

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2016

PRONOUNCED ON : 08.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.226 of 2013

Poovarasi .. Appellant/Singal
Accused

- Vs -

The State Rep. by
The Inspector of Police,
B-2, Esplanade Police Station,
Chennai.
(Crime No.412 of 2010) ..
Respondent/Complainant

Prayer:- Appeal is filed under Section 374 (2) of the Code of Criminal Procedure against the judgment passed by the learned VI Additional Sessions Judge, Chennai in S.C.No.491 of 2010 dated 15.02.2011.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.M.Maharaja
Additional Public

Prosecutor

J U D G M E N T

S.NAGAMUTHU.J.,

The appellant, sole accused in S.C.No.491 of 2010 on the file of the learned VI Additional Sessions Judge, Chennai, who stands convicted for offences under Sections 364 and 302 r/w Section 201 I.P.C. and sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs.50,000/- and in default to undergo simple imprisonment for six months for the offence under Section 364 I.P.C. and to undergo imprisonment for life and pay a fine of Rs.50,000/- and in default to undergo simple imprisonment for six months for the offence under Section 302 I.P.C. r/w Section 201 I.P.C., has come up with this appeal, challenging the said conviction and sentence.

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

2.1. P.W.4 and P.W.1 are the husband and wife respectively. They got married in the year 2000. It was a love marriage. Out of the said wedlock, a female and a male child were born. At the time of occurrence, the female child "Nivedita" was aged eight and half years and the male child "Adithya" was hardly aged three and half years (hereinafter referred to as the deceased). They were residing at 8/26, second cross street, Padmavathy Nagar, Virugambakkam, Chennai.

2.2. Between 2006-2009, P.W.4 was working as the Area Sales Manager in Tata AIG Insurance Company. The appellant / accused-Miss "Poovarasi" was also working in the same company during the said period as an Assistant Sales Manager. In the year 2009, P.W.4 resigned his job in Tata AIG Insurance Company and joined the Reliance Insurance Company as Zonal Manager at T.Nagar, Chennai. In the same year, the accused also resigned her job from Tata AIG Insurance Company. During the month of July 2009, the accused approached P.W.4 seeking help to get her a job in the Reliance Insurance Company. P.W.4 accordingly, made arrangements and finally she got a job. In the interregnum period, they developed a close relationship with each other and they used to speak frequently over phone. During such conversation, the accused informed P.W.4 that all her family members, such as her father, mother, elder brother and younger brother died in a motor vehicle accident and thus there was nobody to support her (later, on verification, it turned out that the said statement was false). P.W.4 developed a sympathy towards the accused on account of the said information. The accused, in the meantime, developed a partnership business with her friend under the name and style "Shiv Well Creators". P.W.4 helped her in developing the said business. P.W.4 had also extended financial assistance to the accused. In due course, the said friendship developed into illicit intimacy between P.W.4 and the accused. They had sexual intercourse on many occasions. They also used to go to hotels and other resorts. Thus, the accused managed to develop immense confidence and faith in the mind of P.W.4 towards her.

2.3. It was also the habit of the accused to please P.W.4 by taking the son of P.W.4 Adithya with her for shopping and to get him some eatables. On all these occasions, she used to promptly bring back the deceased to P.W.4.

2.4. While this relationship was continuing, on one occasion, the accused told P.W.4 that her uncle was pressurising her to agree for a marriage proposal. She enquired with P.W.4 as to what she should do in such a situation. P.W.4 told her very casually that she should go for marriage. This was not to the liking of the accused. The accused was under the impression that P.W.4 would marry her as he had sexual relationship with her and also love for her.

2.5. While so, in the month of June, 2010, P.W.4 went to Italy. The email I.D. and the password of P.W.4 were known to his wife (P.W.1) Mrs.Ananda lakshmi. After few days, P.W.1 casually opened the email inbox of P.W.4. She found a message from one Poovarasi (later identified as the accused), which read as follows:

"I missing you a lot. I feel very depressed. I would like to chat with you online - Poovarasi".

2.6. On seeing this, P.W.1 got disturbed. Immediately she wanted to respond and therefore she sent an email to Poovarasi which reads as follows:

"hi, I am Jaykumar wife. Jai loves me a lot and I love him the most in this world. We have two lovely kids and please dont spoil our relation by sending these kind of mails. Thanks - Anandhi."

2.7. After sending the above email, when P.W.4 spoke to P.W.1 from Italy, she enquired about Poovarasi. At that time, P.W.4 suppressed all his relationship with the accused. Instead, he told P.W.1 that the accused was like an orphan and considering her pathetic condition in life, he was sympathetic towards her and that he was moving friendly with her. P.W.1 was convinced by the said statement of P.W.4. Therefore, she sent another email to the accused apologising for the same and expressing her desire to help the accused. The said E.mail reads as follows:

"hi, I am anandhi jaikumar. Yesterday jai spoke to me bout to you. I came to know about your situation. I felt very sorry for you. When you are free you can send an email to me in his address. I will be in a position to help you. Take care. Thanks - Anandhi."

2.8. Two days after the said email, the accused called P.W.1 over phone and she wanted P.W.1 to come to ECR road, so that they could talk something private. But P.W.1 expressed her inability to come there and therefore she wanted her to discuss, whatever she wanted, over phone. The accused thereafter started telling about her relationship with P.W.4. This resulted in a wordily quarrel between them over phone. The accused challenged P.W.1 that she could do nothing to her and she would continue to have such relationship with P.W.4. Since P.W.1 shouted at her, the accused cut off the connection. Immediately, P.W.1 sent another email to the accused on 12.06.2010, which reads as follows:

"Hi, I am Mrs.Anandhi Jayakumar. R U PROS? If u want to fuck anyone, go to roadside. Dont spoil our life. He loves me lot and I love him most in the world. Thanks - Anandhi."

After this incident, the accused did not speak to P.W.1 at all. There was no more email from her.

2.9. P.W.4 returned from Italy in the month of July, 2010. He was very busy with his job. At that time, he came to know that there was a proposal to appoint someone as Development Manager in his company at Madurai. He told the accused to send her bio data. At his intervention, the company appointed her as a Business Development Manager for Madurai and the salary was fixed at Rs.5.75 lakhs per year. P.W.4 informed the accused on 16.07.2010 and wanted her to come and join duty on 17.07.2010.

2.10. P.W.4 went to Salem by train after leaving his car in the Egmore Railway Station car parking. On 17.07.2010, he returned from Salem early in the morning in the train to the Central Railway station at Chennai, from where, he proceeded to the Egmore Railway station by auto. The accused came to receive him at the Egmore Railway station. The accused owned a Scooty bearing registration No.TN 05 V 3515 (M.O.6). The Scooty was parked by the side of the car of P.W.4. After receiving P.W.4 at the Railway Station, the accused went to YWCA hostel where she was staying and P.W.4 went to his house in his car. At that time, she told that 17.07.2010 was not an auspicious day and therefore, she would come and join duty on 19.07.2010.

2.11. When the accused met P.W.4 at the car park at Egmore railway station, the accused further told P.W.4 that there was a festival in YWCA hostel where she was staying and she would like to take the deceased with her so that she could spend some time with the deceased. She further told that if she once left for Madurai, it would not be possible to be with the deceased. Therefore, she made a fervent request to P.W.4 to allow her to take the child Adithya (deceased) with her for the said festival. P.W.4 assured the accused that he would do so.

2.12. On the said date i.e. on 17.07.2010, in the morning, P.W.4 was getting ready to go to his office in his car. With a view to leave the deceased in the custody of the accused for sometime, as requested by her, he wanted to take the deceased in the car along with him to his office. P.W.4 himself, dressed up the deceased. The deceased was thus wearing a checked pant, blue colour T-shirt and black shoes. They reached the office of P.W.4 at 10.30 a.m. While travelling in the car, P.W.4 called the accused and informed her to come to the office to take the deceased with her.

2.13. When P.W.4 and the deceased were in the office, P.W.9 who was working as a Coordinator at the office of P.W.4, came to the office at 10.30 a.m. He found P.W.4 and the deceased at the chamber of P.W.4. Since the deceased was doing some silly things playfully in the office disturbing his work,

P.W.4 wanted P.W.9 to take the deceased to the ground floor and get him some eatables. Accordingly, P.W.9 took the deceased to a nearby shop and got him biscuits and other eatables. The deceased carried the same in a black colour carry bag and returned to the office of P.W.4. At 11.30 a.m. the accused called P.W.4 through cellphone and informed him that she was waiting by the side of the office in the ground floor. P.W.4 took the deceased to the ground floor. He found the accused standing near the "Hotel Residency" situated on the left side of the office of P.W.4. She was waiting with her Scooty (M.O.6). P.W.4 handed over the deceased to the accused and returned to his office. The accused took the deceased by allowing him to stand between her legs in the motorcycle on the footrest. Thus, the deceased was in the custody of the accused from 11.30 a.m. onwards.

2.14. At about 12.15 p.m., P.W.4 called the accused through over her cellphone and enquired about the deceased. The accused replied that the deceased was with her in YWCA hostel happily. When P.W.4 wanted to speak to the deceased, the accused told him that the deceased was drinking juice. The cellphone connection also went off. Thereafter, P.W.4 went for another meeting at his office. At 02.30 p.m., in order to know whether the deceased had taken his lunch, P.W.4 tried to contact the accused through her cellphone. But the accused did not pick up the phone. Then, P.W.4 repeatedly tried to contact the accused through her cellphone, but failed as the accused did not pick up the phone. Then, after his work at his office was over, at around 03.45 p.m. taking some eatables to the deceased, P.W.4 went to YWCA hostel, where the accused was staying. Admittedly, the accused was staying at Room No.67 which is situated at the second floor of YWCA hostel. P.W.4 went into the compound of YWCA hostel, parked his car and then tried to contact the accused. Since it was a ladies hostel, male members were not allowed to enter into the hostel building. Therefore, P.W.4 tried to speak to the accused through cellphone, but she did not pick up the cellphone. Therefore, he sent two SMS to the accused to her cellphone enquiring as to where the deceased was and how he was. He also messaged that he was waiting in the YWCA hostel premises for her. After sending SMS, he was waiting for the accused to respond.

2.15. While so, at 04.15 p.m., when again he tried to contact the accused through her cellphone, it was picked up and there was a female voice from the other end. Believing that it was the accused, he started scolding her for her irresponsibility in not responding to his phone calls, the SMS and for not informing about the whereabouts of the deceased. The female voice from the other end told P.W.4 that she was speaking from Armenian street near the Church in Chennai. She further told that there was a woman lying unconscious and the cellphone was in her possession. Since there was a ring, with a view to help, she picked up the phone call and responded.

She asked P.W.4 to rush immediately to the Church.

2.16. P.W.4 enquired her as to whether there was a child by her side. She answered in the negative. From the other end the connection was cut. Again P.W.4 called through the said cellphone. The same woman responded. When P.W.4, filled with anxiety, enquire whether there was any child by her side, again she told that there was no such child. Immediately, P.W.4 rushed to the Church at Armenian street in Chennai and reached there at 04.30 p.m. and after parking his car outside the Church, when he entered into the Church, he found the accused lying on the phyal of the Church unconscious and few people were standing by her side. He tried to wake her up by sprinkling water on her face and also by giving water and tea to drink. But there was no response from her. Then P.W.4 went into the Church and searched for the deceased. The deceased was not seen. When he enquired the accused about the whereabouts of the deceased, she did not respond. The people standing by the side of the accused also informed P.W.4 that the accused came alone and she did not bring any child with her. P.W.4 immediately took the accused to a nearby private hospital known as National hospital.

2.17. P.W.11 Dr. Senthil, examined her at around 04.30 p.m. on 17.07.2010 at National Hospital at Beach road, Chennai. She was brought by P.W.4. He was told by P.W.4 that the accused was found lying unconscious in the Church at Armenian street. P.W.11 examined her and found that she was very weak. After admitting the accused at the hospital, P.W.4 again went to the Church after leaving his cellphone number with the doctor to inform him as soon as the accused regained consciousness. When he was searching for the deceased near the Church, he received a phone call from the hospital informing that the accused had regained consciousness. The accused herself spoke to P.W.4. Immediately, P.W.4 rushed back to the hospital and when he enquired about the deceased, she did not respond properly and wanted to accompany him to go to the Church to search for the deceased. When P.W.4 wanted to go to the police station for making a complaint, the accused told him not to go to the police station and instead they could go to the Church and search for the deceased.

2.18. Since the whereabouts of the deceased was not known and since the accused also did not give any satisfactory information about the whereabouts of the deceased, P.W.4 went to B2 Esplanade Police Station at Chennai at 06.30 p.m. on 17.07.2010 and made a complaint under Ex.P5.

2.19. P.W.21, the then Sub Inspector of Police at B2 Esplanade Police Station, on receipt of the said complaint, registered a case in Crime No.412 of 2010 for boy missing. Ex.P18 is the F.I.R. He forwarded both the documents to the

Court and handed over the case diary to the Inspector of Police for investigation.

2.20. In the meanwhile, the accused had again gone to the Church. P.W.4 informed the same to the police also. P.W.4 immediately rushed to the Church again. He found the accused sitting and one Lakshmikandhan P.W.15 was sitting by her side. Police also arrived in the Church. P.W.4 repeatedly enquired her and the police also enquired her about the whereabouts of the deceased. But, she did not give any satisfactory reply. The police also enquired in and around the Church, but the deceased was not seen.

2.21. P.W.4, in the meanwhile, informed his wife over phone that the deceased was missing. P.W.1 immediately rushed to the Church and then to the police station and searched for the deceased.

2.22. P.W.27, took up the case for investigation. But there was yet no clue. The photographs of the deceased were also given wide publicity seeking information about the whereabouts of the deceased. The accused also did not give any satisfactory reply and she was giving contradictory statements.

2.23. While things stood thus, a bus from Chennai reached Velipalayam bus stand at Nagapattinam at 03.00 p.m. on 18.07.2010. The passengers in the bus, brought down a suitcase and left it in the premises of the bus stand. The bus went off. The suitcase was left there abandoned. The message regarding the same reached the Village Administrative Officer of Nagapattinam by name Mr.Sambasivam (Now no more). He went to the spot along with his menial. The V.A.O. in turn informed the Sub Inspector of Police of Velipalayam Police Station at Nagapattinam. P.W.23 the then Sub Inspector of Police immediately rushed to the bus stand. P.W.23 suspected that the suitcase might contain some explosive substance and therefore she informed the experts in the field in the police department and wanted them to come to the place of occurrence. They all came to the place of occurrence and after taking precautionary measures, when they opened the suitcase, to their shock, they found a dead body of a male child aged about 4 ½ to 5 years inside the suitcase. The face of the child was closed with a polythene bag and a nylon rope was found around the neck. The child was wearing a blue colour banian and blue colour jetti. P.W.23 obtained a statement from the Village Administrative Officer Mr.Sambasivam and then, he registered a case in crime No.427 of 2010 under Section 302 I.P.C. Ex.P21 is the F.I.R. He forwarded both the documents to Court and handed over the case diary to the Inspector of Police for investigation.

2.24. P.W.25 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar

and a rough sketch in the presence of Mr.Sambasivam the V.A.O and P.W.8 the Village Assistant. He also prepared a rough sketch showing the place of occurrence. He recovered the suitcase, a track suit and a black colour polythene bag under Ex.P10 mahazar in the presence of the same witnesses. Since the identity of the dead body was not known, he made arrangement for wide publicity of the photograph of the dead body in print and electronic media. He preserved the photographs of the dead body. The Fingerprint expert who came to the spot took the fingerprints from the dead body of the child. Then he forwarded the body to the Government hospital at Nagapattinam for being kept in the mortuary. On 19.07.2010, he handed over the case diary to his successor Mr.Moorthy (P.W.26).

2.25. P.W.26, took up the case for investigation. On 19.07.2010, the photographs of the dead body found at Nagapattinam, Velipalayam bus stand which was given wide publicity in the print and electronic media was noticed by the Inspector of Police (P.W.27), who was investigating the boy missing case in Chennai. P.Ws.1 and 4 and her relatives also noticed the same. As the dead body was bloated, from the photographs, P.W.1 could not make out the identity, but, from the dress and other features P.W.1 suspected that the dead body might be that of the deceased. Therefore, P.W.1 along with her relatives, rushed to Nagapattinam. She was taken by the Inspector of Police, Velipalayam Police Station, to the mortuary at the Government Hospital at Nagapattinam, where after seeing the dead body, P.W.1 identified the same as that of the deceased.

2.26. Thereafter, P.W.25 conducted inquest on the body of the deceased in the presence of Panchayadars during which P.W.1 and other witnesses were examined. P.W.1 told about the fact that the deceased was lastly in the custody of the accused. Then the body was sent for postmortem.

2.27. P.W.22, Dr.Robert Rajamanickam, conducted autopsy on the body of the deceased on 20.07.2010 at 03.00 p.m. He found the body of the deceased in a decomposed condition. He found the following injuries on the body of the deceased:

"Face was swollen and bluish black. Nylon rope of 2mm diameter found tightened around the neck; reef knots in front of the neck. Area underlying the rope was found deeply followed around the neck (rope mark). Dark blood stained fluid exuded from mouth and nose, swollen tongue, teeth complete for age. Scrotum normal, faeces stained and smeared around the anus.

Internal Examination: Abd: on opening post mortem gas comes out. Peritoneal cavity - dark brown coloured. P.H. Fluid. Stomach - empty and

decomposed, liver, spleen and kidney -
decomposed, small intestine - empty and
decomposed. Thorax: ribs - No #, lungs -
decomposed, Heart - all cavities empty, flabby,
valves normal, vessels normal, Hyoid bone -
intact, trachea - decomposed, Head - no
external injuries, skull - no #, brain -
liquified."

Ex.P19 is the postmortem certificate. The doctor opined that the death of the deceased was due to asphyxia due to manual strangulation. He further opined that the death would have occurred on 17.07.2010.

2.28. Since the body was highly decomposed, P.W.4 informed P.W.1 to bury the dead body there itself and accordingly, P.W.1 and her relatives buried the dead body at Nagapattinam itself.

2.29. Thereafter, P.W.27 continued the investigation of the present case on the file of the Esplanade Police Station and he collected all the records from Velipalayam Police Station, Nagapattinam. He altered the case into one under Section 302 I.P.C.

2.30. When the case was under investigation, the accused was again found missing. P.W.15, Mr.Lakshmikandhan, was doing finance business and on account of the same, he had acquittance with both P.W.4 and the accused. On few occasions, the accused had told P.W.15 that she had illicit intimacy with P.W.4 and out of the same, on one occasion, she became pregnant. She further told that at the request of P.W.4 she aborted the child. She further told that P.W.4 had deceived her. He has further stated that on few occasions, he had seen the accused taking the deceased with her. According to him, on 17.07.2010, one Mr.Karthic informed him that the accused was lying unconscious in the Church and he immediately rushed there. When he reached the Church, the accused was not there and after sometime, the accused came there along with P.W.4. At that time, for the first time, she told that she had taken the deceased to the temple and after having darshan at the temple, she found the child missing. He searched for the child in the nearby places. Till 03.30 a.m. on 18.07.2010, he along with P.W.4 searched for the child and then he returned home. According to him, on the next day i.e. 18.07.2010 when he tried to contact the accused through her cellphone, there was no response. When he went to the hostel, he was informed that the accused had left the hostel in the morning itself. Thereafter, he went to the police station along with P.W.4, they tried to contact the accused through her cellphone, but she did not pick up the cellphone. By 12.00 noon, she picked up the cellphone and responded to the call made by P.W.15. When he enquired, she told that she was sitting near the Gandhi statue in Marina Beach. Immediately, he went there

and found her sitting on the road side. He informed the same to the police and police came and took her to the police station. Though she was interrogated from that time onwards, she was not giving any satisfactory reply. After the case was altered into one under Section 302 I.P.C. the accused admitted her guilt to the police. Thereafter, P.W.27 arrested the accused at 09.30 p.m. on 20.07.2010.

2.31. On such arrest, she made a disclosure statement. She produced the Scooty motorcycle bearing registration No. TN 05 V 3515 along with keys and also the keys of the entrance of YWCA hostel. P.W.27 recovered the same under a Mahazar. She disclosed in her statement that she had hidden a skipping rope underneath the garbage at RBI subway. In pursuance of the same, she took P.W.27 and witnesses to the said place and produced the skipping rope. P.W.27 recovered the same under a mahazar. Then at 06.45 a.m. on 21.07.2010, P.W.27 went to Room No.67 of the YWCA hostel, where the accused was staying and in the presence of the witnesses, he prepared an observation mahazar and a rough sketch showing the said place. From the said room, he recovered a black colour shoe one pair, one laptop, two stripes of tablets by name "Morenight maltepe", one pack of Moods "condom", a passport, one godrej lock, chocolate and two cellphones under a mahazar in the presence of the same witnesses. Then the accused took P.W.27 and the witnesses to Armenian street and produced the motorcycle bearing registration No. TN 05 V 3515 with keys. Then, he forwarded the accused to Court for judicial remand.

2.32. Thereafter, P.W.27 collected the call details relating to the mobile numbers of the accused and that of P.W.4. At his request, the learned VI Metropolitan Magistrate recorded the statements of some of the witnesses. On completing the investigation, he laid chargesheet against the accused.

2.33. Based on the above materials, the trial Court framed charges which the accused denied. In order to prove the charges, on the side of the prosecution, as many as 27 witnesses were examined, 26 documents were exhibited and 9 material objects were marked.

2.34. Out of the said witnesses, P.W.1 the mother of the deceased has spoken about the relationship between the accused and P.W.4 and the telephonic talks and the emails between her and the accused. She has also stated about the deceased being taken by P.W.4 to his office at 10.30 a.m. on 17.07.2010 and the further fact that on receiving information from her husband (P.W.4) in the evening that the deceased was missing, she went in search of the deceased. She has also spoken about the complaint made. P.W.2 has spoken about the preparation of the observation mahazar and the rough sketch at Armenian Street at Chennai. P.W.3 is the watchman in the St. Antony Church at Armenian Street. He has stated that on 17.07.2010

at 04.00 p.m. a woman came to the Church in a Scooty bearing registration No.TN 05 V 3515 and she was aged about 25 years. She went into the Church and then she fainted. The people who were in the Church informed him. He has further stated that one person came to the Church and enquired whether the woman came with a child. He has further stated that he told him that she alone came. P.W.4 is the father of the deceased who has vividly spoken about the entire event such as his relationship with the accused. He has further stated about the fact that on 17.07.2010 at 11.30 a.m. the deceased was handed over by him to the accused. He has further stated that at 12.15 p.m. when he contacted the accused through her cell phone, she stated that the deceased was in her custody at YWCA hostel. Thereafter, according to him, when he tried to contact the accused, she did not pick up her phone. He has further stated that after his work, he went to the hostel at 03.15 p.m. and from the premises of the hostel, when he tried to contact the accused, there was no response and even for his SMS messages, there was no response. He has further stated that at 04.15 p.m. he received a phone call from the cellphone of the accused and he came to know that the accused was lying unconscious in a Church at Armenian Street. Therefore, he went to the Church and when he enquired, the accused did not give any proper explanation about the whereabouts of the deceased. Then, he took her to a nearby hospital. After regaining consciousness also, the accused has not stated anything about the deceased. He has further stated that a complaint was given to the police at 05.30 p.m. and he left the accused at YWCA hostel and returned home. P.Ws.1 and 4 have stated that the dead body of the deceased which was found at Nagapattinam was that of the deceased. P.W.4 has also identified the personal belongings of the deceased. P.W.5 is the watchman of the YWCA hostel. He has stated that on 17.07.2010 at about 12.00 noon, the accused came to YWCA hostel with the deceased and by about 01.30 p.m. she alone left the hostel. In other words, the deceased was not taken back from the hostel by the accused. P.W.6 is an inmate of the same hostel. She has stated that between 01.15 p.m. and 02.00 p.m. on 17.07.2010, she heard the voice of a child in the room of the accused. When she enquired the accused, the accused told that the child was the son of her cousin. But P.W.6 did not see the child. P.W.7 has stated about the arrest of the accused and consequent recovery of the material objects.

2.35. P.W.8 is the Village Assistant of Velipalayam village at Nagapattinam. He has stated that on 18.07.2010 at about 04.30 p.m. a suitcase was left abandoned at Velipalayam bus stand. He along with the Village Administrative Officer Mr.Sambasivam (who is now no more) went and found the suitcase and Mr.Sambasivam made a complaint at the Velipalayam police station. P.W.9 has stated that he was working as a Coordinator at the office where P.W.4 was working as Manager. He has stated that on 17.07.2010 at 10.30 a.m. the deceased

was brought to the office by P.W.4. Since the deceased was disturbing P.W.4 in his work, he wanted P.W.9 to take the deceased to a nearby shop and get him some eatables. Accordingly, he took the deceased to a nearby shop and purchased some eatables and brought the deceased back within 15 minutes. Thereafter, according to P.W.9, the deceased was handed over to the accused. P.W.10 was then working as House Keeping Assistant at the office of P.W.4. She has stated that the deceased was handed over to the accused at 11.30 a.m. P.W.11 has stated that on 17.07.2010 at 04.30 p.m. P.W.4 brought the accused in an unconscious state and within a short while, she regained consciousness. She was only weak and her blood pressure was low. Then, she was taken back by P.W.4.

2.36. P.W.12 was the warden of YWCA hostel. She has stated that the accused was staying in the hostel. According to her, on 17.07.2010, there was a festival in the hostel. By about 2.00 p.m. she found the accused with the deceased in the hostel. On an earlier occasion also, she had seen the deceased with the accused. P.W.13 was then working as a security in the YWCA hostel. He has stated that on 18.07.2010, at around 04.00 a.m., the accused was found dragging a suitcase. When he enquired about the pass, she told that she had missed the pass. Since, there was some urgency, he allowed her to leave. He has further stated that she crossed the gate and from where she engaged an auto and went away along with the suitcase. He has further stated that on 18.07.2010, at 03.00 a.m. she returned to the hostel and went away with the suitcase at 04.00 a.m. P.W.14 was an inmate of Room No.62 at YWCA hostel. According to her, on 16.07.2010, she had secured the key from the watchman to open the main gate of YWCA hostel since she had some urgent work. Normally, the gate would be opened very late. According to her, on the same day, the accused got the key at 09.30 p.m. on 16.07.2010.

2.37. P.W.15 Mr.Lakshmikandhan, has stated that he was doing finance business and he had acquittance with P.W.4 and the accused. On one occasion, the accused told him that she had illicit intimacy with P.W.4 and on account of the same, she became pregnant, but at the insistence of P.W.4 she aborted the same and P.W.4 has cheated her. He has further stated about the search made for the deceased on 17.07.2010. He has further stated that after long search for the deceased along with P.W.4 and the accused, he returned to his house. He has further stated that P.W.4 took him and the accused in his car and went straight to YWCA hostel and after leaving the accused at 03.30 a.m. on 18.07.2010 at YWCA hostel, P.W.4 took him to his house. He has further stated that on the next day morning, when he tried to contact the accused, she did not pick up the phone. At around 12.30 p.m. on 18.07.2010, she picked up the phone and stated that she is sitting near Gandhi statue at Marina beach and he in turn informed the same to the police and the police came and picked her up. P.W.16 has

stated about the recovery of the motorcycle (M.O.6) by the police on 21.07.2010. P.W.17 is yet another watchman in the YWCA hostel. He has stated that in his presence on 21.07.2010 Room No.67 was searched by P.W.27 and during which few material objects were recovered. P.W.18 has stated that on 18.07.2010, at around 03.00 p.m. he was selling sundal at Velipalayam bus stand at Nagapattinam and from a bus a suitcase was brought down and left in the bus stand but nobody claimed it thereafter. Then on information, police came and opened the suitcase and found the dead body of the deceased.

2.38. P.W.19 has stated that on 18.07.2010, when she was doing flower business at Puducherry bus stand, a woman came from Chennai bus terminal with a suitcase and enquired her as to why there was crowd and police. She told her that there was a cinema shooting taking place. Then she went to Nagapattinam bus terminal.

2.39. P.W.20 has stated that, he was running a public toilet in Nagapattinam bus stand and on 18.07.2010, at 04.30 p.m. in his presence, the Inspector of Police, Velipalayam Police Station, prepared an observation mahazar and the rough sketch at the place where the suitcase containing the dead body of the deceased was found. P.W.21 the then Sub Inspector of Police, Esplanade Police Station has stated that at 04.30 p.m. on 17.07.2010, on the complaint of P.W.4, he registered the present case in Crime No.412/2010 for boy missing.

2.40. P.W.22 Dr.Robert Rajamanickam has stated about the postmortem conducted on the body of the deceased on 20.07.2010 at 03.00 p.m. and his final opinion regarding the cause of death. He has opined that the death was due to manual strangulation and that the death would have occurred on 17.07.2010. P.W.23, the Sub Inspector of Police at Velipalayam police station has stated that the Village Administrative Officer informed him over phone that there was a suitcase in the bus stand abandoned. She went to the place of occurrence and found the suitcase. Since she suspected there might be explosive substance, he called the experts to the spot and when they opened, a dead body of a child was found. On the complaint made by the Village Administrative Officer, he registered a case in Crime No.477 of 2010 under Section 302 I.P.C. P.W.24 is the Constable attached to the police station, took the dead body from the place of occurrence to the hospital and handed over the same for postmortem. P.W.25 the Inspector of Police, Velipalayam police station has spoken about the investigation done by him. P.W.26, the then Inspector of Police, Velipalayam police station has spoken about the further investigation done by him. P.W.27, Mr.Arul, Inspector of Police, Esplanade Police Station has spoken about the investigate of the present case and his final report.

2.41. When the above incriminating materials were put to

the accused, she denied the same as false. On her side, she examined one Mr.Arun Kumar a practicing Advocate as D.W.1. D.W.1 has stated that he was one of the counsel appearing for the accused in the present case. According to him, on 08.11.2010, he received an anonymous letter written in the name of one Mr.Rajesh. The said letter is Ex.D1. In the said letter, it has been stated that the accused is an innocent person and that actually the deceased was killed by him along with P.W.4 and P.W.15.

2.42. The defence of the accused is that it is true that she took the deceased from P.W.4 on 17.07.2010 at 11.30 a.m. She has further admitted that she took the deceased to YWCA hostel and provided him some eatables. She has further stated that the deceased wanted cool water, she took the deceased outside the hostel and when she was in the shop, one Mr.Rajesh and few others who were doing finance business and already known to her, came in a car. They forced the accused and the deceased into the car and then they wanted to know where the money was kept by P.W.4. When she stated that she was not aware of, they sprayed some chemical on her face and pushed her out of the car and fled away with the deceased from that place. She gave a chase in her Scooty but the car disappeared near Central Railway Station at Chennai. Thereafter, according to her, she came to the Church in Armenian street for prayer and when she was praying, on account of the chemical sprayed on her face, she fainted. Then, she was taken to the hospital after regaining consciousness, she told everyone including P.W.4 that the deceased was kidnapped by Rajesh and others. But P.W.15, threatened her not to inform the same to the police. Thus, according to her, she is innocent and she had not committed the murder of the deceased. Having considered all the above, the trial Court convicted her and that is how she is before this Court with this appeal.

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

4. This is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us now go into the circumstances projected by the prosecution.

5. P.W.4, the father of the deceased has stated about his relationship with the accused. He has stated that what was initially a friendship between him and the accused, later on developed into illicit intimacy between them. He has further

admitted that on few occasions, he had sexual intercourse with the accused. The accused has not denied the said fact.

6. A close reading of the cross examination of P.W.4 by the accused would go to show that there is no denial of the above relationship between her and P.W.4. As a matter of fact, P.W.15 has stated that on one occasion, the accused told him about her illicit relationship with P.W.4 and further on account of the said illicit relationship, she became pregnant and as requested by the accused, she aborted the same. She has further told him that P.W.4 had deceived her. This fact spoken by P.W.15 also has not been disputed by the accused during cross examination. Thus, it remains proved that the accused had illicit relationship with P.W.4 and since he was not ready to marry her, she had grudge against him.

7. P.W.1 has stated that during the month of July, 2010 when P.W.4 had gone to Italy, when she opened the email account of P.W.4, she found an email from the accused and that email disclosed the illicit relationship between her and P.W.4. Therefore, according to her, she gave a reply email to the accused requesting her not to interfere in her family life. She has further stated that when she enquired with P.W.4 when he spoke from Italy, he told her that since the accused was like an orphan having lost all her family members in an accident, he was moving with her in a friendly manner out of sympathy. Therefore, according to P.W.1, she sent a mail to the accused regretting to her earlier mail and wanted her to seek help if any. Thereafter, the accused spoke to her over phone and wanted her to come to ECR road to have one to one talk. When P.W.1 expressed her inability and wanted her to talk over phone, the accused started abusing her and challenged her that she would continue to have illicit relationship with P.W.4 and she could not do anything in the matter. This had resulted in a quarrel and P.W.1 scolded her using abrasive language. The accused cut off the connection and thereafter P.W.1 sent a email message to the accused branding her as a prostitute and wanted her to go to roadside if she wanted to have sex with anybody. This, quite naturally, had developed some grudge against P.W.1 in the mind of the accused. These are all the facts which are stated to be the motive for the occurrence. In our considered view, these facts which have been spoken by P.Ws.1, 4 and 15 have not been seriously disputed by the accused and thus these facts stand proved. In other words, we hold that the motive for the occurrence has been clearly established by the prosecution.

8. The next circumstance is that on 17.07.2010, when P.W.4 had returned from Salem, at the car park in Egmore Railway Station, the accused met him and at that time itself she told him that she had come there to receive him out of respect as he had secured job for her and she has further told him that she would join duty on 19.07.2010 instead of

17.07.2010. She then requested P.W.4 to bring the deceased to the office so that she could take the deceased with her and spend some time with the deceased. She further appealed to P.W.4 that since she would go to Madurai on account of her newly secured job, it could not be possible for her to meet the deceased frequently thereafter and therefore she wanted him to unfailingly bring the deceased to the office. P.W.4 agreed and that is how at 10.30. a.m. on 17.07.2010, he took the deceased to his office. The evidence of P.W.4 in this regard is corroborated by the evidence of P.W.1 also who has stated that the deceased was lastly taken from her house by P.W.4 in his car and at that time the deceased was wearing a blue colour banian and a colour trouser and black colour shoes. When the deceased was in the office of P.W.4, he was seen by P.Ws.9 and 10. P.W.9 a Coordinator in the office of P.W.4 has stated that the deceased was brought to the office at around 10.30 a.m. and since the deceased was disturbing P.W.4 in his work, P.W.4 wanted P.W.9 to take the deceased outside to get him some eatables. Accordingly, P.W.9 took the deceased outside and got him some eatables and brought him back to the chambers of P.W.4.

9. Thereafter, P.W.4 received a phone call from the accused informing him that she was waiting near his office. Therefore, he took the deceased to the downstairs and found the accused standing by the side of the next building of the office with Scooty (M.O.6). He handed over the deceased to her. This was witnessed by P.W.10 also. Thus, it has been clearly established that the deceased was entrusted by P.W.4 to the accused at 11.30 a.m. This is not disputed by the accused. She has admitted that she took the deceased from the custody of P.W.4 at 11.30 a.m. In her statement made under Section 313 Cr.P.C. she has admitted the said fact.

10. The next circumstance is that the deceased was taken in M.O.6 motorcycle to YWCA hostel. The accused admitted the same. This fact has been further spoken by P.W.5 the watchman of YWCA hostel. He has stated that at about 12.00 noon, the accused came with the deceased to the hostel and at around 1.30 p.m. she left the hostel alone in the motorcycle. In other words, the deceased was not taken back from the hostel by the accused. P.W.6 an inmate of the hostel has stated that at around 01.30 p.m. she heard the voice of a child from the room of the accused. When she enquired her, she told that the child is that of her cousin, but she has stated that she had not seen the child.

11. P.W.12 is the warden of the hostel, she has stated that the accused was staying in Room No.67 and on 17.07.2010, he found the accused taking the deceased to the YWCA hostel. From these evidences, the prosecution has clearly established that the accused took the deceased to YWCA hostel at around 12.00 noon. This fact is not disputed by the accused as she has positively admitted the same in her statement under

Section 313 Cr.P.C.

12. The next important circumstance is the evidence of P.W.5, the watchman. He has stated that the accused entered into the hostel at around 12.00 noon with the deceased and left the hostel at around 1.30 p.m. and at that time she did not take the deceased with her. We do not find any reason to reject this part of the evidence of P.W.5. Though this witness has been subjected to lengthy cross examination, nothing has been elicited on record to discredit him. Thus, from his evidence, a very strong circumstance, viz., the accused who came to the hostel at around 12.00 noon with the deceased left the hostel at around 1.30 p.m. without the deceased has been established.

13. The next circumstance is the conduct of the accused. P.W.4 has stated that at around 12.30 p.m., he contacted the accused over phone and enquired about the deceased and she told that the deceased was very much in the hostel with her and the deceased was all right. Again after completing his official meeting, when he tried to contact her, she did not pick up the phone at all. Since the accused had not brought the deceased to the office, at 03.45 p.m., P.W.4 had gone to YWCA hostel. Since it was a ladies hostel, according to him, male members would not be permitted to enter into the building. Therefore, he waited in the premises of the hostel. When he tried to contact the accused over cellphone, she did not pick it up. Then, he sent two SMS to the cellphone of the accused, informing her that he was waiting in the hostel premises, but she did not pick up the phone. He was waiting for about half an hour i.e. between 03.45 p.m. to 04.15 p.m. This circumstance, in our considered view, stands proved as the same has not been seriously disputed by the accused.

14. At 04.15 p.m. he received a phone call from the mobile of the accused, according to P.W.4, believing that the accused was at the other end, he started abusing her for her indifferent attitude in not bringing back the deceased to his office. But the women on the other end told him that a woman was lying unconscious in the Church at Armenian Street with this cellphone. She asked him to come immediately. When he again tried to contact the accused, over cellphone, the same women picked up the phone and when he enquired whether there was any child by her side, she replied that there was no such child. Immediately, he went to the Church. This fact has also been clearly established by the prosecution.

15. On reaching the Church, he found the accused lying unconscious, but the deceased was not found anywhere. When he enquired the accused, there was no response from her as she was unconscious. He sprinkled some water on her face and

tried to make her conscious, but, there was no response. Then he enquired the persons standing there whether she came with a child, they all told that she alone came and she did not come with any child. Then, he searched for the deceased in and around the Church, but the deceased could not be found. Thereafter, he took her to a nearby private hospital.

16. P.W.11 examined the accused on 17.07.2010 at about 04.30 p.m. He has stated that after admitting the accused at the hospital, P.W.4 went away in search of the deceased to the Church and after the accused regained her conscious, the said information was passed on to P.W.4 by the hospital. The accused herself spoke to P.W.4. Then P.W.4 came to the hospital, took her to the Church at Armenian street and when he repeatedly enquired her, she was giving contradictory statements about the whereabouts of the deceased and she did not give any reliable information regarding the whereabouts of the deceased.

17. P.W.15, has also come to the Church and all of them searched for the deceased. The deceased was not seen. In the meanwhile, when P.W.4 wanted to give a complaint, the accused tried to persuade him not to go to the police. This conduct of the accused in making attempt to persuade P.W.4 in making a complaint is yet another incriminating circumstance against her. It is inferable that since the deceased was in her custody elsewhere, she had made attempt to prevent P.W.4 from going to the police. However, P.W.4 managed to give a complaint and the case was registered at 06.30 p.m.

18. After giving the complaint, P.W.4 came to the Church and also informed his wife P.W.1. Now, P.W.1, P.W.4, P.W.15 and the accused were in the Church and they were searching for the deceased in and around the Church. All through this time, the accused did not come forward with any satisfactory explanation about the whereabouts of the deceased. Having failed in their attempt to trace out the deceased, P.W.4 took P.W.15 and the accused in his car and went to YWCA hostel and left the accused at around 03.30 a.m. on 18.07.2010. Then, he went to the house of P.W.15 and after leaving him, he went to his house. Thus, between 06.30 p.m. on 17.07.2010 and 03.30 a.m. on 18.07.2010, the accused was very much with P.W.4 and she did not give any valuable information about the whereabouts of the deceased. She had told them that she took the deceased to a temple at Armenian street and after the darshan she found the deceased was missing from there. This statement of the accused as spoken to by P.W.15 and other witnesses certainly would go to show the guilty mind of the accused. This is yet another strong circumstance against the accused.

19. The fact that the accused entered into the YWCA hostel at around 03.30 a.m. on 18.07.2010 has been spoken by the watchman, P.W.13 is an independent witness, he was a

security in YWCA hostel. According to him, on 18.07.2010, when he was on duty, at around 3.30 a.m. the accused entered into the hostel. This part of the evidence of P.W.13 is duly corroborated by the evidences of P.Ws.4 and 15 who have stated that the accused was left at the YWCA hostel by P.W.4 at around 03.00 - 03.30 a.m. on 18.07.2010. According to this witness, within an hour i.e around 04.00 a.m. the accused came out of the hostel building dragging a suitcase on wheels. When she wanted to leave the hostel premises, P.W.13 asked for the gate pass. But she told that there was some urgent work and that she had misplaced her gate pass. Taking sympathy on her, he allowed her to leave with the suitcase and she left the premises of YWCA hostel in an auto. Thus, it is crystal clear from the evidence of this witness that the accused left the hostel with a suitcase at 04.00 a.m. on 18.07.2010.

20. But, unfortunately, the learned Public Prosecutor who conducted the case, did not make any attempt to call upon this witness to identify the suitcase. Had it been done, it would have been possible for the witness to identify the suitcase which was later found at Velipalayam bus stand at Nagapatinam containing the dead body of the deceased. It is not known as to why it did not occur to the legal brain of the learned Public Prosecutor that this witness should be called upon to identify the suitcase. At any rate, though this witness had no opportunity to identify M.O.6 as the suitcase which was dragged by the accused lastly at 04.00 a.m. from the hostel, on that score, his evidence cannot be completely washed off from consideration. To the extent that the accused left the hostel at 04.00 a.m. with a suitcase, the said evidence can be accepted. Thus, the prosecution has clearly established that the accused left the hostel at 04.00 a.m. on 18.07.2010 with a suitcase.

21. According to P.W.15, early in the morning, he tried to contact the accused through her cell phone, but she did not pick up the cell phone at all. P.W.4 also tried, but she did not pick up. When P.W.15 went to the hostel and searched for her, he was informed that she was not available as she had left the hostel by around 04.00 a.m. itself. Thereafter, he continuously tried to talk to her over phone, but she did not pick up the phone. It was only at around 12.30 p.m. on 18.07.2010, when she responded to the phone call, she told that she was sitting near Gandhi Statute at marina beach, Chennai. P.W.15 after informing the police went there and found her sitting. Thus, it has been established by the prosecution that the accused who had left the hostel at around 04.00 a.m. on 18.07.2010 had returned to Gandhi Statute at around 12.30 p.m. During the interregnum period, what was her movement is not known. The Investigating Officer had not collected any material to fill up this gap in the chain of circumstance. Neither the accused has offered any explanation regarding her movements during this time.

22. The dead body of the deceased was found in the suitcase at 03.00 p.m. on 18.07.2010 at Velipalayam bus stand at Nagapattinam. In this regard, the evidence of two witnesses are very important. P.W.19, a flower vendor at Puducherry bus stand has stated that on 18.07.2010, at the bus stand at Puducherry cinema shooting was going on and therefore there was huge crowd of people and police people were regulating the traffic. At that time, from the Chennai bus terminal at Puducherry bus stand, a woman was found moving with a suit case. She enquired P.W.19 as to why there was huge crowd and the police. P.W.19 told her that cinema shooting was going on and so there was police and crowd. Then the said woman with suitcase went to Nagapattinam bus terminal. From this witness the prosecution has made an attempt to prove that this accused was found at Puducherry bus stand on 18.07.2010 with a suitcase. But unfortunately, this witness was not called upon by the public prosecutor to identify the suitcase (M.O.6). Further, this witness did not identify the accused as the woman who was seen by her at Puducherry bus stand on 18.07.2010. There was no test identification parade also conducted to test the veracity of this witness. Therefore, since the evidence of P.W.19 does not incriminate the accused in any manner, this evidence needs to be rejected as irrelevant. Thus, the prosecution has miserably failed to prove through this witness that the accused was found with a suitcase at Puducherry bus stand and then she went to the bus terminal for Nagapattinam buses at Puducherry.

23. The next important evidence is that of P.W.18, who was selling "sundal" at Velipalayam bus stand at Nagapattinam on 18.07.2010. According to him, at around 3.00 p.m. on 18.07.2010, from a bus, some people, dragged a suitcase and brought it down and left it in the bus stand and then the bus went away. From the evidence of this witness, the prosecution has made an attempt to prove that M.O.6 containing the dead body of the deceased was carried in a bus from Puducherry to Nagapattinam and the same was unloaded and kept in the bus stand.

24. Unfortunately, there was no investigation done as to what was the bus in which the suitcase containing the dead body was brought and from where. Neither the conductor nor the driver nor any other passenger has been examined in this case. The Investigating Officer could have done the investigating in a scientific manner by seizing the trip sheet of the bus in which the dead body of the deceased in the suitcase was carried. Similarly, there is absolutely no investigation done as to how the dead body in the suitcase was carried from Chennai to Puducherry and from Puducherry to Nagapattinam. Whether the suitcase containing the dead body of the deceased was carried by the accused herself or it was carried by somebody else are all not known. The Investigating Officer has only exhibited his inefficiency in the matter of

investigation by not collecting these material evidences like the trip sheet of the bus in which the dead body was allegedly carried from Puducherry to Nagapattinam and he has failed to investigate as to how the dead body was taken from Chennai to Puducherry. He has failed to make a request for conducting test identification parade for P.W.19 to identify the accused as the one who brought the suitcase to Puducherry bus stand and moved with the suitcase to Nagapattinam bus terminal. It remains to be a mystery from the evidence of P.W.18 as to who unloaded the suitcase from the bus at the Velipalayam bus stand at Nagapattinam.

25. The fact, however, remains that the suitcase was found at the Velipalayam bus stand at Nagapattinam at 03.00 p.m. on 18.07.2010 and then the Village Administrative Officer Mr.Sambasivam and village menial had gone there and they had seen the suitcase and informed the police. The Sub Inspector of Police (P.W.23) came to the spot and with the help of experts opened the suitcase and took out the dead body. Thus, the prosecution has proved that the dead body was found at Velipalayam bus stand at Nagapattinam on 18.07.2010 at 03.00 p.m. in the suitcase (M.O.6).

26. The Doctor who conducted autopsy has stated that the death of the deceased was due to manual strangulation and the death would have occurred on 17.07.2010. Inside the suitcase, the face of the child was covered by a plastic carry bag and there was also a rope around the neck of the child. There can be no valid dispute regarding the cause of death. Thus, the prosecution has clearly established that the deceased was done to death in a homicidal violence and the dead body was kept in the suitcase.

27. P.W.25, who took up the case for investigation had given wide publicity of the photograph through print and electronic media and on seeing the same, P.W.27 called P.Ws.1 and 4 and wanted them to verify whether the dead body was that of the deceased. Since, the photographs exhibited a decomposed body, the identity could not be made by P.Ws.1 and 4. However, from the blue colour banian and the trousers, P.W.1 suspected that it must be that of the deceased. Therefore, she went to Nagapattinam and identified the dead body. Regarding the identity of the dead body, there is no dispute. Thus, the prosecution has clearly proved that the deceased died out of homicidal violence sometime between 17.07.2010 at 12.00 noon and 03.00 p.m. on 18.07.2010.

28. P.W.27 had taken the accused into custody at 12.30 p.m. on 18.07.2010 itself. She was interrogated repeatedly, but she had not come forward with any explanation. After the dead body was found and the message spread, the accused voluntarily gave a confession and after which the Scooty keys were recovered on the disclosure made by the accused. The recovery of the material objects would not in any manner help

the prosecution much, as it is in evidence that the accused was all along in the custody of the police from 12.30 p.m. onwards on 18.07.2010. Further, the connection between the recovery of the articles from the disclosure statement made by the accused and the crime has not been established.

29. Next, the conduct of the accused between 04.00 a.m. on 18.07.2010 till 12.30 p.m. on 18.07.2010 is a very very important circumstance. The accused was seen moving with a suitcase from the hostel at 04.00 a.m. Thus, from this circumstance, it is clearly established by the prosecution that after committing murder of the deceased, the deceased had kept the dead body in her room. Perhaps, that may be the reason why, when P.W.4 decided to make a complaint to the police, she tried to persuade him not to make any complaint. P.W.27 could have done well immediately by making a visit to the YWCA hostel when it was clearly in evidence that the deceased was taken to YWCA hostel and thereafter the deceased was missing. P.W.27 should have made a search at Room No.67 at YWCA hostel. Had it been done, the dead body of the deceased would have been unearthed. It is not explained as to why it did not occur to P.W.27 to make an inspection of Room No.67 until 20.07.2010. The further conduct of the accused in misdirecting the police, P.Ws.1, 4 and 15 that the deceased was taken to a temple and after the darshan, the deceased was found missing is also a very strong incriminating circumstance against the accused. As we have already concluded that the accused had taken the child in her custody has not offered any explanation about the whereabouts of the deceased.

30. Now, during trial, the accused had made an attempt to explain about the same. According to her, she brought the deceased to the hostel and gave him some eatables at 12.45 p.m. on 17.07.2010. Since he wanted cool water to drink, she took him in the Scooty motorcycle to a nearby cool drinks shop. When she was in the shop along with the deceased, one Rajesh who was already known to the accused and also to P.Ws.4 and 15 came there in an Innova car with his associates. He pushed the accused into the car along with the deceased and wanted her to disclose the godown where money was kept. When she expressed ignorance, he snatched away the deceased from the custody of the accused. At that time, yet another person in the car sprayed some chemical on her face and then they pushed her out of the car and the deceased cried for help. When the accused fell down from the car, Mr.Rajesh closed the mouth of the deceased and took the deceased in the car. She gave a chase but when the car neared Central Railway Station, Chennai the car disappeared. Thus, according to the accused, the said Rajesh a financier is the culprit, who has caused the murder of the deceased. She has further stated that after the car disappeared, she came to Armenian street near the Beach in Chennai, went to St.Antony Church and started praying. While she was praying, she fainted.

31. This explanation, in our considered view, is an absolute falsehood. Had it been true, that the deceased was kidnapped in the car, she would not have rest contented by keeping silent. By all means, she would have raised a hue and cry which would have attracted the people in the shop and in the surrounding places. But, she did not raise any such alarm. According to her, Rajesh wanted to know from her as to where the godown where money is kept. It is not understandable as to how this quarry could have been asked to the accused when there was no godown with money which has been brought to light in the entire trial of the accused. According to her some persons sprinkled some chemicals on her with a view to make her to faint. If that is so, she would have fainted on the spot itself, but it did not occur to her. Then she has said that she gave a chase to the car. Till it reached Central Railway Station from a shop near YWCA hostel, she did not raise any alarm at all. It is not her case that she raised alarm. After the car disappeared also, it is not her case that she raised alarm at that place. This would only go to show that it is nothing but a false explanation offered by her. After the car had disappeared, according to her, she simply and passively returned to the Church near the Beach in Armenian street and started praying. This conduct of the accused that she passively went to the Church to pray is highly unnatural. Had it been true that the deceased was really kidnapped by Rajesh, she would have certainly not been so patient and passive to go to the Church to pray. This would further go to prove that the explanation offered by her is false.

32. After P.W.4 had rushed to the Church at around 04.15 p.m., she was of course unconscious. P.W.4 tried to wake her up by sprinkling water but there was no response. Then, he took her to the doctor and when she regained consciousness also she did not give any proper explanation to P.W.4. She told P.W.15 that she had gone to the temple with the deceased for darshan and after darshan, the deceased was found missing. Thus, the accused, from 04.30 p.m. onwards, was giving contradictory statements, which were all false. This conduct of the accused is yet another strong circumstance against the accused to prove her guilt. At this stage, we need to mention that though this accused was making contradictory statements about the whereabouts of the deceased, still it did not occur to P.W.27 to suspect her and go over to her hostel and make a house search. Had it been done, most of the subsequent events could have been avoided by the police and if the dead body of the child had been found in the room of the accused, that by itself would have been sufficient to convict the accused.

33. In her statement under Section 313 Cr.P.C. the accused has further stated that P.W.15 threatened her not to disclose about the kidnap made by Mr. Rajesh either to the police or to anybody and therefore, she did not disclose.

This is highly unbelievable. When she was lying unconscious, P.W.4 alone had gone there and P.W.15 was not in the scene. P.W.4 took her to the hospital and after she regained consciousness, P.W.4 alone came to the hospital and when he enquired, if really the deceased was kidnapped by Rajesh and others, she would have told the same to P.W.4. The story propounded by the accused that P.W.15 threatened not to disclose the same cannot be true because P.W.15 came to the Church only after P.W.4 took the accused from the hospital to the police station and then from the police station to the Church. Thus, the accused had two opportunities, one to make a statement to P.W.4 when he came to the hospital and secondly to the police when P.W.4 made a complaint to the police when she was also present. But she deliberately tried to persuade P.W.4 not to make a complaint to the police. Therefore, this explanation of the accused that the accused was threatened by P.W.15 not to disclose about this fact to others cannot be believed and it is absolutely false.

34. On the side of the accused, D.W.1, Mr.Arun Kumar has been examined. He has stated that he was one of the counsel appearing for the accused in this case. He has stated that on 08.11.2010, he received an anonymous letter in the name of one Mr.Rajesh. That letter pertains to the facts involved in the present case. Ex.D1 is the said letter and Ex.D2 is the postal cover. Ex.D3 is the delivery receipt. The said letter was sent through French Express Couriers. The letter reads as though it was written by Rajesh stating that he had acted on the instigation made by P.W.1. The letter is in handwriting and it runs to two pages. Since the contents of the letter have not been proved, the same cannot be read in evidence at all. D.W.1 is competent only to speak about the fact that he received it. Whether it was written by Rajesh or somebody else or whether the facts stated there in are true or not are all matters of proof. Since the same have not been proved, the evidence of D.W.1 and the documentary evidences let in through Exs.D1 to D3 are rejected.

35. The learned Additional Public Prosecutor during the course of arguments submitted that the call details of the cellphone calls between the mobile number of the accused and P.W.4 have been proved by Exs.P25 and P26 which are the print outs of the call details provided by the service provider. We reject the same from consideration in view of the judgment of the Hon'ble Supreme Court in Anvar P.V. Vs. P.K.Basheer reported in (2014) 10 SCC 473 as these documents do not satisfy the legal requirement of Section 65B of the Evidence Act.

36. From the foregoing discussions, what emerges is that the circumstances proved by the prosecution as dealt with elaborately herein above, form a complete chain which unerringly prove the guilt of the accused. The alternative hypothesis propounded by the accused has been found to be

totally false. There is no other alternative hypothesis which is inconsistent with the guilt of the accused. Of course, here and there, there are lapses in the investigation done and also the conduct of the trial of the case by the prosecutor. In our considered view, if these lapses had not occurred, the prosecution would have certainly further strengthened the case against the accused. Notwithstanding these lapses, we find that the prosecution has proved the guilt of the accused and thus the trial Court was right in convicting the accused.

37. Now, turning to the conviction and sentence, the records reveal that the trial Court framed charges under Sections 364, 302 and 201 I.P.C. But the trial Court had convicted her under Section 364 and Section 302 r/w Section 201 I.P.C. This, in our considered view, is not correct. The trial Court ought to have convicted the accused under all the three charges. The conviction of the accused under Section 302 r/w 201 I.P.C. is obviously not correct and therefore we modify the same as conviction under Section 302 I.P.C. and confirm the sentence. The net result is the accused goes scot free without any punishment for offence under Section 201 I.P.C.

38. Now, turning to the quantum of punishment, in our considered view, going by the economic condition of the accused imposing a fine of Rs.50,000/- under each charge is not justifiable as it is disproportionate. We are of the view that directing the accused to pay a fine of Rs.10,000/- for the offence under Section 364 I.P.C. and to pay a fine of Rs.20,000/- for the offence under Section 302 I.P.C. besides the sentence of imprisonment would meet the ends of justice.

39. In the result, the appeal is partly allowed in the following terms:

(i) The conviction of the accused under Section 364 I.P.C. and sentence of rigorous imprisonment of seven years on her is confirmed, however, the fine of Rs.50,000/- imposed by the trial Court is reduced to Rs.10,000/- and in default to undergo simple imprisonment for four weeks;

(ii) The conviction of the accused under Section 302 I.P.C. r/w Section 201 I.P.C. is set aside and instead the accused is convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.20,000/- in default to undergo rigorous imprisonment for six weeks.

(iii) The fine amount, if any already paid, shall be adjusted towards the fine imposed herein and the excess, if any, shall be refunded to the appellant.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kk

To

1. The VI Additional Sessions Judge,
Chennai.
2. The Inspector of Police,
B-2, Esplanade Police Station,
Chennai.
3. The Public Prosecutor,
Madras High Court.
4. The Superintendent, Central Prison, Puzhal, Chennai.

+ 1 cc to Mr.R.C. Paul Kanagaraj, Advocate SR.31150

Copy to: The Section Officer, Criminal Section,
High Court, Madras.

Cr1.A.No.226 of 2013

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