2025:KER:30363

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 9TH DAY OF APRIL 2025/19TH CHAITHRA, 1947

CRL.A NO. 1287 OF 2018

AGAINST THE JUDGMENT DATED 28.09.2018 IN SC NO.861 OF 2011 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT-III, ALAPPUZHA

APPELLANT/ACCUSED:

SEBASTIAN @ THAMPI
AGED 44 YEARS
S/O.CHERIYAN, CHARANKATTUVEEDU, WARD NO. 1, MARARIKULAM NORTH PANCHAYAT, MARARIKULAM VILLAGE, ALAPPUZHA DISTRICT

BY ADVS.
S.SHANAVAS KHAN
SMT.S.INDU

RESPONDENT/COMPLAINANT:

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

BY ADV.SRI.ALEX M THOMBRA, SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, ALONG WITH CRL.A.1424/2018, THE COURT ON 09.04.2025 DELIVERED THE FOLLOWING:

2025:KER:30363

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947

CRL.A NO. 1424 OF 2018

AGAINST THE JUDGMENT DATED 28.09.2018 IN SC NO.861 OF 2011 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - III, ALAPPUZHA

APPELLANT/1ST ACCUSED:

VARGHESE ANTONY @ DIBY,
AGED 34 YEARS
S/O.ANTONY V.V., VALIYAVEEDU, WARD NO.II,
KUTTAMANGALAM MURI, KAINAKARI PANCHAYATH,
KAINAKARI VILLAGE NOW RESIDING AT VALIYAVEETIL,
VELOOR, KOTTAYAM, PIN-686003.

BY ADVS.
K.G.SARATHKUMAR
S.RAJKUMAR
SRI.A.C.KURIAKOSE

RESPONDENTS/COMPLAINANT AND 2ND ACCUSED:

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

2 SEBASTIAN @ THAMPI,
AGED 44, S/O.CHERIYAN, CHARANKATTU VEEDU, WARD NO.1, MARARIKULAM NORTH, MARARIKULAM VILLAGE, ALAPUZHA, PIN-688523.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, ALONG WITH CRL.A.1287/2018, THE COURT ON 09.04.2025 DELIVERED THE FOLLOWING:

2025:KER:30363

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

Crl.Appeal Nos.1287 and 1424 of 2018

Dated this the 9th day of April, 2025

JUDGMENT

P.B.Suresh Kumar, J.

The appellants in these appeals are accused 1 and 2 in S.C.No.861 of 2011 on the files of the Court of the Additional Sessions Judge-III, Alappuzha. Among them, the first accused stands convicted and sentenced for the offence punishable under Section 302 of Indian Penal Code (IPC) for the murder of one Jayaprakash and the second accused who is the brother-in-law of the first accused, stands convicted and sentenced for the offence punishable under Section 212 of IPC for rescuing and harbouring the first accused after the crime.

2. Jayaprakash was a person engaged in transporting goods using his country boats between different

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places in Kuttanad. At 7.15 a.m. on 24.08.2010, Rajeev, the brother-in-law of Jayaprakash informed Pulinkunnu Police that he received information from one Rajesh that Jayaprakash is found lying in a weak state with a bleeding head in the boat jetty at Pandicherry and when he went to that place, Jayaprakash was found lying on his back on a cement bench in the jetty. The police was also told by Rajeev that even though he and others took Jayaprakash to the General Hospital, Alappuzha, he breathed his last on the way to the hospital. A case was registered by Pulinkunnu Police on the said information. The investigation conducted in the case thereafter revealed that on 23.8.2010, Jayaprakash and the first accused engaged in multiple exchange of obscene words at the toddy shop located at Kainakary and that at about 10.45 p.m. on the same day, on account of the said enmity, the first accused beat twice with a flat iron bar on the face of the deceased while he was sleeping on the cement bench at Pandicherry Boat Jetty and thereby caused his death. It was also revealed in the



investigation that the second accused rescued the first accused thereupon from that place and harboured him.

3. On the accused being committed to trial, the Court of Session framed charges against them in terms of the final report to which they pleaded not guilty. The evidence in the case consists of the oral evidence of PWs 1 to 30 and Exts.P1 to P26 proved through them. MO-I to MO-V are the material objects identified by the witnesses. Exts.D1 and D2 are the case diary statements of PW3 and PW19 respectively marked at the instance of the defence. 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. The accused 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 two witnesses on their side at that stage as DW1 and DW2. Thereafter, on an appreciation of the evidence, the Court of Session found the accused guilty of the offences referred to



above and sentenced the first accused, among others, to imprisonment for life. The second accused was sentenced, among others, to undergo simple imprisonment for three years. The accused are deeply aggrieved by their conviction and sentence and hence these appeals.

4. It is seen that the execution of the sentence passed against the second accused has been suspended and he was enlarged on bail by this Court as per order dated 29.10.2018 in Crl.M.A.No.1 of 2018 in Crl.Appeal No.1287 of 2018.

5. Heard Adv.A.C.Kuriakose for the first accused and Adv.S.Shanavas Khan for the second accused. Sri.Alex M.Thombra, the learned Public Prosecutor addressed arguments on behalf of the State.

6. There was no eye witness to the occurrence in terms of the final report filed in the case. However, after the Court of Session framed charges against the accused, a supplementary final report was filed in the case wherein the prosecution cited two eye witnesses to the occurrence also. The



said eye witnesses were examined during trial as PW17 and PW19. It is seen that the Court of Session found that the evidence tendered by the said eye witnesses are not reliable. Consequently, the Court of Session rendered the impugned decision based on the circumstances proved in the case. The essence of the arguments advanced by the learned counsel for the first accused therefore was that the circumstances proved in the case do not establish the guilt of the first accused beyond reasonable doubt. The argument advanced by the learned counsel for the second accused is that there is no evidence in the case to prove that the second accused harboured the first accused with the intention of screening the first accused from legal punishment with the knowledge or at least reason to believe that it was the first accused who committed the murder of Jayaprakash.

7. *Per contra*, the learned Public Prosecutor supported the impugned decision of the Court of Session pointing out that there are no reasons to ignore the evidence tendered by PWs 17 and 19 and even if the same is ignored,

the circumstances proved in the case would establish the guilt of the first accused beyond reasonable doubt.

8. In the light of the arguments advanced by the learned counsel for the accused, it is necessary to delve into the evidence let in by the prosecution. But before doing so, it is necessary to examine the question whether the Court of Session was justified in rejecting the evidence tendered by PWs 17 and 19 for, their evidence is liable to be reckoned otherwise, while examining the correctness of the impugned decision. Although PWs 17 and 19 deposed that they saw the first accused beating another person with a rod on the relevant day at the relevant time at Pandicherry Boat Jetty and fleeing from that place, the Court of Session discarded the evidence tendered by the said witnesses *in toto.* One of the reasons stated by the Court of Session to discard the evidence tendered by PW17 is that PW17, who claimed to have seen the occurrence and who was present during the inquest, post-mortem and funeral obsequies, had not disclosed the same to anyone for about seven years, and the reason given by PW17



for the same for such a long period namely, that he was contemplating to go abroad, is not convincing. Another reason given to discard the evidence tendered by PW17 is that the reason put forth by him for having disclosed the occurrence to police only after almost seven years, is also not convincing. As far as PW19 is concerned, the Court of Session found that there are contradictions in his evidence and that he also had not provided satisfactory explanation for not disclosing the fact that he witnessed the occurrence, for a considerably long period. On a close scrutiny of the evidence tendered by PWs 17 and 19, we also entertain a doubt in our mind as to whether Pws 17 and 19 are persons who have actually witnessed the occurrence. We therefore concur with the view expressed by the Court of Session in this regard. In the circumstances, the pointed question is whether the circumstances proved in the case would establish the guilt of the accused beyond reasonable doubt.

9. The witness who was examined as PW1 is Rajeev, the brother-in-law of Jayaprakash. PW1 affirmed that it

was he who furnished the information, on the basis of which the case was registered and he identified his signature in Ext.P1 First Information Statement. PW2 is a person who had previous acquaintance with Jayaprakash as also the accused. It was deposed by PW2 that on the morning of 23.08.2010, he supplied toddy on behalf of Jayaprakash to the toddy shop run by one Rajesh in one of the boats owned by Jayaprakash. According to PW2, at about 4.00 p.m. on the same day, on a request made by the first accused, he consumed liquor along with the first accused and Jayaprakash at a place near his house and that by about 6 p.m., they parted ways. It was deposed by PW2 that later on the same day at about 9 p.m., while he was standing in Pandicherry Jetty, he saw the accused coming from the northern side loudly shouting abuses. It was deposed by PW2 that when he enquired with the accused as to why they were shouting abuses, the first accused told him that "ഷാപ്പിൽ വച്ച് JP ഉം ടിബിയും ആയി വഴക്ക് ഉണ്ടായി എന്നും അവനിട്ട് ഇന്ന് ഒരു പണി കൊടുത്തിട്ടേ കിടന്ന് ഉറങ്ങുള്ളൂ എന്നും ടിബി എന്നോട് പറഞ്ഞു." It was deposed by PW2 that when he then required the first accused to go home, the latter



abused him also and that the second accused thereafter dragged away the first accused from that place. It was deposed by PW2 that even though he left that place after the said incident, he came back to the jetty at about 10.00 p.m. with his friend Motty to take the boat of Jayaprakash to go to Alappuzha. According to PW2, at that time, Jayaprakash was sleeping on the northern side of the jetty and his friend, Sumesh was sleeping on the southern side. It was deposed by PW2 that Motty then sought permission from Jayaprakash to take his boat to go to Alappuzha and that Jayaprakash permitted the same. It was the version of PW2 that even though he went to his house thereupon along with Motty to change his clothes, he dropped the idea to go to Alappuzha on account of the insistence of his sister and father and that he sent back Motty. According to PW2, he came to know of the death of Jayaprakash on the morning of the following day. PW2 identified the accused in court. He also identified MO-IV as the dhoti worn by the first accused at the relevant time.



10. PW3 is a cousin brother of Jayaprakash. PW3 deposed that on the relevant day at about 7 p.m. he saw Jayaprakash in the toddy shop of Rajesh. According to PW3, at the relevant time, Jayaprakash and the first accused were singing in the room at the south end of the shop. It was deposed by PW3 that after some time, he heard an exchange of obscene words between them and that when he went to that room, he saw the second accused also in their company. PW3 identified the accused in court. According to PW3, after directing the first accused and the deceased to go home, he left the toddy shop a while later PW4 is Motty referred to by PW2 in his evidence. PW4 gave evidence on similar lines as the evidence tendered by PW2. That apart, it was also deposed by PW4 that after leaving from the house of PW2, on their visit to Alapuzha being cancelled, he saw the first accused coming from the north shirtless. According to PW4, the first accused was then carrying a flat iron bar, and even though he asked the first accused from where he was coming, he did not respond, as he was in an angry mood. PW4 identified MO-V as the flat iron

bar carried by the first accused then. It was deposed by PW4 that he then proceeded to Pandicherry Boat Jetty and that Jayaprakash and Sumesh were sleeping there at that time and when he made them woke up, Jayaprakash did not respond, but Sumesh woke up and accompanied PW4. PW4 also identified the dhoti worn by the first accused then as MO-IV.

11. PW5 is a person who is residing near Pandicherry Boat Jetty. He is also a friend of Jayaprakash. PW5 deposed that at about 9.00 p.m. on the relevant day, when he was going to his house after visiting his maternal grandfather at the Medical College Hospital, Kottayam, he heard a commotion from the house of Maniyan, the uncle of the first accused. When PW5 went to the house of Maniyan on hearing the commotion, the first accused and some of his relatives, including the father of the first accused were present there. It was deposed by PW5 that the first accused was then shouting that he will teach a lesson to Jayaprakash on that night itself. According to PW5, the father of the first accused then asked the first accused if he was mad and that the first accused then



brandished the flat iron bar carried by him at his father. It was deposed by PW5 that the cousin of the first accused then slapped the first accused twice on his cheek and that the first accused then left from there in an angry mood. PW5 identified MO-V as the flat iron bar carried by the first accused and MO-IV as the dhoti worn by the first accused at the relevant time. In cross-examination, PW5 admitted that in the statement given by him before the Magistrate, he referred the flat iron bar only as an iron rod.

12. PW6 is a cook working in a houseboat. PW6 deposed that on 23.08.2010, he saw Jayaprakash at about 8.00 p.m. in the toddy shop of Rajesh; that the accused were also present there at the relevant time and that all of them were drinking toddy. It was deposed by PW6 that Jayaprakash used foul language when the second accused criticized the quality of the toddy supplied by Jayaprakash. It was deposed by PW6 that a verbal altercation ensued thereupon between the first accused and Jayaprakash and in the course of the said verbal altercation, Jayaprakash threatened the first accused that he

would teach him a lesson and that the first accused also replied in the same tone and left the place. PW6 also identified accused 1 and 2. In cross-examination, it was admitted by PW6 that he did not disclose in the statement given to the Magistrate that he saw the first accused consuming toddy then. Similarly, it was admitted by PW6 that he did not disclose to the Magistrate about the verbal altercation that took place between Jayaprakash and the first accused.

13. PW7 is Sumesh referred to by the witnesses as the person who was sleeping on the side of Jayaprakash on the southern cement bench at the boat jetty on the night of the date of occurrence. PW7 deposed that at about 9.15 p.m. on the relevant day, Jayaprakash came to his house and while leaving therefrom, Jayaprakash required PW7 to drop him at his house; that while he took Jayaprakash in his boat to drop him, the latter wanted to be dropped at the jetty to sleep for sometime and that both of them accordingly slept at the jetty for sometime. It was deposed by PW7 that after sometime, PW4 came there and woke him up and that he returned to his house



along with PW4. It was deposed by PW7 that when he left the jetty, Jayaprakash was still sleeping and even though he attempted to wake him up, he did not respond.

14. PW8 is a fisherman. It was deposed by PW8 that at about 2.00 a.m. on 24.08.2010, while he was waiting near his boat on his way to Nedumbassery airport to receive his cousin brother, the accused sought his help to go to a place called Kavunkal in his boat and when he said that he cannot do so, they offered that they would pay any amount for the said purpose.

15. PW11 is Rajesh referred to by PW1 in his evidence. He is also relative of the first accused. He deposed that on 23.08.2010, when he reached near Pandicherry Boat Jetty at about 11.30 p.m. while returning to his house from the house of his aunt, he saw one person lying there and when he went near him to ascertain the identity, it was found that he was soaked in blood. It was deposed by PW11 that he informed the matter to one of the nearby houses and that when he came back along with others to the jetty, one among those who

accompanied him identified the injured as Jayaprakash. It was deposed by PW11 that immediately thereupon, he went to the house of PW1 and informed him about the matter.

16. PW25 was the doctor who conducted the post-mortem examination on the body of the deceased and issued Ext.P13 post-mortem certificate. The ante-mortem injuries found by PW25 on the body of the deceased at the time of the post-mortem examination, as deposed by her, are the following:

> "1. Two small lacerated wounds, 1x0.5x0.5cm and 1x0.1x0.1cm on the left side of chin, 2cm outer and below the lower lip.
>
> 2. Multiple small lacerated wounds with surrounding contusions over and area 3x3cm on the inner aspect of lower lip, 2 cm to the left of midline.
>
> 3. Superficial lacerated wound 1.5x1cm on the under aspect of chin, 2cm outer to midline.
>
> 4. Curved lacerated wound 8x1cm of varying depth of muscle deep and bone deep entering into the cranial cavity, horizontal on the left side of the face its inner end being 4cm outer to midline and 1cm below the inner angle of the eye, and its outer end being 3cm in front of left ear, its outer margin showed multiple small skin flaps, the inferior wall of left orbit, zygomatic bone, nasal bones on left side and maxilla were seen in a chopped off and fractured fragmented state, the upper medial and lateral incisors were seen fractured and loose from sockets. The cribroform plate and the roof of

orbits were seen fractured, exposing the cranial cavity through.

5. Curved lacerated wound 1x0.1cm bone deep with surrounding contusions on the left side of face, being 2cm outer to midline and 1cm below the inner angle of eye. Injury No.5 and 6 were is a same linear plane.

6. Punctured lacerated wound 3x1x4cm entering into nasal cavity oblique, on the left side of root of nose and adjacent part of inner canthus of the eye.

7. Contusion of scalp, 4x3x0.5cm on the right side of back of head, 2 cm behind the ear.

Brain showed bilateral subdural and diffuse subarachnoid haemorrhages and contusion 4x3x1cm on the under aspect of left temporal lobe."

It was opined by PW25 in her evidence that the deceased died due to the lacerated wound sustained to the head. It was clarified by PW25 in her evidence that injury 4 is a fatal injury and that the same could be produced by MO-V flat iron bar.

17. PW26 was the police officer who arrested the first accused on 25.08.2010. PW26 deposed that based on the information that the first accused is present in the house of one of his relatives at Marthandam, PW26 proceeded to that place and apprehended the first accused. PW29 was the police officer who conducted the investigation in the case. Among others, it was deposed by PW29 that in the interrogation pursuant to the



arrest of the first accused, he disclosed to PW29 that he has concealed a flat iron bar in his house and when he was taken there pursuant to his disclosure, he took out a flat iron bar from beneath a wooden plank kept under a wooden desk on the north-western corner of the centre bedroom and handed over the same to PW29, who seized the same in terms of Ext.P3 mahazar. PW29 identified MO-V as the flat iron bar seized in terms of Ext.P3 mahazar. It was deposed by PW29 that the investigation revealed that it was the second accused who accompanied the first accused to Marthandam so as to enable the first accused to hide in the house of one of their relatives. It was clarified by PW29 in cross-examination that only PW3 had stated to him about the quarrel that took place in the toddy shop. PW12, who was a witness to Ext.P3 mahazar corroborated the evidence tendered by PW29 as regards the recovery of MO-V flat iron bar by deposing that he witnessed the first accused taking out MO-V flat iron bar from the place as deposed by PW29 and handing over the same to PW29.



18. PW29 has also proved Ext.P26 report received from the Forensic Science Laboratory, Thiruvananthapuram in respect of various objects forwarded for forensic examination. Item 8 in Ext.P26 report is MO-IV dhoti of the first accused and item 9 therein is MO-V flat iron bar. It is reported in Ext.P26 that blood has not been detected on item 8 and even though blood has been detected on item 9, its origin and group could not be determined for want of sufficient sample.

19. It is on an evaluation of the evidence discussed above that the Court of Session came to the conclusion that it was the first accused who committed the murder of Jayaprakash and that the second accused rescued the first accused thereupon from the place of occurrence and harboured him. The pointed question is whether the Court of Session was justified in arriving at the said conclusion on the basis of the evidence discussed above.

20. Before examining the said question, it is necessary to mention that the deceased, accused and the witnesses examined in the case, other than the official



witnesses, were persons residing in the same locality and were known to each other. None of the witnesses referred to above had seen the occurrence. They are all persons who were examined to prove one or other circumstances relied on by the prosecution to establish the guilt of the accused. As far as the evidence tendered by PW2 is concerned, at about 9 p.m., while he was standing in Pandicherry jetty, he saw the accused coming from the northern side shouting abuses loudly. The evidence tendered by PW2 was consistent with his previous statements and his evidence that when he required the first accused to go home, the latter abused him also and that the second accused thereafter dragged away the first accused from that place, makes the evidence of PW2 convincing. Likewise, we find the evidence tendered by PW3 very much natural when viewed in the social background of the parties involved in the case. Coming to the evidence of PW4, the same is not only consistent with his previous statements, but also consistent with the evidence tendered by other witnesses. PW5 is a witness who deposed that on the date of occurrence at about 9



p.m., he heard the first accused shouting that he will teach a lesson to the deceased in the presence of the close relatives of the first accused, including his father. The evidence tendered by PW5 that when the father of the first accused dissuaded him from doing anything by asking him if he was mad, the first accused brandished the flat iron bar carried by him then towards his father also, makes the evidence of PW5 natural. Even though PW5 was cross-examined thoroughly by the first accused, nothing was brought out to create any suspicion even as to the genuineness of the evidence tendered by PW5. The same was the position as regards the evidence of PW6 also. Even though it has come out in evidence that he did not disclose to the Magistrate in the statement recorded under Section 164 of the Code that he saw the first accused consuming toddy and that there was a verbal altercation between the first accused and the deceased, the evidence tendered by PW6 that they threatened each other is consistent with his statement. As in the case of other witnesses, nothing was brought out in the cross-examination of PWs 7 and 8 also



to discredit their evidence. Coming to the evidence tendered by PW25, the doctor who conducted the post-mortem examination on the body of Jayaprakash, the same would establish beyond reasonable doubt that his death was a homicide.

21. In Ext.P13 post-mortem certificate, it is recited among others, that the stomach of the deceased was half-full with rice and other unidentifiable food particles at the time of post-mortem examination. It was argued by the learned counsel based on an article published in one of the medical journals namely, IOSR Journal of Dental and Medical Sciences that digestion is an active ante-mortem process which does not continue after death and if it is found that the stomach contains undigested food, it can certainly be presumed that the death took place within 4 to 6 hours after the meals. According to the learned counsel, there is no evidence in the case to indicate that the deceased had food after lunch, and in the absence of any evidence to that effect, the death must have certainly occurred, at any rate, before 7.00 p.m. on the relevant day. The

argument is that if the death had occurred before 7.00 p.m. on the relevant day, the evidence tendered by the witnesses who deposed that they saw the deceased alive after 7.00 p.m., can only be rejected. According to the learned counsel, if the said evidence is rejected, there is nothing in the case to connect the accused with the crime. We are not impressed by this argument. The argument proceeds on the premise that the deceased had not eaten food after lunch on the relevant day. There is absolutely no evidence to show that the deceased had not eaten any food after lunch on the relevant day. In the absence of any convincing evidence that the deceased had not eaten food on the relevant day after lunch, the argument is fallacious and is only to be rejected.

22. It is 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 tendered by the prosecution keeping in mind the principles referred to above, the following are the circumstances that could be taken as proved in the case:

(i) that the deceased, accused and the witnesses other than the official witnesses, were persons residing in the same locality and were known to each other.

(ii) that PW3 saw the deceased consuming toddy in the company of the first accused at about 7 p.m. on the relevant day at the toddy shop of one Rajesh and witnessed the exchange of obscene words between them at the said toddy shop, while he was present there.

(iii) that PW6 saw the deceased consuming toddy at about 8 p.m. on the relevant day at the shop of Rajesh along with the accused and witnessed the heated exchange of words and threats between Jayaprakash and the first accused.

(iv) that PW5 saw the first accused at about 9 p.m. in the house of the uncle of the first accused in the presence of his relatives, including his father and heard the first accused shouting that he will teach a lesson to the deceased on that night itself.

(v) that PW2 saw the accused together at about 9 p.m. on the relevant day near the boat jetty at Pandicherry and heard the first accused loudly shouting abuses and when PW2 enquired with the first accused as to the reason, the first accused replied to PW2 that he would teach a lesson to the deceased on that day itself.

(vi) that PW2 saw the deceased sleeping on the bench at the Pandicherry boat jetty at about 10 p.m. on the relevant day when he went there again along with his friend, PW4 to seek the permission of Jayaprakash to take his boat for them to go to Alappuzha.

(vii) that after leaving from the house of PW2, PW4 saw the first accused shirtless in an angry mood at about 11 p.m. on the relevant day and with MO-V flat iron bar just

before he saw the deceased sleeping at Pandicherry boat jetty.

(viii) that PW7 who was sleeping with the deceased for sometime at Pandicherry boat jetty on the relevant day, left the jetty in the company of PW4 leaving the deceased alone there at about 11 p.m.

(ix) that PW11 saw the deceased soaked in blood at about 11.30 p.m. on the relevant day on the cement bench at Pandicherry boat jetty.

(x) that PW8 saw accused 1 and 2 leaving the locality at about 2 a.m. on the following day.

(xi) that the death of Jayaprakash was a homicide and the same occurred due to the lacerated wound sustained to the head.

(xii) that the fatal injury sustained by the deceased was one possible with MO-V flat iron bar carried by the first accused when the latter was seen by PW4.

(xiii) that the first accused fled from the scene after the occurrence and he was hiding in another State until his arrest on 25.08.2010.

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(xiv) that MO-V flat iron bar was recovered based on the information furnished by the first accused from the house of the first accused itself.

(xv) that MO-V flat iron bar contained blood even though its origin and group could not be detected.

True, even though blood was found on MO-V flat iron bar, its origin and group could not be determined. It was argued by the learned counsel for the first accused that inasmuch as the origin and group of the blood found on MO-V flat iron bar could not be detected, the same cannot be accepted as a circumstance against the first accused. In this context, it is relevant to refer to the decision of the Apex Court in **State of Rajasthan v. Teja Ram**, (1999) 3 SCC 507. Paragraphs 25 to 27 in **Teja Ram** read thus:

> "25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe

would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objective, no benefit can be claimed by the accused.

26. Learned counsel for the accused made an effort to sustain the rejection of the abovesaid evidence for which he cited the decisions in *Prabhu Babaji Navle* v. *State of Bombay* [AIR 1956 SC 51 : 1956 Cri LJ 147] and *Raghav Prapanna Tripathi* v. *State of U.P.* [AIR 1963 SC 74 : (1963) 1 Cri LJ 70] In the former, Vivian Bose, J. has observed that the chemical examiner's duty is to indicate the number of bloodstains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships felt that ‘blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the judgment’. In the latter decision, this Court observed regarding the certificate of a chemical examiner that inasmuch as the bloodstain is not proved to be of human origin the circumstance has no evidentiary value ‘in the circumstances’ connecting the accused with the murder. The further part of the circumstance in that case showed that a shirt was seized from a dry-cleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for dry-cleaning, it was not bloodstained.

> *27*. We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility. The observations in the aforesaid cases were made on the fact situation existing therein. They cannot be imported to a case where the facts are materially different."

In the light of the decision of the Apex Court referred to above, we are of the view that having regard to the various other circumstances established in the case, the fact that MO-V contained blood cannot be ignored, even though the origin and group of the blood found on the same could not be determined.

23. One of the arguments seriously pressed into service by the learned counsel for the first accused is that in the absence of any convincing evidence as to the motive for the first accused to commit the murder of the deceased, the first accused cannot be found guilty for the murder of the deceased, irrespective of the nature of the circumstances established in the case. No doubt, motive plays a significant role in a case on circumstantial evidence, but it cannot be said as a general proposition that in the absence of any evidence to

establish the motive, the guilt of the accused, in a case of this nature, cannot be established at all. True, the circumstances proved in the case would show that there was no prior enmity between the first accused and the deceased. It has come out in evidence that they consumed toddy together and were singing at the toddy shop of Rajesh when PW3 went there. It was thereafter that they engaged in a heated exchange of obscene words and mutual threats. Even though it cannot be stated that trivial quarrels of the nature referred to above is a cause for committing the murder, the same is sufficient for one to assault another, especially the social background in which the parties involved in the case were living. In other words, even though it cannot be said that a motive sufficient to commit the murder of the deceased was made out by the prosecution in the case, the circumstances proved would certainly establish the motive for the first accused to assault the deceased.

24. The question that remains to be considered is whether the circumstances mentioned above are sufficient to hold beyond reasonable doubt that it was the first accused who

inflicted the injuries found on the body of the deceased. Before examining the said question, 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.

The said circumstances, according to us, would form a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and would show that in all human probability, it was

the first accused who inflicted the injuries on the deceased which ultimately resulted in his death.

25. It was argued by the learned counsel for the first accused that inasmuch as it is not established by the prosecution that the first accused intended to cause the death of Jayaprakash, the conviction of the first accused for the offence punishable under Section 302 IPC is unsustainable in law. No doubt, the evidence on record is not sufficient to hold that the first accused intended to cause the death of Jayaprakash. But the materials on record would certainly show that the first accused intended to cause a bodily injury to Jayaprakash. Since the intention of the first accused was only to cause a bodily injury to him, the question to be examined is whether the bodily injury intended to be inflicted by the first accused is sufficient in the ordinary course of nature to cause death. It is established in the case that MO-V is the weapon used by the first accused to inflict bodily injury to the deceased and the same, as revealed from Ext.P3 mahazar, is a flat iron bar having a length of 47.5 cm, a width of 2 cm and a thickness

of 0.5 cm. Unusually, in the case on hand, there is no formal evidence on the side of the prosecution to establish that the injury intended to be inflicted by the first accused is sufficient in the ordinary course of nature to cause death. No doubt, this is a matter that can be inferred by the court having regard to the facts and circumstances of the case. On an evaluation of the materials on record, including the weapon that was used by the first accused to inflict injuries on the deceased, we are of the view that even though it could be held that the injuries intended and inflicted by the first accused are injuries that are likely to cause death, they are certainly not injuries that are sufficient in the ordinary course of nature to cause death. If that be so, the first accused cannot be convicted for the offence punishable under Section 302 IPC. Instead, he could be convicted only for the offence punishable under Section 304 Part I IPC.

26. What remains to be considered is whether there is evidence to hold that it was the second accused who rescued the first accused from the place and harboured him. As



revealed from the evidence discussed in the preceding paragraphs, even though the second accused was present along with the first accused at the toddy shop to consume toddy in the evening hours of the relevant day and also near the Pandicherry Boat Jetty when the first accused went there at about 9.00 p.m., there is no evidence to infer that it was the second accused who rescued the first accused from the place of occurrence and thereby harboured him. The only evidence relied on by the prosecution to prove the said fact is the evidence tendered by PW8. As noted, it has come out from the evidence of PW8 that the accused left the locality together at about 2.00 a.m. on the following day. We do not think that the said evidence alone is sufficient to hold that the second accused is guilty of the offence punishable under Section 212 of IPC. In order to attract Section 212 IPC, the accused should harbour or conceal a person with the intention of screening him from legal punishment whom he knows or has reason to believe to be the offender of a crime which has been committed. In the case on hand, there is nothing on record to indicate that the

second accused knew or had reason to believe that the first accused caused the death of Jayaprakash. The only evidence that was brought on record to substantiate the stand of the prosecution that the second accused knew or had reason to believe that the first accused caused the death of Jayaprakash is that when PW8 refused to accede to the request of the accused to drop them at Kavunkal, they offered him that they are willing to pay any amount for the said purpose. According to us, the said evidence is not sufficient to infer that the second accused knew or had reason to believe that the first accused committed an offence. Needless to say, the conviction of the second accused is liable to be interfered with.

27. The next aspect is as regards the sentence to be passed against the first accused for having committed the offence punishable under Section 304 Part I IPC. Having regard to the peculiar facts of this case, especially the social background of the parties involved as also the weapon used, according to us, the proportionate sentence to be awarded to the first accused for the offence punishable under Part I of

Section 304 IPC is rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/-.

28. In the result, Crl.Appeal No.1424 of 2018 is allowed in part and the conviction of the first accused under Section 302 IPC is altered to Part I of Section 304 IPC and he is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for three months. Crl.Appeal No.1287 of 2018 is allowed and the conviction of the second accused for the offence charged against him is set aside and he is acquitted.

The bail bond executed by the second accused pursuant to the interim order passed by this Court on 29.10.2018 in Crl.M.A.No.1 of 2018 in Crl.Appeal No.1287 of 2018 will stand cancelled.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
JOBIN SEBASTIAN, JUDGE.

Ds 28.03.2025

2025:KER:30363

APPENDIX OF CRL.A 1424/2018

PETITIONER ANNEXURES

ANNEXURE A1	**MEDICAL CERTIFICATE DATED 13/2/2019 ISSUED BY DR.R.PADMAKUMAR**