he would have participated in the crime. Alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime

by the accused beyond any reasonable doubt, it may not be necessary to go in to the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit in the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court".

105 Here in this case the aforesaid contention taken by the accused is no doubt, 'alibi' in nature. Not only that the accused has failed to prove it with certainly so as to exclude the possibility of his presence at the place and time of occurrence, but also the said contention of 'alibi' is proved to be false. The next question that remains for consideration is whether the prosecution has discharged its burden of proving the commission of the crime by the accused

beyond any reasonable doubt. Then only the question regarding the relevancy of the false plea of 'alibi' arises. The learned public prosecutor invited my attention to the decision in Antony D' Souza and others Vs. State of Karnataka reported in 2003 Cri. L.J 434 wherein it has been held as follows:-

"In their examination under section 313 Cr. P.C. the accused denied the prosecution story in toto. They denied that lorry accident had taken place. They also denied to have received any injuries. In short, in their 313 statement they completely denied the established facts and offered false answers. By now it is well established principle of law that in a case of circumstantial evidence where an accused offers false answer in his examination under 313 against the established facts that can be counted as providing a missing link for completing the chain".

106. In *Swapan Patra v. State of West Bengal*, (1999) 9 SCC 242, it was held that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found not to be true then the same offers an additional link in the chain of circumstances to complete the chain. The same principle has been followed and reiterated in *State of Maharashtra v. Suresh*. (2000)1 SCC 471, where it has been said that a false answer offered by the accused when his attention was drawn to a circumstances, renders that circumstance capable of inculcating him.
107. In the decisions noted supra it has been further pointed out that in such a situation false answer can also be counted as providing a missing link for completing the chain. The aforesaid principle has been again followed and reiterated in Kuldeep Singh and others Vs State of Rajasthan reported in AIR 2000 SC 3649.
108. From the decisions noted above, it has clearly come out that the false explanations offered by the accused can also be counted as providing missing

links for completing the chain of circumstances, and the same are capable of inculpating him.

109. Now the evidence adduced by the prosecution regarding the presence of the accused at or near the scene of occurrence are to be considered. PW38 is conducting business in Aluva Market. He knows the accused. According to him, he came to know about the death of Augustine and his family members on 8.1.2001. He clearly deposed that on 6.1.2001 in the evening at 7 p.m. he saw the accused entering in to the compound of the house of deceased Augustine through its gate from the road. In the cross examination of PW38 there is absolutely nothing to discredit or disbelieve his testimony. Even though his versions were challenged in cross examination In the light of the clear admissions made by the accused in his statement in writing there cannot by any challenge to his evidence. The accused has clearly admitted in his statement in writing that by about 7 p.m. on 6.1.2001 he reached the house of deceased Augustine. Therefore the fact that the accused reached the scene of occurrence around 7 p.m. on 6.1.2001 stands proved. The next question to be looked in to is whether there is any evidence to show that the accused had gone out of the scene of occurrence prior to 5.30 a.m. on 7.1.2001.

110. PW17 Noorjahan is residing about ½ km away towards east from the scene of occurrence. She knows the accused. According to her, on 7.1.2001 Sunday by about 5.45 a.m. she along with her father -in-law were proceeding to the Karothukuzhi Hospital at Aluva in order to see the ailing mother of her mother-in-law on getting information that her illness became arrerated. While they reached near the house of deceased Augustine, she saw the accused stepping in to the road from the place just near to the gate of the house of deceased Augustine and walking towards the road leading to the railway station. According to her, the accused was just 10 feet away from her at that time. In

her words the accused was moving "terribly fast" she could clearly identify the accused in the street light. According to her, she used to attend the programs of Kudumbasree at the Aluva Municipality and she had acquaintance with the accused there as the accused was working as driver there. According to her, she appeared before the Judicial First Class Magistrate's Court Aluva on getting summons from there and gave Ext.P16 statement before the learned Magistrate. According to her, it was read over to her and she affixed her signature in it. In cross examination she deposed that her statement was not recorded by the crime branch officers. According to her she was questioned by the CBI alone and not by any other agency. Some contradictions regarding the presence of her husband in the house and the time of her departure to the hospital from the house as 4.30 a.m. and some other minor contradictions in her statements alleged to have made to the crime branch were brought out in the cross examination. But according to PW17, she was not questioned by the crime branch and her statement was not recorded by them and therefore she denied the said contradictions. At the same time she has deposed in terms of her versions in Ext.P16 statement recorded by PW52 under section 164 Cr.P.C. No doubt, Ext.P16 fully corroborates the evidence of PW17 in all material particulars. Further, no contradictions has been brought out in her evidence with her statement to the CBI also.

111. PW52 was the Judicial First Class Magistrate I, Aluva who recorded Ext.P16 statement of PW17 under section 164 Cr.P.C. According to him, he recorded Ext.p16 after complying with all the formalities to be complied with for recording statements of witnesses under section 164 Cr. P.c. I do not find any reason to disbelieve the versions of PW17 and PW52.
112. PW15 who is the younger brother of PW14 and the elder brother of deceased Augustine deposed that the accused is one of his relatives, According to him,

on 7.1.2001 prior to 5.45 a.m. he along with his wife PW16 and their daughter came out of their house for going to the church and for sending the daughter to Thrissur for attending coaching classes for entrance examination. After directing PW16 and the daughter to proceed to the church, PW15 went ahead to the railway station for taking season ticket for the daughter. As the money taken with him was not enough, he decided to take ticket. For one day for which an amount of Rs.11/- was required. As there was no change of one rupee with him, he came out of the railway station and came to the way by which PW16 and the daughter were to proceed to the church. Then it was going to be about 5.45 a.m. At that time he saw the accused coming through the road and proceeding towards the church. He identified the accused clearly in the light of the Sodium Vapour lamp and he asked the accused whether he was going to the church. But without caring that question and without giving any answer the accused simply walked towards the church. Just behind the accused PW16 and the daughter were also coming. PW15 obtained one rupee from them and went to the railway station. PW16 and the daughter proceed to the church.

113. PW16 is the wife of PW15. According to PW16, the accused frequently used to visit the 'Tharavad' house. On 7.1.2001 she along with PW15 and their daughter got out from their house for going to the church. PW15 walked ahead as he had to go to the railway station for taking season ticket for the daughter. When she had her daughter came to the gate of their house, they saw the accused walking towards north through the road in front of their gate. According to her, their house is situated 200 meters away towards south of the scene of occurrence. She made sounds for inviting the attention of the accused, but the accused without caring it walked away. She along with the daughter walked to the church. The accused was also seen proceeding in front

of them. PW15 came for obtaining money from them. And then PW15 went to the railway station and they again proceeded to the church. When they reached at the gate of the church, she saw the accused coming out of the church compound through the gate. She showed a sign by her hand to the accused as to what was the matter. But without stating anything the accused walked away just after waving his hand. When PW15 and PW16 returned from the church PW16 told PW15 that the accused did not talk to them, even though he met them. They discussed the matter as the accused had visited the houses of his relatives for bidding good bye. Except that of PW15 and PW16 and that when the accused had visited the house of PW14, the wife of PW14 had asked the accused whether he would not be going to the house of PW15 and that the accused replied that he would also be going there. In such a circumstances when the accused did not tell PW15, PW16 anything about his journey even when he saw them in the early morning of 7.1.2001, it is quite natural for them to discuss the said attitude of the accused. I do not find any reason to disbelieve the versions of PW15 and PW16 on this aspect. From the evidence of PW15, PW16 and PW17 it has clearly come out that they saw the accused in between 5.30 a.m. and 5.45 a.m. at the road leading to the church from the scene of occurrence. The evidence of PW17 clearly proves that she saw the accused coming to the road from the place just near the gate of the 'Tharavad' house. In fact the accused has admitted in his statement in writing that at dawn he passed through the pipeline road to the St. Antony's Church situated near the railway station for attending 'Kurbana'. Therefore the accused has clearly admitted his presence on the road, and hence there is no meaning in challenging the evidence of PW15 and PW16. At the same time the accused has conveniently suppressed the fact that he saw PW15 and PW16. From the evidence of PW16 it has clearly come out that the accused did not attending

the 'Kurbana'. The accused simply entered the church compound and then came out through the gate without attending the 'Kurbana'. The evidence of PW17 coupled with the evidence adduced by PW15 and PW16 when read along with the false plea of 'alibi' resorted to by the accused, there is every reason to believe that the accused came from the place just near the gate of the 'Tharavad' to the road at about 5.30 a.m. on 7.1.2001. Apart from all the above, the accused has clearly admitted in MO.11 that he had gone to the house of Augustine during the night of Saturday and not to anywhere else. The accused has admitted in his statement in writing that he went to the house of Augustine ie, the 'Tharavad' house at about 7 p.m. at 6.1.2001. Further contention taken by the accused that he then went to the shop of Augustine and that deceased Augustine gave him Rs.35,000/- and then he went to Perumbavoor and Thottuva with the said money, are found to be false from the discussions made above. The plea of 'alibi' resorted to by the accused is also found to be false. When the explanations offered by the accused regarding his whereabouts during the night of 6.1.2001 are found to be false, the evidence of PW17 coupled with the evidence of PW15 and PW16 assume great importance. The then conduct of the accused as narrated by PW15 and PW16 are also to be considered. Even though the accused had told the wife of PW14 when he visited them to bid goodbye that he would be visiting the house of PW15 also, in the ordinary course of human conduct the accused would have talked something with PW15 and PW16 when he met them around 5.30 a.m. on 7.1.2001. On the contrary the accused did not tell them anything even though they talked to the accused. Further, the accused without attending the Kurbana just entered the church compound and then came out of the gate and walked away.

114. From the evidence of PW19 and PW20 it has clearly come out that the accused was not present at his house during the night of 6.1.2001. The evidence of PW38 and the clear admission of the accused have proved that the accused visited the 'Tharavad' house after 7 p.m. on 6.1.2001. The accused has given a false explanation regarding his whereabouts after the said visit and for the time up to 5.30 a.m. on 7.1.2001. The evidence of PW17 and Ext.P16 clearly prove that the accused came from the gate of the 'Tharavad' house to the road and walked towards the church. Now in this context the questions whether there are any other items of clinching evidence to show the presence of the accused at the scene of occurrence or to prove his act of causing the death of the inmates of the 'tharavad' house, are to be considered.
115. On 8.1.2001 at 1.30 p.m. PW51 Sub Inspector of police Aluva started the inquest of the dead body of Jesmon and completed the inquest at 4 p.m. on 8.1.2001 and prepared Ext.P3 inquest report. PW3 is one of the attestors to Ext.P3. According to PW51, he found a hair in between the middle finger and ring finger of the left hand of deceased Jesmon. He found another hair near the chin at the left side and one more hair at the left side of the neck of deceased Jesmon. He collected the three hairs as per the directions of the Forensic Experts. He seized the said hairs and handed it over to his superior officers. PW3 also clearly supports the evidence adduced by PW51. The evidence of PW3 fully corroborates the evidence of PW51. In cross examination PW3 deposed that the said 3 hairs were black hairs. According to PW51 in cross examination, the forensic experts identified the hairs by the use of a magnifying lens. PW3 has also deposed in cross examination that the hairs were shown by using a lens. When he was asked regarding the dress of the person who had used the lens to identify the hairs, PW3 deposed that it was a person in kaki. The learned counsel for the accused, pointed out that as

the person who used the lens was a person wore kaki, the said person might not have been PW53 who was the Assistant Director , Biology attached to the Forensic Science Laboratory Trivandrum. The said contention is not at all material because many police officers as well as the preparation of Ext.P3. Ext.P3 was prepared by PW51 Sub Inspector. Therefore it is not at all strange in saying that a person dressed in kaki used a lens to show the hairs.

116. According to PW53, while he was working as the Assistant Director of Biology Division, FSL, Trivandrum on 25.4.2001 he received two sealed and one unsealed packets from the Assistant Director, Serology Division of the FSL Trivandrum. The sealed packets bore the seal of the Judicial First Class Magistrate, Aluva. The seals were intact. The material objects in the said packets were numbered as items 28, 31 and 32. Item No.28 contained 12 long hairs which were stained with blood. It was in unsealed packet. Item No. 31 was a sealed packet containing two unsealed packets which were numbered by him as 31(a) and 31(b). 31(a) contained two black hairs kept in a paper packet which was labeled on the outside as 'deceased Jesmon' and on the inside as 'Jesmon, (1) (written in Malayalam) hair 0 seen attached to the neck, (2) hair – at the chin at the top of the left side of the neck'. Item No. 31(b) contained one black hair kept in a paper packet, labeled as 'deceased Jesmon left hand'. Item No. 32 contained 10 black hairs kept in a closed bottle which was kept in a plastic container labeled as 'ANTONY – 38 specimen – scalp hair Crime No. 15/2001, Aluva Police Station dated 18.02.2001'. According to PW53, he examined all the said material objects. As per the requisition the questions hairs in item No. 31(a) and 31(b) were compared with the sample scalp hairs in item No. 32 and the scalp hairs of deceased Divya, deceased Jesmon, deceased Rani, deceased Clara, deceased Augustine and deceased Mary. After examination he prepared Ext. P36 report in which he has given the details of

examination he prepared Ext. P36 report in which he has given the details of examination in pages 3 to 6. According to him, the results of examination are as follows:-

The human scalp hairs in item 31 are similar to the sample scalp hairs of the accused in item No. 32. Further according to him, the hairs in item 31 and 32 were completely utilized for the purpose of examination.

117. In cross examination, PW53 deposed that he had visited the scene of crime in this case at the request of the investigation officer. He does not remember the date of his visit. According to him, he visited the scene along with the physicist. He examined all the dead bodies and scene of crime and prepared a report. He had located the said hairs on one of the dead bodies. According to him, he did not recover it; but he only gave instructions to collect it. It was located from the dead body of Jesmon. Further according to him, one hair was from one of the hands; the others were from the portion below the chin and the side of the neck. According to him, the report was given to him by the investigating officer. The report prepared by him on 23.01.2001 on the basis of examination conducted by him on 08.01.2001 is marked as Ext. D12. He admitted that as per Ext. D12 only one black hair was located by him and he does not know how the 3 hairs were collected. He located and lifted the one black hair which he identified as item No. 31(b) and handed over it to the investigating officer. According to him, it was a pulled out hair. Further according to him, the said hair was located by him from the left hand of Jesmon.

118. Regarding the examination of hairs, according to PW53, the micro scopic comparison is the only reliable mode of examination for comparison of human

public and scalp hairs. Further according to him, as far as he is concerned, there is no difference in using the terms "similar" or "identical" in the case of hair examination. It is true that in Ext. D12 it has been noted that "a thick black hair was found in the left hand. It was collected and packed." The examination of the scene of occurrence and the house in question was also done by PW53. In page No. 4 of Ext. D12, under the caption "physical examination", it has been specifically shown that the front door of the building as well as the door of the rear work area adjacent to the kitchen were also examined by PW53. Those are the only doors for gaining entry into the house as well as for exit from the house. It has been clearly reported in Ext. D12 that on examination of both the said doors, no signs of application of force indicative of forcible opening, could be dictated on the latches, the bolts and inner and outer aspects of the door panels. Therefore, Ext. D12 makes it clear that no force was used for opening the doors by anybody for gaining entry into the house or making exit from the house.

119. On the basis of the statement made by PW53 in Ext. D12 that a thick black hair was found in the left hand of Jesmon, the learned counsel for the accused argued that manipulations were done by the police willfully in order to trap the accused unnecessarily by obtaining Ext. P36 report. According to the learned counsel for the accused, only one hair was collected and instead of it 3 hairs were sent for analysis. It is for explaining the circumstances in which 3 hairs were collected that the prosecution examined PW61 who was working as Scientific Assistant, Chemistry at the District Police Mobile Laboratory, Kottayam. According to him, he was also present during the inquest of Jesmon and the preparation of Ext. P3 inquest report. According to him, PW53 was also present along with him. He clearly deposed that 3 hairs were found sticking on the dead body of Jesmon. It was he who gave direction to the sub

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inspector to collect 2 hairs out of it. The said 2 hairs were found at the chin and the portion of the neck of the dead body of Jesmon. According to him, it was when PW53 examined the dead body of Jesmon. According to him, it was when PW53 examined the dead body on a second time that the other hair seen sticking at the hand of the dead body could be located. The two hairs located by PW61 were collected and packed in accordance with the direction of PW61. The other hair located by PW53 was packed as per the direction of PW53. According to him, he aided PW53 in the scene examination and that he did not prepare a separate report as PW53 was his superior officer. In cross examination he deposed that he had informed PW53 regarding the location and collection of the two hairs located by him. Regarding deposition of PW61 the learned counsel for the accused argued that the same cannot be relied on as PW61 did not participate the examination of the scene of occurrence or the dead bodies. The said argument was based on the fact that PW53 has not spoken to about the presence of PW61 along with him at the scene of occurrence for examination. I do not find any merit in the said contention taken by the learned counsel for the accused as the name and designation of PW61 also finds a place in Ext. P3 inquest report which was prepared by PW51 on 08.01.2001. Ext. P3 and the evidence adduced by PW51 clearly stands unchallenged. In Ext. P3 in page No. 7 at the end of paragraph VIII(a) it has been clearly recorded that P.S. Parameswaran Nair, the Assistant Director of Biology Division, Forensic Science Laboratory, Trivandrum (PW53) James Philipose, Assistant, Physics Division, FSL, Trivandrum and Ajith Kumar Kottayan District Scientific Assistant (PW61) have conducted minute examination of the whole room as well as the dead body of Jesmon. It has been further recorded that out of such examination, one black hair found at the left side of the chin, one black hair found above the neck and another hair

found in between the middle finger and ring finger of the left hand of the dead body of Jesmon were collected for chemical analysis and seized as evidence in the case with the aid of the aforesaid experts. Even the accused has no case that he was arrested or his involvement was suspected at the time, ie. on 08.01.2001 during the preparation of Ext. P3 inquest report. There is no meaning in contending that only one hair was found on the dead body and it was collected by PW53. The presence of PW61 along with PW53 and the examinations conducted by them can be clearly seen from Ext. P3 inquest report as aforesaid. The collection of the 3 hairs and the locations of the same are also correctly noted in Ext. P3. Matters being so, there is absolutely nothing to doubt the examination of the said 3 hairs by PW53.

120. The learned counsel for the accused further argued that the 3 hairs were kept in two unsealed packets and therefore tampering with the same can be suspected. The learned public prosecutor has invited my attention to the decision in Chandrasekharan Vs. State of Kerala reported in 1993 (1) KLT 571 wherein it has been held as follows:

“When the investigating officer packs and forwards material objects he is doing official acts. We are inclined to presume that they were regularly performed by the officer. There is no statutory provision which prescribes any particular mode for such packing etc. The legal aid for drawing a presumption, as illustrated under Section 114 of the Evidence Act, can be used even in respect of official acts adopted during investigation of crimes. Nor are we inclined to presume that investigating officers, being interested in the prosecution, would tamper with materials which remained in their custody and concoct such materials to bring the case to conviction. It would not be proper judicial attitude to start with distrust or suspicion against investigative exercises

made by public officers. Nor it be a healthy approach to presume that whenever there is any opportunity, the investigating officers would manipulate or tamper with material objects dishonestly. Any such attitude, if adopted by judicial functionaries, would run down the guts and gumption of the police administration and erode the morale of the investigating agencies”.

121. From the evidence adduced by PW53, PW61, PW51 and PW3 coupled with the contents of Ext. P3 inquest report clearly establishes that the 3 hairs identified by PW53 as item No. 31(a) and 31(b) in Ext. P36 were duly collected in the course of performance of the official duties of PW51, PW53 and PW61.

122. PW60 while working as Assistant Surgeon, Taluk Head Quarters Hospital, Aluva on 18.02.2001 examined the accused and issued Ext. P48 certificate. According to her, she took the blood of the accused and sent for grouping and Rh typing. The blood group was found to be B +ve. Further according to her, she took the scalp hairs of the accused and she sealed the packet containing the said scalp hairs. According to her, she has stated in Ext. P48 that hair was taken and sent for chemical examination. She put the hair in a glass bottle and after sealing it she handed it over to the investigating officer. In Ext. p36 the sealed packet, the contents of which is noted as item No. 32 shows that the said specimen scalp hairs of Antony – 38 (accused) in Crime No. 15/2001 of the Aluva Police Station was taken on 18.02.2001 and the said sealed packet showed the signature of PW60 Dr. C.Anilakumari. There is absolutely no reason to doubt the taking of specimen scalp hair of the accused identified by PW53 in Ext. P36 as item No. 32. Ext. P36 and the evidence of PW53 clearly established that the 3 scalp hairs identified by PW53 as items 31(a) and 31(b) in Ext. P36 are similar to the specimen scalp hairs of the accused identified by

PW53 as item No. 32 in Ext. P36. According to PW3, as far he is concerned, there is no difference in using the terms "similar" or "identical"

123. The learned public prosecutor invited my attention to the decision in State of Kerala Vs. Rajan @ Nasam reported in 2004 Cri.L.J. 715 (Kerala High Court) wherein it has been held as follows:-

"The science of hair identification is a fast advancing science and even if it is assumed that individualization is not possible the results of scientific examination of hair can be relied upon along with other circumstances connecting the accused with the crime".

In Kanbikarasan Jadav Vs. Stat of Gujarat, AIR 1966 SC 821: (1966 Cri. LJ 605) it was held that the results of scientific examination of hair can be relied on along with other circumstances connecting the accused with the crime.

124. My attention was also invited to the decision in Mohanan Kani Vs. State of Kerala reported in (1992) 2 KLT 839. In that case the scalp hairs recovered from the dead body were similar to the scalp hairs of the accused in all the parameters chosen for comparison. It was held that chemical examination of scalp hair can be considered as an acceptable piece of evidence to connect the accused. Therefore, the results of scientific examination of hair can be relied on along with other circumstances connecting the accused with the crime.
125. It is the specific case of the prosecution that there was a blood stained fingerprint at the door frame at the northern side of the eastern door at the dining hall at the scene of occurrence and that the said finger impression was made by the left thumb of the accused. Now the evidence regarding the said circumstance pointed out by the prosecution are to be considered.
126. PW6 was working as the Ernakulam Rural District Police Photographer as on 08.01.2001. As per the request of the Circle Inspector of Police, Aluva, he visited the scene of occurrence along with PW7 finger print expert on

08.01.2001. The 9 chance prints and one palm portion examined and marked
by PW7 were photographed by him. The same size photograph of the same
were given by him to the Testor Inspector on 10.01.2001. According to him on
18.04.2001 as per the request of the Testor Inspector he took the photograph
of the left thump impression of the accused from the specimen finger print
slip. Further according to him, on 22.04.2001 he handed over the photographic
enlargement of the left thump impression of the accused and the chance print
marked as A3 out of the 9 chance prints marked on 08.01.2001. Over and
above it, he had taken photographs of the scene of occurrence and the dead
bodies. The negatives containing frame Nos. 1 to 36 were seized from him by
PW71 on 02.05.2001 through seizure mahazar. The said film role containing
the negatives of frame Nos. 1 to 36 is marked as Ext. P6. According to him,
frame Nos. 1, 2 and 3 are the negatives of the photos of the scene. Frame Nos.
4 to 19 are the negatives of the photographs of the finger prints taken from the
scene of occurrence. From Nos. 20 to 36 were negatives of photographs taken
at the time of inquest. Ext. P7 series are the positive photo prints of Frames 1
to 36. The photograph of the blood stained finger print from the scene of
occurrence marked as A3 is the photograph numbered as 6th one among Ext.
P7 series. The photographic enlargement of the said finger print marked as A3
is Ext. P8. PW6 has certified the same on its over leaf and the certification is
marked as Ext. P6(a). The photographic enlargement of the specimen left
thump impression of the accused taken as per the request of the Testor
Inspector on 18.04.2001 is marked as Ext. P9. The certification on the over
leaf of the same is marked as Ext. P9(a). In cross examination he deposed that
3 photographs of the chance print marked as A3 were taken and its negatives
are frames 4, 5 and 6. He further deposed that Frame No. 4 and 5 were taken
directly from the blood stained finger print and the same were taken without

developing the said blood stained finger print and the same were taken without
developing the said blood stained finger print. According to him, all other frames for the fingerprints, were taken after developing the finger prints. From the deposition of PW6 it has become clear that the photographs of A3 blood stained finger print were taken without developing it and also its photograph was taken after developing it. Ext. P8(a) certification is dated 22.04.2001. Ext. P9(a) certification is also dated 22.04.2001. Ext. P9 shows that it is photographic enlargement of the specimen finger impression of the left thumb of the accused and Ext. P8 is the photographic enlargement of A3 blood stained finger print obtained from scene of occurrence.

127. PW7 is the Rural Finger Print Expert who inspected the scene of crime ie, the residence of deceased Manjooran Augustine on 8.1.2001. On inspection, he developed and marked 9 chance finger print and one palm portion from the scene of occurrence. Among the 9 chance finger print one finger print marked as A3 was blood stained. According to him, the developed finger impressions were photographed by PW6. In the developed finger prints, he had marked the date of inspection as 7.1.2001. It was a mistake committed by him that instead of 8.1.2001 which was the date of inspection, he had mistakenly noted the dates in all the finger prints as 7.1.2001. A3 was also photographed. The photocopies of the chance finger prints were received from PW6 on 10.1.2001. On examination it was found that 5 chance finger prints among the 9 finger prints were unfit for comparison for want of sufficient ridge peculiarities. As a part of elimination process, the comparable chance finger prints had been compared with finger prints of the six deceased; but no finger prints had been eliminated. Later the said finger prints had been compared with the entire bureau records. They also remained untraced. On 12.1.2001 the photocopies of the comparable chance finger prints were forwarded to the

Director, Finger Print Bureau, Trivandrum for comparison in the computerized data base. But even then they remained untraced. On 18.1.2001, the photocopies of the chance prints were forwarded to all District Finger print Bureau. Then also the same remained untraced. The chance finger print were also compared with the finger impressions of 167 suspected persons received from PW59. Then also it remained untraced.

128. According to PW7, the finger print slip of the accused was received from PW59 on 19.2.2001. The finger print slip was registered in his office as No.47/DA/01/ER. On comparison with the finger print slip, the photocopy of the blood stained chance finger print developed and marked as A3 from the left door post of a door of the scene of crime has been identified as the left thumb impression of the accused. The matter of identification was informed to PW59 on 20.2.2001.

129. On 24.2.2001 the finger print slip and the palm prints of the relatives (six person) of deceased Augustine were received from PW59 for the purpose of elimination of chance prints developed from the scene of crime. On a comparison two chance finger prints among the remaining 4 had been eliminated as that of the right little and the left thumb impressions of PW11. This matter was also informed to PW59 on 24.2.2001.

130. The specimen left thumb impression of the accused was photographed from the original finger print slip and is marked as 'S'. The chance finger print developed and photographed from the scene was marked as A3. In order to establish the identity of the finger impression 'A3' and 'S', PW7 has marked 10 identical ridge characteristics in their nature and relative position in the photographic enlargements of both the chance print and the specimen left thumb impression. as follows:-

Point No.1: is a downward bifurcation.

Point No2: is a downward bifurcation, below and to the right of point No.1, with no ridge intervening.

Point No.3:- is a downward bifurcation, below and to the left of point No.2, with two ridges intervening.

Point No4:- is a bifurcation towards right below and to the left of point No.3, with one ridge intervening.

Point No.5:- is a bifurcation towards right, below point No.4, with two ridges intervening.

Point No.6:- is a downward bifurcation, above and to the left of point No.5, with no ridge intervening.

Point No.7:- is a downward bifurcation, below and to the left of point No.6, with one ridge intervening.

Point No.8:- is a downward bifurcation, above point No.7, with no ridge intervening.

Point No.9:- is an upward ridge ending, above and to the left of point No.8, with one ridge intervening.

Point No.10:- is an upward bifurcation, to the left of point No.9, with no ridge intervening.

131. Further according to PW7, since the above mentioned ridge characteristics are mentioned in their nature and relative position. In both the finger impressions marked as 'A3' and 'S', they are identical. A3 which is the chance finger print developed and photographed from the scene crime and is identical with the specimen left thumb impression marked 'S'. The opinion of PW7 is that the chance finger impressions developed A3 concerned in crime No.15/2001 of the Aluva Police Station has made by left thumb impression of the accused. Ext.P10 is the specimen left the impression taken from the original Daily

Arrest Slip. Ext.P10(a) is negative. Ext.P11 is the jail report record of these prepared by PW7 28.4.2001.

132. Ext.P12 is letter dated 20.2.2001 signed by Pw7 for an behalf of the Testor Inspector, Single Digit Finger Print Bureau Ernakulam Rural, Aluva addressed to PW59. When examined before this court PW.7.... Mistakenly mentioned Ext.P12 as covering letter sent along with Ext.P12 is not a covering letter; but it is a separate letter issue 20.2.2001, whereas Ext.P11 was prepared and issued on 28.4.2001. In Ext.P12, the letter dated 19.2.2001 from PW59 is referred to as paper 2. Ext.P12 further reveals that as per the request in the said letter dated 19.2.2001 from PW59, the chance finger prints developed and photographed from the scene of crime have been compared with the finger print slip of the accused forwarded along with the said letter, and found that one of the chance finger prints (blood stained) developed and photographed from the scene of crime is identical with the left thump impression of the accused. It has been further noted therein that the finger prints expert opinion along with the photographic enlargements of the scene of crime, chance prints and the specimen finger prints shall be forwarded on request from the office of PW59.
133. In fact the comparison and identification of A3 blood stained chance finger print along with the finger prints of the accused received by PW7 on 19.2.2001 from PW59, were made by PW17 on 20.2.2001. The result of the said identification was communicated to PW59 through Ext.P12 letter dated 20.2.2001. Ext.P12 was signed by PW7 for and on behalf of the Tester Inspector. Ext.P12 is referred to as paper 2 in Ext.p11. Exts.p8 and P9 were in fact prepared only for forwarding it along with Ext.p11 report dated 28.2.2001. the comparison and identification etc., were done much earlier ie, on 20.2.2001. According to PW7, Ext.P87 is the copy of the forwarding letter

dated 12.1.2001 issued by the Tester Inspector to the Director of Finger Print Bureau, Trivandrum.

134. Even though PW6 and PW7 were subjected to lengthy and detailed cross examination in the light of the discussions made above and from the contents of Exts.P12 and P11, I do not find anything to discredit or disbelieve PW6 and PW7. According to PW7, on 20.4.2001 also he visited the scene of occurrence along with PW71 and pointed out the spot from which A3 was marked. That portion of the wood was cut and taken by the police. PW71 also deposed that he visited the scene of occurrence on 20.4.2001 with PW7 and PW61 and the portion of the door post identified by PW7 wherefrom a blood stained finger print was lifted was cut and removed by PW61 and the same was seized by PW71 through Ext.p56 mahazar. According to PW61, he cut and collected that portion of the door frame.
135. The learned counsel for the accused invited my attention to the decision reported in AIR 1997 Supreme Court 2960 and argued that as the specimen finger print was not taken before the Magistrate in accordance with section 5 of the identification of the Prisoner's Act, the identification of finger print in this case is of no value at all. But in the case in the decision noted supra the only incriminating circumstances against the accused was his finger print found a brass jug in the house of the deceased. It was in that circumstances, it was held that the prosecution ought to have procured the specimen finger print before a Magistrate in accordance with section 5 of the identification of Prisoner's Act. The learned public prosecutor has pointed out that the specimen finger print was taken in this case from the Daily Arrest slip in accordance with section 4 of the identification of prisoner's act. As per section 4 of the said act, the police is competent to take finger prints of the accused.

136. My attention was also invited to the decision in Chandran & Surendran and another Vz.State of Kerala reported in JT 1990 (3) S.C. 718 wherein the evidence was relating to the finger prints obtained from 2 broken glass pieces. In that case the accused contended that their finger prints were obtained on the said two glass pieces by the police under compulsion. The facts and circumstances of that case have no similarity with the facts and circumstances of the present case. In this case A3 blood stained finger print which is ultimately found to be that of the left thumb impression of the accused was found on the door post of the eastern door of the dining hall at the scene of occurrence. More over the identification of the finger print is not the solitary piece of incriminating circumstance against the accused in this case.
137. The learned counsel for the accused invited my attention to the decision in Boban Vz. State of Kerala reported in 1992(1) KLT 676 and argued that two chance prints remained untraced in this case and the police or the CBI did not take necessary steps to trace out the same. It is evident that attempts were made by PW59 as well as PW71 for the same but it could not be traced out. The said finger prints are not blood stained. The age of the said finger prints are also cannot be ascertained whereas A3 finger print which is the left thumb impression of the accused is a blood stained one. From the evidence of PW6 and PW7 it has clearly come out that they visited the scene of occurrence on 8.1.2001 and took the photographs of all the finger prints marked by PW7 and also the scene of occurrence and dead bodies. The negatives of A3 blood stained finger print are frame Nos.4, 5 and 6 in the single film role which contains the photographs of the dead bodies as well as the scene of occurrence taken on 8.1.2001. The accused was arrested on 18.2.2001. At the most the presence of the accused was procured at Mumbai Airport on 9.2.2001. Therefore the accused cannot validly contend that his left thumb impression

was procured by the police on the door frame at the scene of occurrence.

Matters being so there is absolutely nothing to suspect foul play in obtaining

A3 blood stained finger print. All possibilities of tempering with it can safely be ruled out. As the finger print alone is not the solitary piece of incriminating circumstances being relied on by the prosecution against the accused the act of the police obtaining the specimen finger print in the daily arrest slip of the accused under section 4 of the identification of Prisoner's Act, is acceptable and the same can be approved as correct.

138. Now the other incriminating circumstances brought out by the prosecution against the accused are to be considered. The accused was placed under arrest by PW59 at 11 a.m. on 18.2.2001. He was brought to the Aluva Police station and questioned and the police recorded his statement. On 18.2.2001 the accused gave Ext.p47(a) information to PW59 as follows:-

"The shirt and pants are folded and placed inside the plastic kit in which the socks and kerchief were placed and after tying it, it was thrown in to the property filled with bushes situated at the side of the road starting from the place near the power house and leading to Perumbavoor. I will show the place wherein the said plastic kit was put by me and the plastic kit, if I am taken there". On the basis of the said information furnished by the accused and as lead by the accused, PW59 and the police party reached the said place at 5.30 p.m. on 18.2.2001 and seized MO.79 series plastic kit pointed out by the accused which was lying beneath the bushes in the said property. MO.79 series plastic kit contained MO.75 pants, MO.76 shirt MO.77 kerchief and MO.78 series pair of socks. PW59 seized the said material objects through Ext.P47 mahazar.

139. PW68 and PW73 are attestors to Ext.p47 mahazar. According to PW68, he affixed his signature in Ext.P47 mahazar through which the dress etc. were seized from a kit from the property situated at the side of the Aluva – perumbavoor road and near the Azizi bus stop. According to him, the accused is there at the jeep. He identified the accused. He identified MO.75, MO.76 MO.77, MO.78 series and MO.79 series as the material objects so recovered and seized. According to him, the said property was filled with bushes. In cross examination he deposed that the accused was sitting in the jeep parked at the road side and it was the policemen, who took the plastic kit containing the said articles from the property. ext.p47 mahazar was prepared then and there in which he affixed his signature.
140. PW73 admitted his signature in Ext.P47 mahazar. According to him, the same was prepared at the western side of the road starting from the place near the Aluvaa Power house to Perumbavoor. There is a property at the side of the road, in which there are no inhabitants and the same is filled with bushes. On seeing a crowd there while he was proceeding to his house through the said road by his motor like he stopped and got down there. He saw the accused leading the Dy. SP, CI and police man to the said property through its dilapidated gate. The accused, after a search in the property, took a plastic kit and handed it over to the police. He identified MO.79 as the said plastic kit. Further according to him, there was a pant, shirt, kerchief and socks in the said plastic kit. He identified MO.75 to MO.78 as the said materials. According to him, there were blood stains in MO.75 to MO.78. According to him, Ext.P47 mahazar was prepared in which he affixed his signature. Further according to him, Ext.P47 was signed by an autorickshaw driver also. According to PW68 he is an autorickshaw driver. Even though PW73 was subjected to searching cross examination, nothing could be brought out in order to discredit or

disbelieve his testimony. The evidence adduced by PW73 fully corroborates the version of PW59 and the contents of Ext.P447. Further the versions of PW68 also corroborates the evidence of PW59, PW73 and the contents of Ext.P47 in all material particulars except the fact that the accused was leading the police in to the property and the spot from where are the said materials objects were recovered. But he also has spoken to regarding the presence of the accused just near that spot; but according to him, the accused was sitting in the jeep. Therefore even if that version of PW68 is believed, it is sufficient to prove that it was the accused who lead PW59 and the police party to that place from the Aluva Police Station. It has clearly come out in evidence that MO.75 to MO.79 series were recovered fro a landed property filled with bushes and the said materials were taken from the grounds beneath the bushes. Ext.p479a) information furnished by the accused, is no doubt, clearly admissible under section 27 of the Indian Evidence Act.

141. Further on 19.2.2001 when asked about the weapons used by the accused for committing the crime, the accused furnished Ext.P28^a ~~(a)~~ information to PW59 as follows:-

“Stool has been placed in that house itself. I will point out the stool if I am taken there” On the basis of Ext.p28(a) information and as lead by the accused, PW59 and the police party reached the ‘Tharavad’ house at 9.45 p.m. on 19.2.2001 and seized MO.5 stool pointed out by the accused, through Ext.P28 mahazar.

142. PW29 is an attessor to Ext.P28 mahazar. According to him, he saw the accused taking and handing over MO.5 stool to the police from the house of deceased Augustine. According to him, DY. SP was also present there Ext.P28 mahazar was prepared then and there in which he also affixed his signature. Nothing has been brought out in the cross examination of PW29

also in order to discredit or disbelieve his testimony. The evidence of PW59 and the contents of Ext.P28 are fully corroborated by the evidence of PW29. No doubt, Ext.p29(a) is clearly admissible in evidence under section 27 of the Indian Evidence Act.

143. According to PW59, when asked about the gold ornaments, the accused furnished Ext.p24 (a) information as follows:-

"I have entrusted the gold ornaments to Suresh of Mulloorkara, Thrissur. I will point out Suresh if I am taken there". On the basis of Ext.P24(a) information and as lead by the accused, PW59 and the police party reached Chakkiattil Veedu, Mulloorkara in Thrissur District and identified PW74 Suresh who was pointed out by the accused. PW74 agreed that he has pledged the gold ornaments at Poomala Financiers, Mulloorkara and produced its receipt at 1 p.m. on 20.2.2001. PW59 seized the said receipt through Ext.P26 mahazar. Then along with the accused and PW74, PW59 and the police party reached the said Poomala Financiers. PW25 who is the proprietor of Poomala Financiers produced MO.1 series gold anklets, MO.2 gold chain and MO.3 gold chain which were identified and seized through Ext. P24 mahazar at 1.30 p.m. on 20.02.2001. Thereafter at 2 p.m. on 20.02.2001 itself the bond produced by PW25 for the said gold ornaments pledged by PW74 was seized through Ext. P25 mahazar. According to PW59, the said gold ornaments were shown to PW45 on 21.02.2001 and got it identified.

144. PW74 is presently working in K.S.A. He identified the accused. According to him, he had gone to Bombay on 02.12.2000 for the purpose of proceeding to Gulf. It was PW67 Ummer, an agent, who took PW74 to Bombay. While so, the accused Antony, Hari and 5, 6 other persons were also travelling along

with them by the said agent PW67 Ummer of Thrissur. On reaching Mumbai all of them boarded and resided at P.K.M. Lodge situated near the J.J.Hospital. According to PW74, he did not pass in the interview. The others including the accused successfully passed the interview. As PW74 could not get the visa, PW67 asked him to say at Bombay. The others including the accused returned to their native places in December 2000 itself. Subsequently on 08.01.2001 PW67 returned to Mumbai along with the accused, the said Hari and the others. He met the accused at 8.30 p.m. on 08.01.2001 when he reached Bombay. He along with the accused and Hari went to the Hotel for taking food. At the time he asked them about the murder occurred at Aluva as he had seen it in the TV news at 7.30 p.m. on that evening. As they replied that they did not know anything about it he did not ask anything more. They returned to the room from the hotel and slept. On the next morning he went to the recruiting agent and returned in the afternoon. Then the accused informed him that the ticket of the accused was ready and he would be going to Gulf on the next day. By stating it, he walked down stairs and called PW74. When PW74 went near the accused, the accused took a plastic cover from the pocket of the pants worn by the accused and told him that there are two gold chains and one pair of gold anklets in it and he told him to either sell it or pledge it and to deposit the amount in the bank account of the accused. By telling that he does not know anything about the procedure in the bank or the account, PW74 refused to accept it. Again he returned to the room.

145. On the same evening, he went to the hotel named Badariya for having food and at that time he saw the accused there at the hotel. Then the accused approached him and told him that he would be going on the next morning and by handing over 2 gold chains and one pair of gold anklets to PW74, the accused requested him that he himself should sell it or pledge it and deposit t

he money in the bank account of the accused and also by telling that PW74 was at liberty to appropriate anything out of it if he wanted. The accused gave PW74 the number of his account at the South Indian Bank, Aluva. PW74 obtained the said gold ornaments and the account No. and kept it with him./ According to PW74, the accused had informed him that the said gold ornaments belonged to the elder sister of his wife and that she was detached from her husband and as the accused had no money to make arrangements for going to Gulf, she had given it to the accused. Further according to PW74, the accused told him as follows:-

“No other persons are aware of this and you are being entrusted only because of the faith in you.”

146. On 16.01.2001 he returned to his native place at Thrissur as directed by PW67. On 31.01.2001 he pledged the said gold ornaments handed over to him by the accused, at Poomala Financiers at Mulloorkara. Then he wrote a letter to the wife of the accused stating that the said gold ornaments were entrusted to him by the accused and that he had pledged it and that he would redeem it if she could reach there. But nobody turned up. According to PW74 on 20.02.2001 Dy.S.P., Aluva and the police party reached his house with the accused. The police asked him whether the accused had entrusted anything to him. Then the accused openly revealed that 3 gold chains were entrusted to PW74. Then PW74 corrected it before the police by stating that he was entrusted with 2 gold chains and one pair of gold anklets only. Then the accused recollected that the accused had entrusted one gold chain to some other person and agreed that only 2 gold chains and the anklets were entrusted to PW74. Then the police with the accused and PW74 reached Poomala Financiers and recovered the said old ornaments pledged by PW74. He was issued with a token by the Poomala Financiers and he entrusted the token to

the police. He identified MO. 1 series as the gold anklets, MO. 2 as the big gold chain and MO. 3 as the small gold chain entrusted to him by the accused at Mumbai, which he subsequently pledged at Poomala Financiers, Mullorkkara, Thrissur.

147. In cross examination he was asked whether he had noted any identifying features on MO. 1 series, MO. 2 and MO. 3 which were recovered from Poomala Financiers. He replied that he had noted a deformity on the hook of MO.2. according to him, he was not questioned by the police while he was at Bombay and he does not know whether PW67 was questioned by the police at Bombay. According to him, PW67 was also present at Bombay till he came back from Mumbai. Even though PW74 was subjected to searching cross examination, nothing could be brought out in order to discredit or disbelieve his testimony. The testimony of PW74 is in a quite natural manner and there is absolutely nothing to disbelieve him.
148. PW25 is the proprietor of Poomala Financiers at Mullorkkara, Thrissur. According to him, he had acquaintance with PW74 and that PW74 had pledged gold ornaments at the said financiers. He proved Ext. P22 as the gold loan register of his financiers for the period from 06.01.2001 to 24.01.2001. On 31.01.2001 PW74 had pledged 2 gold chains and one pair of gold anklets weighting in total 86 grams at his financiers for Rs. 5,000/-. The said entry in Ext. P22 is marked as Ext. P22(a). According to him, the police came with PW74 and obtained the said gold ornaments identified as MO. 1 series, MO. 2 and MO.3 from him. He identified the accused as the person who was present along with the police and PW74 when they reached his financiers for the seizure of MO. 1 series, MO. 2 and MO. 3. A separate mahazar was also prepared. Further according to him, he handed over Ext. P22 to the police through Ext. P23 mahazar. In his cross examination it has come out that he

had noted the details of the pledge in another book as printed book had expired. After obtaining a printed book he subsequently prepared Ext. P22 and handed over it to the police.

149. PW26 is one of the attestors to Ext. P24. According to him he saw the police preparing Ext. P24 mahazar for the seizure of gold ornaments from Poomala Financiers. Over and above it, the police seized a bond of the pledge of gold ornaments through Ext. P25 mahazar. Further the police prepared Ext. P26 mahazar for the seizure of the token receipt. In Ext. P24, P25 and P26, he affixed his signature. In cross examination he deposed that two gold chains and one pair of gold anklets were recovered from Poomala Financiers. PW27 is the other attestor in Ext. P24, P25 and P26 mahazars. He also proved the seizure of the gold ornaments, the bond and the token. The said token, and bond were happened to be misplaced and the prosecution could not produce the said bond and token. But Ext. P25 and P26 mahazars give a clear picture regarding the said documents. There is absolutely nothing to disbelieve the versions of PW25, PW26 and PW27. The seizure of MO. 1 series, MO.2 and MO.3 from Poomalas Financiers belong to PW25 clearly stands proved. Whether it was pledged or not is not a question to be decided. On the basis of Ext. P24(a), the police located PW74 as pointed out by the accused and then they could locate PW25 and seized MO. 1 series, MO. 2 and MO. 3 from Poomala Financiers of which PW25 seized MO. 1 series, MO. 2 and MO.3 from Poomala Financiers of which PW25 is the petitioner. The evidence of PW25 is fully corroborated by the evidence of PW74, PW26 and PW27. The evidence of PW74 is fully corroborated by the evidence of PW25, PW26 and PW27. The evidence regarding the seizure of MO. 1 series, MO. 2 and MO. 3 by PW59 is fully corroborated by the evidence of PW74, PW25, PW26, PW27 and the contents of Ext. P24, P25 and P26. There is absolutely

nothing to discard Ext. P24(a). Ext. P24(a) is clearly admissible in evidence under Section 27 of the Indian Evidence Act.

150. The next question to be discussed is whether MO.1 series, MO.2 and MO.3 series are identified to be the belongings of any the deceased persons. PW45 is one of the sisters of deceased Augustine. During all vacancies she used to reside at the Tharvad along with deceased Augustine, deceased Mary, deceased Clara, deceased Kochurani, deceased Divya and deceased Jesmon. PW39 is the daughter of PW45. PW45 clearly deposed that deceased Augustine used to wear a gold chain of 'Vattakanni' fashion weighting 2.5 sovereigns and a gold finger ring. Deceased Mary used to wear ear studs embedded with green stones or red stones and a gold chain of 'Vattakanni' fashion weighting eight sovereigns and also four gold bangles. According to PW45, there was a 'Thali' in the said gold chain and further she used to wear a gold finger ring also. As far as Kochurani was concerned she used to wear two gold ear rings, a gold chain weighting two sovereigns in 'Vattakanni' fashion, four gold bangles, one gold finger ring and one pair of gold anklets. PW45 clearly identified MO. 1 series as the anklets which were being worn by deceased Kochurani. She further identified MO. 2 as the gold chain which was worn by deceased Mary. According to her, at present the 'Thali' is not seen affixed in it. She identified MO6 as the said 'Thali'. PW45 further identified MO. 3 as the gold chain which was being worn by Kochurani.
151. According to PW45, on 11.01.2001 Police came at the 'Tharavad' and in her presence, the police seized about 95 sovereigns of gold ornaments, cash for Rs. 2,00,000/- and fixed deposit receipts for Rs. 45 lakhs through Ext. P2 Mahazar. PW45 further identified MO 12 as the axe, MO. 13 as the knife, MO. 14 as the chopper and MO. 15 as the knife used for cutting meat which were being constantly used at the 'Tharawad'

152. Further according to PW45, Kochurani was having an amount of Rs. 45,000/- with her. In cross examination, regarding the identity of Gld ornaments she deposed that she could identify almost all among the 95 sovereigns of gold ornaments. According to her even without seeing, she has got an idea regarding its fashion, shape etc. In cross examination she clearly deposed that she can easily say about the gold ornaments which were being worn by all the deceased persons except deceased Mary. According to her deceased Mary used to change her ear studs and bangles when going out. But according to her, deceased Mary did never use to change MO2 gold chain. Deceased Kochurani always used to wear MO. 1 series gold anklets. On a careful scrutiny of the deposition of PW45, I am satisfied that there is absolutely nothing to discredit or disbelieve her testimony. She has identified MO. 1 series, MO. 2 and MO. 3 correctly. Further, she has identified MO. 12, MO. 13, MO14 and MO. 15

153. Challenging the identification of MO. 1 series, MO. 2 and MO3 by PW45 the learned counsel for the accused invited my attention to the decision in Pawan Kumar Vs. State of Hariyana reported in AIR 2003 Supreme Court 2987 wherein it has been held as follows:

“The other circumstance, replied upon, is the recovery of gold chain and ring belonging to the deceased from the accused persons upon the disclosure statements made by them before the police. It may be stated that these are articles of common use and can be found out in any house. That apart, no family member of the deceased has identified these articles or claimed that the same belonged to the deceased and/or he was wearing the same at the time of the occurrence. The only person who has identified the same is Baldev Raj (PW11) owner of a shop but
142 it is not possible to place reliance upon his evidence, firstly because

identification by him cannot be of any avail to the prosecution as he had no special reason to know about the identify of these articles more so when he admits in evidence that his house is at a distance of 5/6 kilo meters from that of the deceased and where it has been stated that he never met the deceased and secondly, because no identification. Parade was held for its identification”

154. The decision notes supra is not applicable to the facts and circumstances of this case. In this case PW45 is one other than the sister of deceased Augustine and the daughter of deceased Clara and also the sister of deceased Kochurani. It is an accepted proposition that women have a special skill to identify gold ornaments as well as sarees. She clearly deposed that she could identify most of the gold ornaments among the 95 sovereigns of the gold ornaments seized from the Tharawad house. There is absolutely no reason to disbelieve the identification of MO. 1 series, MO. 2 and MO. 3 by PW45. As all the inmates of the house were murdered, it is not possible for the prosecution to find out a better choice than PW45 to get the said ornaments identified.
155. Citing the decision reported by in 1993 CrI. L.J. 181 the learned counsel for the accused pointed out that an inference that the accused committed murder cannot be drawn from the fact of recovery of stolen articles from the accused, one month after the date of incident. This is a peculiar case in which the accused has gone abroad after the incident in this case and his presence could be procured in India only on 09.02.2001. MO. 1 series, MO. 2 and MO. 3 could be recovered through Ext. P24 Mahazar on the basis of Ext. P24(a)(a) information furnished by the accused on 20.02.2001. The learned public prosecutor invited my attention to the decision in Kantilal etc. Vs. State of Rajasthan reported in 2004 CRI.L.J. 2487 (Supreme Court) wherein it has been

held that the evidence of recovery of various articles allegedly belonging to the deceased, from the possession of the accused is a strong circumstance to prove his guilt. Further it has been held therein as follows:

“A receipt book and a list of persons from whom the deceased had collected money; pieces of a torn bank draft; and a money bag were also recovered at the instance of the appellant, Kanti Lal. All these articles were identified as the articles belonging to the deceased. Appellant, Kanti Lal had no satisfactory explanation how he came to be in possession of these articles. The fact of possession of these articles with the appellant only leads to the most probable inference that he was responsible for the death of the deceased, especially when the appellant had no case that he had come to possess these articles for any other reason”.

156. It is to be noted that either PW74, PW25 or the accused is not claiming MO. 1 series, MO. 2 and MO. 3 as his own. It clearly stands proved that MO. 1 series and MO. 3 being worn by deceased Kochurani always prior to her death and MO. 2 being worn by deceased Mary always prior to her death, were non present on their dead bodies at the time of inquest. At the same time, all the other ornaments worn by them were present on their dead bodies. MO. 1 series, MO2 and MO3 were seized through Ext. P24 on the basis of Ext. P24(a) information furnished by the accused.
157. In this context the learned counsel for the accused argued on the basis of the decision in Joy Vs. CI of Police reported in 1989 (1) KLT 443 that PW59 was aware of the possession of the gold ornaments by PW74 even prior to the arrest of the accused and therefore Ext. P24(a) is not admissible under Section 27 of the Indian Evidence Act. If as a matter of fact PW59 had any correct information regarding the said gold ornaments in the possession of PW74, the

accused could have contended that the recovery was not based on Ext. P24(a).

PW59 has deposed in cross examination that he came to know that PW74 was in Bombay and he had gone away from there. Further according to him he had enquired about PW74 prior to the arrest of the accused, on getting an information that the accused had entrusted some gold ornaments to PW74 for effecting sales. According to PW59 he was seeing PW74 for the first time on 20.02.2001. PW59 enquired about PW74 on getting some information that the accused entrusted some gold ornaments for effecting sales. PW59 did not get any information that the accused entrusted any of the gold ornaments stolen away from the house of deceased Augustine or from the dead bodies of any of the deceased persons, to PW74. Moreover, PW59 saw PW74 for the first time on 20.02.2001. MO. 1 series, MO. 2 and MO. 3 were seized on 20.02.2001 only.

In the decision reported in 1960 KLT 289 it was held as follows:

“It is well in cases where robbery and murder are so connected as to form part of the same transaction, the recent and unexplained possession of the stolen property will not only be presumptive evidence against the accused on the charge of robbery, but also on the charge of murder”

Apart from the above in the decision reported in 1993 (1) KLT Short Note at page 6 Case No. 5 it has been held as follows:-

“In such circumstance, accused being in possession of the stolen property is naturally presumptive proof of his having committed the theft and also to him having committed the murder as the theft and murder are so intimately connected to form part of the same transaction. Where robbery and murder are so connected as to form part of the same transaction the recent and unexplained possession of the

stolen property will not only be presumptive evidence against the accused on the charge of robbery but also on the charge of murder”.

158. In this case the accused has no explanation as to how MO. 1 series, MO. 2 and MO. 3 came in to his possession. The accused admittedly started for Mumbai from his house by about noon of 07.01.2001. Even at that time all the deceased persons were lying dead at the 'Tharwad' house. The accused reached Mumbai during the night of 08.01.2001. it was on 09.01.2001 that the accused entrusted MO. 1 series, MO. 2 and Mo. 3 to PW74 at Mumbai. Matters being so, the theft of MO. 1 series, MO. 2 and MO. 3 and the murder of the deceased are so intimately connected to form part of the same transaction and therefore unexplained possession of MO. 1 series, MO. 2 and MO. 3 by the accused will not only the presumptive on the charge of theft against the accused but also on the charge of murder. As held by the Apex Court in the decision noted supra (2004 C.R.I.L.J. 2487 paragraph 5), the fact of possession of MO> 1 series, MO. 2 and MO. 3 with the accused only leads to the most probable inference that he was responsible for the death of the deceased person especially when he had no case that he had come to possess these articles for any other reason.

159. Now regarding the presence of blood in the Material Objects, its origin and group are to be considered. PW54 who is the Assistant Director in the Serology division of the Forensic Science Laboratory, Trivandrum, received 39 sealed packs from the Judicial First Class Magistrate's Court, Alwaye in connection with this case. Out of the said 39 items, items 1 to 30 and 33 to 39 were examined at the Serology division, for the presence of blood, its origin and group. Item No. 31 is the 3 scalp hairs seized from the body of deceased Jesmon and item No. 32 are the sample scalp hairs collected by PW60 from the accused which were already discussed earlier. Along with item No. 31 and

32, hairs collected from the axe in item No. 28 were forwarded to the Biology division. Ext. P36 report by PW53 is in respect of the said items 31, 32 and 28 which was also dealt with earlier.

160. PW54 after examination of items 1 to 30 and 33 to 39 prepared and issued Ext. P37 report. Items 1 to 3 in Ext. P37 are MOs. 50 to 52 respectively which were the clothes seized from the body of Clara by PW58 during inquest through Ext. P14 inquest report in the presence of PW8. Items 4, 5 and 6 in Ext. P37 are MO. 55, MO. 54 and MO. 56 respectively which were the cloths seized from the body of Kochurani by PW58 through Ext. P13 inquest report in the presence of PW8. Item Nos. 7, 8 and 9 in Ext. P37 are MO.31, 30 and 32 respectively which were cloths seized from the body of Augustine by PW49 through Ext. P4 inquest report in the presence of PW4. Items 10 to 14 in Ext. P37 are Mos. 21 to 25 respectively which were clothes seized from the body of Mary by PW47 through Ext. P17 inquest report in the presence of PW18. Items 15 to 19 are MOs. 38 to 42 respectively which were the clothes seized from the body of Divya by PW50 through Ext. P5 inquest report in the presence of PW5. Through Ext. P5 the panties of Divya was also seized from her body; but it was omitted to be identified before this court. The said panties is item No. 20 in Ext. P37. Items 21, 22 and 24 in Ext. P34 are MOs. 45, 46 and 49 respectively which were clothes seized from the body of Jesmon by PW51 through Ext. P3 inquest report in the presence of PW3. Item No. 23 in Ext. P37 is the bed sheet identified as MO. 47 on which the dead body of Jesmon was found which was also seized through Ext. P3.
161. Item Nos. 25 to 28 in Ext. P37 are MOs 13, 15, 14 and 12 respectively which were found near the dead body of Clara and seized by PW 58 through Ext. P13 inquest report. Item Nos. 33 to 37 in Ext. P37 are MOs 75 to 79 series respectively which were recovered through Ext. P47 Mahazar by PW59 on the

basis of ext. P47(a) information furnished by the accused which was also discussed earlier. Item No. 38 is MO5 stool recovered by PW59 through Ext. P28 Mahazar on the basis of Ext. P28(a) information furnished by the accused which was also discussed earlier. Item No. 39 is a plank identified as MO 4.

162. Now the results of examination as narrated by PW54 and as contained in Ext. P37 are to be considered.

1. Items 1 to 3 clothes of deceased Clara contained human blood belong to 'O' Group.
2. Items 4 to 6 cloths of deceased Kochurani contained human blood belong to 'O' group.
3. Items 7 and 9 clothes of deceased august in contained human blood belong to 'O' group
4. Item 8 trouser of Augustine contained human blood belong to 'O' and 'B' group
5. Items 10 to 14 clothes of deceased Mary contained human blood belong to 'O' group.
6. Items 15 to 20 clothes of deceased Divya contained human blood belong to 'O' group.
7. Items 21, 23 and 24 clothes of deceased Jesmon contained human blood belong to 'O' group.
8. Item 22 trouser of Jesmon contained human blood belong to 'O' and 'B' group.
9. Item 28 axe, 29 and 30 electric wires contained human blood belong to 'O' group.
10. Items 33 and 34, the clothes of accused Antony contained human blood belong to 'O' group.

11. Items 35 and 36 Antony's items contained human blood belong to 'B' group. (Item No. 35 was one handkerchief and item 36 was a pair of socks.)
 12. Item 38 contain human blood which is insufficient for grouping.
 13. Item 39 contain human blood belong to 'O' group
 14. Items 25, 26 and 27 contained blood which is insufficient to determine its origin and group.
 15. Blood is not detected on item 37, a polythene cover.
163. Ext. P38 is the report prepared by PW54 regarding the examination of blood swabs of the deceased persons and the wire strangulation which is MO. 94 found at the neck of Kochurani. As per Ext. P38 it has been reported that the blood samples of Augustine, Mary and Divya were found to be that of 'O' group. The blood samples of Jesmon, Kochurani and Clara were not suitable for examination. MO. 94 electric wire was found containing human blood of the 'O' group. MO. 94 was found tied at the neck of Kochurani.
164. The description of the items in Ext. P37 shows that Mo. 75 pants (item No 33) and MO. 76 shirt (Item No. 34) contained brown coloured stains which were washed stains. It clearly shows that the said pants and shirt were washed after it was stained with blood. Even then it was found containing human blood belonging to 'O' group. Even then it was found containing human blood belonging to 'O' group. The description of items in Ext. P37 further shows that MOs 77 handkerchief (item No. 35) and MO.78 series pair of socks (Item No. 36) were also contained brown coloured stains which were washed stains. It shows that the same were also washed after it was stained with blood. On examination it was revealed that MO. 77 and MO. 78 series contained human blood belong to 'B' group. It has to be remembered that the blood group of the accused is 'B'. The blood group of the deceased persons is proved to be 'O'.

The clothes seized from all the deceased persons contained human blood belong to 'O' group. Over and above it, item No. 8 which is MO. 30 pants worn by deceased Augustine and item No. 22 which is MO. 46 pants worn by deceased Jesmon contained human blood belongs to 'O' group as well as 'B' group.

165. According to the learned counsel for the accused, due to presence of blood of the 'B' group also in MO. 30 and MO. 46, participation of another person having 'B' group blood cannot be ruled out. It is to be noted that Mo. 77 handkerchief and Mo. 78 series pair of socks belong to the accused also contained human blood of the group 'B'. According to the prosecution, the accused also got injured on getting contact with the knife which was in the hands of Kochurani, while the accused beat Kochurani with MO. 5. Now the evidence adduced by PW60 in this aspect has to be scrutinized.

166. PW60 while working as Assistant Surgeon at the Taluk Head Quarters Hospital, Aluva examined the accused on 18.02.2001 at 6.30 p.m. and issued Ext. P48 certificate. She noted the following injuries found on the body of the accused, in Ext. P48.

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

History and alleged cause of injury is noted in Malayalam as injury sustained to the finger on getting contact with the knife in the handw while beating Kochurani with stool at about 9 'O' clock on 6th January. According to PW60, t he said history and alleged cause of injury was started before her by the accused. She clearly identified the accused. Her opinion regarding the injuries is that it could be as alleged. In cross examination she deposed that the age of the injuries could be 4 weeks or more prior to the date of her examination.

According to her, the scarmark is the result of a healed wound. The learned counsel for the accused contended that PW60 has not noted in Ext. P48 that the history and alleged cause of injury was given by the accused. But on this point PW60 clearly deposed that she used to record the alleged cause of injury and history being given by the injured, if oriented. If not oriented, she will record the name of such person who gives the history and alleged cause. Therefore, according to her, the history and alleged cause of injury noted in Ext. P48 was given by the accused as the accused was oriented. When the learned counsel for the accused invited her attention to the overwriting on the top portion of Ext. P48, she explained that at first she had forgotten to keep the carbon for getting the carbon copy and after started writing, she put the carbon copy and again the matters written at the top were to be written in order to get the carbon impression and that was how the said overwriting occurred at that portion. There is absolutely nothing to disbelieve Ext. P48 and the versions of PW60.

167. Regarding the evidentiary value of the history and alleged cause of injury contained in Ext. P48, the learned counsel for the accused invited my attention to the decision in *James Alias @ Chacko and Another Vs. State of Kerala* reported in 1994 (1) KLJ 871 wherein it has been held in paragraph 22 as follows:-

“There was injury on the fingers of the right hand of the appellant. PW37 doctor who noted those injuries and issued Ext. P35 certificate has said that the appellant told him that he sustained the injury at about 10 p.m. On 07.08.1992. (The further portion of the statement made by the appellant to the doctor is inadmissible in evidence as amounting to confession) because appellant was then in police custody. The above circumstances put together would show that appellant would have torn

out MO. 26 from the bed sheet (MO. 3) and bandaged his right index finger around 10 PM. on 07.08.1992"

168. The learned Public Prosecutor invited my attention to the decision in *Ammuni and Others Vs. State of Kerala* reported in AIR 1998 Supreme Court 260. In that case also the accused were in custody. A3 and A4 in that case also had received injuries while administering Cyanide to deceased Merli. On the arrest of A3 on 02.07.1980, he was taken to the doctor who found 3 injuries on the fingers of his right hand. When the doctor asked him how he had received those injuries, he had stated that "these small injuries were caused by biting when I closed Merli's mouth to silence her at 7.30 p.m. on Monday before last". Likewise, when A4 was arrested on 05.07.1980 he was also taken to the doctor who noticed two injuries on him which were in the healing processes. On being asked about the injuries, A4 had told the doctor that My left elbow and the outer part of right hand were injured while taking Merli to the kitchen holding her from behind with the left hand inside Merli's house at about 7.30 p.m. on Monday, 26.03.1980. The Hon'ble High Court of Kerala held that, what A3 and A4 told the doctors amounted to an admission, and therefore, they were admissible in evidence. Through the decision noted Supra the Hon'ble Supreme Court also upheld the said decision of the Hon'ble High Court of Kerala. When applying the very same principle, the history and alleged cause of injury narrated by the accused to PW60 in this case as contained in Ext. P48 is also clearly admissible in evidence as an admission.
169. From the history and alleged cause of injury noted in Ext. P48 which is an admission made by the accused, it stands proved that he sustained an injury on his right index finger noted as injury No. 1 in Ext. P48 as well as another injury below the said injury No. 1, during the incident. Especially when the injury is on the finger there is possibility of getting blood stains on materials

which come into contact with that injured portion. That is the reason why his socks and handkerchief became stained with human blood of the 'B' group. That is the reason why some stains of 'B' group blood were found on Mo. 30 as well as MO. 46. It has to be remembered that he had washed MO. 77 and MO. 78 series and that is the reason why blood of the 'O' group could not be dictated in it. There is no reason to think about the interference of any outsider as blood of any group other than 'O' and 'B' could not be found on any of the Material Objects. 'O' group blood is that of the deceased persons and 'B' group blood is that of the accused.

170. PW71 who was the Superintendent of Police, Crime Branch, Ernakulam conducted the search of the house of the accused on 17.04.2001 from 5 p.m. to 6 p.m. after preparing Ext. P64 search memo and seized MO. 7 series, Baniyan, MO. 8 series bathing towels. MO9 series socks, MO 10 nanjack, MO11 series pieces of inland letters and MO. 84 airbag in the presence of PW42 through Ext. P30 search list. There is absolutely nothing to disbelieve PW71 and PW42 regarding the said search and seizure and the contents of Ext. P30. The same was already discussed earlier while dealing with MO. 11 series inland letters.
171. According to PW54, on 05.05.2001 she received six sealed packets concerned in this case from the Judicial First Class Magistrate's Court, Aluva. Packet No. 1 contained 2 armless banyans numbered as item No. 1(a) & 1(b). Packet No. 2 contained two towels numbered as 2(a) & 2(b), Packet No. 3 contained two pairs of socks numbered as 3(a) and 3(b). Packet 4 contained 5 pieces of wooden chips painted in yellow, packet No. 5 contained Fingerprint lifted on cellophane tape found pasted at a paper and item No. 6 lack powder (control sample) used to lift the fingerprint. All these items were examined for the presence of blood and its origin According to her she, prepared Ext. P39

report on examination of the said items. The result of examination is that human blood was dictated on item No. 1(b), 2(s) and 5. Items 2(b) and 4 contained blood which is insufficient for determining the origin. Blood is not dictated on item 1(a), 3(s) and 3(b). Item No. 1 is MO 7 series. Item No. 2 are bathing towels and item No. 5 is lifted finger print from the scene of crime. The testimony of PW54 stands unchallenged. Therefore, one of the banyans and one of the bathing towels seized from the house of the accused through Ext. P30 were also found containing human blood.

172. The learned counsel for the accused argued that the blood group of the blood used on a wall at the Tharavad house for drawing the picture of bow and arrow and that of the blood stained finger print lifted and the blood group of the blood in the banyan as well as in the bathing towel were not dictated and therefore it is not sufficient to connect the accused with the crime. It is also argued that the dimensions of the blood stains in the other Material Objects are not shown and therefore it is a lacuna in the prosecution case. The learned counsel for the accused invited my attention to the decision in Kansa Behra Vs. State of Orissa reported in AIR 1984 Supreme Court 1507 wherein it has been held in paragraph 11 as follows:

“As regard the recovery of a shirt or a dhoti with blood stains which according to the serologist reports were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only

conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn”.

In the decision noted supra the only conclusive evidence relied on by the prosecution to connect the accused with the crime is the blood stains. But in this case the blood stain is not the only piece of evidence relied on by the prosecution to connect the accused with the crime; whereas the prosecution is relying on many other inculpatory circumstances. The learned Public Prosecutor has invited my attention to the decision in Gura Singh Vs. State of Rajasthan reported in 2001 CRI LJ 487 wherein it has been held as follows:-

“The extent of the dimensions of the blood stains on seized articles has to be determined in the context of the circumstances of each case. It would be appreciated if the extent is mentioned in the seizure memos but failure to give its details in such memo would not entitle the accused to claim the rejection of the prosecution case on that ground alone. Non mentioning of the dimensions of the stains of blood may perhaps assume importance in cases where the accused pleads a defence or alleges the malafides of the prosecution of fabricating the evidence to wrongly involve him in the commission of the crime. The credibility of such a circumstance cannot be weakened only by referring to the non mention of dimension of blood stains on the clothes particularly when its adverse effect on the prosecution case is not pointed out. Mere doubt sought to be created on the non mention of dimensions of blood stains by itself is not sufficient as admittedly the accused is entitled to the benefit of only reasonable doubts. In the instant case, on facts that this circumstance is fully proved and does not

create a doubt, much less a reasonable doubt so far as the commission of the crime by the accused is concerned.”

In the decision noted supra it has been further held follows:

“The Serologist and Chemical Examiner has found it that the Chadar (sheet) seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with the lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument”

173. I have already found that MO1 and MO11(a) were written by the accused to his wife. From the discussion made earlier it was already found that those letters were not written under compulsion. Now the contents of MO11 and MO11(a) are to be considered. MO11 is in Malayalam, which can be translated as follows:-

“Gemma,

Do not hate me. I have committed a grave error. You can't even imagine in your dream the error which I happened to commit. I happened to commit the acts which I did not even think in my mind. Do not curse me. I could only give pain to all those who loved me. It is the line drawn on my head and it will not change. On Saturday night it was not to Perumbavoor for making money that went as you thought and that I went to the house of Babychettan. I have concealed everything from you. It was not due to lack of love towards you that did not tell you about financial difficulties. I did not tell you about financial difficulties. I did not tell you about financial difficulties as I thought that you would dislike me. It is not the fault of anybody. Nobody can change the things which should occur. Even on many earlier occasions

also Kochumary used to give me money. There is no illicit relationship in between us. I was a playmate there from my childhood and that was the relationship with them. From the time which I came to know that I would not get money from the bank onwards, was worried by thinking as to from where could I get money. On many occasions I used to go to the house of Valliamma and discuss matters with her. I went there”.

174. MO.11(a) Inland letter is incomplete and some of its portions are missing. It is evidently not a continuation of MO. 11. It is evident that there was another letter which is the continuation of Mo.11 and that MO11(a) is the continuation of that another letter. MO 11(a) is also in Malayalam. The English translation of the available portions of MO11(a) is as follows:-

“Her mouth was closed. Again the hand was ward off and cried. Then once again pressed. On hearing the hue and cry, Valliamma got up and came over there. Then I removed the hand, Kochurani who got up from the floor came towards me with a knife. Valliamma also came. Valliamma fell down by hitting her head on the floor in the pull and push occurred then, and became immobile. On seeing it, Kochurani approached with increased anger. Then I took the stool and inflicted a blow with it. She fell down. Thinking that both them died, I thought that anybody may suspect me. When others came after Cinema...”

175. The remaining portion of the letter is not available in full, but some of its portions only are available. The available portions show that, he had told falsehood to her Almirah, something regarding pants, shirt, a request to her to look after his son well and also the word murderer etc.
176. It is quite clear from MO11 and MO11(a) that by telling PW19 that he was going to Perumbavoor for money, he went to the Tharawad house. The fact that ‘Kochurani’ had on earlier occasions given money to him is clear from

MO. 11 The fact that the accused became frustrated and worried when he came to know that he could not get the money from the bank and that he went to the Tharavad house are also clearly admitted in MO.11. The fact that he attacked Kochurani and pressed her mouth for silencing her is also clear from MO11(a). The further fact that on hearing the hue and cry deceased Clara got up and came over there is also clearly admitted in MO.11(a). It is admitted in MO11(a) that the accused pushed Clara down and then he beat Kochurani with a stool. It is also admitted that the accused thought that Clara and Kochurani died and that he wanted to screen the offence. The said admissions made by the accused in MO. 11 and MO11(a) can be treated as extra judicial confession made by the accused to his wife, PW19. It reached her house and subsequently the same were seized through Ext. P30 as torn pieces.

177. The learned counsel for the accused argued that I cannot be believed that the accused has written such letters admitting his guilt in the crime and sent it to his wife. Nobody can predict the mind of a criminal. The way in which MO11 was written clearly shows that the accused wanted to get back the love and sympathy of his wife. He wanted to make her aware that he was not having any illicit relationship with Kochurani. The news that might have spread regarding these matters might have prompted and provoked the accused to write such letters to his wife. Moreover, it was written while the accused was in K.S.A. and he got it posted at Bombay through some other persons. The learned counsel for the accused further argued that such letters if received would have been destroyed in normal course and that nobody would keep it beneath the bed. The concerned house might have been under strict police surveillance. It might not have been possible to destroy the letters. Even then it were torn and the same were left beneath the bed. If as a matter of fact these letters were cooked up at the compulsion from the part of the police, it could

have been cleanly created as a confession of the entire guilty. There is absolutely no reason to disbelieve the seizure of MO. 11 and MO11(a). There is absolutely nothing to suspect that MO11 and MO 11() were written at the direction of the police.

178. PW77 who is the Superintendent of Police, Special Crime Branch, CBI, Chennai took up the further investigation of this case in pursuance of Ext. P88 order passed by the Hon'ble High Court of Kerala. He registered crime No. RC 2S of 2002 through Ext. P88 FIR. According to him, the accused confessed before him to his having committed the offence by himself alone. Further according to PW77, the accused expressed his willingness to give confession before a Judicial Magistrate; but requested that the same may please be arranged for at any place outside Kerala. Accordingly PW77 applied before the Chief Metropolitan Magistrate, Chennai for recording his confession under Section 164 Cr.P.C. The accused appeared before PW65 nominated Magistrate on 22.10.2002 and made a confession.
179. PW65 was working as the 19th Metro Politan Magistrate, Egmore, Chennai. While so, she was directed by the Chief Metro Politan Magistrate to record the confession statement of Antony @ Antappan. According to her, as per the above instructions she summoned police. Antappan and he appeared before her at 11 a.m. on 22.10.2002. She identified the accused as the said Antony @ Antappan. According to PW65, except herself, the translator, the typist and the accused anyone else was present in the court hall and she allowed the accused to rest for 10 minutes. According to her, she narrated him about the procedure and orally explained to him that he is not bound to give evidence and later it may go against him. However, the accused agreed whole heartedly that he has giving the evidence without any compulsion or coercion and is giving on his own accord and voluntarily. Further according to PW65, after all

the legal formalities she recorded the statement of the accused. The accused was not able to speak in Tamil. Therefore a translator was brought. All the statements recorded were explained to the accused in Malayalam. The entire statement recorded were explained to the accused in Malayalam. The entire statement recorded is read over and translated to the accused and he agreed to it as he has stated it and he signed it. She also affixed her signature. According to her, she complied with all the formalities contemplated under Section 164 Cr.PC. for recording the confession. The said confession recorded by PW65 is marked as Ext. P59. The accused gave the confession statement in Malayalam and it was translated into Tamil by the translator. Ext. P60 is the English translation of Ext. P59. In cross examination the learned counsel for the accused asked PW65 whether she has recorded a memorandum at the foot of the statement. PW65 answered that as she has explained everything to the accused and as she gave him warning and as she was satisfied that the statement was a voluntary one, she signed at the bottom.

180. PW76 is the deputy Superintendent of Police, Special Crime Branch, CBI, Chennai who translated the contents of Ext. P59 into English as Ext. P60. In cross examination he deposed that he does not know to read and write Tamil. But at the same time he can understand Tamil well if anybody reads out it to him. According to him, it was one Muthukumar who is one of this Subordinate Officers who read over to him Ext. P59 and that the how he prepared Ext. P60.
181. The contents of Ext. P60 statement, which is the English translation of Ext. P59 is as follows:-

“I am a resident of Manjooran House, Vatican Street, Aluva. I have studied upto X standard. Worked as a Driver in the Municipality. I have one child. Deceased Augustine is my father's elder brother's son.

On 06.01.2001 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 call to Mumbai regarding my trip, I told them that I am not coming. Augustine, his wife and children (around 13 & 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 bed room 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 bed room came there. On sustaining cut injury Kochurani fell 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 bed room 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 Kjochurani 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 ten 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 moview 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. 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 of 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 to the 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 bust 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 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 the 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 also showed them the axe and chopper to the police. Before leaving Mumbai, from the amount which I stole, I gave Rs. 32000/- to Raman Nair and Yohannan. I spent the rest of the money. I spent Rs. 3000/- flight charges from Mumbai to

Kerala. The distance between my house and Augustine's house is only 10 minutes y walk. On suspicion, when 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 XIX Metropolitan Magistrate, Chennai, I appeared on my own and gave the statement without any compulsion. I understand Tamil a little"

182. In Ext. P59 the accused was asked whether he was aware that he has reported before the 19th Metropolitan Magistrate Court, Egmore, Chennai? He answered in the affirmative. Then she asked whether he was aware that she is the 19th Metropolitan Magistrate, Egmore, Chennai? to which also he answered in the affirmative, He was then asked whether he was giving this statement on his own accord or whether he was coerced by the police or someone else to give the statement? The answer was No. I am giving the statement on my own". The proceedings of PW65 shows that the windows and doors of the Court were closed at the time of recording Ext. P59. It further shows that he was asked whether he was aware t hat PW65 is not a police officer? He answered in the affirmative. He was also asked whether he was aware that no police officer was present inside and outside the court premises? The accused answered in the affirmative. Again questions were asked for satisfying that the accused was not compelled by anybody to give the confession statement and that he was inclined to give the statement whole heartedly.

183. On the bottom of the statement made by the accused, the following memorandum is also incorporated.

"Since the summoned accused does not understand Tamil thoroughly Shri Prakash Babu, S/o. Balakrishnan, a student of IV year PH.D. was

summoned by the Court and the accused narrated in Malayalam and the same was translated into Tamil by Shri Prakash Babu who is very well conversant with Tamil and Malayalam. The Tamil translation which was done by Sri Prakash Babu was registered in the Court.

The summoned accused Antony narrated and Shri. Prakash babu translated it into Tamil and the same was got typed and admitted to be correct and signed.

Sd/
XIX Metropolitan Magistrate"

184. The learned counsel for the accused argued that Ext. P59 confession statement is not recorded in the manner provided under section 164 Cr. P.C. as there is not memorandum at the foot of Ext.P59 in the form mentioned in section 164(4) Cr. P.C. It is true that the memorandum shown at the foot of Ext. P59 is not in the exact form show in section 164(4) Cr.P.C. but PW65 clearly deposed that she gave the warning to the accused that the accused was not bound to make such a statement and such statement may be used as evidence against him. Further statement show that PW65 was satisfied that the statement was made voluntarily and there was no compulsion or coercion by PW65, or the police or CBI or anyone else on the accused to give such a confession. The memorandum seen at the foot of Ext. P59 further reveals that the same has been admitted to be correct by the accused an he signed. PW65 deposed that the same were explained to the accused in Malayalam and that the entire statement recorded is read over and translated to the accused and he agreed to it as he has stated in and he signed it. Matters being is, even though the memorandum is not in the exact form as the one mentioned in section 164(4) Cr. P.C in substance PW65 has complied that all the formalities mentioned under section 164 Cr. P.C. for recording Ext. P59. The deposition

of PW65 clearly proves that all the legal formalities were duly complied with by her for recording Ext. P59.

185. The learned counsel for the accused invited my attention to the decision reported in AIR 1964 Supreme Court 358 wherein it has been held as follows:-

“The principle that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden applies to judicial officers making a record under S. 164. The principles behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in S. 164. The power to record the confession has obviously been given so that the confession might be provided by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of S. 164 including the safe guards contained in it for the protection of accused persons, would be rendered nugatory. The section, therefore by conferring on magistrates the power to record statements or confessions, by necessary implication, prohibits a magistrate from giving oral evidence of the statements or confessions made to him”.

186. But in the decision noted supra it was held that where a Second Class Magistrate not specially empowered by the state Government to record a statement or confession under section 164 Cr. P.C. has purported to record a confession of the accused under Section 164 Cr. P.C. his oral evidence to prove, the confession will be inadmissible. Therefore the question is one of inherent infirmity in which case. It cannot be corrected through oral evidence.
187. The main objection from the part of the learned counsel for the accused as against Ext. 59 is that the procedure as contemplated under section 164 Cr. P.C has not been followed by PW65 in recording Ext. P59. It has to be noted that

section 533 of the Old Code was redrafted and incorporated in the new code as section 463. Even in the decision noted incorporated in the new code as section 463. Even in the decision noted supra it was held that section 533 (old) permits oral evidence to prove that the procedure had actually been followed. As per section 463 Cr. P.C. that the procedure had actually been followed. As per section 463 Cr. P.C. when the confession purported to be recorded under section 164 is tendered in evidence before a Court and if that Court finds that any of the provisions under Section 164 Cr. P.C. has been complied with by the Magistrate who recorded it, court may, notwithstanding anything contained in Section 91 of the Indian Evidence Act, take evidence in record to such non compliance and may, if satisfied that such non compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement. Here PW65 has clearly deposed that she had complied with all the formalities to be complied with under section 164 Cr. P.C. in recording Ext. P59. She has deposed in detail all such formalities complied with by her in recording Ext. P59. Apart from this, the circumstances in which Est. P590 was recorded are also to be considered. The accused was enlarged on bail on 25.1.2002. It was vide order dated 9-4-2002 that the Hon'ble Court of Kerala ordered further investigation in this case and subsequently PW77 started such further investigation. When the accused voluntarily expressed his willingness to PW77 to make a judicial confession before the Judicial Magistrate outside the State of Kerala, PW77 applied before the Chief Metropolitan Magistrate, Chennai for the same and consequently PW65 was nominated for the purpose of recording the confession statement of the accused. PW65 issued summons to the accused and the accused appeared before PW65. PW65 made the accused aware of the fact that she was not a police officer and that she was a Metropolitan

Magistrate. He was made further aware of the fact that no police officers were present inside or outside the Court premises. It was after satisfying that the accused wanted to make a confession statement voluntarily on his own violation that PW65 recorded Ext. P59. Ext. P59 was recorded not when the accused was in custody. Further it was not recorded on the pre-arrest stage of the accused. Ext. P59 was recorded when the accused was enjoying bail. It has to be noted that the accused furnished Ext. P59 confession statement before PW65 on 26-10-2002 whereas he was already enlarged on bail on 25-1-2002. The accused has not made any complaint before any authority or court of law till he was examined under section 313 Cr. P.C. before this Court, regarding any ill-treatment, threat or promises by the CBI. It cannot be imagined that the CBI has exerted any threat or inducement on the accused who was already enlarged on bail. It is for the first time. It is for the first time that the accused has stated in his statement in writing handed over to this Court when he was examined under section 313 Cr. P.C. that the CBI officers induced and took him to Madras and Bangalore by exerting inducement and threat on him. The accused has attempted to retract his confession statement for the first time when PW65 was examined. Till then the accused did not even lift his little finger against any of the acts of the CBI or PW65. Matters being so the circumstances in this case wherein the accused furnished Ext. P59 confession statement are unique. In the absence of cogent evidence and proof, it is idle on the part of the accused to contend that the confession was not voluntary and that threat and inducement were exerted by the CBI on him, especially when he was on bail. Even if Ext. P59 reveals any procedural error committed by PW65, her evidence as PW65 before this Court is sufficient to accept Ext. P59 as a confession recorded as per section 164 Cr. P.C. as per the provisions contained in section 463 Cr. P.C..

188. The learned counsel for the accused invited my attention to the decision in State of Rajasthan Vs. Rajaram report in 2003 8 Supreme Court Cases 180 wherein it has been held as follows:-

“Confessions may be divided into two classes i.e. judicial and extra judicial. Judicial confessions are those which were made before a Magistrate or a Court in the course of Judicial proceedings. Extra Judicial confession are those which are made by the party elsewhere than before a Magistrate or Court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when section 164 does not apply. As to extra-judicial confessions, two questions arise (i) were they made voluntarily and (ii) are they true? As the section enacts a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement. Threat or promise (1) having reference to the charge against the accused person, (2) proceeding from a person in authority and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement (a) does not have reference to the charge against the accused person or (b) it does not proceed from a person in authority or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of section 24. The law

is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the Court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the facts and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise must be considered before deciding whether the Court is satisfied that in its opinion the impression caused by the inducement threat or promise, if any has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See R.V. Warickshall) It is not to be conceived that a man would be induced to make a free and voluntary confession of guilty. So contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confession of guilt if clearly proved are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat and often the inducement involves both promises and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe's Evidence, 9th Edn, p. 284) a promise is always attached to the confession alternative while threat is always attached to the silence alternative; thus in one case the prisoner is measuring the net advantage of the promises, minus the general undesirability of a false confession as against the present unsatisfactory situation, while in the other case

he is measuring the net advantage of the promise , minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement presents a satisfactory situation, minutes the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy the inducement threat or promise must be such as it calculated is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of an inducement promise etc, or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement promise or threat is sufficient in the opinion of the Court, to give the accused person ground which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, It is enough to exclude the confession. [The words appear to him in the last part of the section refer to the mentality of the accused.]

189. In this case there is absolutely nothing to show that there was any inducement, threat or promise either from the part of CBI or from the part of PW,65 for obtaining Ext. P59.
190. The learned counsel for the accused invited my attention the decision reported in AIR 2001 Supreme Court 2509 wherein it has been held in paragraph 22 as follows :-

“As the confession recorded by PW2 cannot be brought under section 164 of the code it is an idle exercise to consider whether it was voluntary or true. We may again point out. PW2 has not stated that before taking down the confession he explained to Ranbir Singh that he was not bound to make the confession and that if he did so, such confession might be used as evidence against him. This is sine qua non for recording a confession. Further a Magistrate is forbidden from recording any such confession until he gets satisfaction that the person going to make a voluntary confession. There is in the evidence of

PW2 that he had adopted such precaution. For all these we keep that statement out of the ken of consideration in this case.

The decision noted supra clearly reveals that had PW2 in that case adduced evidence before that Court to show that PW2 had adopted such procedures the confession would have been valid and acceptable.

191. The learned Public prosecutor has invited my attention to the decision reported in state Vs. Ammini and others reported in 1987 (1) KLT 928 (F.B) wherein it was held as follows:-

“The respondents in S.164 of the Code and the Rule are intended to ensure that the confession should be voluntary and free from any sort of inducement or pressure from any quarters. The omission to put one of the question as provided in S. 164 or the Rules is not sufficient to throw out a judicial confession, if the Court is otherwise satisfied on a scrutiny of the whole proceedings including the confessional statement, about its voluntariness. Necessity for administering warning to the maker of the confession that the confession is not intended to make him an approver is to make him understand that the confession is likely to be used against him in the trial. If the accused is informed about the consequences of making the confession with sufficient clarity, mere omission to tell him, that the confession is not intended to make him an approver, is not enough to treat the confession as vitiated., If the facts and circumstances surrounding the making of a confession do not appear to cast a doubt on the veracity or voluntariness of the confession, a Court is not to reject the confession outright merely on the technical ground that just one of the formalities prescribed by the section or rule was overlooked by the magistrate.”

My attention was also invited to the decision reported in AIR 1959 Supreme Court 18 wherein it was held as follows:-

“In the absence of any evidence to show that any threat, promise or inducement was made to the accused and when he had not been continuously questioned all the time but only at intervals during the period the mere fact that it took two to three hours from the time that

the accused was brought to the house of the mukhia to the time when he made the confessional statement cannot make his confession one other than free and voluntary”.

Matters being so, Ext. P59 and its English translation marked as Ext. P60 are clearly admissible in evidence.

192. The prosecution has examined PW55, PW56 and PW57 who were the jail wardens of the Sub Jail, Aluva wherein the accused was in Judicial Custody, in order to prove that the accused had confessed his guilt before them. Their evidence is clearly inadmissible and the learned public prosecutor has conceded that the prosecution is not relying on their evidence.
193. According to PW77, to conform the version of the accused, he arranged a polygraph test as he was willing to undergo the same. Accordingly the test was conducted at FSL Bangalore on 12-11-2002 by PW66. PW66 advised PW77 to subject the accused for Brain Finger Printing Examination also. According to PW66, the answers given by the accused were deceptive. Subsequently the accused was subjected to Brain Finger Printing Examination at the National Institute of Mental Health and Natural Science (NIMHANS) Bangalore by PW48. The report of the same was marked as Ext. P34. The learned counsel for the accused argued that the procedure adopted by PW48 is hit by Article 20(3) of the Constitution of India. According to PW.48, it stands proved that the accused was having experiential knowledge about the commission of the offence in the manner he had already confessed. Ext P34 shows that many probes were put to the accused by PW48 . On a perusal of it, it was found that most of the probes were incriminating in nature. In fact the technique adopted by PW48 in conducting Brain Finger Printing Examination is the tapping of response from the Brain regarding experiential knowledge of a fact. Responses were invited from the Brain of the accused regarding his experiential knowledge on probes which were mostly of inculpatory in nature. Of course I am satisfied by the evidence of PW48 and the contents of Ext. P34 that it is a very good technique for better

investigation in scientific method. As probes containing inculpatory circumstances were put to the accused and answers were tapped from the brain, I am of the view that the report is admissible in evidence. It cannot be said that it is hit by Article 20(3) of the Constitution of India in subjecting to person for Brain Finger Printing Examination during investigation incriminating questions as probe were not put to him, just as in case of polygraphic examination. Even though the investigating machine can afford it, the judicial exercise can only ill afford it. This Court is not accepting the report of the polygraphic expert as well as Brain Finger Printing Expert in evidence.

194. Another strong circumstance pointed out by the prosecution is that the accused has deliberately made a false contention in his statement in writing pretending ignorance about PW74. In his statement in writing the accused has stated that he does not know Suresh (PW74) Even though the verbatim translation of the said statement made by the accused in his statement in writing is "I have no acquaintance with Suresh", on reading it as a whole it can be seen that what was intended by the accused is that he does not know the said Suresh (PW74). It is to be noted that the accused had handed over the said statement in writing to this Court just after his examination under section 313 Cr. P.C. question No. 265 was put to the accused regarding the fact that PW74 Suresh along with the accused, PW67 Hari and others had gone to Mumbai on 2-12-2000 and all of them resided together the P.K.M. Lodge near J.J. Hospital Mumbai and that PW. 74 Suresh did not succeed in the interview whereas all the others including the account successfully passed the interview whereas all the others including the account successfully passed the interview etc. To that question the accused answered as follows:-

"It is correct. Suresh did not pass we all passed."

Therefore it is evidence that the accused had acquaintance with Suresh and they resided together on two occasions at the P.K.M. Lodge Mumbai. Therefore it is

evident that the accused has deliberately presented ignorance about PW74 Suresh, in his statement in written before this Court. The said false contention will not be sought against the accused.

195. Another strong circumstance pointed out by the prosecution against the accused is that when PW.19 the wife of the accused met the accused for the first time after his coming back from K.S.A and his arrest at the office of PW59, PW19 asked the accused as to for whom did he confess. But the accused did not give any reply. It is a matter of fact that accused had any complaint that he was made to confess the crime by the police forcibly or by exerting inducement, threat or promise definitely he would have divulged that information to PW19 being his wife. When this aspect was put to the accused as question No. 68 when he was examined under Section 313 Cr. P.C. circumstances the accused admitted it as correct. No doubt, this is also a strong circumstance against the accused.
196. Now the evidence of Forensic Experts regarding the weapons that might have been used for causing the injuries found on the body of the deceased persons has to be discussed. Regarding the injuries found on the body of deceased Augustine, PW64 who conducted the autopsy and prepared Ext. P55 Postmortem Certificate and Ext. P56 series body charts, deposed that injury numbers 1 to 4 in Ext. P55 could be caused by cutting with MO.12 and injury Nos. 5 to 8 in Ext. P55 could be caused by striking with the blunt edge of MO.14. I have already found that Augustine died due to injuries sustained to the skull and brain i.e. injury Nos. 1 to 4 in Ext. P55.
197. Regarding the injuries found on the body of deceased Mary, PW 64 who conducted the autopsy and prepared Ext. P57 Postmortem Certificate and Ext. P58 series of body charts deposed that injury Nos. 1 and 8 in Ext. P57 could be caused by striking with the butt of MO 12 injury Nos. 2 to 7 in Ext. P57 could be caused by cutting with the sharp edge of MO.4 and injury No.9 could be caused by forcibly snatching away a gold ornaments worn by the deceased from her neck. It has to be remembered that

there is a deformity on the hook of MO2 and that MO6 Thali had detached from it and was lying separately on the floor. I have already found that the death of Mary was due to the injuries sustained to the skull and brain ie, injury Nos. 1 to 8.

198. Regarding the injuries found on the body of deceased Clara , PW72 who conducted the autopsy and prepared Ext. P85 postmortem Certificate and Ext. P86 series body charts , deposed that injury Nos.1 to 3 in Ext. P85 could be caused by striking with the butt of MO 12 or striking with MO5 and injury Nos. 4 and 5 could be caused by cutting with the sharp edge of MO12 or by cutting with MO.14. I have already found that Clara died due to injuries sustained to her skull and brain.
199. Regarding the injuries found on the body of deceased Kochurani, PW72 who conducted the autopsy and prepared Ext. P79 postmortem certificate and Ext. P80 series body charts, deposed that injury Nos.2 to 5 in ExtP.79 could be caused by cutting with MO13 and injury No.6 in Ext. P79 could be caused by striking with MO5 or the butt of MO12. injury No.1 could be caused by tying and hanging her by neck by using MO 94 double standard electric wire . I have already found that Kochurani died due to multiple injuries sustained.
200. Regarding the injuries found on the body of deceased Divya, PW72. who conducted the autopsy and prepared Ext. P81 postmortem certificate and Ext. P82 series body charts deposed that Injury Nos.,1,3,4 and 5 in Ext. P81 could be caused by cutting with MO13 and injury No2 in Ext. P81 could be caused by striking with the butt of MO12. I have already found that Divya died due to injury Nos.2 and 3.
201. Regarding the injuries found on the body of deceased Jesmon, PW72 who conducted the autopsy and prepared Ext. P83. Post mortem certificate and Ext. P84 series body charts deposed that injury No.1 in Ext. P83 could be caused by striking with the butt of MO12 and injury No.2 in Ext. P83 could be caused by cutting with MO 13. I have already found that Jesmon died due to injuries 1 and 2.

202. The opinion expressed by PW64 and PW72 regarding the probable cause of injuries on the body of the deceased persons are highly probable and the same can only be believed. There is absolutely no reason to discard their evidence regarding the same. By pointing out the presence of human Spermatozoa which do not belong to the accused found oozing out of the vagina of deceased Kochurani the learned counsel for the accused argued that the possibility of another person or other persons in committing the crime cannot be ruled out. On this aspect, PW72 deposed that it is possible that such sexual intercourse had occurred some hours or days prior to her death. Further according to him, in a living person Spermatozoa could be found up to 26 hours and sometimes upto 2 or 3 days. The said evidence of PW72 stands unchallenged. No question has been asked on that evidence during the cross examination of PW72. the body of Kochurani did not show any injuries or marks of violence at or near her private parts which clearly reveal that such a sexual intercourse was merely consensual in nature and that could be even upto 2 or 3 days back to her death. It is evident that the private parts of Kochurani did not reveal any forcible sexual assault on her. Injury No.1 found on the body of Kochurani might have caused the oozing out of the spermatozoa from her vagina.

203. The accused examined the News Editor of the Cochin Unit the Malayalam Manorama Daily who deposed that DW2 is the correspondence the Malayala Manorama daily for the Aluva Region. Further, according to DW1, DW2 was the part time correspondent of that Daily for the said region during 2001 also. According to DW2, Ext. D19(a) is the news item regarding this case in the said Daily 13-2-2001 Ext. D20(a) is the news item regarding this case in the said daily dated 14-2-2001 Ext. D21(a) is the news item regarding this case in the said Daily dated 14-2-2001, Ext D21(a) is the news item regarding this case in the said Daily dated 15-2-2001 and Ext. D22(a) is the news item regarding this case in the said Daily dated 16-2-2001. In chief examination when DW2 was asked whether the said news item were

published on the basis of direct information's received by him, he answered that those information's were not officially received and that the Investigating Officers did not use to give any informations regarding this case officially. According to him those informations were the informations which they thought to be believable as they had received it from their sources.

204s. Further, according to DW22, those news item were given on the basis of informations received from some officers connected with the investigation and also from some other believable persons. In cross examination he deposed that he cannot say as to who are the officers connected with the investigation who gave such informations. The accused was not questioned in his presence. He does not know as to what was asked by the police officers to the accused and what the accused had stated before such officers. He clearly admitted that he gave the said new item on hearsay information received from others. Much discussion is not required to come to the conclusion that Exts D19(a) D21(a) and D22(a) have no evidentiary value and that the same cannot be made use of for any purpose in judicial proceedings.

205. The learned counsel for the accused by citing the decisions reported in AIR 1996 Supreme Court 66 and 1976 KLT Short Note 202 pointed out that the mere presence of the accused near, the place of occurrence and an injury found on him is not sufficient to connect him with the alleged offence. Here in this case the mere presence of the accused near the place of occurrence and the injuries found on him, are not the only circumstances relied on by the prosecution.

206. The learned counsel for the accused invited my attention to the decision reported in AIR 1987 Supreme Court 1572 and argued that suspicion. However strong it be does not take the place of proof. There is no quarrel with regard to the said proposition.

207. The learned counsel for the accused has invited my attention to decision reported in 2002 7 Supreme Court Cases 230 wherein it has been held as follows:-

"The essential ingredients to prove guilt of an accused by circumstantial evidence are (a) the circumstances from which the conclusion is drawn should be fully proved (b) the circumstances should be conclusive in nature (C) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (d) the circumstances should be a moral certainty, exclude the possibility of guilt of any person other than the accused."

208. The learned counsel for the accused invited my attention to the decision reported in 1963 KLT 292 wherein it was held motive may not be very material in cases where there is enough of direct evidence, but in cases where there is not even an iota of legal evidence or a singly telling circumstances, motive has a vital part to play. My attention was also invited to the decision reported in 1998 Cr. L.J. 401 where it was held as follows:-

"Proof of motive is not necessary to sustain a conviction but when the prosecution puts forward a specific case as to motive for the crime, the evidence regarding the same has got to be considered in order to Judge the probabilities.. Motive for a crime is a satisfactory circumstances of corroboration when there is convincing evidence to prove the guilt of an accused person but it cannot fill up a lacuna in the evidence."

209. In *Mulakh Raj and others V. Satishkumar and Ors.* Reported in 1992 3 SCC 43 at page 44 it was held

"In cases of circumstantial evidence motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to prove motive is never indispensable for conviction. When facts are clear it is immaterial that no motive does not break the link in the chain of circumstances connecting the accused with the crime nor militates against the prosecution case."

210. In another decision by the High Court of Kerala in Rajayyan Samuvel Vs State of Kerala reported in 1992 (2) K.L.T. 234 Their Lordships laid down that:-

“The motive is not a decisive test for determination of the Criminal Character of human acts. An unlawful act will not become lawful even if it is done with a good motive. To put it conversely, a lawful act will not become lawful even if it is done with a bad motive. A man who carries a guilty mind is not punished under the penal law, he is punished only for his unlawful actions. The law will judge a man by his actions and not by the motions of his mind. In any case, it is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it. The absence of proof relating to motive is of no consequence, when cogent and reliable evidence as to the guilt of the accused is available. The motive need not be the immediate objective of an act or murder and it does not form an ingredient of the offence.”

211. Another point argued by the learned counsel for the accused is that, it is not probable for a single person to cause the death of six persons. The arrangement of the scene and creation of the trap and also the skillful dramatic performance of the modes of execution successfully done by the accused has been clearly narrated by him in Ext.P59, which will also be dealt with later. The learned Public Prosecutor has invited my attention to the decision reported in 2003 Cr.L.J. 483 (Supreme Court), in a case in which domestic servant murdered all the three members of a family. In the decision noted Supra it has been held as follows:

"As the accused-appellant executed his plan to put an end to the lives of the entire family in a calculated manner it is difficult to accept the contention that it could not have been possible for the appellant to single handedly commit three murders one by one using different weapons".

In the case in the decision noted Supra, all the said persons were killed in broad day light, that too, when all of them were aware that they were going to be killed.

My attention was also invited by the learned public prosecutor to the decision reported in 2003 Cr.L.J.3697 in a case in which the facts are almost identical to the facts and circumstance of this case. In that case also the accused single handedly committed multiple murders and exterminated all the members of a family in his greed for money.

212. According to PW77, he conducted investigation on all the points noted by the Hon'ble High Court of Kerala in Ext.P88(a) Order. He gave the following versions in box:

"The investigation revealed that the delay in sending the negatives of the photograph, original finger print impressions and the hair of the accused seized from the scene of crime to the court was not deliberate or malagide. This was further corroborated by examining observation Mahazar witnesses, seizure Mahazar witnesses, the photographs and by viewing the positive prints of the photographs in sequential order which show the incriminating evidence and the bodies of the deceased in accordance with the observations in the observation maghazar. I also conducted investigation into the fact that the number of chance finger prints available were not communicated to the I.O. in the first instance

by the finger print expert. Investigation revealed that though the finger print expert had communicated to the I.O on 11.01.2001 itself about the change prints available, but without mentioning the details of it, he had communicated to his Superior Officer, namely the Director, F.S.L. on 12.01.2001 itself giving complete details of the change prints available and it was much earlier to the arrest of the accused. Regarding the collection of evidence of the foot print impression that were noticed in the scene of Crime the negatives of the photographs having the foot print impression and the positive prints were forwarded from the Court to the Finger Print Bureau, Trivandrum for comparing with the foot print impressions of the accused Antony. Only one foot print impression was found fit for comparison and even in that conclusive opinion could not be given by the experts because of the lack of complete contour in the foot print impression. Regarding the collection of blood stains from the wall where a bow and arrow symbol was marked, I visited the scene of occurrence and collected it and got it forwarded through court for obtaining opinion from the DNA finger printing expert at FSL Chennai. However, they were found to be blood samples unfit for further analysis. Investigation was conducted into the probable cause for the presence of sperms in the vaginal swab and pubic hair of deceased Kochurani. In this regard blood samples of accused Antony, PW10, PW11, PW12 Nevil Wilson, Vincent, P.P. George, Joy Mathew (PW31) and deceased Augustine were made available for DNA finger printing and comparison with the presence of Male DNA in the sperms. The examination revealed that none of the above mentioned persons was the cause for it. In this regard opinion

was sought from PW64 who had conducted the postmortem of Augustine and Mary and had supervised the postmortems of the other deceased. PW64 opined that there are no injuries lead into sexual assault on the body of Kochu Rani and hence the presence of sperms is not reflective of the offence having been committed for it. He has of the view that it could be a consensual sexual contact. Investigation was also conducted into the hearsay information that a jeep belonging to Kerala Water Authority passed by the house of Augustine at about 2 a.m. on 07.01.2001. In this regard detailed examination of the drivers of Kerala Water Authority Offices and other personnel including Engineers of the Kerala Water Authority were examined. The log books of the vehicles were scrutinized. No information could confirm the hearsay information and on the contrary the evidence clearly showed that no jeep of Kerala Water Authority was out at the particular time in that area. In addition to attending to the above points that were mentioned in the Order of the Hon'ble High Court, I conducted investigation to rule out the possibility of anybody else being associated with the accused Antony in committing this offence. In this regard the petitioners in the O.P.(PW1 and PW2) were examined on quite a few occasion and the reasons for suspicion given by them were looked into. The investigation revealed that though the brothers of deceased Augustine were not in talking terms with him over the dispute relating to ancestral property, the dispute was pertaining to the period dating back to 1990 and 1997 when their father expired. On the contrary there were evidence to show that they were moving towards cordiality in their relationships. Investigation was also conducted into

the possibility of any of the local bad characters being associated and it was also ruled out."

I do not find any reason to disbelieve PW77. All the matters were gone into by PW77 and his team and no stones remain as unturned. I do not find any latches on the part of the CBI in conducting further investigation. Over and above PW77, PW59 had also done a commendable job in the matter of investigation.

213. PW65, who recorded Ext.P59 confession statement of the accused under Section 164 Cr.P.C. on 22.10.2002 was working as the 19th Metropolitan Magistrate during that period. Being a Metropolitan Magistrate as per Section 281 Cr.P.C., she ought to have recorded the statement in the language of the court. According to PW65, there was the assistance of a translator who knew Malayalam as well as Tamil well. According to PW65, she can speak and understand Malayalam and she knows Tamil and English language. The question to the accused were asked in Tamil and it was translated to the accused in Malayalam. Over the above it, PW65 could speak and understand Malayalam. The accused has no case that any inducement threat, or promise were exerted by PW65 on him. His only allegation in his statement in writing is that the CBI offices by exerting inducement and threat on him, took him to Madras and Bangalore and to several offices and he was shown to many persons there and such persons asked many things to him in languages to which he was not acquainted. The accused has no case that he was made to state any falsehood before PW65. Further the accused has no case that he was made to confess before PW65 by exerting inducement, threat or promise.
214. In fact, Ext.P59 confession statement made by the accused before PW65, has not been retracted so far. As I have found earlier, Ext.P59, confession

statement read along with the evidence adduced by PW65 in box is clearly admissible in evidence. Even then, by way of abundant caution, first of all I am considering the circumstances made out from the evidence adduced by the prosecution without the aid of Ext.P59 and P60 or evidence of PW65. On careful scrutiny and on evaluation of the entire evidence adduced by the prosecution, it was clearly come out that the following circumstances are firmly and cogently established.

- (1) The accused is one of the relatives of the deceased persons and he had full freedom at the house of the deceased persons named tharavad house.
- (2) Deceased Augustine and deceased Kochurani were financially well off and they were in the habit of keeping huge amounts in cash and also gold ornaments at the Tharavad.
- (3) The accused was a frequent visitor at the Tharavad House and all the deceased persons were very much associated with the accused.
- (4) After making a false representation to his wife PW19 that he was going to Perumbavoor, the accused on 06.01.2001, after 7 p.m. started from his house; but instead of going to Perumbavoor he directly went to the Tharavad house.
- (5) The accused made the above false representation to his wife knowingly even though he knew that he was proceeding to the tharavad house.
- (6) The accused did not tell his wife that he was going to the Tharavad house.
- (7) The accused gained entry into the Tharavad house by about 7.30 p.m. on 06.01.2001.
- (8) Thereafter nobody saw that accused prior to 5.30 a.m. on 07.01.2001.

- (9) During those days the accused was in utter financial stringency.
- (10) As the accused had to leave for Mumbai on 07.01.2001 for proceeding to K.S.A. and as he had to pay the balance amount of Rs.18,000/- to PW67 for the visa and all and also to make arrangements for his journey, the accused was badly in need of money.
- (11) Even though the accused was striving hard to find out source for raising funds, he could not find out it till 7.30 p.m. on 06.01.2001.
- (12) Deceased Augustine, deceased Mary, deceased Divya and deceased Jesmon went to the nearby Zeenath Theatre for the second shown of the Malayalam movie 'Jocker' by about 9.30 p.m. on 06.01.2001.
- (13) Deceased Jesmon did not attend the Sunday class on 07.01.2001.
- (14) Nobody could see any of the deceased persons outside the Tharavad house on 07.01.2001.
- (15) Deceased Divya along with deceased Kochurani were lastly seen alive by PW31 when they visited his beauty centre at Aluva for purchasing ribbon etc. at about 7.30 p.m. on 06.01.2001.
- (16) Deceased Jesmon, deceased Divya, deceased Kchurani and deceased Mary talked to PW39 over the phone at 8.45 p.m. on 06.01.2001.
- (17) Deceased Jesmon was lastly seen alone by PW12 at 6.45 p.m. on 06.01.2001 at his shop when deceased Jesmon came for purchasing chicken.
- (18) Deceased Clara was lastly seen alone by PW11 at the Tharavad house at about 4 p.m. on 06.01.2001.
- (19) MO 69 series Cinema tickets and the dress worn by deceased Augustine, deceased Mary, deceased Divya and deceased Jesmon reveal that they were done to death immediately after their reaching

Tharavad house after the second show Cinema around midnight on 06.01.2001.

- (20) On the evening of 06.01.2001 when deceased Mary left for parental house at Ernakulam to the Tharavad house she had promised to reach the parental house again at 9.30 a.m. on 07.01.2001, but she did not reach the parental house as promised.
- (21) It was after 10. p.m. on 07.01.2001 that, PW1 could see deceased Mary in squatting position inside the Tharavad house and later came to know that all the six inmates of the house were lying murdered in the Tharavad house.
- (22) The front door as well as the rear of the Tharavad house which are the only doors enabling exit and entry from and into the 'Tharavad' house were not seen forced open.
- (23) All the six inmates were found lying murdered inside the Tharavad house with injuries which could be caused by the use of MO5, MO12, MO13, MO14 as well as MO94.
- (24) All the aforesaid material objects were the belongings of the Tharavad house itself.
- (25) MO94 double stranded electric wire was found as a ligature around the neck of deceased Kochurani, and MO12, MO13 and MO14 were found near the dead body of the deceased Clara.
- (26) There is no evidence to show that any weapon other than the aforesaid weapons was used from outside, for causing injuries on the deceased persons.

- (27) The accused had borrowed an amount of Rs.25,000/- on interest @ 120% p.a. from PW23 which the accused had paid as the advance amount for the visa to PW67.
- (28) The accused had borrowed an amount of Rs.10,000/- in total on interest as 5 to 8 instalments from PW24.
- (29) The accused had borrowed an amount of Rs.1,000/- from PW67.
- (30) On 06.01.2001 after leaving his house by around 7 p.m. by falsely representing to his wife that he was going to Perumbavoor, the accused did not return till the morning of 07.01.2001.
- (31) The accused gave a false explanation to PW19 regarding his whereabouts during the night of 06.01.2001 as the reason for not returning to his house.
- (32) The accused has resorted to a false contention before this court regarding the above, which is contrary to the one given to PW19 by him.
- (33) The accused has resorted to a false contention before this Court that he had gone to the shop of deceased Augustine by about 8 p.m. on 06.01.2001 and that deceased Augustine had paid him Rs.35,000/-.
- (34) PW19 has no case that deceased Augustine had promised the accused to pay Rs.35,000/- or that deceased Augustine had paid Rs.35,000/- to the accused on 06.01.2001.
- (35) An amount of Rs.1,94,940/- in cash and gold ornaments weighing 95 sovereigns apart from some gold ornaments found on the dead bodies, and fixed deposit receipts and Indira Vikas Patras having face value of around Rs.45,00,000/- were found in the Tharavad in the Tharavad house, and the same were seized through Ext.P2 Mahazar.

- (36) Accused paid Rs.25,000/- to PW23 around 9.30 am on 07.01.2001 which was beyond the expectation of PW23, especially when the accused had handed over Ext.P19 signed cheque leaf and the Ext P20 signed stamp paper to PW23 as security for the said amount on 06.01.2001 at 12.55 p.m. at Aluva.
- (37) The accused repaid Rs.10,000/- at the house of PW24 which was also beyond the expectation of PW24.
- (38) The accused paid Rs.7,500/- to PW19 on 07.01.2001 prior to his leaving for Thrissur and Mumbai.
- (39) Only the accused and Hari had no reservation tickets in train for going to Mumbai whereas all the others in the group of PW67 had reserved their tickets much earlier and therefore the accused and Hari traveled by General compartment and the others traveled by reservation coaches.
- (40) Just after reaching Mumbai on the night of 08.01.2001 the accused paid Rs.18,000/- to PW67.
- (41) The accused has no explanation as to how such a huge amount of money came to his possession after the evening of 06.01.2001 and before the morning of 07.01.2001.
- (42) The accused has no explanation as to from where did he get Rs.7,500/- which he paid to his wife on 07.01.2001 prior to his leaving for Mumbai and the amount of Rs.18,000/- which he paid to PW67, just after his reaching Mumbai on the night of 08.01.2001.
- (43) On 09.01.2001 the accused entrusted MO1 series, MO2 and MO3 to PW74 at Mumbai.

- (44) The accused made a false contention in his statement in writing that he does not know PW74.
- (45) The accused when examined under Section 313 Cr.P.C has agreed in answer to Q.No.265 that, he had stayed with PW74 at P.K.M. Lodge, Mumbai and that PW74 could not succeed in the interview etc.
- (46) The accused has no explanation as to how MO1 series gold anklets and MO3 gold chain worn by deceased Kochirani and MO2 gold chain worn by deceased Mary came into his possession immediately on their death.
- (47) MO1 series and MO3 were not present on the dead body of Kochurani and MO2 was not present on the dead body of Mary.
- (48) On the basis of Ext.P47(a) information furnished by the accused, MO75 to MO79 series were recovered and seized through Ext.P47 mahazar.
- (49) MO75 pants and MO76 shirt belonged to the accused which were recovered and seized on the basis of Ext.P47(a) information furnished by the accused contained human blood belong to 'O' group.
- (50) The blood group of the deceased persons, is 'O' and that the blood group of the accused is 'B'.
- (51) The blood stained left thumb impression of the accused was found on the door post of the eastern door of the dining hall at the scene of occurrence.
- (52) Three scalp hairs which are identical to the scalp hairs of the accused were found sticking on the dead body of Jesmon at the time of inquest on 08.01.2001.

- (53) On 07.01.2001 the accused started for Mumbai and reached Mumbai on the night of 08.01.2001 and thereafter he went to Damam by the Morning flight of 10.01.2001 from Mumbai.
- (54) The accused has made a false contention in his statement in writing that he left for Damam from Mumbai on 09.01.2001 whereas it is evident from MO72 boarding pass that he had left Mumbai to Damam on 10.01.2001.
- (55) One of the armless banyans and one of the bathing towels seized from the house of the accused by PW71 through Ext.P30 search list were found containing human blood.
- (56) As the history and alleged cause of injury found on his right index finger etc and noted in Ext.P48, the accused stated before PW60 that the said injuries had occurred when that portion came into contact with the knife in the hand (of Kochurani) when he beat Kochurani with stool (MO5).
- (57) MO11 and MO11(a) inland letters written by the accused at K.S.A. to his wife PW19 were got posted by him at Mumbai through another person.
- (58) The said MO11 and MO11(a) reached the house of the accused by post and were seized as torn pieces which were hidden beneath the bed, and the same were seized through Ext.P30 search list.
- (59) MO11 and MO11(a) contain clear admissions pointing towards the guilt of the accused.
- (60) MO11 give the indication that, the accused went to the Tharavad house during the evening of 06.01.2001 with the intention of availing money from Kochurani or to get money from there by any means.

- (61) The accused has resorted to a false contention of alibi which he could not prove and which is proved to be false.
- (62) When PW19 met the accused for the first time after his returning from K.S.A. and his arrest, at the office of PW59, when she asked the accused as to for whom did he confess, the accused did not give any reply.
- (63) Lastly Ext.P59 confession statement made by the accused before PW65 about nine months after he was enlarged on bail.
215. All the aforesaid circumstances are firmly and cogently established and all such circumstances form a complete chain so as to establish the guilt of the accused. All the inculpatory circumstance are incompatible with the innocence of accused. The false contentions resorted to by the accused and the unexplained possession of MO1 series and MO3 which were the belongings of deceased Kochurani and MO2 which was belonging of deceased Mary with him immediately after the murder of the deceased are additional links in the chain of circumstances against the accused. I do not find any hypothesis that points towards the innocence of the accused. All the aforesaid circumstances even without the aid of MO11 series, and Ext.P59 confession statement, themselves form the complete chain which unerringly point towards the guilt of the accused and the none else, and the same are sufficient to establish the guilt of the accused. Ext.P59 confession and the contents of MO11 series inland letters are only an added advantage to get a clear picture regarding the modus operandi adopted by the accused to day away with all the inmates of the house and for making sure that his involvement should not be suspected.
216. On a birds eye vie of the matter, it may not be palatable and may not be easily digestible to a common man that the accused could do away with all of the

said six inmates of the house with precision that too without attracting the attention of outsiders or the public. But on going through the modus operandi adopted by the accused as is detailed by him in Ext.P59 as well as MO.11 and MO11(a), it can easily be understood that the scene was conveniently and carefully arranged by the accused in such a way as to successfully complete his acts in causing the death of all the six inmates of the Tharavad house without inviting the attention of the neighbours or the public. This is a peculiar case in which all the six inmates of the house were done to death inside the house in the dead of night without inviting the attention of any of the neighbours. The accused is the only person who can say about the modus operandi adopted by him in order to successfully carry out the death of all the said six persons. Of course, Ext.P59 gives a vivid description and a clear picture regarding his dramatic performance by which he could successfully carry out his acts in taking away the life of all the six inmates of the house. Even without the aid of Ext.P59 confession statement, the guilt of the accused stands proved beyond any shadow of doubt.

217. The learned counsel for the accused has pointed out that the mortar in the store room was not shown in the mahazars prepared in respect of the scene of occurrence. But according to PW71, as he could find that the local police and omitted to make mention of the stone mortar seen affixed at the store room in Ext.P29 scene mahazar, he prepared an additional report marked as Ext.P65 for the same and sent the same to the court. In cross examination he clearly deposed that the said stone mortar was one affixed at the floor of the store room that too by using cement concrete. Therefore it is evident that the non-mentioning of that mortar in the earlier mahazars was a mere inadvertent omission. The same was set at right by PW71 through Ext.P65.

218. From the discussions made above it has clearly come out that the accused after gaining entry in the 'Tharavad' house unlawfully remained there for stealing money from the house by any means. As it so happened that he could not get money from deceased Kochurani, he caused the death of Kochurani as well as Clara. The accused patiently waited there inside the house after removing the dead bodies from the dining room to the kitchen and by creating a trap for getting the presence of deceased Augustine, deceased Mary, deceased Divya and Deceased Jesmon one by one before him, for the successful execution of his acts to do away with them. He caused all the injuries found on the body of Augustine, the body of Mary, the body of Clara, the body of Kochurani, the body of Divya and the body of Jesmon and the said injuries resulted in their death. Therefore, it is the accused who caused the death of Augustine, the death of Mary, the death of Clara, the death of KOchurani, the death of Divya and the death of Jesmon. It stands proved that the accused committed the theft of MO.1 and MO.3 from the body of deceased Kochurani and MO.2 from the body of deceased Mary. The accused further committed the theft of the gold chain from the neck of Augustine and the gold chain from the neck of Clara, but the same could not be recovered and seized. The accused committed theft of money also from the 'tharavad' house.
219. Apart from all the above, the accused made all attempts to cause the evidence of the offence committed by him to disappear with the intention of screening him from legal punishments. The accused had deliberately tried to mislead the investigation machinery by drawing the picture of bow and arrow on the wall of the scene of occurrence with blood. Points found accordingly.

220. Point Nos.26 and 27:- By unlawfully remaining inside the 'Tharavad' house with intent to commit offences, after gaining entry in the 'Tharavad' house, the accused has committed trespass. As the 'Tharavad' house was being used as a human dwelling and also for the custody of property, the said act on the part of the accused constitutes the offence of house trespass. As such house trespass was in order to the committing of the murder of the inmates of the house, which offence is an offence punishable with death, the accused has committed the offence punishable under Section 449 of the Indian Penal Code.
221. The accused has committed theft of gold ornaments from the body of deceased Augustine, deceased Mary, deceased Clara, and deceased Kochurani and also the theft of money from the 'Tharavad' house, thereby the accused committed the offences punishable under Sections 379 and 380 of the Indian Penal Code.
222. For coming to the conclusion whether the acts of the accused in causing the death of Augustine, deceased Mary, deceased Clara, deceased Kochurani, deceased Divya, and deceased Jesmon, constitute the offence of murder as if defined in Section 300 of the Indian Penal Code, the injuries found on the body of all the deceased persons are self speaking. Any further evidence is not required to come to the conclusion that the acts by which the death of all the six deceased persons were caused by the accused were done with the intention of causing their death. The injuries found on the body of the deceased persons speaking volumes regarding the intention of the accused to see that at any cost he wanted to ensure their death and to wipe out any possible evidence against him. Therefore, the acts of the accused by which he caused the death of all the said six persons were done with the intention of causing their death and hence the same constitute the offence of murder on the part of the accused as defined in Section 300 of the Indian Penal Code, which is punishable under Section 302 of the Indian Penal Code.

223. Apart from all the above it has clearly come out that the accused caused the evidence of the commission of the offence committed by him to disappear and also made every attempts to mislead the investigating officers and to divert the line of investigation with the intention of screening him from legal punishment and thereby he committed an offence punishable under Section 201 of the Indian Penal Code.

In the result, I find the accused guilty of the offence punishable under Sections 449, 379, 380 and 201 of the Indian Penal Code and convict him there under. The accused will be heard on the question of sentence on 02.02.2005. His bail bonds shall stand cancelled and he is remanded to the Sub Jail, Ernakulam till 02.02.2005.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 31st day of January, 2005.

Sd/-
B.Kemal Pasha
Special Judge (SPE/CBI)-I &
IIIrd Addl. Sessions Judge.

224. I heard the accused on the question of sentence. I made an earnest effort to elicit from the accused all matters which eventually bear on the question of sentence. The accused stated that his wife, his ~~six~~ year old son, and his mother's younger sister who is age old are being maintained by him. According to him, so far he has not been involved in any offence. Further according to him, he is leaving the rest to the court.

225. According to the accused he is 42. His father and mother are no more. He has two elder brothers. He is engaged in decorating working of shamiyanas. His wife is a school teacher. After this incident his wife has not come to his house. He added, that she use to speak to him. She is unable to face the others on account of this case and that is why she is not residing with him. When I asked about the school at which she is employed at present, the accused revealed that he does not know it. When asked about his son, he stated that he is residing with his wife (PW19). When I asked the place of their residence, the accused stated that it is at Vypin. At present his mother's younger sister is the only person residing with him. According to him, he has studied upto the 10th standard. When I asked him whether he has anything more to add, the accused laughed and stated that now his wife and child are the persons who are going to be crucified because she happens to be his wife. According to him, his wife does not suspect him.
226. The learned counsel for the accused submitted that this case cannot be brought within the purview of the "rarest of rare cases" by inviting my attention to the decision in *Lehna Vs State of Haryana* reported in (2002) 3 SCC 76. Citing the decision in *MUhammed Chaman Vs State* reported in (2001) 2 SCC 28, the learned counsel for the accused submitted that the accused cannot be said to be such a dangerous person that to spare his life will endanger the community. But on going through the facts of the case in that decision, it can be seen that it was a case in which the accused therein raped his 1 ½ year old daughter which resulted in her death. The facts and circumstances of the present case have no similarity with those of the said case. Inviting my attention to the decision in *Babu Ram Vs State* reported in 1998 CrI.L.J. 814

(Supreme Court), the learned counsel for the accused submitted that the number of victims is not the only criterion to bring the case within the category "rarest of rare cases". In the case in the decision noted supra it was found that the evidence do not know the death of the persons in the said case were either diabolical, ghastly or gruesome. The learned counsel for the accused canvassed for the lesser alternative in the choice of sentence for murder.

227. The learned public prosecutor canvassed for the extreme penalty in the question of sentence in this case by stating that the accused after enjoying dinner with deceased Clara, aged 78, and the young lady Kochurani, murdered them and thereafter brutally murdered the other four members of the family. According to the learned public prosecutor, even after causing their death, the accused continued his acts of butchery. It is also pointed out that the accused has nobody to look after and maintain as his wife and child are not with him

In State of Tamil Nadu Vs Nalini reported in 1999 Cr.L.J. 3124 at page 3335, paragraph 712, the Hon'ble Supreme Court of India held:

"He who gives life alone has the authority to take life. In dispensing justice, a judge is not only discharging a sovereign function but he is also doing a divine function. Even so, the most difficult task for a judge is to choose the punishment of death to the punishment of life imprisonment for he is conscious of the fact that once the life of a person is taken away by a judicial order it cannot be restored by another judicial order of the highest authority in this world. Having taken upon himself the onerous responsibility of doing justice according to

constitution and the laws the judge must become independent of his conviction and ideology to maintain the balance of scale of justice."

In *Dhanajoy Chatterjee @ Dhana Vs State of West Bengal* reported in (1994)

2 SCC 220 it has been held as follows:-

"Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence, which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

In our opinion the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenseless and unprotected state of the victim, imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands the courts should impose punishments befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view of the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishments".

In *Lehna Vs Stat of Haryana* reported in (2002) 2 SCC 76, which was subsequently followed in *State of Rajasthan Vs Kheraj Ram* reported in (2003) 8 SCC 224, after discussing *Bachan Singh Vs State of Punjab* (AIR 1980 SC 898), *Ediga Anamma Vs State of A.P.* (AIR 1974 SC 799) and *Machi Singh Vs State of Punjab* (1983) 3 SCC 470, the Apex Court categorized the following circumstances also as circumstances in which the community may entertain the aforesaid sentiment:

- (i) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- (ii) When the crime is enormous in proportion, for instance when multiple murders, say of all or almost all the members of a family or large number of persons of a particular caste, community, or locality, are committed.
- (iii) When the victim of murder is an innocent child, or a helpless woman, or old or infirm person or a person vis-à-vis whom the murder is in a dominating position, or public figure generally loved and respected by the community.

228. It has been further held that, if upon taking an overall global view of all the circumstances in the light of the aforesaid propositions, and taking into account the answers to the questions posed by way of the tests for determining the 'rarest of rarest cases', the circumstances of the case are such that death sentence is warranted, the court would proceed to do so. It is apt to quote here

the following observations of the Supreme Court of India in Mahesh Vs State of Madhya Pradesh reported in AIR 1987 SC 1346:

“It will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give he lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon.”

229. The case in hand stands on a unique footing wherein all the members of a family were exterminated that too in a most cruel and gruesome manner. All the deceased were unarmed and helpless. They were attacked and done t death quite unexpectedly. First of all they were immobilize inside the house in the dead of night and then the accused went on a killing spree. The old woman Clara who was very much fond of the accused was also brutally attacked and murdered. The deceased were not aware of their fate and were also unaware of the fact that they were purchasing their death when they gave full freedom to the accused at their house. The two innocent children who were in their early teenagers were nipped in the bud. It was after having supper from the house with deceased Clara and deceased Kochurani that the accused murdered them. Thereafter, the accused had sufficient time to design the scene and to create a trap for getting the presence of the 4 others who had gone for the movie. before him, one by one, so that he could accomplish his design. They also fell in the trap.

230. Deceased Augustine had sustained one injury which was necessarily fatal among four injuries which were independently sufficient in the ordinary course of nature to cause death. Deceased Mary sustained two injuries which were necessarily fatal among eight injuries which were independently sufficient in the ordinary course of nature to cause death. Deceased Clara sustained three injuries which were independently fatal. Deceased Kochurani sustained one injury which was necessarily fatal among four injuries which were independently sufficient in the ordinary course of nature to cause death. Deceased Divya sustained two injuries which were independently sufficient in the ordinary course of nature to cause death. Deceased Jesmon sustained one injury which was necessarily fatal among the two injuries which were independently sufficient in the ordinary course of nature to cause death. The deceased persons had sustained many other injuries also.
231. The cruel tendency of the accused was writ large even in the manner of attack. His conduct and behavior is repulsive to the collective conscience of the society. It is clear that he does not value the lives of others in the least. The fact that the murders in this case were committed in such a deliberate and diabolic manner even beyond the slight expectation of the victims, without any provocation whatsoever from the side of the victims that too having enjoyed the hospitality and kindness of the victims, indicate the cold blooded and premeditated approach of the accused to put to death the victims which included two innocent children in their earlier teenages also, for a sordid purpose.
232. It was clearly come out that his wife and child are not residing with the accused. He does not know even the school at which his wife is working as

teacher. Even according to him, she has not cared to come to reside with him after the incident in this case. In fact, all my searches for extenuating circumstances in this case are in vain. From various judicial pronouncements of the Hon'ble Supreme Court of India on the subject, it has come out that in the choice of sentence the court has to weigh the aggravating and mitigating factors available on the facts of the case to find out whether special reasons do exist to categorise the case as one among the "rarest of rare cases".

233. The accused is a hardened criminal beyond any correction and rehabilitation. In this case the culpability has assumed the preparation of extreme depravity. The accused is a preferred example of blood thirsty, irreclaimable and hardened criminal. This court is of the view that, to spare such a criminal from the gallows is to render the justicing system suspect and to have recourse to the lesser alternative in sentencing this accused will be a mockery of justice. As this incident had sent tremors in the society and the collective conscience of the community as such was shocked, it is not to be humane but to be callous to allow such a criminal to return to the society. When multiple murders are committed in the most cruel, inhuman, extreme, brutal, gruesome, diabolic, revolting and dastardly manner, this court cannot wriggle out of the infliction of the extreme penalty. Matters being so, special reasons do exist in this case under Section 354(3) Cr.P.C. and this case comes within the category of "rarest of rare case" in which the "lesser alternative is unquestionably foreclosed".

In the result, the accused is sentenced to be hanged by the neck till he is dead under Section 302 IPC. The accused is further sentenced to undergo Imprisonment for life under Section 449 IPC. The accused is further sentenced

to undergo Rigorous Imprisonment for 7 years under Section 380 IPC. The accused is further sentenced to undergo Rigorous Imprisonment for 7 years under Section 210 IPC. In view of the sentence imposed under Section 380, I.P.C., no separate sentence is imposed under Section 379 I.P.C. . .

234. The question remains regarding the disposal of the properties involved in this case. Many valuable items, the cost of which runs to lakhs of rupees are involved. It is not at all safe to order the disposal of the property to any satisfied person or persons unless and until their claims are settled by a competent Civil Court. MO.7 series, MO.8 series, MO.9 series, MO.9, MO.9, MO.10, MO.21, MO.22, MO.23, MO.24, MO.25, MO.26, MO.29, MO.30, MO.31, MO.32, MO.33, MO.34, MO.35, MO.36, MO.37 series, MO.38, MO.39, MO.40, MO.41, MO.42, MO.43 series, MO.45, MO.46, MO.47, MO.48, MO.49, MO.50, MO.51, MO.52, MO.53, MO.54, MO.55, MO.56, MO.57, MO.58, MO.69 series, MO.70, MO.72, MO.73, MO.74 series, MO.75, MO.76, MO.77, MO.78, MO.79, MO.84, MO.85, MO.86 and MO.94, being valueless, shall be destroyed after the appeal period is over.
235. MO.1 series MO.3, MO.59 and MO.60 series shall be returned to the legal heirs of deceased Kochurani after the appeal period is over. MO.53 and MO.53(a) shall be returned to the legal heirs of deceased Clara after the appeal period is over. MO.2, MO.6, MO.16, MO.17, MO.18, MO.19 and MO.20 shall be returned to the legal heirs of deceased Mary, after the appeal period is over. Regarding the valuables seized from the body of Augustine, body of Divya and body of Jesmon and all the valuables including the gold ornaments, currency, fixed deposit receipts, India Vikas Patras etc. and MO.80 and MO.81 series, seized from the Tharavad house which is the place of

occurrence shall be returned to the legal heirs of the deceased, after the appeal period is over.

236. It is made clear that all the substantive sentences of imprisonments shall run concurrently. It is further made clear that the accused is entitled to set off, of the period undergone by him in custody in connection with the investigation, inquiry and trial of this case under Section 428 Cr.P.C.
237. The entire proceedings in this case shall be submitted before the Hon'ble High Court of Kerala, and the sentence of death passed on the accused shall not be executed unless it is confirmed by the Hon'ble High Court of Kerala, under Section 366(1) Cr.P.C. As far as the sentence of death passed on the accused is concerned, he is committed to jail custody under a warrant under Section 366(2) Cr.P.C. The accused is informed of the period within which, if he wishes to appeal, his appeal should be preferred as per Section 363(4) Cr.P.C. The accused is committed to the Central Prison, Thiruvananthapuram to undergo the sentence imposed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 2nd day of February, 2005.

Sd/-
B.Kemal Pasha
Special Judge (SPE/CBI)-I &
IIIrd Addl. Sessions Judge.

APPENDIXPROSECUTION EXHIBITS

P1	7.1.2001	-F.I. Statement given by Joseph @ Rajan to S.I of Police, Aluva.
P1(a)	7.1.2001	-F.I.R No. 15 15/2001 of Aluva Police Station.
P2	11.1.2001	-Seizure Mahazar
P3	8.1.2001	-Inquest report in respect of deceased Jesmon.
P4	8.1.2001	-Inquest report of deceased Augustine.
P5	8.1.2001	-Inquest report of deceased Divya.
P6		-Negative film roll 1 to 36.
P7(series)		-Photos 36 Nos.
P8	8.1.2001	-Photographic enlargement of the chance print taken from the scene of Crime No.15/01 of Aluva Police Station.
P8(a)	-do-	Certificate No.4/SOC/01/ER on Ext.P9.
P9	18.4.01	-Photographic enlargement of the specimen left thumb impression of Antony taken from the DA Slip.
P9(a)		Certificate o.4/SOC/01/ER on Ext.P9.
P10	18.4.01	-Specimen thumb impression photo.
P10(a)		- Negative of -do-
P11	28.4.2001	-Expert opinion by finger print expert single Digit Bureau, Ernakulam 9R) Aluva.
P12	12.2.2001	-Covering letter No.04/SDC/2001/ER by tester Inspector.
P13	8.1.2001	- Inquest report in respect of deceased Kochurani.
P14	8.1.2001	-do- of deceased Clara.
P15	20.10.2004	-Contradiction in the 161 statement given by PW9(George) to CBI.
P16	19.4.03	-Cr.P.C. 164 statement made by smt. Noorjahan PW17.
P17	8.1.2001	- Inquest report in respect of deceased Mary.

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- P18 - Contradiction in the statement PW19 Jemma
- P18(a)- Another -do-
- P18(b)- Another -do-
- P19 09.04.2001 - Cheque No.955761 of South Indian Bank Alwaye Branch.
- P20 09.04.2001 - Blank Stamp paper worth Rs.50/- signed by accused Antony.
- P21 - Pocket note book
- P22 - Gold loan register of Poomala financiers, Mullorkara.
- P22(a) - SI.No.3154 of page 52 of Ext.P22.
- P23 21.04.2001 - Seizure Mahazar of Register Ext.P22.
- P24 20.02.2001 - Recovery Mahazar of two chains and a pair of anklets.
- P24(a) 20.02.2001 - Relevant portion in Ext.P24.
- P25 20.02.2001 - Recovery Mahazar of bond of Poomala Financiers
- P26 20.02.2001 - Recovery Mahazar of token receipt of Poomala financiers.
- P27 18.02.2001 - Recovery mahazer of 'Korandipalaka'
- P27(a) 18.02.2001 - Relevant portion in P27.
- P28 18.02.2001 - Recovery mahazer of stool.
- P28(a) 18.02.2001 - Relevant portion in Ext.P28.
- P29 09.01.2001 - Scene mahazer prepared by Dy.S.P.Abraham Cheriyan.
- P30 17.04.2001 - Search list.
- P31 - Log book of Aluva municipality for the period

from 16.08.2000 to 14.10.2000.

P31(a)	-	SI.No.021212 of Ext.P31.
P31(b)	-	SI. No.021211 of Ext.P31.
P31(c)	-	SI.NO.021225 of Ext.P31.
P31(d)	-	SI.NO.021231 of Ext.P31.
P31(e)	-	SI.No.021233 of Ext.P31.
P31(f)	-	SI.NO.021234 of Ext.P31.
P31(g)	-	SI.No.0212236 of Ext.P31.
P32	06.06.2001	- Report of Assistant director, documents, F.S.L., Trivandrum.
P32(a)	06.06.2001	- Reason for Ext.P32
P33	08.05.2001	- Specimen writing of accused Antony M.A.series.
P34	06.06.2003	- Report of brain finger printing investigation conducted on accused M.A.Antony.
P35	09.05.2001	- Report No.B1-1189/FSL/22001.
P36	03.05.2001	- Report No.1314/FSL/01
P37	05.05.2001	- Report No.1314/FSL/2001.
P38	03.05.2001	- Report No.1189/FSL/01.
P39	15.05.2001	- Report o.B1-1531/FSL/01.
P40	08.01.2001	- Scene Mahazer prepared by Circle Inspector P.A.Sabu.
P41	10.01.2001	- Seizure Mahazer of Ear ring of deceased Clara, prepared by Circle Inspector P.A.Sabu.
P42	10.01.2001	- Seizure Mahazer of Gold Ornaments collected from the body of deceased KOchurani.
P43	10.01.2001	- Seizure Mahazer of ring from the body of

deceased Augustine, prepared by Circle Inspector
P.A.Sabu.

- P44 10.01.2001 - Seizure Mahazer of Gold Ornaments from the
body of deceased Mary, prepared by Circle
Inspector P.A.Sabu.
- P45 18.02.2001 - Report by Dy.S.P.Aluva.
- P46 18.02.2001 - Seizure Mahazer prepared by Dy.S.P.Aluva at
12.30 p.m. for the recovery of Passport of Antony,
two Air tickets and boarding pass.
- P47 18.02.2001 - Recovery Mahazer of pant, shirt, socks, curchief
and plastic kit.
- P47(a) 18.02.2001 - Relevant portion of Ext.P47.
- P48 18.02.2001 - Wound certificate original issued by Dr. Anil
Kumar.
- P49 24.02.2001 - Seizure Mahazer of for Rs.5500/- recovered from
Jemma. PW19 prepared by D.SP.Aluva.
- P49(a) 24.02.2001 - Relevant portion in P49
- P50 25.02.2001 - Seizure Mahazer prepared by Dy.S.P., Aluva for
the recovery of stamp paper and cheque from
PW23.
- P51(series) - Duly acknowledged notices issued to accused on
dtd.11.02.2001, 13.02.2001, 16.02.2001.
17.02.2001.
- P52 27.04.2001 - Report No.24/FSL/KTM/01 by M.K.Ajith Kumar,
Scientific Assistant FSL, Kottayam.

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P53	-	Lay out prepared by PW62.
P54	-	Plan prepared by PW63.
P55	10.01.2001	- Postmortem Certificate in respect of deceased Augustine.
P56 (Series)	-	Body chart of deceased Augustine – 2 sheets.
P57	10.01.2001	- Postmortem Certificate in respect of deceased Mary.
P58 (series0	-	Body chart of deceased Mary.
P59	22.10.2002	- Cr.P.C.164 statement given by accused Antony, recorded by 19 th Metropolitan Magistrate; Chennai in Tamil language.
P60	22.10.2002	- English translation of Ext.P59
P61	-	Report of the polygraphic test conducted on accused Antony, by PW66.
P62	09.04.2001	- Report by S.P., CBCID Ernakulam.
P63	08.04.2001	- Mahazer in respect of Video Cassette and 22 Photos.
P64	17.04.2001	- Memorandum in respect of the search conducted in the house of accused, by S.P.CBCID Ernakulam.
P65	09.01.2001	- Additional report by S.P.CBCID, Ernakulam.
P66	25.04.2001	- Mahazer in respect of the seizure of log book of tractor No.KL7 Q of Aluva Municipality.
P67	21.04.2001	- Report by S.P., Aluva before JFCM Aluva.
P68	28.04.2001	- Seizure Mahazer of certified Photostat copies of

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Cheque issue register and S.B ledger f South India Bank, Aluva Branch.

- P69 28.04.2001 - Certified Photostat copy of page 134 of Cheque issue register South India Bank Ltd. Aluva Branch.
- P70 28.04.2001 - Certified copy of the ledger of South Indian Bank Ltd Aluva Branch.
- P71 02.05.2001 - Seizure Mahazer of prints and negatives of chance prints, prepared by S.P., by CBCID, Ernakulam.
- P72 03.05.2001 - Seizure mahazer of the negatives of 22 colour photos, prepared by S.P., CBCID, Ernakulam.
- P73 05.05.2001 - Seizure Mahazer of pocket note book, prepared. S.P., CBCID, Ernakulam.
- P74 09.05.2001 - Inventory prepared by S.P., CBCID, Ernakulam.
- P75 11.05.2001 - Inventory prepared by S.P., CBCID, Ernakulam.
- P76 14.05.2001 - Report for the incorporation of the offence under Section 201 IPC, by S.P., CBCID, Ernakulam.
- P77 11.05.2001 - Inventory for the seizure of CD Rom regarding the reconstruction of scene copied from video cassette.
- P78 17.04.2001 - Search Mahazer prepared by S.P, CBCID, Ernakulam.
- P79 10.01.2001 - Postmortem Certificate in respect of deceased Kochurani.
- P80 (series0 - Body chart of Kochurani.
- P81 10.01.2001 - Post mortem certificate in respect of deceased Kochurani.

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P82 (series) - Body chart of Kochurani.

P83 10.01.2001 - Postmortem certificate of Jesmon.

P84 (series) - Body chart of deceased Jesmon.

P85 10.01.2001 - Postmortem certificate of deceased Clara.

P86 (series) - Body chart of Clara.

P87 12.01.2001 - Carbon copy of the forwarding letter
dtd.12.01.2001 to the Director, Finger Print
Bureau, Thiruvananthapuram.

P88 17.05.2002 - F.I.R. by CBI

P89 27.11.2004 - Letter No. B1-1189/FSL/2001 to Inspector of
Police, CBI, Spl.Crime Branch, Chennai.

P90 22.12.2002 - Report of the DNA test.

Defence Exhibits:-

D1 - Contradiction in the 161 statement of PW1 to local police.

D1(a) - Contradiction in the 161 statement of PW1 given to local police.

D2 - Contradiction in the statement of PW11 – Tintu given to CBI.

D3 - Contradiction in Ext.P3 – Inquest report.

D4 - Contradiction in the Cr.P.C.161 statement of PW12 given to
local police.

D4(a) - Another -do- -do- -do-

D5 - Contradiction in the Cr.P.C. 161 statement of PW14 to local
police.

D5(a) - Another -do- -do- -do-

D6 - Contradiction in the Cr.P.C.161 statement of PW15 given to

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Crime Branch CID.

D7 - Contradiction in the Cr.P.C.161 statement of PW17, given to
Crime Branch CID.

D7(a)- Another -do- -do- -do-

D7(b)- Another -do- -do- -do-

D7(c)- Another -do- -do- -do-

D7(d)- Another -do- -do- -do-

D7(e)- Another -do- -do- -do-

D8 - Contradiction in the Cr.P.C.161 statement given to .
Crime Branch by PW23.

D9 - Contradiction in the statement of PW43 given to
Local police.

D9(a)- Another -do- -do- -do-

D10 - Contradiction in the statement of PW45 given to
Local police.

D10(a)- Another -do- -do- -do-

D11 - Another -do- do given to Crime Branch CID

D11(a)- Another -do- -do- -do-

D12 - Scene Report Dtd. 23.01.2001

D13 - Relevant portion of statement by PW64 Given to CBI

D14 - Contradiction in the Cr.P.C.161 statement of Dr.Johny Cyriac
given to Crime Branch CID.

D15 - Contradiction in the Cr.P.C.161 statement of PW74 to local
Police.

D16 - Another -do- -do given to CBCID.

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- D17 - Chitty ledger of Dharma Deepthi, Aluva for the period of 04.09.2000 to 04.10.2004 containing 1 to 63 pages.
- D17(a)- Page No.44 of Chitty ledger of Dharma Deepthi, Aluva.
- D18 - Stamped receipt dt.12.12.2002 for Rs.3716/- issued by M.A.Antony to Dharma Deepthi.
- D19 - Malayala Manorama Daily dtd.13.02.2001.
- D19(a)- News in front page of Malayala Manorama Daily 13.02.2001 (certified photo copy).
- D20 - Malayala Manorama Daily Dtd.14.02.2001.
- D20(a)- News in front page of Malayala Manorama Daily Dtd.14.02.2001.
- D21 - Malayala Manorama Daily dt. 15.02.2001 (certified photo copy).
- D21(a)- News in 11th page of Malayala Manorama daily dtd.15.02.2001.
- D22 - Malayala Manorama Daily (Photo copy)
- D22(a)- News in 11th page of Malayala Manorama Daily dtd.16.02.004.

Prosecution witnesses:

- PW1 - Joseph @ Rajan, S/o. Joseph, Mulayarikal House, Ernakulam.
- PW2 - M.P.Joseph, S/o. Paulo do.do.
- PW3 - Sulaiman, S/o. CK.Abdu, Tharappallam house, West Velliyathunadu, Aluva.
- PW4 - Varghese, S/o. Joseph, Puthusseri House, Neerkode, Alangad.
- PW5 - Francis, Manjooran House, Near Azizi Reading Room, Aluva.
- PW6 - V.O.Jose. S/o. Ouso. Velikkakath House, Thekkumpuram Chennamangalam, North Parur.
- PW7 - Yogindra Sakiya. S/o. Kochu rani, Korine Villa Near Ashram

High School, Perumbavoor.

- PW8 - Ismail, S/o. Kamal, Tharapeedikayil, Patteripuram, Aluva.
- PW9 - George, S/o. Augusty, Manjooran House, Vattikan, Street, Aluva.
- PW10 - Manadan Kurape Jose, S/o. Kuriape, Manadan House, Nerikode P.O., Alangadu, Aluva.
- PW11 - Tintu, S/o. do. do.
- PW12 - Sebastian, S/o. Joseph, Manjooran House, Sub Jail Road, Aluva.
- PW13 - Sharon John, S/o. P.P. John, Pulikkal House, Vattican Street, Aluva.
- PW14 - Jose, S/o. Thommi, Manjooran House, Sub Jail Road, Aluva.
- PW15 - M.T. George, S/o. Tommi -do-
- PW16 - Shiny, W/o. George. -do-
- PW17 - Noorjahan, W/o. Ismail, Padiyarath House, Zeenath Junction, Aluva.
- PW18 - Mani Vithayathil, S/o. Thomas, Vithayathil House, Alangad.
- PW19 - Jemma, W/o. Antony, Manjooran House, Vatican Street, Aluva.
- PW20 - Tessy. D/o. Varghese, -do-
- PW21 - Antony Raphael, S/o. Pappan, Puthusseri Road, Aluva.
- PW22 - Jose, S/o. Paulose, Inchakkaveettil, Thottuva.
- PW23 - Yohanna, S/o. Paily, Chandalal House, Thottuva, Kodanad.
- PW24 - Ramachandran Nair, S/o. Narayanan Nair, Kunnathali Veedu, Broadway, Perumbavoor.
- PW25 - Gangadharan, S/o. T.K. Velayudhan, Thuruthikkattuchirayil. Thekkumkavu, Thrissur.
- PW26 - Abdul Salam. S/o. Abdul Rehman, Pulikkal House,

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Mulloorkara, Thrissur.

- PW27 - Vinod, S/o. Sankaran Nair, Thalammilly Veedu, Mulloorkara, Thrissur.
- PW28 - Justine Jose, S/o. Jose, Manjooran House, Near St.Mary's High School, Aluva.
- PW29 - Antony, S/o. Pappachan, Pañackal House Chappal Lane, Aluva.
- PW30 - Jomon, S/o. Joseph, Koyikara House, Telephone Exchange Quarter, Aluva.
- PW31 - Joy Mathew, Anna Beauty Centre, Aluva.
- PW32 - Faizal, S/o. Preeth, Kavayikoodath House, Chillupadi, Aluva West.
- PW33 - Kunju Muhammed, P.C. 6337, Aluva Police Station.
- PW34 - Paul, P.C. 5316, do.do.
- PW35 - Joseph, P.C.5281 do.do.
- PW36 - Viswanathan P.C. 6600 do.do
- PW37 - Sajeevan, P.C. 6505 do.do.
- PW38 - Nazar, S/o. Abdul Khadir, Kondoty, Chenakandathil House, Chowra Village.
- PW39 - Resmi. D/o. Sunny, Kolattukudi House, Manjapara Village.
- PW40 - Jayahandran, S/o. Ramachandran Nair, Kunnetheli House, Perumbavoor.
- PW41 - Lilly, W/o. Jose, Manadan Veettil, Neerikode kara, Alangad Village.
- PW2 - Alexander. S/o. Paulose, Puthanpurackal House, Near ESI Hospital. Aluva.

- PW43 - Vindokumar, S/o. Ayyappan, Nelliampurathil House,
Erumathala Aluva.
- PW44 - Peethambaran, S/o. Kumaran, Vallorath House, Kuzhithadam,
Aluva east.
- PW45 - Kochumari, W/o. Sunny, KOlattukudy Veetil, Manjapara.
- PW46 - K.Ravidas, Asst. Director (documents) FSL, Trivandrum.
- PW47 - V.S.Gopalakrishnan, S.I. of police, Aluva.
- PW48 - Dr.C.R.Mukundan, Prof. & Head of Dept. of Clinical
Psychology, NIMHANS, Bangalôre.
- PW49 - N.V. John, S.I. of Police, Aluva.
- PW50 - K.S.Baby Vinod, do. do.
- PW51 - K.Raghavan Pillai do. do.
- PW52 - K.Vasudevan, Judl. First Class Magistrate, Aluva.
- PW53 - Parameswaran Nair, Asst. Director (Biology) FSL, Trivandrum.
- PW54 - Jameela, Asst. Director (Serology) FSL, Trivandrum.
- PW55 - C.C.Varghese, Warden, Sub Jail, Muvattupuzha.
- PW56 - Salim, Warden, Sub Jail, Ernakulam.
- PW57 - Rajeev, Warden, Sub Jail, Ernakulam.
- PW58 - P.A.Sabu, C.I. of Police, Aluva.
- PW59 - Abraham Cheriyan, Dy.SP of Police (Retd.) H.No.16/121,
Kothamangalam, Ernakulam.
- PW60 - Dr.C.Anilakumari, Assistant Surgeon, Taluk Hospital, Aluva.
- PW61 - M.K.Ajithkumar, Scientific Asst. DCRB Kottayam.
- PW62 - Mathew Markose, Asst. Executive Enginner, PWD Road
Division Aluva.
- PW63 - N.T.Shanmughan, Village Assistant, Aluva Village.

- PW64 - Dr.Nelson, Prof. of Forensic Medicine and Vice Principal
T.D.Medical College, Alleppy.
- PW65 - Jayanthi, XIXth Metropolitan Magistrate, Chennai.
- PW66 - Dr.Malini, Asst. Director, Forensic Psychology Division, FSL,
Bangalore.
- PW67 - Ummer, S/o. Ibrahim, Panikaveetil, Vadanappilly.
- PW68 - Ismail, S/o. Beeran, Parakkattil House, Aluva West.
- PW69 - Mini Justine, Clerk, JFCM Court, Aluva.
- PW70 - Joseph Lesslie, S/o. Joseph, Pallithara House, Chempakassery
Road, Aluva.
- PW71 - Thomas Mathew, S.P.CBCID, Ernakulam (Retd).
- PW72 - Dr. Johny Cyriac, Kakkattuchira, Varandu P.O., Cherthala,
Alappuzha.
- PW73 - Jose, Thekkina Veedu, Chungamveli, Aluva.
- PW74 - K.Suresh, S/o. Sankunni Nair, Chakkiattil House, Irunilamoodu,
Mullorkara, Thrissur.
- PW75 - N.C.Gopakumar, S.I. of police., CBI, Chennai.
- PW76 - V.T.Nandakumar, Inspector of Police, CBI, Chennai.
- PW77 - G.Venketaraman, S.P., C.B.I, Slp.Crime Branch, Chennai.

Defence witnesses

- DW1 - John Milton, S/o. Francis, Manager, Dharma Deepthi Financiers,
Aluva.
- DW2 - P.J.George, News Editor, Malayala Manorama, Kochi.
- DW3 - Vincent Antony, Reporter, Malayala Manorama, Aluva.

Material Objects

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- M.O.1 Series – A Pair of anklet having 16 gms weight.
- M.O.2 - A gold chain having 55 gms weight.
- M.O.3 - A gold chain having 15 gms weight.
- M.O.4 -Korandipalaka.
- M.O.5 -Stool.
- M.O.6 - Gold Tali of Mary having 0.700 gms weight.
- M.O.7series - Banian (2Nos)
- M.O.8 - Bath towel (2Nos)
- M.O.9 - Socks (a pair)
- M.O.10 -Nencheck.
- M.O.11 -Inland letter.
- M.O.11(a) --do-
- M.O.12 - Axe
- M.O.13 -knife
- M.O.14 -Chopper
- M.O.15 -Knife(meat cutting)
- M.O.16 - Four Gold bangles having 31.45 gm weight.
- M.O.17 - Two gold bangles having 19 gm weight.
- M.O.18 - One gold ring having weight 7.300 gm inscribed name "Baby"
- M.O.19 - One gold ring having 4.400gm weight.
- M.O.20series - One pair of stud and pendant having weight 3.100 gm no back screw for one stud
- M.O.21series - Saree.
- M.O.22 -Under skirt.
- M.O.23. -Panties.
- M.O.24 -Blouse.

- M.O.25 - Brassieres.
- M.O.26 -Ladies Chapel.
- M.O.27 -One Gold ring having 6.950 gm weight inscribed the name
"Baby"
- M.O.28 -Watch.
- M.O.29 -Spectacles.
- M.O.30 -Pants.
- M.O.31 -Shirt.
- M.O.32 -Jetty.
- M.O.33series - Silver anklet.
- M.O.34 -Golden colour ear ring(imitation)
- M.O.35 -Black twine.
- M.O.36 -A pearl string.
- M.O.37series - Hawai Chapel.
- M.O.38 -Front Open Over Coat.
- M.O.39 -Front Open Shirt.
- M.O.40 -Shammis.
- M.O.41 -Brassier
- M.O.42 -Middi
- M.O.43series -Leather Chapel
- M.O.44 -Watch
- M.O.45 -T Shirt
- M.O.46 -Jeans
- M.O.47 -Bed Sheet.
- M.O.48 -Rosary
- M.O.49 -Shuddy.

- M.O.50 -White Cotton Dhothi
- M.O.51 -Chatta
- M.O.52 -Brassier of Clara.
- M.O.53 -Clara's stud having weight 1.225 gm.
- M.O.53(a) -do-
- M.O.54 - Under skirt of Kochurani.
- M.O.55 -Nighty of Kochurani.
- M.O.56 -Brassier of Kochurani.
- M.O.57 -Piece of white code wire.
- M.O.58 White Code wire with pin plug.
- M.O.59 -One Gold bangle having 14.300 gms. Weight.
- M.O.60series- Three Gold bangles broken) and piece of bangle having 24.400 gms. Weight
- M.O.61series -Gold ring (a pair) having 4.800 gms. weight
- M.O.62 - One Gold ring having 4.900 gms. Weight.
- M.O.63 -25 Gold ring having 4.900 gms. Weight.
- M.O.63(a) -6 gold bangles having 19 gms. Weight.
- M.O.63(b) - One gold bangle having 3.400 gms. Weight.
- M.O.63© -Six sets of gold studs having 21.600 gms. Weight.
- M.O.63(d) -One gold Ear ring having 2.900 gms. Weight.
- M.O.63(c) -One gold bangle of 14.650 gms. Weight
- M.O.63(f) -Two gold bangles having 18.200 gms. Weight.
- M.O.63(g) -One gold chain with locket having 52.700 gms. Weight.
- M.O.63(h) -Gold Necklace having 10.800 gm. Weight.
- M.O.63(i) -One gold waist chain having 15.700 gms. weight
- M.O.63(j) -One gold chain having 13.700 gms. Weight.

- M.O.63(k) - One gold chain having 2.900 gms. Weight.
- M.O. 63(l) -One gold chain having 16.100 gms. Weight.
- M.O. 63(m) One gold bracelet having 9 gms. weight
- M.O.63(n) -Four sets of gold studs having 18.200 gms. Weight.
- M.O.63(o) -One gold ring having 3.600 gms. Weight.
- M.O.63(p) Two gold rings having 4.150 gms. Weight.
- M.O.63(q) -One gold ring, One gold second stud, Nose stud, piece of hook, piece of chain having total 3.400 gms. Weight.
- M.O.63® -One gold bangle having 19.150 gms weight.
- M.O.63(s) -Three gold bangles having 20.750 gms. Weight.
- M.O.63(t) -One gold bangle (broken) having 8.100 gms. Weight.
- M.O.63(u) -One gold chain having 56.250 gms. Weight. (with Thali)
- M.O.63(v) -One gold chain having 69.250 gms. Weight.
- M.O.63(w) -One gold necklace having 28.900 gms weight.
- M.O.63(x) -One gold chain having 41.300 gms weight.
- M.O.63(y) -Two sets of gold ear chain having 9.400 gm.
- M.O.63(z) -One gold Necklace having 12.750 gms weight.
- M.O.63(aa) -Four gold rings having 7.800 gms weight.
- M.O.63(ab) -Seven gold rings having 23.450 gms. Weight.
- M.O.63(ac) -Two gold ear ring having 5.200 gm.
- M.O.63(ad) -Four sets of gold studs having 13.550 gms. Weight.
- M.O.63(ae) -One set of gold stud having 3.900 gms.
- M.O.63(af) -Two gold Jimkies with one stud having 3.800 gms.
- M.O.63(ag) -Four Gold crosses and one Tali having 4.350 gms weight
- M.O.(ah) -Two pieces of broken bangles. one stud and nose stud are having 3.500 gms weight.
- M.O.64series - Currency note for 1.5 lakh.

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- M.O.65 - Currency notes for Rs.44,940/-
- M.O.66 -Jet star suitcase.
- M.O.67 -F.D. receipts and Indira Vikas Patras.
- M.O.68 -Pass books.
- M.O.69(series)-Cinema Tickets.(4Nos.)
- M.O.70 -Ash colour pant.
- M.O.71 -Passport of Sri, M.A. Antony.
- M.O.72 - Air boarding pass dt. 10.1.2001 (Bombay to Daman).
- M.O.73 --do- dt.9.2.2001 (Daman to Bombay).
- M.O.74(series)- Air tickets (Two numbers).
- M.O.75 -Brown colour pants.
- M.O.76 -Shirt.
- M.O.77 -Handkerchief.
- M.O.78 -Socks(a pair)
- M.O.79 -Plastic Cover.
- M.O.80(series)- Currency notes for Rs.5,500/-.
- M.O.81(series)- Currency notes for Rs.426/-
- M.O.82 -Video cassettes.
- M.O.83(series)-Colour Photos (22Nos)
- M.O.84 -Green Plastic bag.
- M.O.85 -Part of the wooden door cut and removed.
- M.O.86 -Sample of chemical used for lifting finger print.
- M.O.87 -Blood stained finger print lifted from the door.
- M.O.88(series)-Negative of M.O.83
- M.O.89 -Cheque Book
- M.O.90(series)-Photos of the accused(2 Nos.)

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M.O.91(series)-Micro cassettes (4 Nos.)

M.O.92(series)-C.D.s (4 Nos)

M.O.93(series)- C.D of demonstration of the crime by the accused taken in
video converted to C.D.

M.O.94 -Double stranded electric wire used for strangulating
Kochurani.

Sd/-
SPECIAL JUDGE(SPE/CBI)-I & III ADDL. SESSIONS JUDGE.

//TRUE COPY//