

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.729 of 2016

C.Annamalai

...

Appellant

Vs

The State rep. by
The Inspector of Police,
Chithode Police Station,
Crime No.724 of 2011
Erode District.

...

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., by the appellant/sole accused against the judgment dated 30.09.2016 made in S.C.No.36 of 2014 on the file of the learned I Additional District and Sessions Judge, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.36/2014 on the file of the learned I Additional District and Sessions Judge, Erode. He stood charged for offences under Sections 302, 392 & 201 I.P.C. By judgment dated 30.09.2016, the trial Court convicted him under all the three charges and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for a period of one year, for the offence under Section 392 I.P.C.; to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for a period of one year for the offence under Section 302 I.P.C., and to undergo rigorous imprisonment for three years and to pay a fine of

Rs.5,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 201 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Pachiappan. P.W.1 is his wife. They had children born out of the said marriage. They were residing at Kalingarayanpalayam at Bhavani, Erode District. The deceased was running a Marble shop at Palaniandavar Street, Kalingarayanpalayam under the name and style of "Amman Marbles". During the year 2011, the deceased had leased out the said shop to the accused. The accused is after all a relative of the deceased. Thus, from the year 2011 onwards, the accused was running the said shop as a lessee.

(a) On 05.12.2011, the mother of P.W.1 and the mother in-law of the deceased who is residing at Mettur Raman Nagar passed away. P.W.1 and the deceased rushed to participate in the funeral. They stayed at the house of the mother of P.W.1 till 10.12.2011. On 10.12.2011, the deceased alone left for Kalingarayanpalayam. He went in his motor cycle bearing registration No.TN 52 X 5991 around 7.00 pm. On the same day, the deceased spoke to P.W.1 over phone and informed her that he was then in Amman Marbles Shop at Kalingarayanpalayam. He further told that he would soon go to their house. He further informed P.W.1 that he would return to Mettur on 11.12.2011. P.W.1 was under the belief that from Amman Marbles Shop, the deceased would have gone to their house.

(b) As assured by him, the deceased did not come to Mettur to his mother-in-law's house on 11.12.2011. Having waited for him, P.W.1 tried to speak to him through his cell phone. But, his cell phone was in a switch off mode. Since, the deceased was lastly at Amman Marbles Shop, P.W.1 also tried to contact the accused over phone. That was also under the switch off mode. P.W.1 thereafter, enquired the neighbours at Kalingarayanpalayam. But, nobody gave any clue about the whereabouts of the deceased.

(c) Therefore, around 6.00 pm, P.W.1 went to her house at Kalingarayanpalayam. She enquired the landlord of the house. The landlord told her that the deceased came to the house on 10.12.2011 around 6.00 pm in the evening and after some time, locked the house and went away. P.W.1 became perplexed. She went in search of the deceased at various places. Having failed to locate the deceased, at last, at 9.00 am, on 12.12.2011, she made a complaint to the Police.

(d) P.W.17, the then Special Sub Inspector of Police, on receipt of the said complaint registered a case in Crime No.724/2011 for "man missing" at 9.30 am on 12.12.2011. Ex.P.1 is the complaint and Ex.P.21 is the F.I.R.

(e) The case was taken up for investigation by P.W.19, the then Inspector of Police. P.W.19, examined many people including P.W.1 and others. He found Amman Marbles shop closed. He also tried to contact the deceased through his cell phone as well the accused through his cell phone. Both the cell phones were found under the switch off mode. Therefore, he obtained the call details of both the cell phones from the service provider.

(f) The accused was also not available either at his house or at his shop. From the call details, P.W.19 also had suspicion over the accused. But, he was not able to get any definite clue about the perpetrator of the crime. While things stood thus, the accused voluntarily surrendered before the learned Judicial Magistrate No.1, Namakkal, on 16.12.2011.

(g) On receiving the said information, P.W.19 immediately approached the jurisdictional Magistrate and requested for police custody of the accused. On 20.12.2011 at 3.00 pm, as per the order of the learned Judicial Magistrate, he took the custody of the accused. While in police custody, on 21.12.2011, in the presence of P.W.8, the then Village Administrative Officer, he made a voluntary disclosure statement between 6.00 am and 8.00 am. In the said disclosure statement, the accused informed the place where the deceased was done to death by him and where he had thrown the dead body and he further told that he threw the dead body into Kaveri river near Mettur dam. He further disclosed that he had hidden the jewels and other articles belonging to the deceased, in a gunny bag and thrown the same into the river. The said disclosure statement was recorded by P.W.19 in the presence of P.W.8 and another witness.

(h) In pursuance of the said disclosure statement, the accused took P.W.19 and P.W.8 and another witness to Amman Marbles Shop. On opening the same, he identified a place where there were blood stains in the office room. P.W.19, found blood stains on a piece of "Daily Thanthi" news paper lying in the office room; a mosaic tile and on a plastic chair. P.W.19 prepared an observation mahazar (Ex.P.7) and recovered the above three material objects under a mahazar (Ex.P.8). The accused took P.W.19 & P.W.8 and other witnesses to Kaveri New Bridge on the Salem to Coimbatore road. Taking P.Ws.19 & 8 into the river, the accused identified a rock on the bank of the river. He further identified the said place and informed that he cut the dead body into pieces and put the same in a gunny bag. He put the head, hands and legs, shirt and banian belonging to the deceased and a knife and tied the same with stones and threw

the same into the river water. He further disclosed that he had thrown the trunk also into the river (The admissibility of this statement will be dealt with by us a little later).

(i) In the said place, P.W.19 wanted P.W.3 - a diver to dive into the water and to find out the dead body and the other material objects, as spoken by the accused. Accordingly, P.W.3, dived into the water and came out with a white colour nylon bag containing some materials. On opening the same, P.Ws.19 & 8 found a banian (M.O.8) blue colour shirt (M.O.7) two granite small stones (M.O.12) one metal knife (M.O.13) hearing aid machine (M.O.9) a small portion of flesh (M.O.14).

(j) P.W.19 recovered the same under a mahazar, in the presence of P.W.8 and another witness. Then, the accused took P.Ws.19 & 8 to a cycle stand near Sankari Old Bus stand and identified the motor cycle of the deceased which was kept there. P.W.19 recovered the said motor cycle (M.O.6) and the register maintained in the said cycle stand (M.O.15).

(k) On returning to the Police Station, P.W.19 forwarded the accused to Court and also forwarded the material objects to Court. The efforts made by P.W.19 with the divers to retrieve the dead body of the deceased from the river could not succeed. Thus, the corpus delicti was not available for further investigation.

(l) In order to prove that the deceased was done to death, P.W.19 proceeded with the investigation in a scientific manner. He requested DNA examination to be conducted with the blood samples of the son of the deceased by name Mr. Poobathy and the blood stains found at the Amman Marbles Shop. The blood sample of Mr. Poobathy was taken and examined by DNA expert. But, the result revealed that Mr. Boobathi was not the biological son of the person whose blood stains were found at the Amman Marbles Shop and P.W.1. Therefore, he wanted DNA examination to be conducted to the daughter of the deceased. Thus, the blood sample of P.W.9 - Ms. Bharathi, the daughter of the deceased was therefore, sent for DNA examination. The blood sample taken from her was examined with the DNA taken from the blood stains found on the material objects recovered from the Amman Marbles Shop. It proved that the blood stains which were found on the material objects at the office of Amman Marbles which were recovered on being identified by the accused belonged to a male and the said male was the biological father of P.W.9 - Ms. Bharathi, who is the daughter of P.W.1 and the deceased.

(m) During the course of investigation, the accused further disclosed that he had sold the jewels belonging to the deceased to P.W.6. P.W.6 was owning a jewellery shop under the name and style of "Sumangali Jewellers" at Kolathur. According to him,

the accused sold a minor chain - M.O.1; a gold bracelet - M.O.4; two gold rings M.Os.2 & 3 and a silver waist cord - M.O.5. P.W.19 recovered M.Os.1 to 5 from P.W.6 on 22.12.2011, in pursuance of the disclosure statement made by the accused. They were later on identified by P.W.1 as that of the deceased. On completing investigation, P.W.19 laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 33 documents, besides 21 Material Objects were marked.

4. Out of the said witnesses examined by the prosecution, P.W.1 is the wife of the deceased. She has stated about the relationship between the accused and the deceased in respect of the business. She has further stated that on 10.12.2011, the deceased who was staying with her at her mother's home at Mettur left for their house at Kalingarayanpalayam, in his motor cycle bearing registration No. TN 52 X 5991 (M.O.6). She has further stated that around 7.00 pm, on 10.12.2011, he spoke to her and told her that he was in Amman Marbles shop at Kalingarayanpalayam. She has further stated that thereafter, he did not return home, as promised by him, on 11.12.2011. She has further stated that she tried to contact the deceased as well as the accused. But both the cell phones were under the switch off mode. Therefore, she went to Kalingarayanpalayam and found the house also locked. Thereafter, she enquired with the neighbours and others. She found the Amman Marbles shop also closed. Therefore, she made a complaint on 12.12.2011 around 9.00 am. She has further stated that during the course of investigation, she has identified M.Os.1 to 6 as that of the deceased. Even at the time, when she made complaint, she told the fact that the deceased was wearing M.Os.1 to 5. According to her, when the deceased was lastly seen, he was wearing a full hand shirt (M.O.7); a sleeveless banian (M.O.8) and a hearing aid machine (M.O.9). She has identified M.Os.7, 8 & 9 as that of the deceased. She has further stated that when the accused was in the custody, out of his disclosure statement some material objects were recovered from the gunny bag from the river. She has also spoken about the blood extracted from her for DNA examination.

(a) P.W.2 is the employee of both accused and the deceased. He was working in the shop namely, Amman Marbles, when the same was run by the deceased. After the accused started running the said shop, on lease, he continued to work under him. According to him, on 10.12.2011, as usual, he was in the shop and doing his duty. According to his further case, there were two keys

available to open the shop. One was with him and the other was with the accused. According to his further statement, on 10.12.2011, around 4.00 pm, the deceased came to the shop and then left the shop at 7.00 pm. According to him, after having received his wages, he left to his house. Since, he did not support the case of the prosecution, he was treated as hostile having cross examined by the prosecutor thus, he has not said anything incriminating against the accused.

(b) P.W.3 is a Diver. According to him, on 22.12.2011, around 11.30 am, he was requested by P.W.19 to dive into the Kaveri river at the place identified by the accused, to find out the dead body of the deceased or some material objects. He accordingly, dived and after hectic effort, he found a white gunny bag (M.O.11) containing two stones (M.O.12); a banian (M.O.8); a shirt (M.O.9); a knife (M.O.13) and a flesh (M.O.14). The said material objects were recovered by P.W.19.

(c) P.W.4 has stated that he was running a Cycle Stand at Sankari Old Bus Stand. On 10.12.2011, around 9.15 pm, the accused came to the cycle stand and kept the motor cycle - M.O.6 in the stand. While keeping the same, he gave the name of the deceased as the owner of the vehicle. He entered the same at page No.56 of the register maintained, on 10.12.2011. He has further stated that on 21.12.2011, the accused took the Police to the said shop and identified the motorcycle (M.O.6) which was parked there as that of the deceased. P.W.19 recovered the said material object and also the register (M.O.15) maintained at the said Cycle Stand.

(d) P.W.5 has stated that on 12.12.2011, he went to Jos Alukas shop at Chithoor. After finishing his work, around 7.00 pm, he went to a nearby liquor shop. On the table, he found two cell phone sim cards abandoned by somebody. He took the same and left to his house. After reaching his house, he put the same in his cell phone and tried to speak to somebody. Later, the Police came to him and wanted how he could possess those sim cards. He told the same and returned the sim cards to the Police.

(e) P.W.6 was running a jewellery shop at Kolathur at Mettur under the name and style of "Sumangali Jewellers". According to him, on 11.12.2011 between 11.00 am and 12.00 noon, the accused came to his shop and sold M.O.1, gold chain; M.Os.2 & 3 gold rings; M.O.4, bracelet; and M.O.5 silver waist cord. Initially he received Rs.2 lakhs on the same day and in the evening, he came to the shop and received the balance of Rs.1,72,000/-. According to him, on 22.12.2011, the accused brought P.W.19 and another witness to his shop and identified him. He produced the said jewels (M.Os.1 to 5) to the Police which were recovered under Ex.C.4 mahazar.

(f) P.W.7 has stated that the hearing aid machine (M.O.9) was purchased by the deceased in his shop vide Ex.P.5 receipt, on 20.05.2010. P.W.8, the then Village Administrative Officer has spoken about the disclosure statement made by the accused while in police custody on 21.12.2011 and the consequential recovery of the blood stained material objects from the Amman Marble Shop, in pursuance of the disclosure statement made by the accused and on the place being identified by the accused. He has also witnessed the recovery of gunny bag (M.O.11) containing the other material objects such as M.O.12 - stones, M.O.13 - knife, M.O.14 - flesh, M.O.7 - full hand shirt, M.O.8 - banian and M.O.9 - hearing aid machine. He has also further witnessed the recovery of M.Os.1 to 5 on the disclosure statement of the accused from the shop of P.W.6. He has further spoken about the recovery of the motor cycle (M.O.6) from the cycle stand run by P.W.4 and the note book M.O.15.

(g) P.W.9 is the daughter of the deceased. She has stated that blood sample was taken from her for the purpose of DNA examination to identify the identity of the blood stains taken from the Amman Marbles shop.

(h) P.W.10 has spoken about the photographs taken on the Amman Marbles Shop and on the other places, as requested by P.W.19. P.W.11 - Dr.Ravichandra Prabhu has stated that he took blood samples from Mr.Boobathi, son of the deceased for the purpose of DNA examination and forwarded the same to the Forensic Lab. P.W.12 has stated that he took blood sample of one Mrs.Rajammal, mother of the deceased and sent the same for DNA examination. He further stated that he took the blood samples of one Ms.Bharathi (P.W.9) for the purpose of DNA examination and forwarded the same to Forensic Lab.

(i) P.W.13, an Scientific Expert in the Regional Forensic Lab at Coimbatore has stated that, he received six material objects viz., the Daily thanthi news paper containing blood stains (M.O.18); mosaic tile (M.O.17); pieces of plastic chair (M.O.19); a shirt (M.O.7); knife (M.O.13) and flesh (M.O.14) from the Magistrate's Court for the purpose of examination. According to him, on examination, he found that there were blood stains on M.O.18 - news paper; M.O.17 - mosaic tile and M.O.19 - the broken plastic chair pieces. There were no blood stains found on the other material objects. He forwarded the same for serology examination. P.W.14, an Assistant Engineer in PWD has stated that during the relevant period, he was working at Mettur Dam. According to him, the Inspector of Police - P.W.19, wanted him to give details about the quantity of water released from Mettur dam from 05.12.2011 to 15.12.2011 and such details were given by him under Ex.P.19 - report.

(j) P.W.15, a Head Constable has stated that he handed over the F.I.R., to Court. P.W.16, a Head Clerk of the Magistrate has

stated that he forwarded the material objects to Court. P.W.17 has spoken about the registration of the case on the complaint of P.W.1.

(k) P.W.18 is another important witness for the prosecution. He was working as the Assistant Director of Forensic Sciences, Forensic Lab, Chennai, Tamil Nadu. According to him, the blood stains found on M.Os.17,18 and 19 were examined by him. DNA extracted from the blood stains found on these material objects were examined by him since, M.O.14 - flesh was in a highly decomposed stage, DNA examination could not be retrieved from the same. According to him, he compared the blood sample of Mr.Poobathy son of the deceased and P.W.1. But on examination, it was found that the blood samples found on the Amman Marbles Shop was that of a male but, the said male was not the biological father of Mr.Boobathi. Thereafter, the blood sample of Ms.Bhavani (P.W.9), the daughter of the deceased was received by him for further DNA examination. The DNA, extracted from the blood sample of Ms.Bhavani - P.W.9 and the DNA drawn from the above three material objects were examined by him. Such examination revealed that the blood stains found on the material objects, M.Os.17 to 19 were that of a male and the said male was the biological father of P.W.9 - Ms.Bhavani. He has spoken about the details of examination conducted and the results. He has further stated that since, it was found that Ms.Bhavani - P.W.9 is the biological daughter of the deceased, the blood sample taken from the mother of the deceased viz., Mrs.Rajammal, was not examined. P.W.19 has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused, he denied the same as false. On his side, one Mr.Nachimuthu was examined as D.W.1. D.W.1 has stated that he was working as an Auditor during the year 2011-2012. He audited the accounts of P.W.6, the proprietor of "Sumangali Jewellers". According to him, as per the statement of accounts, there was no purchase of jewels made by P.W.6 on 11.12.2011 for Rs.3,72,000/-. There is no detail mentioned in the said account for payment of the said amount to the accused. Apart from that, on the side of the accused, two documents have been marked as Exs.D.1 and D.2. Ex.D.1 is the petition made by P.W.1 to the learned Judicial Magistrate, Erode, seeking return of the motorcycle (M.O.6). Ex.D.2 is the income tax returns of P.W.6 relating to "Sumangali Jewellers" shop. He also marked seven photographs as M.Os.1 to 7 on his side. His defence was thus, a total denial.

6. Having considered all the above, the trial Court convicted the accused/appellant as stated in the first paragraph of this judgment and that is how, he is before this Court with this Criminal appeal.

7. 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.

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

9. From the evidence of P.W.1, the wife of the deceased, in our considered view, it has been clearly established by the prosecution that the deceased was staying at Mettur at the house of the mother of P.W.1 for attending the funeral of his mother-in-law. On 10.12.2011, from Mettur, he left for Kalingarayanpalayam at Bhavani to his house assuring P.W.1 that he would return to Mettur on 11.12.2011. Lastly, around 7.00 pm, on 10.12.2011, he spoke to P.W.1 over phone and informed that he was in Amman Marble Shop. Thereafter, he was not seen. She made complaint on 12.12.2011. Now, the foremost question to be decided is "Whether the prosecution has proved that the deceased was done to death?"

10. As we have already narrated, the dead body of the deceased has not been retrieved. The corpus delicti is not thus, available for examination to find out the cause of death. In the absence of corpus delicti and in the absence of the medical evidence relating to the cause of death, it is to be examined as to whether this Court could safely conclude that the deceased who went missing on 10.12.2011, is no more and that his death was a homicide.

11. It is not necessary that in all cases, the corpus delicti must be available and the cause of death must be proved by forensic medical examination conducted on the corpus delicti. "Whether a person is dead or alive?" and "Whether the death of a person was a homicide or not?" are all facts which can also be proved by other circumstances, even in the absence of corpus delicti and the forensic medical examination conducted on the same. In the instant case, the fact that the deceased who went missing on 10.12.2011 was done to death, is sought to be proved by the following circumstances. The first and foremost circumstance is that, between 10.12.2011 and 21.12.2011, the deceased was not seen anywhere alive. In the meanwhile on 12.12.2011, a case for 'man missing' was registered and it was under investigation. There was no clue available either with the

Police or with anybody else about the whereabouts of the deceased. The accused, while so, on his own, voluntarily surrendered before the learned Judicial Magistrate No.1, Namakkal, on 16.12.2011. This conduct of the accused in voluntarily surrendering before the learned Judicial Magistrate, though he claims to be innocent, gives rise to a suspicion against the accused. In our considered view, this is only an initial incriminating circumstance available against the accused. The learned counsel for the appellant would submit that since, the Police was searching for him, he surrendered before the learned judicial Magistrate No.1, Namakkal. Despite the said explanation, the initial doubt in the mind of the Court regarding the suspicious movement of the accused continues to exist.

12. Then comes the important circumstance. The accused was taken into police custody on 21.12.2011. While in custody, according to P.W.19, in the presence of P.W.8 and another witness, he made a voluntary disclosure statement. In the said disclosure statement, he confessed that he killed the deceased at the office room of Amman Marbles Shop at Kalingarayanpalayam and cut the body into pieces, threw the body into the running water of Kaveri river and put the shirt, banian, knife, two stones and some flesh into the gunny bag and threw the same also into the river. It is true that the said confession made to the Police admitting his guilt is not admissible in evidence, in view of the bar contained in Section 25 of the Indian Evidence Act, except to the extent permissible under Section 27 of the Indian Evidence Act.

13. Section 27 of the Indian Evidence Act, is in the nature of a proviso to section 25 of the Indian Evidence Act. This provision has come to be interpreted for several decades by the Privy Council, the Hon'ble Supreme Court and by various High Courts. The Privy Council and the Hon'ble Supreme Court have settled the law relating to the disclosure statement made under Section 27 of the Indian Evidence Act, by stating that so much of such information "Whether it amounts to confession or not?" which leads to the discovery of any fact alone is admissible in evidence. It is the law settled by the Privy Council in *Pulukuri Kottaya v. King Emperor* ((1947) 1 MLJ 210 (crl.) and the same has been approved and being followed by the Indian judiciary, especially the Hon'ble Supreme Court of India. In the instant case, while in custody, the accused disclosed that he had killed the deceased at the office room of Amman Marbles Shop. Until the said statement was made, there was no information about the whereabouts of the deceased. It was still a case of 'man missing'. Only from out of the said disclosure statement made by the accused and from the blood stains recovered in pursuance of the statement, it came to light that the deceased was 'no more'. This disclosure statement made by the accused to P.W.19

in the presence of P.W.8 that the deceased was no more squarely falls within the scope of Section 27 of the Indian Evidence Act. This ofcourse amounts to confession. But, section 27 of the Evidence Act, does not bar a confession being admitted in evidence, if the said confession is inseparable from the discovery of the fact, made out of the said confession. The phrase "Whether it amounts to confession or not in Section 27 of the Indian Evidence Act?", needs to be deeply taken note off. In a case where the information leading to the discovery of a fact is separable from the confession, so much of that information which distinctly led to the discovery alone is admissible. In this regard, in Pulukuri Kottaya v. King Emperor's case (cited supra), the privi council has held as follows:-

"9. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon

produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

14. Keeping in mind the above law laid down by the Privy Council, now let us consider the following Illustration. If an

accused states, while in custody that he is in possession of ganja at his house, if discovery of ganja is made from his house, in pursuance of the said information, the statement that he is in possession of ganja at his house, is admissible in evidence as per Section 27 of the Indian Evidence Act, though, it is a confession. We want to re-emphasise that the wordings "Whether it amounts to confession or not in Section 27 of the Act gives enough clarity to the issue. In the instant case, the discovery of the blood stains of the deceased inside the Amman Marble Shop in pursuance of the disclosure statement of the accused, makes the disclosure statement of the accused admissible under Section 27 of the Indian Evidence Act. The statement of the accused that the deceased died in the Amman Marbles Shop amounts to discovery of a fact because, the fact that the deceased was no more was discovered by the discovery of the blood stains of the deceased only out of the said disclosure statement made. Therefore, we hold that this part of the evidence is admissible in evidence as provided under Section 27 of the Indian Evidence Act.

15.The death of the deceased was not only proved by the prosecution from out of the said disclosure statement. It is proved by other circumstances also. On the disclosure statement made by the accused, P.Ws.19 & 8 visited the Amman Marbles Shop. It was found locked. It was opened and inside the office room, there were blood stains found on the "Daily Thanthi news paper" (M.O.18); broken plastic chair (M.O.19) and mosaic tiles (M.O.17). They were all recovered. These blood stains found on the material objects were examined. The scientific examination conducted by the Expert proved that those blood stains were that of the deceased. The accused was in exclusive possession of the shop. He has got no explanation as to how the blood stains of the deceased came to be present at the office room and on the above material objects. Since, the dead body was not found, there was no chance for the Police to make a false case by staining these material objects with the blood of the deceased. The accused must therefore, explain to the Court as to how the blood stains came to be present on these material objects which were kept in the office room of Amman Marbles Shop, which was in the exclusive possession of the accused. The same was not done by the accused.

16.The learned counsel for the appellant would submit that the blood sample taken from the son of the deceased by name Mr.Boobathi did not tally with the DNA extracted from the material objects recovered from the Amman Marbles shop. The examination revealed that the blood stains found on these material objects were that of a male. To that extent, there was no dispute. Since, the DNA extracted from the blood stains found on the material objects did not tally with the DNA of Mr.Boobathi who is the son of P.W.1 and the deceased, it may

only be said that Mr.Boobathi was not born to the male whose blood stains were found on the material objects. In other words, Mr.Boobathi was not the biological son of the deceased. But later, the blood samples of P.W.9 - Ms.Bharathi, were extracted and sent for DNA examination. P.W.1s blood samples were also sent. On comparison of DNA extracted from the blood stains found at the material objects recovered from the Amman Marbles Shop and P.W.9, it was found that the blood stains found on the material objects were that of a male who was the biological father of P.W.9 - Ms.Bharathi. The blood sample extracted from Mrs.Rajammal, mother of the deceased, was not examined. Since, the expert was satisfied with the examination conducted on the DNA extracted from the blood sample of P.W.9. We find no reason to reject this scientific evidence. The accused has got no explanation as to how the blood stains of the deceased had come to be present on the above material objects which were in the office room of the Amman Marbles shop. In the absence of any explanation from the accused, it is a very strong circumstance against the accused that the deceased was killed only inside the office room of Amman Marbles as disclosed by him in his disclosure statement to the Police under Section 27 of the Indian Evidence Act.

17.The next circumstance is the discovery of the material objects from the river. In pursuance of the disclosure statement made by the accused, he took P.Ws.19 & 8 to the Kaveri river and identified a place near a rock. He disclosed that it was from there, he had thrown a gunny bag containing M.Os.7 to 9 & 12 to 14. Out of the above disclosure statement made, with the help of P.W.4, M.O.11, gunny bag was retrieved from water which contained M.Os.7 - full hand shirt; M.O.8- banian; M.O.9 - hearing aid machine; M.O.12-stones; M.O.13 - knife and M.O.14-flesh. P.W.1 has identified M.Os.7 to 9 as that of the deceased. In fact, P.W.7 has identified M.O.9 the hearing aid machine as the one sold by him to the deceased for a sum of Rs.17,300/- under Ex.P.5 receipt. These personal belongings of the deceased were found in the gunny bag - M.O.1 and were retrieved from the Kaveri River. But for the disclosure statement made by the accused, they would not have retrieved at all. The accused has got no explanation as to how he came to possess knowledge about the lying of these personal belongings of the deceased in the kaveri river. This is yet another very strong circumstance against the accused. In the absence of explanation by the accused, for his possession of such knowledge, adverse presumption against him as provided in Section 114 of the Indian Evidence Act, needs to be drawn.

18.The next comes the discovery of M.Os.1 to 5, the jewels belonging to the deceased. In Ex.P.1 complaint, at the earliest point of time, when P.W.1 made complaint about the missing of the deceased, she had mentioned that these jewels had been worn

by the deceased. She has identified M.Os.1 to 5, as that of the deceased which were lastly worn by the deceased. They were recovered from P.W.6, on the disclosure statement made by the accused. P.W.6 was then running a jewellery shop at Kolathur under the name and style of "Sumangali Jewellers". According to him, on 11.12.2011, between 11.00 am and 12.00 noon, the accused came to the shop and sold M.Os.1 to 5. The accused received Rs.2 lakhs immediately and on the same day, in the evening, he came back to the shop and received the balance of Rs.1,72,000/-. Thus, these jewels were recovered from P.W.6, on the disclosure statement made and on being identified by the accused.

19.The learned counsel for the appellant tried to assail this part of the prosecution case by referring to the evidence of D.W.1 - chartered accountant. D.W.1, as we have already stated, has stated that as per the income tax statement (Ex.D.2), there is no entry that on 11.12.2011, P.W.6 had purchased jewels worth Rs.3,72,000/- and paid the said cash to the accused on the same day. Relying on this, the learned counsel would submit that the case of the prosecution that the accused sold M.Os.1 to 5 to P.W.6 on 11.12.2011, cannot be true. But, we are not persuaded by this argument at all. May be true that P.W.6 was not maintaining proper accounts for tax purposes. But that would not go to falsify his oral evidence wherein, he has admitted that he purchased M.Os.1 to 5 from the accused for Rs.3,72,000/-. May be he is liable for prosecution for having rendered incorrect income tax return to the Income Tax Department. On that score, we cannot reject the evidence of P.W.6. Though, P.W.6 has been cross examined at length, nothing has been elicited from him so as to disbelieve his evidence. Thus, from the evidence of P.W.6, it has been clearly established that on 11.12.2011, around 11.00 am, the accused sold away M.Os.1 to 5 for a sum of Rs.3,72,000/-. Thus, the accused was found in possession of these stolen properties on 11.12.2011 at 11.00 am. The accused has got no explanation to offer except denying his very possession of these material objects. Since, we hold that the accused was in possession of these stolen properties at 11.00 am on 11.12.2011, he is bound to explain as to how he came to possess these properties. Since, no such explanation has been offered, we have to necessarily draw a presumption under Section 114 of the Indian Evidence Act, that he was the one who killed the deceased and had removed these material objects from the deceased.

20.In the said gunny bag (M.O.11), the flesh - M.O.14 was also recovered. Since, it was in a decomposed stage, DNA could not be conducted by the Expert. The accused has got no explanation as to how in the gunny bag, flesh also came to be present along with the stolen properties. Flesh in the gunny bag also gives strength to the presumption that the deceased had been done to death by the accused.

21. In pursuance of the disclosure statement made by the accused, he took P.Ws.19 & 8 to the cycle stand at Sankari Bus stand. P.W.4 was the cycle stand owner. He has stated that on 10.12.2011, at 9.15 pm, the accused came and parked the motorcycle (M.O.6) there. He gave the name of the deceased at that time because, the accused was not known to him. P.W.4 entered the name as told by the accused, in the register. The motorcycle has been identified to be that of the deceased. The recovery of the motorcycle from the said cycle stand on the disclosure statement made by the accused, is yet another circumstance against the accused. From the recovery of the material objects namely, the stolen properties and the properties in the gunny bag and the blood stained properties recovered from the office room of the Amman marbles, on the disclosure statement made by the accused, would all go to conclusively prove that the deceased was killed by the accused in his office room and then, the body was disposed of by throwing the same into the river.

22. In our considered view, these circumstances would go to unerringly prove that the deceased is no more and he was killed only by the accused. There is no hypothesis which is inconsistent with the guilt of the accused. Thus, we hold that though the corpus delicti has not been being discovered, the prosecution has proved by means of other circumstances that the deceased was killed by the accused and the material objects were stolen away and the dead body was disposed off with a view to erase the evidence. The trial Court was thus, right in convicting the accused. The well considered judgment of the trial Court does not require any interference at the hands of this Court at all.

23. Before parting with the case, we would appreciate the investigation done by P.W.19 in a scientific manner. He has not left out any clue during the course of investigation. He has properly utilised the blood stains found on the daily thanthi news paper, the mosaic tile and the plastic chair found at the office room of Amman marbles, as identified by the accused for investigation. Even after the report of DNA expert that the blood samples of Mr. Boobathi did not tally with that of the deceased, P.W.19 had gone further to prove the identity by making P.W.9 to undergo DNA examination. For these reasons, we record our appreciation for P.W.19.

24. In view of the foregoing discussions, we find no merit in this criminal appeal. Accordingly, the Criminal Appeal is dismissed and the judgment of the trial Court in S.C.No.36 of

2014 dated 30.09.2016 shall stand confirmed. It is reported that the accused is in jail.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

jbm

To

- 1.The I Additional District and Sessions Judge, Erode.
- 2.Thro' The Principal District & Sessions Judge, Erode
- 3.The Judicial Magistrate No.III Erode.
- 4.do Thro The Chief Judicial Magistrate Erode.
- 5.The Superintendent, Central Prison, Coimbatore.
- 6.The Inspector of Police, Chithode police station, Erode District
- 7.The District Collector, Erode District.
- 8.The Director General of Police Mylapore, Chennai-4
- 9.The Public Prosecutor, High Court, Madras.
- 10.The Section Officer, Criminal Section, High Court, Madras.

+1cc to M/s.N.Manokaran, Advocate in sr.no.73103

Cr1.A.No.729 of 2016

MP(CO)
NR 28/06/2017