

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.479 of 2014

State rep. By
The Deputy Superintendent of Police,
CB CID,
Organized Crime Unit - II,
Chennai.
(Selaiyur P.S. Cr.No.206/2004)Appellant

Vs

1.Radhakrishnan
2.Mariappan
3.Arumugam @ Matti Arumugam
4.Jagaveera Raja @ Selvaraja @ Kuttiraja
5.Munis @ Muniyappan
6.MarimuthuRespondents

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment of acquittal passed by the learned
Principal Sessions Judge, Kacnheepuram in S.C.No.363 of 2005
dated 03.10.2013 and convict and sentence the accused.

For Appellant : Mr.E.Raja,
Additional Public Prosecutor

For R.1 : Mr.S.Suresh Babu

For RR.2,3,5 & 6 : Mr.G.Anbuchezhian

For R.4 : Mr.P.Ramaiah

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The State has preferred the present Criminal Appeal
against the acquittal of the respondents 1 to 6 herein who are

A.1 to A.6 in S.C.No.363/2005 on the file of the learned Principal Sessions Judge, Kancheepuram District, Chengalpattu. The trial Court framed as many as nine charges against the accused as detailed below:-

Charge No.	Accused	Section of law
1	A.1 to A.6	120 (B) I.P.C.,
2	A.1	364 I.P.C.,
3	A.1 to A.4	302 r/w 34 I.P.C.,
4	A.5 & A.6	201 r/w 302 I.P.C.,
5	A.5 & A.6	203 r/w 302 I.P.C.,
6	A.1 to A.4	109 r/w 201 I.P.C.,
7	A.1 to A.4	109 r/w 203 I.P.C.,
8	A.2 to A.4	109 r/w 120 (B) & 364 I.P.C.,
9	A.4	109 r/w 302 I.P.C.,

By judgment dated 03.10.2013, the trial Court acquitted all the accused from all the charges. Aggrieved over the same, the State is before this Court with this Criminal Appeal.

2.The case of the prosecution, in brief, is as follows:-

The first respondent/A.1 is the father of one Ms.Roselin Selvarasi (P.W.54). P.W.54 was doing M.B.B.S., degree course in Universal College of Medical Science, Nepal. P.W.1 is a resident of Madurai. Before joining medical course, P.W.54 was studying in a coaching centre in Madurai. The deceased in this case was one Mr.Pratap. He was also undergoing coaching in the same centre. In such a way, the deceased got himself introduced as a friend to P.W.54. Later on, the said friendship was developed into a love affair between them. After P.W.54 had gone to Nepal for doing M.B.B.S., course, the love affair continued. The deceased had all the way gone to Nepal; married P.W.54 and in a rented house, he started living with P.W.54 as her husband. His friend one Mr.Ambedkar (P.W.14) was staying with him for some time. Through the seniors of P.W.54, A.1 came to know about the same.

3.A.1 is an Advocate by profession. A.2 is an Advocate Clerk of A.1. A.1 & A.2 went to Nepal. When they enquired, they came to know about the marriage between P.W.54 and the deceased. However, A.1 & A.2 somehow managed to get the deceased back to Tamil Nadu. P.W.54 continued her studies in Nepal. A.1 & A.2 returned to Madurai.

4.P.W.1 is the brother of the deceased. On 16.04.2013, P.W.54 returned to Tamil Nadu and along with the deceased she met P.W.1 and told that they had married the deceased and she further told that they were proceeding to Bangalore. When P.W.1 enquired the deceased as to why he was so hasty in performing the marriage without the consent of the parents of P.W.54. P.W.54 and the deceased told that if only they married, her parents would accept the same without causing any further trouble to them.

5.On 18.04.2003, it is alleged that A.1 and the father of the deceased came to Pallavaram at Chennai. They met P.W.1 and at that time, A.1 told him that in the event the deceased spoke to him, he should in turn ask him to speak to A.1. On the same day, during night hours, P.W.54 spoke to P.W.1. P.W.1, in turn, gave the cell phone to A.1. But, when A.1 started talking, P.W.54 disconnected the call. Then after having ascertained that the deceased and P.W.54 were not in Chennai, A.1 returned to Madurai. It is further alleged that on 21.04.2003, the mother of the deceased informed P.W.1 over phone that at Coimbatore, before an Advocate and Notary Public, P.W.54 and the deceased registered their marriage. The fact that they had so married had gone to the ears of A.1. On few occasions, A.1, over phone, intimidated the father of the deceased, objecting to the above conduct of the deceased. This resulted in a complaint with the Police. In the said complaint, P.W.1 had alleged that his father had been abducted by A.1. Thereafter, A.1 came to Chennai and went in search of P.W.1, where he was working, with a view to intimidate him. Because of the above incident, P.W.1 was also sent out of service by his employer. When P.W.1 told the deceased about the same, the deceased took P.W.54 and went to Nepal. In the year 2004, the mother of the deceased had fallen ill. P.W.1 informed the same to the deceased who was then in Nepal. He returned to Chennai. He went in search of a job and finally, he secured a job in a net working company. He was staying with his friends viz., P.W.4 and two others at Camp Road, Tambaram. Every day, he used to go to his work place from the said house. Since, the deceased had secured a job, P.W.1 wanted to have a separate house for him, for the deceased and their mother.

6.While so, A.1 along with the other accused who are his associates decided to do away with the deceased. In pursuance of the said conspiracy, it is alleged that on 12.04.2004, A.1 along with A.2, A.3 & A.4 went in a Car to Chennai. A.2 had kept an Aruval ready in the Car. They went to Chennai only with a view to execute the conspiracy so as to kill the deceased.

7. On 12.04.2004, around 7.00 pm, on reaching Chennai, A.1 went to the house where the deceased was staying at Camp Road, Tambaram, Chennai. A.2 to A.4 were staying in the Car outside. But, the deceased was not then available in the house. Therefore, he returned to the Car. Around 8.30 pm, A.1 went to another place and brought the deceased to Camp Road. A.1 deceived the deceased as though he was very cordial towards him. Believing the words and deeds of A.1, the deceased changed his dress and got into the Car. A.1 took the deceased in the Car along with A.2 to A.4 under the guise of taking him to Madurai, in a cordial manner. Therefore, the deceased also did not raise any alarm. When the Car reached Oragadam Village, as instructed by A.1, A.4 who drove the vehicle stopped the Car by the side of the road. A.1 wanted the deceased to get down which the deceased, without any resistance, did. A.1 took him to a nearby vacant land comprised in S.No.71 belonging to one Mr. Ramakrishnan at Chennakuppam, where, it is alleged that A.1 & A.3 held the deceased and A.2 cut him indiscriminately. A.4, standing near the Car was watching the movement and assisted them. The deceased died on the spot. Leaving the dead body at the same place, A.1 to A.4 fled away from the scene of occurrence, in the said Car belonging to A.1. They returned to Madurai and went to their respective destinations. The occurrence was not thus, witnessed by anyone.

8. On 13.04.2004, around 6.30 pm, P.W.8, a friend of the deceased had sent an email to P.W.1 that since, there was some problem for the deceased in the company where he had just joined service on 12.04.2004, he left the company and had gone to Nepal. P.W.1 developed a doubt as to how within one day of the joining employment, the deceased would have had some problem. With this, he started enquiring the whereabouts of the deceased. He came to know that on 12.04.2004, around 8.30 pm, A.1 took the deceased in his Car. On 14.04.2004, P.W.1 spoke to A.1 over phone and wanted to know about the whereabouts of the deceased. A.1 told him that since, the deceased did not like the job, he had gone to Nepal. This statement of A.1 again made him to raise further suspicion. Till 16.04.2004, P.W.1 was in search of the deceased. The deceased did not turn up. Therefore, on 16.04.2004, P.W.1 made a complaint at Selaiyur Police Station, Tambaram, Chennai about the missing of his brother. According to P.W.1, the Police refused to receive the complaint for want of jurisdiction and wanted P.W.1 to go over to Madurai and to make a complaint. On hearing information about the missing of the deceased, P.W.54, the wife of the deceased returned to Chennai. She went to a Women Organization and informed about the missing of the deceased. With the help of the Women Organization, she

took P.W.1 to Selayur Police Station, Tambaram, Chennai and made a complaint on 19.04.2004 at 1.30 pm.

9.P.W.49, the then Sub Inspector of Police, registered a case in Crime No.206/2004 for offence under Section 363 I.P.C. Ex.P.1 is the complaint and Ex.P.61 is the F.I.R. He forwarded both the documents to Court.

10.Taking up the case for investigation, P.W.49, examined P.Ws.1,2 & 4 and recorded their statements. He prepared an observation mahazar at the place where the deceased was lastly seen. His efforts to locate the deceased turned futile. On 20.04.2004, he examined P.W.54. On 23.04.2004, he sent summons to A.1 directing him to appear before him for interrogation. But the house of A.1 at Madurai was locked and therefore, he could not be reached. Till 15.05.2004, he was not able to get any breakthrough in the investigation.

11.While so, P.W.5 - Mr.Anandan who was the Panchayat Board President found the dead body of a male lying in the field of one Mr.Ramakrishnan (P.W.6) near Vellakulam Village. In this regard, he made a complaint to Manimangalam Police Station on 13.04.2004 at 8.30 am. One Mr.Elumalai, the then Sub Inspector of Police of Manimangalam Police Station, registered a case in Crime No.121/2004 for offence under Section 302 I.P.C. At that time, the identity of the dead body was not known.

12.P.W.45, the then Inspector of Police of Manimangalam Police Station took up the case for investigation. He rushed to the place of occurrence at 9.30 am on the same day. At his request, a police sniffer dog was brought to the place of occurrence. It turned futile. A finger Print Expert and a Forensic Expert were also brought to the place of occurrence. They assisted P.W.45. But they also could not get any incriminating evidence from the place of occurrence. Then, P.W.45 prepared an observation mahazar and a rough sketch at the place of occurrence, with the help of a Police Photographer. He recovered blood stained earth, sample earth, blood stained shoe, the spectacles, a pen, a comb and other personal belongings of the deceased. Then he conducted inquest on the body of the deceased between 12.30 pm and 1.30 pm on 13.04.2004 and prepared an inquest report (Ex.P.54). He forwarded the dead body for post mortem.

13.P.W.32 - Dr.Parasakthi conducted autopsy on the body of the deceased on 16.04.2004, she found the following injuries:-

"1.Horizontal cut injury seen on the

middle of front of neck measuring 11 cm x 4cm x cervical bone deep involving the muscles, vessels, nerv trachea and oesophagus, margins found clear cut with acute ends.

2.Horizontal cut injury seen on upper part of back of neck measuring 13cm x 5cm x bone deep with clear cut margins and acute ends.

3.1cm below injury No.2 horizontal cut injury seen measuring 4cmx3cm muscle deep with clear margins and acute ends

4.1cm below injury no.3 horizontal cut injury seen measuring 8cmx3cmx bone deep with clear cut injury seen measuring 8cmx3cmxbone deep with clear cut margins and acute ends.

5.A vertical cut injury seen on left palmar region measuring 4cm x 2cm x bone deep with clear margins and acute ends."

Ex.P.31 is the post mortem certificate. She gave opinion that the death of the deceased was due to shock and haemorrhage due to the multiple cut injuries more particularly the injury to neck.

14.P.W.45, then made a vide publicity of the photograph of the dead body in a local news papers in an attempt to identify the dead body. Then he recovered the blood stained clothes and the silver ring from the body of the deceased. He kept the dead body till 24.04.2004 in the mortuary. Since, the identity of the dead body could not be made out and since, nobody came forward to identify the dead body of the deceased, he made a request to the Commissioner, Chengalpet Municipality to bury the dead body. Accordingly, the dead body was buried on 21.04.2004.

15.Reverting back to the family of the deceased, P.W.1 and other family members were hectically searching for the deceased. But, they could not succeed. They were also not satisfied with the investigation done by the Sub Inspector of Police, Selayur Police station. Therefore, P.W.1 filed a Habeas Corpus Petition before this Court. During the last week of April 2004, when the said Habeas Corpus Petition came up for admission, a Division Bench of this Court ordered notice. In the said Habeas Corpus Petition, P.W.1 had alleged that the deceased was abducted by A.1 herein. The said proceedings of the Court was covered mainly in various news papers.

16.P.W.45 noticed the said news item in one of the news papers on 14.05.2004. Immediately, he verified with the Selayur Police Station and came to know that on the file of Selayur Police station, a case of abduction had already been registered in Crime No.206/2004. On intimation, P.W.1 and the other family members came to Manimangalam Police station and on seeing the photographs and the personal belongings of the deceased, they identified the dead body as that of the deceased. Therefore, P.W.45, sent a report to the Inspector of Police, Selayur Police Station. The Deputy Superintendent of Police, Sriperumbudur ordered P.W.45 to transfer the investigation of the said case to Selayur Police Station, so as to be investigated along with the Crime No.206/2004.

17.Both the cases were clubbed together for investigation. P.W.50, the then Inspector of Police, Selayur Police Station, took up the case for investigation and altered the case in Crime No.206/2004 from Section 363 I.P.C., into one under Sections 363 & 302 I.P.C. Ex.P.71 is the Alteration Report. Then even before he could commence the investigation, the Deputy General of Police issued order transferring the investigation to CB-CID.

18.P.W.55, the Deputy Superintendent of Police, CB-CID, Chennai, took up the case for investigation on 25.05.2004. He visited the place where the deceased was staying at Camp Road, Tambaram, Chennai and the place from where the deceased was lastly taken by A.1 in his Car. He examined P.Ws.1 & 4 and few more witnesses and also recorded their statements. During the course of investigation, he made formal arrest of A.2, A.6 who were already in judicial custody in connection with some other case. Then he took police custody of A.2 & A.6. Both the accused gave voluntary confessions. He collected the photographs of the deceased and forwarded the same to Forensic Lab along with the skull which was already preserved for the purpose of superimposition examination, in order to prove the identity of the dead body beyond doubt.

19.In pursuance of the confession made by A.2, he took the Police and witnesses to the place of hide out and produced M.O.21 - Shirt. A.6 also made a voluntary confession. Then he forwarded these accused to Court for judicial remand. On 10.06.2004, P.W.55 arrested A.3 in the presence of witnesses at Tambaram bus stand. He also made a request to Forensic Lab to conduct DNA examination in order to ascertain the identity of the deceased, on the orders of the learned Judicial Magistrate. A.3 was handed over to police custody for 7 days. While in custody, on 20.06.2004, at 8.30 am, he made a voluntary confession, in which, he disclosed that he had

hidden the socks at his house and also the Car bearing registration No.TN 59 H 6841. In pursuance of the said disclosure statement, he produced these material objects, which were recovered. Then he forwarded him to Court for judicial remand. He took police custody of A.2 on 25.06.2004, on the orders of the Magistrate. While in custody, A.2 made a voluntary confession. In which, he disclosed the place where he had hidden a Car and an Aruval. In pursuance of the same, he took the police and witnesses to his native place and produced an Aruval (M.O.27). P.W.55 recovered the same. Then he forwarded him to Court for judicial remand. He made a request to the learned Judicial Magistrate for holding test identification parade for A.2 & A.3. During Test Identification Parade, Mr.David (P.W.12); Mr.Sivanpandi (P.W.13) and Mr.Kumar @ Sudarshanam, participated. He collected the records relating to the marriage between the deceased and P.W.54 and the complaint made. The investigation was thereafter, continued by his successor P.W.56.

20.On 16.02.2005, near Tambaram Bus stand, P.W.56 arrested A.1 at 10.30 am. He forwarded him to Court for judicial remand on 17.05.2005. On the orders of the learned Judicial Magistrate, he took Police custody of A.1. While in custody, on 20.02.2005 at 11.00 am, A.1 made a voluntary confession. In which, he disclosed the place where he had hidden the registration certificate of the Car bearing registration No.TN 59 H 6841 and also the cell phone with mobile No.98652 97334. In pursuance of the same, he took the police and witnesses to his marriage hall and from the locked room, he produced these material objects. P.W.56 recovered the same from the same room. A.1 produced black colour pant (M.O.6); black colour belt (M.O.7); kerchief (M.O.8), and a navy blue shirt (M.O.9) which were kept in a plastic bag. P.W.56 recovered the same. On returning to the Police Station, he handed over A.1 to Court for judicial remand and also handed over the material objects to Court. In the test identification parade, P.Ws.12, 13 & 15 identified A.1. On completing investigation, he laid charge sheet against all the six accused on 26.04.2005.

21.Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 56 witnesses were examined and 106 documents were exhibited, besides 28 Material Objects were marked.

22.Out of the said witnesses, P.W.1, the brother of the deceased has stated about the marriage between P.W.54 and the

deceased. He has further stated that they were living together in Nepal. He has also spoken about the fact that the deceased had joined a private company in Chennai on 22.04.2003. He has also stated about the fact that the deceased was not found from 13.04.2004 onwards. He has identified the dead body from out of the photographs. He has also spoken about the complaint made by him.

23.P.W.2 is a friend of the deceased. He is the one who was staying along with the deceased in a Camp Road in a rented building. According to him, on 12.04.2004, the deceased returned to their room around 6.00 pm. Then he left the room along with his friends. Around 8.00 pm, somebody had come to meet the deceased. The deceased returned some time thereafter. P.W.2 asked the deceased, whether there was any problem. He told that there was no problem for him. Then immediately, he went out of the room. Thereafter, he did not return. He has further stated that on the same day, when he was in the Sakthi Murugan hotel, one person was in his company. When he enquired the deceased, he told that he was his uncle. He has identified A.1 as the one who was in the company of the deceased. He has also identified M.Os.2 to 9, the pant, shirt, kerchief and belt as that of the deceased which were recovered from A.1.

24.P.W.3 is yet another friend of the deceased who was staying with the deceased in a rented room at Camp Road, Tambaram, Chennai. He has not stated anything incriminating against the accused. He has only stated that on 12.04.2004, he came to know that the deceased had gone out with his uncle. P.W.4 is another friend of the deceased who was also staying along with the deceased. He has stated that around 8.10 pm, on the same day, the deceased told him that he was going with his uncle but, this witness has further stated that he did not see the uncle of the deceased to whom he had gone. Thus, he has not spoken anything incriminating against the accused.

25.P.W.5 is a resident of Chennakuppam village. According to him, he found the dead body of the deceased near Vellakulam, Oragadam on 13.04.2004 and he made a complaint to the Police. He has identified the material objects found on the body of the deceased. P.W.6 is the owner of the land where the dead body was lying. He has spoken about the same. P.W.7 has spoken about the preparation of observation mahazar and the rough sketch prepared at the place where the dead body was lying. He has spoken about the recovery of material objects recovered from the dead body, by the Inspector of Police, Manimangalam Police Station. P.W.8 has spoken about the photographs taken by him at the place where the dead body was found lying. P.W.9 is a Constable attached to Manimangalam Police Station. He has stated that he took the dead body and

handed over the same to the Doctor for post mortem. He has further stated that he collected the clothes found on the body of the deceased and handed over the same to the Inspector of Police. P.W.10 is the mother of the deceased. She has stated about the marriage between P.W.54 and the deceased and the fact that the deceased was living with P.W.54 in Nepal and the subsequent events. In essence, she has spoken about the motive for A.1. P.W.11 is the father of the deceased. He has also spoken about the motive and the other related facts. P.W.12 is an Auto Driver. He was one of the person who participated in the test identification parade to identify A.1. But he turned hostile and he has not supported the case of the prosecution in any manner. Thus, his evidence is of no use for the prosecution. P.W.13 was working as a Tea Master in Vasanth Tea Stall at Camp Road, Tambaram. He also turned hostile and has not supported the case of the prosecution in any manner. He has stated that he identified A.1 during test identification parade as he was instructed by the Police by showing the photograph of A.1.

26. P.W.14 is one of the friends of the deceased. He has also spoken about the relationship between P.W.54 and the deceased and the marriage and the other events indicating the motive. P.W.15 is the Vice President of Chennakuppam Panchayat Union. He has turned hostile and he has not supported the case of the prosecution in any manner. P.W.16 has spoken about the arrest of A.5 & A.6 on 08.06.2004. He has stated about the disclosure statement made by these two accused and the recovery of material objects from A.1. P.W.17 has spoken about the alleged confession made by A.3 and the consequential recoveries made by him. P.W.18 has spoken about the confession said to have been made by A.4 on 18.03.2005 and the consequential recoveries of material objects. P.W.19 has spoken about the alleged disclosure statement made by A.2 and the consequential recoveries of material objects. P.W.20 is a photographer. He has stated that during the year 2003, he took photographs of the marriage between the deceased and P.W.54 however, he has not identified either the deceased or P.W.54 as a person whose marriage the photographs were taken. P.W.21 is the State President of Women Organization in Chennai. She has stated that on 17.02.2004, P.W.54 appeared before her and complained that the Selayur Police Station refused to receive the complaint in respect of missing of her husband. Then on their persuasion on 19.04.2004, a complaint was received from P.W.1 and a case was registered. On the same day, P.W.54, gave a detailed written statement in English about the missing of the deceased and the events which proceeded the same. P.W.22 has stated that P.W.54 was staying in Women Protection Home for some time from 17.04.2004 onwards. P.W.23, is an Advocate by profession. He is also the notary public and he has stated

that he notarised the marriage between P.W.54 and the deceased. He told that they married on 16.04.2003 at St.Velankanni Church, Besant Nagar, Chennai. P.W.24 is a marriage counselor. She has stated that on 17.04.2004, one Ms.Selvarasi came to their organization along with P.W.1 and complained that A.1, her father had abducted the deceased. She has further stated that she took steps through Police to secure her husband. P.W.25 was running a grocery shop in front of the Women Protection Centre at Chennai. He has stated that on 02.05.2004, one Mr.Radhakrishnan along with two women came to the said place and scolded the president of the said organization, for having allowed P.W.54 to stay in the home. P.W.26 a politician of Otanchathiram has stated that at the request of A.1, he persuaded P.W.54 to continue her education. P.W.27, is a relative of the deceased. He has also stated about the motive. P.W.28 has stated that in the year 2000, the deceased studied in his computer center and obtained a certificate. P.W.29 is the mother of A.6. She has turned hostile and he has not supported the case of the prosecution in any manner.

27.P.W.30 is a Finger Print Expert. He has stated that as requested by the Inspector of Police, Manimangalam Police Station, he visited the place where the dead body was lying on 13.04.2004. He did not find any finger print at the place of occurrence. P.W.31 the head of the Senior dog squad had stated that on 13.04.2004, he took a sniffer dog to the place where the dead body was found but, it did not yield any positive result. P.W.32 has spoken about the post mortem conducted and her final opinion regarding the cause of death. P.W.33, the Scientific Assistant in the Forensic Lab has stated that he examined the material objects and found that there were blood stains on the material objects recovered from the dead body. P.W.34 is the Expert in serology and he has stated that the grouping of the blood could not be made out. P.W.35 is a scientific Assistant in the Vellore Regional Forensic Lab. He conducted superimposition of the photograph of the deceased with the skull. He found that the skull of the dead body tallied with the photograph of the deceased. Thus, according to him, the skull was that of the deceased. P.W.36 has stated that the Car bearing registration No.TN 59 H 6841 belonged to A.1 as he has spoken so based on the records maintained at his office as he was the Senior Transport Officer of Madurai North during relevant period. P.W.37 has spoken about the DNA examination conducted from the DNA extracted from the dead body and from the father and mother of the deceased. It proved that the father and mother of the deceased were the biological parents of the deceased. P.W.38 was the Sub Inspector of Police at Selayur Police Station. He has stated that he handed over the case records relating to the earlier complaint

between A.1 and the family of the deceased. He has also spoken about the motive. P.W.39, the then Sub Inspector of Police Madurai Tallakulam Police Station has stated that one Ms.Selvarasi w/o Pratab had made complaint on 28.04.2003 against A.1. Ms.Selvarasi has changed her name as Ms.Roselin Selvarasi who is P.W.54. P.W.40 has stated about the registration of the case on the complaint of A.1 against the deceased and his family members regarding the abduction of P.W.54. P.W.41 has stated that on 27.03.2003, when he was working as the Sub Inspector of Police at Ottanchathiram Police Station, a complaint was received from one Mr.Sampath, the father of the deceased that A.1 and his relatives were threatening him. P.W.42 has stated that on 24.05.2003, when he was the Inspector of Police at Natham Police Station, one Mr.Balasubramanian had made a complaint that the father of the deceased was threatening the father of P.W.54 and also demanded money. P.W.43 has stated that when he was working as Sub Inspector of Police at Kolathur Police Station, Chennai, one Ms.Sulu the President of the Women Organization where P.W.54 was staying has made a complaint against A.1 that he threatened her. P.W.44, an employee of the Women Organization has stated that on 02.05.2004, A.1 along with two other women came to the organization and scolded the President for having allowed P.W.54 to reside in the home. P.W.45 the then Inspector of Police has spoken about the registration of the case on the complaint of P.W.6 in Crime No.121/2004 for offence under Section 302 I.P.C. He has further spoken about the investigation done by him. P.W.46, the learned Judicial Magistrate No.2, Ulundurpet has stated that he recorded the statements of W.Rajadurai, Karthikeyan (P.W.4), Rajaram & Ambedkar (P.W.14) under Section 164 Cr.P.C.

28.P.W.47 the then learned Judicial Magistrate, Alandur has spoken about the test identification parade conducted by him on 02.07.2004. During which, Mr.David (P.W.12); Mr.Sivanpandi (P.W.13) and Mr.Kumar @ Sudarshanam identified A.2 & A.3. According him, all the witnesses identified A.2 & A.3 correctly. P.W.48, the Inspector of Police of Umachikulam Police Station has stated about the complaint made by A.1 on 23.04.2003 about the abduction of P.W.54 by the deceased. He has further stated that the investigation was done into the same. P.W.49 has stated that on 19.04.2004, P.W.1 made a complaint at Selayur Police Station and he registered the present case in Crime No.206 of 2004 for offence under Section 363 I.P.C. P.W.50 was the then Inspector of Police, Selayur Police Station. He has stated that he took up the case in Crime No.206 of 2004 for offence under Section 363 I.P.C., and the Manimangalam Police Station Crime No.121 of 2004 for offence under Section 302 I.P.C., for investigation. He altered the case in Crime No.206 of 2004 for offence under

Sections 363 & 302 I.P.C., then he handed over the case diary to the Deputy CB-CID as per the orders of the Deputy General of Police. P.W.51 the then Judicial Magistrate No.1, Poonamallee has stated that a request was made to him to record the judicial confession of A.5 & A.6. A.5 & A.6 were produced on 06.07.2004 however, they have stated that they did not make any such confession. P.W.52 is a friend of P.W.54. He has stated that he was studying M.B.B.S., course at Nepal in the College where P.W.54 was also studying. He has further stated that in Nepal, the deceased was staying with P.W.54 as her husband. P.W.53, the Constable has stated that he produced the parents of the deceased for the purpose of DNA examination. P.W.54, the wife of the deceased has turned hostile and she has not supported the case of the prosecution in any manner. P.Ws.55 & 56 have spoken about the investigation done and the final report filed.

29. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, they did not choose to examine any witness on their side. However, a copy of the telegram dated 19.02.2005 was marked as Ex.D.1. The said telegram was sent to the Hon'ble Chief Minister Cell, the Home Secretary and the Director General of Police, by the wife of A.1 alleging that her husband namely A.1 was taken away by the CB-CID on 14.02.2005 at 6.00 am and he was detained in the illegal custody. In short, their defence was a total denial.

30. Having considered all the above materials, the trial Court acquitted all the accused from all the charges. Aggrieved over the same, the State is before this Court with this Criminal Appeal.

31. We have heard the learned Additional Public Prosecutor appearing for the State and the learned counsel for the respondents we have also perused the records carefully.

32. This is a case based on circumstantial evidence. It is needless to point out that, in a case of this nature, the prosecution has to prove the circumstances projected by it, beyond reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution in the present case.

33. There is no denial of the fact that the deceased had married P.W.54 against the wishes of A.1 and his family

members. There were a number of complaints and counter complaints between the two family members. A.1 gave complaint against the deceased and his family members that the deceased had abducted P.W.54. The father of the deceased had made a complaint against A.1 that he had criminally intimidated him, the deceased and his family members. Even P.W.54 preferred a complaint against her own father and she also approached a Division Bench of this Court by way of filing a Habeas Corpus Petition to produce her husband before this Court and to set him at liberty. The above stated complaints would go to prove that there was no love last between A.1 and the deceased. It has also been established that the deceased lived with P.W.54 in Nepal secretly and that news came to the knowledge of A.1. The marriage between the deceased and P.W.54 was celebrated in a Church in Besant Nagar, Chennai and the same was notarised by an Advocate Notary, Coimbatore. From these evidences, the prosecution has succeeded in establishing that A.1 had grudges against the deceased.

34.The next circumstance projected by the prosecution is that on 12.04.2004, the deceased had joined a private company in Chennai for work and he was staying with his friends in a room at Camp Road, Tambaram, Chennai. He was lastly seen alive on 12.04.2004 by P.W.2 around 8.00 pm. Thereafter, he was not seen alive by anyone. Thus, from the evidence of P.Ws.2, 3 & 4, it has been established that the deceased was lastly seen alive at 8.10 pm on 12.04.2004.

35.The next circumstance is that the dead body of the deceased was found by P.Ws.5 & 6 on 13.04.2004 between 7.00 to 8.00 am in the field belonging to P.W.6 near Vellakulam village at Oragadam. There were a number of injuries found on the body of the deceased. From the superimposition examination and from the DNA examination conducted, it has been established that the said dead body was that of the deceased. P.W.1 and the other family members had also identified the dead body from out of the photograph of the dead body. Thus, the prosecution has succeeded in establishing that the deceased was found lying dead on 13.04.2004 at 7.00 am.

36.Dr.Prasakthi - P.W.32, who conducted autopsy had found a number of cut injuries, on the body of the deceased. According to her, the said injuries would have been caused by an Aruval. She has opined that the death of the deceased would have been caused by a weapon like M.O.27. Thus, from the medical evidence, the prosecution has clearly established that the death of the deceased was a homicide and he had died some time between 8.10 am on 12.04.2004 and 7.00 am on 13.04.2004.

37. Now, the question is "Who are the perpetrators of the crime?" In order to prove this fact, the prosecution attempted to prove that lastly the deceased was taken from a hotel in Tambaram by A.1 along with A.2 to A.4 in a Car. But, all those witnesses who were examined to speak about the said fact have turned hostile and they have not supported the case of the prosecution. Thus, absolutely, there is no evidence that the deceased was found alive in the company of any of these accused lastly.

38. The prosecution next relies on the recoveries of M.O.6 - black colour pant; M.O.7 - belt and M.O.9 - shirt belonging to the deceased. According to the prosecution, on the arrest of A.1, these material objects were recovered from out of the disclosure statement made by A.1 from a locked room in a Kalyana Mandapam belonging to him in Madurai. According to the case of the prosecution, the arrest of A.1 was made on 16.02.2005 and the confession was made by him on 20.02.2005 out of which, these material objects were recovered. But P.W.7 during cross examination, has stated that M.O.6 - black colour pant; M.O.7 - black colour and M.O.9 - black colour shirt, were all found on the dead body of the deceased and they were recovered on 13.04.2004 itself. P.W.6, the President of the village has stated during cross examination that these material objects were recovered from the dead body on 13.04.2004 itself. This has been spoken even in the chief examination also. From these evidences, it is highly unbelievable that these material objects were recovered from A.1. Except this circumstance which also does not stand proved, there is no other evidence against A.1.

39. As against the other accused, the prosecution again relies on the recovery of certain material objects. None of the material objects belonged to the deceased. No connection between the crime and the recovered material objects on the disclosure statement made by A.2 to A.6 also has been established. It is settled law that it is not the discovery of every fact that makes the disclosure statement admissible, but, it is only the discovery of a relevant fact that makes the statement admissible in evidence. Here, in this case, the connection between the material objects and the crime has not been established at all. Thus, absolutely, there is no evidence against the other accused also.

40. The attempt of the prosecution to collect finger prints from the place of occurrence turned futile. There was no other scientific evidence to connect the accused with the crime. The prosecution has examined a number of witnesses to speak only about the motive both prior to the occurrence and after the occurrence. Some witnesses have been examined by the

prosecution unnecessarily. For example, the prosecution has examined P.W.25 to speak about the alleged shouting of A.1 along with two other women on 02.05.2005 at the President of a women organization in Chennai. We are unable to understand as to how an occurrence that would have taken place long after the commission of the crime would be relevant to the case. Similarly, a number of witnesses examined by the prosecution are unnecessary witnesses.

41.By examining as many as 56 witnesses, the prosecution has made an attempt to create an impression that the case against the accused is so strong. Unfortunately, except proving the motive and the fact that the deceased was lastly seen alive on 12.04.2004, the prosecution has not proved any other circumstance against the accused, to prove the alleged guilt of the accused. It is unfortunate that even P.W.54, the wife of the deceased who is supposed to speak about the entire occurrence which may prove certain circumstances and to prove the guilt of the accused has also turned hostile. Thus, we find absolutely there is no evidence against the accused and thus, the trial Court was right in acquitting the accused.

42.In the result, the Criminal Appeal fails and accordingly, the same is dismissed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

jbm

To

1.The Deputy Superintendent of Police,
CB CID, Organized Crime Unit - II,
Chengai East,
Chennai.

2.The Judicial Magistrate,
Tambaram.

3.-Do- Through The Chief Judicial Magistrate,
Tambaram.

4.The Principal Sessions Judge,
Kancheepuram District at
Chenalpattu.

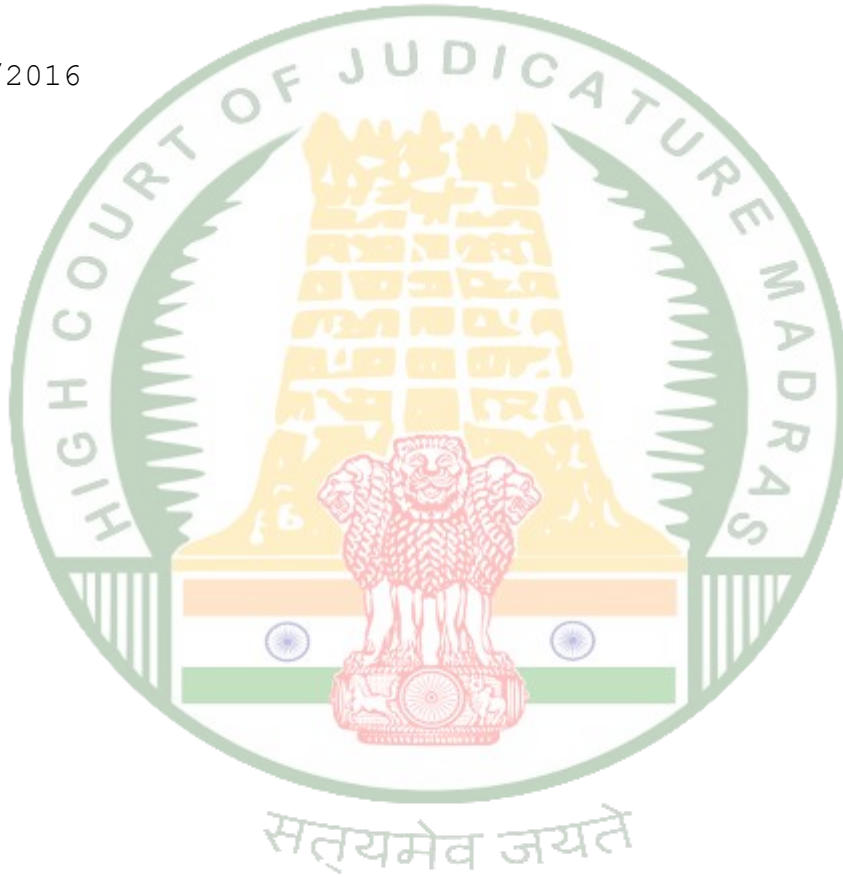
5.The Public Prosecutor,
High Court, Madras.

6. The Inspector of Police,
Selaiyur Police Station,
Selaiyur,
Chennai.

1CC to Mr.P.Ramaiah, Advocate, SR 47054

Cr1.A.No.479 of 2014

NM (CO)
PSI 06/10/2016



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