

Madhu vs State Of Kerala on 13 January, 2012

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Bench: Jagdish Singh Khehar, Asok Kumar Ganguly

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"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.522 OF 2006

Madhu

.... Appellant

Versus

State of Kerala

.... Respondent

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. The appellant herein, Madhu Kalikutty Panicker (hereinafter referred to as "Madhu") was charged along with Sibi Bhaskaran (hereinafter referred to as "Sibi") for offences punishable under Section 302 and 392 read with Section 34 of the Indian Penal Code, for having robbed Padmini Devi alias Omana of her gold ornaments and thereafter having murdered her on 8.5.1998 at her residence, i.e., Kalathil House situated in Ward No.IV of Veliyanad Village. Both Madhu (accused no.1) and Sibi (accused no.2) were also residing in the neighbourhood of the deceased in the same ward and village.

2. The Sessions Judge, Alappuzha convicted the accused and sentenced them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.25,000/- under Section 392 of the Indian Penal Code. The accused were sentenced to imprisonment for life under Section 302 of the Indian Penal Code. The Sessions Judge directed that the aforesaid sentences would be suffered successively, i.e., one after the other. In case of default of payment of fine, the accused were to undergo further rigorous imprisonment for a period of three years. The Sessions Judge also directed that the accused would be entitled to set off equivalent to the period of their detention during the course of trial, under Section 428 of the Criminal Procedure Code.

3. On appeal, the High Court of Kerala maintained the conviction of the two accused. On the question of sentence, the High Court modified the order passed by the Sessions Judge to the extent that the sentences would run concurrently. Subject to the aforesaid modification, even the sentences awarded by the Sessions Court were maintained.

4. The conviction of the accused at the hands of the Sessions Judge as also the High Court was based on circumstantial evidence. Principally, the conviction was ordered as a consequence of recovery of ornaments worn by the deceased, pursuant to the information furnished by the accused. Based on the aforesaid recovery, the High Court, relying on Section 114 of the Indian Evidence Act inferred that the accused had committed the murder of Padmini Devi, and thereupon, robbed her off the ornaments worn by her. The only other material evidence taken into consideration by the courts below, to return the conviction of the appellant herein (as also his co-accused Sibi) was the factum of their having been sighted close to the place of occurrence at or around the time of occurrence.

5. The care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt. During the course of deliberations of the present controversy, we shall endeavour to evaluate the worthiness of circumstantial evidence produced by the prosecution to prove the guilt of the accused. But more importantly, our endeavour would be to evaluate the admissibility of the statements made by the accused to the police, during the course of their detention by the police, resulting in the discovery of the gold ornaments, belonging to Padmini Devi, after having committed her murder. This piece of evidence has been

relied upon to connect the accused with the crime.

6. The prosecution case as is revealed from the charge-sheet, notices that the accused with the deliberate intention of committing the murder of Padmini Devi with the motive of robbing her of the ornaments worn by her, proceeded to Kalathil House where the deceased was residing. Padmini Devi was found alone, sitting on the ghat (place leading into water) steps leading to the paddy field, washing utensils. The ghat was situated at about 3 meters (2 meters and 75 cms.) from the last door step of the kitchen's eastern door of Padmini Devi's house (Kalathil House). It is alleged that Madhu - accused no.1, caught hold of the plated hair and neck of Padmini Devi and Sibi-accused no.2, held her by her feet, and the two together forcibly dragged her into the water. Thereupon, they suffocated her. The act of drowning of Padmini Devi is alleged to have been committed by the accused at a place 29 meters from the south-east of the steps of the ghat. The accused are stated to have dragged Padmini Devi to the spot from where her body was eventually recovered, at a distance of 7 meters north- west of the foundation of the Snake God Shrine, which is to the south of the paddy field in question. Madhu-accused no.1, is alleged to have removed six gold bangles worn by Padmini Devi (on her left arm), whereas, Sibi-accused no.2, is alleged to have removed a gold chain worn by Padmini Devi (around her neck). The accused were thus alleged to have committed the murder of Padmini Devi, and the theft of her ornaments jointly.

7. The son of the deceased Asuthosh PW3 is stated to have received a phone call from his sister Ambily PW4 at 9.45 p.m. on 8.5.1998. Since Ashutosh's sister Ambily informed him that she would like to speak to her mother Padmini Devi, Ashutosh PW3 who was sleeping at the time when the call was received, got up to call his mother. He found his mother missing. He accordingly, approached his relations and neighbours. A joint search was carried out. The husband of the deceased, i.e., Ayyappa Kurup PW2 who, at that point of time, was attending to his night duty in the Telephone Exchange at Changanacherry was summoned. Ayyappa Kurup PW2 reached Kalathil House at around 11.30 p.m. The body of the deceased was found at about 11.45 p.m., from under the water in the field on the eastern side of Kalathil House. Ayyappa Kurup PW2 asked Purushottama Kurup PW1 to make a complaint to the police. This decision was in fact, that the death of Padmini Devi was shrouded in suspicious circumstances. The aforesaid suspicion emerged on account of absence of her golden necklace (worn by the deceased on her neck), as also, six bangles (worn by the deceased around her left arm) when her body was recovered. Accordingly, Purushothama Kurup PW1 reported the matter to the police, disclosing the aforesaid factual position on the following morning i.e. on 9.5.1998 at 8.30 a.m..

8. On the registration of the FIR, PJ Thomas PW21, Circle Inspector of Police, reached the place of occurrence, and prepared the inquest report (Exhibit P-3). As per the inquest report. the deceased Padmini Devi alias Omana was aged 47 years. She was found by Karthikeyan Nair PW16, a neighbour and a resident of Thundiyl House in Ward No.IV, Veliyanad Village at 11.45 p.m. from the paddy field on the eastern side of his house. As per the inquest report, Padmini Devi was last seen alive at her residence by her son Aushutosh at 9.15 p.m. on 8.5.1998. As per the inquest report, apart from the dress worn by her she was wearing a gold chain around her neck of "thara" fashion weighing about 5-1/2 sovereigns, besides 4-5 golden bangles in her left hand and golden earrings in her ears, when Aushutosh saw her for the last time. The inquest report further depicts, that blood

and water was oozing out from her nostrils on both sides, and her tongue was protruding out by = inch, with the mouth slightly open. Water weeds were found sticking to her hair. Ears had earrings of "claver" design. The stomach was found to be slightly bloated. The inquest report records, that at a distance of 2 meter 27 cm. of the first foot-step of the kitchen door, there is a ghat (place leading into water) with three steps. The lower step of the ghat is immersed in water. At a distance of 50 cms., from the lowest foot- step the water is 75 cms. deep. The spot in the field from where the dead body of Padmini Devi was recovered, was 29 meters from the lowest foot-step. The depth of the water at the place from where the dead body was recovered is stated to be 82 cms. deep (32.28 inches, i.e., about 3 feet). The inquest report also noted, that ornaments worn around the neck and in the left arm by Padmini Devi were missing. According to the statement of Aushutosh PW3, his mother must have gone to the ghat, fallen into the water and somehow died. Yet, consequent upon the discovery of the missing golden ornaments, those present at the spot at the time of preparation of the inquest report, expressed doubts about the death of Padmini Devi. Accordingly, even though at Serial no.XI of the inquest report, it stands recorded that Padmini Devi alias Omana had died due to drowning, at Serial no.XVI it was mentioned that since the ornaments worn by her were missing, the persons present had unanimously raised a doubt about the cause of her death.

9. The contents of the First Information Report, as also, the Inquest Report constituted the first factual depiction of an occurrence. These are of utmost importance. The evidence produced by the prosecution during the course of trial, will accordingly have to be evaluated along with the aforesaid reports conjointly to substantiate the credibility of the charges levelled against the accused. During the course of hearing, some salient facts which constituted the foundation for establishing the prosecution version emerged. The first and the foremost in the sequence of events, is the fact that Padmini Devi is alleged to have gone to the steps of the ghat after having taken supper, for washing utensils. The second important feature of the prosecution story is the absence of a gold necklace from around the neck of Padmini Devi, and six gold bangles worn by her on her left arm. Gold earrings worn by the deceased Padmini Devi were found intact on her ears. The third facet is the factum of the state of body of deceased Padmini Devi. The prosecution version is that Padmini Devi was first smothered and thereafter drowned. Thereby inferring murder, as against death by accidental drowning. The fourth component of the prosecution case was the presence of Madhu-accused no.1 and Sibi-accused no.2 in the vicinity of the place of occurrence at or around the time of occurrence on the fateful day i.e., on 8.5.1998. The final and the clinching basis for establishing the guilt of the accused were the confessional statements made by Madhu-accused no.1, i.e., the appellant herein, on 13.5.1998 (Exhibit P-10) to P.J. Thomas PW21, Circle Inspector of Police that he had wrapped six gold bangles belonging to Padmini Devi, in an old plastic paper, and had hidden them under the earth near the field on the southern side of his house. He offered that if he was taken to his house, he could produce the bangles. Likewise, is the confessional statement of Sibi- accused no.2 (Exhibit P-9) recorded on 13.5.1998 by PJ Thomas PW21, Circle Inspector of Police, that he had wrapped the gold chain of Padmini Devi, in a plastic paper, and had kept the same inside a "chadjan leaf" of a coconut tree, standing on the eastern side of his house. He further stated, that he could show the coconut tree and produce the chain. Consequent upon the aforesaid confessional statements, (Exhibits P-10 and P-9 respectively), the police recovered the gold chain as also the six gold bangles on 13.5.1998 at the instance of the accused. These ornaments came to be identified as the necklace and bangles worn by the deceased Padmini Devi.

10. The evidence produced by the prosecution also falls in different compartments. One set of witnesses were produced to establish the search conducted for the recovery of the body of the deceased Padmini Devi on 8.5.1998. The same set of witnesses deposed about the presence of utensils on the steps of the ghat. The second set of witnesses was produced by the prosecution to establish the presence of Madhu-accused no.1 and Sibi-accused no.2, near the place of occurrence, at or around the time of occurrence on the fateful day i.e., on 8.5.1998. The third set of witnesses deposed about the recovery of the missing gold ornaments, at the instance of the accused. Besides the aforesaid three sets of witnesses, the prosecution examined Dr.Radhakrishnan, Principal, Medical College, Alappuzha as PW20. Dr.Radhakrishnan had conducted the post mortem examination of the body of the deceased. The only other witness whose statement was recorded was PJ Thomas PW21, the then Circle Inspector of Police, whose statement was recorded to show the course and process of investigation.

11. Since the prosecution endeavoured to establish the crime on the basis of circumstantial evidence, it shall be necessary for us to record a bird's eye view of the statements of witnesses produced by the prosecution. First and foremost the prosecution produced Purushothama Kurup as PW1. Purushothama Kurup, deposed that he had recorded the First Information Report. He also asserted, that he had called the husband of the deceased Ayyappa Kurup (PW2) on telephone, to inform him that Padmini Devi was missing. Purushothama Kurup PW1 also deposed, that on being informed that Padmini Devi was missing, he had reached the house of the deceased and participated in her search. PW1 in his cross-examination deposed, that he had seen utensils, some of which were washed, and some were unwashed, at the upper step leading to the field, even though it was acknowledged, that he had not made any statement to the aforesaid effect to the police. Purushothama Kurup PW1 in his deposition also narrated the fact, that a gold chain of "thara" fashion weighing about 5-1/2 sovereigns and six gold bangles were missing when the dead body of Padmini Devi was recovered. In his cross-examination he affirmed that he had made the aforesaid assertion, on the basis of the statement made by the deceased's husband Ayyappa Kurup (PW2), after the dead body of the deceased was recovered.

The statement of the husband of the deceased Ayyappa Kurup (PW2) recorded before the Sessions Court reveals, that both the accused Madhu and Sibi were known to him as they were his neighbours. He affirmed that on 13.5.1998, P.J. Thomas PW21, Circle Inspector of Police, brought the accused to his residence at about 6 p.m. The police party showed him six gold bangles, five of which were hand-cut whereas one was machine made. The police also showed him the recovered gold necklace. Ayyappa Kurup PW2 identified the recovered gold ornaments, as the ones which were worn by the deceased Padmini Devi around her neck and left arm. PW2 did not depose about the gold earrings worn by the deceased Padmini Devi, which were found on her ears at the time of recovery of her dead body. Ayyappa Kurup asserted during the course of his cross examination, that he had seen the utensils at the ghat, and that, the same had been taken and restored to the house, and were available at his residence. Aushutosh, son of the deceased Padmini Devi was examined as PW3. He asserted, that the accused Madhu and Sibi were known to him. He confirmed that utensils were found lying on the eastern ghat when the search for his mother Padmini Devi was carried out. Like his father, he also identified the recovered ornaments on 13.5.1998, when the police party produced the same along with the accused at their residence.

Ambily, the daughter of the deceased Padmini Devi deposed as PW4. She confirmed having spoken to her brother over the telephone, whereupon, her brother Aushuthosh PW3 who had been sleeping, went out in search of his mother Padmini Devi, and found her missing. PW4 asserted that she had reached her parents house, after she had received a call informing her that her mother was missing. She also asserted that as usual, her mother had gone to wash utensils at the field. She also deposed that her mother's gold chain and six bangles were missing when her dead body was recovered.

Vijayalakshmi was produced by the prosecution as PW5. Vijayalakshmi deposed that the deceased Padmini Devi, as also, both the accused Madhu and Sibi were known to her, as they were residing in her neighbourhood. Vijayalakshmi had joined the search party when Padmini Devi was found missing. In her statement she deposed that she had gone to the ghat on the fateful day, where she had seen two/three utensils. She asserted that the utensils were lying on the steps of the ghat. She further asserted that some of the utensils were washed while some were still unwashed. She asserted that the deceased was her aunt, and that, the golden necklace and the golden bangles worn by her aunt were missing when her body was recovered. She however acknowledged, that her aunt was still wearing the golden earrings when her body was recovered. It would be relevant to indicate here, that all the aforesaid witnesses (PW1 to PW5) were primarily associated with the search and recovery of the body of deceased Padmini Devi as also, to support the prosecution version that Padmini Devi had gone out of the house to wash utensils at the ghat, on the fateful day. All these witnesses also deposed about the missing gold ornaments, namely, a gold chain and six gold bangles.

12. The next set of witnesses produced by the prosecution was to establish the presence of accused Madhu and Sibi close to the scene of occurrence at or around the time of occurrence on 8.5.1998, as well as, matters associated therewith.

The first witness produced for the aforesaid purpose was Kamalama PW6. Kamalama in her deposition asserted, that the accused Madhu and Sibi had come to her residence at about 8.30 p.m. on 8.5.1998 as it was raining heavily at that time. She asserted that she had served two plantains each to the accused. As per the statement of Kamalama PW6, the accused had come to her house to borrow an umbrella. In her statement she also deposed, that both the accused were intoxicated and were smelling of liquor. She stated that the accused left her house when the rain subsided.

Madhu, a labourer appeared as PW7. Relevant part of the statement of Madhu PW7 needs to be extracted herein. The same is therefore reproduced hereunder:

"I swam from the eastern bank of the boat jetty to its northern bank. It should have been 9.30 p.m. then. I swam by taking out by shirt and keeping it aloft. A person was seen walking from the Western side and turning to the North. I identified him as A-2 in the light of my torch. I asked whether he is Sibi. Saying that he is Sibi, he walked towards South. While I walked away and reached on the West of the shutter of Kuttachi's chira, a person was seen coming flashing torch-light towards East. On reaching near me, I identified him as A-1. I asked him whether he was swimming. A-1 told me that it is so. He also added that he is a little intoxicated and that he swam and got into the Karumuppathu ghat. A-1 was wearing a kyli mundu (dhoti). The dhoti

was wet. There was a country-boat in the Karumuppathu ghat. A-1 told me that if I am to proceed to that jetty, I can cross to the other side. Witness identified both the accused persons. A-1 proceeded towards East and I went to my house."

Besides the aforesaid, Madhu PW7 also deposed about the recovery of gold ornaments at the instance of accused Madhu and Sibi. He asserted that a golden necklace was recovered from a palm tree at the instance of Sibi-accused no.2, from the compound of his residence, whereas, six gold bangles were recovered from under the earth at the instance of Madhu-accused no.1 from the compound of his residence. In his cross examination he asserted that the death of the deceased Padmini Devi was not natural as the gold ornaments worn by her were missing. It was however clarified by him, that the fact that ornaments worn by the deceased Padmini Devi were missing came to his notice on account of an assertion made to the aforesaid effect by Ayyappa Kurup PW2. His statement relating to his having seen the accused close to the place of occurrence on 8.5.1998, emerges from his cross-examination which is being extracted hereunder:

"When it was found that ornaments were missing, it was suspected that it should have been a case of murder. I realized that the ornaments were missing when PW.2 told about it. I did not tell them that I had seen the accused persons (on 8.5.1998). I was summoned to appear before the Police Station on 12.5.1998 at 8.00 a.m. A constable came to my house on the 11 th and asked me to come to the Police Station.... I am speaking about this for the first time in Court. Raju is staying just near my house. I swam ashore. At that time, it should have been 9.30 p.m. which fact I did not tell the Police. I had also not told the Police that I had removed my dress and kept it aloft while swimming.

Q. Are you not speaking about this also for the first time in Court?

A. Yes.

The person whom I saw first, proceeded to the West and then turned to the South. I had not stated during the chief-examination that he turned to the North."

It is also important to extract herein the cross-examination of Madhu PW7 on his incidental presence, which led to his having sighted the accused Madhu and Sibi, close to the place of occurrence:

"To swam ashore some 4/5 minutes are enough. Until I swam ashore and saw the 2nd accused I did not meet anybody else. I was walking by flashing the torch-light. When I got down after the turning, and flashed the torch, I identified the person. The turning is on the East of the Shutter, which is on the East of Kuttachi Chira, and on the West of the Narayanan Achari. A-2 came from the West and turned to the South. I saw him come 15 feet away. I had seen very clearly. I did not notice the colour of the dress of A-2. He was wearing a kyli mundu (dhoti), is what I remember. I did not care to notice whether his dress was wet. I asked him whether he is Sibi. He was

walking.

Q. Did he try to run away?

A. No. He walked speedily.

I had not told the Police that he had walked speedily. I had not told the Police how I was able to identify Sibi. There are inmates in the house of Narayanan Achari. Sibi did not stand there talking to me. After answering me that he is Sibi, he proceeded towards South. Within two/three minutes I saw A-1. I saw A-1, some 20 feet on the West of the shutter. Both had not come there together. One was proceeding from behind and the other was walking in front. I saw A-1 some 30 feet away from the place where I saw A-2. My dress was not wet. I was walking along by wearing dhoti and shirt. A-1 asked me whether I was swimming. I told I was swimming. It seems that the dhoti worn by A-1 was of blue colour. I had not told the Police about the colour of that dhoti."

It would be relevant to mention that Madhu PW7 also deposed the presence of utensils on the steps of the ghat. In his statement he affirmed, that he had seen one utensil on the upper step and one utensil on the lower step of the ghat. In response to cross-examination he stated, that he had not made a statement in connection with the utensils on the ghat, because he was not questioned in connection therewith by the police. His presence, at the time of recovery of the gold ornaments at the instance of accused Madhu and Sibi, is also relevant. The same is also accordingly being extracted hereunder:

"I went for work on 13th at 7.30 a.m. In the afternoon, I reached my house at about 2.30 p.m. I had gone back home on coming to learn that the accused will be brought there around 4.00 p.m. I do not remember who told me so. A lot of people had gone to the Jetty. Seeing this, I too proceeded there.

Q. Did the people know that the accused will be brought there and there will be recovery or seizure of ornaments?

A. I do not know about it.

I had not told the Police that as people were seen proceeding to the Jetty, I too proceeded there. I had told the Police that I heard it said by Sibi to the Police that the ornaments are hidden under the cadjan leaf."

Madhu PW7 also deposed that he remained present when the recovery of the gold necklace was made at the behest of Sibi-accused no.2, and also thereafter, when the recovery of six gold bangles were made at the behest of Madhu- accused no.1.

Rajankutty was produced by the prosecution as PW8. He deposed that he was the Manager of the Toddy Shop from where Madhu-accused no.1 and Sibi- accused no.2, had purchased one bottle of toddy each at 8.00 p.m. on the fateful day, i.e., 8.5.1998.

Sasseendran Nair was produced by the prosecution as PW9. He deposed that he had seen the accused close to the place of occurrence on the fateful day. He also deposed that he had left the house of Chandrasekhara Kurup PW10 at 9 p.m. on 8.5.1998, when the electricity was restored after the power cut. He stated that when he reached near the bridge on the western side of the house of Ayyappa Kurup PW2, he had seen a person ascending the bridge, and then proceeding to the eastern bank. He had also seen another person following him and going towards the east. The first person he had noticed was Sibi-accused no.2, whereas the person who followed Sibi was Madhu-accused no.1. The cross-examination of PW9, in connection with his having sighted the accused is significant, relevant extract thereof is accordingly reproduced hereunder:

"I first met Sibi. I saw Sibi standing under the bridge. Each of the accused persons were seen crossing the bridge from the Western bank to the Eastern bank. I had told the Police that I saw (these persons) crossing the bridge from Western bank to the Eastern bank.

Q. Why is it not been noted by the Police?

A. May be, the Police had not noted it down.

I have not stated that one person alone was seen getting down to the Eastern bank. I had not stated that then one person crossed over the bridge from Western bank and descended on the Eastern bank. Marked Ext.D-3. They were seen turning towards North.

Q. Did you notice any one standing there?

A. I did not see.

I had told the Police that a person along with another came there and turned to the North. What I had seen was both the accused going together towards the North. I had

not noted one person standing there and turning to the North along with another. I had not told the Police what was the dress worn by the accused persons or the colour of their dress. I have not told anybody else about my having met the accused persons there. I am speaking about it for the first time in Court. I had told the Police about this. Q. I put it to you that you had not noticed the accused persons on that day and that due to influence brought to bear upon by Chandrasekhara Kurup, you are speaking about what you had not Personally seen?

A. I had only spoken the truth."

13. The next set of witnesses deposed mainly on the subject of recovery and identification of the stolen gold ornaments and matters associated therewith. Chandrasekhara Kurup appeared before the Sessions Court as PW10. The deceased Padmini Devi was described by him as the wife of his younger brother Ayyappa Kurup PW2. Chandrasekhara Kurup PW10 deposed about the presence of utensils lying on the steps of the ghat. He also deposed, that he had not only participated in the search but had also gathered people to find Padmini Devi. He asserted that he was present when the dead body of Padmini Devi was found. He confirmed the presence of earrings on the person of Padmini Devi. He also deposed about the missing gold chain and gold bangles. He asserted that he could identify the gold chain, as also, the gold bangles if they were shown to him. Accordingly, he identified the gold chain and bangles recovered at the instance of the accused, during the course of his deposition. Neelakantan Nair appeared as PW11. His deposition was primarily in respect of recovery of the gold chain and the golden bangles at the instance of accused Madhu and Sibi. His presence at the time of recovery of ornaments, as deposed during the course of his cross-examination, has an important bearing on the controversy, the same is accordingly being reproduced hereunder:

"On the afternoon of 13th, I learnt that the accused persons have been apprehended. I learnt it from the people in the locality. I learnt that the accused persons, who had murdered the teacher, have been arrested. In the morning itself, it was heard it said that the accused persons will be brought there for recovering the thondy articles. I had told the Police that on 13.05.1998 after my lunch at noon, when I was resting at my house, on coming to know that the Police are coming with the accused persons, who had murdered Omana Teacher, and that the stolen gold ornaments will be recovered, I came to the side of the Boat Jetty, well before 4.00 p.m. A big crowd had assembled at the boat jetty. It was widely known that the stolen booty of gold ornaments will be recovered. All those assembled there were knowing about this. The Police arrived around 4.15 p.m. along with the accused persons. There were two accused persons. The police took A-2, to A-2 house. I too followed them. By about 4.20 p.m. we reached the residence of A-2.... After leaving the residence of A-2, the police along with A-2 boarded the boat. It should have been 5.00 p.m. at that time. They proceeded from there towards West, to the house of A-1. They reached A-1's house, around 5.15 p.m. They got down in front of the house of A-1 in the boat. I had

walked from the house of A-2 to the residence of A-1. Police and A-1 at first reached the house of A-1. I heard the Police asking Madhu about the thondy articles. I have not given a statement to the Police that I had heard about this. Madhu dug up the spot with his own hands and took out the packet."

S. Uthaman appeared as PW12. At the relevant time he was the Village Officer of Veliyanad Village. He had prepared the site plan of the scene of occurrence on the directions of the Circle Inspector of Police, P.J. Thomas PW21. His statement is formal and needs no further elaboration.

Gopinathan was produced by the prosecution as PW13. He was produced to establish the recovery of gold chain at the instance of Sibi-accused no.2. In fact he was asked to climb the coconut tree pointed out by Sibi-accused no.2. He brought down the gold chain. His cross-examination on the instant issue is relevant to determine the validity of the confessional statements made by accused Madhu and Sibi (vide Exhibits P-10 and P-9 respectively). Relevant portion from the cross-examination of PW13 is being reproduced hereunder:

"Q. When did you come to know that the accused persons are coming to recover the gold ornaments?

A. I knew it at 4.45 p.m. On the 13th May, 1998, while I was sitting at my house, I learnt that the police party is coming along with accused persons. I had gone to Kumarangary Boat Jetty, coming to know that the accused persons are arriving. The police arrived there along with accused persons after 4.00 in the afternoon. They had come there after I reached there. A large crowd had gathered at the place. There was information available by noon that the police party is coming with the accused persons. I had not noticed the arrival of the Police with accused persons. I saw A-2 leading with the police party behind him."

Ramesh appeared before the Sessions Court as PW14. He was the goldsmith summoned by the investigating agency to examine the gold ornaments and to indicate the purity thereof as also the weight of the recovered ornaments. His deposition being formal needs no further elaboration.

14. The remaining witnesses from PW15 to PW19 made statements on different aspects of the matters. Some of them were formal witnesses. Chacko appeared before the Sessions Court as PW15. He was associated with the search of Padmini Devi. He affirmed that on the recovery of the body of Padmini Devi, Ayyappa Kurup PW2 had asserted that the gold chain around her neck, and the gold bangles on her left arm were missing. He also deposed, that he had seen utensils on the eastern ghat at the time of search. For the present controversy his statement in respect of recovery of gold ornaments for the purposes of determining the admissibility of the confessional statements made by accused Madhu and Sibi is relevant. A relevant extract of his statement is accordingly being reproduced hereunder:

"The accused were arrested at 2.30 p.m. on the 13th, was what I heard. After reaching the Block Jetty around 4.00 p.m. that day, the accused were taken by the Police to the

house of A-2. There was a large crowd to witness this. I too went there. After pointing out the coconut tree standing on the East of A-2's house, A-2 told the C.I. that the gold is deposited on the 3rd step. C.I. asked him to go up and bring the gold. A-2 said that he was unable to do as he was tired and feeling unwell. C.I. then asked those assembled there as to who will go up the tree and bring the gold. Gopinathan brought the ladder which was kept slanting at the house of A-2 and with the help of the ladder, went up and brought down by the Western side of the coconut tree, a green plastic packet and handed it over to C.I. It was seen that he was taking it out from the 3rd step. C.I. took out the gold chain and showed it all. Witness identified M.O. 1 chain. This itself is the Plastic cover. A goldsmith appraised the ornament to see whether it is real gold. He also gave the name of the fashion. He said it is 'Kattithara' fashion. A mahazar was prepared. I am a witness to the Mahazar. I have affixed my signature on Ext.P-5."

The statement of Chacko PW15 reiterates the factual position recorded in the statements of other witnesses including Gopinathan PW13 and Ramesh PW14. During the course of their cross-examination they acknowledged that they had been the part of search team. They confirmed that at the ghat he had seen utensils on the steps. They asserted in their cross-examination, that all the people in the locality had assembled in the courtyard of the house of Sibi- accused no.2 before the police arrived, as the police was expected to bring the accused to effect recovery of the stolen gold ornaments.

Karthikeyan Nair appeared before the Sessions Court as PW16. He was also a member of the search party associated for finding Padmini Devi. He reiterated the position in respect of the presence of the utensils at the bathing ghat. He confirmed that the utensils were still there when the police arrived at the scene. Sivan was produced by the prosecution as PW17. He and his nephew Saboo were part of search team. In fact they were summoned to search out Padmini Devi from the water in the paddy fields. He deposed, that when they found Padmini Devi from under the water in the paddy fields, she was already dead. He also deposed, that the gold chain and bangles of Padmini Devi were missing. In his statement he asserted that he did not know whether when the body of Padmini Devi was recovered, she had earrings. He also stated, that he had no information about the loss of any earrings. He acknowledged his presence at the time of preparation of the inquest report. He denied having noticed utensils at the ghat. He asserted that the depth of the water at the place from where the body of Padmini Devi was recovered was about 2-1/2 feet. He clarified that the depth of the water was upto his waist.

Baby C. George appeared as PW18. He is a formal witness.

Likewise K.D. Sivamony PW19, Sub Inspector of Police was also a formal witness who deposed in connection with the recording of the First Information Report, and its dispatch to the court of the Sub Divisional Magistrate, as also, the JFMC.

15. Dr. Radhakrishnan was examined as PW20. He conducted the post- mortem examination on the body of Padmini Devi on 9.5.1998 between 4 and 5 p.m. His deposition was in consonance with the

injuries depicted by him in the post mortem certificate dated 9.5.1998. He described the following injuries on the body of the deceased:

"INJURIES ANTEMORTEM

1. Contusion with minute superficial laceration on the mucosal part of lower lip corresponding to the right lateral incisor and canine teeth.
2. Linear abraded contusion on the whole of the right ear lobe just in front of the old ear lobule perforation.
3. Linear graze abrasions over an area 7x5 cm on the outer aspect of left leg its upper border being 13 cms below the knee placed obliquely outwards and upwards."

Besides the aforesaid his other findings were recorded as under:

"The soft tissue and cartilages of the neck and the hyoid bone were intact. The trachea and bronchi contained blood stained froth. A few particles of fine sand found sticking on to the inner aspect of trachea. The right and left lung weighed 515 and 485 gms respectively. Both lungs were congested and edematous and crepitus and their cut sections exuded copious blood stained frothy fluid. The valves and chambers of the heart were normal and the coronary arteries were patent. The stomach was full and contained 1.2 litre softened rice and vegetables in a watery fluid medium without any peculiar smell. The uterus measured 7.5x6x2.5 cms in size its os closed and cavity empty. The valva and vagina were intact. All the other internal organs of the abdomen were normal but congested. Sheaths of brain and brain matter were intact. Skeletal system did not show any injury. Blood viscera, vaginal swab were collected and preserved for laboratory examination. Diatom test done with the bone marrow and the sample of water from the alleged site of immersion of the body was negative. Opinion as to cause of death - Postmortem findings are consistent with death from drowning. This is the postmortem certificate issued by me which bears my signature and seal. Marked Ext.P7. The deceased died within a short time after the last meal. There is no signs of any sexual assault. Finger nails were bluish, shows died due to lack of oxygen in the blood. Injuries 1 & 2 could be due to the application of blunt force at that part of the body. Injury numbers 1 & 2 could be produced due to the attempt of smothering. Cardio-vascular system appeared normal. Keeping a person submerged in water forcibly need not produce any injury. Time required for death may vary. But death can occur within 2 to 3 minutes. There was no smell suggestive of poisoning in the stomach contents."

During the course of his cross-examination he asserted that injury nos.1 and 2 depicted by him in his examination-in-chief, could be due to attempted smothering. Even though he clarified by asserting that injury nos.1 and 2 are possible if a person falls and during the course of that fall the right side of the face comes in contact with a rough hard surface. It was also stated by him during his

cross-examination, that all the injuries suffered by the deceased Padmini Devi, were superficial in nature.

16. P.J. Thomas, Circle Inspector of Police, appeared as PW21 was the last witness to be examined by the prosecution. He deposed about the course of investigation carried out by him. His deposition in respect of the arrest of the Madhu-accused no.1 and Sibi-accused no.2, as also, the confessional statements made by them is relevant, and is accordingly being reproduced hereunder:

"On 13.05.1998 at 1.00 p.m. in the afternoon, Madhu (A-1) was arrested near at the Boat Jetty at Valadi. Same day at 1.30 p.m. Sibi (A-2) was arrested from near the Toddy shop at Valady. They were questioned lawfully and their statements were recorded. A-1 and A-2 admitted/confessed about the commission of crime. When A-2 Sibi was questioned, he said "The (gold) chain I have packed in an old plastic paper and have kept it hidden at the top of the coconut tree standing on the East of my residential house. If I am taken there, I shall point out the coconut tree where I had deposited the chain as well as the gold chain". Confession statement is marked as Ext.P9. On questioning A-1, he confessed : "Six bangles after having packed them in a plastic paper, I have kept hidden under the soil/ earth on the South of my residential house, adjoining the field. If I am taken there, I shall take them out and deliver it."

A-1's confession statement is marked as Ext.P10.... The confession statement from the accused persons was recorded in between 2.00 and 2.30 p.m. The statements were recorded separately. It was A-1's statement that was recorded first. It was recorded then and there. A-2's confession statement was recorded at about 2.45 p.m."

It is significant to notice, that the presence of utensils were not depicted in the inquest report. In consonance with his inquest report, when questioned about the presence of utensils at the place of occurrence, PW21 categorically asserted, that there were no utensils either at the ghat or at the steps to the paddy fields. On the issue of earrings on the person of the body of the deceased at the time of preparation of the inquest report his statement is of some interest, and is accordingly being reproduced hereunder:

"The ear-rings were removed from the ears of the dead body by the Policemen who were assisting me at the inquest. The thondy (material) objects seized in a case would be produced before the Court, the Court will direct those M.Os. to be kept in the Station after entering them in the Sentry Leaf Book; the ear-rings and M.O.3 series have not been entered in the Sentry Book. Q. When were the ear-rings handed back to the relatives? A. P.W.2 got back the ear-rings on 11.6.1998. He came to the Station and took them back. Until then these ear-rings were kept by the Writer to whom they were entrusted.

Q. Are there records to show that they were kept in the Station?

A. No records are there."

The prosecution closed its evidence after recording the statement of P.J. Thomas (PW21), Circle Inspector of Police.

17. The most significant issue in the present controversy is the veracity of the confessional statements made by the accused Madhu and Sibi before P.J. Thomas PW21, Circle Inspector of Police on 13.5.1998. It is evident that the aforesaid statements were made by the accused before a police officer while the accused were in custody of the police. Section 25 of the Indian Evidence Act postulates that a confession made by an accused to a police officer cannot be proved against him. Additionally, Section 26 of the Indian Evidence Act stipulates that a confession made by an accused while in police custody cannot be proved against him. It is evident from the factual position narrated hereinabove, that the statements made by the accused Madhu and Sibi were made to a police officer while the accused were in police custody. It is, therefore, apparent that in terms of the mandate of Sections 25 and 26 of the Indian Evidence Act, the said statements could not be used against accused Madhu and Sibi. But then, there is an exception to the rule provided for by Sections 25 and 26 aforesaid, under Section 27 of the Indian Evidence Act. Section 27 of the Indian Evidence Act is being extracted hereunder:

"27. How much of information received from accused may be proved - Provided that, when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

As an exception, Section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of Sections 25 and 26 of the Indian Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is limited "...as it relates distinctly to the fact thereby discovered....". The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. Discovery of facts itself, therefore, substantiates the truth of the confessional statement. And since it is truth that a court must endeavour to search, Section 27 aforesaid has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Indian Evidence Act.

18. We shall now endeavour to apply the exception postulated in Section 27 of the Indian Evidence Act, to the facts of the present controversy, in order to determine whether or not the confessional statements made by Madhu-accused no.1 vide Exhibit P-10, and Sibi-accused no.2 vide Exhibit P-9, can be proved against them in view of the exception stipulated in Section 27 of the Indian Evidence Act. As already noticed hereinabove, relevance of the confessional statements would depend on the discovery of facts based on the information supplied by the accused. If any fresh facts have been discovered on the basis of the confessional statement made by the accused, the same would be relevant. If not, the confessional statement cannot be proved against the accused, to the detriment of

the accused. We have extracted the relevant portion of the statement of P.J. Thomas PW21, Circle Inspector of Police hereinabove. It reveals that Madhu-accused no.1 was arrested on 13.5.1998 at 1 p.m. from near the boat-jetty at Valadi. On the same day, Sibi-accused no.2 was arrested from near a toddy shop at Valadi at 1.30 p.m. It is thereupon, that the confessional statements of accused Madhu and Sibi came to be recorded. In his cross- examination P.J. Thomas PW21 has acknowledged, that the confessional statements of the accused persons were recorded between 2 and 2.45 p.m. It was sought to be clarified, that the confessional statement of Madhu-accused no.1 was recorded first, and thereafter, the confessional statement of Sibi- accused no.2 came to be recorded. As against aforesaid, we would like to refer to the statements made by Madhu PW7, Neelakantan Nair PW11, Gopinathan PW13 and Chacko PW15. Madhu PW7, during the course of his cross- examination, stated that he had left for his work on 13.5.1998 at 7.30 a.m. He further stated that he returned back from his work and reached his residence at 2.30 p.m. In so far as his return from work is concerned, in his examination-in- chief he stated that he would ordinarily return back from work only around 9 p.m. at night. The reason for his return back early on 13.5.1998 was explained by stating, that he had come to know that the accused would be brought to their residences at around 4 p.m. for the recovery of the stolen gold articles. He also asserted, that just like him, a lot of people had gathered at the jetty to witness the recovery and seizure of the stolen ornaments. The statement of Madhu PW7 clearly establishes that he came to know that the police would effect recovery well before 2.30 p.m. Therefore, as an exception to his coming home from work late in the night, he had reached his residence at 2.30 p.m. Likewise, the statement of Neelakantan Nair PW11 reveals, that in the morning itself, on the date of arrest of the accused i.e., on 13.5.1998 he had heard, that the accused persons would be brought for recovery of the stolen articles. He further stated, that a large crowd had gathered to witness the recovery of the stolen articles, and that, he also witnessed the recovery of stolen articles. He reiterated, that just like him all those who were assembled there were aware that the police would bring the accused there for recovery of the stolen articles. Gopinathan PW13 acknowledged, that there was information available by "noon" that the police party would come along with the accused to recover the stolen articles. It is, therefore, that he had gone to witness the recovery of the stolen articles. Even Chacko PW15 while deposing before the Sessions Court asserted that a large crowd had gathered to witness the recovery of the stolen articles at the house of the accused. The statements of PW7, PW11, PW13 and PW15, narrated (and relevant portions extracted) hereinabove, clearly lead to the positive conclusion that the fact that the stolen articles would be recovered from the premises of the accused was known before the accused were brought to the recovery site. These witnesses, as also the crowd present, were aware of the said factual position at around "noon" (as per statement of Gopinath PW13) but definitely before 2.30 p.m. (as per the statement of Madhu-PW7). But according to PJ Thomas (PW21), the confessional statements were recorded between 2 and 2.45 p.m. The question to be determined is whether the confessional statements made by the accused (vide Exhibit P-9 and P-10) can be said to have led to the discovery of an unknown fact? The answer to the aforesaid query has to be in the negative, because the statements of PW7, PW11, PW13 and PW15 reveal that the factual position in respect of the recovery of the articles from the place from where the same were shown to have been eventually recovered, was known to the public at large by noon (and certainly before 2.30 p.m.) i.e., well before the confessional statements had been recorded. As per the deposition of P.J. Thomas (PW21), Circle Inspector of Police, "... A-2's confession statement was recorded at about 2.45 p.m....". Interestingly, the public had become aware of the recovery by "noon", whereas, Madhu-accused no.1 was arrested

at 1.00 p.m., and Sibi-accused no.2 was arrested at 1.30 p.m. and their confessional statements were recorded by the police after their arrest. In the background of the aforesaid factual position, it is not possible for us to conclude that the confessional statements made by Madhu-accused no.1 vide Exhibit P-10 and Sibi-accused no.2 vide Exhibit P-9, can be stated to have resulted in the discovery of any fresh facts. The factual position that recovery of stolen ornaments would be made by the police was a matter of common knowledge well before the confessional statements were made. The said statements recorded vide Exhibits P-9 and P-10 are inadmissible inspite of the mandate contained in Section 27 of the Indian Evidence Act for the simple reason, that they cannot be stated to have resulted in the discovery of some new fact. In the factual background of the present controversy, the gold ornaments which eventually came to be recovered by the police, allegedly at the instance of accused, may well have been planted by the police. On account of the fact that the confessional statements made by Madhu-accused no.1 and Sibi-accused no.2, which is the main linking factor in the circumstantial evidence of the prosecution version of the controversy, being inadmissible as the same cannot be proved against them, we are of the view that the prosecution's case stands fully demolished. In view of inadmissibility of evidence which was taken into consideration by the Trial Court, as well as, the High Court to implicate the accused with the commission of the offence alleged against them, shall have to be reconsidered on the basis of the remaining evidence.

19. The second significant conglomerate of evidence to link the accused to the crime in question, is their alleged presence at or around the place of occurrence. This evidence emerges from the statements made by PW6 to PW9. The prosecution, through these witnesses, have endeavoured to demonstrate the presence of the accused, in the vicinity of the place of occurrence, at around the time of occurrence. According to the prosecution the occurrence took place on 8.5.1998 at 9.20 p.m. According to the statement of Kamalama PW6, the accused came to her house and asked for an umbrella as it was raining heavily. She offered two plantains each to both the accused. The accused left her residence when the power was restored at 9 p.m., after the power cut. She further stated that both the accused were smelling of liquor and were under the influence of liquor. According to PW6, after leaving her house the accused turned left, i.e., towards the house of the deceased Padmini Devi. The statement of Kamalama PW6, to our mind, is wholly insignificant to connect the accused with the crime under reference. Madhu PW7 has given his version of having seen the accused close to the place of occurrence. But the statement of PW7 which has been extracted hereinabove is so unrealistic, that it is worthy of rejection without recording any reasons. It is strange that Madhu PW7 reached the embankment by swimming upto it since the last boat had already left. He claims to have kept his clothes afloat and above the water while he was swimming through the water. It is, therefore, that his clothes had remained dry. Even though, in his statement, he asserted that "...I identified him as A-2 in the light of my torch...". He subsequently stated that a person was seen coming, flashing a torchlight towards east, and that, he was identified by Madhu PW7 as Madhu-accused no.1. As per the said statement, the identification was made on the basis of the torch held in the hands of Madhu-accused no.1. The aforesaid contradiction is hard to digest. How PW7 retained the torch in his hand in a dry condition, while swimming, has not been explained. If he was holding his torch in one hand and clothes in the other, it is difficult to understand how he swam across the water. And if the accused himself was carrying the torch, the light would not fall on his face, and in that situation, the accused could not have been identified, because by then it was past 9

p.m. These and other such like discrepancies, when viewed closely, leave no room with us to accept the credibility of the statement made by Madhu PW7. Rajankutty PW8 was the manager of Toddy Shop No.86 at Kuttanad. As per the statement of PW8 both the accused purchased a bottle of toddy each, and after drinking the toddy, they left the toddy shop. This statement does not establish the presence of accused at or near the place of occurrence. Even so, it establishes the correctness of the statement of Kamalama PW6, to the effect that the accused were smelling of liquor, and were under the influence of liquor. Saseendran Nair PW9 is the only other witness produced by the prosecution to show the presence of the accused close to the place of occurrence, at or around the time of occurrence, on 8.5.1998. The statement made by Saseendran Nair PW9, during the course of his deposition before the Sessions Court, in connection with his having seen the accused near the place of occurrence, had not been disclosed by him even to the police during the course of investigation. In fact during the course of his cross- examination he acknowledged "...I have not told anybody-else about my having met the accused persons there, I am speaking about it for the first time in court...". In fact PW9 was working as a labourer in the house of Chandrasekhara Kurup PW10. Saseendran Nair PW9 had not even disclosed the aforesaid factual position to his employer Chandrasekhara Kurup PW10, even though he must have known, that Chandrasekhara Kurup was the elder brother of Ayyappa Kurup (husband of the deceased Padmini Devi). In this situation it is difficult to consider the statement of Saseendran Nair PW9 as credible. In view of the aforesaid evaluation of the statements of witnesses examined by the prosecution, to establish the presence of the accused, in close vicinity of the place of occurrence, there remains no proved connection of the accused with the accusations levelled against them. Even otherwise, in our view the presence of the accused close to the residence of Padmini Devi is inconsequential, because according to the statement of Ayyappa Kurup PW2 (husband of the deceased Padmini Devi) both the accused Madhu and Sibi were known to him as they were his neighbours. Surely, presence close to ones own residence cannot be the basis for drawing an adverse inference. We are therefore satisfied, that the statements of PW6 to PW9, do not in any manner, further the case of the prosecution.

20. There are other glaring discrepancies as well. A large number of witnesses, referred to above, including Purushothama Kurup PW1, Aushutosh PW3, Ambily PW4, Vijayalakshmi PW5, Madhu PW7, Chandrasekhara Kurup PW10, Gopinathan PW13, Ramesh PW14, Chacko PW15 and Karthikeyan Naik PW16, deposed, that they had seen utensils lying on the steps of the ghat. Some of the witnesses had gone further to explain, that some of the utensils were washed whereas some were still to be washed. Obviously, these statements were made by the witnesses so as to support the prosecution version mentioned in the charge-sheet, wherein it was projected that Padmini Devi had gone out to the steps of the ghat after taking the supper meal, to wash the dirty utensils. The inquest report (Exhibit P-3), a translated version whereof was made available for our consideration, does not disclose the presence of any utensils at the ghat. In conjunction with the aforesaid, it is relevant to notice, that during the deposition of P.J. Thomas PW21, Circle Inspector of Police, who carried out the investigation in the case, he categorically asserted (in response to a pointed question posed to him), that when he reached the ghat there were no utensils. He further stated, that none of the witnesses told him, that there were utensils at the ghat or on the steps leading to the paddy fields. The absence of any evidence supporting the prosecution case depicting the reason for Padmini Devi to go out of her house at late hours in the night, so as to be found alone by the accused, reveals the lack of evidence to project the prosecution version reflected in the charge-sheet. But more than that,

is the contradiction in the statements of PW1, PW3, PW4, PW5, PW7, PW10 and PW13 to PW16 on the one hand, and the statement of PW21 coupled with the details mentioned in the inquest report on the other. The genesis of the crime should ordinarily emerge from the inquest report specially when it is in respect of a patent fact. If utensils were actually at the ghat, the mention thereof could not have been left out therefrom. This would be so even if the inquest report had been prepared with half the seriousness required in its preparation. A perusal of the inquest report reveals that the same was painstakingly recorded, and even minute details have been recorded therein. It is difficult to state which of the two sides has deposed correctly and/or which one of them has deposed falsely. All the same, the instant aspect of the deposition creates a serious doubt about the credibility of the evidence on the instant factual aspect, irrespective of the significance thereof in proving the charges.

21. Additionally, the charge-sheet pointedly records that Madhu-accused no.1, caught hold of the plated hair and neck of Padmini Devi, and Sibi-accused no.2 caught hold of her feet, and forcibly dragged her into the water and suffocated her thereby cause her death by drowning. This factual position remained unproved as not a single prosecution witness narrated the said factual position, so as to establish the manner in which Padmini Devi came to be drowned by the accused Madhu and Sibi. This issue has been examined from a different perspective in the next paragraph.

22. It is also essential to properly analyse the statement of Dr.Radhakrishnan PW20. Dr. Radhakrishnan had expressed in the post mortem certificate dated 9.5.1998, and he had affirmed during the course of his deposition before the Sessions Court, that the death of Padmini Devi had been caused by drowning. The fact that she had been smothered first and thereafter drowned by the accused Madhu and Sibi cannot be stated to have been established by the prosecution. No injury whatsoever was suffered by deceased Padmini Devi either on her neck or on her feet. Padmini Devi was 47 years old at the time of occurrence. She would not have easily allowed two drunkards, who were in a state of intoxication, to carry her away by holding her by her neck and feet as has been alleged in the charge-sheet. Padmini Devi would have been expected to fight for her life, consequent upon an assault on her, at the hands of the accused Madhu and Sibi. Injury nos.1 and 2 referred to by the courts below, so as to infer smothering, is clearly unacceptable in view of the fact that Dr. Radhakrishnan PW20, in his cross-examination, clearly asserted, that injury nos.1 and 2 are possible if a person falls and during the course of that fall the right side of the face comes in contact with a rough hard surface. Dr. Radhakrishnan PW20 also stated during his cross-examination, that all the injuries suffered by Padmini Devi were superficial injuries. In the aforesaid view of the matter, even the medical evidence produced by the prosecution, does not suitably support the prosecution story, that the deceased Padmini Devi was, first assaulted by the accused Madhu and Sibi, and thereafter, drowned. The deceased is alleged to have been dragged, smothered and forcibly drowned. The instant version of the prosecution story, is wholly unacceptable, keeping in mind the statement of Dr.Radhakrishna PW20.

23. The motive for the accused in committing the murder of Padmini Devi is stated to be theft of her gold ornaments. Madhu-accused no.1 is a labourer, and Sibi-accused no.2 is a toddy trapper. If the motive had been theft, so as to snatch away the jewellery of Padmini Devi, it is difficult to understand why the accused only took away the golden chain around the neck of the deceased, and the six bangles on her right arm, and forsake the earrings on the person of the deceased. It is

relevant to mention, that the factum of the earrings found on the person of the deceased has been explained in a wishy-washy manner. P.J. Thomas PW21, Circle Inspector of Police, has specifically deposed on the recovery, retention and return of the earrings to the family of the deceased. The statement of PW21 reveals a sorry state of affairs in handling the investigation of the case in hand. According to the statement of PW21, the earrings were removed from the dead body of Padmini Devi, by one of the policemen who was assisting him in the preparation of inquest report on 9.5.1998. There is no documentary record of this. The earrings were then (according to PW21) retained by the writer at the police station. This again, without maintaining any record. On 11.6.1998, the said earrings are stated to have been returned to Ayyappa Kurup PW2, husband of deceased Padmini Devi. It was also deposed by PW21, that Ayyappa Kurup PW2 had visited the police station to take back the earrings. Accordingly, the earrings were returned to him. Yet again, without maintaining any record. Coupled with the conclusion drawn by us in respect of the gold chain and the six gold bangles, allegedly recovered at the instance of accused Madhu and Sibi, we are of the view that it may well be, that the ornaments were never taken away from the person of the deceased Padmini Devi. This view comes to our mind because if the motive had been theft of gold ornaments, then all the gold ornaments would have been taken away, most certainly the earrings which were openly and clearly visible. The accused were poor persons, for them the earrings alone would have meant a lot. If nothing else, the earrings would have balanced (to some extent at least) the spoils in the hands of the accused. It may well be, that the aforesaid ornaments came to be planted only with the object of solving the case in hand. This aspect of the matter also creates a serious doubt in the prosecution case.

24. For the reasons recorded by us hereinabove, we are of the view, that the evidence produced by the prosecution does not, in any way, establish the guilt of the accused. The prosecution had endeavoured to prove the allegations levelled against the accused on the basis of circumstantial evidence. As noticed above, the mainstay of the prosecution evidence is the recovery of the gold ornaments belonging to the deceased Padmini Devi at the instance of the accused Madhu and Sibi. We have concluded that the statements made by the accused Madhu and Sibi (vide Exhibits P-10 and P-9 respectively) cannot be proved against the accused, or to their detriment. This by itself removes the most vital link in the chain of events sought to be established by the prosecution against the accused. Evidence produced to establish the presence of the accused near the place of occurrence, at or about the time of the commission of the crime has also been found to be irrelevant. This because, the accused were in any case neighbours of the deceased Padmini Devi. We have also found, that the theft of the golden ornaments worn by the deceased Padmini Devi was also doubtful. The explanation tendered by the prosecution of the earrings worn by the deceased Padmini Devi when her body was recovered, is also far from satisfactory. From the statement of Dr.Radhakrishnan PW20, and the surrounding facts, it cannot be positively inferred that the deceased Padmini Devi was first smothered and then drowned as has been alleged by the prosecution. We have also found serious contradictions in the deposition of the prosecution witnesses. The prosecution has failed to establish an unbroken chain of events lending to the determination, that the inference being drawn from the evidence is the only inescapable conclusion. In fact in our view the prosecution has not been able to connect the accused with the alleged crime in any manner whatsoever.

25. For all the reasons recorded by us hereinabove, the appellant- accused/Madhu, is liable to be acquitted of the charges levelled against him. Ordered accordingly. He be released forthwith, unless he is required to continue in detention in some other case.

26. Resultantly, the instant appeal is allowed and the judgments rendered by the Trial Court, as also, by the High Court convicting the appellant-accused/ Madhu are hereby set aside.

27. During the course of the deliberations recorded by us hereinabove, we have dealt with the evidence projected against appellant-accused/Madhu. From our determination it emerged, that the evidence to establish the charges against his co-accused Sibi was on the same lines. In fact Sibi-accused no.2 was accused of the allegations for exactly the same reasons, as have weighed with the courts below against the appellant-accused Madhu. He was also convicted for the same reasons. We are of the view that if Sibi-accused no.2 had preferred an appeal, the result would have been exactly the same, as it has been in the present appeal, in respect of the appellant-accused/Madhu. But, is it open for us, to extend the benefit of acquittal, determined by us in case of the accused-appellant/Madhu to Sibi-accused no.2 also? In so far as the instant aspect of the matter is concerned, reference may be made to the judgment rendered by this Court in Gurucharan Kumar & Anr. vs. State of Rajasthan, (2003) 2 SCC 698, wherein this Court had observed as under:

"32. As noticed earlier the accused Pravin Kumar, husband of the deceased Geetu has not preferred an appeal before this Court, on account of the fact that he has already served out the sentence imposed against him. However, though we cannot obliterate the sufferings of Pravin Kumar, we can certainly obliterate the stigma that attaches to him on account of his conviction for a heinous offence under Section 304B IPC. This Court has laid down a judicious principle that even in a case where one of the accused has not preferred an appeal, or even if his special leave petition is dismissed, in case relief is granted to the remaining accused and the case of the accused who has either not appealed or whose special leave petition has been dismissed, stands on the same footing, he should not be denied the benefit which is extended to the other accused. This has been held in Harbans Singh vs. State of U.P. [(1982) 2 SCC 101], Raja Ram v. State of M.P. [(1994) 2 SCC 568], Dandu Lakshmi Reddy v. State of A.P. [(1999) 7 SCC 69] and Akhil ali Jehangir Ali Sayyed v. State of Maharashtra [(2003) 2 SCC 708]."

Reference may also be made to the decision rendered by this Court in Pawan Kumar v. State of Haryana, (2003) 11 SCC 241, wherein this Court has held as under:

"Apart from the salutary powers exercisable by this Court under Article 142 of the Constitution for doing complete justice to the parties, the powers under Article 136 of the Constitution can be exercised by it in favour of a party even suo motu when the Court is satisfied that compelling grounds for its exercise exist but it should be used very sparingly with caution and circumspection inasmuch as only the rarest of rare cases. One of such grounds may be, as it exists like in the present case, where this Court while considering appeal of one of the accused comes to the conclusion that

conviction of appealing as well as non-appealing accused both was unwarranted. Upon the aforesaid conclusion arrived at by the Apex Court of the land, further detention of the non-appealing accused, by virtue of the judgment rendered by the High Court upholding his conviction, being without any authority of law, infringes upon the right to personal liberty guaranteed to the citizen as enshrined under Article 21 of the Constitution. In our view, in cases akin to the present one, where there is either a flagrant violation of mandatory provision of any statute or any provision of the Constitution, it is not that this Court has a discretion to exercise its suo motu power but a duty is enjoined upon it to exercise the same by setting right the illegality in the judgment of the High Court as it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to interfere with the same would amount to allowing the illegality to be perpetuated. In view of the foregoing discussion, we are of the opinion that accused Balwinder Singh alias Binder is also entitled to be extended the same benefit which we are granting in favour of the appellant."

In view of the ratio laid down in the two cases referred to above, we are satisfied, that to do complete justice, it would be just and appropriate to extend the same benefit as has been extended to the appellant-accused/Madhu, also to Sibi- accused no.2. Therefore, for exactly the same reasons as have weighed with us in the instant appeal, to determine the acquittal of the appellant-accused/Madhu, we hereby order the acquittal of Sibi-accused no.2 as well, even though he has not preferred an appeal so as to assail the impugned judgment whereby he stands convicted.

28. For the reasons recorded hereinabove, even Sibi-accused no.2 is hereby acquitted. He be released forthwith, unless he is required to continue in detention in some other case.

.....J. (Asok Kumar Ganguly)J. (Jagdish Singh Khehar) New Delhi;

January 13, 2012.