

Bail Slip

The Appellant/Accused Viz. namely 1) Krishnaraj - A1, S/o. Debvaraj and 2) Prakash - A2, S/o. Somasundaram and 3) Krishnamurthy - A4 S/o. Veeramuthu and 4) Sooravalli @ Sudhandirarajan - A5 S/o. Sekar @ Rajasekar respectively are directed to be released on bail as per the order of the court dated 03.09.2015, 24.06.2015, 03.09.2015 respectively and made in respect of Accused 1 and 2 in MP 2 of 2015 in CrI.A.776 of 2013 and for Accused - 4 in MP 1 of 2015 in CrI.A.775 of 2013 and for Accused 5 MP No.1 of 2014 in CrI.A.519 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2016

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.776, 605, 775 of 2013 and 519 of 2014

1.Krishnaraj
2.Prakash .. Appellants/A.1 & A.2 in CrI.A.No.776/2013
Dhavamani .. Appellant/A.3 in CrI.A.No.605/2013
Krishna Murthy .. Appellant/A.4 in CrI.A.No.775/2013
Sooravalli @ Sudhandirarajan .. Appellant/A.5 in CrI.A.No.519/2014

vs

State, represented by
The Inspector of Police,
Neyveli Thermal Police Station,
Cuddalore District
(Crime No.109 of 2011) .. Respondent in all CrI.As

Common Prayer in all Criminal Appeals:- These appeals have been filed under Section 374 (2) Cr.P.C., to call for the records and set aside the conviction and sentence imposed in S.C.No.15/2012 dated 24.07.2013 on the file of the learned Sessions Judge, Mahila Court, Cuddalore District.

In Crl.A.No.776 of 2013:-

For Appellants :Mr.K.Gandhikumar

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.605 of 2013:-

For Appellant :Mr.R.Sankarasubbu

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.775 of 2013:-

For Appellant :M/s.Om Sai Ram Associate

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.519 of 2014:-

For Appellant :Mr.P.G.Perumal Pandian

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

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

The appellants are the accused 1 to 5 in S.C.No.15 of 2012 on the file of the learned Sessions Judge, Cuddalore. The trial Court framed charges for offences under Sections 366, 392, 376(2)(g), 302 r/w 34 and 201 I.P.C., against all the accused. By judgment dated 24.07.2013, the trial Court convicted all the accused and sentenced them to undergo life imprisonment and also to pay a fine of Rs.10,000/- each in default to undergo rigorous imprisonment for one year for offence under Section 302 r/w 34 I.P.C; and to undergo life imprisonment and also to pay a fine of Rs.10,000/- each in default to undergo rigorous imprisonment for one year for the offence under Section 376(2)(g) I.P.C., and to undergo rigorous imprisonment for ten years and also to pay a fine of Rs.10,000/- each in default to undergo rigorous imprisonment for one year for the offence under Section 392 I.P.C; and to undergo rigorous imprisonment for ten years and also to pay a fine of Rs.10,000/- each in default to undergo rigorous imprisonment for one year for offence under Section 366 I.P.C; and to undergo rigorous imprisonment for seven years and also to pay a fine of Rs.10,000/- each in default to undergo rigorous imprisonment for one year each for offence under Section 201 I.P.C. It has been further directed that from the fine amount, Rs.2,00,000/- shall be paid as compensation to the victim's brother P.W.1 Senthilkumar. The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the A.1 & A.2 have come up with

Crl.A.No.605 of 2013; A.3 has come up with Crl.A.776 of 2013; A.4 has come up with Crl.A.No.775 of 2013 and A.5 has come up with Crl.A.No.519 of 2014.

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

The deceased in this case was one Ms.Kavitha, aged 22 years. P.W.1 is her brother. The deceased was living along with P.W.1 and other family members at 21st Block, Neyveli Township in Cuddalore District. The deceased was employed in a Bakery known as "Laxmi Bakery" at the main bazar in Neyveli Township. It was her usual practice to go for her job at 9.00 am and to return to her house at 9.30 pm every day. On 26.04.2011, as usual, at 9.00 am, she left her house to the Bakery. But, till 9.40 pm, she did not return home. Therefore, P.W.1 enquired with P.W.2, who was working along with the deceased in the same Bakery. P.W.2 informed P.W.1, that the deceased accompanied her from the Bakery and left her for her house. Since, the deceased had not returned home, P.W.1 and others, went in search of her. After 10.00 pm, on the same day, P.W.1 while searching for the deceased, found the cycle of the deceased, near the Telephone exchange. Even after that, P.W.1 continued the search for the deceased. Since, he was not able to find her anywhere, he went to the Neyveli Town Police Station and made a complaint at 12.00 noon on 27.04.2011.

3.P.W.22, the then Sub Inspector of Police registered a case in Crime No.109 of 2011 on the complaint of P.W.1 for "girl missing". Ex.P.1 is the complaint and Ex.P.29 is the F.I.R. He forwarded both the documents to Court and handed over the case diary for investigation to the Inspector of Police.

4.P.W.28-the Inspector of Police, took up the case for investigation. He examined P.Ws.1 and 2 and other family members of the deceased. He collected the photograph of the deceased and made wide publicity of the same through press and other modes. During investigation, it came to light that the deceased was using the mobile number 9965923503. Through the Deputy Superintendent of Police, P.W.28, gave a request to the Aircel company for a report as to whether the said cell phone instrument was used by anybody. On 19.05.2011, from the Aircel company, he received a report to the effect that the IMEI number of the cell phone instrument was 355246034985470. Thus, he confirmed the mobile number as well as the IMEI number of the cell phone used by the deceased. Then, from the Aircel Company, he received yet another report that after the date of missing of the deceased, the cell phone instrument having IMEI number 355246034985470 was used with the mobile number 8056321026. The cell phone company authorities further reported that the mobile number 8056321026 was in the name of

A.1 - Krishnaraj. During the course of investigation, P.W.6 also informed that at 9.45 pm, on the day, when the deceased was lastly seen alive, she was taken in a Van by 5 persons.

5. Based on all these details, P.W.28, arrested A.1 on 12.06.2011 at 11.00 am, in the presence of P.W.8 and another witness at Neyveli Central Bus stand. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had raped the deceased and the place where he had buried the dead body of the deceased. He further disclosed that he had concealed a cell phone and a nose screw at his house. P.W.28 recorded the said confession in the presence of witnesses. In pursuance of the said disclosure statement, A.1 took P.W.28 and another witness to his house and produced the cell phone bearing IMEI No. 355246034985470 (M.O.13) sim card bearing number 8056321026. P.W.28 recovered the same under the same mahazar. Then A.1 took P.W.28 and the witnesses and identified the place where he had allegedly raped the deceased. Then he identified yet another place, where he had buried the dead body of the deceased. P.W.28 put up police escort for both the places and returned to the Police station along with A.1.

6. Based on the statement of A.1, P.W.28 altered the case into one under Sections 147, 341, 366, 376, 396, 302 & 201 I.P.C. Then, he forwarded the alteration report to Court (vide Ex.P.38). He also forwarded the Material Objects recovered from A.1 to the Court. Then, he made a request to the Executive Magistrate/Tahsildar to arrange for exhumation of the dead body from the place identified by A.1. P.W.28 also made a request to the Professor of Forensic Medicine, Chengalpet Medical College and Hospital, to conduct autopsy on the body of the deceased, which was stated to be buried by the accused, if it was found there. Then, on 13.06.2011, P.W.28 prepared an observation mahazar in the presence of witnesses at the place where the dead body of the deceased was buried. Then, he prepared yet another observation mahazar in the place where the deceased was allegedly raped by the accused and he also prepared rough sketches in respect of both the places, in the presence of the same witnesses.

7. On the same day at 11.00 am, he arrested A.2-Mr. Prakash in the presence of the same witnesses. On such arrest, he made a voluntary disclosure statement, in which, he disclosed the place where the dead body of the deceased was buried and the place where he had hidden a silver anklet (one No.) of the deceased at his house. In pursuance of the same, he took P.W.28 to the place where the dead body was buried (the place already identified by A.1). Then, he took P.W.28 and another witness to his house and from hide out, he produced a silver anklet (one No.) - M.O.8. P.W.28 recovered the same in the presence of the same witnesses. Then he forwarded A.2 to the

Court for judicial remand and handed over the Material Objects also to the Court.

8. On 14.06.2011, P.W.11 - The Tahsildar and P.W.25- Dr. Prakash had come to the place where the dead body of the deceased was reportedly buried. Then, in the presence of P.W.11, the place identified by A.1 was dug and the body of the deceased was exhumed. It was in a highly de-composed condition. On the dead body, a sandal colour petti coat (M.O.1); Marun colour Davani (M.O.2) Black colour Bra (M.O.3) Marun colour Blouse (M.O.4) white colour inner petti coat (M.O.5) one hair clip (M.O.6) and one metal hand kapu (M.O.7) were found. He recovered all these material objects under a mahazar. P.W.1 and other family members who were present at that time, identified the dead body as that of the deceased, from out of these material objects, which were the personal belongings of the deceased. The body of the deceased was in a highly de-composed condition and it was beyond recognition.

9. P.W.25 conducted autopsy on the body of the deceased on the spot and she found the following ante mortem injuries on the body of the deceased:-

"1. Reddish brown contusion seen over right side of forehead and right frontal region skull - intact brain liquefied

2. Diffuse contusion reddish brown colour seen on the middle of all around the neck o/d contusion seen over muscles and soft tissues. Inward compression fracture of both horns of hyoid bone seen with surrounding areas of contusions. Teeth 8 in each quadrant. Stomach and intestines - highly decomposed. Liver, Kidney and brain preserved for chemical analysis. Uterus - de-composed. Genitalia found congested with evidence of bleeding (dried blood stains). Hymen absent and mud particles seen over the vaginal orifice. Smears and swabs could not be taken. Skull preserved for superimposition. Lone bone (femur) preserved for D.N.A test. Hairs and soil preserved for heavy metallic poisoning death 18 - 20 days prior to P.M."

10. Ex.P.33 is the post mortem certificate. P.W.28 forwarded the hyoid bone and viscera for chemical examination. He preserved the skull of the deceased for the purpose of super-imposition. The viscera report revealed that there was no poison in the internal organs of the deceased. The hyoid bone was intact. Since, the body was highly de-composed,

P.W.25, the Doctor could not remove the smear from her vagina. She gave final opinion that the deceased would have died out of manual strangulation and according to her, the death would have occurred 18 to 20 days before the date of post mortem.

11. On 23.06.2011, at Kannuthope bus stop, on the Banruti to Cuddalore road, at about 10.00 am, P.W.28, arrested A.3 in the presence of P.W.12 and another witness. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden a gold chain and one silver anklet as well as the Car bearing Registration No. TN 07 IQ 0331. In pursuance of the said disclosure statement, he took P.W.28 and another witness to his house and produced a silver anklet (one no.) (M.O.8) and the gold chain (M.O.12) and he also produced the Car from the backyard of the house of one Mr. Ayappan at Cuddalore. P.W.28 recovered all these material objects. On returning to the Police Station, he forwarded A.3 to the Court and handed over the material objects also to Court.

12. On 24.06.2011, at 11.15 am, at Neyveli Mandarakuppam Bus Stop, P.W.28 arrested A.5 in the presence of P.W.13 and another witness. On such arrest, he made a voluntary confession in which, he disclosed the place where he had hidden a pair of Titanic Gold Ear Studs (M.O.9). In pursuance of the said disclosure statement, he took P.W.28 and another witness to his house and produced M.O.9. On returning to the Police Station, P.W.28 forwarded A.5 to Court and handed over the Material Objects to the Court.

13. On 01.07.2011, A.4 surrendered before the learned Judicial Magistrate No.3, Cuddalore. P.W.28 took custody of A.4 on 07.07.2011 for three days as per the order of the Jurisdictional Magistrate. While in police custody, on 08.07.2011, in the presence of P.W.8 and another witness, he gave a voluntary confession in which, he disclosed the place where he had hidden a Titanic Gold Ear Stud with a drop. In pursuance of the same, he took P.W.28 and another witness to his grand father's residence and produced M.O.10 (1 pair of ear drops with Mani). On returning to the police station, he forwarded the accused to Court and handed over the material objects also to the Court.

14. P.W.28 collected the photographs of the deceased and through Court, he made arrangement for forwarding the skull of the deceased, for the purpose of super-imposition comparison with the photograph of the deceased. The super-imposition result revealed that the exhumed dead body was that of the deceased. P.W.28 examined many more witnesses and handed over the case diary to his successor.

15. P.W.29, the then Inspector of Police, who took the case for further investigation, on 22.08.2011, collected further

details from the Airtel Company, collected opinion from the Chemical Analyst and also examined the other witnesses. On completing investigation, he laid charge sheet against all the five accused.

16. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove of the case of the prosecution, as many as 29 witnesses were examined and 41 documents were exhibited besides 16 Material Objects.

17. Out of the said witnesses, P.W.1 is the brother of the deceased, who has stated that the deceased left her house at 8.00 am on the day of occurrence and in the evening, she did not return to the house, till 9.40 pm. He has further spoken about the complaint made by him. He has also stated that the cycle of the deceased found near the Telephone Exchange. P.W.2 is the co-worker of the deceased. She has stated that on the day of occurrence, the deceased left the work place at 9.30 pm. P.W.3 is the yet another co-worker of the deceased. She also stated so. P.W.4 is the owner of the Bakery, where the deceased was working. He has stated that on the date of occurrence, that was on 26.04.2011, the deceased left the Bakery around 9.15 pm to go to her house. P.W.5 has stated that he was running an un-registered chit and the deceased was a member of the chit. Usually, the deceased used to speak to him frequently in respect of the chit. According to him, his mobile number is 9788569522 and that of the deceased was 9965923503.

18. P.W.6 has stated that on 26.04.2011 at about 9.45 pm when he was returning to his house, near the Telephone Exchange, at Block No.21, a white colour omni van was parked and five people pushed a girl into the said car. When he enquired, they told him that she was their sister and out of difference of opinion, she was trying to go out of the house. Believing their words, he left the place. Those five persons took the girl in the van. He has further stated that later he came to know about the death of the deceased and then he informed the same to the Police.

19. P.W.7 has spoken about the observation mahazar and the rough sketch prepared at the place of occurrence. P.Ws.8,9 & 10 have spoken about the arrest of A.1, A.2 & A.4 and the disclosure statements made by them and the consequential recoveries. P.W.11, the Tahsildar has spoken about the examination of the dead body of the deceased. P.W.12 has spoken about the arrest of A.3 on 23.06.2011 and the disclosure statement made by him and the consequential recovery of material objects such as the gold chain and one silver anklet (M.Os.12 & 8). P.W.13 has spoken about the arrest of A.5 on 24.06.2011 at 12.00 pm and the disclosure

statement made by him and the consequential recovery of M.Os.9 & 10. P.W.14 is the relative of the deceased and she has spoken about the mobile number used by the deceased. P.W.15 is the Zonal Officer of the Airtel company and he has spoken about the mobile number used by the deceased and the cell phone IMEI number. The reports submitted by him have been marked as Exs.P.18 and P.30. According to him, the mobile number 9965923503 used by the deceased was used in the cell phone instrument IMEI No.355246034985470. Similarly, after the death of the deceased, the said cell phone instrument was used by the accused in his mobile No.8056321026.

20.P.W.16 has stated that on the date of occurrence, all the accused came to the petrol bunk and out of the five, two persons purchased petrol. He saw the other accused sitting inside the Car. P.W.17 is the person who arranged the Car for A.3, on his request. P.W.18 is the owner of the omni van bearing registration No.TN 07 IQ 0331. According to him, P.W.17 took the said Car for him once and returned the same after five days. P.W.19, the Doctor examined all the five accused and found that they were all potent and capable of performing sexual intercourse with a woman. P.W.20 also has spoken about the purchase of petrol by the accused persons. P.W.21 is the relative of the deceased and he has spoken about the mobile number used by the deceased. P.W.22, the then Sub Inspector of Police has spoken about the registration of F.I.R., in the present case. P.W.23 is the Executive of the Aircel Company and he has spoken about the mobile number used by the deceased. P.W.24 is the Scientific Officer of the Forensic Department who has spoken about the chemical examination conducted on the body of the deceased. According to her, the super imposition conducted on the body of the deceased revealed that the skull of the deceased tallied with the photograph of the deceased.

21.P.W.25 has spoken about the post mortem conducted by her on the body of the deceased and she gave final opinion regarding the cause of death of the deceased. P.W.26 has stated that he found a Maruthi Omni Van in question near the place where the dead body was later recovered and a TVS 50 was also parked there. He found five people at the place of occurrence and he has identified all the five accused in Court. P.W.27 is the Photographer. He has spoken about the photographs taken by him at the time of conducting autopsy on the body of the deceased. P.Ws.28 & 29 have spoken about the investigation done and the final report filed.

22.When the above incriminating materials were put to the accused, they denied the same as false. Further, on their side, they examined D.W.1-Sankar. He has stated that he was one of the signatories of the inquest report prepared by the Tahsildar and he has stated that he did not know anything

about the examination of the dead body of the deceased but, his signature alone was obtained. On the side of the accused, Ex.P.30 was marked as Ex.D.1. According to the said entry, the owner of the mobile No.9965923503 is one Mr.Veeramani and not the deceased and the said person was not examined by the prosecution. In short, their defence was a total denial.

23.Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the accused 1 to 5 are before this Court with these Criminal Appeals.

24.We have heard K.Gandhikumar, learned counsel appearing for A.1 and A.2;; Mr.R.Sankarasubbu, learned counsel for A.3; M/s.Om Sai Ram Associate, learned counsel for A.4 and Mr.P.G.Perumal Pandian, learned counsel for A.5 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

25.This is a case based on circumstantial evidence. The following are the circumstances, upon which, the prosecution makes reliance:-

(i)The deceased left her house for her job at 9.00 am, on 26.04.2011 in the usual course in her Bicycle.

(ii)The deceased left the Bakery on 26.04.2011 at around 9.15 pm and after informing P.W.2, a co-worker, she proceeded towards her house in her Bi-cycle.

(iii)The deceased was wearing silver anklets, gold chain, gold nose screw, titanic gold ear studs and she also had the mobile phone No.9965923503.

(iv)On 26.04.2011, at 9.45 pm, the deceased did not return to her house. The efforts of the family members to find her could not succeed.

(v)The Bicycle of the deceased was found near the telephone exchange on the night of 26.04.2011.

(vi)The mobile No.9965923503 was used by the deceased in the cell phone instrument having IMEI No.355246034985470. The said cell phone sim card was lastly used in the said instrument on 26.04.2011 at 9.31 pm near the cell phone tower at Prasar Bharathi. The deceased had received incoming call from the mobile No.919487379562. Thereafter, it was used by A.1 with his mobile No.8056321026.

(vii)A.1 was arrested on 12.06.2011 at 11.00 am. On such arrest, the personal belongings of the deceased viz., nose screw (M.O.11) and cell phone instrument bearing IMEI No.355246034985470 (M.O.13) with sim card No. 8056321026 were recovered.

(viii) On 12.06.2011, at 11.00 am, P.W.28 arrested A.2-Mr. Prakash and in pursuance of his disclosure statement, the personal belonging of the deceased viz., a silver anklet (one number) M.O.8 was recovered.

(ix) On 23.06.2011, at Kannuthope bus stop, on the Banruti to Cuddalore road, at about 10.00 am, A.3 was arrested. On his disclosure statement, the personal belongings of the deceased viz., a silver anklet (one number) M.O.8 and the gold chain (M.O.12) were recovered.

(x) On 01.07.2011, A.4 surrendered before the learned Judicial Magistrate No.3, Cuddalore. P.W.28 took custody of A.4 on 07.07.2011 for three days. While in police custody, on 08.07.2011, in pursuance of his disclosure statement, a Titanic Ear Stud with drop (M.O.9) of the deceased was recovered.

(xi) On 12.06.2011, at 11.00 am, P.W.28 arrested A.2-Mr. Prakash. In pursuance of his disclosure statement, a silver anklet (one number) M.O.8 belonging to the deceased was recovered.

(xii) On 24.06.2011, at 11.15 am, A.5 was arrested and in pursuance of his disclosure statement, a pair of Titanic Stud (M.O.9) belonging to the deceased was recovered.

(xiii) P.W.6-Manikandan had seen these accused at 9.45 pm on 26.04.2011 together in a Car when the deceased was taken by them.

(xiv) The dead body of the deceased was exhumed in pursuance of the disclosure statement of A.1 from the place identified by him.

26. Now, let us examine whether the prosecution has proved these circumstances beyond doubt. So far as the circumstance that the deceased left her house on 26.04.2011, for the whole day, she was in the Bakery and she returned from the Bakery at around 9.15 and 9.30 pm on the same day, have been spoken by P.Ws. 2, 3 and 4. Thus, the deceased was lastly found alive on 26.04.2011 between 9.15 and 9.30 pm on 26.04.2011. This circumstance is not seriously disputed. This, in our considered view, stands proved.

27. Thereafter, it is alleged that P.W.6 - Mr. Manikandan saw these accused near the Telephone Exchange at 9.45 pm on 26.04.2011. At that time, he found a girl in their company. When he enquired, the accused told that the girl was their sister and she was trying to leave them, on account of some misunderstanding and therefore, they were taking her with them. P.W.6, identified these accused in the Court during trial. But, we find it difficult to act upon the evidence of P.W.6 for more than one reason.

28.First of all, P.W.6 has not stated in his evidence that the girl who was in the company of the accused was the deceased. P.W.6 had not seen the deceased before that. So far as these accused are concerned, they were also not known already to P.W.6 and there was no test identification parade conducted. In the absence of any prior test identification parade, the identification made by P.W.6, for the first time in Court, who had not seen the accused prior to the occurrence, is inherently a weak piece of evidence and we find ourselves reluctant to act upon the same, as they do not draw corroboration from other sources. At any rate, we find that P.W.6 is not trust worthy and therefore, we reject his evidence.

29.Further, on the same day, during night, when P.W.1 and the other family members, went in search of the deceased, they found the Bicycle belonging to the deceased near the Telephone Exchange. This circumstance may not go to clinchingly prove the death of the deceased already.

30.The next circumstance is the mobile phone used by the deceased. P.W.1 has stated that the deceased was having the mobile No.9965923503 and from the evidence of P.W.4, the IMEI number of the cell phone instrument used by the deceased was 355246034985470. According to the evidence of P.W.5, the said IMEI cell phone instrument No.355246034985470 was used by A.1 subsequent to the missing of the deceased. This only gave a clue to the Police to suspect A.1. P.W.5 has also stated about the mobile number of the deceased. Absolutely, there is no explanation on the part of A.1 as to how he came to possess the cell phone instrument with IMEI No.355246034985470 which was all along used by the deceased. Ofcourse, as per Ex.D.1, the mobile No. 9965923503 stood in the name of one Mr.Veeramani and that the said person has not been examined. In our considered view, it does not affect the case in any manner because, as per the evidence available, the said mobile number was used only by the deceased.

31.The next circumstance is that A.1 was arrested on 12.06.2011 at 10.30 am near the Neyveli Central Bus stand in the presence of P.W.8 and another witness. On such arrest, he made a disclosure statement in which, he disclosed the place where, he had hidden the cell phone instrument IMEI No.355246034985470 (M.O.13) and nose screw (M.O.11) and thereafter, the same were recovered under the mahazar. The mobile No.8056321026 which was found in the cell phone instrument IMEI No.355246034985470 belongs to A.1. There is no reason to reject this part of evidence of P.W.8 and P.W.28. This would only go to prove that A.1 had removed the above cell phone instrument from the deceased, either before or after her death.

32. Yet another very vital circumstance is the place identified by A.1 from where the dead body of the deceased was exhumed. Only on 12.06.2011, the fact that the deceased was killed, came to light, for the first time, from the disclosure statement made by A.1 on his arrest. He disclosed the place where the dead body of the deceased had been buried. In pursuance of the same, he took the Police and the other witnesses to the said place and identified the same. In the presence of Doctor and other officials, when the dead body of the deceased was exhumed, it was found to be that of the deceased. The superimposition examination has clearly proved the identity of the deceased. Apart from that, the dress materials found on the dead body of the deceased also belonged to that of the deceased. The same had been confirmed by the family members of the deceased who were present at the said place. Thus, it has been clearly established by the prosecution that the dead body, which was exhumed from the place that was identified by A.1, was that of the deceased. A.1 has got no explanation whatsoever as to how he came to possess knowledge that the dead body was buried at that place if really he had not buried the same. Going by the natural human conduct and all the other circumstances, it is to be necessarily presumed that it was this accused/A.1 who killed the deceased and removed the jewelleries and the cell phone from the dead body and buried the dead body at the place in question. There is no reason to draw any inference which would be in-consistent with the above conclusion which we have arrived at.

33. From the foregoing discussions, it is crystal clear that all the proved circumstances dealt with above go to clinchingly prove the guilt of the first accused. Thus, the first appellant in CrI.A.No.776/2013 is liable to be punished for offences under Sections 302, 379, 201 r/w 302 I.P.C., and 366 I.P.C. Since, there is no evidence that the deceased had been raped, he is entitled to acquittal from the said charge. Since, there is no evidence that A.1 committed robbery. But, there is evidence to prove that he had committed theft. Therefore, he is liable to be punished for offence under Section 379 I.P.C. So far as sentences are concerned, the trial Court has imposed a just sentence and therefore, it requires no interference at the hands of this Court.

34. Now, turning to the case against A.2 to A.5, on the disclosure statement made by A.2, a silver anklet (M.O.8) was recovered and thereafter, on the disclosure statement made by A.3 one silver anklet (M.O.8) and the gold chain (M.O.12) were recovered. On the statement made by A.4, M.O.10 (1 pair of ear drops with Mani) were recovered. On the disclosure statement of A.5, a pair of Titanic Stud (M.O.9), was recovered. They are the personal belongings of the deceased which were worn by the deceased lastly. Absolutely, there is no explanation

from A.2 to A.5 regarding the possession of these stolen properties.

35. The learned counsel for the appellants/A.2 to A.5, would submit that since, the stolen properties were recovered long after the death of the deceased, it cannot be conclusively held that the murder was committed by these accused/A.2 to A.5. The learned counsel would submit that at the most, these accused could be convicted for offence under Section 411 I.P.C. In this regard, the learned counsel relies on a judgement of the Hon'ble Supreme Court in State of Rajasthan v. Talevar and another (2011 (11) SCC 666). In the said judgment, the Hon'ble Supreme Court has held as follows:-

"Thus, the sole question remains to be decided whether adverse inference could be drawn against the accused merely on the basis of recoveries made on their disclosure statements.

In *Gulab Chand v. State of M.P.*, AIR 1995 SC 1598, this Court upheld the conviction for committing dacoity on the basis of recovery of ornaments of the deceased from the possession of the person accused of robbery and murder immediately after the occurrence.

7.2. In *Geejaganda Somaiah v. State of Karnataka*, AIR 2007 SC 1355, this Court relied on the judgment in *Gulab Chand* (supra) and observed that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced.

It has been indicated by this Court in *Sanwat Khan v. State of Rajasthan*, AIR 1956 SC 54, that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances.

7.3. In *Tulsiram Kanu v. State*, AIR 1954 SC 1, this Court has indicated that the presumption permitted to be drawn

under [Section 114](#), Illustration (a) of the [Evidence Act 1872](#) has to be drawn under the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if a long period has expired in the interval, the presumption cannot be drawn having regard to the circumstances of the case.

7.4. In [Eerabhadrapa v. State of Karnataka](#) AIR 1983 SC 446, this Court held that the nature of the presumption under Illustration (a) of [Section 114](#) of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise. Each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according "as the stolen article is or is not calculated to pass readily from hand to hand".

If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed could not be said to be too long particularly when the appellant had been absconding during that period.

7.5. Following such a reasoning, in [Sanjay @ Kaka etc. etc. v. The State \(NCT of Delhi\)](#), AIR 2001 SC 979, this Court upheld the conviction by the trial court since disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. The Court found that the trial Court was justified in holding that the disclosure statements of the accused persons and huge recoveries from them at their instance by themselves was a sufficient circumstance on

the very next day of the incident which clearly went to show that the accused persons had joined hands to commit the offence of robbery.

Therefore, recent and unexplained possession of stolen properties will be taken to be presumptive evidence of the charge of murder as well.

7.6. In *Ronny Alias Ronald James Alwaris & Ors. v. State of Maharashtra*, AIR 1998 SC 1251, this Court held that apropos the recovery of articles belonging to the family of the deceased from the possession of the appellants soon after the robbery and the murder of the deceased remained unexplained by the accused, and so the presumption under Illustration (a) of *Section 114* of the Evidence Act would be attracted :

"It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would therefore, be that the appellants and no one else had committed the three murders and the robbery."

(See also: *Baijur v. State of Madhya Pradesh*, AIR 1978 SC 522;

and *Mukund alias Kundu Mishra & Anr. v. State of Madhya Pradesh*, AIR 1997 SC 2622).

7.7. Thus, the law on this issue can be summarized to the effect that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. It also depends on the nature of the property so recovered, whether it was likely to pass readily from

hand to hand. Suspicion should not take the place of proof."

36. In the said case, the Hon'ble Supreme Court has reiterated the legal position regarding the adverse inference to be drawn on the basis of the recoveries of the stolen properties, made on the disclosure statements of the accused. Although, in this case, theft and the murder have taken place in one and the same occurrence, it is not safe to draw an inference as against the accused 2 to 5 that they had committed the murder. The only possible inference is that they had received the stolen properties. Therefore, the appellants 2 to 5 are liable to be punished only for offence under Section 411 I.P.C., and they are entitled to be acquitted from all the other charges. For the said offence under Section 411 I.P.C., having regard to the aggravating and mitigating circumstances, we deem it appropriate to sentence the accused 2 to 5 to undergo rigorous imprisonment for three years and to pay a fine of Rs.25,000/- each.

37. In the result, the Criminal Appeals are allowed in part and the conviction and sentence imposed by the trial Court on the appellants/A.1 to A.5 are set aside and instead they are convicted and sentenced as follows:-

(i) The first appellant in CrI.A.No.776 of 2013, the first accused in this case is convicted for offence under Sections 302, 379, 201 r/w Section 302 I.P.C., and 366 I.P.C., and he is sentenced (i) for offence under Section 302 I.P.C., to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year; (ii) for offence under Section 379 I.P.C., to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year; (iii) for offence under Section 201 r/w 302 I.P.C., to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year and (iv) for offence under Section 366 I.P.C., he is sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for four weeks. The above sentences are ordered to run concurrently.

(ii) The second appellant in CrI.A.No.776 of 2013; the appellant in CrI.A.No.605/2013; the appellant in CrI.A.No.775/2013 and the appellant in CrI.A.No.519/2014 who are the accused 2 to 5 in this case are convicted for offence under Section 411 I.P.C., and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.25,000/- each in default to undergo rigorous imprisonment for one year each.

(iii) The trial Court is directed to take steps to secure

the presence of the accused 1 to 5 to commit them to prison to undergo the remaining period of sentence, if any. The fine amount, if any, already paid by each accused shall be adjusted towards the fine amount imposed in this judgment and the excess amount, if any, shall be refunded to the accused concerned.

(iv) The period of sentences already undergone by the appellants are directed to be set off under Section 428 Cr.P.C.

(v) It is further directed that the entire fine amount shall be paid by the trial Court to the parents of the deceased as compensation.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Sessions Judge, Mahila Court,
Cuddalore District.

2. The District Munsif Cum Judicial Magistrate,
Neyveli.

3. The Chief Judicial Magistrate,
Cuddalore (for information),

4. The Superintendent,
Central Prison, Cuddalore.

5. The Director General of Police,
Mylapore.

6. The Inspector of Police,
Neyveli, Thermal Police Station,
Cuddalore District.

7. The District Collector,
Cuddalore.

8. The Public Prosecutor,
Madras.

+1 cc to Mr. R. Sankarasubbu, Advocate, sr.8949

+1 cc to S.T. Raja, Advocate, sr.8970

CrI.A.Nos.776, 605, 775 of 2013 and
519 of 2014