

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

Crl.A.No.210 of 2017

Kennary Robert @ Kim .. Appellant/Single Accused
Vs.

State by the Inspector of Police,
S-15, Selaiyur Police Station,
Chennai - 73.
(Crime No.950/2015) .. Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of
Cr.P.C., praying to call for the entire records in connection
with S.C.No.229 of 2015 on the file of the learned Principal
Sessions Judge, Kancheepuram District at Chengalpattu, and set
aside the judgment dated 13.03.2017.

For Petitioner : Mr.V.Arunagiri

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl. Side)

JUDGMENT

सत्यमेव जयते

[Judgment of the Court was delivered by M.SATHYANARAYANAN,J.]

The sole accused, aggrieved by the conviction and sentence,
passed by the learned Principal Sessions Judge, Kancheepuram at
Chengalpet vide impugned judgment dated 13.03.2017 in S.C.No.229
of 2017, has preferred this Criminal Appeal.

2. The accused stood charged, tried, convicted and sentenced
as follows :

Charges	Tried for the offence	Conviction imposed on the appellant by the trial Court	Sentence imposed by the trial Court
Murder	Sec. 302 IPC	Sec. 302 IPC	Life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 3 months rigorous imprisonment.
Theft	Sec. 380 IPC	Sec. 379 IPC	Rigorous imprisonment for three years

The sentences were ordered to run concurrently and the period of imprisonment already undergone by the appellant/accused was ordered to be set off under Section 428 IPC.

3. Though the offence under Section 201 IPC is found place in the Alteration Report submitted by P.W.18, the trial Court found that the accused himself is the offender and as such, observed that, he cannot be punished for the offence under Section 201 IPC. However this Court, on going through the charges framed by the trial Court against the accused, found that no charge under Sec. 201 of IPC has been framed.

4. The facts leading to the disposal of this appeal, are narrated as follows :

4.1. The deceased namely Jarina Mariya was the daughter of P.W.5 and sister of P.W.6. The appellant/accused namely Kennary Robert alias Kim, S/o.Robert Babu, had developed relationship with the deceased and he used to get/receive money from the deceased for his expenses and accordingly, the sum had accumulated to the tune of Rs.1,80,000/-. Since the deceased pestered the appellant/accused to repay the debt amount, he took a decision to kill her. Accordingly, the appellant/accused asked the deceased to come to his sister's house at Door No.69/70, Janakpuri First Street, Rajparis Villa, Velacherry, Chennai and after her arrival to the said place for the purpose of receiving the money, the appellant/accused served her with "Tropicana Cool Drink" mixed with alcoholic drink "Vodka" and thereafter, murdered her by strangulating her neck with a nylon rope (M.O.10). The appellant/accused, after murdering Jarina Mariya, took her body in a Lancer Car bearing registration No.TN 07 AJ 3147 (M.O.17) and thrown the body into a dry canal in Thenugambal Nagar, First Street, near Plot No.8,9, Sharon Valley Apartments at about 5.30 a.m. on 5.4.2015 for the purpose of concealing the said heinous act.

4.2. The deceased Jarina Mariya, daughter of P.W.5 was stated to be working as a teacher in St.Bedes Anglo Indian School for the past 9 to 10 years. The appellant/accused is the son of P.W.5's aunt daughter. The date of occurrence i.e., on 04.4.2015, was a holiday and the deceased left her home at about 12.00 noon, informing her mother that she would attend the family function of her student and on her way back to home, she would visit the appellant/accused and get back the money. She was stated to have worn a yellow colour churidhar top, green colour churidhar pant and 10 sovereigns of gold ornaments [M.Os 1 to 7]. In addition to it, she also carried a mobile phone [M.O.8]. It appeared that the deceased did not return home till 3.30 p.m., and when P.W.5 tried to contact her daughter, she found that her mobile phone was switched off and thereafter, P.W.5 made a thorough search to find out the whereabouts of the deceased, and since it did not fructify any desirous effect, P.W.5 proceeded to Korukkupettai Police Station and lodged a complaint at about 14.30 hours before P.W.16, who was the then Station House Officer of the said Police Station.

4.3. P.W.16, Inspector of Police, Korukkupettai Police Station, upon receipt of complaint given by P.W.5, had registered a case in Crime No.392 of 2015 as "Woman Missing" and the FIR was marked as Ex.P11, and thereafter, forwarded a copy of the complaint to the jurisdictional Magistrate. P.W.16 had collected the phone numbers of the deceased including the suspected persons from P.W.5 and forwarded the said particulars to the Assistant Commissioner of Police, North Zone, Chennai, on the same day.

4.4. P.W.1, the Revenue Inspector of Madambakkam, Tambaram Taluk, Kancheepuram District has lodged a complaint under Ex.P1 on 05.4.2015, on the file of S-15, Selaiyur Police Station at around 12.00 noon stating among other things that on receipt of information from the Village Administrative Officer, Madambakkam, on 05.4.2015 at around 11.20 a.m. he reached the dry canal located near Plot No.8,9, Sharon Valley apartment, First Street, Thenugambal Nagar, Madambakkam at around 11.30 a.m. and found the body of a female aged about 32-35 years, in a condition of blood oozing out from her nostrils as well as from her ears and she was found dead in a suspicious circumstance.

4.5. P.W.18, the Station House Officer of Selaiyur Police Station, on receipt of complaint from P.W.1, registered a case in Crime No.950/2016 under Sec. 174 Cr.P.C. and registered an FIR [Ex.P13] and took up the investigation. He also forwarded the original complaint/FIR to the Tahsildar, Tambaram Taluk and the copies to the concerned jurisdictional officers. Thereafter, P.W.18 took up the case for investigation and visited the scene of occurrence at 13.00 hours on the same day

and prepared the Observation Mahazar [Ex.P2] in the presence of P.W.4 and another, and also prepared a Rough Sketch [Ex.P14]. P.W.18, in the presence of Panchayatars, had conducted inquest over the body of the deceased and prepared the Inquest Report and it was marked as Ex.P.15. During the course of investigation, P.W.18 sent the body of the deceased to the Chennai Royapettah Hospital for conducting post-mortem through P.W.13, Special Sub-Inspector of Police, Selaiyur Police Station.

4.6. P.W.15, Assistant Medical Professor [Legal], Government Royapettah Hospital, Chennai-600 014 had commenced the post-mortem on the body of the deceased on 06.4.2015 at about 2.15 p.m., connected with Crime No.950/2015 on the file of Selaiyur Police Station, upon request of the Inspector of Police, S-15, Selaiyur Police Station and it was also identified by P.W.13. P.W.15 has noted the following features:

"Appearance found at the Post-Mortem. Well-nourished female dead body, which lies on its back with bluish finger and toe nails following ante mortem injuries.

1.Complete faint transverse, irregular, assymmetrical, ligature abrasion 32x4-3cm encircling the neck; at the level of thyroid cartilage; the ligature abrasion was 5 cm below the chin and 5.5 cm above the suprasternal notch; on the right side of the neck, the ligature abrasion was 5 cm below the right mastoid process; on the left side of the neck, the ligature abrasion was 4 cm below the left mastoid process; On dissection of the neck: diffuse dark red bruising 4.5x3-1x1cm on the lower part of the right side of the neck involving right sternocleidomastoid muscle. Irregular incomplete fracture of base of superior horn of thyroid cartilage on right side with surrounding soft tissue contusion. Hyoid bone, were intact.

On further dissection : dark red scalp deep diffuse contusion on of 4x3x0.5cm on frontal region of the scalp. Diffuse thick film of subdural and subarachnoid haemorrhage all over the brain surface.

RIBS: Intact. HEART: Normal in Size, cut section empty. Valves and Coronaries:Patent. STOMACH: Empty with no specific smell; normal mucosa. INTESTINES: distended with gas Liver, Spleen and Kidneys: soft, normal in size, c/s:congested. BLADDER: Empty. UTERUS: Normal in size cut section empty. PELVIS AND SPINAL COLUMN: Intact. VISCERA SENT FOR CHEMICAL ANALYSIS."

P.W.15, after conclusion of the post-mortem, had opined that "the deceased would appear to have died of ASPHYXIA DUE TO

STRANGULATION OF THE NECK." and the Post-mortem Certificate is marked as Ex.P10.

4.7. P.W.18 continued with the investigation and recovered "dark blue colour nylon wires" marked as M.O.18 and M.O.19 and those articles were recovered under Form-95.

4.8. In the meantime, P.W.5, on seeing the photograph of her daughter's dead body appeared in the Thina Thanthi vernacular, went to Korukkupettai Police Station and based on the information furnished by the police officials, she went to Royapettah Hospital and identified her daughter's dead body and the material objects M.O.1 and M.O.2 and however, noted that no jewels owned by her daughter, were found on the body of her daughter. Thereafter, P.W.18 continued with the investigation and on 06.4.2015 at about 18.30 hours effected the arrest of the appellant/accused, and the accused came forward to give a confession statement and the same was recorded in the presence of P.W.12 and one Rajan, and the admissible portion of the confession statement is marked as Ex.P8. The appellant/accused was stated to have handed over the Lancer Car (M.O.17) and the same has been seized under Ex.P3/Mahazar and that apart, a cash of Rs.1,80,000/- (M.O.21 series) was also recovered under the cover of Ex.P4/ Seizer Mahazar, photographs of which was taken and was marked as M.O.12 series. The jewels owned by the deceased were marked as M.O.3 series, M.O.4, M.O.5, M.O.6 series and M.O.7 series and the mobile phone of the deceased was marked as M.O.8 and wrist watch as M.O.9 and all these articles were seized under the cover of Ex.P5/Mahazar.

5. P.W.18 brought the appellant/accused at the scene of occurrence viz., No.69/70, F2 Raj Paris Villa, Janakpuri First Street, Velacherry at about 10.30 p.m on 06.4.2015 and prepared the Ex.P16 rough sketch. The appellant/accused had voluntarily handed over M.O.10, nylon rope; M.O.11, liquor empty bottle; M.O.12 series, use and throw plastic tumbler, M.O.13, Tropicana cool drinks paper box, M.O.14 blood stained bed sheet under the cover of Ex.P7 Mahazar. P.W.18 also recorded M.O.15, blood stained mosaic tiles and M.O.16 ordinary mosaic tiles under the Mahazar in the presence of the witnesses and subsequently altered the Sections 302, 380 and 201 IPC and sent the alteration report Ex.P17. P.W.18 also re-examined the witnesses and recorded their statements and also sent Ex-P18 requisition letter to the Court for chemical analysis of the material objects.

6. P.W.14, Deputy Director (Biology) an Assistant Chemical Examiner on receipt of Item Nos.1 to 8, examined the same and given the Biological Report [Ex.P9] stating that blood has been detected on item Nos.2,4 and 5 and not on the other items.

7. P.W.18 also collected Ex.P19-Serology Report and Ex.P20, Toxicology Report and after completing the investigation, filed the final report against the appellant/accused, charging for commission of offence under Sections 301, 380 and 201 IPC and committed the case to the Court of Judicial Magistrate, Tambaram and it was taken on file in P.R.C.No.36/2015.

8. The Committal Court after summoning the accused, furnished him with documents along with charge sheet and committed the case to the Court of Principal Sessions Judge, Kancheepuram at Chengalpattu. The Court of Principal Sessions Judge, Kancheepuram at Chengalpattu, summoned the accused and framed the charges under Section 302, 380 and 201 IPC and questioned the accused. The appellant/accused pleaded not guilty to the charges framed. The prosecution in order to sustain their case, examined P.W.1 to P.W.18 and marked Ex.P1 to Ex.P20 and also marked material objects M.O.1 to M.O.20 series. The appellant/accused was questioned under Sec.313 (1) (b) Cr.P.C. with regard to the incriminating circumstances in the evidences rendered by the prosecution and he denied it false. On behalf of the appellant/accused, no oral evidence and documents were produced. The trial Court on consideration and documentary evidence and other materials of the prosecution, has convicted and sentenced the appellant for commission of offence under Section 302 and 380 IPC as stated above and did not punish him under Section 201 of IPC.

9. The appellant/accused challenging the impugned judgment passed by the trial Court in awarding conviction and sentence, has filed this appeal.

10. The learned counsel appearing for the appellant has drawn the attention of this Court to the oral and documentary evidences and would submit that the case of the prosecution rests upon circumstantial evidence and following circumstances are projected by the prosecution against the accused to connect him with the commission of crime:

- (1) call details
- (2) recovery of jewels and mobile phone of the deceased from the accused on the basis of his confession statement,
- (3) the accused has driven the car at odd hours on the fateful day.

11. It is the primordial submission of the learned counsel appearing for the appellant that insofar as the call details which the prosecution has brought before this Court Vide Ex.P12 is concerned, though according to the prosecution, the calls emanated from the said mobile number of the accused to the mobile number of the victim, that would not prove the appellant

is guilty and it would not lead to the inference that the appellant/accused has committed the murder of Jarina Mariya. It is the further submission of the learned counsel for the appellant/accused that mere recovery of incriminating articles and based on the admissible portion of the alleged confession statement given by the appellant/accused, would not be the sole circumstance to connect the appellant/accused to the commission of crime, especially, in which fact, when the body of the victim was recovered from a open place, a dry water body and not from the scene of occurrence. It is the further submission of the learned counsel for the appellant that though M.O.17, the Lancer Car, which was seized by the prosecution, was driven by the appellant on the date of occurrence, this would not lead to the inference that the accused has committed the crime. He has further has invited the attention of this Court to the oral evidence and would submit that though the watchman who was examined as P.W.10, had stated that a foul smell emanated from the Car M.O.17, and that he has also noted blood stain in the said car, but however the said car was not subjected to any chemical analysis by the prosecution and as such, merely because the appellant/accused had driven the car on that fateful day, it would not lead to the automatic inference that the appellant has committed a heinous crime of murdering the victim and further the case projected by the prosecution bristles with very many inconsistencies and infirmities and in any event, the judgment passed by the trial Court is erroneous and hence, prays for setting aside the order of conviction and sentence passed by the trial Court and prays for allowing the appeal and thereby acquitting the appellant/accused.

12. Per contra, the learned Government Advocate (Crl Side) appearing for the State has invited the attention of this Court to the testimonies of the prosecution witnesses as well as the exhibits and would submit that the prosecution by adducing trustworthy and cogent evidence, has connected the chain of circumstances, to the guilt on the part of the accused and the trial Court based on the proper appreciation of oral and documentary evidence, has rightly reached the conclusion that the appellant is guilty and has convicted and sentenced him for the offences committed and in the absence of any error or infirmity in the impugned order passed by the trial Court, prays for dismissal of this appeal.

13. This Court paid its attention and anxious consideration and also perused the materials, oral and other documentary evidence as well as the original records.

14. The following points arise for consideration: (a) whether the prosecution was successful in completing the chain of events which connect the appellant/accused to the commission of offence of murder (b) whether the reasons assigned by the

trial Court for convicting and sentencing the appellant/accused are sustainable.

Point No.1:

15. P.W.5 is the mother of the deceased and as per her cross-examination, her daughter Jarina Mariya was employed as a teacher in St.Bedes Anglo Indian School and was working there for nine to ten years and she also knew the accused/appellant, who is none other than the son of her aunt's daughter. P.W.5 would further depose that 04.04.2015 was a holiday and on that day, at about 12.00 noon, her daughter had left the home informing her that she is going out to attend the family function of her school child and on her return, she would collect the money from the accused/appellant that is in debt to her. At the time of leaving the house, the victim was wearing ten sovereigns of gold jewels and carried a mobile phone. It is further deposed by P.W.5 that since her daughter did not return home till 3.30 p.m., she tried to contact her over phone but there was no response and found that her mobile phone was in switched off condition. Thereafter, she made a thorough search and since nothing progressed effective, she went to the Korukkupet Police Station and lodged a complaint, based on which, Ext.P11, FIR was registered by P.W.16, the then Station House Officer of Korukkupet Police Station.

15.1. P.W.5 would further aver that on the next day, she went to the house of the accused and made enquiries about her daughter and found that the appellant/accused was perplexed and she was also informed by the watchman P.W.9, named Munusamy that the appellant/accused reached home at late hours the previous day and during the course of investigation when P.W.5 was enquired about the suspicious persons whom she suspects, she disclosed the name of the appellant/accused.

15.2. In the cross-examination of P.W.5, she would depose that with regard to the lending of the money by her daughter to the appellant on different occasions, it had aggregated to a sum of Rs.1,80,000/- and this was known to her only through her daughter. Further, at the time of lodging the complaint before the Korukkupet Police Station, she had stated that her daughter was missing; but, only on the next day, after she visited the accused house and enquired about her daughter, she went to the Korukkupet Police Station and wherein, she has expressed her suspicion about the appellant/accused. During her cross-examination she was questioned whether she has been falsely implicating the accused in commission of the said crime, on account of previous enmity, and she denied it and submitted that the appellant/accused was suspected to have involved in the crime.

16. P.W.6 was the brother of the deceased and the son of P.W.5 and his chief examination was in corroboration to that of

the chief examination of P.W.5. In the chief examination of P.W.6, he would depose that at the time of lodging the complaint before the Korukkupet Police Station, nothing was stated in the complaint about the suspicion on the accused/appellant and also about the money that was given to the appellant/accused by her sister. He would state that without his knowledge, her sister had given the money on various occasions to the appellant and on coming to know about it, when he enquired his sister, he was informed that the accused/appellant would return the said amount in due course of time.

17. P.W.7 is the maternal uncle of the deceased and he is the brother of P.W.5. and in his chief examination, he had deposed that the said incident that accused/appellant had received a sum of Rs.1,80,000/- from the deceased and never repaid it to her, and was known to him only on 04.04.2015 when his sister P.W.5 had contacted him to inform about missing of her daughter. He further deposed that no jewels were found on the victim and in order to grab the jewels from the victim, the appellant had strangled and murdered her. In his deposition he has stated that there was no previous enmity between the family of the deceased and the family of the accused. However, there was a small misunderstanding between both the families, some eight years before and later in the year 2013, both the families met in a marriage function of one of their relatives and they developed a cordial relationship between them. P.W.7 would further submit that even at the time of lodging the complaint before the Korukkupet Police Station, they did not state anything in writing about their suspicion against the appellant, but made an oral statement that they suspect the appellant/accused.

18. A perusal of Ex.P11, FIR dated 05.4.2016, registered by P.W.16, Station House Officer of Korukkupet Police Station would reveal that nothing has been stated about the suspicion developed by the above said witnesses against the appellant/accused. During the cross-examination of P.W.16, he had deposed that based on the complaint given by the complainant-P.W.5, FIR was registered in which it was recorded that the victim had informed P.W.5 that she is going to attend the family function of her school child, but on investigation, it was found that no such function had been held and he had also submitted that he did not examine any of the friends and relatives of the deceased and only on 05.4.2015, he made a requisition to the Deputy Commissioner, with regard to the call details of the mobile phone of the deceased, appellant/accused and yet another phone number and the said details were sent to the Inspector of Police, Selaiyur Police Station. Moreover, P.W.16 did not make any enquiry as to in whose name the mobile phone number was registered. Thus, it appears that the witnesses who are the relatives of the deceased viz., P.W.5,

P.W.6 and P.W.7 at the time of lodging the complaint on the file of the Korukupet Police Station did not raise any suspicion on the appellant/accused.

19. It is to be pointed out at this juncture that the motive for the commission of offence as projected by the prosecution is that the deceased demanded the accused to pay back the sum of Rs.1,80,000/- given to the accused and that he had also had a eye on the jewels of the deceased. It is a settled position of law that a case rests upon the circumstantial evidence, motive plays an important role and from the testimonies of the close relatives of the deceased, motive for commission of the murder on the part of the appellant/accused, have not been made out.

20. The prosecution has placed much reliance upon the testimonies of P.Ws.8 to 12, which accordingly proved them the suspicious manner in which the appellant/accused had acted upon in cleaning of the car and that the arrest of the accused and the recovery of the jewels and other articles from the house of the accused as per the admissible portion of the confession statement of the accused, and thereby, guilt on the part of the appellant/accused have been proved.

21. P.W.8, Munusamy alias Arumugham is the watchman of Vijayabackiam Apartments. In his chief examination, he had deposed that knew the accused, who was the resident of Flat No.101 of the said apartments and that he had M.O.17, a green colour car bearing registration No.TN07 AJ 3147. He further deposed that one year back, on a particular day at about 3.45 a.m., the appellant/accused came in that car and sounded the horn and in response to it, he opened the gate and thereafter, the accused went out and returned at about 5.30 a.m. On the following day, he came to know about the murder from the other watchman on duty, and two days later he was enquired by the police in connection with the crime. In his cross examination, P.W.8 had deposed that the car belonged to the accused/appellant's sister and on that fateful day, it was driven by the appellant/accused.

22. P.W.9, Munusamy is the another watchman employed in Vijayabackiam Apartments and during his chief examination, he had deposed that he knew the accused, who resided along with his mother in Flat No.101 of the said apartment and that he had M.O.17, a green colour car. On 05.4.2015, he attended his duty at 7.00 a.m. At about 10.00 a.m. on the said day, the relatives of the deceased arrived at the apartment and wanted him to locate the house of the appellant/accused and he was informed by P.W.5 that her daughter was missing and they all have come to enquire about it. He further deposed that the car

used by the appellant/accused was cleaned by P.W.10, one Lakshmanan on the fateful day at about 6.00 a.m.

23. P.W.10 is one Lakshmanan. In his chief examination, he had deposed that he is working as a Peon in Chennai Doordharsan and on every Sundays he used to clean the cars of the residents of Vijayabackiam Apartments on a monthly pay of Rs.300/- per car, including the car of the accused/appellant. In his deposition, he stated that he knew the appellant/accused, who is residing at Flat N0.101 of Vijabackiam Apartments and that he possessed a green colour car bearing registration No.TN07 AJ 3147 and that the said car was cleaned by him on every Sundays. On 05.4.2015, at about 9.00 a.m., the appellant/accused had approached him to clean his car and handed over the car key. When P.W.10 opened the car, he found a foul smell emanating from it, and he cleaned the car and when the same was informed to the appellant, he stated that he had vomited inside the car and this he told it to Munusamy-watchman. In his cross-examination, he had deposed that he found trace of vomit inside the car in red colour and he did not know whether it is a blood stain or not? However, when P.W.10 had informed it to the appellant at the time of handing over the key after washing the car about the foul smell that emanated from the car and the appellant in reply, had stated that he had vomited inside the car.

24. P.W.11 is the night watchman in an Apartments in Janakpuri Road, Ist Street, Velacherry. In his chief examination, he had deposed that the appellant/accused used to come to F-2 flat of the said apartments and the owner of this flat is a relative of the accused/appellant. The said flat remained vacant from 31.3.2015. On 05.4.2015 at about 4.00 a.m., when he felt somebody was moving towards him, he woke up and found the accused approaching him. The accused/appellant asked him whether he can get a tea for him and when P.W.10 answered in positive, the appellant/accused gave him the money to get a tea for him. On his return, P.W.11 found the appellant/accused was in a tensed condition and when he enquired him, the appellant/accused stated that he is having breathing problem and was advised to take a pill to subsidise it and after sometime, the appellant/accused took the car and left the place. Later, on Monday at about 9.00 p.m. the appellant/accused was brought by the police to the said flat and that P.W.11 was also examined by the police. He further deposed that immediately after the accused had left the flat, he did not notice anything on the staircase of the flat; however at about 6.00 a.m. on 05.4.2015, he saw spots of blood stain on certain places of the staircase. In the cross-examination of P.W.11, he had deposed that he found the car entering into the apartment at about 4.15 a.m. and thereafter he saw the car was parked outside the second gate entrance. In his deposition, he had stated that he never

saw the appellant/accused driving the car, but the car had left that place at about 4.45 a.m.

24. It is the case of the prosecution that the murder took place in a flat in the apartments in Janakpuri Road, I Street, Velacherry and thereafter the body was removed in the odd hours on 05.4.2015 and it was thrown near the dry water body.

25. The testimonies of the aforesaid witnesses have been analysed and discussed by this Court. But the prosecution failed to adduce any evidence as to the appellant/accused seen in the company of the deceased at any point from 04.4.2015 till the recovery of body and only based on the complaint given by the Revenue Inspector, Madambakkam, the registration of the case was done by P.W.18, Inspector of Selaiyur Police Station under Ext.P.13, FIR dated 05.4.2015. Thus the evidence let in by the prosecution, failed to make out the circumstance namely that the appellant/accused was found in the company of the deceased, while she was alive. The prosecution has placed heavy reliance upon the arrest, the confession of the accused and recovery of incriminating articles, based on the admissible portion of the confession given by the accused, to sustain their case and that apart no evidence is available as to the call details M.O.8-mobile phone.

26. P.W.12 is an electrician by avocation and after finishing his work at Santhoshpuram, he was waiting for a bus in Medavakkam Police Station on 06.4.2015 at 6.30 p.m. and at that time, the other witness, Rajan was getting down from an auto at the said bus stand and he also found some policemen were standing near the bus stop. At that time, M.O.17, a green colour Lancer Car bearing registration No.TN07 AJ 3147 came along Velacherry-West Tambaram road and the police had stopped the car and enquired the person who had driven the car and identified him as accused and on examination, the appellant/accused admitting the crime voluntarily came forward to give a confession statement and accordingly, the confession statement was prepared in the presence of the witnesses P.W.12 and one Rajan and thereafter, the car was recovered by the police under Mahazar Ext.P-3 and a sum of Rs.1,80,000/- was also recovered under the said Mahazar Ext.P4. The witnesses P.W.12 and one Rajan had signed in the confession statement and seizure mahazars viz., Ex.P.8, Ex.P3 and Ex.P4 respectively. P.W.12 had further deposed that the police officials visited the Vijayabackiam apartments along with the accused/appellant and the witnesses viz., Rajan and himself also accompanied them. After entering into his flat, the appellant/accused from the loft of his house, had produced the jewels and the mobile phone, which was recovered by the police and were marked as M.O.3 to 8 under seizure mahazar Ex.P5 and from there they visited the flat at No.69/70, Janakpuri I Floor, Velacherry and the

appellant/accused had identified the place of murder and the police had prepared the Observation Mahazar, marked as Ext.P6 and from that said place, the appellant/accused had produced the articles from the place occurrence and those articles were marked as M.Os.10 to 16 under the cover of Mahazar Ext.P7 and the admissible portion of the confession statement of the appellant/accused was marked as Ext.P8. In his cross-examination, P.W.12 would depose that a case has had been registered against him in Selaiyur Police Station in connection with the case of wordy quarrel and according to him, it is a false case lodged against him and he also denied that he is a stock-witness of the police.

27. Upon recovery of the incriminating articles from the house of the appellant/accused and on forwarding the same through P.W.13, the Sub-Inspector of Police, Selaiyur Police Station, P.W.14, the then Deputy Director, Forensic Department (Biology) had subjected eight items to chemical and forensic analysis and found blood stains only on item nos.2,4,5 and the chemical report was marked as Ext.P9.

28. In the judgment of Hon'ble Supreme Court in Yuvaraj Ambar Mohite Vs. State of Maharashtra reported in (2007) 2 SCC (Cri) 554, it was held that the effect of the deceased last seen together in the company of the deceased varies from case to case. In the present case on hand, this Court has already pointed out that there is absolutely no evidence as to the deceased seen in the company of the appellant/accused prior to the commission of offence of murder, and the prosecution has also placed heavy reliance upon the recovery of the incriminating articles, based on the admissible portion of the confession statement of appellant/accused to connect with the commission of the crime.

29. The testimony of P.W.15, who conducted the post-mortem on the body of the deceased coupled with the post-mortem report, marked as Ext.P1, would disclose that by using the nylon rope marked as M.O.10, the deceased died on account of ASPHYXIA.

30. But it is also the primordial duty of the prosecution to prove that especially in a case of circumstantial evidence, it was the appellant/accused who has committed the murder of the victim. It is a well settled position of law as held by the Hon'ble Supreme Court in very many decisions and considered in I.Ravindra Reddy Vs. Shaik Khader Masthan and Ors. reported in [(2008 (11) SCALE 128)], wherein it has been held that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other. The circumstances from which an inference to the guilt of the accused is drawn have to

be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence and further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally in-consistence with his innocence.

31. This Court, keeping in mind the settled position of law as per the ratio laid down by the Hon'ble Supreme Court in its various decisions, is of the considered view that the prosecution has failed to prove the guilty part of the appellant/accused beyond any reasonable doubt and as already pointed out, absolutely no evidence is let in by the prosecution as to the deceased seen in the company of the appellant/accused, prior to the commission of offence of murder. Though it is the case of the prosecution that the accused did not want to pay back the sum of Rs.1,80,000/- that he had got from the victim on various occasions and had an eye on the jewels worn by the deceased and the fact remains that a sum of Rs.1,80,000/- has been seized, pursuant to the alleged confession and the prosecution is also unable to explain as to the intention of the appellant/accused not to pay any amount that was lent by the deceased to the accused, though the recovery of the sum of Rs.1,80,000/- at the time of arrest. Therefore, the said recovery is highly doubtful.

32. No doubt that pursuant to the admissible portion of the confession given by the accused, incriminating articles namely M.O.1 to M.O.14 were recovered. In a decision rendered by a Division Bench of this Court in Rathinavel Vs. State, rep. by the Inspector of Police, Tiruchengode, [1996 (1) MWN (Cr.)], in paragraph 19 of the said judgment it is observed as follows :

"19. Even assuming for arguments sake that the arrest, confession and consequent recoveries effected at the instance of the accused had been duly proved and are having some connection with the crime, even then, such evidence alone, in the absence of any evidence aliunde is rather grossly insufficient and inadequate to come to the safe conclusion that the accused and he alone was responsible for committing the murders of deceased 1 and 2. Such an evidence, can, if at all, serve us a lending assurance factor, if there is any evidence aliunde pointing out the factum of the accused having a vital hand in the commission of murders of deceased 1 and 2. We have already found that there was no evidence-direct or circumstantial sufficient and adequate enough to point out that it was the hand of the accused that was responsible for the commission of the murders of deceased 1 and 2."

33. Thus, the prosecution has failed to prove the motive on the part of the appellant/accused to take out the life of Jarina Mariya and they have further failed to prove that the deceased was seen in the company of the appellant/accused and the witnesses namely P.Ws.8,9 and 10 did not depose anything as to the said act of crime. It is to be pointed out at this juncture that deposition of the first informant, the mother of the deceased, who was examined as P.W.5, that even at the time of lodging the complaint before the Korukupet Police Station, based on which Ext.P11, FIR came to be registered, did not make any statement with regard to the suspicion developed against the appellant/accused and so also P.W.6 and P.W.7, the brother and the maternal uncle of the deceased also creates a doubt as to motive on the part of the appellant/accused to commit the crime.

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34. It is also the well settled position of law that in the absence of any evidence or it is rather grossly insufficient to arrive at the conclusion that the appellant had committed the crime, the benefit of doubt shall enure in his favour. Hence, the conviction and sentence imposed by the Trial Court warrants interference.

35. In the result, this criminal appeal is allowed and the conviction and sentence imposed upon the appellant vide judgment dated 13.3.2017 in S.C.No.229 of 2015 on the file of the Principal District and Sessions Court, Chengalpattu are set aside and the appellant/accused is found not guilty of the charges and he is acquitted thereof and the fine amount paid if any, shall be refunded to the appellant/accused.

36. It is represented that the appellant/accused is in jail. The appellant/accused is directed to be released forthwith unless his detention/custody is required in connection with any other case.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To:

1.The Principal Sessions Judge,
Kancheepuram at Chengalpattu

2.The Inspector of Police,
S-15, Selaiyur Police Station,
Chennai - 73.

3.The Superintendent of Police,
Kanchipuram District.

4.The Judicial Magistrate, Tambaram

5.-do- Thro' The Chief Judicial Magistrate,
Kancheepuram District @ Chengalpattu.

6. The Superintendent, Central Prison,
Puzhal-I, Chennai.

7.The District Collector,
Kancheepuram @ Chengalpattu.

8.The Director General of Police,
Mylapore, Chennai.

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

+1cc to Mr.V.Arunagiri, Advocate in sr.no.73189

Crl.A.No.210 of 2017

MSM(CO)
NR 15/11/2017



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