SUPREME COURT OF INDIA

R.Shaji

Vs.

State of Kerala

Crl.A.No.1774 of 2010

(Dr. B.S.Chauhan and V.Gopala Gowda JJ.)

04.02.2013

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 10.12.2009 delivered by the Kerala High Court at Ernakulam in Criminal Appeal No. 86 of 2006, by way of which it has affirmed the judgment and order of the Sessions Court, Kottayam dated 3.1.2006, passed in Sessions Case No. 145 of 2005.

2. Facts and circumstances giving rise to this appeal are:

> A. As per the case of the prosecution, the appellant at the relevant time had been working as the Deputy Superintendent of Police at Malappuram, and his wife was living at Palluruthy, and was using a vehicle which was driven by Praveen (deceased). He was also related to the appellant. Praveen developed an illicit relationship with the appellant's wife, and the appellant was informed of this development by his Manager, Aji. The appellant reached Palluruthy, and made enquiries about the situation from Praveen and others, and his relatives tried to resolve the aforesaid matter. In the presence of other relatives, the matter was then amicably settled. Praveen (deceased), was asked not to come to appellant's house thereafter, and thus Praveen left and began working in a shop at Ettumanoor, as a driver.
>
> B. During this period, on 25/26.11.2004, Vijayamma, relative of Praveen (deceased), and N. Sahadevan PW.2's father, informed Pavithran (PW.1), father of Praveen, that Praveen was in danger as Vijayamma had found out

about the illicit relationship that Praveen had developed with the appellant's wife.

C. N. Sahadevan, PW.2's father informed Pavithran (PW.1), Praveen's father who resided at Trivendrum, via the telephone of this danger to Praveen's life. Pavithran (PW.1) immediately informed his brother and requested him to help Praveen, as he may not be spared by the appellant. N. Sahadevan, PW.2's father, went and brought Praveen to his own house, whilst informing everybody, that his mother was seriously ill. The appellant asked N. Sahadevan, PW.2's father, in conversation over the telephone about Praveen, and directed him to bring Praveen back. PW.2's father then took Praveen back. When the meeting took place in the presence of various relatives, the appellant (A-1), attempted to assault Praveen, but they were separated by other persons. Praveen pleaded his innocence, and told the appellant that Aji had played this dirty game for some personal gain. However, when Aji was called to participate in the said meeting, he stood by his version of events and stated that he had seen Praveen and the appellant's wife in a compromising position. The appellant told Praveen to leave the said place and to not enter the city.

D. Praveen was brought by Jilesh M.S. (PW.2), and taken to Trivendrum for treatment. Praveen told his father after a period of 2/3 days that it was not safe for him to stay in hospital as 2/3 gundas had been roaming around in the hospital. Thus, he went back to the city and sought employment.

E. On 15.2.2005, Divakaran (PW.7), neighbour of Vinu (A-2), while coming out of a bus stop, saw Vinu (A-2) coming on a motor bike while Praveen was standing in the market. Vinu (A-2), stopped the bike and took Praveen towards Kottayam. They then went to a bar, had drinks as were served to them by Saiju (PW.9), and came out of the bar at 8.30 p.m., after which they ate at a 'thattukada' (a small petty shop), where they were served by Jose (PW.8), an employee of the 'thattukada'. Mohammed Sherif @ Monai (PW.13), who was the owner of the 'thattukada', saw the appellant (A-1), coming in a Maruti car. In the said car, there were also some other persons. They had coffee, as was served to them by Jose (PW.8), and seen by Mohammed Sherif @ Monai (PW.13). The appellant (A-1) went back to the car and started driving. Other persons also joined him, and Vinu (A-2), along with Praveen, left on a Motor Cycle. Vinu (A-2) lifted his hand and proceeded further. The Maruti Van followed them. They all left the city at about midnight, and drove into the jungle.

F. Shanavas (PW.12), an auto-rickshaw driver carrying patients to the Medical College, Kottayam found one motor cycle parked on the side of the road. As he had slowed down seeing the vehicles on the road, he also saw two persons coming out of the van. The pillion rider of the motor cycle sat in the van and after he got into the van, the van left immediately. The motor bike also started. He noted the registration number of the van, and also that of the motor bike. G. Mohanan (PW.10), another auto rickshaw driver saw the Maruti Van parked on the road and a person standing near it. Mohanan (PW.10), stopped his auto and asked him what had happened, however he only replied that a person had gone nearby. Thus, Mohanan (PW.10) left the place.

H. On 16.2.2005, a pair of human legs was found floating in the backwaters of the Vembanad lake (hereinafter referred to as the 'lake') at Kottayam, by a person who thereafter lodged a complaint to Subhah K. (PW.68), Sub-Inspector of the Kottayam West Police, on the basis of which, an FIR was registered.

I. On 18.2.2005, Pavithran (PW.1) lodged an FIR in the Police Station alleging that his son Praveen had gone missing, and that after he became aware of the same, he had spent the last 3/4 days searching for him, but had been still unable to trace him.

J. On 19.2.2005, a torso in a plastic bag, was seen floating on the eastern side of the lake. Upon obtaining requisite information, K.M. Antony (PW.17), Circle Inspector of Vaikom, reached the scene and Pavithran (PW.1) also identified the torso, to be that of his son. While the inquest of the torso was being conducted, a pair of hands was seen floating in the lake. K.M. Antony (PW.17) recovered the same and conducted inquest. Pavithran (PW.1) identified the hands to be those of Praveen as well.

K. After the completion of the preliminary enquiry, the appellant and Vinu (A-2), were arrested on 24.2.2005. The house of the appellant (A-1) was searched by K.M. Anto (PW.74), Circle Inspector of Police, Kottayam West and there was recovery of M.Os. 13 to 18, under Exts. P.17 and 18 Mahazars. B. Muralidharan Nair (PW.77), Dy.S.P., Kottayam, received information that a human head in a plastic cover, had been spotted on the shores of the back waters of the lake. The head was then recovered and inquest prepared. B. Muralidharan Nair (PW.77) obtained custody of the

accused from court. The chopper (M.O.4), alleged to have been used in the said crime was recovered at the instance of the appellant. A Maruti Van (M.O.5) was also recovered after information was furnished by the appellant (A-1), to the effect that the said Maruti Van had also been used. L. After having completed the investigation, a charge sheet was filed against five persons, including the appellant. The trial however, could be conducted only against two persons, i.e. the appellant (A-1) and Vinu (A-2), as all the others were absconding. Subsequent to the trial of this case, A-3 and A-4 were also apprehended, put to trial separately, and convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). A-5 is still absconding.

M. So far as the present case is concerned, the appellant (A-1) was convicted under Section 302 read with Section 120-B of the IPC, and was awarded a sentence of life imprisonment and a fine of Rs. one lakh, in default of which, he would undergo SI for a period of one year. Vinu (A-2) was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- only, in default of which, he would undergo SI for 3 months. Both the accused were also convicted under Section 201 read with Section 120-B IPC, and sentenced to imprisonment for a period of 3 years, and a fine of Rs.2,000/- each, in default of which, they would undergo SI for a period of 3 months each. They were further convicted under Section 364 read with Section 120-B IPC, and sentenced to undergo RI for a period of 7 years each, and to pay a fine of Rs.5,000/- each, in default of which, they would undergo SI for a period of one year. All the sentences were directed to run concurrently.

N. Aggrieved, both of them preferred Criminal Appeal No. 86 of 2006, which was dismissed by the High Court vide judgment and order dated 10.12.2009.

Hence, this appeal.

3. Shri S. Gopakumaran Nair, learned senior counsel appearing for the appellant, has submitted that there was no motive for the appellant to cause death of Praveen. It is a case of circumstantial evidence as there is no eye-witness to the actual incident of killing. The chain of circumstances is not complete. Haridas (PW.14), an auto- rickshaw driver had seen the appellant and others only for a fleeting moment. Though the appellant and Vinu (A-2) were arrested, no Test Identification Parade was conducted. The statements of witnesses were recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the

'Cr.P.C.') by a Magistrate who did not even mention the date of recording such statements, such statements were not exhibited before the court for the purpose of corroboration and confrontation. Jose (PW.8), Shanavas (PW.12), and Mohamamed Sherif @ Monai (PW.13), identified Praveen (deceased), by seeing only his passport sized photograph. This is not enough as Shanavas (PW.12), had seen the appellant and others including Praveen (deceased), only for a brief moment and thus, was unable to identify them in court after the lapse of a period of several months, during the course of the trial. Different parts of the body were found, and the identification of the dead body, merely on the basis of a mole on the leg of the body cannot be held to be proper identification by the father, as the dead body was recovered after a lapse of 3/4 days. Different parts of the body were recovered on different dates and by such time the skin would have dis-integrated entirely. Neither Vijayamma nor Radhamma were examined. Aji, who had disclosed information pertaining to the illicit relationship of Praveen with the appellant's wife, was also not examined. A DNA test was conducted on the dead body to determine whether the same was in fact, the body of Praveen (deceased). However, the FSL report disclosed that in respect of the chopper used for the purpose of dismembering the parts of the body, no blood group could be detected. The whole case of the prosecution hence, becomes unbelievable, and the conviction of the appellant is liable, to be set aside.

4. Per contra, Mr. Basant R. learned senior counsel appearing for the State has opposed the appeal, contending that the various circumstances that stood proved, pointed only towards the guilt of the appellant, and that in the light of the facts and circumstances of the case, no one apart from the appellant could have committed the murder of Praveen (deceased). The DNA test established that the different parts of the body that were recovered from the lake were in fact, those of Praveen. There was no reason for the prosecution witnesses, particularly, Jose (PW.8), Mohanan (PW.10), Shanavas (PW.12) and Mohamamed Sherif @ Monai (PW.13), to depose against the appellant and both the courts below also have found their evidence to be trustworthy. Jose (PW.8) and Mohamamed Sherif @ Monai (PW.13) knew the appellant, as well as Vinu (A-2) and Praveen (deceased). Therefore, holding a TI Parade would have been a mere formality. Though, Mohanan (PW.10) and Shanavas (PW.12), the auto rickshaw drivers, were chance witnesses, their presence cannot be doubted as it is an ordinary circumstance that patients are taken to the hospital even in the late hours of night, and the said incident had occurred on the road that led to the hospital. There was sufficient light on the road, and the High Court recorded a finding to the effect that Shanavas (PW.12), an auto rickshaw driver, even if he had been unable to see Praveen, was still able to identify the appellant and others.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The courts below have appreciated the entire evidence on record, including the evidence of the defence. The appellant also examined Ajeesh M. Muraleedharan (DW.1), who was a Sub-Editor, Malayala Manorama and thereafter, the High Court concurred with the findings of fact recorded by the Sessions Court on various issues. There is no dispute that Praveen (deceased), was a victim of homicide, and that the dismembered parts of the body recovered from the lake were those of Praveen, as the same stood proved by the DNA report. The High Court concurring with the opinion of the Sessions Court, held as under: "The DNA analysis made it clear that the blood samples of the parents of Praveen matched with the DNA of Praveen, deceased and the same proved and established the identity of the dead body as the DNA had also been extracted from the portion of the limbs recovered from the lake and compared with that of DNA of parents."

7. The recovery of other articles also stood proved as the High Court yet again concurring with the finding recorded by the Sessions Court in this regard, held as under:

> "The recovery has been made by the Investigating agency on the statement voluntarily made by the appellant in respect of various materials and the High Court took note of the fact that the appellant was the seasoned police officer and unless and until some of the links were identified and located, nobody could doubt his involvement. The recovery witnesses have proved the recoveries. B. Muraleedharan Nair (PW.77), stated that the seizure was at the behest of the appellant and the vehicle infact recovered belonged to the brother-in-law of Babu (PW.6) and as the owner of the vehicle did not have enough space to park the vehicle in his house, the van was being parked in the compound of Babu (PW.6). The said PW.6 was familiar to the appellant who has deposed that the appellant had come to him on 15.2.2005 and told the said witness that the appellant's vehicle had developed some trouble and that is why he wanted to use the vehicle parked in the house of the said witness. The van was taken by the appellant as allowed by Babu (PW.6) after taking the consent of the owner and the witness further disclosed that the van was brought back by the appellant after few days. B. Muraleedharan Nair (PW.77) has stated that the vehicle was identified by the appellant himself telling that this was the van which had been used for committing the crime."

8. Undoubtedly, the van was returned on 16.2.2005 and was recovered on 24.2.2005, and hence, it might have been used in the interim period, but this does not affect the evidence on record. Some police officers collected samples of blood stains from the floor of the said vehicle and also some hair. The hair and blood stains recovered during the investigation, were compared with the hair collected by the Scientific Officer from the deceased, which established that the said hair did in fact, belong to Praveen (deceased), and thus, the use of the said vehicle in the crime stood proved. The recovery of the van was in accordance with the provisions of Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), and as the same was done at the behest of the appellant, his conduct was relevant under Section 8 of the Evidence Act.

9. The recovery of the chopper (M.O.4) stood proved as the said chopper was crafted by Vijayakumar (PW.5), who deposed that appellant was familiar with him and that the appellant had given him a leaf plate for the purpose of making a chopper, as also, a kitchen knife. He prepared both, the chopper and the knife in accordance with instructions, and handed them over to the appellant in early January, 2005. Vijayakumar (PW.5) identified the chopper.

10. As per the deposition of B. Muraleedharan Nair (PW.77), the appellant made a disclosure statement to the effect that Praveen's body was mutilated using the chopper (M.O.4). The said chopper was recovered from the southern side of the lake on the basis of such disclosure statement made by the appellant. The appellant had exclusive knowledge as regards the place of concealment, and the evidence on record makes it clear that when he was in fact, taken to such place, the appellant himself got into the water and retrieved the chopper from there. No one else knew that the weapon was hidden in such a place, and the location was not one that was frequented by the public at large. Therefore, recovery of the said chopper at the behest of the appellant cannot be doubted.

11. The chopper (M.O.4) was recovered by M.K. Ajithkumar, Scientific Assistant, who deposed that at the time of recovery, the chopper had blood stains and hair stuck on it. Dr. P. Babu (PW.71), a Forensic Surgeon deposed that the dismemberment of the body of the deceased could certainly have been possible with the said chopper. So far as the recovery of the skull of Praveen (deceased) is concerned, the same was also made on the basis of the disclosure statement of the appellant. The investigating team was taken to the relevant place by the appellant, and it was on the basis of his disclosure statement that the skull was found. This happened after digging in a few places around the land of Ananda Kini. A glove

and a plastic rope were also recovered at his behest, and in light of the aforementioned circumstances, it cannot be doubted that the said recoveries suffered from any illegality.

> Some minor issues with respect to the above, were raised before the Sessions Court, as well as before the High Court, and the same have rightly been explained by the courts below. Thus, they do not require any further discussion.

12. Learned senior counsel for the appellant has urged that statements of certain witnesses were recorded under Section 164 Cr.P.C. before Magistrates, namely, Kalampasha (PW.61) and Dinesh M. Pillai (PW.62). The said statements were not put on record before the trial court, and the same were not marked. Thus, the trial stood vitiated as the accused has been denied an opportunity to contradict the aforementioned statements of the witnesses, which were made under oath before the magistrates, which though are not in the nature of substantive evidence, could well be used for the purpose of corroboration and contradiction. Denial of such opportunity is against the requisites of a fair trial.

13. Clause (iv) of Section 207 Cr.P.C. clearly provides that any statement recorded under Section 164 Cr.P.C., shall be made available to the accused alongwith all the other documents that have been filed alongwith the charge sheet. The appellant herein, has neither urged that the statements recorded under Section 164 Cr.P.C. were not a part of such documents, before the trial court, nor was any issue raised by him at the time of cross-examination of B. Muralidharan Nair (PW.77), the investigating officer. The same is a question of fact. However, it appears from the documents on record that such documents, if the same were in fact, a part of the record, were not marked. The appellant raised this issue for the first time before the High Court, and the High Court dealt with the same observing:

> "A reading of the judgment of the court below show that both sides referred to the same in detail and the court below has also referred to the same in its judgment. It is well settled that the statement under Section 164 Cr.P.C. can be used both for corroboration and contradiction of the author of the statement and thus, did not find this ground worth acceptance. Even otherwise, it appears that statement recorded under Section 164 Cr.P.C. by the Magistrate was not in detail. No question had been put to the witnesses whose statements had been recorded nor an attempt had been made to extract answers from them and the witnesses were asked by the learned magistrates what they wanted to say and they had no clue as to what they

had to speak. Therefore, they simply spoke what came to their mind at that point of time whether it was relevant or irrelevant. The witnesses could not be deemed to carry so much of wisdom to enable them to know what are the essential facts they need to state before the learned magistrate. The witnesses whose statements were recorded before the magistrate were simply asked "have you finished, you can go".

14. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C. Hence, the magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted. (Vide: Jogendra Nahak Ors. v. State of Orissa Ors., AIR 1999 SC 2565; and Ors., AIR 2000 SC 2901).

16. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.

During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Cr.P.C. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced. (Vide: Mamand v. Emperor, AIR 1946 PC 45;

Bhuboni Sahu v. King, AIR 1949 PC 257; Ram Charan Ors. v. The State of U.P., AIR 1968 SC 1270; and Dhanabal Anr. v. State of Tamil Nadu, AIR 1980 SC 628).

17. It has been argued by the learned counsel for the appellant, that as the blood group of the blood stains found on the chopper could not be ascertained, the recovery of the said chopper cannot be relied upon.

A failure by the serologist to detect the origin of the blood due to dis-integration of the serum, does not mean that the blood stuck on the axe could not have been human blood at all. Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard.

Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group (s) loses significance. (Vide : Prabhu Babaji Navie v. State of Bombay, AIR 1956 SC 51; Raghav Prapanna Tripathi v. State of U.P., AIR 1963 SC 74; State of Rajasthan v. Teja Ram, AIR 1999 SC 1776; Gura Singh v. State of Rajasthan, AIR 2001 SC 330; John Pandian v. State, represented by Inspector of Police, Tamil Nadu, (2010) 14 SCC 129; and Dr. Sunil Clifford Daniel v. State of Punjab, JT 2012 (8) SC 639).

18. In view of the above, the Court finds that it is not possible to accept the submission that in the absence of a report regarding the origin of the blood, the accused cannot be convicted, for it is only because of the lapse of time, that the blood could not be classified successfully. Therefore, no advantage can be conferred upon the accused to enable him to claim any benefit, and the report of dis- integration of blood etc. cannot be termed as a missing link, on the basis of which the chain of circumstances may be presumed to be broken.

19. Motive is primarily known to the accused himself and it therefore, it may not be possible for the prosecution to explain what actually prompted or excited the accused to commit a particular crime. In a case of circumstantial evidence, motive may be considered as a circumstance, which is a relevant factor for the purpose of assessing evidence, in the event that there is no unambiguous evidence to prove the

guilt of the accused. Motive loses all its significance in a case of direct evidence provided by eye-witnesses, where the same is available, for the reason that in such a case, the absence or inadequacy of motive, cannot stand in the way of conviction. However, the absence of motive in a case depending entirely on circumstantial evidence, is a factor that weighs in favour of the accused as it "often forms the fulcrum of the prosecution story". (Vide: Babu v. State of Kerala, (2010) 9 SCC 189; Kulvinder Singh Anr. v. State of Haryana, AIR 2011 SC 1777; Dandu Jaggaraju v. State of A.P., AIR 2011 SC 3387).

20. The evidence on record clearly established, that the appellant had adequate reason to harbour animosity towards Praveen, as he may well have been unable to tolerate the intimacy that the deceased had developed with his wife. In light of the fact that the appellant had absolute faith and trust in the deceased, and had hence allowed him to have free access and absolute freedom in his house, the alleged act of betrayal of trust was committed by the deceased, which the appellant no doubt found gravely humiliating and agonizing.

> Jilesh M.S. (PW.2) deposed, that when the appellant became aware of the illicit relationship between Praveen and his wife, he had said that in the event that he was able to lay his hands on Praveen, he would chop him up into pieces. The said threat was followed by a tirade of abuses. Jilesh M.S. (PW.2) consulted Pavithran (PW.1), in this regard. Both of them have deposed as regards the manner in which the situation was handled by the relatives of the appellant and Praveen.
>
> We do not find force in the submission made by Shri S. Gopakumaran Nair, learned senior counsel appearing for the appellant that the appellant had absolutely no grievance against his wife Smt. Shadi, and that even after the alleged incident, she had been accompanying her husband to all social events, as Ajith (PW.3) has deposed that the appellant had attended the engagement ceremony of Vinu (A-2) along with his wife and son, and that too, only 3 days prior to the alleged murder, thus, it would be most unnatural for him to annihilate Praveen (deceased). It is further urged that Praveen (deceased) had in fact, misbehaved with the appellant's wife, and the matter was settled upon the interference of several relatives, after which Praveen (deceased) was asked to quit his job and was also told not to enter in the city. In the event that the defence version is accepted, and it is believed that Praveen (deceased) had in fact, misbehaved with the wife of the appellant, the same could actually lead to the inference that the appellant may have had an even stronger motive to eliminate Praveen (deceased).

> Further, there is no force in the submission advanced on behalf of the appellant that Shirdhi (PW.4), the son of the appellant from his first wife, did not support the case of the prosecution. His statement is only to the effect that when the meeting took place on 26.11.2004 he did not attend the meeting and stayed upstairs. Thus, he has not deposed that the said meeting was not held. Additionally, his statement that Praveen (deceased) had tendered an apology and that upon the intervention of relatives and friends, the appellant had actually pardoned him, cannot be believed, as the said witness was not present at the meeting owing to which he could not have been an eye- witness to the aforementioned part of the incident.

21. Undoubtedly, in this case Aji, the Manager of the appellant who had revealed the existence of the alleged relationship between Praveen and the appellant's wife, has not been examined, but we are of the considered opinion that non-examination of the said witness will not adversely affect the case of the prosecution. The same is the position so far as Radhamma, the appellant's sister, Bijulal, nephew of the appellant and Vijayamma, aunt of Jilesh M.S. (PW.2) are concerned, who could also have unfolded the factum of the said meeting being held in this respect.

22. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order to prove/disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus, the quality and not quantity, which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this, does not carry any weight. (Vide: Vadivelu Thevar v. State of Madras; AIR 1957 SC 614; Jagdish Prasad v. State of M.P. AIR 1994 SC 1251; Sunil Kumar v. State Govt. of NCT of Delhi AIR 2004 SC 552; Namdeo v. State of Maharashtra AIR 2007 SC (Supp) 100; Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638; Mahesh Anr. v. State of Madhya Pradesh (2011) 9 SCC 626; Kishan Chand v. State of Haryana JT 2013(1) SC 222).

23. It is a settled legal proposition that the conviction of a person accused of committing an offence, is generally based solely on evidence that is either oral or documentary, but in exceptional circumstances, such conviction may also be based solely on circumstantial evidence. For this to happen, the prosecution must establish its case beyond reasonable doubt, and cannot derive any strength from the weaknesses in the defence put up by the accused. However, a false defence may be brought to notice, only to lend assurance to the Court as regards the various links in the chain of circumstantial evidence, which are in themselves complete. The circumstances on the basis of which the conclusion of guilt is to be drawn, must be fully established. The same must be of a conclusive nature, and must exclude all possible hypothesis except the one to be proved. Facts so established must be consistent with the hypothesis of the guilt of the accused, and the chain of evidence must be complete, so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must further show, that in all probability the said offence must have been committed by the accused. (Vide: Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622; and Paramjeet Singh @ Pamma v. State of Uttarakhand, AIR 2011 SC 200).

24. Divakaran (PW.7), deposed that he knew Praveen (deceased) and Vinu (A-2) from childhood, and that on the fateful day Vinu (A-2) had taken Praveen on a motor cycle and had driven towards Kottayam. Jose (PW.8) was running a 'thattukada' (petty shop) during the night. He deposed that on 15.2.2005 at 8.30 p.m., Praveen (deceased) came with Vinu (A-2) to his shop, and that the two, after their meal, left for the theatre, on a motor cycle. At 11.45 p.m., the appellant and three others also came to his shop and had coffee. The appellant then returned to the van after which, the other three persons also got into the van. The appellant got into the driver's seat of the van. When most of the people had left after watching the movie, the witness saw Vinu (A-2) and Praveen on the said motor cycle, riding towards Thirunakkara. Vinu (A-2) came close to the van, lifted his hand and then proceeded. Thereafter, the van in which the appellant (A-1) was sitting, followed them. During the cross-examination on behalf of the appellant (A-1), the witness deposed that at the time when A-2 had lifted his hand, there was only a distance of 5 feet between the van and motorcycle. This witness further deposed that he had been shown only one photograph. He stated that A-1 had come to his shop and had remained there for 10-15 minutes. During this cross-examination on behalf of A-2, the said witness also deposed that he had told the police and magistrate that A-2 and Praveen had eaten a Bull's eye, and that he had accepted cash from them and had also returned the balance.

25. Baiju (PW.9), was working as the barman at Hotel Arcadia. He deposed that it was in fact, A-2 who had come with another person on the 15th February 2005, at about 6.30 p.m. to the Hotel and had consumed liquor. He stated that they had remained in the bar till about 8.30 p.m. and that A-2 had paid the bill. The witness had noticed the presence of the two because they were both highly intoxicated at the said time.

26. Mohanan (PW-10), an auto rickshaw driver, deposed that on 15th February 2005, he had seen an Omni Van along the eastern side of the Arpookara temple. That night, he was driving from MCH, to Kottayam town via Panambalam road. While returning, he stated that he had seen the Omni Van some 200 metres east of the temple, and on the southern side of the road at about 12.30 -1 am. The van was green in colour with KL7 registration and 5855 number. Furthermore, a man was also seen by him standing near the door of the driver's seat. Upon asking, the said man only replied that one person had gone up. He could not see much as the van was closed but, the vehicle was most certainly a van MO.5. During cross-examination on behalf of appellant (A-1), the witness deposed that the person standing near the said van, had a North Malabari accent.

27. Shanavas (PW.12) also an auto driver by profession, identified Shaji (A-1) and Vinu (A-2). He deposed that he had first seen them on 15th February 2005 while he was proceeding in his auto from Baker Junction to MCH. He had seen an Omni Van and a motorcycle on the side of the road beyond Chemmanampadi, near the Medical College, and had seen two persons coming out of the said van. He further deposed that the two people had then caught hold of the pillion rider of the motor cycle, and had taken him to the van. Thereafter, the, van left the place and he followed the van to MCH. He identified A-1 as the person he had seen there and A-2, as the person who had been riding the motorcycle.

> During his cross examination by the appellant (A-1), the witness deposed that he had in fact, seen three other persons there. However, he did not identify them.

28. Mohammad Sherif (PW.13) a businessman, deposed that he knew the appellant (A-1) and identified him as Shaji and also Vinu (A-2). At about 8.30 p.m. on 15th February 2005, A2 and Praveen came to his petty shop from the Arcadia Bar premises, on a red coloured bike. Jose (PW8), an employee of PW13 was previously acquainted with the accused (A-2) and Praveen (deceased), and hence, PW8 introduced them as his friends. He further deposed that the Omni Van arrived in front of the Arcadia Bar at 11.30 pm. A1 got out of the driver seat and

proceeded to the theatre. The three other persons came out of the van and had black coffee at the witness's shop. All of them (including A-1) then returned to the van. Later, when A-2 and Praveen riding a bike, approached the Arcadia Bar, A-2 signaled to A-1 to follow him and rode in the direction of Thirunakkara. The van followed the bike and they headed to MCH, Ettumanoor and Ernakulam.

> During the cross examination on behalf of the appellant (A-1), the witness deposed that he did not tell anybody about A1 and that he did not even talk to Jose (PW.8), about the incident that occurred on 15/02/2005. He deposed that he did not know A1's friends, or the place to which A1 belonged. He only stated that he knew A1 when he was the control room, S.I. Mohammed Sherif (PW.13) denied having told the Police that Shaji Sir of Valiadu was the person he had seen on the road. He deposed that he knew S.I.s such as Satheesan and Suseelan, and that they were also from the West Police Station. He further said that he knew of A1 only as control room S.I. He had read about the incident in the subsequent days' newspaper. He further admitted that the help of the police, as well as that of the Municipality, was needed to run the petty shop which did business from 8.00 p.m. to 1.30 a.m.

29. Reji (PW11) deposed that on 15.2.2005 at about mid-night, he had gone to Baker Junction and there he had seen the appellant (A-1), getting out of the driver's seat of a green coloured van. He thereafter, crossed M.C. Road and went into the Post Office and placed inland like material inside the post box. The appellant (A-1) returned to the van after crossing the road, got into the driver's seat and drove off towards Baker Junction. It appears that in the cross-examination, he did not support the case of the prosecution. However, his evidence is not very relevant with respect to the issues involved in this case, as at the initial stage the witness had supported the case of the prosecution to the extent that it was in fact, the appellant (A-1), who had posted the letter in the name of the deceased's father, that was purported to have been written by Praveen (deceased), stating that he was going to Bombay in search of employment. This letter seems to have been written to misdirect/mislead the deceased's family. The same became entirely insignificant, as immediately after the murder of Praveen, the dismembered parts of his body were recovered. Thereafter, the incident became the talk of the town and the same was high-lighted by both, the print and the electronic media.

30. The evidence referred to hereinabove alongwith the material on record, reveals that Praveen (deceased) was a victim of homicide and further that there is no dispute regarding the identification of his body and its parts thereof, as has been referred to hereinabove. The recoveries of a shirt (MO.1), underwear (MO.2) and

of a watch (MO.3), belonging to Praveen (deceased) were identified by Pavithran (PW.1). His body was also identified by PWs.1 to 3 and the DNA report did not leave any room for doubt with respect to the said identification. Same stood proved by super imposition.

The injuries found on the body that were revealed by the post- mortem report established that the dismemberment of the parts of the body was possible by using a weapon like the chopper (MO.4), as was explained/opined by Dr. Babu (PW.71). Praveen died in the intervening night between 15/16.2.2005. He was last seen on 15.2.2005 with Vinu (A-2) and the appellant (A-1). The motive as explained hereinabove stood proved. Vinu (A-2) and the appellant (A-1) were closely related and together they had hatched a conspiracy to eliminate Praveen (deceased). Pavithran (PW.1) has stated in his deposition that Praveen (deceased) did not bear any animosity towards any person. In fact, in his statement under Section 313 Cr.P.C., the appellant has even admitted so. Praveen (deceased) was seen by Divakaran (PW.7) talking to Vinu (A-2) at his work place. Divakaran (PW.7) was acquainted with both Vinu (A-2) and Praveen (deceased) since childhood.

The evidence of Baiju (PW.9) who was working at Hotel Arcadia at Kottayam, revealed that he was the man who had served drinks to Vinu (A-2) and Praveen (deceased). The Virca Report proved by Sujatha (PW.64), corroborated the same.

Jose (PW.8) and Mohammed Sherif (PW.13) identified the appellant (A-1) and Vinu (A-2) and stated they knew both of them very well. Baiju (PW.9) was not acquainted with either Vinu (A-2) or Praveen (deceased) but he did in fact, have an opportunity to see them for a sufficient amount of time as he had served them food. Babu (PW.6) deposed that the appellant (A-1) was well acquainted with him. He stated that he had taken the Maruti Van (MO.5) from him on the afternoon of 15.2.2005, and had returned the same to him on the afternoon of 16.2.2005. Phone calls made by the appellant (A-1) to Babu (PW.6), were also not denied by the appellant in his cross-examination under Section 313 Cr.P.C. The aforementioned call details were duly proved. There is also material on record to show that the said van was used in the crime by the appellant (A-1) and 3 others. Vinu (A-2) and Praveen (deceased) after watching a movie at the cinema hall and having meals etc., proceeded towards Thirunakkara on the bike, and Vinu (A-2) signaled to the person in the van by raising his hand. The appellant (A-1)

and three other persons followed the bike in the van. On the way Praveen (deceased), was transferred from the bike to the van as deposed by Shanavas (PW.12) auto driver, who is a natural witness, and he also identified the appellant (A-1), Vinu (A- 2), and Praveen (deceased) by way of photographs. He stated that he had seen the van standing in the middle of the road. The said witness turned hostile and did not support the prosecution case fully. Recoveries of all the material items/objects stood proved.

31. A criminal conspiracy is generally hatched in secrecy, owing to which, direct evidence is difficult to obtain. The offence can therefore be proved, either by adducing circumstantial evidence, or by way of necessary implication. However, in the event that the circumstantial evidence is incomplete or vague, it becomes necessary for the prosecution to provide adequate proof regarding the meeting of minds, which is essential in order to hatch a criminal conspiracy, by adducing substantive evidence in court. Furthermore, in order to constitute the offence of conspiracy, it is not necessary that the person involved has knowledge of all the stages of action. In fact, mere knowledge of the main object/purpose of conspiracy, would warrant the attraction of relevant penal provisions. Thus, an agreement between two persons to do, or to cause an illegal act, is the basic requirement of the offence of conspiracy under the penal statute. (Vide: Mir Nagvi Askari v. CBI, AIR 2010 SC 528; Baldev Singh v. State of Punjab, AIR 2009 SC Supp. 1629; State of M.P. v. Sheetla Sahai, AIR 2009 SC Supp. 1744; R. Venkatkrishnan v. CBI, AIR 2010 SC 1812; S. Arul Raja v. State of T.N., (2010) 8 SCC 233; Monica Bedi v. State of A.P., (2011) 1 SCC 284; and Sushil Suri v. CBI, AIR 2011 SC 1713).

32. An argument has been advanced by Shri S. Gopokumaran Nair, learned senior counsel appearing on behalf of the appellant, that as the witnesses PW.8 and PW.11 have admitted in their cross-examination, that they have been the accused persons in certain other criminal cases, their testimony should not have been relied upon by the courts below. The argument seems to be rather attractive at the outset, but has no substance, for the reason that the law does not prohibit taking into consideration even the evidence provided by an accomplice, who has not been put to trial.

It is a settled legal proposition that the evidence provided by a person who has not been put to trial, and who could not have been tried jointly with the accused can be considered, if the court finds his evidence reliable, and conviction can also safely be based upon it. However, such evidence is required to be considered with care and caution. An accomplice who has not

been put to trial is a competent witness, as he deposes in court after taking an oath, and there is no prohibition under any law to act upon his deposition without corroboration. (Vide: Laxmipat Choraria Ors. v. State of Maharashtra, AIR 1968 SC 938; Chandran alias Manichan alias Maniyan Ors. v. State of Kerala, AIR 2011 SC 1594; and Prithipal Singh Ors. v. State of Punjab Anr., (2012) 1 SCC 10).

33. It has further been submitted that the prosecution failed to hold the test identification parade. Therefore, the prosecution case itself becomes doubtful.

In Vijay @ Chinee v. State of M.P., (2010) 8 SCC 191, this Court, while dealing with the effect of non holding of a test identification parade, placed very heavy reliance upon the judgments of this Court in Anr., AIR 1973 SC 2190; Anr., AIR 1999 SC 3916; and Malkhan Singh Ors. v. State of M.P., AIR 2003 SC 2669 and held that, the evidence from a test identification parade is admissible under Section 9 of the Evidence Act, 1872. The identification parade is conducted by the police. The actual evidence regarding identification, is that which is given by the witnesses in court. A test identification parade cannot be claimed by an accused as a matter of right. Mere identification of an accused in a test identification parade is only a circumstance corroborative of the identification of the accused in court. Further, conducting a test identification parade is meaningless if the witnesses know the accused, or if they have been shown his photographs, or if he has been exposed by the media to the public. Holding a test identification parade may be helpful to the investigation to ascertain whether the investigation is being conducted in a proper manner and with proper direction. (See also: Munna Kumar Upadhyay v. State of A.P., AIR 2012 SC 2470).

34. In the instant case, the witnesses, particularly Jose (PW.8), Baiju (PW.9), Reji (PW.11) and Shanavas (PW.12), made it clear that they were acquainted with the appellant since he was posted in the control room of their city. Moreover, just after the incident took place, the same being a sensitive case wherein the main accused was a highly ranked official of the police department, wide publicity was given to the same by the media. In light of the aforementioned fact- situation, the holding/non-holding of a Test Identification Parade loses its significance. It is also pertinent to note that the defence did not put any question to B. Muralidharan Nair (PW.77), the investigating officer in relation to why such TI Parade was not held.

35. The prime witness of the prosecution has no doubt been Shanavas (PW.12), and in relation to him, the submission advanced on behalf of the appellant that the High Court had entirely disbelieved his testimony, is factually incorrect. In fact, the High Court re- appreciated the evidence of the said witness and held as under: "The act of identifying the victim from his passport size photograph seems to be unconvincing. But that does not mean that his evidence in toto has to be thrown out. The fact remains that atleast his evidence as regards the act of accused nos. 1 and 2 and others in forcing a person from the motor bike into the van has to be accepted."

> In view of the above, we do not find any cogent reason to dis- believe the testimony of Shanavas (PW.12) in toto.

36. Be that as it may, when a statement is recorded in court, and the witness speaks under oath, after he understands the sanctity of the oath taken by him either in the name of God or religion, it is then left to the court to appreciate his evidence under Section 3 of the Evidence Act. The Judge must consider whether a prudent man would appreciate such evidence, and not appreciate the same in accordance with his own perception. The basis for appreciating evidence in a civil or criminal case remains the same. However, in view of the fact that in a criminal case, the life and liberty of a person is involved, by way of judicial interpretation, courts have created the requirement of a high degree of proof.

37. In view of the above, we do not find any merit in the appeal and the same is dismissed accordingly. However, before parting with the case, we would like to mention that the courts below have appreciated the entire evidence meticulously, but it would have been desirable if all the circumstances which completed the chain, rendering the accused liable for punishment could have been put together, to facilitate better understanding of the judgment.