

BAIL SLIP

The Appellant/Accused namely A.Dharaniselvam, S/o.Arumugam, is directed to be released on bail by this Court's order dated 29.10.2012 made in CrI.M.P.No.1 of 2012 in CrI.A.No.674 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.2.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR. JUSTICE P.DEVADASS

CrI.A.674 of 2012

A.Dharaniselvam

... Appellant/Accused

Vs.

The Inspector of Police,
Sankari Police Station,
Crime No.1066/2008

... Respondent/Complainant

This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the JUDGMENT and Sentence passed in S.C.No.271 of 2009 on 20.9.2012 by the I Additional District & Sessions Judge, Salem.

For Appellant : Mr.N.R.Elango
Senior Counsel for
M/s.Raja Senthoo Pandian

For Respondent : Mr.S.Shanmugavelayutham
Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by Dr.P.DEVADASS, J.)

The sole accused in the Sessions case in S.C.No.271 of 2009 on the file of the learned First Additional Sessions Judge, Salem is the appellant.

2. In the said Court, after trial, on 20.9.2012 he was convicted and sentenced as under:

Conviction	Sentence
364 I.P.C.	10 years R.I. and fine Rs.5,000/- i/d 2 years R.I.
302 I.P.C.	Life imprisonment and fine Rs.10,000/- i/d 2 years R.I.
201 I.P.C.	2 years R.I. and fine Rs.2,000/- i/d 6 months R.I.

All the sentences were directed to run concurrently.

3. The case of the prosecution briefly runs as under:

(1) In Salem District, in Sankari, there is Brightsun Matriculation School. PW-5/Correspondent and his wife PW-16 are managing the School. In this School, the accused served as P.T. Master. He is married. His wife is also employed in the said School. PW-14, a lady teacher, is also employed in the same School. She is a widow. She is residing in Sankari.

(2) Illegal intimacy developed between the accused and PW-14. She became pregnant. With the assistance of his friend PW-13, the accused arranged abortion to PW-14 in a private Clinic. PW-14 started avoiding the accused. However, the accused continued his sexual torture. PW-14 complained to PW-16. She scolded the accused. He was also sent out of the School from 17.10.2008. Again, he gave sexual torture to PW-14. In the presence of other teachers, PW-16 warned him that she will complain to police. The accused felt ashamed. He left challenging PW-16.

(3) PW-1's daughter Monisha, aged about 8 years was studying III Standard in the said School. Her brother PW-2 was studying VIII Standard in the same school. On 1.11.2008, at about 8.30 a.m. Monisha, PW-2, PW-8 then studying IX Standard and some other co-students have went to the School in the School Tata Sumo Car driven by PW-4. They have gone to their classes. After 10 minutes, while PW-8 was returning from bathroom, she had seen Monisha standing near a Neem Tree with school diary in her hand. When PW-6 the teacher took attendance Monisha was not in the classroom. PW-8 told her that she had seen Monisha near the Neem Tree. All searched for the missing Monisha. But, she was not found.

(4) On the same day, around 8.45 a.m., PW-23 drove TVS 50 PW-22 travelled as pillion rider. Near the School they have seen the accused going along with a school going female child. The accused was looking on the backside. PWs-22 and 23 were under the impression that the child must be known to the accused and left.

(5) Since the child was not seen in the School, PW-7 School Headmistress and another teacher went to PW-1's house and informed her missing of Monisha. In spite of hectic search the child was not found.

(6) Under these circumstances, on the same day, at about 4 p.m., at the Sankari Police Station, PW-1 gave Ex.P-1 complaint to PW-27, S.I. of Police. He registered F.I.R. in Cr.No.1067 of 2010 (Ex.P-17) under the caption 'Girl missing'. He sent the F.I.R. to the Court and copies to senior Police Officers.

(7) PW-28 Inspector of Police took up his investigation. He went to the School. In the presence of PW-9 and one Sekar, he prepared Ex.P-2 Observation Mahazar. Drew Ex.P-6 Rough sketch. In their presence, he seized MO-1 School bag, MO-2 Lunch bag, MO-3 Lunch box, MO-4 Spoon, MO-9 Towel, MO-11 test click pad, MO-12 Geometry box, MO-13 water bottle, MO-17 Note books from the classroom under Ex.P-3 Mahazar. PW-28 issued pamphlets (Ex.P-26) with photo of the missing girl. On 2.11.2008, PW-28 examined further witnesses and recorded their statement. On 3.11.2008 and on 4.11.2008 he examined further witnesses and recorded their statement.

(8) On 5.11.2008, PW-12 residing at Naickanpatti, Vellakkaradu hillock had gone to collect firewood. Around 12 Noon, at the hill top, she had seen the decomposed body of a female child. She informed this to her neighbour Chinnakannu. At about 2 p.m., PW-17, VAO, Sankari received telephone message of the same. PW-17 along with his Assistants went there. Seen the dead body of the female child wearing blue colour skirt, socks, cotton tied around her neck. The crowd informed him that it is the dead body of Monisha.

(9) PW-17 gave Ex.P-7 report to PW-28 at the Sankari Police Station. PW-28 went to Vellakkaradu hillock. Seen the dead body of Monisha. He altered the section of law to Sections 317, 364, 302 and 201 I.P.C. Sent Ex.P-28 alteration report to the Court. He also informed Forensic Scientist and sniffer dog squad.

(10) PW-28 visited Vellakkaradu hillock. In the presence of PW-17 and his Assistant, he prepared Ex.P-8 Observation Mahazar. Drew Ex.P-29 Rough sketch of the said place. In the presence of panchayatdars, he held inquest over the dead body of Monisha (Ex.P-30 inquest report). He sent the dead body through PW-25 Head Constable to the Government Hospital, Salem to conduct post mortem.

(11) On 6.11.2007, at the said Hospital, at about 2.35 p.m., PW-21 assisted by Dr.Paneerselvam conducted post-mortem on the dead body of Monisha and noticed the following:

- (1) A highly decomposed girl dead body lies on its back with crowling of maggots over all, part of the body, with skin shows peeling of cuticles over most of the body, abdomen slightly distended with gas. There is a greyish discolouration over both sides of flanks. On right side face there is a decomposition of over the right cheek with exposure of right side maxilla and mandible. A white colour cloth tied over the neck (strangulated). Eyeballs shrinkened with disfigurement of face, finger nails bluish discolouration seen.
- (2) A transverse interrupted ligature mark dark brownish in colour over front and sides of neck measuring 12.5 cm long, 2.5 cm width and it is situated 78 cm above supra sternal notch and 5.5 cm below mid chin, 5.5 cm below right mastoid process and 4.5 cm below left mastoid process.

Findings:

- (1) O/D of head: Scalp - normal with decomposing changes. Cranial vault - intact. Membranes - intact. Brain - liquefied and decomposed. Base of skull - intact.
- (2) O/D neck: Fracture hyoid bone seen over both sides of greater horn with surrounding soft tissue contused.
- (3) O/D of Thorax: No ribs fracture. Heart - normal in size. Flooby and C/S decomposed. Lungs - greasy to touch. C/S decomposed.
- (4) O/D abdomen: Stomach - empty, Greasy to touch and C/S. Decomposed. Liver, spleen, both kidneys. Greasy to touch and C/s. Decomposed. Bladder - Empty. Genitalia - No injuries made out. Pelvis - intact.
- (5) O/D Spinal column: Intact.
The doctor has opined that the deceased appeared to have died of effects of asphyxia due to strangulation. He has further opined that the deceased would have died about 5 days

+ 2 days prior to autopsy. The postmortem certificate issued by P.W.12 has been marked as Ex.P17.

(12) On 5.11.2008, at about 7.30 p.m., PW-20 visited Vellakkaradu hillock. Collected MO-19 ordinary sand, MO-18 bloodstained soil in MO-20 cotton. He prepared Ex.P-15 crime scene report. PW-28 examined the girl's parents and others and recorded their further statement. On 6.11.2008, he examined further witnesses and recorded their statement.

(13) On 8.11.2008, at about 8 a.m., at Konkanapuram Branch Road, near Salem bus-stop, in the presence of P.W.17 and his Assistant, PW-28 arrested the accused. He took the accused to the Police Station. The accused gave him Ex.P-10 confessional statement to the effect that he will show him some objects in the classroom of the Brightsun Matriculation School, place of occurrence and place where he had thrown the dead body.

(14) The accused took PWs-28, 17 and his Assistant to the III Standard classroom in Brightsun Matriculation School and in their presence, PW-28 prepared Ex.P11 Observation Mahazar. He also drew Ex.P-32 rough sketch. Thereafter the accused took them to his house in Vasantham Colony and produced MO-17 School diary and MO-21 red colour ribbon from a bush near his house. PW-28 seized them under Ex.P-30 Mahazar. Thereafter, on the way to Vellakkaradu hillock, the accused produced MO-22 empty brandy bottle. In the presence of said witnesses, PW-28 seized it under Ex.P-24 Mahazar. Thereafter, the accused took them to the place where the dead body of Monisha was found. PW-17 altered the section of law to Sections 317, 364, 302 and 201 I.P.C. Sent Ex.P-33 alteration report to the Court. He had examined further witnesses and recorded their statement. PW-28 produced the accused before the Court for judicial custody and the case properties under Form 95.

(15) On 9.11.2008, PW-28 examined further witnesses and recorded their statement. On 10.11.2008, he examined PWs-22 and 23 and recorded their statement. He had also examined further witnesses and recorded their statement. He gave requisition to the Magistrate to record the statement of certain witnesses under Section 164 Cr.P.C. PW-24 Judicial Magistrate No.VI, Salem recorded the statement of certain material witnesses under Section 164 Cr.P.C.

(16) On 1.12.2008 PW-28 gave Ex.P-23 requisition to the Court for sending the case-properties for chemical analysis. He received Exs.P-35 and P-36 Chemical and Serology reports. Concluding his investigation, PW-28 filed the Final Report for

offences under Sections 317, 364, 302 and 201 I.P.C. before the committal Court.

4. The committal Magistrate supplied copies of the documents to the accused under Section 207 Cr.P.C. The Court committed the case to the Court of Sessions, Salem under Section 209 Cr.P.C. The case was made over to the First Additional Sessions Judge, Salem for trial.

5. The trial Court upon hearing both sides and on consideration of the case-records, framed charges under section 364, 302 and 201 I.P.C. as against the accused. The accused pleaded not guilty to the charges.

6. The prosecution examined PWS-1 to 28, marked Exs. P-1 to 36 and exhibited MOs-1 to 22.

7. When the accused was examined on the incriminating aspects in the prosecution evidence under Section 313 Cr.P.C., he denied the offences.

8. In his written statement the accused mainly stated as under:-

He had asked more salary. PW-16 took hostile attitude towards him, stopped him from attending the School. PW-14 is a close friend of him. As between them there is no dispute. As between PWS-13 and 14 there is illegal intimacy. PW-13 took PW-14 to a Doctor for abortion. On 2.11.2008, at about 8 a.m., PW-28 took the accused to Sankari Police Station for enquiry. There he had seen PWS-4, 6 and 16. The accused told PW-28 that in no way he is connected with the missing of Monisha. Subsequently, the wife of the accused along with one Balasubramaniam, Advocate met the accused at the Police Station. However, PW-28 kept the accused under illegal custody from 2.11.2008. In the circumstances, on 3.11.2008, the Advocate sent a lawyer notice to PW-28 and Superintendent of Police, Salem. However, the accused was not let out. In the circumstances, on 8.11.2008, when the dead body of Monisha was found near the School, PW-28 compelled the accused to admit that he had killed the child. PW-28 kept him under illegal custody from 7.11.2008. There was huge agitation by parents of the deceased and there were largescale protest from various quarters. In order to implicate him in this case, PW-28 obtained his signature in blank papers and took some photographs of him, prepared some false documents. On 8.11.2008 P.W.28 had fabricated evidence. With the assistance of School Management, PW-28 had foisted this case against the accused.

9. The accused also let in defence witnesses. DW-1 Post Master, Sankari stated that the accused had sent a letter to the Inspector, Sankari. Its postal acknowledgment is Ex.D-10. The date 5.11.2008 was put by DW-1 and Ex.P-11 is the receipt issued for sending the said letter from Sankari Post office. Police Station Writer was authorised to receive thapals meant for Inspector, Sankari. DW-2, a Financier has spoken about some financial dispute between him and PWs-5 and 16 with regard to running of the School. On 1.1.2008, DW-3 was Head Constable in Sakari Police Station. Then one Nataraj was Station Writer. Ex.D-12 is concerned with Sankari Police Station. DW-3 has signed Ex.D-10 acknowledgment acknowledging the letter sent to the Inspector, Sankari. Since it is a lawyer's notice without opening the envelope, DW-3 has handed over it to the Inspector. DW-4 produced cellphone call list and on the request of the accused, DW-4 took Ex.D-15 (series) photos of the School. He also took photographs of the hillock near the School.

10. Upon hearing both sides and on consideration of the evidence adduced, the trial Court convicted the accused under Sections 364, 302 and 201 I.P.C. and sentenced him as already stated.

11. Mr.N.R.Elango, learned Senior Counsel for the appellant contended that the case has been foisted against the accused by the Police in connivance with the School Management. Since the accused had demanded more salary the School Management was not happy with the accused. PW-1's child Monisha, a student of the School was found dead under suspicious circumstances. In order to extricate itself from this and to maintain the reputation of the School, the School Management has implicated the accused in this case.

12. The learned Senior Counsel further contended that the motive suggested in this case, namely, the accused had illegal intimacy with PW-14 and he was sent out and because of that he has killed the child so that the school will get bad name is highly imaginary, concocted, does not sound any logic. Above all, motive is a double edged weapon, it could be either way.

13. The learned Senior Counsel further contended that the last seen theory introduced in this case through PWs-22 and 23 is highly imaginary, unacceptable and they were introduced only to brought out a story telling. The learned Senior Counsel further added that the silence or their non-mentioning of their last seen to anyone for about 10 days would show that it is a concocted version.

14. The learned Senior Counsel further contended that Section 27 Evidence Act recovery introduced in this case is a stage managed show. Already on 2.11.2008, the accused was taken to Police Station and was kept in illegal custody till 7.11.2008 by PW-28. On 3.11.2008, through a Lawyer, the wife of the accused also sent a registered letter to PW-28 to release her husband. This aspect has been proved through evidence. Above all, PW-2 himself admits that on 2.11.2008, he had seen the accused along with PW-4 in the Police Station.

15. The learned Senior Counsel further contended that none of the circumstances have been established by the prosecution. The prosecution has failed to establish the charges levelled against the accused beyond all reasonable doubts.

16. On the other hand, the learned Public Prosecutor would contend that the accused had grievance over the school since the School Management had insulted him in the presence of other Teachers as he had affair with a lady Teacher (PW-14). In order to exhibit his ire and to bring a bad name to the School, he had kidnapped Monisha, a 8 year old 3rd Standard student of the School and mercilessly killed her and thrown her dead body at a lonely place and screened the offence.

17. The learned Public Prosecutor further contended that PWs-22 and 23 have no connection with the accused. They are strangers to him. They have very clearly stated that on the occurrence day they have seen the child in the company of the accused. In this case, the last seen theory has been very clearly established. Further PWs-22 and 23 are chance witnesses. They have no need to rope in the accused in this case.

18. The learned Public Prosecutor further contended that in this case, certain material objects were recovered based on Section 27 Evidence Act confessional statement of the accused. They were recovered in the presence of PW-17 VAO and his Assistant. PW-17 has clearly testified the arrest of the accused and the recovery of the material objects based on his disclosure statement.

19. The learned Public Prosecutor further contended that all the incriminating circumstances were proved and the chain is complete, they would goes to show that the accused is the killer. Thus, the Trial Court has rightly convicted and sentenced him.

20. We have anxiously considered the submissions of the learned Senior Counsel for the appellant and the learned Public

Prosecutor, perused the Trial Court's judgment and also the entire materials on record.

21. Now the question is whether the prosecution has established the charges under Sections 364, 302 and 201 IPC framed as against the accused beyond all reasonable doubts.

22. The evidence of PWs-1, 2, 4, 6 and 8 would show that PW-1's daughter Monisha aged about 8 years, a student of 3rd Standard and her brother/PW-2 left their house in Morur, Sankari, to Brightsun Matriculation School on 1.11.2008 at 8.30 a.m., and the School Van reached the school and after that Monisha went missing in the school. Only thereafter, on 5.11.2008, around 12.30 Noon her decomposed dead body was found in Vellakkaradu Hillock at a distance from the School.

23. Who took the child from the school and who killed her is the question.

24. According to prosecution, in order to wreck vengeance against the school, their dismissed P.T. Master/accused kidnapped the child on 1.11.2008, killed her and to screen the offence thrown away her dead body near the said hillock.

25. There is no eye witness to the occurrence. This case is based on circumstantial evidence.

26. In SK.YUSUF Vs. STATE OF WEST BENGAL reported in [(2011) 3 SCC (Cri) 620], on the aspect of circumstantial evidence, Hon'ble Apex Court observed as under:-

"32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the Court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to

leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that the act must have been done by the accused."

27. In Navarasu murder case, [INSPECTOR OF POLICE, TAMIL NADU Vs. JOHN DAVID [2011 (3) CTC 104], the Hon'ble Apex Court laid down the following guidelines in considering the circumstantial evidence:-

"19. The principle for basing a conviction on the edifice of circumstantial evidence has also been indicated in a number of decisions of this Court and the law is well-settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the Accused and that no other hypothesis against the guilt is possible." (Also see Ranjithkumar and another vs. State Represented by Inspector of Police, Mayanur Police Station, Karur District [(2012) 3 MLJ (CrL.) 158].

28. In a case based on the circumstantial evidence, the circumstances stated by the prosecution must be proved like any other fact. Each proved circumstance must form a complete chain unerringly proceeding towards the only conclusion that the accused is the author of the crime excluding any hypothesis of innocence in his favour. In short, there shall not be any missing link in the chain of circumstances woven by the prosecution.

29. Now in the instant case, prosecution mainly relies on the following circumstances:-

- (i) Motive;
- (ii) Last Seen Theory;
- (iii) Section 27 Evidence Act recoveries.

30. Now let us proceed to see whether the circumstances are proved and whether they form a complete chain without any missing link that the accused is the author of the crime.

31. In Brightsun Matriculation School, in Sankari, the accused served as a P.T. Master. He is married to one Radhika. They are having children. In the same School, PW-14, a lady teacher, also served. She is a widow.

32. It is alleged that the accused had illegal intimacy with PW-14, sexually abused her and on account of that the accused was sent out of the School and in order to bring bad name to the school, he has kidnapped Monisha and killed her.

33. PW-14 stated about her intimacy with the accused and she also had sex with him and because of that she became pregnant and with the assistance of PW-13, an acquaintance of the accused she underwent abortion. PW-13 also corroborated this. PW-16, wife of PW-5 looks after the management of the school stated that she had warned the accused and on 17.10.2008, the accused stopped coming to the school.

34. Motive is a double edged weapon. It must be strong enough to form an adverse opinion, adverse view on the accused. It should not be feeble, imaginary and logically unsound.

35. In this case, to exhibit his vengeance towards the school management, it is alleged that the accused had kidnapped the child and killed her, so that the School will get a bad name is far fetched and did not take one to its logical conclusion. Above all, motive is a double edged weapon and it could be either way.

36. Last seen theory is also one of the incriminating circumstance which will have an adverse effect upon the accused to the effect that the deceased was lastly seen alive in the company of the accused. But, at the same time, there should not be a time gap, as in between it could have been caused by somebody. Further the last seen theory must also be established like any other fact beyond reasonable doubts. In this case with respect to the last seen theory prosecution had examined PWs-22 and 23.

37. In this case, Monisha was found missing at 8.45 a.m., on 1.11.2008 from the school and her dead body was found only on 5.11.2008, around 2 Noon, at Vellakkaradu Hillock by PW-12 who went to the hillock to collect firewood. Till such time, all were searching for the missing child.

38. According to PW-22 he is residing in Kattampalayam, while PW-23 is employed in a Power Loom and he is residing in Thanneerpandal Palayam. According to PW-22, on 1.11.2008, at about 8.45 a.m., he travelled as a pillion rider in the TVS-50

driven by PW-23 and they were returning after seeing one Thangamuthu and when they came near the hillock near the Brightsun Matriculation school, he had seen the accused taking along with him a school going child and the accused went seeing here and there. PW-23 also says so, however, he had added that at that time, the child was having a school diary in her hand. Both PWs-22 and 23 said that they thought that the child must be known to the accused and they have simply left. Thereafter, as stated already, only on 5.11.2008, the dead body of Monisha was found.

39. The missing of Monisha on 1.11.2008 is known around 9 a.m. School Management informed her mother/PW-1. All were searching for the missing child. On the same day, around 4 p.m., PW-1 also lodged Ex.P-1 complaint with PW-27 S.I. of Police at Sankari Police Station. There were lot of agitations by her parents, relatives and dharnas by public to trace the missing child. PW-28 Investigating Officer/Inspector on 2.11.2008 issued Ex.P-27 pamphlets with the photograph of Monisha. Missing of the child was also published in the Dailies. PWs-22 and 23 also belongs to the said area. However, only on 10.11.2008, they have told PW-28 that they have seen the deceased alive in the company of the accused on 1.11.2008. They admit that till such time they did not reveal the said information to anyone. PW-28 also admits that only on 10.11.2008, PWs-22 and 23 have revealed the said information to him.

40. In his evidence, PW-22 did not mention about the child carrying a School Diary. Only for the first time, PW-23 had stated that he had seen the child carrying the School Diary. Further, PWs-22 and 23 had stated that before that they have not seen the accused nor the child. In such circumstances, there was no test identification of the accused with PWs-22 and 23. Further there was no identification of the child by PWs-22 and 23 with the photograph of the child.

41. The most important aspect is the complete silence of PWs-22 and 23 that they have seen the child alive in the company of the accused on 1.11.2008 till 10.11.2008. In spite of the fact there was largescale manhunt in Sankari for the missing child and there was publication in the Dailies and issuing of pamphlets also, they did not reveal the same to anyone till 10.11.2008. In the circumstances, the last seen theory introduced in this case is not established.

42. Certain Section 27 Evidence Act recoveries have been pressed into service in this case. Confession made to police is inadmissible. However, so much of information leading to the discovery of a fact is admissible. But it should not be

stage managed, it must be voluntary. It should not be secured. If it is obtained in police custody or under duress, it will lack its credence. It cannot be relied on.

43. In this case, PW-28, the Investigating Officer states that he has arrested the accused on suspicion, on 8.11.2008, at 8 a.m., near Salem Bus stop at Konganurpuram Branch in the presence of PW-17 VAO and his Assistant Sellathurai and recorded his confessional statement Ex.P-10. It is the evidence of PW-28 that in Ex.P-10, the accused had stated that he will show him the place from where he had kidnapped the child Monisha, the place of occurrence, the place where her dead body was thrown away and the place where the School Diary was concealed.

44. It is the further evidence of PW-28, accordingly the accused took him, VAO and his Assistant to 3rd Standard classroom in Brightsun Matriculation School, took them to his house in Vasantham Colony and a place near to it and took them to Vellaikkaradu Hillock and shown the place he place where from the dead body was already found and based on his confession, some material objects were also recovered. PW-17 also spoken about the said recoveries.

45. In this case, the defence contends that it is farce as already on 2.11.2008 itself the accused was picked up by PW-28 and kept him in police custody and this case was cooked up and a stage managed recovery was enacted and PW-17 VAO had obliged PW-28. It has also contended by the defence that on 3.11.2008, through Advocate Balasubramaniam, wife of the accused had sent a letter to PW-28 to release her husband from illegal custody.

46. When the accused was examined under Section 313 Cr.P.C., in his written submission with reference to his arrest and recovery similar defence has been raised.

47. DW-3 was the Head Constable in Sankari Police Station during the relevant time. Ex.P-10 acknowledgement, Ex.D-11 postal receipt and the evidence of DW-3, DW-1 Sankari Post Master would show that an envelope containing some letter sent by a Lawyer to PW-28 has been received. But DW-3 did not read the contents of the letter of Advocate Balasubramaniam, however, he had handed over to PW-28. Above all the evidence of PW-2 is very important here. PW-2 is the son of PW-1 and the brother of the deceased. Ex.P-1 complaint has been lodged by PW-1 to PW-27 on 1.11.2008 at 4 p.m. at the Sankari Police Station. In his cross-examination PW-2 had stated that on suspicion the accused has been kept in the Sankari Police Station and he was

interrogated by the police. In his further cross-examination, PW-2 confirmed that on 2.11.2008, at the said Police Station he had seen PW-4, the van driver and the accused. It is pertinent to note here that the accused is not a stranger to PW-2. The accused was the P.T. Master of his School. Further, already we have seen the evidence of PWs-22 and 23 with regard to the school diary stated to have been carried by the child on 1.11.2008 and it was subsequently recovered on 8.11.2008 when the accused was stated to have been arrested based on his confessional statement.

48. Thus, the confession, the arrest and the recoveries are doubtful and they were extracted from the accused while he was in the custody of the police and PW-17 VAO obliged the Police and further, the arrest, confession and recoveries are stage managed.

49. Thus, in the above circumstances projected by the prosecution were not established. They were found cut everywhere. There are missing links and they do not form a complete chain, unerringly proceeding towards the accused.

50. Suspicion, however, strong may not be a substitute for legal proof. Thus, we hold that the prosecution has failed to establish the charges levelled against the accused beyond all reasonable doubts.

51. In view of the foregoing, this Criminal Appeal is allowed. The conviction recorded by the learned Additional Sessions Judge in S.C.No.271 of 2009 and the sentence awarded by the Trial Court are set aside. Fine amount, if any, shall be refunded.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vaan/Svn

To

1.The Principal Sessions Judge,
Salem.

2.The I Additional District and Sessions Judge,
Salem.

3.The Judicial Magistrate No.1,
Sankari.

4.The Chief Judicial Magistrate,
Salem.

5.The Superintendent,
Central Prison,
Puzhal, Chennai.

6.The Inspector of Police,
Sankari Police Station,
Salem District.

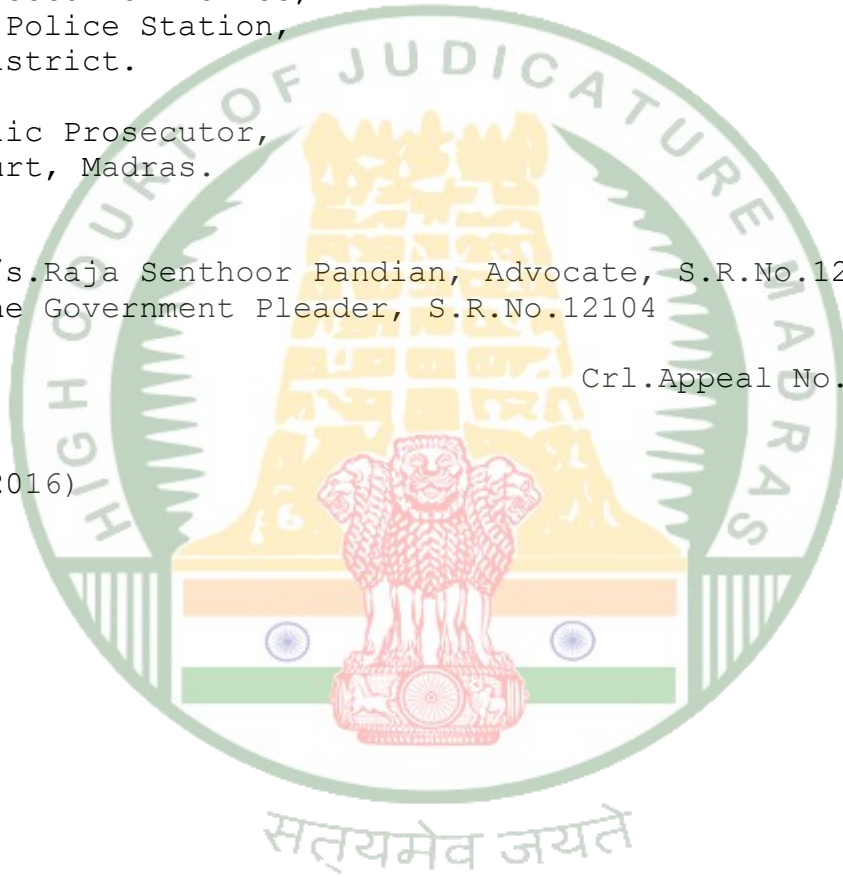
7.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Raja Senthoo Pandian, Advocate, S.R.No.12445

+1cc to the Government Pleader, S.R.No.12104

Crl.Appeal No.674 of 2012

PVS (CO)
CA(05/05/2016)



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