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V. VIJAY KUMAR  
v.  
STATE OF KERALA

DECEMBER 10, 1999

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[G.B. PATTANAİK AND M.B. SHAH, JJ.]

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*Criminal Trial—Circumstantial evidence—Conviction—Circumstances established by prosecution—Such circumstances capable of explanation and not inconsistent with innocence of accused persons—Held, under the facts and circumstances, conviction set aside—Indian Penal Code, 1860—Sections 302/34, 201 and 120-B.*

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Prosecution alleged that deceased was watchman of a College and on the fateful day while closing the gate at night there was some quarrel between him and accused No. 1-appellant which was reported by the watchman to the Principal of the College. The dead body of watchman was found hanging on the next day. Trial Court tried and convicted the appellants-accused under Sections 302/34, 201 and 120-B IPC on the basis of circumstantial evidence since there were no eye-witnesses to the occurrence on the grounds that all accused persons were assigned duty at the College; that evidence of Principal of College indicated that there was quarrel between the deceased and a police constable; that human blood was found in the guard room; that medical evidence indicated that death was homicidal in nature; that fibre of lungi of accused No.1 was found in the hands of deceased; and that the lungi that was used as ligature was stained with human blood of Group 'A' which was the blood group of accused No. 2. Judgment of the trial court was upheld in appeal by the High Court. Hence these appeals.

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The appellants contended that there was no evidence to indicate that they were seen inside the campus alongwith the deceased by anybody; that since prosecution did not establish the fact that the lungi that was used as a ligature belonged to accused No.2, the presence of blood of the same group as that of accused No. 2 on lungi did not necessarily involve accused No. 2 with the crime; and that presence of fibre of lungi of accused No.1 found in the hands of deceased could not be clinching evidence against accused No. 1 in view of the fact that they had quarrelled.

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The respondent-State contended that the circumstances proved by the

prosecution make the entire chain complete and therefore, conviction of the appellants was unassailable. A

Allowing the appeals, this Court

**HELD : 1.** In case of circumstantial evidence, the prosecution must establish different circumstances beyond reasonable doubt and all those circumstances taken together must lead to no other inference except that of the guilt of the accused. To justify an inference of guilt the circumstances from which such inference is sought to be drawn, must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. [212-G] B

2. There is no witness, who has seen all the accused persons together with the deceased on the fateful night in the college campus. In the absence of any evidence that all the accused persons were seen in the guard room last with the deceased, the presence of human blood in the guard room cannot be a clinching circumstance to bring home the charge against the accused persons. That apart, it has not been established that the said blood is of the same group as that of the deceased. It cannot, therefore, be reasonable to hold that the deceased was assaulted in the guard room. [213-F, G, H; 214-A] C

3. The presence of group 'A' blood on the lungi that was used as ligature, which is also the blood group of accused No.2, could have been utilised as clinching circumstance against the said accused, had it been established that the lungi belonged to accused No. 2. But in the absence of any evidence and further in the absence of any investigation as to what was the blood group of the deceased, the said circumstance cannot be held to be a clinching circumstance, so far as accused No. 2 is concerned. [214-B] D

4. The only other circumstance relied upon by the prosecution is the presence of fibre of lungi of accused No.1 in the hands of the deceased. But there had been some altercation between the accused No. 1 and the deceased, even before the deceased went to the house of Principal, and further after he came back, the deceased assaulted accused No.1. In such circumstances, mere presence of fibre of the lungi of accused No.1 in the hands of the deceased cannot be held to be a conclusive circumstance against accused No.1. E

[214-C-D] F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1147 of 1997 Etc. G

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**A** From the Judgment and Order dated 18.12.1996 in Criminal Appeal No. 161 of 1993 of the High Court of Kerala.

For Applicant

(In CrI. A. No. 1147/97) Mr. E.M.S. Anam.

**B** (In CrI. A. No. 1148-50/97) U.R. Lalit, M/s. T.G. N. Nair and -  
M.K. Sasidharan.

For State

**C** (In CrI. A. No. 1148/97) Anup Chawdhary and G. Prakash

(In CrI. A. No. 1147/97) K.M.K. Nair

(In CrI. A. No. 1149-50/97) G. Prakash

**D** The Judgment of the Court was delivered by

**PATTANAİK, J.** These appeals are directed against conviction of the appellants under Sections 302/34, 201 and 120-B IPC and sentence to undergo imprisonment for life for conviction under Section 302/34 IPC and six months' R.I. under Section 120-B IPC and R.I. for one year, each under Section 201/34 IPC. The learned Sessions Judge convicted the appellants of the aforesaid offences for causing the murder of one Issac Edward, inside the campus of Govt. Sanskrit College. The said conviction and sentence has been upheld in appeal by the High Court of Kerala.

**F** The prosecution case in nutshell is that on 26.5.1992 at 10.30 p.m. deceased Issac Edward, the watchman of the college came to close the college gate and on that score there was some quarrel between him and accused No.1 and accused No.1 slapped him and took away the keys. Issac Edward went to the residence of the Principal PW2 and narrated the occurrence and came back to the college campus. His dead body was found on the next day hanging from the bracket of the sunshade of the second window of the corner of the building and according to the prosecution case, all the five accused persons hatched a conspiracy and in pursuance of the said conspiracy, assaulted the deceased and hanged him from the place where the dead body was found on the next morning. On getting the news of hanging of the deceased Issac, PW2 the Principal sent an information in writing to the

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**H** Cantonment Police Station, which was treated as F.I.R., the investigation

started and on completion of investigation, charge-sheet was filed. The accused persons on being committed to the Court of Sessions, stood their trial. There is no eye-witness to the occurrence and prosecution case hinges upon the circumstantial evidence. The circumstances relied upon by the prosecution are as follows:

- (1) Though accused No.1 was attached to the Cantonment Police Station and other accused persons were from the Armed Reserve Camp, Nandavanam, but all of them had been assigned the duty at the Sanskrit College in connection with the centralised valuation; B
- (2) The evidence of PW2, the Principal of the college, indicates that the deceased came to his house at 10.55 p.m. and informed him that a police constable prevented him from closing the gate and slapped him on his face and took away his torch and bunch of keys; C
- (3) PW5, in the early morning went to the watchman's room and found drops of blood; D
- (4) In the guard room on the table as well as on the wash tube, blood was found, which has been established through the evidence of PW30 and the said blood on being serologically tested, was found to be human blood; E
- (5) The medical evidence indicates that the death is homicidal in nature;
- (6) The fibre of lungi of A1 found in the hands of deceased, as is established by PW30 and the report Exh.P41; F
- (7) When PWs 13 and 14 asked accused No.1 about blood in the guard room, there was no answer from accused No.1;
- (8) The lungi, was used as ligature was stained human blood of Group 'A' and the blood group of accused No.2 is also of Group 'A'; G

Relying upon these circumstances, the learned Sessions Judge convicted the accused persons of offences as already stated and High Court also has affirmed the conviction on appeal.

Mr. U.R. Lalit, learned senior counsel. appearing for accused Nos. 1-4 H

**A** and Mr.E.M.S. Anam, appearing for accused No.5, contended that there is not an iota of evidence to indicate that all these accused persons were seen inside the campus along with the deceased by anybody and the evidence of Principal indicates that the deceased had been to his residence at 10.55 p.m. and the circumstances alleged to have established by the prosecution do not unerringly point towards the guilt of the accused persons inasmuch as nobody knows, what happened to the deceased after 10.55 p.m. till he was found hanging from the roof on the next morning. According to learned counsel for the appellants, the prosecution not having established the fact that the lungi that was used as a ligature belongs to accused No.2, presence of blood group of accused No.2 and the presence of blood of the same group on the lungi do not necessarily mean that accused No.2 is in any way involved with the crime. It is further contended that in view of the evidence of PW12 that accused No.1 complained to him about the deceased assaulting him and thereafter the said accused No.1 having been taken away in the mobile jeep and hospitalised, the presence of fibre of the lungi of accused No.1 found in the hands of deceased, cannot be a clinching evidence, so far as the said accused No.1 is concerned. So far as accused Nos. 2 to 5 are concerned, there is not an iota of material, except the duty chart, indicating that they were supposed to be on duty in the Sanskrit College compound.

**E** Mr. Anup Chowdhary, learned senior counsel, appearing for the State, on the other hand contended that the accused persons and the deceased being the only persons within the campus on the fateful night and those accused persons, not having explained as to how blood could be found in the guard room itself, when read with the circumstance that the fibre of lungi of accused No.1 was founded in the hands of the deceased and the blood found on the lungi that was used as a ligature is of the same group as that of accused No.2, the entire chain becomes complete and, therefore, the conviction of the accused appellants is unassailable.

**G** It is too well settled that in case of circumstantial evidence, the prosecution must establish different circumstances beyond reasonable doubt and all those circumstances taken together must lead to no other inference except that of the guilt of the accused. To justify an inference of guilt the circumstances from which such inference is sought to be drawn, must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Bearing in mind the aforesaid principle, let us now examine the circumstances which can be said to have been proved in the case in hand. But before examining the

circumstances, it would be appropriate to discuss the medical evidence also. A  
 The medical evidence consists of PWs 26 and 27. As has been indicated by  
 High Court in the impugned judgment even, PW 26 and PW27 did not rule  
 out the possibility of suicidal hanging altogether, but certain injuries found  
 on the deceased being ante-mortem in nature and since hairs were seen  
 projecting from the knot, both the witnesses who conducted the autopsy, B  
 came to the conclusion that possibly the death was homicidal. It would thus  
 appear that the medical evidence was not very categorical about the homicidal  
 nature of death but the conclusion of the learned Sessions Judge and the  
 High Court that the death was homicidal, however, has not been assailed  
 before us by the counsel, appearing for the accused persons. The question  
 that arises for consideration, therefore, is whether the circumstances established C  
 in the case, complete the entire chain from which a conclusion can be drawn  
 that it is the accused persons, who committed the crime. As has been stated  
 earlier, there is no witness, who has seen all the accused persons together  
 with the deceased on the fateful night in the Sanskrit College Campus but  
 from the entry Exh. P16, which is the allotment of guard duty, the Court has  
 come to the conclusion that all these accused persons must be deemed to D  
 have been present in the Sanskrit College Campus on the fateful night. Even  
 if it assumed that they were on guard duty on the date of occurrence but that  
 they were inside the guard room is also not established by any positive  
 evidence. From the evidence of PW2, it is established beyond doubt that the  
 deceased came to his residence at 10.55 p.m. alleging the forcible snatching  
 of keys of the gate by one of the accused persons. From the evidence of E  
 PW12, who also happens to be a policeman, it is established that accused  
 No.1 came and complained to him that deceased assaulted him and has run  
 away, where-after a mobile van was called and accused No.1 was taken in the  
 said van and was hospitalised. It would, therefore, be reasonable to come to  
 the conclusion that before accused No.1 was taken to the hospital by the F  
 mobile van, it is he, who stated that deceased came and assaulted him. There  
 is no material to indicate as to whether the other four accused persons were  
 at all present when accused No.1 was alleged to have been assaulted by the  
 deceased or at any point of time thereafter and the dead body of the deceased  
 having been found hanging from the ceiling on the next morning. To connect G  
 the accused persons with deceased, no other circumstance has been  
 established, excepting the circumstance of presence of human blood in the  
 guard room and presence of group 'A' blood on the lungi that was used as  
 ligature, which is also the blood group of accused No.2. In the absence of  
 any evidence that all these accused persons were seen in the guard room last  
 with the deceased, the so called presence of human blood in the guard room H

- A cannot be a clinching circumstance to bring home the charge against the accused persons. That apart, it has not been established that the said blood is of the same group as that of the deceased. It cannot, therefore, be reasonable to hold that the deceased was assaulted in the guard room as contended by Mr. Chowdhary, appearing for the prosecution, in course of his arguments.
- B The presence of group 'A' blood on the lungi that was used as ligature, which is also the blood group of accused No. 2 could have been utilised as clinching circumstance against the said accused, had it been established that the lungi belongs to accused No.2. But in the absence of any such evidence and further in the absence of any investigation as to what was the blood group of the deceased, the said circumstance, in our opinion, cannot be held to be
- C a clinching circumstance, so far as accused No. 2 is concerned. The only other circumstance relied upon by the prosecution is the presence of fibre of lungi of accused No.1 in the hands of the deceased. But as has been stated earlier that there had been some altercation between the accused No. 1 and the deceased, even before the deceased went to the house of Principal PW2 and, further after he came back, it is alleged that deceased assaulted the said
- D accused No.1. In such circumstances, mere presence of fibre of the lungi of accused No.1 in the hands of the deceased cannot be held to be a conclusive circumstance against accused No.1 also. In the aforesaid premises, we have no hesitation to come to the conclusion that the circumstances said to have been established by the prosecution evidence do not unhesitatingly point
- E towards the guilt of the accused and is not inconsistent with their innocence. We therefore, set aside the impugned conviction and sentence and acquit the appellants of the charges levelled against them and they be set at liberty forthwith, unless required in any other case.

These appeals are accordingly allowed.

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A.K.T.

Appeals allowed.