

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement reserved on : 11.08.2016
Judgement delivered on: 23.08.2016

CORAM

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

Criminal Appeal Nos.169, 488 of 2015 and 386 of 2016

Ram Mandal [A1] ... Appellant in CrI.A.No.169 of 2015

Uttam Mandal [A2] ... Appellant in CrI.A.No.488 of 2015

Ujjal Mandal [A3] ... Appellant in CrI.A.No.386 of 2016

.Vs.

State Rep. by The Inspector of Police,
Crime Branch C.B.C.I.D., Kancheepuram,
Kancheepuram District.

[Crime No.2 of 2014] ... Respondent in CrI.As.169 & 488 of 2015

State Rep.by
Deputy Superintendent of Police,
Crime Branch C.I.D.,
Kancheepuram.

(Crime No.2 of 2014) ... Respondent in CrI.A.386 of 2016

Criminal Appeals filed under Section 374(2) of Cr.P.C.
challenging the conviction and sentences imposed on the
appellants by the learned Sessions Judge, Mahila Court,
Chengalpattu, Kancheepuram District, in S.C.No.192 of 2014 dated
28.11.2014.

For Appellants : Mr.S.Suresh for Appellant/ A2
in CrI.A.No.488 of 2015 and
as Court appointed Legal Aid
Counsel for Appellant/A1 in
CrI.A.No.169 of 2015
Mr.S.Sridevi for Appellant/
A3 in CrI.A.No.386 of 2016

For Appellants

: Mr.S.Suresh for Appellant/ A2
in CrI.A.No.488 of 2015 and
as Court appointed Legal Aid
Counsel for Appellant/A1 in
CrI.A.No.169 of 2015

For Respondent

: Mr.E.Raja, APP for respondent
/State in all Criminal
Appeals

COMMON JUDGEMENT

She, Miss.B.Umamaheswari, an young Software Engineer, at her early twenties, earning a fabulous annual income, working in a leading software company, having lot of hopes of achievements in her life, would have had no reason to anticipate, when she left the software company at 10.30 p.m. to her house, that her cruel end was fast approaching and that she would be thrown like a dust, after being ravished of her modesty, in a bush, as a lifeless body and that the police would be insensitive for sometime ever after report of her mysterious disappearance. Yes. she was in the news in the print and electronic media for quite some time. After her mangled decomposed body was found after ten days, there were lot of hue and cry for women protection. At last, three culprits were booked by the police alleging that they raped her, killed her and robbed her. They stand convicted. They are before us pleading innocence.

2. The Appellant in CrI.A.No.169 of 2015 is the Accused No.1; the Appellant in CrI.A.No.488 of 2015 is the Accused No.2 and the Appellant in CrI.A.No.386 of 2016 is the Accused No.3 in S.C.No.192 of 2014 on the file of the learned Sessions Judge, Mahila Court, Chengalpattu, Kancheepuram District. The trial court framed as many as six charges against A1 to A3 as detailed below:-

Charge Number	Charge(s) framed against	Penal provision under which charge framed
1	A1 to A3	Section 120(B) of IPC
2	A1 to A3	Section 341 of IPC
3	A1 to A3	Section 392 r/w 34 of IPC
4	A1 to A3	Section 376(D) r/w 34 of IPC
5	A1 to A3	Section 302 r/w 34 of IPC
6	A1 to A3	Section 379 r/w 34 of IPC

The trial court, by judgement dated 28.11.2014, convicted A1 to A3 and sentenced them as detailed below:-

Rank of the Accused	Penal provision under which conviction recorded	Quantum of Sentence Imposed
A1 to A3	Section 341 of IPC	Rigorous imprisonment for three months
	Section 392 r/w 34 of IPC	Rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- each in default to suffer rigorous imprisonment for one year
	Section 302 r/w 34 of IPC	Imprisonment for Life and fine of Rs.5,000/- each in default to suffer rigorous imprisonment for one year
	Section 120(B) of IPC	No separate sentence imposed
	Section 379 r/w 34 of IPC	As separate charge under Section 392 r/w 34 of IPC was framed and sentence has also been imposed thereunder, the trial court dropped this charge as unnecessary

The trial court, however, acquitted A1 to A3 from the charge under Section 376(D) r/w 34 of IPC. Challenging the above said conviction and sentences, A1 to A3 have come up with these criminal appeals.

3.0. The case of the prosecution in brief is as follows:- Miss.B.Umamaheswari, aged 23 years, an under graduate in Computer Engineering, was employed as a Software Engineer in Tata Consultancy Services, [in short "TCS"], SIPCOT IT Park, Siruseri, Chennai, Kancheepuram District. She was residing at Medavakkam. Her native place was Jothi Nagar, Attur Taluk in Salem District. P.W.1 is her father. All her family members were

residing in their native village. On account of her employment, the deceased was staying in a rented house at Medavakkam along with her co-employees by name Ms.Sujitha.S.V. [P.W.2], Ms.Maheswari and Ms.Abhinaya. All of them used to go to the company for work according to the shift allotment.

3.1. As usual, on 13.02.2014, the deceased had gone to her shift work at 02.00 p.m. to the company. P.W.2 finished her work by 02.00 p.m. and when she came out of the company, she found the deceased entering into the company for work. At that time, the deceased was wearing a bluish green colour tops, black colour pants and black colour dupatta. As usual she was wearing a pair of gold ear-studs; a bracelet on her right wrist; and a copper ring and was having a hand bag. She was wearing a pair of chappals. She had her identity card issued by the company and a Samsung mobile phone. After going into the company, the deceased was fully involved in her work till 10.28 p.m. At 10.28 p.m., she left the company for her house at Medavakkam. But, she did not reach home. Having waited for her in vain, P.W.2, spoke to P.W.1, the father of the deceased at 09.00 a.m. on 14.02.2014 and informed him that the deceased had not returned home from the company to the house on the previous night. Immediately, P.W.1 tried to contact the deceased over her mobile phone. In a single mobile phone, the deceased was operating two SIM cards with mobile Phone Nos. 81220 94337 and 90473 56471. P.W.1 could not reach the deceased over phone as her mobile phone was in switch off mode. Immediately, thereafter, P.W.1 in a car rushed to Chennai.

3.2. P.W.1, on reaching Chennai, went in search of the deceased in the company where he was informed that the deceased had left the company at 10.30 p.m. on 13.02.2014. He came to the house of the deceased and inquired in the nearby places. He was not able to find her anywhere. Therefore, at 04.00 p.m. on 14.02.2014, he went to Kelambakkam Police Station and made a complaint [Ex.P1] alleging that the deceased was missing from 10.30 p.m. on 13.02.2014. P.W.43, the then Sub Inspector of Police, Kelambakkam Police Station, on receipt of the said complaint, registered a case in Crime No.92 of 2014 for "Woman Missing". Ex.P.79 is the FIR. Then, he forwarded both the complaint (Ex.P1) and the FIR (Ex.P79) to the jurisdictional court. Thereafter, he went to the TCS Company, where the deceased was working, prepared an observation mahazar (Ex.P.80), a rough sketch (Ex.P.81). Then, he handed over the case diary to the Inspector of Police for investigation.

3.3. P.W.46, the then Inspector of Police, Kelambakkam Police Station, took up the case for investigation. He examined P.Ws.1 to 4. He made wide publicity of the photograph of the

deceased by issuing pamphlets soliciting information about her whereabouts. He went in search of the deceased to various places with the police. Through police constables, he verified with the Government Hospitals as to whether the dead body of the deceased had been taken there from elsewhere. He collected the call details of the mobile phone numbers of the deceased. Then, he examined many more witnesses. But, no clue whatsoever came forward in respect of the whereabouts of the deceased.

3.4. While so, on 22.02.2014, he received an anonymous phone call informing that a dead body of a woman was lying near Siruseri SPICOT IT park. P.W.46, immediately, rushed to the said place. The parents of the deceased had also come to the said place on his instructions. The body was beyond recognition as it had undergone decomposition. From out of the cloths, chappals, the identity card, money purse, and a coupon found in the purse, they identified that the dead body was that of the deceased.

3.5. P.W.46, then, prepared an observation mahazar and a rough sketch at the place where the dead body was lying. He altered the case into one under Section 174 of Cr.P.C. He recovered as many as 7 Nos. of material objects found on the body of the deceased and nearby under a mahazar (Ex.P.3). They were blood stained earth (M.O.45), sample earth (M.O.46), brown colour ladies money purse (M.O.1), employee identity card (M.O.2) issued by TCS, a pair of chappals (M.O.3), a hand bag (M.O.47) and a steel knife with wooden handle measuring 28 cm (M.O.17). Then, he conducted inquest on the body of the deceased and forwarded the same for post-mortem. Then, the investigation was continued by P.W.44 his successor. He recovered the blood stained cloth from the body of the deceased and forwarded the same to the court. While so, the investigation was transferred to the Crime Branch Criminal Investigation Department [in short, "the C.B. C.I.D."].

3.6. P.W.49, the Deputy Superintendent of Police, C.B.C.I.D., Kancheepuram, as per the order of the Director General of Police, took over the case for investigation on 24.02.2014. Ex.P.101 is the order of the Director General of Police in RC No.031338/Crime 1(1) /2014 dated 24.02.2014. He prepared yet another FIR (Ex.P103) in Crime No. 2 of 2014 and forwarded the same to the court. On the same day, at 06.30 p.m., he commenced the investigation. On 24.02.2014, at 09.00 p.m. he visited the place of occurrence and verified the correctness of the observation mahazar and the rough sketch already prepared by P.W.46. During the course of investigation, P.W.49, collected ATM card Number of the deceased [vide No.4585 6600 0299 8988]. It came to light during investigation, that in the Indian Bank

ATM Centre near Siruseri SIPCOT Complex, an attempt had been made to use the said ATM card and to draw money. Since, the Personal Identification Number [in short "PIN"] was not correctly entered, ATM had rejected the request for money withdrawal. Fortunately, there was a CCTV Camera installed inside the ATM centre. The examination of the same revealed that a person aged between 20 and 25 years, fair in colour wearing pants and a full sleeve shirt, partly covering his face with a kerchief, had entered into the centre and tried to withdraw money by using the said ATM card of the deceased. Therefore, there arose suspicion in the mind of P.W.49 that the person in the CCTV footage should have had a hand in the killing of the deceased.

3.7. On the dead body, the jewels worn by her were found missing. The mobile phone instrument with two SIM cards used by the deceased was also missing. P.W.49, therefore, started investigating about the possible user of the above said mobile phone instrument by the perpetrator of the crime. It came to light that IMEI No.353576051308213 [one of the IMEI Number of the cellphone instrument of the deceased] was activated near Siruseri SIPCOT IT park. In other words, the said mobile phone instrument of the deceased had been used by someone within the coverage of the cellphone tower at Siruseri SIPCOT IT park. Therefore, P.W.49 further suspected that the perpetrator of the crime must be roaming around somewhere near SIPCOT IT park area. He collected the CCTV footage recorded by the camera at the above ATM centre of Indian Bank. During investigation, he came to know that a number of people from North India were working in a building under construction near SIPCOT IT park area. They were all speaking only Hindi. Therefore, P.W.49 took the help of a Hindi Teacher.

3.8. During the course of further investigation, it came to light that on 22.02.2014, the Samsung Cellphone Instrument of the deceased was used with the mobile Number 74015 15554 by activating the same by someone. The investigation further revealed that there were frequent calls between the mobile numbers 74014 65392 and 90873 16522 and also 7401515554. During further investigation it was ascertained that the mobile phone number 90873 16522 was used by Uttam Mandal (A2 herein) and the mobile number 74014 65392 was used by Ujjal Mandal (A3 herein). It also came to light that the mobile phone number 74015 15554 was used by one Mr.Indrajit Mandal, a friend of A3. P.W.49, examined many more witnesses in connection with the mobile phone numbers and the persons using the same.

3.9. On 25.02.2014 at 04.00 p.m. P.W.49, arrested A1 and A2 in the vacant site near a multi storeyed building near the IT

park in SIPCOT, Siruseri, in the presence of two witnesses. A2 was in possession of an Electoral Identity Card [M.O.19] issued by the Election Commission of India bearing No.ZMU 323971 to him and a Savings Bank Pass Book [M.O.20] for his savings bank Account with Bank of Baroda, Saidapet Branch, Chennai vide SB A/c No. 44830100000875. A2 was also in possession of a Xerox copy of Electoral Identity Card in his name [vide M.O.18]. He recovered all these documents in the presence of P.w.9 and another witness under a mahazar (Ex.P.5). Then, he took A1 and A2 to Kelambakkam Police Station. One Mrs.Amuthavalli (P.W.10), a Hindi knowing person, had come to the police station on the request made by P.W.49 as a Translator. In her presence, A1-Ram Mandal gave a voluntary confession in Hindi. As it was spoken, P.W.10 translated the same into Tamil. P.W.49 reduced the Tamil translation of the confession into writing. In his confession, A1 disclosed the place where he had hidden a pair of gold ear-studs (M.O.4), and a Sodexo Meal Pass coupon (M.O.51) belonging to the deceased which was used to wrap the ear studs, and also a broken SIM Card bearing No.89914 30031 48395 466 and another broken SIM Card [Tata Docomo] bearing No.89910 44161 02433 67072 (M.O.21 series), a copper ring (M.O.5), a knife (M.O.22), a maroon colour nylon pants (M.O.23), a black and white colour cross striped nylon T-Shirt (M.O.24). In pursuance of the said disclosure statement, he took the police and the witnesses to his residence and produced all the above material objects. P.W.49 recovered the said material objects under a mahazar (Ex.P7). Thereafter, P.W.49 returned to the police station with A1 and the witnesses.

3.10. At 10.00 p.m., during investigation, he came to know that A3-Ujjal Mandal was proceeding to Kolkatta, his native place, in a train along with P.W.19. He, therefore, authorised and deputed P.W.47 to arrest A3.

3.11. At 10.00 p.m. on the same day, A2 gave a voluntary confession in Hindi. P.W.10 translated the same into Tamil as it was spoken by A2. P.W.49, in turn, reduced the same into writing in Tamil. He recovered a grey colour jeans pants (M.O.25), a full sleeve shirt (M.O.26), a black colour belt (M.O.27), a pair of chappals (M.O.28) from A2. The confession made by A2 was videographed and was sent to the court. A2 in his disclosure statement stated that he had hidden a mobile phone instrument. In pursuance of the said disclosure statement, he took the police and the witnesses to the shed where he was staying and produced M.Os.29 to 33. M.O.29 is the SIM card bearing No.89914100000170536630 and the mobile phone Number is 74015 15554 was found. M.O.30 is the Airtel SIM card bearing 89915100030160896857 and M.O.31 is the Vodofone SIM card bearing No.68991200016756428872, M.O.32 is the IDEA SIM card bearing

No.89918530300023904394. He also produced a white colour kerchief with dirt. P.W.49 recovered M.Os.29 to 33 under a mahazar (vide Ex.P11). On 26.02.2014, at 06.00 p.m., P.W.49 recovered the computer Hard Disk (M.O.11) from the Indian Bank ATM Center. It was removed by a technician (P.W.6). P.W.4, the Manager of the Bank handed over the same to P.W.49. He recovered the same under the mahazar Ex.P.12.

3.12. As P.W.49 had informed that A3 was proceeding in a train towards Kolkatta, when A3 got down from the train at Howrah railway station, P.W.47 arrested him at 04.40 a.m. on 26.02.2014. He was identified by P.W.11-Mr.Vinothkumar Sharma was the employer of A3 at Chennai and who accompanied P.W.47. A3 was found in possession of a "Celkon" black colour mobile phone (M.O.48) and an Aadhaar Card (M.O.49). P.W.47 recovered the same. P.W.47, therefore, produced A3 before a local Judicial Magistrate and with a remand warrant, he got into the Chennai by Spice Jet Flight and reached Chennai at 11.30 p.m. on 26.02.2014. Then, P.W.47 handed over A3 to P.W.49. He also handed over the mobile phone seized from A3 (M.O.48) and the Aadhaar Card (M.O.49). The mobile phone number of the cellphone seized from A3 was having Two SIM Slots with IMEI No.s 911334901326604 and 911334901326612. He had used the mobile phone No.074014 65392. He produced A3 before the jurisdictional Magistrate on 27.02.2014 for remand and on the orders of the learned Magistrate, he took him into police custody for six days. Similarly, he produced A1 and A2 before the court for judicial remand on 25.02.2014 and took them into police custody for seven days as per the orders of the learned Magistrate. Thus, on 27.02.2014, all the three accused were in the custody of P.W.49.

3.13. On 28.02.2014, A3 gave a voluntary confession in Hindi. P.W.10 translated the same, into Tamil and P.W.49, in turn, reduced the same into writing in Tamil. In that confession, he disclosed the place where he had hidden a mobile phone instrument, a full hand shirt and a brown colour pants. Accordingly, he produced M.Os.10, 34 and 35. M.O.10 is the Samsung Cellphone Instrument with IMEI Nos.353576051308213 and 353577051308211; M.O.34 is the rose colour full hand shirt and M.O.35 is the brown colour cotton readymade shirt. the same.

3.14. All the three accused then identified the shop from where they purchased two knives. They also identified the shop from where they purchased the SIM cards. Thereafter, P.W.49, forwarded the accused for medical examination. The medical examination revealed that all the three accused were sexually potential to have penile sexual intercourse with a woman. Thereafter, he forwarded the accused to the court for judicial

remand. He examined many more witnesses, collected the call details of the above said mobile phone numbers from the respective service providers.

3.15. At his request, P.W.30, the then Judicial Magistrate, Tambaram, conducted test identification parade for A1 and A3 on 10.03.2014. P.W.17 identified both the accused during test identification parade. Similarly, he conducted test identification parade for A2 on 11.03.2014, during which P.W.17 identified him correctly. At the request, P.W.31, the then Judicial Magistrate, Alandur, recorded the statement of Mr.Indrajit Mandal (P.W.19) under Section 164 of Cr.P.C. on 10.03.2014.

3.16. Now, reverting back to 22.02.2014, P.W.45, Dr.Parasakthi, a Professor in the Department of Forensic Medicine, Chengalpattu Government Medical College, as requested by P.W.49, conducted autopsy on the body of the deceased at 04.00 p.m. One Dr.Balaji assisted her. P.W.45, noticed the following:-

"Identification and caste marks:

Identification marks could not be made out due to decomposition.

The body was first seen by the undersigned at 04.00 p.m. on 22.02.2014. Its condition then was in an extensive decomposition state. Post mortem commenced at 04.10 p.m. on 22.02.2014.

Appearances found at the post mortem:

Body found dressed in dark green half sleeves chudidhar tops, black shawl, black pants, green chimmis, black brazier and dark green panties. Braziers found opened in the back with intact hooks. Front left side of panties found cut measuring 7 cm. Bracelet made of coloured artificial beads seen on the right wrist.

Following decomposition finding seen on the body.

Post mortem partial avulsion of scalp hair seen, scalp hair found tied in ponytail style.

Partial skeletonization seen over the nasal,maxillary and upper mandibular region of face, front of left leg, upper part of left leg, both foot, back of chest, upper gluteal region, and left forearm.

Both eye balls absent, eyebrows and eye lashes absent.

Maggots seen crawling all over the body.

Soft tissues of both side upper and lower limbs found shrunken and dried up.

Post mortem avulsion of pubic hair seen with loosening and liquefaction of external genitalia.

Following ante mortem injuries seen on the body.

(1) Partial transverse cut seen in the middle of the 6th cervical vertebra bone measuring 2 cm x 0.4 cm x 03 cm with clear cut margins and surrounding areas of brownish black in colour. Upper trachea found transversely cut with clear cut margins. Hyoid bone intact.

(2) An oblique stab injury seen in the right hypochondrium 3cm below the right costal margin with size measuring 2 cm x 1 cm x abdominal cavity deep with clear cut margins. One end acute and other end obtuse.

(3) An oblique stab injury seen 4 cm below injury No.2 measuring 2 cm x 1 cm x abdominal cavity deep with clear cut margins. Cut one end acute and other end obtuse.

(4) An oblique stab injury seen on the left lumbar region 3 cm lateral to umbilicus measuring 2 cm x 1 cm x abdominal cavity deep with clear cut margins. Cut one end acute and other end obtuse.

(5) An oblique stab injury seen on the umbilical region 2 cm below umbilicus measuring 2 cm x 1 cm x abdominal cavity deep with clear cut margins. Cut end one end acute and other end obtuse.

Other Findings:

Skull bone intact and NAD. Brain absent.

Both lungs shrunken and decomposed.

Heart decomposed and chambers empty.

Stomach empty and mucosa decomposed. Nil specific smell.

Intestines found pale.

Liver, spleen and kidneys found decomposed.

Uterus normal in size and cavity empty.

Hymen could not be made out due to decomposition.

Vaginal smear and swab taken for evidence of semen and spermatozoa.

All other internal organs on cut section found decomposed."

She preserved the visceral organs of the deceased and sent them for chemical analysis. She also preserved scalp hair for DNA analysis and blood samples for blood grouping and sent them for examination. Ex.P.83 is the post-mortem certificate. She gave opinion that that deceased would have died between 7 - 9 days prior to the autopsy. She further opined that the injuries found on the body of the deceased were antemortem and they could have been caused by a weapon like M.O.1-Knife. She further opined that the death of the deceased was due to cut injuries found on the body of the deceased.

3.17. During the course of investigation, in order to ascertain the identity of the dead body, the hair from the dead body was sent for DNA examination. Though DNA was extracted from the hair of the deceased, it could not be amplified and thus, DNA examination could not be done. From the visceral organs, DNA was extracted. The DNA extracted from the intestine of the deceased was amplified and compared with the DNA extracted from the father and mother of the deceased proved that P.W.1 is the biological father and Mrs.Vijaya, the biological mother of the deceased-Miss.Umamaheswari. The DNA examination conducted out of the blood samples drawn from A1 tallied with the trousers (M.O.28) and the blood samples drawn from A2 tallied with the DNA of blood stains found on the chappals (M.O.3). On completing the investigation, P.W.49 laid charge against A1 to A3 on 29.04.2014.

4. Based on the above materials, the trial court framed charges as detailed in the second paragraph of this judgment. The accused denied the charges and wanted to be tried. In order to prove the case, on the side of the prosecution, as many as 49 witnesses were examined, 119 documents and 51 material objects were marked. On the side of the accused, the letter sent by the learned Judicial Magistrate, Tambaram, to the Sub Jail, Saidapet for holding test identification parade by letter in D.No.447/2014 dated 07.03.2014, was marked as Ex.D1.

5.0. Out of the said witnesses, P.W.1 is the father of the deceased. He has spoken about the disappearance of the deceased from 10.30 p.m. on 13.02.2014. He has also spoken about the mobile phone numbers used by the deceased and has identified the mobile phone. He has also identified the stolen properties from the possession of the deceased (M.Os.1 to 5) and M.Os.6 to 9 recovered from the place of occurrence. He had identified M.O.10, the Samsung Mobile phone as the one used by the deceased. P.W.2 Ms.Sujitha is the co-employee of the deceased.

She did her B.E. Course along with the deceased and had stayed together in a rented house. According to her on 13.02.2014, at 02.00 p.m. when she was coming out of TCS Limited at Siruseri, she found the deceased going into the company for her shift work. In normal course, she should have returned in the night. But, she did not return. When she inquired with the company, she was informed that the deceased left the company at 10.30 p.m. itself. Since she did not return, she informed P.W.1 about the same at 09.00 a.m. on 14.02.2014. She has also spoken about the mobile phone numbers used by the deceased. She has further stated that she identified the dead body later. P.W.3 is a relative of the deceased. He has stated that on hearing about the missing of the deceased he had come to Chennai and finally, on 22.02.2014, he identified the dead body of the deceased.

5.1. P.W.4 is an important witness for the prosecution. He was the Manager of Indian Bank, I.T. Park Branch, Siruseri. The said bank was running an ATM Centre at IT Park Complex in Siruseri. He has further stated that inside the cabin of the ATM Centre, a CCTV camera was installed and the same was functioning. Yet another camera was installed at the outer side of the ATM Centre. He has further stated that on 24.02.2014, the investigating officer wanted to watch the video footages recorded through the Video Cameras between 13.02.2014 and 14.02.2014. Accordingly, it was played. He has further stated that ATM particulars up to 11 p.m. on 13.02.2014 was handed over by him to the Inspector of Police. ATM journal printer roll of ATM Indian Bank, Siruseri SIPCOT is M.O.12. He also removed the hard disc of the computer (M.O.11) and DVR (M.O.13) which recorded the activities through CCTV cameras installed at the ATM Centre with the assistance of one Mr.Srinivasan (P.W.5) and handed over the same to P.W.4. P.W.15, a Technician, who removed the hard disc of the CCTV camera and the digital video recorder (DVR) has stated that as requested by P.W.4, he removed the above gadgets from the computer and handed over the same to the Investigating Officer in the presence of P.W.4. M.O.14 is the DVD containing the images of video footages. M.O.15 is the DVD containing images copied from the recordings as reenacted by the accused. [After the arrest of A2, he was asked by the investigating officer to reenact his entry into the ATM centre and the same was recorded in the CCTV Camera.

5.2. P.W.6 was a system service engineer. According to him, he played the motion footages recorded at the ATM centre through CCTV camera from 04.30 p.m. on 13.02.2014 and 03.30 a.m. on 14.02.2014. He helped for the removal of M.O.11-Hard Disc from the computer installed to monitor the movements at the ATM centre. P.W.7 was a System Analyst at TCS, SIPCOT IT Park, Siruseri. According to him, at the entrance of the said

company, a CCTV camera had been installed to record the movements of persons into the company and from out of the company. According to him, as per the recordings through CCTV camera, on 13.02.2014 at 02.00 p.m., the deceased had entered into the company and at 10.15 p.m. on the same day she had left the company. In the Camera installed at the main gate of the company premises, it was found that the deceased went out of the company premises at 10.28 p.m. on 13.02.2014. He took printouts of the stills of motion pictures (M.O.16) and handed over the same to the police.

5.3. P.W.8 was the then Village Assistant of Egattur village. According to him, on 22.02.2014, the villagers told him that a dead body of a woman in a highly decomposed condition was found lying at the place of occurrence. He informed the same to his Village Administrative Officer (P.W.9). He has further stated that later on he was present at the time when the investigating officer came to the place of occurrence and prepared the observation mahazar and a rough sketch. P.W.9, the Village Administrative Officer has spoken about the preparation of observation mahazar and the rough sketch by the police and also the recovery of material objects from the place of occurrence. She has also spoken about the arrest of A1 and A2, their disclosure statements and the consequential recoveries of material objects made out of the same. She has further spoken about the disclosure statement made by A3 on 28.02.2014 and the consequential recovery of material objects on his disclosure statement. P.W.11 was a co-worker of the accused. He was employed as a Project Engineer in a company known as "Sharma Kalypso (P) Limited". The said company was making construction of multi storied buildings at Siruseri IT park complex. A1 to A3 were working there as daily labourers. According to him, A2 gave him a black colour Samsung mobile phone used by him to one Mr.Anand, who, in turn, handed over the same to one Mr.Louis and from Mr.Louis, P.W.49 recovered the same in his presence. M.O.36 is the said mobile phone.

5.4. P.W.12 has stated that he was a co-worker of one Mr.Louis and also A1 to A3. He was working as a Mason in the construction company. According to him, on 24.02.2014 at 06.00 p.m., he wanted the mobile phone of A2 to speak to someone. A2 gave the mobile phone before he could return the mobile phone to A2, he had left. On the next day, A1 to A3 did not turn up for work. Then, he handed over the phone to one Mr.Louis and Mr.Louis, in turn, handed over the same to the police.

5.5. P.W.13 was yet another co-worker of the accused. According to him, on 17.02.2014, A2 told him that he was in need of money. He further told that he was in possession of a pair of

gold ear-studs which could be sold or pledged. A2 requested him to pledge the said gold jewel and to give him money as he knew no pawn broker in the said locality. But, P.W.13 did not want to help him. P.W.13 has further stated that on 26.02.2014 Mr.Anand (P.W.12) told him that the mobile phone of A2 was with him and then, they handed over the same to P.W.49.

5.6. P.W.14 was a Sales Manager in Aircel Company. He was a dealer of Aircel company for selling SIM cards. He was running a store in the name and style of "Gajanana Associates" at Plot No.98, Door No.3/116, Kumaran Kudil, 6th Street, Okkiayam Thuraipakkam, Chennai 600 096. He had sale unit at OMR Road, Navalur, near Tollgate. According to the rules of the company, if anybody wanted to purchase a SIM Card, he should produced a document for address proof and his photographs. He has confessed that out of business motive, at times, even in the absence of any address proof, he used to sell SIM Cards. He has further stated that in the year 2014, two Hindi speaking North Indians aged 20 - 24 years purchased a SIM Card which was already activated in the name of one Mr.Karthik Kumar S/o.Murugesan Achari with mobile Number 74015 15554. On the next day the same persons came and wanted another SIM card. That day, he sold another SIM card with mobile Number 74014 65392 activated in the name of one Mrs.Vijaya w/o Pandian. But, P.W.14 has not identified any of these accused as the persons to whom these two SIM cards were sold.

5.7. P.W.15 has stated that he was also selling SIM cards. He was using the mobile phone No.99406 90619 and his brother-Ramesh was using the mobile Number 97907 29191. He has further stated that using his rubber stamp, P.W.14 has sold the SIM card bearing mobile phone No.74015 15554 and activated the same. P.W.16 has also spoken about the sale of SIM card bearing mobile phone Number. 90873 16522. He has not identified any of the accused. He has only stated that about the sale of SIM card to a North Indian which was activated in the name of Mrs.Jesintha Thangamani W/o.James Devarajan.

5.8. P.W.17 is an important witness for the prosecution. He has stated that he was running a shop at OMR Road in the name and style of "Murugan Vessels Park" at No.1/302, OMR Road, Navalur, Chennai, where he was selling utensils, stove, vegetable cutter and knives, etc. On 13.02.2014 around 08.00 p.m. three persons came to him to purchase knives. He sold two stainless steel knives with wooden handle. Among the three persons, one person purchased the same. He has identified all the three accused during test identification and also in court during trial that A1 to A3 are those three persons who purchased the knives at his shop.

5.9. P.W18 was running a mobile phone shop. He was selling chargers, memory cards, batteries and mobile phone covers and was also dealing with sale of recharge cards and e-recharge besides selling of SIM cards. He used to insist for address proof and passport size photographs for purchase of SIM cards. He has stated that P.W.14 is his close friend and he had sold SIM card bearing mobile No. 74015 15554 without insisting for the address proof.

5.10. P.W19 is a resident of Malda in West Bengal. A3 was closely known to him. On 24.12.2013, he went to Mumbai along with A3. Thereafter, on 02.02.2014, A3 took him to Chennai and then he joined the construction work at Siruseri. He was staying with A1 to A3. He has stated that on 13.02.2014, around 12 midnight, when he was about to move to toilet, he found A1 sitting in the room. At that time, he was having one ATM card. When he inquired A1, he confessed to him that he along with A2 and A3 abducted a girl at Siruseri, raped and killed her. He further told that he had a mobile phone with a SIM card from the person of the deceased. He has further stated that when he asked A1 as to what would be his reaction if it had happened to his sister, immediately, all the three accused threatened him not to disclose the same to any one. Then, they burnt down the said ATM card and they threw the metal from the ATM card. On the next day, all the four went to the construction work. A3 received the mobile phone instrument from him and inserted the SIM card bearing mobile Phone Number 74015 15554. On 24.02.2014, A3 along with him went to Kolkatta. Then, A3 removed the above said SIM card and retained the same with him and returned the mobile phone instrument alone to him. Thereafter, in the said mobile phone, he used his SIM card bearing mobile phone number 89721 84086.

5.11. P.W.20 was a Software Engineer in TCS Limited at Siruseri. On 13.02.2014 around 02.00 p.m., she went to her office after swiping her identity card at the gate. Following her, the deceased entered into the office after swiping her identity card at the gate. Thus, according to her, the deceased entered into the office at 02.00 p.m. on 13.02.2014. P.W.21 was the General Manager of TCS Limited. He has also stated about the entry of the deceased into the company at 02.00 p.m. and her leaving the company at 10.28 p.m. on 13.02.2014. He has further stated that at the request of the police, he removed the computer hard disc and RAM of the computer and handed over the same to P.W.49. P.W.22 is yet another employee at TCS Limited. According to him, on 14.02.2014 at 06.30 a.m., P.W.2 inquired about the deceased. He told that the deceased left the company around 10.30 p.m. on 13.02.2014 itself. When P.W.1 came and inquired him he told the same to him also. P.W.23 was the

Executive Manager of TCS Limited. He has stated that the deceased was working at TCS Limited, Siruseri. On 13.02.2014, the deceased did not ask for any vehicle for her travel to her house from the company. He has identified the identity card issued to the deceased by TCS Limited.

5.12. P.W.24, a resident of Yethapur Village, Attur Taluk in Salem District. He was also doing service center in the name and style of "P.R.Net Mobile Service". For quite some time, the deceased was working in the said service center along with him. He used to address her as "sister". Thereafter, she came down to Chennai and joined TCS Limited. During the year 2014, she wanted a SIM card. She was already having a Vodofone SIM with mobile No. 90473 56471. He gave her a Tata Docomo SIM card bearing mobile No. 81220 94337. He had earlier purchased the same from one Mr.Prabhakaran. On 13.02.2014, he sent a message to the said number to convey a message to the deceased. But, the message was not delivered and the reply was "message failed". P.W.25 is a resident of Attur Taluk. He has stated that his father-in-law by name Mr.Ramalingam had purchased a Tata Docomo SIM card bearing mobile phone number 90437 18784. But, it was not activated. He returned the same to one Mr.Vinoth through one Mr.Kishore. P.W.26 has stated that he took back the unactivated SIM card and gave the same to one Mr.Prasanth. Mr.Prasanth, in turn, had sold the same to the deceased. P.W.27 has stated that he purchased a vodofone SIM card bearing mobile number 90473 56471 and gave the same to the deceased. P.W.28 was the Nodal Officer of Vodafone Service Provider. According to him, as per the records maintained at his Office, vodofone SIM Card bearing mobile Number 90473 56471 stood in the name of Mr.Mageshkumar, No.6/24A, Ward No.4, Ponmanal Street, Kanyakumari. P.W.29 was another Nodal Officer of Aircel Service Provider. He has stated that the SIM card bearing mobile phone No. 74014 65392 stood in the name of one Mrs.Vijaya, No.17/64, 6ht Street, Vanniyar Street, Kolapakkam, Chennai 600122 and the SIM card bearing mobile phone No. 74015 15554 stood in the name of Mr.Karthik Kumar, No.31, Ram Nagar, Madipakkam, Chennai 600 091.

5.13. P.W.30 was the then Judicial Magistrate, Tambaram. He has spoken about the test identification parade conducted wherein P.W.17 identified A1 to A3. P.W.31 was the then Judicial Magistrate, Alandur. He has spoken about the statement recorded by him under Section 164 of Cr.P.C. from P.W.19.

5.14. P.W.32, the Nodal Officer of IDEA Service Provider, has stated that he handed over the call details of the mobile phone bearing No. 90873 16522 for the period between 01.01.2014 and 24.02.2014. P.W.33 was the Branch Manager of Standard

Chartered Bank, T.Nagar Branch. One Mr.Saravanan was the then Officiating Branch Manager of the branch. According to P.W.33, the deceased was operating SB Account in the said bank vide A/c No.43610321174 and her debit card No. is 4585 4600 0299 8988. She had given her mobile number as "9047356471". He has identified the bank statement pertaining to the said savings bank account and debit card details [Vide Exs.P.55 and P.66]. P.W.34 is the Deputy Manager of Bank of Baroda, Saidapet Branch. He has spoken about the savings bank account maintained by A2 at their branch. He has given the details of the transaction pertaining to the said bank account.

5.15. P.W.35, the Deputy Director, Serology Division, Tamil Nadu Forensic Sciences Laboratory, has stated that on 24.02.2014, he received the blood samples collected from the dead body of the deceased But, she was not able to find the grouping of the blood. She has further stated that she received the cloth materials namely Chudidhar, a tops, trousers and Chappals from the court for examination. In that also she was unable to find the grouping of the blood. P.W.36 is the DNA Expert. She has spoken about the DNA test conducted from out of the DNA extracted from the intestine of the dead body and the blood samples of P.W.1 and his wife-Mrs.Vijaya. According to he opinion, the DNA examination revealed that P.W.1 was the biological father of the deceased. He has further stated that the DNA extracted from the blood of A1 tallied with the DNA extracted from the pants recovered from him. Similarly, the DNA extracted from A2 tallied with the DNA extracted from the blood strains found in the chappals recovered from A2. P.W.37 is the Assistant Director in Biology Division. He has spoken about the examination conducted on the material objects. The effect of his evidence is that there were no semen found either on the body of the deceased or on the dress materials of the accused.

5.16. P.W.38 was the Branch Manager, Standard Chatered Bank, T.Nagar Branch. According to him, the deceased had an account in the said bank and her Debit Card Number was 4585 4600 0299 8988. The card was issued to the deceased on 27.07.2013 and the same was operational all through. P.W.39 has stated that A1 was produced before her on 26.02.2014 for treatment. He had high fever and cough. There was a cut injury between left index finger and thumb. P.W.40 has spoken about the photographs taken at the place of occurrence. P.W.41 has stated that he videographed the interrogations of A1 to A3 all through, one after the other, at the Office of the CBCID, Chennai. P.W.42 is the Photographer in the police department. He has stated that as directed by the investigating officer, the accused reenacted the entire occurrence and the same was videographed. P.W.43 has spoken about the registration of the case on the complaint of

P.W.1 and the preparation of the observation mahazar and the rough sketch in front of the TCS Limited at Siruseri. P.W.46 has spoken about the initial investigation done by him followed by P.W.44. P.W.45 has spoken about the autopsy conducted on the body of the deceased and the medical examination conducted for A1 to A3. P.W.47 has spoken about the arrest of A3 as authorized and directed by P.W.49 and the recoveries made from him. P.W.48, the Assistant Director, Forensic Science Laboratory, Chennai, has spoken about the examination conducted on the ID card of the deceased and knives and her opinion on the same. P.W.49 has spoken about the entire investigation done by him in this case and the charge sheet filed against the accused.

6. When the above incriminating materials were put to A1 to A3 under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness on their side, but, only one document was marked as Ex.D.1. Their defence was a total denial.

7. Having considered all the above, the trial court convicted the appellants/A1 to A3 as detailed in the second paragraph of this judgement. Challenging the above said conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

8. Pending enquiry of these appeals, this court in order to satisfy its judicial conscience summoned an expert in Computer Science and examined her [Ms.S.P.Lavanya, the Deputy Superintendent of Police, Cyber Crime Cell, C.B. C.I.D., Chennai] as C.W.1 as additional evidence. She has stated as to how to find out the exact IMEI Number of a mobile phone instrument from out of the false number given in the call details.

9. After the examination of C.W.1 was over, when A1 to A3 were questioned under Section 313 of Cr.P.C. on the incriminating materials that appeared against them, they in general said that they do not know anything and they have nothing to say about the case.

10. In CrI.A.No.169 of 2015, since consistently there was no representation for A1, one Mr.S.Suresh, was appointed as Legal Aid Counsel for him. Mr.Suresh was already appearing for A2.

11. We have heard Mr.S.Suresh, the learned counsel appearing for A1 and A2; Mrs.S.Sridevi, the learned counsel for A3 and Mr.E.Raja, the learned Additional Public Prosecutor for State and also perused the records carefully.

12. This is a case based on circumstantial evidence. In a

case of this nature, the prosecution is expected to prove the circumstances projected by it beyond all reasonable doubts and all such proved circumstances should form a complete chain, without any missing link, unerringly pointing to the guilt of the accused and that there should not be any other hypothesis which would be inconsistent with the guilt of the accused. Keeping this broad principles in our mind, let us now go into the circumstances projected by the prosecution.

13. There is no denial of the fact that the deceased was a Software Engineer working in TCS Limited, SIPCOT IT Park, Siruseri, Chennai. It is in evidence that on 13.02.2014, she went for duty at 02.00 p.m. This has been spoken by P.W.2, P.W.7 and the other witnesses. There is also no dispute that the deceased left the company at 10.28 p.m. on the same day. P.W.22, who was an officer in HR Department at TCS Limited had seen her leaving the company at 10.30 p.m. P.W.21, the General Manager in TCS Limited, after verifying the records of the company including the punching entry at the Gate has stated that the deceased left the company at 10.28 p.m. Thereafter, the deceased did not reach home. P.W.2, having waited for her, called P.W.22 and inquired him. P.W.22 told P.W.2 that the deceased left the company at 10.28 p.m. itself. From these undoubted facts, the prosecution has established that the deceased was lastly seen leaving her Office at 10.28 p.m. on 13.02.2014 when she came out of the TCS company.

14. The next circumstance is that the dead body of a female was seen by P.W.8 on 22.02.2014 at 10.00 a.m. near a bush in SPICOT IT park complex. The dead body was in a highly decomposed condition. The DNA examination conducted by extracting DNA from the intestine from the dead body with the blood samples drawn from P.W.1 and his wife revealed that P.W.1 and his wife- Mrs.Vijaya were the biological father and mother respectively of the deceased. Thus, the prosecution has established that the dead body found was that of the deceased. P.W.45, the doctor, who conducted autopsy on the body of the deceased had found a cut injury on the neck of the deceased which was ante mortem in nature. She has further opined that the death of the deceased was due to the said cut injury. Thus, it was a homicide. The prosecution thus, by means of overwhelming evidence has proved that the death of the deceased had occurred some time between 10.30 p.m. on 13.02.2014 and 10.00 a.m. on 22.02.2014 and the same was a homicide. The prosecution has thus proved this circumstance also beyond any reasonable doubt.

15. According to P.Ws.1 and 2, the deceased used to wear a pair of gold ear-studs; a copper ring; and a bracelet. She was also having a purse with her ATM card. The ear studs, copper

ring, mobile phone and money purse with ATM card were all found missing. P.W.2 had seen the deceased wearing gold ear-studs and copper ring. Since the deceased was wearing the gold ear studs and copper ring and was in possession of ATM card and a mobile phone soon before her death and since they were found missing from the person of the deceased, the prosecution has proved that these properties had been stolen away from her possession and further the prosecution has established that the death of the deceased and theft of these materials objects had taken place in one and the same occurrence.

16. Now, the question is, "Who were the perpetrators of the crime?" The initial investigation was done by P.W.46 could not make any break through. The investigation was later on transferred to P.W.49. He had first visited the place of occurrence and the surrounding areas near TCS company. He found the ATM centre run by the Indian Bank within the IT Park complex. His investigation further revealed that there were two CCTV cameras installed at the ATM Centre by the Indian Bank. This has been spoken by the bank officials. When the CCTV Camera footages were played, it revealed that a male person, aged about 20 - 25 years wearing a full hand shirt and a pants had entered into the ATM Centre and tried to use the ATM card No. 4585 6600 0299 8988. Since the PIN was not correctly entered, the ATM rejected the transaction. This ATM card bearing No. 4585 6600 0299 8988 was issued to the deceased by Standard Chartered Bank as spoken by P.W.33 about which there is no dispute. This is a very strong circumstance relied on by the prosecution that a person who entered into the ATM Centre soon after the missing of the deceased and who used the ATM card belonged to the deceased and tried to withdraw money from ATM must have some connection with the death of the deceased. Of course, from out of the video footages, the identity of the person who used the ATM card could not be ascertained.

17. Even after the collection of evidences from the ATM centre, the identity of the culprit was not known. P.W.49, then collected the details from the cellphone service providers as to whether the mobile phone of the deceased had been used after 10.30 p.m. on 13.02.2014.

18. P.W.1 has stated that the deceased was using two mobile phone numbers namely, 81220 94337 and 90473 56471. The learned counsel appearing for the appellants would submit that the SIM cards of these two mobile numbers did not stand in the name of the deceased and thus, according to the learned counsel, there is no proof that these two mobile numbers were used by the deceased. This argument, though appears to be attractive, a deep look into the evidence would expose the hollowness of the

same. P.W.1, the father of the deceased has stated that these two mobile phone numbers were used by the deceased. P.W.2, a friend and co-worker of the deceased has also stated that the deceased was using these two mobile phone numbers. Apart from that, P.W.24 a former co-worker of the deceased has stated that he had purchased the SIM card bearing mobile No. 81220 94337 from one Mr.Prabhakaran who was his friend. Since the deceased wanted a SIM card, he gave the said SIM Card to the deceased. That his how, the deceased was using the said Tata Docomo SIM bearing mobile phone No. 81220 94337. Similarly, P.W.26, a native of Attur Taluk in Salem District, has stated that he was a distributor for Tata Docomo SIM Cards. One Mr.Prasanth, was working in his shop. The Tata Docomo company had prescribed target for them to sell SIM cards. It was his practice to activate some of the SIM cards using the identity cards submitted by the customers known to them as Proof of Address and then he would sell such activated SIM cards to the college students. He has further stated that he handed over around 100 SIM cards to one Mr.Prasanth including SIM card bearing mobile bearing phone No. 81220 94337 and Mr.Prasanth, in turn, had sold the same to Mr.Prabhakaran. It was in the name of P.W.25. P.W.25 has also stated so. From these evidences again it has been established by the prosecution that the mobile phone bearing No. 81220 94337 was used by the deceased.

19. P.W.1 has stated that the deceased was using a dual SIM mobile instrument. It is the evidence of C.W.1 and the officers of the cellphone companies that every dual SIM mobile instrument will have two different IMEI numbers. The IMEI numbers of the mobile phone instrument used by the deceased were ascertained from the respective service providers. One such IMEI No. was 353576051308213. Though it is stated by the learned counsel for the appellants that the call details furnished by the Nodal Officer of the cellphone companies are not admissible in evidence inasmuch as they do not carry any certificate as required under Section 65-B of the Evidence Act, in our considered view, de hors the rejection of these documents from consideration, we find that there is sufficient evidence that one IMEI Number of mobile phone instrument of the deceased was 353576051308213. In fact, these facts have not been disputed by the accused. According to P.W.49, he collected the materials to show that this IMEI number was activated with a different mobile SIM card bearing mobile Number 74015 15554 and the said mobile phone had been used within the tower located in the SIPCOT IT complex area. Now, the question is, Who used the mobile phone with the said mobile phone instrument. In this regard, we have to refer to the evidence of P.W.19. P.W.19, the friend of A3 has stated that the SIM card bearing mobile phone No. 74015 15554 belonged to him and the same was purchased in Chennai. A3, after

few days of the occurrence, wanted him to give a SIM card purchased in Chennai. He gave the said SIM card bearing mobile phone No. 74015 15554. He has further stated that A3 inserted the said SIM card in the mobile phone which was in his possession and used it for some time and then returned the SIM card to P.W.19. Then both of them went to Kolkatta by train. On their way to Kolkatta by train, A3 was arrested by P.W.47 at Howrah Railway Station. On the arrest of A3, he was in possession of mobile phone instrument bearing IMEI numbers 911334901326604 and 911334901326612. After he was brought to Chennai, while in the custody of P.W.49, he made a disclosure statement and produced the cellphone instrument belonging to the deceased (M.O.10) from the place of hide out in the presence of P.W.9 and another witness. That was recovered under Ex.P.14 mahazar. A3 has got no explanation to offer as to how he came to possess the mobile phone instrument which was lastly used by the deceased. From these circumstances, it has to be presumed as provided under Section 114 of the Evidence Act that A3 was one of the perpetrators of the crime.

20. P.W.14 is the one who sold the SIM card bearing mobile phone number 74015 15554 which stood in the name of one Mr.Karthik kumar S/o.Murugesan Achari. The learned counsel for the appellants would submit that this SIM card does not stand in the name of P.W.19 and therefore, the evidence of P.W.19 that he gave the said SIM card to A3 for some time in Chennai and A3 in turn, used the same in the cellphone instrument of the deceased cannot be believed. But, P.W.14 has categorically stated that it was his business practice to activate SIM cards in the name of some one and to sell the same to different persons. He has further stated that he activated the SIM card bearing mobile phone number 74015 15554 in the name of Mr.Karthik Kumar and sold the same to one North Indian. Though P.W.14 has not identified P.W.19 as the one to whom it was sold in the presence of A1, P.W.19 has categorically stated so. Therefore, we find no reason to reject the evidence of P.W.19.

21. Next comes the evidence of P.W.12. He was a co-worker with the accused and P.W.13. He was staying with A1 to A3. He was working as mason in the construction company. According to P.W.12, on 24.02.2014 at 06.00 p.m. he received the mobile phone from A2 to speak to someone. P.W.12 spoke to somebody. But, when he wanted to return the mobile phone, he found A2 had already left. Then, he handed over the mobile phone to P.W.13. P.W.13 and P.W.11 during interrogation handed over mobile phone to P.W.49. M.O.36 is the said mobile phone with IMEI Nos. 357860046930158 and 357861046930156. The said mobile phone was used by A2. But, the learned counsel for the appellants would submit that M.O.36 would not in any manner link the accused with

the crime. We find force in the said argument. But, the fact remains that A2's involvement is proved, among other evidences, by the fact that the SIM card-Mobile No. 74015 15554 (M.O.29) used in the cellphone instrument of the deceased (M.O.10) was recovered from his possession on his disclosure statement.

22. Now, turning to A1, on his arrest, he made a disclosure statement in the presence of P.W.9 to P.W.49. In pursuance of the same, from the place of hide out, he produced a pair of ear-studs (M.O.4), the copper ring (M.O.5) and partly damaged SIM Cards- 2 Nos. (M.O.21-series). These properties have been proved to be that of the deceased and they are the stolen properties. P.W.1 has identified these properties as that of the deceased. There is no explanation from A1 as to how he came to possess these stolen properties. This would give rise to a presumption that he was one among the perpetrators of the crime.

23. The fact that A1 to A3 were acting in concert has been spoken by P.W.17. P.W.17 has stated that these three accused on the day of occurrence came to his shop and purchased two knives. Unfortunately, this witness was not called upon to identify the knives. He has identified A1 to A3 during test identification as well as in court during trial. From his evidence, it could be inferred that A1 to A3 were acting in concert even in the preparation to commit the crime.

24. At this juncture, the evidence of P.W.19, a co-worker of the deceased assumes much importance. P.W.19 came to Chennai from West Bengal searching for a job. He came to Chennai along with A3. He was staying with A1 to A3 and was working in the construction company. According to him, on 14.02.2014 around 12.00 midnight, when he was about to go to toilet to attend nature's call, he found A1 to A3. A1 was having one ATM card. P.W.19 knew well that A1 did not have any such ATM card in his name. Therefore, P.W.19 enquired him. A1 confessed to him in the presence of A2 and A3 that he along with A2 and A3 had raped and killed a girl when she was returning near SIPCOT IT Park complex and threw the dead body. He further confessed that from her he had taken ATM card, a pair of gold ear-studs and her mobile phone. A1 was found in possession of the mobile phone in his hand which according to P.W.19 did not belong to A1. When P.W.19 asked A1 as to what would be his reaction had it happened to his sister, A1 to A3 immediately threatened him not to disclose the occurrence to anybody. Then, they burnt down the ATM card and threw the remainder metal from the ATM card at a distance. He has further stated that on the next day, all of them went to the construction work as though nothing had happened. The learned counsel for the appellants would submit that it is highly unbelievable that A1 to A3 would have

confessed to P.W.19. We find no force at all in the said argument for, after all P.W.19 hails from the native place of A1 to A3 and he was not only a friend of A1 to A3 but also a co-worker. In our considered view, there would have been every reason for A1 to A3 to confess to P.W.19. We therefore reject the argument of the learned counsel for the appellants and accept the evidence of P.W.19. From this evidence, as we have already pointed out, the prosecution has established that soon after the disappearance of the deceased, the ATM card belonging to the deceased was in the possession of A1 and A2 had used the same in an attempt to draw money from the ATM. The conduct of A1 in destroying ATM card and the fact that A1 did not have any ATM card in his name previously coupled with the other facts which we are going to discuss hereinbelow, we have to hold that the ATM card which was destroyed by A1 was that of the deceased.

25. The prosecution, in an attempt to prove that the person who entered into the ATM centre and attempted to use the ATM card of the deceased was A2, has made reliance on Ex.P.112 which is a report given by one Mr.H.J.Trivedi, Scientific Officer, Computer Forensic Division, Directorate of Forensic Science, Gandhi Nagar, Gujarat State. We need to remember at this juncture that the CCTV footage recovered from the ATM centre and the CCTV footage covering the re-enactment by A2 during investigation were compared by Mrs.Trivedi and in his report he has stated that the person covered in the original CCTV footage is probably A2. When this document was marked in evidence, the defence had objected to the same on the ground that it is inadmissible in evidence in the absence of examination of Mr.H.J.Trivedi. In Ex.P.112, Mr.Trivedi has observed as follows:-

"1. Resolutions of the video footages recorded by the 'Camera 06' is very low as compared to the distance of the persons from the camera hence identity of the persons present in the video footage recorded by the 'Camera 06' present in the Hard disk Exh-1-1 and CD-R Exh-1-2 could not be established.

2. As person Exh-6 had covered his face with cloth, facial features are not visible.

3. The physical structure, height & length of foot step of person Exh-6 & Exh-7 are found similar. There by showing that person Exh-6 & Exh-7 are same person i.e. Uttam Mandal with probable identity."

26. In our considered view, this document [Ex.P.112] cannot be read in evidence without the examination of Mr.Trivedi, the Scientific Officer, Computer Forensic Division, since Section 293 of Cr.P.C. would not cover Ex.P.112. Further the opinion of Mr.Trivedi is based only on physical measurements and not by means of any scientific analysis. His opinion speaks of only probability and there is no certainty. In our considered view, Ex.P.112 is inadmissible in evidence and the same is therefore rejected.

27. The learned counsel for the appellant, during the course of argument, submitted that in the call details relating to SIM Card bearing mobile number 74015 15554 allegedly used by A3 by using the cellphone instrument of the deceased does not show that IMEI number used by the deceased was used to operate the above said SIM card. This argument is based on the call details which show that out of the 14 digits of IMEI number, the last digit is shown as '0' and it does not show the actual IMEI number of the deceased. Though, on one hand, the learned counsel for the appellants would contend that these call details are not admissible in evidence for want of certificate as required under Section 65-B of the Evidence Act, on the other hand, his argument is that in the call details, the IMEI number corresponding to SIM card allegedly used by A3 did not tally. For the naked eye, it is so clear that the last digit of the IMEI number as mentioned in the call details do not reflect any of the IMEI numbers of the mobile phone used by the deceased. In order to clarify this aspect, we wanted to examine an expert. Accordingly, we examined one Ms.S.P.Lavanya, who happened to be a Deputy Superintendent of Police, Cyber Crime Cell, C.B. C.I.D., Chennai, as court witness [C.W.1] before this court on 10.08.2016 by exercising our power under Sections 391 and 311 of Cr.P.C. to receive additional evidence. This exercise was done after affording sufficient opportunity to the counsel for the accused to make their submissions. C.W.1 was cross examined by the counsel for the accused. C.W.1 is a graduate in Computer Science. The following is the substance of evidence of C.W.1:-

"In a cell phone instrument, for each sim card used, the instrument should have one IMEI number. Suppose a cell phone instrument could be used to operate two sim cards then the instrument should have two IMEI numbers. In the call details, provided by the service provider, there shall be the cell phone number (sim card number) as well as the IMEI number of the cell phone. As per the standard norms, each IMEI number shall have 15 digits. In the call details provided by the service provider, the last digit of the IMEI number

will not appear and instead, it will appear as "zero". For example, if the IMEI number of the cell phone is 353577051308211, in the call details, the IMEI number shall appear as 353577051308210. From and out of the IMEI number, ending with "zero" as mentioned in the call details, provided by the service provider, applying the standard formula known as Luhn algorithm, the real IMEI number can be easily found out. In the 14 digit IMEI number, every even digit has to be doubled and if the doubled digit is again double digit, for example 10, then each digit shall be added, that is to say, $1 + 0 = 1$. Odd digit has to be taken as such. Now, the odd digit and the doubled even digit has to be added together and then with the final result to make to the near decimal, for example 55 to make it 60, we have to add 5. So the last digit of the IMEI number is 5. By taking into account the first 14 digit IMEI number 35357705130821, applying the said formula, it can be found out easily that the real IMEI number is 353577051308211. Similarly, for the first 14 digits of IMEI number 35353605130821, the 15th digit can be found out as 3. Similarly, the real IMEI number can be found out by applying the said formula from and out of the first 14 digit IMEI number."

She demonstrated the method to apply the formula in open court. By applying the above formula, she worked out the actual IMEI number of the mobile phone for the dummy No. "353577051308210". We, on our part, applied this formula to satisfy our judicial conscience and found that the explanation offered by C.W.1 is correct.

28. From the evidence of C.W.1 it may be established by the prosecution that the SIM card bearing mobile phone number 74015 15554 was used in the mobile phone instrument of the deceased. But, this valuable scientific evidence is lost by the prosecution as the call details, though marked as exhibits, and though spoken by the officials of the service providers, do not carry certificate under Section 65-B of the Evidence Act. As has been held by the Hon'ble Supreme Court in P.V.Anvar v. P.K.Basheer, 2014 (10) SCC 473, these documents [call details] and the oral evidences of the officials of the service provider companies are rejected.

29. From the foregoing discussion, we hold that the prosecution has proved beyond any doubt, by means of cogent and convincing circumstantial evidences that these three accused alone were the perpetrators of the crime. The trial court has acquitted A1 to A3 from the charge of rape for want of sufficient evidence, but, so far as the other charges are concerned, the trial court has considered all the evidences meticulously and found that A1 to A3 had wrongfully restrained the deceased, took her to a nearby secluded place, killed her, robbed her movable properties such as gold ear-studs, copper ring, ATM card, etc., from her person. Thus, we do not find any infirmity in the judgement of conviction recorded by the trial court.

30. Now turning to the quantum of sentences, the trial court has imposed very reasonable sentences having regard to the mitigating as well as the aggravating circumstances. Thus, we do not find any reason to interfere with the sentence also.

31. For the parents of the deceased, the loss is immeasurable. We are able to perceive their agonies. We are able to visualize the perennial tears rolling down from their eyes. Though the loss cannot be compensated, we feel that monetary compensation may, to some extent, wipe out their tears. We feel that this is a fit case where we have to order for payment of compensation of Rs.2,00,000/- under the Tamil Nadu Victim Compensation Scheme, 2013 framed in exercise of the power conferred under Section 357-A of the Code of Criminal Procedure.

32. Before parting with this case, we would like to place on record our deep appreciation to P.W.49-Mr.K.Veeramani, the then Deputy Superintendent of Police, C.B.C.I.D., Kancheepuram for the excellent investigation done by him to bring to book, the culprits within a record time by using the best investigation skills. He has not left any stone unturned except to get necessary certificate under Section 65-B of the Evidence Act for the electronic evidence. Crime detection and crime investigation are the tools to bring to book the real culprits. In this case, crime detection as well as the crime investigation have been done excellently. P.W.49 needs to be rewarded by the Government as a token of appreciation of his work.

33. In the result, These Criminal Appeals [Crl.A.Nos.169 and 488 of 2015 and Crl.A.No.386 of 2016] are dismissed. The conviction and sentences imposed on the appellants by the trial court are hereby confirmed.

We, further direct the Superintendent of Police, Kancheepuram, to pay a sum of Rs.2,00,000/- [Rupees Two lakhs only] as compensation to the parents of the deceased from out of the Tamil Nadu Victim Compensation Scheme under Section 357-A of the Code of Criminal Procedure within four months from today.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

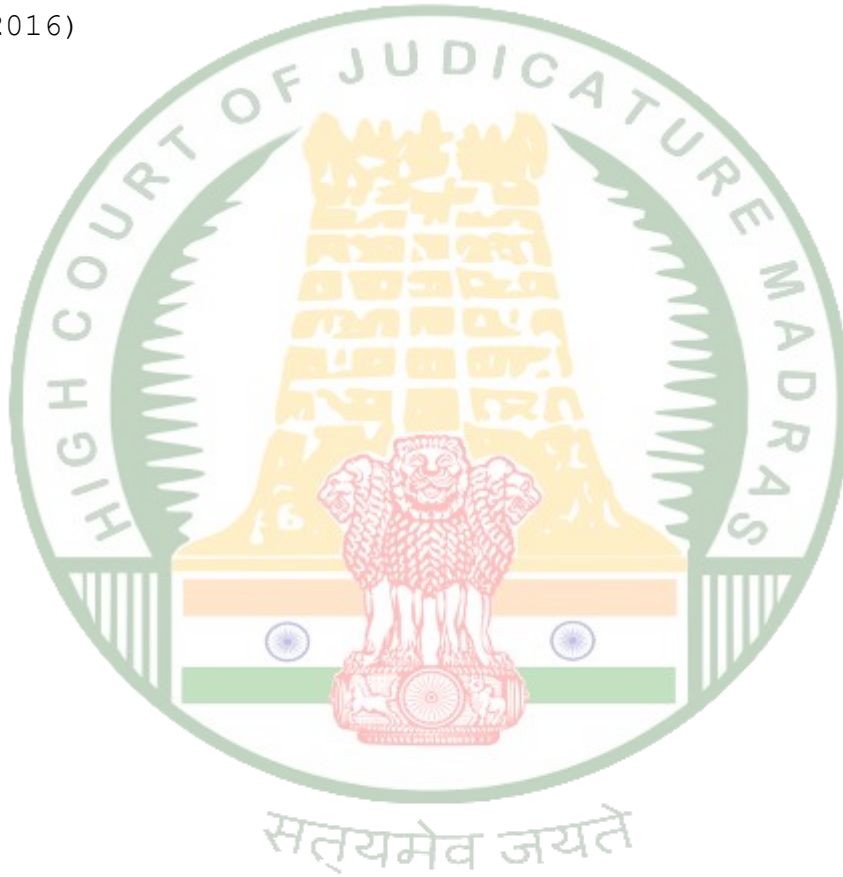
1. The Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.
2. The Director General of Police,
Tamil Nadu, Chennai 600 004.
3. The Sessions Judge,
Mahila Court, Chengalpattu,
Kanchipuram District.
4. The Inspector of Police,
Crime Branch C.B.C.I.D., Kanchipuram,
Kanchipuram District.
5. The Deputy Superintendent of Police,
Crime Branch C.I.D., सत्यमेव जयते
Kancheepuram.
6. The Superintendent of Police,
Kancheepuram.
7. The Principal Sessions Judge,
Chengalpattu, Kancheepuram District.
8. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

9. Mr.S.Suresh, Advocate,
Legal Aid Counsel,
High Court, Madras.

10.The Public Prosecutor,
High Court, Madras.

Crl.A.Nos.169, 488 of 2015 and 386 of 2016

VD(CO)
CA(12/09/2016)



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