2025:KER:28362

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

CRL.A NO. 885 OF 2018

AGAINST THE JUDGMENT DATED 15.03.2018 IN SC NO.819 OF 2014 ON THE FILES OF THE ADDITIONAL SESSIONS JUDGE-V, KOLLAM

APPELLANTS/COUNTER PETITIONERS:

1 SELVARAJ @ RAJU
AGED 38 YEARS, S/O. MANUVEL, KARIKATHIL VEEDU, THEKKETHERI MURI, DARFA, PATTAZHI VILLAGE, KOLLAM DISTRICT.

2 SUSEELA KUNJUMOLE,
AGED 35 YEARS, D/O. KUTTY, PALLATHUVEEDU, KIZHAKKE THERUVU, ERINGOOR MURI, MELILA VILLAGE.

BY ADVS.
SRI.B.RENJITHKUMAR
SUNEESH KUMAR R
SRI.K.T.SEBASTIAN
K.P.ABHIRAMI S. LAL

RESPONDENT/PETITIONER:

STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31

SRI.ALEX.M.THOMBRA SR.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17.03.2025, THE COURT ON 03.04.2025 DELIVERED THE FOLLOWING:

2025:KER:28362

P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

Crl. Appeal No.885 of 2018

Dated this the 3rd day of April, 2025

JUDGMENT

P.B.Suresh Kumar, J.

The appellants in this appeal are the accused in S.C.No.819 of 2014 on the files of the Additional Sessions Judge-V, Kollam. They stand convicted and sentenced for the murder of Suresh, the husband of the second accused.

2. The second accused has an elder sister named Mani. The first accused is the younger brother of the husband of Mani. There was a function in the house of Mani on 17.03.2013. Suresh, the second accused and their daughter, Soorya took part in that function. After the function, the second accused and Soorya stayed in the house of Mani on the said day. Suresh, however, left the house of Mani to witness a temple festival. On the following day, when the second accused and Soorya returned home, Suresh was not found in the house. When Suresh was contacted on his mobile, it

was switched off. The search for Suresh by his friends and relatives thereafter did not yield any results. Consequently, a complaint was lodged by the second accused before Kunnicode Police on 19.03.2013 and a case was registered on that complaint for “man missing” under Section 57(A) of the Kerala Police Act.

3. While the investigation in the case was going on, the police found the body of Suresh in a rubber estate on 20.03.2013. The investigation conducted thereafter revealed that accused 1 and 2 were in an illicit relationship; that they hatched a criminal conspiracy to murder Suresh who was a hindrance to their relationship; that in pursuance of this criminal conspiracy, the first accused lured Suresh into his autorickshaw on 17.03.2013 on his way back from the house of Mani by offering to take him to the venue of the temple festival and that thereafter, the first accused pulled him out of the autorickshaw, knocked him down with a kick on his abdomen and strangulated him with an electric wire. When Suresh became unconscious, the first accused ensured his death by strangulating him again with the dhothi worn by the first accused and thereafter buried the body in the property of one Kunjamma. Later, on 19.03.2013, the first accused exhumed the body, carried

the same in his Maruti Car after packing the body in gunny bags and abandoned it in the rubber estate of one Vinod. The final report was accordingly filed in the case against accused 1 and 2 alleging commission of the offences punishable under Sections 120B, 302, 201, 202 and 203 read with Section 34 of the Indian Penal Code (IPC).

4. On the accused being committed to trial, the Court of Session framed charges against them in terms of the final report and they pleaded not guilty to the charges. The evidence in the case consists of the oral evidence of PWs 1 to 48 and Exts.P1 to P61. MO1 to MO31 are the material objects identified by the witnesses. The accused were thereupon questioned under Section 313 of the Code of Criminal Procedure (the Code) as regards the incriminating evidence brought out by the prosecution and they denied the same. As the Court of Session did not find the case to be one fit for acquittal under Section 232 of the Code, the accused were called upon to enter on their defence. The accused examined three witnesses at that stage as DW1 to DW3. Exts. D1 and D2 are the documentary evidence on the side of the accused, of which Ext.D1 is a portion of the statement of PW15 recorded under section 161 of

the Code and Ext.D2 is a document proved by the accused through DW2. Thereafter, on an appreciation of the materials on record, the Court of Session found that the accused 1 and 2 are guilty of the offences punishable under Sections 120B, 302, 201 and 203 read with Section 34 IPC. The Court of Session found the second accused guilty of the offence punishable under Section 202 also. Consequently, the accused were convicted for the said offences and sentenced, among others, to imprisonment for life. The accused are deeply aggrieved by their conviction and sentence in the case and hence this appeal.

5. Heard Adv.B.Renjithkumar for the first accused and Adv.Suneesh Kumar R. for the second accused. Sri.Alex M.Thombra, the learned Public Prosecutor addressed arguments on behalf of the State.

6. The point that arises for consideration in the appeal is whether the conviction of the accused and the sentence passed against them, are sustainable in law.

7. As there is no direct evidence to prove the case, the prosecution attempted to prove its case through circumstantial evidence. One of the arguments seriously pressed into service by

the learned counsel for the appellants was that the circumstances proved in the case do not establish the guilt of the accused beyond reasonable doubt. In the light of the said contention, it is necessary to delve deep into the evidence let in by the prosecution.

8. PW1 is Soorya, the daughter of Suresh and the second accused. PW1 deposed among others that the second accused contacted the first accused on his mobile more than once on 16.03.2013 and that it was the first accused who picked PW1 and the second accused from Kottarakara and dropped them near the house of Mani at Pattazhi wherein a family function was being held on the following day. It was deposed by PW1 that the house of Mani is situated at a higher plane and one has to walk uphill beyond the reach of the autorickshaw to reach there. It was deposed by PW1 that after stopping the autorickshaw, the first accused proceeded to the house of Mani first after making them wait for sometime stating that there would be trouble if they all go to the house of Mani at once. It was deposed by PW1 that her father reached the house of Mani on 17.03.2013 and that after the function, he left therefrom at about 9 p.m. to witness the temple festival at Bharanikkavu. It was deposed by PW1 that when she enquired with the second accused

about her father, the second accused told PW1 that she was informed by the first accused that her father was lying in the autorickshaw of the first accused which was parked outside the house then. It was deposed by PW1 that on 18.03.2013, when the second accused and Soorya returned home, Suresh was not found in the house and that when her father was contacted on his mobile, it was switched off. It was deposed by PW1 that the police summoned the second accused to the station on 19.03.2013 and when the second accused went to the station, PW1 also accompanied her; that after questioning the second accused for sometime, the police took them to Kottayam where the first accused was working then; took him into custody and while returning, the first accused took out a blade from the cover carried by him and cut his neck. It was deposed by PW1 that the woman police constable who accompanied them, attempted to prevent the first accused from doing so and took him to the Government Hospital, Kottarakkara and after admitting the first accused in the said hospital for treatment, PW1 and the second accused were taken to Kunnikkode Police Station, Kollam. In cross-examination, when it was put to PW1 that it is as required by the police that she deposed that there was an illicit

relationship between the accused, PW1 admitted the suggestion. It was also clarified by PW1 in cross-examination that there was no occasion for the first accused to come to their house at any time.

9. PW2 is the nephew of the first accused. PW2 deposed that the first accused called his father for help to procure petrol for the vehicle of the first accused in the early hours of the morning of 20.03.2013 and that PW2 went to Kura along with his father as required by the first accused. It was deposed by PW2 that when they reached Kura, the first accused was found waiting near his blue Maruthi 800 car with two empty mineral water bottles; that after dropping his father there, PW2 took the first accused to a petrol outlet, procured petrol and returned to the same place where the said car was parked and the first accused then left therefrom after re-fueling his car. It was deposed by PW2 that the body of Suresh was found on the same day at the same place where the first accused was waiting for him and his father earlier that day. PW5 is Mani, the elder sister of the second accused. PW5 deposed that the first accused left her house at about 8 p.m. after attending the function on 17.03.2013 and that Suresh left thereafter at about 9

p.m. PW6 is the wife of the first accused. She turned hostile to the prosecution.

10. PW7 is a gunny merchant. PW7 deposed that the first accused purchased two gunny bags from his shop on 19.03.2013. PW8 is a person who was running a workshop at Kottarakkara during the relevant time. PW8 deposed that the first accused came to his workshop on 19.03.2013 to repair the Maruti Car of the first accused and that PW8 sent a technician named Manoj along with the first accused to repair the car and that after sometime, both the first accused and the technician returned to the workshop with the car after its repair and the first accused left the workshop at about 6 p.m. It was deposed by PW8 that on the morning of the following day, the first accused brought back the car to the workshop for additional work and at that time, a foul smell was emanating from the car and its interiors were found to be wet. PW10 is a vegetable merchant. PW10 deposed that the first accused came to her shop on 19.03.2013 in a blue coloured Maruti Car and purchased five strands of rope.

11. PW9 was a member of the Thalavoor Grama Panchayat during the relevant time. It was she who informed the

police that a foul smell was emanating from a gunny bag lying in the rubber estate of Vinod. It was deposed by PW9 that when the police arrived at that place, PW9 also accompanied them and on inspection, it was found that a dead body was packed in the said gunny bag. It was explained by PW9 that the body was in fact packed using two gunny bags, one covering the head portion and the other covering the lower portion of the body and that the gunny bags were tied using ropes. It was also deposed by PW9 that they found a letter also near the body. PW15 was the pastor of a church. He was blind. PW15 deposed that the first accused was the secretary of the church until he was employed elsewhere and that PW15 entrusted to the police a notebook which was maintained by the first accused to keep a record of the accounts of the church. PW18 is the wife of PW15. PW18 deposed that it was she who handed over the account book of the church to the police. PW18 identified Ext.P7 as the account book. She also identified the handwriting in Ext.P7 as that of the first accused. PW25 was the Assistant Executive Engineer attached to the Pallam Division of the Kerala State Electricity Board during 2013. It was PW25 who allotted a dormitory to the first accused on his request. PW25 identified

Ext.P13 as the application submitted by the first accused for the said purpose.

12. One Dr.P.Rema conducted the post-mortem examination on the body of the deceased and issued Ext.P23 post-mortem certificate. The ante-mortem injury noted at the time of post-mortem was described in Ext.P23 as thus:

> "Abrasion 36cm long, horizontal on the neck: being just below right ear (3.5cm broad) 8cm below occiput (3cm broad) just below left ear (3.5cm broad) and 5cm below chin. (3.5cmbroad) Soft tissues underneath was found contused on the front of neck. Contusions were noted in upper end of left sternomastoid muscle (2.5x1x1cm) and left cricothyroid muscle (2x1x1cm) Extensive infiltration of blood was noted in prevertebral muscles of neck, around epiglottis and inner surface of thyroid cartilage. Hyoid bone, other cartilages and bones of neck were normal and intact."

It was opined by Dr.P.Rema in Ext.P23 that the death was due to constriction force around neck. PW37 was a doctor who was working with Dr.Rema during the relevant time. PW37 affirmed that the signature in Ext.P23 post-mortem certificate is that of Dr.Rema.

13. PW38 was the doctor who examined the first accused on 21.03.2013 at the Taluk Headquarters Hospital, Kottarakkara and issued Ext.P24 wound certificate. It was deposed

by PW38 that the history was reported to her by the police as "ബ്ലേഡ് കൊണ്ടു കഴുത്തിൽ മുറിവേല്പിച്ചതിനാൽ". The injuries noted by PW38 on the body of the first accused as deposed by her were the following:-

> "Multiple cut wound on cillus side of neck. 7X2x1 cm deep left side of neck 7x3x1 cm deep on the right side of neck extending from side of midline respectively. Multiple tendative like cuts over arteries aspect of neck. Lacerated wound of 2x0.5 cm over left wrist."

It was opined by PW38 that the injuries sustained could be caused as alleged. It was also clarified by PW38 that these type of injuries could be caused only with sharp edged objects like blade. It was also deposed by PW38 that on the same day she examined PW36 and issued Ext.P25 certificate. It was deposed by PW38 that the cause of the injury of PW36 was reported to her as "ശെൽവൻ എന്നയാളെ custody യിൽ എടുത്തുകൊണ്ടു വരുന്ന വഴിയേ കഴുത്തറുത്ത് ആത്മഹത്യക്കു ശ്രമിക്കുന്നതിനിടയിൽ അയാളെ പിടിച്ചുമാറ്റുന്നതിനിടയിൽ blade കൊണ്ടു കയ്യിൽ പോന്തിയതിൽ വച്ച്'." The injuries noted by PW38 on the body of PW36 as deposed by her are as follows :

> "1. Cut wound 1x0.1 cm size over dorsum of left index finger.
> 2. Linear abrasion 1 cm in between 2nd and 3rd knuckles of fingers."

It was also deposed by PW38 that the aforesaid injuries could be caused as alleged.

14. PW43 was the Scientific Assistant who examined the Maruti 800 car involved in the crime on 02.04.2013 and collected samples of hairs and fibres as also a white paper with some indentation from the same. PW43 deposed that the items collected by her from the car were handed over by her to the investigating officer for onward transmission to the Forensic Science Laboratory, after packing the same with a label under her seal. PW44 was the Nodal Officer of the Telecom Service Provider – Airtel. It was PW44 who made available to the investigating officer the subscriber details as also the call details of the mobile phone bearing number 9995966853 held by the first accused. PW44 deposed the said fact in his evidence. Ext.P28 is the call details and Ext.P29 is the subscriber details.

15. PW36 was the woman Police Constable who took the second accused along with her to Kottayam, where the first accused was residing. PW36 deposed that while returning with the first accused, the first accused made an attempt to commit suicide with a blade and when PW36 attempted to prevent him from doing so, she also sustained injuries. PW47 was the police officer who conducted the initial investigation in the case. It was deposed by

PW47 that it was he who sent PW36 to Kottayam to secure the presence of the first accused. In addition, it was deposed by PW47 that the letter discovered at the place where the body was found, was collected and stored by him in safe custody at the police station and that the same was later made available to the investigating officer. PW48 was the police officer who conducted the rest of the investigation. PW48 gave evidence as to the various steps taken by him as part of the investigation. PW48 identified MO27 as the letter found along with the body of the deceased, and seized the same in terms of the inquest report, and MO29 as a white paper with indentation collected and entrusted to him by PW43, the Scientific Assistant, from the Maruti Car involved in the crime. It was deposed by PW48 that in the course of the investigation, he collected the sample writings of the first accused for scientific examination.

16. Ext.P57 is the report of the Molecular Biology Division of the Forensic Science Laboratory, Thiruvananthapuram and Ext.P59 is the report of the Document Division of the Forensic Science Laboratory. The forwarding notes submitted by PW48, on the basis of which various objects forwarded for scientific as also forensic examination, were not seen marked in the proceedings. But,

the same are available in the records. Items 1(a) and 1(b) in Ext.P57 report are the scalp hairs and body hairs respectively of the deceased collected at the time of post-mortem examination. Item 26 in Ext.P57 report are the hairs and fibres collected by PW43 from the dicky of the Maruti Car involved in the crime. It is reported in Ext.P57 that two out of the sample hairs collected from the Maruti Car are similar to the scalp hairs of the deceased collected at the time of post-mortem examination and six out of the sample hairs collected from the Maruti Car are similar to the body hairs of the deceased collected at the time of post-mortem examination.

17. S1 to S4 referred to in Ext.P59 are the specimen handwritings of the first accused, A1 and A2 referred to in Ext.P59 are Exts.P7 and P13 documents containing the admitted handwritings of the first accused, Q1 referred to in Ext.P59 is the handwriting in MO27 letter found with the body of the deceased and Q2 referred to in Ext.P59 is the white paper with indentation collected from the dicky of the Maruti Car. It is reported in Ext.P59 that the person who wrote the standard writings in A1, A2, S1, S2, S3 and S4 is the person who wrote the questioned writing in Q1. Similarly, it is reported in Ext.P59 that the indentations deciphered

from the questioned document were found tallying with the writings in Q1.

18. It is based on the evidence discussed in the preceding paragraphs that the Court of Session came to the conclusion that the prosecution has proved the guilt of the accused beyond reasonable doubt. Before proceeding further, it is necessary to note that the specific case of the prosecution is that the first accused committed the murder of the deceased in pursuance of the criminal conspiracy between him and the second accused as they were in an illicit relationship and the deceased was a hindrance to that relationship. The Court of Session did not accept the case of the prosecution that the accused were in an illicit relationship, for want of evidence. Nevertheless, it accepted the case of the prosecution that the accused hatched a criminal conspiracy to commit the murder of the deceased. It is seen that the sole basis of the finding rendered by the Court of Session in this regard is that there were frequent telephone calls between the accused, after the disappearance of the deceased. The said finding was rendered based on the call records of the mobile phones used by the accused. No doubt, through the evidence of PW44, the prosecution

established that the first accused was using the SIM bearing number 9995966853. Ext.P28 call details would show that there were frequent calls from the said SIM to the SIM bearing number 9961800486. According to the prosecution, the latter number was one used by the second accused at the relevant time. But, there is no legally acceptable evidence before this court to prove that SIM bearing number 9961800486 was one allotted to the second accused by the concerned telecom service provider. The evidence in this regard was tendered only by PW48, the investigating officer. It was PW48 who tendered in evidence, Ext.P53 call details obtained by him from the telecom service provider, namely Idea Cellular Limited. PW48 was incompetent to let in evidence as regards the call records of SIM bearing number 9961800486 and its certification, in terms of Section 65B of the Indian Evidence Act. If so, the finding rendered by the Court of Session based on the call records that there were frequent calls between the accused after the disappearance of the deceased, is unsustainable in law.

19. The essence of the criminal conspiracy lies in forming a scheme or agreement between parties. No doubt, it is not necessary to prove an express agreement. On the other hand, the

evidence as to transmission of thoughts sharing the unlawful design is sufficient. In other words, when the circumstances in a given case are taken together, it must be possible for the court to infer the meeting of minds between the conspirators for the intended object of committing the offence. Inasmuch as it has been found by this court that the prosecution has failed in establishing even its case that there were frequent calls between the accused after the disappearance of the deceased, what remains is only the evidence of PW1 that there used to be telephone calls between the accused as also her evidence that the second accused used to travel in the autorickshaw of the first accused. Inasmuch as the accused are close relatives, the facts that there used to be telephone calls between them and that the second accused used to travel in the autorickshaw of the first accused, are hardly sufficient to hold that they conspired to commit the murder of the deceased. The offence of criminal conspiracy is a serious offence which carries the same punishment as that of the intended offence. There has to be satisfactory evidence to infer that there was *consensus ad idem* between the accused to commit the crime. The prosecution has no case that there is any evidence, other than the alleged telephone

calls between the accused to connect the second accused with the crime. Needless to say, the finding rendered by the Court of Session that the circumstances proved in the case establish a criminal conspiracy between the accused to commit the murder of the deceased, is unsustainable. Inasmuch as the second accused was charged for the remaining offences viz, offences punishable under Sections 201 and 202 IPC on the basis of the alleged criminal conspiracy, she is liable to be acquitted of all the charges framed against her.

20. As noted, the first accused was convicted not only for hatching a criminal conspiracy to commit the murder of the deceased under Section 120B, but also for committing the murder in pursuance of the criminal conspiracy under Section 302 IPC. He was also convicted for causing disappearance of the evidence of murder under Section 201 IPC and for giving false information in respect of the offence under Section 203 IPC. The case of the prosecution, on the basis of which the first accused was found guilty under Section 203 IPC is that he wrote MO27 letter and placed the same near the body of the deceased in which the names of some persons related to the deceased were mentioned to divert the investigation.

According to the prosecution, the said conduct of the first accused would amount to the offence punishable under Section 203 IPC. It is established in the case that it was the first accused who wrote MO27 letter and kept the same along with the body of the deceased. The recitals in MO27 letter read thus :

> "പ്രകാശാ ഇത് നിനക്കുള്ള സമ്മാനം. ഇതുപോലെ ഒറ്റയ്ക്ക് ഞങ്ങളുടെ കൈയ്യിൽ കിട്ടും. അടുത്ത ഊഴം നെജി - പിന്നെ നീയും ഞങ്ങളെ ഉപദ്രവിച്ചവരെ ഞങ്ങൾ ഒരിക്കലും വിടില്ല ഇവനെ ഞങ്ങൾ മണ്ണിനടിയിൽ ആക്കിയതാണ്. നീ ഒതുങ്ങാൻ വേണ്ടി മാത്രം ഞങ്ങൾ വിട്ടതരുന്നു അല്ലെങ്കിൽ ഒരു കാലത്തും സുരേഷിനെ നിങ്ങൾക്ക് കിട്ടില്ല കേട്ടോടാ പരമനാറി ഒരു പ്രാവശ്യം കൂടി വാണിങ്. ഇവൻ ഞങ്ങടെ ശരീരത്ത് കൈ വച്ചതുകൊണ്ടാണ് ഇവനെ ഈ ഗതി വന്നത് - പണ്ടേ ഇവൻ ഞങ്ങടെ നോട്ടപുള്ളിയാണ്. സുകുവിനെ ഞങ്ങൾ നല്ലതുപോലെ കൈകാര്യം ചെയ്തോളാം. ഒതുങ്ങിയാൽ നിനക്കെഒക്കെ നല്ലത് അല്ലെങ്കിൽ ഇതുപോലെ ഓരോന്നിനെ ഞങ്ങൾ പറഞ്ഞു വിടും. ഓർത്തോ."

No doubt, the conduct of the first accused in writing a letter in the nature of MO27, after the commission of the crime, with the intention of misleading the investigation, is relevant in terms of Section 8 of the Indian Evidence Act as subsequent conduct, but, the said conduct of the first accused would not attract the offence punishable under Section 203 IPC for, the same would not amount to giving information regarding the offence committed. Needless to say, the prosecution has failed to establish the charge against the first accused under Section 203 of the IPC.

21. Let us now consider the question whether the circumstances proved in the case would establish beyond reasonable doubt, the guilt of the first accused of the remaining charges namely, the charges under Sections 302 and 201 IPC. It is now trite that the circumstances to be proved to establish the guilt of the accused in a given case, shall be *of a conclusive nature and tendency* and the same shall be fully established, which means that the circumstances shall unequivocally establish the truth of the facts, leaving no reasonable doubt, or alternative explanation and the same should have a definite tendency of implicating the accused in the crime. If one examines the evidence let in by the prosecution in the case keeping in mind the principles aforesaid, the following are the circumstances that could be taken as proved :

(i) that accused 1 and 2 were relatives; that they were close to each other and that there used to be frequent telephone calls between them;

(ii) that the second accused and her daughter went to the house of PW5 on 16.03.2013 in the autorickshaw of the first accused;

(iii) that the deceased was missing from the morning hours of 17.03.2013;

(iv) that the first accused purchased two gunny bags from the shop of PW7 on 19.03.2013;

(v) that the first accused purchased five strands of coir from the shop of PW10 on 19.03.2013;

(vi) that the first accused contacted PW8 for assistance to repair his car which was involved in the crime on 19.03.2013 and availed the services of PW8 for the same;

(vii) that PW2 saw the first accused by the side of his car which was involved in the crime in the morning hours of 20.03.2013 close to the rubber estate of Vinod where the body of the deceased was found abandoned;

(viii) that when the first accused took his car to the workshop of PW8 for further repair on 20.03.2013, the interiors of the car was found wet and a foul smell was emanating from the car;

(ix) that when the body of the deceased was found in the rubber estate of Vinod on 20.03.2013, the same was

seen packed in two gunny bags tied using ropes in such a manner that one bag covered the upper body and the other bag covered the lower body;

(x) that when the police party took the first accused in custody for questioning him in connection with the death of the victim, the first accused made an attempt to commit suicide on the way to the police station;

(xi) that the cause of death of the victim was due to constriction force around the neck;

(xii) that two out of the sample hairs collected from the car of the first accused which was involved in the crime were found to be similar to the scalp hairs of the deceased collected at the time of post-mortem examination;

(xiii) that six out of the sample hairs collected from the car of the first accused which was involved in the crime were found to be similar to the body hairs of the deceased collected at the time of post-mortem examination;

(xiv) that the writing in MO27 letter recovered from the place where the body of the deceased was seen abandoned, was found to be that of the first accused;

(xv) that the indentations deciphered from MO29 white paper recovered from the car of the first accused which was involved in the crime were found to be tallying with the writing in MO27.

(xvi) that the first accused made an attempt to mislead the investigation in the case by placing MO27 letter written by him along with the body of the deceased.

22. One of the arguments advanced by the learned counsel for the first accused is that inasmuch as Dr.Rema who conducted the post-mortem examination was not examined in the case, there is no evidence to prove the cause of death of the victim. The learned counsel conceded that statements written or verbal of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant in terms of Section 32 of the Indian Evidence Act, when the statement relates to an opinion given by that person. But, according to him, for accepting the statement of such persons, it has to be shown that he is either dead

or cannot be found or has become incapable of giving evidence or whose presence cannot be procured without any delay or expense which under the circumstances of the case appears to the court unreasonable.

23. The cause of death is ordinarily proved through the evidence of the doctor who conducted the post-mortem examination, which constitutes substantive evidence. In that case, the post-mortem certificate being a document containing the previous statement of the doctor, can be used only to corroborate or contradict the doctor. Section 32(2) of the Indian Evidence Act is an exception to this. If the doctor who conducted the post-mortem is dead or not available for examination under the circumstances mentioned in Section 32 of the Indian Evidence Act, the certificate issued by the doctor, is itself relevant and admissible. At the same time, the court can come to its independent conclusion as to the cause of death, if there is independent evidence on record in support of it. Inasmuch as the post-mortem certificate contains what was observed by the doctor while conducting the post-mortem examination and the conclusion arrived at by him, a statement coming under Section 32 can be proved as prescribed in Section 47

of the Indian Evidence Act. The fact that Ext.P23 post-mortem certificate is one issued by Dr.Rema has been duly proved by PW37 in terms of Section 47 of the Indian Evidence Act. In other words, Ext.P23 establishes the prosecution case.

24. The question that remains to be considered is whether the circumstances mentioned above, are sufficient to hold that it was the first accused who committed the murder of the deceased and caused disappearance of the evidence. Before examining the question above mentioned, it is necessary to keep in mind the principles to be followed in this regard. The principles are:

(1) that the circumstances from which the conclusion of guilt is drawn are fully established,

(2) that the facts so established are consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) that the circumstances are of a conclusive nature and tendency,

(4) that they should exclude every possible hypothesis except that the accused is guilty, and

(5) that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must

> show that in all human probability, the act must have been done by the accused.

On an evaluation of the circumstances established in the case, we are of the view that the same would form a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and would show that in all human probability, it was the first accused who committed the acts alleged against him and that the same would exclude every possible hypothesis except that he is guilty. We are not oblivious to the fact that there is no satisfactory evidence in the case to establish the motive of the first accused to commit the crime and the motive, in cases involving circumstantial evidence, plays a significant role. But, having regard to the totality of the facts and circumstances of the case, according to us, the same shall not deter us from arriving at the conclusion aforesaid.

In the result, the appeal is allowed in part. The conviction of the second accused for the offences charged against her is set aside and she is acquitted. She shall be set at liberty forthwith and released from custody, if her continued detention is not required in connection with any other case. Registry is directed

to communicate the above order forthwith to the concerned prison, where the second accused is undergoing incarceration. The conviction of the first accused under Sections 120B and 203 IPC are set aside and his conviction and sentence for the offences punishable under Sections 302 and 201 IPC are confirmed. The sentences shall run concurrently.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOBIN SEBASTIAN, JUDGE.

YKB