

Before the Honourable  
**High Court of Kerala, at Ernakulam**

**Criminal Appeal No. 617 of 2017**

*(Against judgment dated 9<sup>th</sup> July 2015 in SC No. 656/2012 on the files of  
4<sup>th</sup> Additional District & Sessions Judge, Thrissur)*

Lijo Joy @ Joseph : Appellant [2<sup>nd</sup> Accused]

v.

State of Kerala : Respondent [State]

**Argument Note**  
**filed by the Counsel for the Appellant under**  
**Section 314 of the Criminal Procedure Code, 1973**

**P. THOMAS GEEVERGHESE | K/405/2008**  
**TONY THOMAS INCHIPARAMBIL | K/810/2010**  
**ES FIROS | K/555/2014**  
**AMRUTHA KP | K/836/2020**

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1. Appellant (2<sup>nd</sup> Accused) stands convicted under Sections 302, 394 r/w 34 of IPC and is sentenced to imprisonment for life and pay a fine of Rs. 20,000/-.

2. The prosecution case is that on 21/11/2011, A1 Sajeesh and A2 Lijo befriended the deceased 'CR Immanuel Das', while travelling in Trivandrum Express Train, and they all got down at Iringalakkuda Railway Station. They checked into a lodge named 'New Al-Ameen' at 11.50pm at Tanav, Thrissur, and took separate rooms bearing nos. BC, BE, BF. The deceased stayed in BE Room. Ten Minutes afterwards, A1 and A2 went out to have dinner from Government Hospital Canteen, and returned to their rooms [A1 stayed in BF Room, and A2 (appellant) stayed in BC Room]. Next day (22/11/2011 - Tuesday) early morning at 4am, A1 and A2 left the lodge. After 14hrs, in the evening at 6pm, the watchman discovered CS Immanuel Das lying dead in his coat, tied and strangulated. Within 18hrs, on 23/11/2011 @ 12pm, the police arrested the accused persons from a lodge named 'By the Way', at Kalpatta. The police allegedly recovered MO6 wrist-watch and MO7 gold-chain belonging to the deceased, from the bag of accused persons. On

these factual basis, the police indicted the accused persons under Ss. 302, 394 r/w 34 of the Indian Penal Code.

3. The deceased 'CS Immanuel Das' was an office-attendant of the **Vikram Sarabhai Space Centre** of the **Indian Space Research Organisation** (ISRO). His murder was allegedly proved in 2hrs by the Kerala Police. The accused persons are below-poverty line individuals, who have **no criminal antecedence. Their defence in court below was unsuccessfully done by the Legal Service Authority.**

4. The court below convicted the accused persons on following grounds:

- Deceased was last seen in the company of the accused persons;
- Recovery of gold-chain (MO7) and watch (MO6) belonging to the deceased from accused persons;
- Recovery of mobile phone (MO12) belonging to deceased based on confession of 1<sup>st</sup> Accused;
- Tower-location of A1 accused was same as deceased, and there was a 4second call made from A1's phone to deceased's phone at 12.44 morning; and
- Forensic detection of cloths-fiber of accused persons from the nail-clippings of deceased (not completely accepted by court below).

However, none of the above grounds would stand a proper legal scrutiny, due to material discrepancies, contradictions and prosecution malafides.

5. The following are the arguments of the appellant, and they are made in sub-heading, for easy reference:

#### 6. **Prosecution malice and planting of evidence**

6.1. MO12 mobile phone of deceased and MO7 gold chain were there with the body of the deceased, at Iringalakkuda Lodge, while conducting Inquest.

6.2.PW13 (Jojin – Relative of deceased stated that “(page 2 end) ഇരിങ്ങാലക്കുട റോഡിൽ New-AI Ameen Lodgeൽ വന്നു. അവിടെ മരിച്ചയാളെ ഞാൻ കണ്ടു തിരിച്ചറിഞ്ഞു. പോലീസ് 9മണിക്ക് Inquest തുടങ്ങി. പോലീസ് എന്നെ കണ്ട് ചോദിച്ച് മൊഴി എടുത്തു. മരിച്ച കൊച്ചച്ചന്റെ മാലയും Mobile phoneയും ഞാൻ കണ്ടു തിരിച്ചറിഞ്ഞു. സ്വർണ്ണമാലയും Nokia Express music എന്ന് പേരുള്ള phone ആണ്. അവകണ്ടാൽ അറിയാം. Chain ആണ് ഇത്. Already as MO7. Mobile phone ആണ് ഇത് MO12 identified (already marked).” This shows that the phone and chain never left the body of the deceased, contrary to the prosecution version.

### 6.3. Phone

6.3.1. MO12 (phone of deceased) was surrendered to police by PW8 (Vineesh) as per Ext. P14 seizure mahazar, on 17/12/2011. Ext. P14 states that Vineesh purchased the phone at 8pm on 24/11/2011. However during deposition, Vineesh PW8 (page2) contradicted that the phone was purchased at 3.00 – 3.30pm on 24/11/2011.

6.3.2. PW8 (Vineesh) further deposed that “(page2) 3110 കൊടുത്ത് Express Music വാങ്ങിയപ്പോൾ Aslam എന്റെ പേരും വിലാസവും എഴുതി എടുത്തില്ല.” So how did the police find Vineesh, and got MO12 phone surrendered? The fact is, phone was always with the police and it was planted as a piece of recovery pursuant to Ext. P38 confession made by A1.

6.4.Ext. P13 (Book seized from Aslam, Mobile Plus Shop at Malappuram) recovered consequent to Ext. P38 S.27 statement did not contain the address of Vineesh PW8, who purchased phone from there on 24/11/2011. An alleged similar transaction made by A1, caused to record his name or something similar to it in Ext. P13 book. This shows that Ext. P13 is a fabricated document, not reflecting true

transactions. Ext. P13 book does not contain the name of A1 (Sajeesh). The name written there is Satheesh. Ext. P13 book was seized as per Ext. P28 seizure mahazar. Ext. P28 seizure mahazar does not reveal where it was prepared. Ext. P13 book is titled “District Level Tourism Camp, 27/11/2010”, and not Mobile Plus Malappuram. So, this book does not inspire confidence, and it is rather a fabricated piece of evidence.

## **6.5. Gold Chain**

6.5.1. Gold chain MO7 was recovered from MO10 bag, which was laying at By-the-way lodge room ‘B’, as per Ext. P7 Mahazar,. It is a planted evidence since the police took a gold apprise (PW16) along, to arrest the accused and seize gold from them. A gold appraiser cannot be a seizure mahazar (P7) witness, unless it is a premeditated arrest and recovery. Further illegality of gold chain recovery is discussed in Paragraph 7 hereunder.

## **6.6. Dressing up the accused, after arrest to take fake samples for Forensic examination**

6.6.1. According to Ext. P10 the arrest memo, the dress of A2 is “കറുത്ത ടീ ഷർട്ട്, കറുത്ത പാന്റ്, ബ്രൗൺ ഷ്യൂ”. However, as per Ext. P2 seizure mahazar by which dresses of accused persons (MO2, MO3 & MO4) were seized and sent to FSL, A2 is wearing

“3) നീലകളരിലുള്ള ഉപയോഗിച്ച് പഴുകിയ ജീൻസ് – 1No (A2),

4) പച്ചകളരിലുള്ളതും മുൻഭാഗത്ത് Gabba എന്ന് കറുപ്പ് അക്ഷരത്തിൽ എഴുതികാണപ്പെടുന്നതും Dolce & Gabbana എന്ന് എഴുതികാണപ്പെടുന്നതുമായ ഫൾകൈ ബനിയൻ - 1No (A2)

6.6.2. This shows that A2 was dressed up by the police with a blue jeans and green baniyan, before taking his cloths for FLS Sampling. A2 was actually wearing black plants and black t-shirt while arrest, but his dresses were changed by the police, to falsely implicate him in this crime.

6.6.3. Ext. P2 seizure mahazar is prepared at Iringalakkuda at 8am on 24/11/2011, when the accused persons were actually at Kalppatta

at that point of time. PW1 deposed that “(In page 30) 23ആം തിയതി പുലരുന്നതിനു മുമ്പ് ഞങ്ങൾ കൽപ്പറ്റയിൽ പോയി. പിന്നീട് 24ആം തിയതി പകൽ ഒരു മണി സമയത്ത് കല്ലറ്റയിൽ നിന്ന് പുറപ്പെട്ടു.”

#### **6.7. Ext. P12 register of By-the-way lodge is interpolated**

6.7.1. In Ext. P12, it can be seen that accused persons checked-out at 14.10am. But that entry is clearly an overwritten entry. If one closely examines Ext. P12, it can be seen that checkout time is 11:10 am, and it is later corrected as 14:10pm, at the instance of police to accommodate the recovery and arrest.

6.7.2. No hotel has check-out time beyond 12pm. The explanation given by PW5 regarding the corrections and checkout is unbelievable. He deposed that “(Page 15) Ext. 12(a) entriesൽ രണ്ടു mobile numbers എഴുതിയത് വെട്ടുതിരുത്തുണ്ട്. അതിന് ശേഷമാണ് മൂന്നാമത് ഒരു നമ്പർ എഴുതിയത്. റൂമ് എടുത്ത സമയം 22/11/2011 8.40pm എന്നാണ് എഴുതിയിട്ടുള്ളത്. Check-out time 2.10pm 23/11/2011ന് കാണിച്ചിട്ടുണ്ട്. Ext. P12(a) entriesന് corresponding റശീതി എഴുതിയില്ല.... (Page 16) Ext. P12(a) date, സമയം എന്നിവ പിന്നീട് കേസ് ആവശ്യം എഴുതിച്ചേർത്തതാണെന്ന് പറയുന്നു, ശരിയല്ല.” Ext. P8 shows that the appellant was not arrested by anyone from the lodge, but he rather voluntarily checked-out from there.

6.7.3. Ext. P12 was seized by the police as per Ext. P8 seizure mahazar. It is witnessed by two police officers. None of them are examined by the prosecution to avoid perjury in court. Ext. P8 is executed at 14.45. This also shows that check-out time is not 2.10pm, but 11.10am.

#### **6.8. Ext. P3 register of New Al-Ameen Lodge**

6.8.1. Ext. P3 register was seized by Ext. P16 scene mahazar. In P16, page 4, the arrival time of accused persons in register is stated as 11.40pm. However, in P3 register produced, it is 11.50pm.

6.8.2. In P3 register, the check-out time of BC & BF rooms are not mentioned, though prosecution states that it was vacated at 4am. The absence of this entry creates suspension as to the gaminess of this document.

6.8.3. In Ext. P3 there is a signature in departure column as well, corresponding to entry of CRI Das.

## **7. Illegality of alleged recovery effected from accused persons**

7.1. The prosecution recovered following things from the accused persons, from Kalpatta By the Way Lodge:

- MO2 : Shoe (alleged to be of deceased)
- MO5 : Carbon Phone (A2)
- MO6 : Gold colour wrist watch (Alleged to be of deceased)
- MO7 : Gold chain of 16.54grams(Alleged to be of deceased)
- MO8 : Mobile phone recovered from A1
- MO9 : Cigarette Packet (No idea whose)
- MO10 : Bag (Alleged to be belonging to accused)

7.2. MO6, MO7 and M09 were allegedly recovered from MO10 bag, alleged to be in the custody of the accused persons. These recoveries are marred by impossible contradictions, and inconsistent depositions.

7.3. Ext. P6 seizure mahazar is at 12.30pm on 23/11/2010, prepared in front of 'By the Way' Lodge at Kalpatta as per Ext. P6. MO6, MO7 and MO9 were recovered from Room 'B' of 'Bay the Way' Lodge, as per Ext. P7 seizure mahzar prepared at 1.30pm on 23/11/2011. However, these recoveries are contradicted by mahazar witnesses, and other who were present at the time of alleged recovery.

7.4. The relevant deposition of PW30 (M Surendran CI) who lead the arrest party is as follows: "(page 3) by the way ഏതാ

ലോഡ്ജിലെത്തി. പ്രതികളെ കണ്ടെത്തി. ലോഡ്ജ് ജീവനക്കാരൻ രാമകൃഷ്ണൻ (PW1) അവരെ തിരിച്ചറിഞ്ഞു. 23/11/2017 തീയതി 12:15 മണിക്ക് പ്രതികളെ സ്ഥലത്ത് വെച്ച് അറസ്റ്റ് ചെയ്തു... തുടർന്ന് ഈ കേസിലെ ഒന്നാം പ്രതി സജീഷിന്റെ പാൻറ് പോക്കറ്റിൽ നിന്നും കാണപ്പെട്ട മൊബൈൽഫോൺ ബന്ധത്തിൽ എടുക്കുന്നതിന് ഇന്ന് 12:30 മണിക്ക് seizure മഹസർ തയ്യാറാക്കി. മൊബൈൽ ഫോണും സിം കാർഡും ബന്ധബന്ധിതമായി എടുത്തു. ആയതിന്റെ seizure മഹസർ ആണ് Ext. P6. എന്തെയും സാക്ഷികളുടെയും ഒപ്പുണ്ട്. Nokia company നിർമ്മിതവും മോഡൽ 1209 എന്ന് കാണുന്നതും IMEI No. 359346032231841 എന്ന് കാണുന്നതും Idea sim ഉള്ളതും ആയതിൽ mobile phone no. 9847796451 എന്ന് പരിശോധനയിൽ ബോധ്യപ്പെട്ടിട്ടുള്ളതും ആയ മൊബൈൽ ഫോണും സിം കാർഡും ബന്ധബന്ധിതമായി എടുത്തു (MO8 identified). തുടർന്ന് ടിയാൻമാർ താമസിച്ചിരുന്ന മുറിയിൽ ടിയാൻമാർ സൂക്ഷിച്ചിരുന്ന ചുവപ്പ് കറുപ്പ് കളർ ബാഗിൽ (MO10) സൂക്ഷിച്ച 980 രൂപയും, മൊബൈൽ ഫോൺ (MO5), വാച്ച് (MO6), സ്വർണ്ണമാല (MO7), സിഗരറ്റ് (MO9) എന്നിവ ബന്ധത്തിൽ എടുക്കുന്നതിന് ഉച്ചയ്ക്ക് 1:30 മണിക്ക് seizure mahazar തയ്യാറാക്കി (Ext. P7)..”

7.5. However, in cross PW30 changed the entire sequence of recovery. He stated that “(Page 13cross) A2 lijo കൽപ്പറ്റ കാരനാണെന്ന് മനസ്സിലായിട്ടുണ്ട്. ലോഡ്ജിന്കത്ത് മുറിയിൽ വെച്ചാണ് അറസ്റ്റ്. ബീ നമ്പർ മുറിയിൽ വെച്ചാണ് അറസ്റ്റ്. പാർട്ടിയുമായി ചെന്നപ്പോൾ അവർ മുറിക്കകത്ത് ഉണ്ടായിരുന്നു... Ext P6, P7 മഹസറുകൾ ഒരേ സ്ഥലത്ത് വെച്ചാണ് തയ്യാറാക്കിയത്. ലോഡ്ജിന് പുറത്തോ മുറിക്ക് പുറത്ത് corridorിലോ, ലോഡ്ജിന് മുൻവശത്ത് വെച്ചോ അറസ്റ്റ് ചെയ്തിട്ടില്ല.” However, in his chief, PW30 stated that



they first seized MO8 phone from A1, then went to their room, and recovered MO5, MO6, MO7 & MO9 from MO10 bag. This sequence of events goes for a toss, thereafter, and it is impossible to know what was recovered first, MO8 phone or MO5, MO6, MO7 & MO9 belongings of deceased.

7.6. PW4 (Shanavas witness mahazar of P6 & P7) deposed that “(page3) ഇപ്പോൾ കാണിച്ച മഹസ്സറിൽ എന്റെ ഒപ്പും addressഉം ഉണ്ട്. Marked as Ext. P7. By the way lodgeന്റെ വരാന്തയിൽ വെച്ച് ഒപ്പ് വെച്ചതാണ്... (Page 4) ഒപ്പുവെച്ച പേപ്പർ എന്ത് എഴുതിയെന്ന് ഞാൻ വ്യക്തമായി വായിച്ചില്ല. ഒപ്പ് വെക്കുന്ന സമയം ഏകതേശം 12 ½ - 12 ¾ മണിയായികാണും.. (Page 5down) ഒപ്പ് വെച്ചത് first floor വരാന്തയിൽ വെച്ചാണ് എന്നാണ് ഓർമ്മ. Corridorൽ വെച്ചാണ് nokia mobile phone കൊടുക്കുന്നത് കണ്ടത്. അതിനുശേഷം റൂമിൽ വെച്ചാണ് മാലയും വാച്ചും കാണുന്നത്. ഒപ്പുവെച്ച പാടെ കുറച്ചുകഴിഞ്ഞ് അവ കണ്ടു. ആദ്യം കോരിഡോറിൽ വെച്ച് ഒപ്പുവെച്ചു. അവിടെ നിന്ന് രണ്ട് മീറ്റർ മാറിയാണ് റൂം. എത്ര റൂം മാറി ആണ് എന്ന് ഓർമ്മയില്ല. ആദ്യം ഒപ്പുവെച്ച ശേഷം പോലീസ്കാരുടെ കൂടെ മുറിയിലേക്ക് ഞാൻ പോയി. മുറിയിൽ അരമണിക്കൂർ ചെലവഴിച്ചു. മുറിയിൽ വെച്ച് ഒരു paperൽ ഒപ്പു വെച്ചില്ല {Ext. P7 is prepared inside room}. മുറിയിൽവെച്ച് രേഖ തയ്യാറാക്കിയോ എന്ന് ഓർമ്മയില്ല. ഒപ്പുവെച്ച പേപ്പറിൽ എന്ത് എഴുതി എന്ന് അറിയില്ല.”

7.7. PW5(Umman, 2<sup>nd</sup> mahazar witness of P6 & P7) stated that “(Page 2) പോലീസ് പാർട്ടി പ്രതി സജീഷിനെ പിടിച്ച സമയം സജീഷ് ഒരു മൊബൈൽ ഫോൺ പോക്കറ്റിൽ നിന്ന് എടുത്ത് പോലീസിന് കൊടുത്തു. 23.11.2011 നാണ് സമയം ഉച്ചക്ക് 12 മണിക്ക്, എന്റെ ലോഡ്ജിന്റെ reception നും enteranceനും തൊട്ട് ഇടക്ക് വെച്ചാണ്.

നോക്കിയ കമ്പനിയുടെ മൊബൈൽ ഫോൺ ആണ്(MO8 Ext. P6)... അന്നേദിവസം ഞാൻ Ext. P7 മഹസ്സറിൽ ഞാൻ ഒപ്പുവെച്ചു. അന്ന് 12-10, 12-15 മണിക്ക് എന്റെ ലോഡ്ജിൽ റൂം നമ്പർ B വെച്ച് ബാഗും അതിനകത്ത് ഒരു മൊബൈലും സ്വർണ്ണമാലയും വാച്ചും കുറച്ചു കറൻസി നോട്ട്, സിഗരറ്റ് പാക്കറ്റ് എന്നിവ കണ്ടെടുത്തു.”

7.8. PW16 (Gold Apprizer – KC Mohanan, also mahazar witness in Ext. P7) – “(Page 2) മാറ്റ് നോക്കി. അന്ന് നോക്കിയ സ്വർണ്ണാഭരണമാണ് ആണിത് (MO7 identified). പോലീസ് അവിടെ മഹസ്സർ തയ്യാറാക്കി. അതിൽ ഞാൻ സാക്ഷിയായി ഓപ്പ് വെച്ചു. Ext. P7ൽ എന്റെ ഒപ്പുണ്ട്. 16gram 54mg ആണ് തൂക്കം” Ext. P7 is the seizure mahazar. It is impossible to believe that the police party took a gold appraiser also to arrest and recover gold from accused persons. Now seizure mahazar and apprizer mahazar is one and same. **This shows that the PW30 (arresting officer) was premeditated to recover gold from accused persons.** PW 16 further deposed that “(page 3 cross) പൊലീസ് വേണ്ടി ഒരുപാട് ആഭരണങ്ങൾ apprise ചെയ്തിട്ടുണ്ട്... (page no. 4) lodgeൽ B എന്ന മുറി ഏതുഭാഗത്താണ് എന്ന് ശ്രദ്ധിച്ചിട്ടില്ല. B എന്ന മുറി നമ്പർ ഉണ്ടോ എന്ന് അറിയില്ല. റോഡിൽ നിന്ന് മുറ്റത്ത് കയറി lodgeൽ കറയുന്ന മുറിയിലാണ് തൂക്കം നോക്കിയത്. മേശയും **കസേരയും ഇട്ട reception റൂമാണ്.** **ആധ്യമായി ഈ സ്വർണ്ണം കാണുന്നത് Police ഇത് കൈയിൽ തരുമ്പോൾ ആണ്.** **സ്വർണ്ണം പോലീസ് എവിടെ നിന്നും എടുത്തു എന്ന് കണ്ടില്ല.** ഞാൻ തൂക്കം നോക്കാൻ അവിടെ എത്തിയത് ഉച്ചക്ക് **1.00 മണിക്കാണ്.**” PW16 is a witness to MO7 seizure mahazar, in court he stated that he has not seen from where the gold came from. However, in his 161 statement, he specifically stated to be part of the recovery proceedings. Gold apprizer should be called after recovering the gold. In this case, gold apprizer was taken along for seizing gold, showing that whole thing is a concocted story.

7.9. PW1, who accompanied the police party did not state anything about MO8 mobile phone alleged to be recovered by the police from 1<sup>st</sup> Accused.

7.10. PW1 stated that they reached the lodge at “(page 31) by the way lodgeൽ ഉച്ചക്ക് 11½ മണിയോടെ എത്തി. വാച്ചും സ്വർണ്ണമാലയും കണ്ട് തിരിച്ചറിയാൻ പ്രതേക അടയാളങ്ങൾ നോക്കിവെച്ചില്ല. By the way lodgeൽ വെച്ചാണ് ഞാൻ ആദ്യമായി മാല കാണുന്നത്...” He further deposed that “(In page 30) 23ആം തീയതി പുലരുന്നതിനു മുമ്പ് ഞങ്ങൾ കൽപ്പറ്റയിൽ പോയി. പിന്നീട് 24ആം തീയതി പകൾ ഒരു മണി സമയത്ത് കല്ലറ്റയിൽ നിന്ന് പുറപ്പെട്ടു.” However, seizure mahazar of MO1, MO2, MO3 & MO4 (Ext number not clear, and not marked) was created at 8am on 24/11/2011, at Iringalakkuda Police Station, in which PW1 is the mahazar witness. This is highly contradictory of the prosecution case. It is more relevant since MO2 shoe is alleged to be shoe of the deceased, which was seized at Iringalakkuda, when the accused were at Kalpatta.

7.11. Conclusion of illegal recovery

- Recovery time and place are contradicted by witnesses as follows:

<u>Witness</u>	<u>MO8 Time</u>	<u>MO8 Place</u>	<u>MO5,6,7,9 Time</u>	<u>MO5,6,7,9 Place</u>
PW 30 (Arresting Officer)	12.30pm (changed in cross)	In chief it was by Ext. P7, in front of lodge. In cross he changed to Room	1.30pm	B Room
PW4 (Mahazar Witness)	12.30-12.45pm	Corridor	12.30-12.45pm	B Room
PW5 (Mahazar Witness)	12pm	Between entrance and reception of lodge	12:10 to 12-15	B Room
PW16 (Apprizer) (In deposition, he didn't see recovery. But in 161, he witnessed recovery)	Didn't see	Didn't see	1.30pm	Reception Room
PW1 (watchman)	Didn't see	Didn't see	11am	Room

Ext. P6 seizure mahazar	12.30	In front of by the way lodge	-	-
Ext. P7	-	-	1.30pm	B room
<b><u>Witness</u></b>	<b><u>MO2 (Shoe) Time</u></b>		<b><u>Place of recovery</u></b>	
Seizure Mahazar (not marked)	8am on 24/11/2020		Iringalakkuda	
PW1 (Mahazar Witness)	Evening on 24/11/2020		Iringalakkuda	

## 8. **Suppression of Material Documents**

8.1. The police drew the identifiable pictures of the accused persons, with the help of PW1 (watchman). However, the said pictures are conspicuously absent in the evidence of the prosecution. In cross of PW30 this was specifically questioned “രണ്ടുപേരുടെയും രേഖാചിത്രം തന്നിരുന്നു. രേഖാചിത്രം അന്വേഷണ ഉദ്യോഗസ്ഥന് തിരിച്ചെൽപ്പിച്ചു”. But this document is not there anywhere. The adverse inference of this suppression is that the pictures drew by the police bared no resemble to the accused persons.

8.2. **The mobile number, mobile phone, cell tower locations of 2<sup>nd</sup> accused/appellant is intentionally suppressed by the prosecution, though the entire investigation happened on the basis of cell tower locations.**

8.3. The call record of the 2<sup>nd</sup> accused is intentionally suppressed, to avoid disclosure of the fact that the 2<sup>nd</sup> accused was no where near Iringalakkuda, when the alleged incident happened.

## 9. **Probability of others to commit the crime**

9.1. The accused persons left the lodge at 4am on 22/11/2011. The death was discovered at 6pm, after 14hours. According to PW23 doctor who conducted post-mortem, the death happened more than 18hours and less than 72hrs, before conducting autopsy at 1.45pm on 23/11/2011. **So the widow of death is 1.45pm on 20/11/2011 to 7.45pm on 22/11/2011.** The accused left at 4am on 22/11/2011. The death was discovered at 6pm on 22/11/2011. So there is an unexplained window

of 14hours since the accused left the lodge, for anyone to commit murder of an ISRO Officer.

9.2. The lodge where the deceased was found dead, is an open lodge cum shopping complex, which had access to whole public. According to PW1 (Ramakrishnan) watchman of the lodge “(page2) എന്റെ duty time വൈകിട്ട് 6മണി മുതൽ പിറ്റേദിവസം 7മണി വരെ ആയിരുന്നു”. There is no watchman for the lodge during day-time. PW1 further stated that “(page 14) New Al-amen lodge മൂന്ന് നിലയിൽ പ്രവർത്തിക്കുന്നു, ground floor അടക്കം. Second floorൽ മാത്രമാണ് ലോഡ്ജിങ്ങ് ഉള്ളത്. ഭാക്കി കടകളും ഓഫീസുമാണ്... (Page 18) 21/11/2011ന് BE കൂടാതെ 7പേർക്ക് മുറികൾ കൊടുത്തിട്ടുണ്ട്. (Page 19) 22/11/2011ന് മുറി എടുത്തവരിൽ ഒരാൾ മാത്രമാണ് checkout ചെയ്ത് പോയിട്ടുള്ളത്. ഭാക്കിയുള്ളവർ എപ്പോൾ പോയിയെന്ന് Ext P3 register കൊണ്ട് പറയാൻ പറ്റില്ല.. (Page 21) ഡാണവിൽ ധാരാളം വ്യാപാരസ്ഥാപനങ്ങൾ ഉള്ള സ്ഥലമാണ്. New Al Ameen lodge അല്ലാതെ വേറെ സ്ഥാപനങ്ങളുടെ protectionനും രാത്രികാലം ഞാൻ നോക്കാറുണ്ട്. ടാണാവിലുള്ള ഒരു jewellery, spare-parts കട, foreign സാധനങ്ങളുടെ കട എന്നവയുടെയും watchman ആണ്. (Page 22) 21ആം തീയതിലെ 317, 318 നമ്പറുകളായി Ext. P3(a)ൽ മുറികൾ എടുത്തവരുടെ വിവരം കാണിച്ചിട്ടുണ്ട്. ആ മുറികൾ എടുത്തവരെ 21ആം തീയതിക്ക് ശേഷം ഞാൻ കാണുക ഉണ്ടായിട്ടില്ല. Room No. 211, 205 മുറികളാണ് അവർ എടുത്തത്. ആ മുറികൾ അന്ന് വന്ന് എടുത്തവരെ എനിക്ക് മുൻപരിചയമില്ല.. 211ആം നമ്പർ മുറി 11pm നാണ് എടുത്തിട്ടുള്ളത്. 205 ആം നമ്പർ മുറി 11.20pmനാണ്.. 211ൽ 3പേർ ആണ് മുറി എടുത്തിട്ടുള്ളത്. 205ൽ 2പേർ ആണ് മുറി എടുത്തിട്ടുള്ളത്. ഈ മുറികൾ അവർ എപ്പോൾ vacate ചെയ്ത് പോയിയെന്ന് ഞാൻ കണ്ടിട്ടില്ല. 21ന്

10.50pmന് 2പേർ മുറി എടുത്തതായി കാണാം. അവർ എപ്പോൾ vacate ചെയ്ത് പോയിയെന്ന് എനിക്കറിയില്ല.... (Page24 middle) New Al Ameen Buildingൽ വേറെ സ്ഥാപനങ്ങൾ ground floor first floor എന്നിവയിൽ പ്രവർത്തിക്കുന്നുണ്ട്. സ്ഥാപനങ്ങളുമായി ബന്ധപ്പെട്ട് ധാരാളം ആളുകൾ വന്നുപോകാറുണ്ടോ എന്ന് അറിയില്ല. കടകളിൽ പലരും വരുന്നുണ്ട്. ഓഫീസുകളും മറ്റും മേണിയാകുമ്പോൾ അടച്ചുപോകും. Ground floorൽ നിന്നും ഒന്നാം നിലയിലേക്കും രണ്ടാം നിലയിലേക്കും പോകാൻ ഒരേ കോണിയാണ്. (page 25) ഒന്നാം നിലയിൽ വരുന്നവർക്ക് രണ്ടാം നിലയിലേക്ക് പോകാം. ഗോവണിക്ക് വാതിൽ ഇല്ല. 22ആം തിയതി രാവിലെ 7മണിമുതൽ വൈകിട്ട് 6മണിവരെ ആരെല്ലാം ഏതെല്ലാം മുറിയിൽ പോയി, വന്നു എന്ന് എനിക്കറിയില്ല. മറ്റു മുറികൾ എടുത്തവർ അവർ അവരുടെ മുറികളിൽ ഉണ്ടോ എന്ന് കാലത്ത് പോകുമ്പോൾ എനിക്ക് അറിയില്ല...” PW5 (Abdul Latheef) Owner of the lodge stated that “(Page 9) രാവിലെ അഞ്ചുൽ ഖാദർ 8 30 മണിയോടെ ഡ്യൂട്ടിക്ക് വരാറുണ്ട്. 22/11/2011ന് ഞാൻ സ്റ്റാഫ് അഞ്ചുൽഖാദർ വരുന്നതിനുമുമ്പ് ലോഡ്ജിൽ എത്തിയിരുന്നു. അപ്പോഴേക്കും PW1 രാമകൃഷ്ണൻ അവിടെനിന്ന് പോയിരുന്നു. അഞ്ചുൽ ഖാദർ രാവിലെ വന്നു മകൻറെ കൂട്ടിക്ക് സുഖമില്ല എന്ന് പറഞ്ഞു പോയി. അന്ന് അഞ്ചുൽഖാദർ ഡ്യൂട്ടിക്ക് ചെയ്തില്ല.” Therefore, it is clear that lodge was not properly secured or managed, and everyone had free and easy access to the lodge. In the time between 7am (when PW1 watchman left) and 8.30am (PW5 owner came), the lodge had no one in control to know who all entered and existed the premises.

9.3.The deceased got down at Iringalakkuda to visit the house of PW18 (Smitha), his colleague at VSSC. She is living separated from her husband, against whom a divorce case is pending (her S.161

Statement). MO34 (Big Fun 100 tables) were recovered from the deceased, which is a medicine used for increasing penis erection duration. She and her relatives have more reason to assault and injure the deceased CS Immanuel Das.

9.3.1. The prosecution case about CSI Das's intended visit to PW18's house is totally unbelievable. According to prosecution Das knew that PW18 was at Thiruvananthapuram. On his way back to Thiruvananthapuram, he still got down at 11.30pm at Iringalakkuda, took a lodge, and wanted to go to PW18's house. It makes no sense for him to take so much effort, if PW18 was really at Thiruvananthapuram.

9.4. The deceased was an officer of Indian Space Research Organisation, a sensitive institution of the Nation. His death can also be caused by foreign intelligence agencies, working against the interest of the country. WikiLeaks released a report in 2013 that 684 staffs working in ISRO, died in various suspicious circumstances, and the agency is keeping mum about it. The death of CSI Das, is very suspicious, and it was investigated by an incompetent officer and completed within 18hrs. The investigation happened only with a single theory, robbery of phone and gold by the accused, and no alternatives were explored by the police. The accused were arrested and indicted even before the post-mortem report became available.

#### **10. No scientific evidence to prove complicity of the accused.**

10.1. The scene of crime was inspected by finger print experts, dog squad and forensic experts. However, there is no scientific evidence linking the appellant to the deceased.

10.2. PW22 (Scientific assistant) inspected the scene of crime and gathered cellophane pressings from the neck and arms of the deceased, cigarette butts, hair strands, loose hairs stands found on the body, hair stands found on the pillow cover, hair stands found in plastic rope, hair stands found on comb, dark brown stains found on pillow and packed and sealed them in covers, as per Ext. P31 seizure mahazar and handed over to the investigation officer for laboratory

examination. But the prosecution could not connect any of these materials with the accused persons or with the appellant.

10.3. After all the collection and examination, PW22 could only state that MO11 rope is similar to MO40 & M41 ropes, which is possible, as the owner of lodge might have purchased all cloth-hanging ropes together. MO11 rope allegedly used to strangle the deceased, did not contain any human cell or particle linking it to deceased or accused (Ext. P58(a))

#### **10.3.1. Rope did not contain human cells**

10.3.1.1. The prosecution version is that MO11 plastic rope was used to strangle the deceased. MO11 was sent to FSL.

10.3.1.2. In DW1(Scientific Assistant)'s deposition (page 2), it was stated that:

“2. Fibres similar to those in Item No. 9<sup>1</sup> are not detected on the cellophane tapes in Items 11<sup>2</sup>, 12<sup>3</sup> and 13<sup>4</sup> ”

10.3.1.3. **This shows that the weapon totted by the prosecution as the alleged object causing death, is not the rope but something else.**

10.4. Although, the prosecution took lot of finger-prints from the scene of crime, it could not match any finger-prints with the finger prints of the accused persons. It is a serious deficiency in the prosecution case.

### **11. Cloth-fibre match totted by FSL & prosecution malafide.**

11.1. Although FLS report was filed to show that colour of fibre found in the nails of the deceased belonged to the accused persons, the same could not be established in court due to discrepancy in colour of the fiber.

11.2. In Paragraph 57 of lower court judgment, it is clearly found that Forensic Reports do not help the prosecution.

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<sup>1</sup> Yellow colour plastic rope – MO11

<sup>2</sup> Cellophane pressing of around the neck of deceased

<sup>3</sup> Cellophane pressing of left hand of deceased

<sup>4</sup> Cellophane pressing of right hand of deceased



11.3. Nonetheless, to decipher FSL Report, the details of the cloths worn by deceased and accused persons are listed hereunder for easy understanding:

*Dress of Deceased :*

- കാവി ഷർട്ടി. (MO31)
- റോസ് കരയുള്ള വെള്ളമുണ്ട് (MO38)
- കറുപ്പിൽ വെള്ള വരയുള്ള full കൈ ഷർട്ട് (MO20)

*Dress of 1<sup>st</sup> Accused:*

- കറപ്പ് കളരിലുള്ള ഉപയോഗിച്ച പഴകിയ പാന്റ് (MO1),
- Maroon colour half sleeve shirt, with two flap pocket having colours red, black and white. (MO4)

*Dress of 2<sup>nd</sup> Accused/Appellant:*

- പച്ച കളരിലുള്ള ഫൾ കൈ ബനിയൻ, written gabba in black, dolce & gabbana. (MO3)
- നീല കളർ പഴകിയ ജീൻസ് – Suppressed by prosecution (Item 29 in P58(a))

*Blanket*

- Red-Sky Blue Colour, with columns
- രക്തം കലർന്ന bedsheet

11.4. In Ext. P58(a), report of scientific assistant, the item sent as A2's dress, is a t-shirt of **bluish-green and dark-green**. However, according to PW31 (investigating officer), A2's dress is a banyan of **green colour** (MO3) written "Dolce & Gabbana"). According to the said report, it is further stated that cellophane tape imprint of deceased's hand contained 'bluish green fiber similar to that of A2's t-shirt. The said report later corrected by an erratum report (Ext. P58(b)). **The erratum report (Ext. P58(b)) stated that the finger-nails of the deceased contained fibre's similar to the dress worn by the 1<sup>st</sup> accused and not 2<sup>nd</sup> accused/appellant.**

11.5. **The charge sheet against the appellant was laid on the basis of Ext. P58(a) FSL report implicating him. The FLS report was later corrected by Ext. P58(b) erratum report during trial by DW1, exonerating the appellant.**

11.6. In the deposition of this chemical analyst (DW1), he also admitted that fibre presence is not tested by any chemical or scientific means, but by rudimentary physical handling in the laboratory itself.

11.7. Now, there is a prosecution malafide in the cloth-fibres and FLS report. According to Ext. P10, the arrest memo, the dress of A2 is “കറുത്ത ടീ ഷർട്ട്, കറുത്ത പാന്റ്, ബ്രൗൺ ഷൂ”. The dress is neither green nor blue, but black. In the Lab report (Ext. P58(a)), the pants of A2 is blue jeans. However, in arrest memo, it is black pants, not jeans or blue jeans.

11.8. MO2 to MO4 (dresses of accused persons) were seized as per Ext. P2 seizure mahazar. Ext. P2 is prepared on ‘24/11/2011 തിയതി പകൽ 8.00മണിക്ക് ഇരിങ്ങാലക്കുട പോലീസ് സ്റ്റേഷനിൽ വെച്ച്.’ At the said time, the accused persons were at Wayand, as seen from PW1’s deposition “(In page 30) 23ആം തിയതി പുലരുന്നതിനു മുമ്പ് ഞങ്ങൾ കൽപ്പറ്റയിൽ പോയി. പിന്നീട് 24ആം തിയതി പകൽ ഒരു മണി സമയത്ത് കല്ലറ്റയിൽ നിന്ന് പുറപ്പെട്ടു. ”

11.9. This clearly shows that investigating officer purposefully made the accused persons wear some cloths belonging to strangers/actual-killer, to get a positive FSL report. However, the arresting officer accidentally stated the true colour of the dress of the accused while arresting, which does not tally with the MOs produced.

11.10. MO11 plastic rope is totted as used for strangulating the deceased. MO40 & MO41 plastic ropes were recovered from the room of 1<sup>st</sup> Accused, and alleged to be the remaining of MO11 plastic rope. But this version of the prosecution is not supported by any scientific or other evidence. Besides, it has no connection with 2<sup>nd</sup> accused, the appellant herein.

## 12. Presence of unknown human hair

12.1. In Ext. P58(a) FLS report, in page 15, it is stated that ‘item 16’ hair is human scalp hair, but it did not match neither with hair of deceased nor of the accused persons. Whose hair is it, is unexplained by the prosecution.

12.2. The unknown human hair shows that there was someone else in the room of the deceased.

**13. Last seen in the company of the accused – Not correct**

13.1. The prosecution version is that the deceased was last seen in the company of the accused persons. It is not correct. The court below failed to note relevant facts which proves otherwise.

13.2. There is no statement by anyone to support the prosecution case that the accused persons befriended the deceased while travelling in Thiruvananthapuram Express Train from Vadakara to Iringalakkuda. This train reaches Iringalakkuda at 10pm, and there is no explanation as to what the deceased did till 11.50pm when he checked into Al-Ameen Lodge.

13.3. PW2 (Siju), the auto driver who allegedly took the accused and deceased from Iringalakkuda Railway Station to Al-Ameen Lodge, turned hostile. Similarly PW3 (Pratheesh), the canteen worker did not support the prosecution theory, and did not identify the accused. Both these witnesses should have had more time to interact with the accused, than the star witness of prosecution PW1 (watchman), who seems to be saving his own life, from the police. PW1 was also there in the last seen company of the deceased.

13.4. PW1 stated that “(Page 3) മുന്ന് single rooms കൊടുത്തു. BC, BF, BE എന്നീ roomsന്റെ താക്കോൽ എടുത്തു അവരെ മൂന്നുപേരെയും മുറികളിൽ കൊണ്ടുപോയി. ഓരോരുത്തർക്ക് ഓരോ റൂംസ് തുറന്നുകൊടുത്തു. BE room ഇമാനുവൽ ദാസിന് കൊടുത്തു. ചാവി അവരെ ഏൽപ്പിച്ചു. ഞാൻ താഴോട്ട് ഇറങ്ങി വന്നു. പത്ത് നിമിഷം കഴിഞ്ഞ് പ്രായംകുറഞ്ഞ രണ്ടു പേർ ഇറങ്ങി വന്നു. ‘ഭക്ഷണം വല്ലതും കിട്ടുമോ’ എന്ന് എന്നോട് ചോദിച്ചു. ‘വേറെ കാൻറീൻ ഈ സമയത്ത് അത് തുറക്കില്ല ഹോസ്പിറ്റൽ കാൻറീൻ ഉണ്ടാകും അവിടെ പോയി കഴിച്ചോ’ എന്ന് ഞാൻ അവരോട് പറഞ്ഞു. അവർ ഭക്ഷണം കഴിക്കാൻ ഹോസ്പിറ്റൽ കാൻറീൻലേക്ക് പോയി. ഭക്ഷണം കഴിച്ച് കഴിഞ്ഞ് അവർ തിരിച്ചു”

വന്നു അവർ മുറിയിലേക്ക് കയറിപ്പോയി. പിറ്റേന്ന് രാവിലെ 4 മണിക്ക് രണ്ടു ചെറുപ്പക്കാർ ഇറങ്ങി വന്നു. അതേ ചെറുപ്പക്കാരാണ് ആണ്. 'മറ്റേയാൾ കുടിച്ച് ഓവർ ആയി ഉറങ്ങുകയാണ്, കുറച്ചു കഴിഞ്ഞെ വരൂ' എന്നു പറഞ്ഞു. അവർ ചാവി എന്നെ ഏൽപ്പിച്ചു പോയി.

13.4.1. The last company of CSI Das was with PW1, when he gave the key to BE room. All three were given separate rooms by PW1. Accused persons came down after 10mins, and went to have food at Hospital Canteen. They returned after some time (exact time not specified). A1 & A2 went out in a company and came back together in a company. This company does not include the deceased, as the deceased was given a room by PW1. So, it cannot be said that the deceased was last seen in the company of the accused persons.

13.4.2. When the accused persons left the room at 4am, PW1 did not find any suspicious circumstances or altered behaviour from the accused persons. Accused persons aged 22 and 24, who have no criminal antecedences, cannot be expected to give the keys and leave the lodge meeting the watchman, after committing a murder, in the ordinary course of criminal behaviour.

13.5. **PW1's statement is self-serving and self-vindicating.** He was appended by the police and was on leave for two days since the death. PW1 stated that "(page 28) ലോഡ്ജിന് തൊട്ടടുത്ത ബിൽഡിംഗ് ആണ് സിഐയുടെ പോലീസ് സ്റ്റേഷൻ. ഗേറ്റിലേക്ക് വളഞ്ഞു വരണം. ലോഡ്ജിന് തൊട്ടടുത്ത ബിൽഡിംഗ് ആണ് സിഐയുടെ പോലീസ് സ്റ്റേഷൻ റേഷൻ ഗേറ്റിലേക്ക് വളഞ്ഞു വരണം ജീപ്പിൽ കയറ്റി പോയത് കാട്ടിത്തള്ളിച്ചിറ പോലീസ് സ്റ്റേഷനിലേക്ക് ആണ്. മൂന്നു കിലോമീറ്റർ ദൂരം ഉണ്ടാകും. അവിടെ വെച്ചാണ് ചോദ്യം ചെയ്തതും എഴുതിയതും ഒപ്പിട്ടതും. Lodgeൽ വെച്ച് എല്ലാം മൊഴിയെടുത്തു ഒപ്പുവെച്ചതും. അവിടെ വെച്ചാണ് എന്ന്

പറയുന്നത് ശരിയല്ല. ഇരുപത്തിരണ്ടാം തീയതി രാത്രി 12 മണിക്കാണ് ഞാൻ ഒപ്പുവെച്ചത്. ഞാൻ പിന്നീട് വീട്ടിൽ പോയത് 24 ആം തീയതിയാണ്.” So, his statement is a coerced, unreliable and self acquitting statement.

13.6. PW1 & PW6’s S.161 statement stated that they discovered the dead body, together. However, in the deposition, PW1 stated that he saw the dead body first, and he called the owner (PW6) who came later, and informed the police. This is a serious contradiction, which discredits the deposition of PW1 & PW6

13.7. In Ext. P11 inquest report, answer no. 4 (page 4) given by PW1 states that he last saw the deceased in the corridor alone at 23.50. He doesn’t say that the deceased was last seen in the company of the accused persons.

#### **14. Illegality of alleged confession and recovery of MO12 (mobile phone of the deceased) and MO13**

14.1. The alleged confession of **1<sup>st</sup> Accused** is Ext. P38 “എന്നെകൊണ്ടുപോയാൽ mobile കടയും mobile വാങ്ങയ ആളെയും കാണിച്ചുതരാം”. In this alleged confession, A2 is not mentioned anywhere, and therefore, it does not implicate A2. PW7 (Aslam) also stated that he saw only A1, and had no clue about A2. So, this confession does not affect the innocence of the Appellant.

14.2. Notwithstanding the above, Ext. P38 confession did not reveal anything material for prosecution. The book recovered from Aslam (P13) is a shabby piece of evidence, not inspiring confidence. It did not contain the name of A1.

14.3. **It is submitted that Ext. P38 confession is with respect to mobile phone, and mobile phones can be easily traced by the police even otherwise by tracking its IMEI, without any confession. So, the quality of evidence obtained by the alleged confession, pertaining to a traceable object, should be of a higher standard. This standard of**

**proof is not satisfied in recovery of Ext. P13 book from PW7, though Ext. P38 confession.**

14.4. Moreover, in Ext. P28 seizure mahazar by which Ext. P13 book was recovered, the place of seizure and recovery is not stated. It is a serious deficiency in admissibility of Ext. P13, which lead to further recoveries of MO12 and MO13 phoned.

14.5. Ext. P13 book did not contain the address and details of Vineesh, though he exchanged a phone similar to that of A1. This shows that Ext. P13 was fabricated by the police to trap A1.

14.6. Since Ext. P13 book did not contain address of Vinessh, it **breaks the chain of proof**, and makes the discovery inadmissible. MO12 was not recovered by anyone, but surrendered to police by PW8 (Vineesh) way of Ext. P14 seizure mahazar, on 17/12/2012. MO12 is alleged to be the mobile phone of the deceased. MO13 is the phone exchanged by PW8(Vineesh) to purchase MO12. PW8 deposed that “(page 2) 3110 കോടുത്ത് express music വാങ്ങിയപ്പോൾ Aslam (PW7 shopowner) എന്റെ പേര് വിവരം എഴുതിയെടുത്തില്ല”. So, his appearance and surrender cannot be linked and proved to the accused persons.

14.7. **Anyways, the appellant (2nd Accused) is no way connected to the recovery of MO12, 13 and P13. Everything is related to 1st Accused.**

## **15. Inadmissibility of Call Record Details and Tower Locations**

15.1. PW24 is the nodal officer of the Idea Cellular Ltd. He produced Ext. P22 (CDR of Mobile No. 9847796451 of A1) and P23 (CDR of Mobile No. 9961252765, of deceased). The address of above mobile numbers is produced as Exhibit P24. Ext. P25 is tower decoding list. Ext. P26 and P27 are the application forms for mobile of the above two mobile nos. None of these documents are admissible in evidence.

15.2. Ext. P22 and P23 do not have proper certificate under Section 65B of the Evidence Act. The certificates do not explain how the information was derived or reproduced, which software was used or

which kind of computer was employed. Hence, they are invalid certificates and inadmissible in evidence<sup>5</sup>.

15.3. The original nodal officer who provided the information (C. Ramachandran CW34) was not examined by the prosecution.

15.4. **Ext. P26 and P27 (application forms showing ownership of mobile nos) were photocopies produced at the time of cross examination, and they were marked under objection, subject to proof.** However, no proof was further adduced by the prosecution. These belated documents, not part of charge-sheet ought not to be party of evidence.

15.5. **None of these call records concerns with the 2<sup>nd</sup> Accused, the appellant herein.** The appellant's mobile phone was seized by the police as MO5 (Karbon Mobile phone). This phone is lying without ownership or status in the present prosecution case.

15.6. **According to the prosecution case, the phone number of 2<sup>nd</sup> Accused/Appellant was written in Ext. P12 (By-the-Way Lodge Register). The said number is 9526327734. That number itself is an over-written entry, bearing different handwriting compared to other entries.**

15.7. **The prosecution has wilfully not taken the call-records or tower-locations of this phone number, which is alleged to be that of the 2<sup>nd</sup> Accused/Appellant.** This phone number, as per charge-sheet, belongs to one Mr. Mohammed Rafeeq (CW13). He was not examined by the prosecution, implying a total cover-up to save someone, and implicate someone else.

15.8. According to PW23 "(Page8) 22/11/2011ന് 9837796451ൽ നിന്ന് 9526327734 എന്ന നമ്പരിലേക്ക് outgoing call പോയിട്ടുണ്ട്. അത് receive ചെയ്ത tower എവിടെ എന്ന് Ext. P22 കൊണ്ട് പറയാൻ കഴിയില്ല. 22ആം തീയതി 9526327734 നമ്പരിലേക്ക് 19.58നം, 20.14മണിക്കൂറും 7 seconds, 15seconds ദൈർഘ്യമുള്ള calls പോയിട്ടുണ്ട്. 23ആം തീയതി 11.09മണിക്ക് ഇതേ നമ്പറിൽ calls

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<sup>5</sup> In Karunamoorthy v. State, 2019 KHC 5028, it was held that Call Records Details produced to show that appellant and deceased was in constant touch, should be accompanied by certificate under S.65B of Evidence Act. Same dicta was laid down in Mohan Lal v. State of Rajasthan, 2019 KHC 5035.

പോയിട്ടുണ്ട്.” This shows that these two phone numbers alleged to be of accused persons, were not together but at two different places.

15.9. Ext. P22 & P23 CDRs are selective and truncated documents, produced by the prosecution, suppressing the relative details of the 2<sup>nd</sup> accused/appellant.

15.10. Junk number followed by 10digits of deceased phone no.

15.10.1. In Ext P22 (CDR of A1), on 22/11/2011, at 0:44, two phone calls have happened. One is to a junk number ‘6030729961252765’, and second is to the number of the deceased ‘9961252765’. The dialling of the junk number which has the same ending as the deceased’s phone number, gives the impression that latter was an accidental call. Both the calls were of short duration 4secs, and the possibility is that it was an accidental call press while sleeping with the phone. Neither in Ext. P22 (CDR of A1) nor in Ext. P23 (CDR of victim) there is a call to either of their number, other the above one particular entry. This shows that they both were total strangers. The CDR of A2 is intentionally suppressed by the prosecution.

15.11. Prosecution based on Tower Location of cell phones are scientifically unreliable and generally deprecated in developed countries. It is a ‘junk science’, and has caused several legal debates and articles against its admissibility.

16. Who is Rafeeq – Owner of phone number 9526327734 ?

16.1. The above phone number was allegedly written in the register of ‘By the way lodge’, Kalpatta. This phone number belongs to one Mr. Rafeeq, Parapoor Village, Malappuram. This place is very near to the 1<sup>st</sup> accused’s residence. There were many phone calls between this number and 1<sup>st</sup> accused’s number on 23/11/2020. However, the prosecution has not proved whose number is it, and how is it connected to this case and lodge register.

16.2. Rafeeq is 23years old, and fits the description of persons explained by PW1. It could be to save Rafeeq that the rough-sketch created by police were suppressed from court. ‘Item 16’ hair in Ext. P58(a) could be of Rafeeq.

17. Where is the gold ring of the deceased?



17.1. In Ext. P11 inquest report, it is stated that the deceased had a gold chain and a gold ring. There is no clue where the gold ring is! The prosecution gives no explanation for the missing gold ring.

## 18. Lack of Motive

18.1. The accused had no acquaintance with the deceased. They have no reason to kill the deceased.

18.2. The prosecution has not given a proper motive for the accused persons to commit the murder of an ISRO Officer. The robbery alleged against the accused is a feeble excuse, not sustainable before an intelligent mind. The alleged items robbed are also worthless articles, costing less than Rs.40,000/-. In fact, alleged robbed articles were identified by PW13 during the inquest.

18.3. The accused have **no criminal antecedence whatsoever**, not even a cheque case, and it cannot be believed that they would commence with robbery by murder, at the first instance itself.

18.4. **The wife of the deceased PW14 (Usha) suspected PW15 (Sarathchandra Das) and his friends for committing the murder of the deceased.** PW15 stated that he did not attend the funeral of the deceased, fearing backlash from the relatives of the deceased.

18.5. All the calls in Ext. P23 CDR of deceased is to PW15 (Sarathchandra Das), except the last call of 4seconds. He denied making these calls during his cross examination.

18.6. The prosecution has failed to explain the purpose of CRI Dad's visit to Iringalakkuda. His suspicious presence in Iringalakkuda caused his death, and it is no way connected to the accused persons.

## 19. Absence of injuries on the accused

19.1. Ext. P57(series) reveals that a systemic examination of the body of accused were conducted. The accused persons did not have any injuries while they were arrested, *not even a finger-nail markings or scratches*. After committing a murder by strangulation, it is impossible not to have any finger-nail marking or scratches on the body of the murder. This shows that the appellant is innocent.

## **20. Absence of proof regarding joint commission & common intention**

- 20.1. Even if all the evidence of the prosecution is admitted, everything is concerning A1 alone. The phone call went from A1's phone, the rope balance was recovered from A1's room, the confession was of A1, everything is concerning A1. **There is no admissible incriminating proof against A2.** MO10 bag is projected as the owned by both A1 & A2. But there is no proof regarding it. There is absolutely no proof tendered by the prosecution that the A1 & A2 together committed the crime. Even the phone number of A2, his location at the time of crime etc are not clear from evidence.
- 20.2. The investigation officer (PW31) has not stated that there was common intention or friendship between A1 & A2.
- 20.3. A1 and A2 are total strangers, and they have nothing in common, other than the fact that they both are poor and falsely implicated in this case by the police.

## **21. Irrational behaviour of the deceased, to contract two rooms in a lodge for strangers.**

- 21.1. The entire behaviour of the deceased, at Irringalakkuda is suspicious. No reasonable man would get down from train, at midnight, with two strangers, that too to meet the mother of a colleague, who is back at Thiruvananthapuram. There is more to this story.
- 21.2. Concomitantly, it is irrational for a person to contract two lodge rooms for strangers, in his own address.
- 21.3. The alleged motive of robbery of gold chain, mobile-phone and shoe, are unbelievable, as MO16 (ATM Card) and MO19 (Purse) were left behind with the deceased. The negligible value of stolen things do not support motive for such a heinous crime.
- 21.4. The prosecution case of murder for robbery is an unbelievable proposition, in this factual matrix.

## **22. Impossibility of A2 to give his true name in 'By the way lodge', Kalpatta, if he was part of murder.**

- 22.1. It is impossible to comprehend that a person fleeing a murder scene will give his true name and address, like the way A2 gave in 'By the way lodge' Kalpatta. This actually shows his innocence. The

logical inference is that A2 didn't know about the heinous crime, and was not part of the crime.

### **23. Prejudicial investigation**

23.1. The whole investigation proceeded with a premeditated decision that the persons who came with the deceased committed the murder. In FIR (Ext. P30) it is already prejudicially stated that two persons aged 25 years are the suspected persons, believing PW1's FI Statement. The FIR was lodged at 7pm on 22/11/2020, just one hour after the discovery of death. And police were able to resolve the murder case in one hour. The whole evidence collection is proceeded with the prejudice and malice to complete at the earliest.

### **24. Disqualification of Investigating Officer**

24.1. According to the Appellant, the investigation and charge-sheet in this case is filed by a person who lacks qualification, authority and jurisdiction to conduct investigation. The investigating officer in this case is the Inspector of Costal Security Police Station, Azheekode, Kodungallur, when the murder happened in Iringalakkuda. Costal Security Police, Azheekode is a special wing constituted under GO(MS) 23/2010 Home dated 23/1/2010 to police the coastline of Kerala. Its jurisdiction is 12 nautical miles of Arabian Sea from the shore of Azhikode (Trissur) to Anangadi (Malappuram), covering a coastline of 94kms. The objectives of Costal Security Police are to prevent smuggling by sea, to impose monsoon trawling, handling oil-spills and pollution on territorial waters, and to protect various maritime interest of the country. The Costal Security Police Stations are funded by the Central Government, though it is under the DGP of Kerala Police.

24.2. In this case, the District Police Chief, Thrissur entrusted the investigation to the Inspector of Costal Security Police Station, Azheekode as per order No. D1-49817/11/02 (Ext. P33). However, according to Section 11(6) of the Kerala Police Act, 2011 only the State Police Chief has power to entrust additional/special responsibilities upon the special wings, and not the District Police Chief. The District

Police Chief, Thrissur is not even a superior officer of the Coastal Security Police, as its hierarchy is totally different. So, the investigation and charge-sheet are vitiated by lack of jurisdiction. This is a serious irregularity, going to the root of the case, since a person specialised in marine patrolling and related activities, conducted the murder investigation of an ISRO Officer, and allegedly proved the case within 18hrs.

## **25. Conclusion**

- 25.1. The prosecution has miserably failed to prove the case as against the appellant/2<sup>nd</sup> accused. The investigation was conducted by a person who has no authority or experience in conducting such investigation.
- 25.2. The 2<sup>nd</sup> accused was dressed up by the police to framed him in this case, for reasons best known to the prosecution. His phone number, his call records, identifying diagram etc were suppressed.
- 25.3. **The appellant is in jail since his arrest on 23/11/2011, without any bail, for the last 9years.** He is not involved in this crime. He was framed by the police since he is a poor child who cannot not afford proper legal counsel.
- 25.4. Hence, the appellant should be acquitted in this case, and appeal should be allowed.

Dated this the 18<sup>th</sup> day of November 2020

**P. Thomas Geeverghese**  
Counsel for the Appellant (2<sup>nd</sup> Accused)