

**HIGH COURT OF KERALA****BENCH : P.B. Suresh Kumar and Johnson John, JJ.****Date of Decided : 19-03-2024**

Crl.Appeal No.94 of 2018

**CHENTHAMARA @ CHENTHAMARAKSHAN****Vs.****STATE OF KERALA****Legislation:**

Sections 302, 449, 450, 392, 394, and 201 of Indian Penal Code (IPC)

**Subject:**

Criminal appeal against conviction and sentencing in a murder and robbery case involving Chenthamarakshan, the sole accused, charged with the murder of Preethi and theft of her gold ornaments.

**Headnotes:**

**Conviction and Sentencing** – Chenthamarakshan convicted under Sections 302, 449, 450, 392, 394, and 201 IPC for murder and robbery of Preethi, his relative, and disposing of her body in Tamil Nadu using a Honda Activa scooter [Para 1].

**Evidence and Circumstances** – Lack of direct evidence; reliance on circumstantial evidence including recovery of victim's body, stolen items, and DNA evidence; bloodstains found in victim's bedroom; autopsy report confirming homicide; accused's debts and recovery of victim's ornaments from his house [Paras 2, 5, 8-10, 13, 22-24].

**Witness Testimonies and Recovery** – Testimonies from various witnesses including the victim's daughter, neighbors, and individuals who saw the accused on the day of the incident; recovery of the victim's body and stolen items based on accused's information [Paras 10-13, 20-21].

**Call Records and Vehicle Registration** – Analysis of accused's mobile phone location indicating presence near the victim's house and travel to Tamil Nadu; scooter used for disposing of the body registered in accused's wife's name [Paras 17-18].

**Legal Principles on Circumstantial Evidence** – Meeting the criteria for convicting based on circumstantial evidence; necessity of excluding other hypotheses and establishing a complete chain of events pointing to the accused's guilt [Para 25].

**Appeal Outcome** – Dismissal of appeal due to strong circumstantial evidence and corroboration by various sources confirming the accused's involvement in the crime [Para 26].

Referred Cases: Not explicitly mentioned in the provided text.

Representing Advocates:

For Appellant: Sri. R. Anil

For Respondent: Smt. Ambika Devi, Public Prosecutor

## **JUDGMENT**

**P.B.Suresh Kumar, J.** - The sole accused in S.C.No.878 of 2016 on the files of the Court of the Additional Sessions Judge - IV, Palakkad, is the appellant in this appeal. He stands convicted and sentenced for the offences punishable under Sections 302, 449, 450, 392, 394 and 201 of Indian Penal Code (IPC).

2. One Preethi was found missing from her house located at a place called 'Chithali' when her daughter returned from school at about 5 p.m. on 14.07.2016. As Preethi was neither found in the neighbouring houses nor in the houses of her relatives, a case was registered by Alathur Police on the information furnished by her daughter for missing person. The investigation in the case however revealed that the accused, who is none other than the son of the cousin of Preethi, murdered her in her bedroom by hitting her head on the wall and also by applying blunt force to her neck and committed robbery of the gold ornaments worn by her as also kept by her in the house. It was also revealed in the investigation that the accused thereafter caused disappearance of the evidence of the offence by discarding the dead body of Preethi in a bushy area on the side of Pollachi - Meenkara road in the State of Tamil Nadu using the Honda Activa Scooter bearing registration No.KL-49-C-7304 used by him. A final report was accordingly filed, after recovering the body, alleging commission of various offences including the offences for which he is convicted.

3. On the accused being committed to trial, the Court of Session framed charges against him to which he pleaded not guilty. Thereupon, the prosecution examined 36 witnesses as PW1 to 36 and proved through them 58 documents as Exts.P1 to P58. MOs 1 to 46 are the material objects in the case. Exts.D1 to D3 are a portion of the statement of PW1 and two other documents proved by the accused through the prosecution witnesses. When the incriminating circumstances were put to the accused in terms of the provisions contained in Section 313 of the Code of Criminal Procedure (the Code), he denied the same and pleaded innocence. The Court of Session, thereupon, on a consideration of the evidence on record, held that the

accused is guilty of the offences referred to above, convicted and sentenced him to undergo, among others, imprisonment for life. The accused is aggrieved by his conviction and sentence and hence this appeal.

4. Heard Sri.R.Anil, the learned counsel for the appellant as also Smt. Ambika Devi, the learned Public Prosecutor.

5. There is no direct evidence to prove the occurrence. The prosecution, therefore, attempted to prove the occurrence through circumstantial evidence and it was on a finding that the circumstances proved in the case would establish the guilt of the accused, that the Court of Session convicted the accused.

6. The learned counsel for the accused opened his arguments by submitting that the accused has already undergone the sentences imposed on him for all the offences except for the offence of murder, and the circumstances proved in the case do not, at any rate, establish conclusively that it was the accused who caused the death of Preethi. We are not referring here, the various arguments addressed by the learned counsel for the accused, as we propose to deal with the same elaborately in the latter part of this judgement. The learned Public Prosecutor, however, supported the impugned judgment submitting that the circumstances proved in the case are sufficient to hold conclusively that it was the accused who caused the death of Preethi.

7. The point that arises for consideration, therefore, is whether the circumstances proved in the case would establish beyond reasonable doubt that it was the accused who caused the death of Preethi.

8. Before delving into the point formulated, it is necessary to consider two fundamental aspects involved in this case namely, whether the dead body recovered was that of Preethi and whether the death of Preethi was a case of homicide. Ext.P51 is the report issued by the DNA Division of the Forensic Science Laboratory, after conducting DNA profiling of the DNA extracted from the blood samples of the daughter as also the mother of Preethi and the sternal bone marrow aspirated at the time of autopsy from the dead body recovered. In Ext.P51, it is certified that the sternal bone marrow from which the DNA was extracted is that of the mother of PW1, the daughter of Preethi and of the daughter of PW4, the mother of Preethi. In the absence of any material to discredit Ext.P51 report, according to us, it can be safely concluded that the dead body recovered was that of Preethi.

9. PW20 is the doctor who conducted the autopsy. The ante-mortem injuries noticed by PW20 at the time of autopsy as testified by her, are the following:

"1. Contusion 3.5x1x0.3cm on lower lip across midline at its inner aspect, incorporating a laceration 1x0.2x0.2cm in it.

2. Contusion 4x1x0.3cm on right side of upper lip at its inner aspect, inner end at midline 1.5cm from the mucocutaneous junction.

3. Contusion 1.5x0.5x0.2cm on right side of chin margin, 1 cm outer to midline.

4. Contusion 6x4x0.8cm on left side of back of head, inner end at midline at the level of occipital protuberance. Skull was intact. Brain was uniformly blood stained.

5. Contusion 5x4x1cm on left side of face below zygoma.

6. Contusion 20x16x2cm on right side of front and outer aspect of chest wall, upper end just below clavicle and inner end at midline.

Flap dissection of neck done under bloodless field showed-

7. Contusion 7x7x0.3cm on lower part of neck involving sterno cleido mastoid and strap muscles.

8. Contusion 8x5x0.5cm on lower part of front and left side of neck involving strap muscles and sterno cleido mastoid. Injury No.7 and 8 were situated in the same line. Hyoid bone, thyroid cartilage and other neck structures were intact."

It was testified by PW20 that the cause of death was due to head injury and blunt force sustained to the neck; that Injury Nos. 7 and 8 found on the neck could be caused on attempted manual strangulation and Injury No. 4 found on the back of the head can be caused by a forceful striking on the wall. It was testified by PW20 that approximate time since the death could be more than one week and less than one month. In reexamination, PW20 clarified that the injuries caused to the neck of the deceased are sufficient in the ordinary course of nature to cause death. There was no serious challenge to the evidence tendered by PW20, especially as regards the cause of death. In the light of the categorical evidence tendered by PW20, there cannot be any doubt to the fact that the death of Preethi was a homicide.

10. Having considered the two fundamental aspects, the moot question now is as to who caused the death of Preethi and committed robbery of her gold ornaments. PW1 is none other than the daughter of the deceased. PW1 testified that she left for school at about 7.45 a.m. on 14.07.2016; that her mother was very much at home when she left for school and that her mother was not found when she returned home. PW1 also testified that her father who was working abroad came down when her mother had gone missing and in the search conducted at home thereupon, it was revealed that the ornaments kept in the house including gold ornaments were missing. PW1 identified MOs 4 to 19 as the gold ornaments and MO20 series as the broken pieces of a rolled gold bangle which were found missing from the house. PW1 further testified that other than MOs 4 to 19, there were two other gold bangles also at the house among the missing ornaments. It was also testified by PW1 that she found a blood stain on the wall of the bedroom on the relevant day, which was absent when she left for school. PW2 is the husband of the deceased and PW4 is the mother of the deceased. Their evidence was almost on similar lines of the evidence tendered by PW1. They also identified MOs 4 to 19 gold ornaments as that of PW1 and the deceased and MO20 series as the broken pieces of the rolled gold bangle of the deceased. Nothing was brought out in the cross-examination of these witnesses to doubt the veracity of the evidence tendered by them.

11. PW3 is a lady residing in the adjacent neighbourhood of the house of the deceased. It was with PW3 that PW1 had enquired first, the whereabouts of her mother. PW3 testified that at about 10 a.m. on 14.07.2016, when she came near the gate of her house for drying the washed clothes, she saw a black scooty usually used by ladies in the car porch of the deceased and when she came to the same place in the afternoon to remove the dried clothes, the said vehicle was not there then. PW3 also testified that the deceased was not seen after 4 p.m. on that day and that she saw the accused and his wife coming to the house of the deceased later in the same vehicle. PW3 identified MO25 as the vehicle found in the porch of the deceased on 14.07.2016. In cross-examination, PW3 admitted that she did not disclose in her previous statement as also in the statement given by her under Section 164 of the Code that she saw the accused and his wife coming to the house of the deceased in the same two wheeler. Even though it was testified by PW3 in cross-examination that she disclosed to the police that she saw a black two wheeler in the porch of the deceased, PW35, the investigating officer in the case stated that PW3 did not inform the police that she saw a

black coloured vehicle in the porch of the deceased. The learned counsel for the accused contended that the evidence tendered by PW3 is not reliable in the light of the aforesaid material omissions in her previous statements. Even though we find that it is not safe to place reliance on the evidence tendered by PW3 that she saw the accused and his wife coming in the same vehicle to the house of the deceased after the deceased has gone missing, we do not find any reason to reject the evidence of PW3 that she saw a black two wheeler in the porch of the deceased on 14.07.2016, for the same, according to us, cannot be said to be contradictory to her previous statement merely for the reason that she did not disclose the colour of the vehicle in the statement given to the police, for the contradiction provided for under the proviso to Section 162 of the Code arises only when the statement in the evidence of the witness is so inconsistent or irreconcilable with the statement before the police and both cannot co-exist. That apart, it is unnecessary to consider the question whether the statements aforesaid are contradictory, as PW3 identified MO25 which is a black Activa scooter as the vehicle she had seen in the porch of the deceased on 14.07.2016.

12. PW10 is a painter by profession. PW10 testified that he knows the accused; that he was undertaking a painting work on 14.07.2016 in the house of one Mohanan located on the side of Chithali - Manjalloor road; that he saw the accused proceeding to Manjalloor direction in a black Activa scooter while he was washing his hands after lunch in front of a water tap and that there was a packed white sack in the front space of the scooter ridden by the accused then. PW10 also identified MO25 as the scooter ridden by the accused at the time when PW10 saw him carrying the white sack on 14.07.2016. PW11 is a person residing in Manjalloor, where the deceased was earlier residing. PW11 testified that he knows the accused, and that he saw the accused stopping his scooter in front of the house of the deceased on 14.07.2016 at about 10 a.m., while PW11 was proceeding to the bus stand. PW11 also identified MO25 as the scooter on which he found the accused on 14.7.2016. Nothing is brought out in the cross-examination of PWs 10 and 11 also to doubt the veracity of the evidence tendered by them. The argument advanced by the learned counsel for the accused as regards the evidence tendered by the said witnesses is that they are chance witnesses and that they had not disclosed to anyone else that they saw the accused on 14.07.2016. True, the said witnesses are chance witnesses, but according to us, merely because PWs 10 and 11 happened to see the accused by chance, the evidence tendered by them can be brushed aside



lightly or viewed with suspicion for, their presence at the relevant time has been well explained by them. Similarly, merely for the reason that they had not disclosed the information passed on to the police to anyone else prior to disclosing the same to the police, their evidence cannot be discarded.

13. PW13 is a person who is engaged in money lending business. PW13 testified that he knows the accused; that the accused came to his place of business for selling two gold bangles; that when PW13 informed the accused that he can only lend money on the security of gold ornaments, the accused pledged with PW13 the bangles brought; that on examination of the bangles, it was found that one among the bangles was rolled gold and that he, therefore, accepted only one of the bangles weighing 10 gms and gave Rs.20,000/- to the accused on the security of the pledged bangle. Ext.P11 is the register maintained by PW13 in his place of business and Ext.P11(a) is the entry in Ext.P11 register dated 14.07.2016 relating to the bangle pledged by the accused. PW13 has also testified that on 18.07.2016, the accused redeemed the pledge made by him on 14.07.2016. Ext.P11(b) is the entry relating to the redemption of the pledge. Nothing is brought out in the cross-examination to doubt the veracity of the evidence tendered by PW13 also.

14. PW21 is a relative of the accused. PW21 testified that she had extended financial help to the accused when he incurred a liability in connection with the housing loan availed by him. PW23 is the Manager of Alathur Rural Agricultural Development Bank. PW23 testified that she knows the accused as the member of Kuzhalmannam branch of the Bank and that he had availed two loans from the said bank. PW23 also testified that the accused committed default in repaying the instalments of the loans availed by him from the bank.

15. PW22 is the Secretary of a Milk Producer's Society and she testified that the brother of the accused is a member of the society who used to purchase cattle feed from the Society. PW22 identified MO33 as the sack in which the cattle feed is sold by the Society.

16. PW25 is the Scientific Assistant attached to District Crime Records Bureau, Thrissur who inspected the house of the deceased in connection with the crime. PW25 testified that on 15.07.2016, he collected samples of the bloodstains found on the wall of the bedroom as also on the surface of a fan kept in the bedroom and handed over the same to the investigating officer for scientific examination. PW25 identified MO22 as the fan from the surface of which he collected the bloodstain. PW25 also testified that later on

27.07.2016, he went to the place where the dead body was discarded and handed over to the investigating officer MO33 white sack. PW25 further testified that on 27.07.2016, he inspected MO25 black Honda Activa vehicle and even though he found a bloodstain on the front portion of its seat, he could not collect the sample of the same as sufficient quantity was not available.

17. PW32 is the Nodal Officer of a mobile service provider namely, Idea Cellular Services. PW32 testified that mobile number 9656168087 is one allotted to the accused and that he provided the call details of the said mobile number for the period from 14.04.2016 to 20.07.2016 to the investigating officer. Ext.P23 is the customer application form submitted by the accused for obtaining the said mobile connection and Ext.P24 is the ID proof submitted by the accused for the said purpose. Ext.P.22 is the call details of the mobile number. PW32 testified that on 14.07.2016, at 10:11:29, at 12:34:25 and at 13:01:23 hours, the said mobile number was under the location of Chithali Tower in the State of Kerala and at 14:30:15 and at 14:46:39 hours, the mobile number was under the Coimbatore Tower in the State of Tamil Nadu. In cross-examination, it was stated by PW32 that if the phone is used in border districts, at times, the tower particulars of the neighbouring State would also be shown in the call records. The learned counsel for the accused did not dispute the fact that the mobile number aforesaid is one allotted to the accused. The learned counsel however contended that in the light of the statement made by PW32 that if the phone is used in border districts, at times, the tower particulars of the neighbouring State would be shown in the call records, it cannot be inferred based on Ext.P22 call details that the accused had been to the State of Tamil Nadu in the afternoon of 14.07.2016. We are not impressed by this argument. Merely on account of the possibility suggested by PW32, it cannot be inferred that the tower locations shown in Ext.P22 are incorrect.

18. PW36 was the Joint Regional Transport Officer, Alathur during 2016 and he testified that the registration of MO25 scooter is in the name of the wife of the accused.

19. PW35 is the investigating officer in the case. PW35 testified that during interrogation, the accused informed him that he can show the place where the dead body was discarded and when the accused was taken to the place called Alankadavu in Divansapudur Village in Pollachi Taluk in the State of Tamil Nadu, he had shown a white plastic sack containing a decomposed



dead body in a bushy area where waste is dumped on the northern side of Pollachi - Meenkara road and the same was seized by him as per Ext.P4 mahazar. Ext.P4(a) is the information which led to the discovery of the place where the dead body was discarded. PW35 identified MO33 as the plastic sack in which the body was found kept. It was also testified by PW35 that on further interrogation, the accused informed him that he would show the place where ornaments were concealed and when he was taken to his own house thereupon as per his direction, he took out from a place behind his house a soiled plastic cover containing a white carry bag which was concealed under the ground, containing gold ornaments, and the same were seized as per Ext.P8 mahazar. MOs 4 to 19 were among the ornaments seized as per Ext.P8 mahazar. Ext.P8(a) is the information which led to the discovery of the place where the ornaments were concealed. It was also testified by PW35 that on further interrogation, the accused informed him that he would show the place where the broken pieces of a bangle were thrown and when he was taken to that place in the courtyard of the same house, he took out MO20 series broken pieces of the said bangle and the same were seized as per Ext.P9 mahazar. Ext.P9(a) is the information which led to the discovery of the place where the broken pieces of the bangle were concealed. It was also testified by PW35 that he seized MO25 scooter from the house of the deceased as per Ext.P10 mahazar.

20. PW6 is a witness to Ext.P4 recovery mahazar of the dead body. PW6 is a native of Tamil Nadu. PW6 corroborated the evidence tendered by the investigating officer as regards the discovery of the place where the dead body was discarded by the accused. The learned counsel for the accused argued persuasively that the evidence of PW6 would indicate that the police had prior knowledge as regards the place where the body was discarded and the same was not recovered as shown to the police by the accused. We do not find any merit in this argument. The relevant portion of the evidence tendered by PW6 in his chief examination in this regard reads thus:

“കൂട്ടിൽ നിൽക്കുന്ന പ്രതിയെ ഞാൻ ഇതിനുമുമ്പ് കണ്ടിട്ടുണ്ട്. വരന്തായി മരത്തിനും ആളാങ്കടവിനും ഇടയിലുള്ള ഒരു സ്ഥലത്ത് തമിഴ് നാട്ടിൽ വെച്ചാണ് ഞാൻ ടിയാനെ കണ്ടത്. ഒരു വർഷത്തിന് മുൻപാണ് ഞാൻ ടിയാനെ കണ്ടത്. പോലീസിന്റെ കൂടെ കൈകാണിച്ച് സംസാരിച്ച് നിൽക്കുന്നതാണ് ഞാൻ കണ്ടത്. കുഴികകുത്ത് ഒരു വെള്ളത്ത ചാക്ക് കെട്ടാണ് കാണിച്ചത്. വൈകീട്ട് 5.30 നും, 6.30 നും ഇടയിലുള്ള സമയത്തായിരുന്നു. ചാക്ക് കെട്ടിനുള്ളിൽ ഒരു മനുഷ്യന്റെ കാല് ഞാൻ കണ്ടിരുന്നു. പോലീസ് എനോട് കൈയെഴുത്ത് വാങ്ങിയിരുന്നു. ”

The relevant portion of the evidence tendered by PW6 in his cross-examination in this regard reads thus:

“ഞങ്ങൾ നടന്നു വരുന്നവർ പോലീസും ഒരാളും നിൽക്കുന്നത് കണ്ടു. നിങ്ങൾ പോകുന്നവർ പോലീസ് എന്താണ് എഴുതിക്കൊണ്ടിരുന്നത്(Q) പോലീസിന്റെ കൂടെ മറ്റിയിലുണ്ടായിരുന്ന ആള് കൈ കാണിച്ചു കൊണ്ടിരിക്കുന്നതാണ് കണ്ടത്. (A)”

The argument is that PW6 came to the scene only after the arrival of the police and he does not say who had shown the sack and to whom. It was also argued that the prosecution has failed to explain the identity of the person in mufti and what was he pointing out. True, the deposition would give such an impression if each sentence is read in isolation, but if the deposition is read and understood as a whole, it is clear that the body was shown to the police by the accused and the person who is referred to in the cross-examination as the person in mufti is none other than the accused. PW8 is another witness who corroborated the evidence tendered by the investigating officer that the dead body was recovered from a place within the limits of Divansapurur Village in Tamil Nadu. The evidence of PW8 was to the effect that he was in charge of the said village at the time when the body was recovered and when he proceeded to that place on receiving information, he saw a dead body in a sack. PW8 also testified that he noticed the presence of police also then at the place. It was argued by the learned counsel for the accused that PW8 does not mention the presence of the accused at the place or that he identified the accused in dock, even though he stated in his evidence that PW8 reached the place where the body was recovered at 6.30 p.m. We do not think that the said evidence tendered by PW8 would affect the case of the prosecution in any manner whatsoever, as it was specifically stated by PW6 in his evidence that he witnessed the recovery between 5.30 p.m. and 6.30 p.m.

21. Similarly, the evidence tendered by PW35 as regards the discovery of the place where the gold ornaments and pieces of the rolled gold bangle were concealed, has been corroborated by PW9 who is a witness to Exts.P8 and P9 mahazars. PW9 is also a witness to Ext.P10 mahazar in terms of which MO25 scooter was seized by the police. It was argued by the learned counsel for the accused that the evidence tendered by PW9 cannot be relied on since he is a person who has been summoned by the police in connection with another criminal misappropriation case. We do not find the argument even worthy of consideration, for it omits to take note of the fact that it is not mandatory that there shall be a witness to the recoveries made, based on disclosures made by the accused. It is long settled that if the evidence

tendered by the investigating officer is found reliable and acceptable, it is unnecessary to insist for independent evidence to prove such recoveries.

22. One of the main arguments advanced by the learned counsel for the accused concerning the evidence tendered by PW35 as regards the discovery of the places where the dead body was discarded and the ornaments were concealed was that no independent witnesses were present when the disclosure statements which led to the discoveries were made by the accused. According to the learned counsel, Exts.P4(a), P8(a) and P9(a) disclosures are therefore not admissible under Section 27 of the Indian Evidence Act. The learned counsel has relied on the decision of the Apex Court in **Subramanya v. State of Karnataka, 2022 SCC OnLine SC 1400** in support of the said argument. Section 27 of the Indian Evidence Act does not lay down that the statement made to a police officer should always be in the presence of an independent witness. In **Praveen Kumar v. State of Karnataka, (2003) 12 SCC 199**, it was explained by the Apex Court that in cases where the evidence led by the prosecution as to a fact depends solely on police witnesses, the courts seek corroboration as a matter of caution and not as a matter of rule and as such, in cases where the court is satisfied that the evidence of the police can be independently relied upon, there is no prohibition in law that the same cannot be accepted without independent corroboration. In other words, the mere absence of independent witnesses when the investigating officer recorded the statement of the accused and the article was recovered pursuant thereto, is not a ground to discard the evidence of the investigating officer [See also **State Govt. of NCT of Delhi v. Sunil, (2001) 1 SCC 652**]. That apart, it is also settled that once a recovery is proved by the prosecution, burden of proof on the defence to rebut the same, is heavy and cannot be discharged merely by pointing out procedural irregularities in making the recoveries, especially when the recovery is corroborated by direct or circumstantial evidence [See **Mukesh v. State (NCT of Delhi), AIR 2017 SC 2161**]. Be that as it may, Subramanya is a case where none of the prosecution witnesses deposed the exact statement said to have been made by the accused which ultimately led to the discovery of a fact attempted to be proved under Section 27 of the Indian Evidence Act. It is in the aforesaid background, the said case was decided and the judgment in the said case, in the circumstances, may not have any application to the facts of the present case, as the investigating officer has given categorical evidence as to the disclosures made by the accused which led to the discovery of the facts

proved in the case, especially in the light of the decisions of the Apex Court in Praveen Kumar, Sunil and Mukesh referred to above.

23. Ext.P52 is the report of the Forensic Science Laboratory. Ext.P52 recites that the brown stains collected from the fan installed in the bedroom and also from the wall of the house of the deceased which are referred to as items 1 and 2 in the said report are stains of blood, although the examined samples were insufficient to determine its origin and group.

24. From the evidence let in by the prosecution, according to us, the following circumstances are conclusively established:

(i) that Preethi was alone at her house after PW1, her daughter left for school at about 7.45 a.m. on 14.07.2016;

(ii) that when PW1 returned from the school in the evening of 14.7.2016, she found Preethi missing and after two days, it was realised that the gold ornaments including two gold bangles kept in the house were also missing;

(iii) that PW1 is the last person who saw Preethi when she left for school on 14.07.2016 and no one saw her thereafter.

(iv) that the accused had debts and he was therefore in need of money;

(v) that PW3 saw MO25 scooter in the porch of the deceased at about 10 a.m. on 14.07.2016;

(vi) that PW10 saw the accused proceeding to Manjalloor direction in MO25 scooter with a white packed sack while he was washing his hands after lunch on 14.07.2016;

(vii) that MO25 is a vehicle registered in the name of the wife of the accused;

(viii) that PW11 saw the accused in front of the house of the deceased in MO25 scooter at about 10 a.m. on 14.07.2016;

(ix) that there was blood stain on the wall of the bedroom and also on the surface of the fan installed in the bedroom of the house of the deceased;

(x) that there was a bloodstain on MO25 scooter when it was inspected by PW25 on its recovery from the house of the accused;

(xi) that the white sack in which the body of the deceased was found is a sack in which cattle feed was sold by the Milk Producers Co-operative Society of

which PW22 was the Secretary, and from where the brother of the accused used to purchase cattle feed;

(xii) that the accused had pledged a gold bangle with PW13 on 14.07.2016 and borrowed from him on the security of the said bangle a sum of Rs.20,000/-;

(xiii) that Ext.P22 call details of the mobile phone of the accused shows that the accused was very much present in the neighbourhood of the house of the deceased in the forenoon of 14.07.2016 and that he had been to the State of Tamil Nadu in the afternoon of 14.07.2016;

(xiv) that the body of the deceased was recovered based on the information furnished by the accused. There is no explanation from the accused as to how he knew the place where the body of the deceased was discarded;

(xv) that the ante-mortem injuries found on the body of Preethi includes a laceration capable of producing blood;

(xvi) that the approximate time since death was more than one week and less than one month of the autopsy; and

(xvii) that MOs 4 to 19 gold ornaments and MO 20 series broken pieces of the rolled gold bangle of the deceased were recovered based on the information furnished by the accused. There was no explanation from the accused as to how he knew the places where MOs 4 to 19 gold ornaments and MO20 series broken pieces of rolled gold bangle were concealed.

25. It is trite that the following conditions must be fulfilled in order to hold that an accused in a case on circumstantial evidence is guilty of the offence for which he is charged:

(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.

As noted, it was established by the prosecution that the ornaments of the deceased and her daughter kept by them in their house were recovered from the house of the accused on the basis of the information furnished by the accused, and the accused has not offered any explanation as regards his knowledge of the place of concealment of the said ornaments. Section 114 of the Indian Evidence Act enables the court to presume that a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In this case, as noted, the accused has not accounted for the possession of the ornaments of the deceased and her daughter which were recovered from his house. As such, in the light of the provision contained in Section 114 of the Indian Evidence Act, it can be safely concluded that it was the accused who had stolen the ornaments of the deceased and her daughter which were kept in their house. The larger question, however, is whether it can be concluded that it was the accused who caused the death of the victim merely for the reason that her ornaments were recovered from the accused. In **Raj Kumar v. State (NCT of Delhi), (2017) 11 SCC 160**, the Apex Court held that even with the aid of the presumption under Section 114 of the Evidence Act, the charge of murder cannot be brought home, unless there is some evidence to show that the theft/robbery and the murder occurred at the same time, i.e., in the course of the same transaction. The subsisting question is whether the circumstances established in the case on hand are sufficient to hold that the theft/robbery and the murder took place in the same transaction. According to us, the circumstances established in this case, especially circumstances (iii), (v), (vi), (ix), (x), (xvi) and (xvii) would establish beyond doubt that the robbery and murder took place in the very same transaction. If that be so, the finding of the Court of Session that the accused is guilty of the offences punishable under Sections 302, 449, 450, 392, 394 and 201 IPC, is in order.

26. We shall now refer to some of the other arguments raised by the learned counsel for the accused which we have not dealt with hitherto. One of the arguments was that the prosecution has not proved satisfactorily, the motive for the crime. True, what is proved in the case is only that the accused who



was in debt, needed money, and the same may not justify a crime of the instant nature. According to us, the case of the prosecution cannot be rejected on that sole ground, for, though motive assumes importance in a case on circumstantial evidence, failure on the part of the prosecution to establish the motive would not result in the rejection of the case of the prosecution, when there is other evidence to establish that the accused is guilty of the offences alleged. Another argument advanced by the learned counsel is that the place of occurrence sought to be established by the prosecution is the bedroom of the deceased, solely based on the recovery of bloodstains which have not been established to be as that of the deceased. True, the bloodstains found in the bedroom of the deceased have not been established as that of the deceased. But according to us, merely for the said reason, the case of the prosecution as regards the place of occurrence cannot be rejected, for there is other convincing evidence which establishes that it was the accused who caused the death of the victim at her house.

In the circumstances, there is no merit in the appeal and the same is dismissed.

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