

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2017  
PRONOUNCED ON : 15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

REFERRED TRIAL No.1 of 2017

and

Criminal Appeal Nos.362, 476, 369, 475 and 322 of 2017

REFERRED TRIAL No.1 of 2017:

State rep.by the Inspector of Police  
Palladam Police Station  
Tiruppur District .. Complainant

vs.

1.Selvam @ Koolai Selvam @ Subramaniam

2.Rangaraj .. Accused (A1 and  
A5)

CRIMINAL APPEAL Nos.362, 476, 369, 475 and 322 of 2017:

Selvam @ Koolai Selvam @ Subramaniam  
.. Appellant in Cr1.A.No.362/2017/A1  
Deivasigamani .. Appellant in Cr1.A.No.476/2017/A2

Nagaraj .. Appellant in Cr1.A.No.369/2017/A3

Anandan @ Anantham .. Appellant in Cr1.A.No.475/2017/A4

Rangaraj .. Appellant in Cr1.A.No.322/2017/A5

vs.

State rep.by the Inspector of Police  
Palladam Police Station  
Tiruppur District.

.. Respondent in all the appeals

REFERRED TRIAL numbered under Section 366 Cr.P.C. to go  
into the question of confirmation of the death sentence awarded

by the Mahila Court (Fast Track Court), Tiruppur in Spl.S.C.No.1 of 2016 on 15.05.2017.

Criminal Appeal No.362 of 2017 filed under Section 374(2) Cr.P.C. to call for the records made in Spl.S.C.No.1 of 2016 dated 15.05.2017 on the file of the Mahila Court (Fast Track Court), Tiruppur and set aside the same as illegal.

Criminal Appeal No.476 of 2017 filed under Section 374(2) Cr.P.C. to set aside the judgment, conviction and sentence dated 15.05.2017 passed in Spl.S.C.No.1 of 2016 by the Mahila Court (Fast Track Court) at Tiruppur.

Criminal Appeal No.369 of 2017 filed under Section 374(2) Cr.P.C. to set aside the judgment dated 15.05.2017 made in S.C.No.1 of 2016 passed by the II Additional District and Sessions Judge, (Fast Track Mahila Court), Tiruppur, convicting the appellant.

Criminal Appeal No.475 of 2017 filed under Section 374(2) Cr.P.C. to set aside the judgment passed in Spl.S.C.No.1 of 2016 on the file of Magalir Needimandram (Fast Track Mahila Court), Tiruppur, dated 15.05.2017.

Criminal Appeal No.322 of 2017 filed under Section 374(2) Cr.P.C. against the conviction and sentence imposed upon the accused by the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur District in Spl.S.C.No.1 of 2016 dated 15.05.2017 for the offences under Section 120(B) IPC and sentenced to undergo 6 months Rigorous Imprisonment and 302 of IPC sentenced to death and 5(m) r/w 6 of POCSO Act and sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5000/- in default sentenced to undergo 1 year rigorous imprisonment.

IN REFERRED TRIAL NO.1/2017:

For complainant : Mr.R.Rajarathinam  
Public Prosecutor  
Assisted by  
Mr.C.Emalias, Addl.Public Prosecutor  
For A1 : Mr. R.Sankarasubbu  
For A5 : Mr.V.Gopinath, Senior Counsel  
for Mr.L.Mahendran

IN CRIMINAL APPEALS:

For A1 : Mr.R.Sankarasubbu  
(Cr1.A.No.362/2017)  
For A2 : Mr.C.D.Sugumar  
(Cr1.A.No.476/2017)

For A3 : Mr.S.N.Arunkumar  
(Crl.A.No.369/2017)  
For A4 : Mr.T.Muruganantham  
(Crl.A.No.475/2017)  
For A5 : Mr.V.Gopinath,  
(Crl.A.No.322/2017)

Senior Counsel  
for Mr.L.Mahendran

For respondent : Mr.R.Rajarathinam,  
Public Prosecutor  
Assisted by  
Mr.C.Emalias,  
Addl.Public Prosecutor

### C O M M O N J U D G M E N T

P.N.PRAKASH, J.

The Reference, R.T.No.1 of 2017 has been made by the learned Mahila Judge, [Fast Track Court] Tiruppur, under Section 366 of the Code of Criminal Procedure, seeking confirmation of the capital punishment imposed upon Selvam [A1] and Rangaraj [A5] by judgment dated 15.05.2017 in Spl.S.C.No.1 of 2016. Selvam [A1] and Rangaraj [A5] have independently preferred Crl.A.Nos.362 of 2017 and 322 of 2017 respectively, challenging their conviction and sentences. The co-accused in this case, viz., Deivasigamany [A2], Nagaraj [A3] and Anandan [A4], who were awarded life sentence in the same trial, have also filed independent criminal appeals in Crl.A.Nos.476 of 2017, 369 of 2017 and 475 of 2017 respectively, challenging their conviction and sentences.

2. The case of the prosecution, culled out from the materials on record, is as follows:

[a] Selvam [A1] has a weaving unit in his residential campus in Maanikapuram Road, Palladam, in which, Thangavel [D1] was employed. During the employment, Thangavel [D1] had borrowed Rs.60,000/- from Selvam [A1] some time in the year 2014 as advance. He worked in the weaving unit for about six months and returned only Rs.8,000/- to Selvam [A1] and a sum of Rs.52,000/- was due. Selvam [A1] was frequently pestering Thangavel [D1] to return the amount and there were quarrels between them, on account of which, Thangavel [D1] lodged a complaint dated 19.12.2014 [Ex.P.41] to the Inspector of Police, Palladam Police Station, which was enquired into by Palanisamy [P.W.35], Sub Inspector of Police, Palladam Police Station, who registered a petition enquiry in CSR No.652 of 2014 [Ex.P.39] and called Selvam [A1] for enquiry. In the enquiry, Thangavel [D1] agreed to repay the balance of Rs.52,000/- before

20.02.2015. The police obtained a letter [Ex.P.40] from Selvam [A1], in which, he agreed to wait till February 2015 and further undertook not to harass Thangavel [D1]. An undertaking letter dated 19.12.2014 [Ex.P.33] was also obtained from Thangavel [D1], which was countersigned by his friend Mani [P.W.25] and Palanisamy [not examined]. Based on the aforesaid undertaking given by Thangavel [D1] and Selvam [A1], the petition enquiry in CSR No.652 of 2014 was closed by the police.

[b] Thangavel [D1] did not return the money as undertook by him and therefore, Selvam [A1] often met Thangavel [D1] and demanded return of the money.

[c] On 05.10.2015, around 6.45 in the morning, when Thangavel [D1] and his wife, Tamilselvi [P.W.1] were standing with their daughter Mahalakshmi [D2] waiting for the school van to pick Mahalakshmi [D2] up, Selvam [A1] met him and warned him of dire consequences, if he does not return the money by that evening. According to the prosecution, this was witnessed by Tamilselvi [P.W.1] and Azhagumalai [P.W.3], a neighbour.

[d] On the same day, i.e. on 05.10.2015, in the evening around 6.00 p.m., Mahalakshmi [D2] wanted to purchase brown paper rolls for wrapping her books and so, Thangavel [D1] took her by his TVS XL Super bearing Registration No.TN-42-B-6931 to Palladam market. Thereafter, the father and daughter did not return home. Tamilselvi [P.W.1] panicked and started calling her relatives in order to find out if her husband and daughter had come to their place. Baby [P.W.16], sister of Tamilselvi [P.W.1] and other relatives came to Tamilselvi's house and all of them started looking out for the missing duo, but to no avail.

[e] On 06.10.2015, Tamilselvi [P.W.1] went to the Palladam Police Station and lodged a complaint around 8.45 a.m. stating that her husband and daughter went to the market around 6.00 p.m., the previous day by TVS XL Super bearing Registration No.TN-42-B-6931 for buying book cover, but did not return. In the complaint, she has stated about the incident that took place at 6.45 a.m. on 05.10.2015 and suspected the involvement of Selvam [A1] in the disappearance of the duo. The said complaint is Ex.P.1.

[f] Based on the complaint, Pachayappan [P.W.36], Sub Inspector of Police, Palladam Police Station, registered an FIR in Cr.No.1178 of 2015 [Ex.P.42] on 06.10.2015 at 8.45 a.m. for an offence under Section 365 IPC against Selvam [A1]. The printed FIR [Ex.P.42] and the complaint [Ex.P.1] reached the jurisdictional Magistrate at 3.00 p.m. on 06.10.2015, as could be seen from the endorsement found thereon.

[g] Investigation of the case was taken over by Thangaraj [P.W.59], Inspector of Police, Palladam Police Station, who recorded the statement of Tamilselvi [P.W.1] from 9.00 a.m. to 9.30 a.m. on 06.10.2015. In the course of investigation, he recorded the statement of Haridas [P.W.2] and his wife Latha [not examined] around 9.45 a.m. on 06.10.2015, from whom, he learnt that Selvam [A1] and three others had abducted Thangavel [D1] and Mahalakshmi [D2] around 6.45 p.m. the previous day. According to him, based on the information provided by Haridas [P.W.2] and his wife Latha [not examined], he prepared an Observation Mahazar [Ex.P.3] and a Rough Sketch [Ex.P.86] in the presence of Senthil Kumar [P.W.4] and Palanisamy [not examined].

[h] At the outset, we would state here that Observation Mahazar [Ex.P.3] and Rough Sketch [Ex.P.86] are inadmissible in evidence in view of Section 162 Cr.P.C., as they have been prepared based on the statement of Haridas [P.W.2].

[i] As the Investigating Officer was proceeding with the investigation, he received information from the adjoining Mangalam Police Station that they have found a body of a male person within their jurisdiction and therefore, he made arrangements to send Tamilselvi [P.W.1] there.

Now the scene shifts to Mangalam Police Station limits, which is about 12 kms. from Palladam Police Station.

3. One Chandrasekaran [P.W.17], who was going for his morning walk around 06.10.2015, found a half burnt body on the road side near No.63 Velampalayam Village at 6.30 a.m. and informed the same to his friend Ganesan [not examined], who, in turn, informed Marimuthu [not examined], the Village Assistant. On the information provided by Marimuthu [not examined] the Village Assistant, Arumugam [P.W.15], the Village Administrative Officer went to the spot and thereafter, went to the Mangalam Police Station around 8.30 a.m. and lodged a written complaint [Ex.P.25], based on which, Ganesan [P.W.41], Sub Inspector of Police, Mangalam Police Station registered an FIR [Ex.P.43] in Cr.No.696 of 2015 on 06.10.2015 around 8.30 a.m. under Sections 302 and 201 IPC against unknown accused.

[a] Thangavel [P.W.56], Inspector of Police, Mangalam Police Station, took over investigation of the case in Mangalam Police Station Cr.No.696 of 2015 and went to the spot where the body was found around 9.15 a.m. and in the presence of witnesses Chandrasekaran [P.W.17] and Ganesan [P.W.41], prepared a Rough Sketch [Ex.P.73] and Observation Mahazar [Ex.P.26]. The FIR [Ex.P.43] in Mangalam Police Station Cr.No.696 of 2015 and the complaint in original [Ex.P.25] were received by the

jurisdictional Magistrate at 10 a.m. on 06.10.2015, as could be seen from the endorsement found thereon.

[b] On the request of the police, Thangavel [P.W.48], Assistant Director, Tamil Nadu Forensic Science Laboratory, visited the place where the body was found around 12.30 hours on 06.10.2015 and helped the police in seizing clue materials from the place. Thangavel [P.W.48], in his evidence and in his report [Ex.P.59] has stated as follows:

"OBSERVATIONS:

01. The dead body was found lying nearby road side ditch facing towards sky.

02. Face bears totally burnt symptoms and beyond recognizable stage.

03. Front side of the body bears extensive burnt symptoms. Anus region also bears burnt symptoms.

04. Back side of upper arms bear same above symptoms.

05. Surrounding space of the body was found in order, no disturbance was seen.

06. The smell of (under body lying) earth, on which the body found with usage of enormous amount of inflammable liquid (Petrol like odour)

07. Tailoring mark "tp\$a; gy;ylk;" seen partially on the burnt shirt portion. Label also preserved.

OPINION MADE:

01. Absence of disturbance in the surrounding where the deceased was found lying indicate that no struggle happened.

02. The road side SOC gives a lead that the deceased was brought from somewhere else and set fire at the place.

03. It can be clearly evidenced that the culprits had intention to deface the victim in order to burn his identity.

04. Blood stained earth, control earth samples were sent to RFSL, Coimbatore.

05. To find inflammable material used, burn cloth pieces and earth samples were collected and packed in air tight container and sent to FSD, Chennai for analysis.

06. One key bunch and one TVS moped key which were found inside of the partially burnt trunk pocket, were also preserved."

[c] The Investigating Officer requisitioned the services of Arulmurugan [P.W.49], Police Photographer and took photographs of the body [Ex.P.61] and the Compact Disc was marked as M.O.47.

[d] In the mean time, Tamilselvi [P.W.1] reached the spot and she identified the dead person as her husband Thangavel [D1]. The body was half burnt, despite which, Tamilselvi [P.W.1] was able to identify the body based on the apparel [M.O.1], lungi [M.O.2], Shirt [M.O.3] and the presence of plantar wart in the foot sole. The house keys [M.O.4] and two-wheeler key [M.O.5] were found near the body.

[e] Thangavel [P.W.56], Inspector of Police, prepared a Seizure Mahazar [Ex.P.27] in the presence of Chandrasekaran [P.W.17] and Ganesan [not examined] and seized the apparel; the keys found nearby; the mud with and without blood stain [M.Os.38 and 37]; the ash [M.O.39] and mud with ash [M.O.40]. The seized articles were sent to the Judicial Magistrate No.II, Tiruppur.

[f] Thangavel [P.W.56] Inspector of Police, prepared a Rough Sketch [Ex.P.73] and also conducted inquest over the body in the presence of Tamilselvi [P.W.1] and others and prepared the inquest report [Ex.P.74]. He despatched the body of Thangavel [D1] with a requisition for post-mortem to the Government Medical College Hospital, Coimbatore through Murali [P.W.38], Head Constable and Anandan [not examined]. He examined some witnesses and thereafter, the case in Mangalam Police Station Cr.No.696 of 2015 was transferred, on the order of the Superintendent of Police, to the Palladam Police Station, where, the case in Cr.No.1178 of 2015 was under investigation by Thangaraj [P.W.59].

4. Dr.Peranandam [P.W.45] conducted autopsy on the body of Thangavel [D1] at the Government Medical College Hospital, Coimbatore and issued the Post-mortem Certificate [Ex.P.49] and the Final Opinion [Ex.P.50]. In his evidence and in the Post-mortem Certificate [Ex.P.49], he stated that there were Dermo epidermal burns all over the body, except on the right sole and on both scapular. In Dr.Peranandam's [P.W.45] opinion, it was stated as follows:

"The deceased would appear to have died of HEAD INJURY. The death would have occurred 12 to 14 hours prior to body kept in cold storage room."

The viscera and the blood were sent to the Forensic Sciences Laboratory for examination and report.

5. Srinivasan [P.W.58] the Deputy Director (Serology) and Assistant Chemical Examiner to Government, in his evidence and in his report [Ex.P.83], has stated that blood grouping was done and determined that it belonged to blood group 'B'. Thus, from the evidence of Dr.Peranandam [P.W.45] and from the evidence of Srinivasan [P.W.58], it is seen that Thangavel's [D1] blood group was "B" and that Thangavel [D1] had died of head injuries sustained by him in an attack by somebody and thereafter, his body was burnt.

Now, we shift to the happenings in Vadavalli Police Station limits in Coimbatore:

6. On 06.10.2015 around 6.00 a.m., Dhanalakshmi [P.W.18], the Village Administrative Officer of Veerakerala Village, received information from the Village Assistant that a body of a girl has been found near VVK Nagar layout in Vadavalli-Pongaaliyur Road. She proceeded to the spot around 6.30 a.m. and found a half burnt body of a girl in the spot and therefore, she went to Vadavalli Police Station and lodged a written complaint [Ex.P.28], based on which, Jaganathan [P.W.32], Sub Inspector of Police, Vadavalli Police Station, registered an FIR in Cr.No.290 of 2015 [Ex.P.38] on 06.10.2015 at 7.00 a.m. under Sections 302 and 201 IPC against unknown accused. The original complaint [Ex.P.28] and the printed FIR [Ex.P.38] reached the jurisdictional Magistrate at 5.00 p.m. on 06.10.2015, as could be seen from the endorsement found thereon.

[a] Investigation of the case in Vadavalli Police Station Cr.No.290 of 2015 was taken over by Subramaniam [P.W.57], Inspector of Police, Vadavalli Police Station, who proceeded to the place and with the help of Vijay Anand [P.W.29], police photographer, took photographs of the body in the presence of Chandrasekaran [P.W.17] and Arun Kumar [P.W.20]. He prepared the Observation Mahazar [Ex.P.29] and the Rough Sketch [Ex.P.76]. He conducted inquest over the body from 9.00 a.m. to 11.00 a.m. in the presence of panchayatdars and the Inquest Report is Ex.P.77.

[b] Subramaniam [P.W.57] seized the various items found on the body of the deceased [D2], viz., M.Os.7 to 12 under cover of a Mahazar [Ex.P.30] in the presence of Arun Kumar [P.W.20] and

Dhanasekar [not examined]. From near the body of the deceased, he seized soil with and without blood [M.Os.41 and 42] and also blood- stained iron rod [M.O.43] by Mahazar [Ex.P.31] in the presence of Arun Kumar [P.W.20] and Dhanasekar [not examined]. After the inquest, he sent the body through Vijay Anand [P.W.29] Head Constable and Maheshwari [P.W.30], Woman Police Constable, to the Coimbatore Medical College Hospital for post-mortem. The information relating to the detection of an unidentified body of a young girl was sent to all the Police Stations, pursuant to which, Palladam Police brought Tamilselvi [P.W.1] to the Coimbatore Medical College Hospital. Tamilselvi [P.W.1] identified the body as that of her daughter Mahalakshmi.

7. Dr.Jayasingh [P.W.53] performed autopsy on the body of Mahalakshmi [D2] and in his evidence and in the Post-mortem Report [Ex.P.65], he has noted Dermo epidermal burns all over the body, except on both soles, back of chest, back of abdomen and occipital region. He has recorded a reddish contusion on the lateral aspect of labium minora. The Final Opinion given by him is as under:

"The deceased would appear to have died of BURNS associated with HEAD INJURY. The death would have occurred 12 to 24 hours prior to cold storage period.

Note: The deceased has the evidence of recent forcible sexual act before death."

8. Blood sample that was drawn from the body of Mahalakshmi (D2) was sent to the Serologist for grouping and M.Srinivasan [P.W.58], Deputy Director (Serology) and Assistant Chemical Examiner to Government, in his evidence and in his report dated 07.01.2016 [Ex.P.84], has opined that the blood group was "O". Thus, from the evidence of Dr.Jayasingh [P.W.53] and Srinivasan [P.W.58], it is clear that Mahalakshmi [D2] was subjected to sexual abuse and was also assaulted on the head and burnt. It has also been established that her blood group was "O". The iron rod [M.O.43] that was seized under cover of Mahazar [Ex.P.31] was sent through the Court to the Serologist for determining the blood group. M.Srinivasan [P.W.58], in his evidence and in his report dated 07.01.2016 [Ex.P.82], has stated that the blood stains found on the iron rod [M.O.43] is human and is of "O" group.

Now, we go back to Palladam, where Thangaraj [P.W.59], Inspector of Police, was on the search for Selvam [A1].

9. There was no significant breakthrough on 06.10.2015, except the discovery of two bodies, one at No.63 Velampalayam Village, Mangalam and another at VVK Nagar layout in Vadavalli

Pongaaliyur Road. Breakthrough came on 07.10.2015, when Selvam [A1] surrendered before the police at 8.00 a.m. and was arrested. Thangaraj [P.W.59] interrogated Selvam [A1] and recorded his statement. The offence under Section 365 IPC in Cr.No.1178 of 2015 was altered to one under Sections 120-B, 363, 364, 365, 376, 302 and 201 IPC and Sections 5 and 6 of the Protection of Children from Sexual Offences Act [for short " the POCSO" Act].

10. Selvam [A1] provided certain information, which were hitherto unknown to the police, leading to the discovery of the following facts, which are relevant under Section 27 of the Evidence Act:

[a] About Deivasigamani [A2], Nagaraj [A3], Anandan [A4] and Rangaraj [A5] and Bahadeeshwari [A6].

[b] Showed the place in his weaving unit, where Thangavel [D1] was assaulted. The Investigating Officer requisitioned the services of Thangavel [P.W.48], Assistant Director, Tamil Nadu Forensic Sciences Department for assistance and recovered blood-stained scrappings from the wall [M.O.13]; scrapping without blood stains [M.O.14]; Alto car [M.O.25]; spectacles of Thangavel [M.O.16]; 5 rolls of brown wrapper sheet [M.O.17]; blood stained rexin from the car [M.O.18]; Rexin without blood stain [M.O.19]; 35 litre petrol can [M.O.20]; purple colour half shirt [M.O.21] and lungi [M.O.21] under the cover of Mahazar [Ex.P.7] in the presence of Kuppuraj [P.W.5] and Ramamurthy [not examined]. As stated above, Thangavel [P.W.48] Assistant Director of Tamil Nadu Forensic Science Laboratory helped the Investigating Officer to collect clue materials, especially, the blood-stained piece of rexin [M.O.18] from the Alto car and a portion of the floor mat [M.O.45] from the Alto car, as it was found to have petrol odour. He assisted the Investigating Officer to swipe the inner portion of the 35 litre plastic container with cotton swab in order to find out the nature of the fuel. S.Rajaram [P.W.54], Scientific Officer (Analyst), in his evidence before the Court and in his Report [Ex.P.67], has stated that he examined the seized portion of the mat [M.O.45] and the cotton swipe swab [M.O.23] and detected petrol in the said items.

[c] On the showing of Selvam [A1], the TVS XL Super motorcycle bearing Registration No.TN-42-B-6931 belonging to Thangavel [D1] was fished out from the well of Palanisamy [P.W.13] with the help of Vivekanandan [P.W.33], Station Officer, Fire Services Department and by Karthick Thangam [P.W.34], Sub Inspector of Police, Palladam Police Station, under the cover of Mahazar [Ex.P.24], attested by Velumani [P.W.12].

[d] The petrol bunk from where petrol was purchased that was owned by Ramesh [P.W.8] and the CCTV footages were taken therefrom in a Compact Disc [M.O.35].

11. On the identification by Selvam [A1], the Investigating Officer intercepted Deivasigamani [A2] while he was coming by his bike Hero Honda Passion bearing Registration No.TN-37-AB-4732 [M.O.27] and seized the bike under the cover of Mahazar [Ex.P.8] in the presence of Kuppuraj [P.W.5]. Thereafter, the Investigating Officer recorded the statement of Deivasigamani [A2] and from the information supplied by him, a hose pipe [M.O.28] was recovered from a bush under Mahazar [Ex.P.10] in the presence of Kuppuraj [P.W.5].

12. On 07.10.2015, around 15.30 hours, on being identified by Selvam [A1], the Investigating Officer arrested Nagaraj [A3] while he was coming in a motorbike bearing Registration No.TN-42-V-1084 [M.O.29], which was seized under the cover of Mahazar [Ex.P.12] in the presence of Kuppuraj [P.W.5].

13. Similarly, on the showing of Selvam [A1], Anandan [A4] was arrested by the Investigating Officer on 07.10.2015 around the same time and the motorbike bearing Registration No.TN-38-VK-0981 [M.O.31] was seized under the cover of Mahazar [Ex.P.14] in the presence of Kuppuraj [P.W.5].

14. From the statements of Nagaraj [A3] and Anandan [A4], the Investigating Officer recovered three wooden weaver sticks, of which, one was found to contain blood stains, under the cover of Mahazar [Ex.P.13], in the presence of Kuppuraj [P.W.5]. The stick with blood stain was sent to the Serologist, Tamil Nadu Forensic Sciences Laboratory, through the Court and M.Srinivasan [P.W.58], in his evidence and in his Report [Ex.P.81], has stated that the blood found in the stick is human blood of "B" group.

15. Selvam [A1] took the Investigating Officer and showed the house of Rangaraj [A5] and Rangaraj [A5] was arrested at 1.15 a.m. on 08.10.2015 and his statement was recorded. On the information provided by Rangaraj [A5], a blood stained shirt [M.O.33] was recovered under the cover of Mahazar [Ex.P.19] in the presence of Chinnasamy [P.W.6].

16. Selvam [A1], Deivasigamani [A2], Nagaraj [A3], Anandan [A4] and Rangaraj [A5] were produced before the Special Judge for POCSO cases, Mahila Court, Tiruppur, on 08.10.2015 at 7.55 a.m. and they were remanded to judicial custody.

17. The Investigating Officer arrested Bahadeeshwari [A6], wife of Selvam [A1] at 10.00 a.m. on 08.10.2015 and recorded her statement. From the information provided by her, a blood-stained lungi piece [M.O.34] was recovered under the cover of Mahazar [Ex.P.21] in the presence of Karunanidhi [P.W.7]. Bahadeeshwari [A6] was produced before the Special Judge for POCSO cases, Mahila Court, Tiruppur, on 08.10.2015 at 6.25 p.m. and she was remanded to custody.

18. On 08.10.2015, the Investigating Officer took possession of CCTV footages from the petrol bunk of L.Ramesh [P.W.8], S/o Loganathan with the help of P.Ramesh [P.W.9], S/o Pitchandi, a CCTV Services Technician and viewed the same and had it recorded in a Compact Disc [M.O.35] under the cover of Mahazar [Ex.P.23] in the presence of Mubarak [P.W.10], an employee of the petrol bunk and Matheswaran [not examined]. From the CCTV footages, five still photographs were taken [Ex.P.22 series].

TEST IDENTIFICATION PARADE:

19. On the requisition made by the Investigating Officer, Velusamy [P.W.50], Judicial Magistrate, conducted Test Identification Parade on 16.10.2015 at the Central Prison, Coimbatore. Witnesses Latha [not examined], Haridas [P.W.2], Subramani [not examined] and Ramesh [P.W.8] participated in the Identification Parade for identifying the accused. Haridas [P.W.2] and Ramesh [P.W.8] identified only Selvam [A1] and not others, whereas, Subramani [not examined] identified Selvam [A1], Deivasigamani [A2] and Nagaraj [A3], but, for reasons best known to the prosecution, he was not examined as a witness in the trial Court. Latha did not identify anyone.

20. The Investigating Officer recorded the statements of the Post-mortem doctors, experts from the Tamil Nadu Forensic Science Laboratory and other witnesses and completed the investigation and filed a Final Report for offences under Sections 120-B, 364, 302, 201, 302 r/w 120-B r/w 109 IPC and Section 5(m) r/w 6, 16 r/w 17 of the POCSO Act against Selvam [A1], Deivasigamani [A2], Nagaraj [A3], Anandan [A4], Rangaraj [A5] and Bahadeeshwari [A6] before the Special Court [Mahila Court for POCSO Act cases], Tiruppur on 30.12.2015.

21. The trial Court took cognizance of the aforesaid offences and on the appearance of the accused, they were furnished with the copies of the materials relied upon by the prosecution under Section 207 Cr.P.C. The trial Court framed the following charges against the accused:

|     |                                                                                              |
|-----|----------------------------------------------------------------------------------------------|
| A-1 | u/s 120-B, 364 (2 counts), 302 (2 counts) and 201 IPC & Sec.16 r/w 17 of the POCSO Act, 2012 |
| A-2 | u/s 120-B, 364, 302, 201, 120-B r/w 302 r/w 109 IPC                                          |
| A-3 | u/s 120-B, 364, 302, 120-B r/w 302 r/w 109 IPC                                               |
| A-4 | u/s 120-B, 364, 302, 120-B r/w 302 r/w 109 IPC                                               |
| A-5 | u/s 120-B and 302 IPC & Sec.5(m) r/w 6 of the POCSO Act                                      |
| A-6 | u/s 201 IPC                                                                                  |

22. When questioned, the accused pleaded 'not guilty'. The prosecution, in order to prove their case, examined 59 witnesses, marked 88 exhibits and 51 material objects. The accused were questioned about the incriminating circumstances under Section 313 Cr.P.C., and they denied the same. No witness was examined nor any exhibit marked on behalf of the accused.

23. After hearing the prosecution and the learned counsel for all the accused, the trial Court acquitted Bahadeeshwari [A6] and convicted A1 to A5 as follows:

**A-1 [DEATH SENTENCE + LIFE IMPRISONMENT]**

|                            |                                                                                                               |
|----------------------------|---------------------------------------------------------------------------------------------------------------|
| u/s 120 B                  | 6 months R.I.                                                                                                 |
| u/s 364 (2 counts)         | 10 years for each count, and fine of Rs.1000/- each, i/d 1 year R.I. for each count                           |
| u/s 302 IPC (2 counts)     | i) Life (for murder of Thangavelu) + Rs.5000/- fine, i/d 1 year R.I.<br>ii) Death (for murder of Mahalakshmi) |
| u/s 201 IPC                | 5 years R.I. + Rs.1000 fine, i/d 1 year R.I.                                                                  |
| Sec.16 r/w 17 of POCSO Act | 10 years R.I. + Rs.1000 fine, i/d 1 year R.I.                                                                 |
|                            | (Total fine of Rs.9,000/-)                                                                                    |

**A-2 [DOUBLE LIFE IMPRISONMENT]**

|               |               |
|---------------|---------------|
| u/s 120 B IPC | 6 months R.I. |
|---------------|---------------|

|                           |                                                                   |
|---------------------------|-------------------------------------------------------------------|
| u/s 364 IPC               | 10 years R.I. + Rs.1000/- fine, i/d 1 year R.I.                   |
| u/s 302 IPC               | Life (for murder of Thangavelu) + Rs.5000/- fine, i/d 1 year R.I. |
| u/s 201 IPC               | 5 years R.I. + Rs.1000 fine, i/d 1 year R.I.                      |
| Sec. 120B r/w 302 r/w 109 | Life + Rs.1000 fine, i/d 1 year R.I.                              |
|                           | (Total fine of Rs.8,000/-)                                        |

A-3 & A-4 EACH [DOUBLE LIFE IMPRISONMENT]

|                               |                                                 |
|-------------------------------|-------------------------------------------------|
| u/s 120 B IPC                 | 6 months R.I.                                   |
| u/s 364 IPC                   | 10 years R.I. + Rs.1000/- fine, i/d 1 year R.I. |
| u/s 302 IPC                   | Life + Rs.5000/- fine, i/d 1 year R.I.          |
| Sec. 120B r/w 302 r/w 109 IPC | Life + Rs.1000 fine, i/d 1 year R.I.            |
|                               | (Total fine of Rs.7,000/-)                      |

A-5:

|                             |                                                  |
|-----------------------------|--------------------------------------------------|
| u/s 120 B IPC               | 6 months R.I.                                    |
| u/s 302 IPC                 | Death (Mahalakshmi)                              |
| Sec.5(m) r/w 6 of POCSO Act | 10 years R.I. + Rs.5,000/- fine, i/d 1 year R.I. |
|                             | (Total fine of Rs.5,000/-)                       |

24. Heard Mr.R.Sankarasubbu, learned counsel for Selvam [A1], Mr.C.D.Sugumar, learned counsel for Deivasigamani [A2], Mr.S.N.Arun Kumar, learned counsel for Nagaraj [A3], Mr.T.Muruganantham, learned counsel for Anandan [A4], Mr.V.Gopinath, learned Senior Counsel for Mr.L.Mahendran, counsel-on-record for Rangaraj [A5] and Mr.R.Rajarathinam, the learned Public Prosecutor appearing for the State.

25. This case is based partly on direct evidence, but mostly on circumstantial evidence. Bearing in mind, the legal principles relating to circumstantial evidence propounded by the Constitution Bench of the Supreme Court in Govinda Reddy and

another v. State of Mysore [AIR 1960 SC 29], in the passage extracted below, we propose to appraise the evidence on record:

"In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn would in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

26. Before advertng to the disputed facts, it may be apposite to catalogue the facts which have been proved beyond doubt, viz.:

- Thangavel [D1] and his daughter Mahalakshmi [D2] were found missing after 6 p.m. on 05.10.2015.
- Tamilselvi [P.W.1] reported the matter to the police on the morning of 06.10.2015 and the FIR in Cr. No.1178 of 2015 was registered.
- The half burnt body of Thangavel [D1] was found on 06.10.2015 around 7.00 a.m. at No.63, Velampalayam Village within the jurisdiction of Mangalam Police Station and from the medical opinion, it has been established that his death was homicidal.
- The half burnt body of Mahalakshmi [D2] was found near VVK Nagar Layout within the jurisdiction of Vadavalli Police Station on 06.10.2015 around 7.00 a.m. and from the medical opinion, it has been established that she was subjected to sexual abuse and her death was homicidal.
- Mahalakshmi [D2] was less than 18 years old at the time of her death, via the evidence of Ranganayaki [P.W.28], her school teacher, through whom, her school certificate [Ex.P.37] has been marked, in which, her date of birth has been shown as 09.07.2015.

- The Alto car bearing Registration No.TN-42-D-8420 [M.O.25] belongs to Selvam [A1] vide evidence of Paulraj [P.W.42], Regional Transport Officer and the Report Ex.P.44.
- The TVS XL Super bearing Registration No.TN-42-B-6931 [M.O.36] belongs to Thangavel [D1] vide evidence of Paulraj [P.W.42], Regional Transport Officer and Report Ex.P.44].
- Selvam [A1] runs a weaving unit in his residential campus and employs all the labourers.
- Bahadeeshwari [A6] is the wife of Selvam [A1]; Deivasigamani [A2] is the brother-in-law of Selvam [A1]; Nagaraj [A3] is the brother-in-law of Anand [A4]; Rangaraj [A5] is the cousin brother of Selvam [A1].
- Selvam [A1] is also called Subramanian @ Koolai Selvam.

MOTIVE:

27. In a case based on circumstantial evidence, motive assumes significance. It is the case of the prosecution that Selvam [A1] has a weaving unit at Maanikapuram Road, Palladam, in which, Thangavel [D1] was employed in 2014 and that Thangavel [D1] had taken an advance of Rs.60,000/- from Selvam [A1], but, had returned only Rs.8,000/-; that Selvam [A1] was frequently quarelling with Thangavel [D1] demanding return of the balance sum of Rs.52,000/-.

28. In order to establish this fact, the prosecution placed reliance upon the evidence of Mani [P.W.25] and Palanisamy, [P.W.35], the Sub Inspector of Police who dealt with the complaint [Ex.P.33] that was lodged by Thangavel [D1] against Selvam [A1].

29. Mani [P.W.25], admittedly, is a member of the Communist Party. In his evidence, he has stated that he knew both Thangavel [D1] and Selvam [A1] and that Thangavel [D1] was working in the weaving unit of Selvam [A1], during which time, Thangavel [D1] had taken an advance of Rs.60,000/- towards his wages and only a sum of Rs.8,000/- was deducted from his wages; that he suffered a hand injury during employment and therefore, did not go for work, due to which, a sum of Rs.52,000/- was due to Selvam [A1], which, Selvam [A1] was frequently demanding from Thangavel [D1].

30. In this regard, Thangavel [D1] lodged a complaint on 19.12.2014 in Palladam Police Station against Selvam [A1], in

which, police conducted enquiry by calling both the parties. Thangavel [D1] gave a written undertaking [Ex.P.33] agreeing to pay Rs.52,000/- before February 2015 and in that written undertaking, Mani [P.W.25] has signed as one of the witnesses.

31. In the cross-examination of Mani [P.W.25], it was not suggested to the witness that there was no financial dealing between Thangavel [D1] and Selvam [A1]. On the contrary, it was suggested that Thangavel [D1] would indulge himself in illegal activities and since he wanted to avoid repaying money to Selvam [A1], he had given a false complaint to the police. In other words, it was not suggested to the witness that Thangavel [D1] had not given any complaint against Selvam [A1] with regard to the money transaction. Thus, it is the specific case of the accused that Thangavel [D1] owed money to Selvam [A1], but, in order to avoid repayment, Thangavel [D1] had given a false complaint against Selvam [A1].

32. This stand taken by the defence in the cross-examination supports the prosecution theory that Selvam [A1] had a strong motive to get rid of Thangavel [D1] because, Thangavel [D1], after having taken money from Selvam [A1], had given a false complaint against Selvam [A1].

33. Mr.R.Sankarasubbu, learned counsel for Selvam [A1] submitted that when Thangavel [D1] had agreed to repay the money by February 2015, there is no question of Selvam [A1] harbouring any vengeance against him.

34. We are not able to appreciate the aforesaid submission of Mr.R.Sankarasubbu, learned counsel, because, Thangavel [D1] had agreed in the Police Station to return the money by February 2015 and it is not the case of Selvam [A1] that he returned the money. Had Selvam [A1] taken the plea that Thangavel [D1] had indeed returned the money, then, there may be some force in the submission of Mr.R.Sankarasubbu. Neither in the cross-examination of any of the witnesses nor in the examination under Section 313 Cr.P.C., Selvam [A1] had taken a stand that Thangavel [D1] had returned the sum of Rs.52,000/- to him. Thus, there is every reason for Selvam [A1] harbouring grudge against Thangavel [D1] since, Thangavel [D1] after having borrowed Rs.60,000/- had given a police complaint against Selvam [A1] on account of which Selvam [A1] had to go to the Police Station for enquiry and get harassed.

35. The evidence of Mani [P.W.25] has been corroborated by Palanisamy [P.W.35] Sub Inspector of Police, who conducted the enquiry on the complaint [Ex.P.41] given by Thangavel [D1] and after enquiring both the parties, closed the case on the strength

of the undertaking given by Thangavel [D1] that he would return the money by February 2015.

36. Tamilselvi [P.W.1] and Azhagumalai [P.W.3] have stated in their evidence that on 05.10.2015, when Thangavel [D1] and Mahalakshmi [D2] were waiting for the school bus around 6.45 a.m. near their house, Selvam [A1], who was passing by, threatened Thangavel [D1] of dire consequences, if he did not return the money by the evening. Tamilselvi [P.W.1] has, in her complaint to the police [Ex.P.1], has stated this fact which corroborates her evidence in the Court. The defence were not able to make any serious dent in the cross-examination of Tamilselvi [P.W.1] and Azhagumalai [P.W.3] on this aspect, except suggesting to them that they are giving false evidence. Thus, from an analysis of the evidence of Mani [P.W.25], Palanisamy [P.W.35] Sub Inspector of Police, Tamilselvi [P.W.1] and Azhagumalai [P.W.3], we are of the opinion that the prosecution has proved that Selvam [A1] had a strong motive against Thangavel [D1].

#### LAST SEEN THEORY:

37. The prosecution has also satisfactorily established from the evidence of Tamilselvi [P.W.1] that her husband Thangavel [D1] and her daughter Mahalakshmi [D2] left their house around 6.00 p.m. on 05.10.2015 in the TVS XL Super bearing Registration No.TN-42-B-6931 [M.O.36] to the market for buying book cover and thereafter, they did not return.

38. It is the case of the prosecution that Haridas [P.W.2] saw Selvam [A1] and three others forcibly taking Thangavel [D1] and Mahalakshmi [D2] in their vehicle around 6.45 p.m. on 05.10.2015. Haridas [P.W.2], in his evidence, has stated that he runs an eatery in the name of "Sakthi Mess" and that he knew both the deceased, viz., Thangavel [D1] and Mahalakshmi [D2], as they would come to his mess for having tea. He has stated that he also knows Selvam [A1] and his wife Bahadeeshwari [A6]. He has stated that on 05.10.2015, around 6.45 p.m., he saw Thangavel [D1] and Mahalakshmi [D2] coming in their motorcycle and they were intercepted by Selvam [A1] along with three others and that they bundled Thangavel [D1] and Mahalakshmi [D2] into an Alto car and thereafter, Selvam [A1] and one of the persons went in the car and of the other two, one took the TVS XL of Thangavel [D1] and followed the car and that the third person went by his motor bike following the car. He has further stated that he heard the conversation between Selvam [A1] and Thangavel [D1] in which, the former demanded payment of money to him.

39. In the Test Identification Parade conducted by the Magistrate, Haridas [P.W.2] told the Magistrate at the beginning itself that he was acquainted with Selvam [A1] and therefore, he was able to identify Selvam [A1] in the parade as well in the

Court. However, Haridas [P.W.2] was not able to identify Deivasigamani [A2], Nagaraj [A3] and Anandan [A4] either in the parade or before the Court.

40. Mr.R.Sankarasubbu, learned counsel for Selvam [A1] attacked the evidence of Haridas [P.W.2] by contending that the prosecution has not placed any material to show as to how the Investigation Officer knew that Haridas [P.W.2] had witnessed the event when he had not reported the incident either to the police or to Tamilselvi [P.W.1]. The learned counsel further submitted that in the Test Identification Parade, Haridas [P.W.2] has told the Magistrate that he had worked under Selvam [A1]. He further contended that, to a specific question in the cross-examination, Haridas [P.W.2], has stated that he had not told this incident to anyone not because he was scared. Therefore, he submitted that the conduct of Haridas [P.W.2] in not informing the police or the family of Thangavel [D1] was unnatural.

41. The learned counsel further submitted that during October 2015, there would have been very less day light around 6.45 p.m. and hence, Haridas [P.W.2] could not have seen the incident nor could he have heard the conversation that is alleged to have occurred between Selvam [A1] and Thangavel [D1] at the time of abduction when the incident had taken place 80 ft. away from his eatery. He further contended that Latha, W/o Haridas [P.W.2] had told the Magistrate during the Test Identification Parade that because of poor light, she was not able to identify the abductors and that would also apply to Haridas [P.W.2].

42. Mr. R. Rajarathinam, learned Public Prosecutor, refuted these contentions.

43. We carefully analysed the evidence of Haridas [P.W.2]. Admittedly, Haridas [P.W.2] is a Keralite having settled in Palladam. From the beginning, he has been stating that he knew both Thangavel [D1] and Selvam [A1]. It would have been an ideal situation had Haridas [P.W.2] informed the police immediately, but, however he was examined by the Police on 06.10.2015 and his statement reached the Court on 08.10.2015 itself. Supposing a total stranger had picked up a quarrel with Thangavel [D1] and Mahalakshmi [D2] and had abducted them and if Haridas [P.W.2] had not informed the police, there could be some force in the submission of Mr.R.Sankarasubbu. Even according to Mr.R. Sankarasabbu, learned counsel, Haridas [P.W.2] was also an employee of Selvam [A1], for which he placed strong reliance upon the statement of Haridas [P.W.2] to the Magistrate who conducted the Test Identification Parade and which also has been recorded in the Identification Parade proceedings and put to Thangaraj [P.W.59] as a contradiction in the cross-examination. Therefore, viewed in this context, the conduct of Haridas [P.W.2] in not

informing the police immediately that he had seen Selvam [A1] taking away Thangavel [D1] and Mahalakshmi [D2] in the car would not be fatal to the prosecution case.

44. Mr.R.Sankarasubbu, learned counsel for Selvam [A1] placed reliance on the judgment of the Supreme Court in Vijay Shankar v. State of Haryana [(2015) 12 SCC 644], wherein, the Supreme Court in paragraph no.14 has held as follows:

"14. Evidence of PW 11 is assailed contending that PW 11 is not a reliable witness and that he being the owner of sixty acres of land and also owning a petrol pump, it is quite unbelievable that he went in the midnight from one village to another in search of buffalo. The learned counsel for the appellant placed reliance on Modi's Medical Jurisprudence and Toxicology, 19th Edn., Para (2) at p. 61 contending that according to Tidy, "the best known person cannot be recognised in the clearest moonlight beyond a distance of seventeen yards..." and it is quite improbable that PW 11 could see the appellant-accused so clearly from such a long distance.

45. Of course, in the said judgment, the Supreme Court has disbelieved the testimony of P.W.11, for the reasons given therein. In this case, Haridas [P.W.2] has clearly stated that he is having a mess, where, Thangavel [D1] would come for having tea and that he also knew Selvam [A1]. Even in the Identification Parade, he told the Magistrate that he was acquainted with Selvam [A1]. Therefore, the possibility of Haridas [P.W.2] being there in his mess from where he had seen Selvam [A1] and three others abducting the duo cannot be said to be unnatural.

46. Mr.R.Sankarasubbu, learned counsel relied upon the judgment of the Supreme Court in Shahid Khan v. State of Rajasthan [(2016) 4 SCC 96], wherein, it has been held as under:

"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide

about the shape to be given to the case and the eyewitnesses to be introduced."

By placing upon the aforesaid judgment, Mr.R.Sankarasubbu submitted that the police have not examined Haridas [P.W.2] immediately.

47. We are unable to agree with this submission, because Haridas [P.W.2] had seen the abduction around 6.45 p.m. on 05.10.2015 and he was examined by the police the next day, i.e. on 06.10.2015, around 10.00 a.m. and the police statement had reached the Court on 08.10.2015. Thus, we do not find any delay by the police in the examination of Haridas [P.W.2].

48. Therefore, we have no hesitation in believing the evidence of Haridas [P.W.2] and holding that on 05.10.2015, around 6.45 p.m., Thangavel [D1] and Mahalakshmi [D2] were coming in TVS XL Super motorcycle [M.O.25] and they were intercepted by Selvam [A1] and three others. They were bundled into the Alto car of Selvam [A1] and one of the persons went into the car and of the other two, one took the TVS XL of Thangavel [D1] and followed the car and that the third person went by his motor bike following the car.

49. Thereafter, the half burnt dead body of Thangavel [D1] was found around 6.10 a.m. at 63, Velampalayam Village, which is about 4 kms. from Palladam and the half burnt dead body of Mahalakshmi [D2] was found at 7.00 a.m. on 06.10.2015 at VVK Nagar Layout in Vadavalli-Pongaaliyur Road.. At this juncture, we may profitably quote the following passage from the judgment of the Supreme Court in State of West Bengal vs. Mir Mohammad Omar and others [(2000) 8 SCC 382]:

"35. During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise."

Of course, we are not concluding our decision by drawing the aforesaid inference.

#### ARREST OF THE ACCUSED AND RECOVERY:

50. It is the case of the prosecution that Selvam [A1] surrendered before the police on 07.10.2015 and based on the disclosure made by him, the police went to his weaving unit and with the help of Thangavel [P.W.48], Assistant Director, Forensic Science Laboratory, collected vital clue materials from the place. The police also seized M.Os. 13 to 25 under the cover of mahazar [Ex.P.7] in the presence of Kuppuraj [P.W.5] and Ramamurthy (not examined). Of the material objects seized, we propose to discuss the relevance of the following material pieces of evidence:

i) Alto car (M.O. 25) bearing Registration No.TN-42-D-8420:

51. Haridas [P.W.2] in his evidence, has stated that Selvam [A1] abducted Thangavel [D1] and Mahalakshmi [D2] in an Alto car. Paulraj [P.W.42], Regional Transport Officer, in his evidence as well as in his report [Ex.P.44] has stated that the Alto car bearing Registration No.TN-42-D-8420 [M.O.25] is in the name of Selvam [A1] which has not been controverted by the accused.

[a] It is the specific case of Tamilselvi [P.W.1] that Thangavel [D1] and Mahalakshmi [D2] went to the market for buying brown paper cover for wrapping the books. She has stated this even in the complaint [Ex.P.1] and also in her evidence before the Court. The 5 brown paper rolls [M.O.17] were found by the police in the Alto Car [M.O.25] and were seized under the cover of Mahazar [Ex.P.7] in the presence of Kuppuraj [P.W.5] and Ramamurthy [not examined].

[b] With the help of Thangavel [P.W.48], Assistant Director of Forensic Science Laboratory, the Investigating Officer took blood-stained wall scrappings [M.O.13] and wall scrappings without blood stains [M.O.14] and sent the same through the Court for chemical examination.

[c] From the evidence of M. Balashanmugam [P.W.55] and from his report [Ex.P.68], it has been established that human blood was detected in M.O.13.

[d] Srinivasan [P.W.58], Deputy Director (Serology) and Assistant Chemical Examiner to Government, in his evidence and in his report [Ex.P.81], has stated that the blood found in M.O.13 is human blood. Of course, grouping test was inconclusive.

[e] With the help of Thangavel [P.W.48], the Investigating Officer cut a piece from the floor mat of the Alto car, as it was found to have the smell of petrol. The said piece [M.O.45] was sent to the Forensic Science Laboratory, where, it was

examined by Rajaram [P.W.54], Scientific Officer (Analyst), who, in his evidence and report [Ex.P.67], has stated that petrol was detected in that piece.

[f] Cotton swipe swab [M.O.23] that was taken from the 35-litre petrol can [M.O.20] was sent through the Court to the Forensic Science Laboratory, where, it was examined by Rajaram [P.W.54], who, in his evidence and report [Ex.P.67] has stated that petrol was detected in that.

From the above, we can draw inference that petrol was carried in the 35-litre can [M.O.28], from which, petrol had spilled on the floor mat of the Alto car.

[g] The spectacles [M.O.16] of Thangavel [D1] was recovered from the Alto car under Mahazar [Ex.P.7] in the presence of Kuppuraj [P.W.4] and Ramamurthy [not examined]

ii) Recovery of TVS XL Super bearing Registration No.TN-42-B-6931 (M.O.36]

52. As stated above, the prosecution have proved beyond doubt that TVS XL Super motorcycle bearing Registration No.TN-42-B-6931 [M.O.36] belonged to Thangavel [D1]. This has been established from the evidence of Tamilselvi [P.W.1], who, in her complaint [Ex.P.1], has given the registration number of the vehicle and further, the prosecution have examined Paulraj, [P.W.42], the Regional Transport Officer, who in his evidence and in his report [Ex.P.44], has stated that TVS XL Super motorcycle stands in the name of Thangavel [D1]. This has not been challenged by the accused. Selvam [A1] took the police and showed the well into which he had thrown TVS XL Super motorcycle [M.O.36]. Since there was water in the well, the Investigating Officer requisitioned the services of the Fire Service personnel, pursuant to which, Vivekanandan [P.W.33] and his team of Fire Service men, came to the spot where the well was located and with the help of grappling hook, pulled out the motorcycle [M.O.36] from the well in the presence of Velumani [P.W.12] and Palanisamy [P.W.13], which was seized by Karthik Thangam [P.W.34], Sub Inspector, Palladam Police Station under the cover of Mahazar [M.O.24]. Thus, the discovery of the motorcycle of Thangavel [D1] was done on the information supplied by Selvam [A1] to the police and the same is relevant under Section 27 of the Evidence Act.

ARREST OF SELVAM [A1]:

53. Mr.R.Sankarasubbu, learned counsel for Selvam [A1] placed reliance on the judgment of the Supreme Court in

K.A.Kotrappa Reddy and another v. Rayara Manjunatha Reddy alias N.R.Manjunatha and others [2015 AIR SCW 6079] and submitted that the Investigating Officer has not followed the mandates of the judgment of the Supreme Court in D.K.Basu v. State of West Bengal [(1997) 1 SCC 416] and therefore, the entire arrest is vitiated. The Supreme Court judgment relied upon by Mr.R.Sankarasubbu relates to an appeal against acquittal, in which, the Supreme Court refused to upset the acquittal of the accused by the High Court. The said judgment should be read in the context, in which, the Supreme Court has said so and hence, the said judgment would be of no avail.

#### 54. EVENTS IN THE PETROL BUNK:

[a] Selvam [A1] further disclosed to the police that he had gone to Meesakaran Petrol Bunk on 05.10.2015 along with Deivasigamani [A2] and bought petrol in a can. The disclosure statement of Selvam [A1] that was recorded by the police on 07.10.2015 reached the jurisdictional Court on 08.10.2015 when Selvam [A1] was produced for remand at 7.55 a.m.

[b] After placing the arrested accused in judicial custody by producing them before the jurisdictional Court, the Investigating Officer proceeded to Meesakaran Petrol Bunk for collecting evidence. The Investigating Officer examined Ramesh [P.W.8] and learnt that the bunk is fitted with CCTV cameras.

[c] Ramesh [P.W.8] has, in his evidence, stated that he knew Selvam [A1], as Selvam [A1] used to come to his bunk for purchasing diesel for his weaving unit; that on 05.10.2015, Selvam [A1] and Deivasigamani [A2] came to the bunk with a petrol can and filled petrol for Rs.2,000/- in the can [M.O.20]; that when he asked them whether they needed a bill, they told him that they do not want one; that he has installed CCTV cameras in his bunk, which will have recordings of the happenings in the bunk; that he does not know how to extract copies therefrom, but, he knows a technician by name Ramesh [P.W.9] who can help in this regard (incidentally there are two Ramesh in this case, viz., P.W.8 and P.W.9, P.W.8 being the owner of the bunk and P.W.9 being the CCTV technician); that Ramesh [P.W.9] was brought to the bunk; that the CCTV footages of 05.10.2015 were viewed and it was found that Selvam [A1] and Deivasigamani [A2] had come to the petrol bunk in a red colour motorcycle and had filled petrol in a can.

[d] Ramesh [P.W.9], the CCTV technician, in his evidence before the Court, stated that on 08.10.2015, around 4.00 p.m, the Inspector of Police, Palladam Police Station called him to the petrol bunk and asked him to retrieve the footages from the CCTV recordings and accordingly, he went to the bunk around 5.00

p.m., but, found that the DVR was showing the time as 6.00 p.m. When he asked about this to the owner of the bunk Ramesh [P.W.8], he told him that two months back, the DVR developed a snag, due to which, the recordings are one hour ahead of the actual time. Ramesh [P.W.8] the owner of the Bunk, also stated this fact in the Court and further stated that two months back, he had requested an authorised CCTV service agent to set things right, but, on account of Deepavali festival, he had not attended the call.

[e] Anand [P.W.11], in his evidence, has stated that it was he who had installed the CCTV network in the petrol bunk of Ramesh [P.W.8] and that Ramesh [P.W.8.] had called him two months prior to 08.10.2015 and complained that the timing in the CCTV has to be rectified, but, on account of his mother's illness, he was not able to attend to the call immediately.

[f] Mubarak [P.W.10], an employee of the petrol bank, in his evidence, has stated that on 05.10.2015, Selvam [A1] and another person came in a motorbike and filled petrol for their motorbike and also bought petrol for Rs.2,000/-.

[g] With the help of Ramesh [P.W.9], the CCTV technician, the police had the CCTV footages relating to Selvam [A1] and Deivasigamani [A2] recorded in a Compact Disc, which was marked as M.O.35 and the same was seized under the cover of Mahazar [Ex.P.23] in the presence of Matheswaran [not examined] and Mubarak [P.W.10]. During trial, this Compact Disc [M.O.35] was shown to both Ramesh [P.W.9] and Mubarak [P.W.10] and at that time, the defence did not object to the marking of the Compact Disc. The police also took five still photographs from the CCTV footage, viz., Ex.P.22 series and they were marked through Ramesh [P.W.8], owner of the petrol bunk. This was also not objected to by the defence.

[h] Ramesh [P.W.8] the owner of the Bunk, also identified Selvam [A1] and Deivasigamani [A2] as the persons in the photos [Ex.P.22 series] and also the petrol can they were having and correlated it with the can [M.O.20] that was available in the Court. It is true that Ramesh [P.W.8] identified only Selvam [A1] in the Test Identification Parade, but, was not able to identify Deivasigamani [A2]. However, with the photographs [Ex.P.22 series], he correlated Selvam [A1] and Deivasigamani [A2]. In our opinion, when a photo on a CCTV footage is available, it is perfectly permissible for the Judge himself to look at the photograph and say if the person standing in the dock is the person who is in the photo. At this juncture, it may be profitable to extract the word "proved" in Section 3 of the Evidence Act, which reads as follows:

"Proved".- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

[i] Sir Stephens, in the definition of the word "proved", has employed the expression "After considering the matters before it" and not "evidence before it". This means, the expression "matters before it" carries a wider import than the expression "evidence before it" and it would definitely include the exercise of the Judge himself seeing the photograph or video footage in order to satisfy himself if the person found in the photographs or video footage is the person standing in the dock. In fact, Deivasigamani [A2] was produced before us on two days and we questioned him directly for providing him legal aid and thus, we had the occasion to see him and interact with him. In the photographs [Ex.P.22 series] he is there.

55. Mr.R.Sankarasubbu, learned counsel for Selvam [A1] and Mr.C.D.Sugumar, learned counsel for Deivasigamani [A2] strenuously contended that the Court ought not to have admitted the Compact Disc [M.O.35] and the photographs [Ex.P.22 series] without the certification under Section 65-B of the Evidence Act and placed strong reliance on the judgment of the Supreme Court in Anvar P.V. vs. P.K.Basheer and others [2014 (10) SCC 473].

56. It is true that in Anvar (supra), the Supreme Court has held that a certification under Section 65-B is essential for admitting an electronic record like a Compact Disc, etc. However, very recently, the Supreme Court in Sonu alias Amar v. State of Haryana [JT 2017 (7) SC 362], has elaborately considered Anvar and has held as follows:

"27. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have

given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 of the Cr.P.C. 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."

57. As stated above, when the Compact Disc [M.O.35] and the photographs [Ex.P.22 series] were marked, the accused did not object to the admissibility of the same. Had they objected to their very marking, then things would have been different. They cannot object to it for the first time before this Court.

58. Be that as it may, in *Laxmipat Choraria and others vs. State of Maharashtra* [AIR 1968 SC 938], though in a different context, it is held as follows in para 19:

"19. On the whole, we think that if the court is satisfied that there is no trick photography and the photograph is above suspicion, the photograph can be received in evidence. It is, of course, always admissible to prove the contents of the document, but subject to the safeguards indicated, to prove the authorship. This is all the more so in India under Section 10 of the Evidence Act to prove participation in a conspiracy. Detection and proof of crime will be rendered not only not easy but sometimes impossible if

conspirators begin to correspond through photographs of letters instead of originals."

59. We have no reason to suspect the authenticity of the photographs [Ex.P.22 series] and it was not even suggested by the accused to the witnesses that they are trick photographs.

60. Mr.R.Sankarasubbu, learned counsel for Selvam [A1] and Mr.C.D.Sugumar, learned counsel for Deivasigamani [A2] further submitted that the timings shown in the CCTV footages [M.O.35] and photographs [Ex.P.22 series] do not tally with the timings fixed by the prosecution. It is true that the timings in the CCTV footages were 1½ hrs ahead. However, this has been clearly explained by Ramesh [P.W.8], the owner of the petrol bunk, who, in his evidence has stated that two months back there was power fluctuation in the bunk, on account of which, the CCTV recorder developed a snag and the timings got re-set and started showing 1½ hrs ahead. He had requested the Company mechanic to attend to the repair, but it was not attended to on account of Deepavali festival during the interregnum. This has been corroborated by Anand [P.W.11], who, in his evidence has stated that he had installed the CCTV network in the bunk and the owner of the bunk had told him that the timings in the camera are 1½ hrs ahead, but on account of his mother's illness, he was not able to attend to the work immediately.

61. We carefully analysed the evidence of Ramesh [P.W.8] and Anand [P.W.11]. Here, the dispute is only with regard to the timings in the recording and not with regard to the date that has been recorded in the footage and in the photographs. The date is 05.10.2015, but only the timing is 1½ hrs ahead. Though it is suggested by the defence that the CCTV footages were manipulated by the police, Selvam [A1] and Deivasigamani [A2] have not denied that they are not the persons in the photographs [Ex.P.22 series]. Selvam [A1] has taken a defence that, he being a regular customer of Ramesh [P.W.8] would fill petrol in that bunk and the footage relating to an earlier occasion has been projected, as if he had come to the bunk on 05.10.2015.

62. Mr.R.Sankarasubbu, learned counsel submitted that the Compact Disc [M.O.35] and the photographs [Ex.P.22 series] had gone to the Court only on 31.10.2015 and therefore, there is every possibility of the police having manipulated the CCTV footages. In our opinion, this by itself cannot lead to an inference that there was manipulation of the footages, especially in the light of the fact that the disclosure statement made by Selvam [A1] and Deivasigamani [A2], that they had gone to the petrol bunk for buying petrol on 05.10.2015, had reached the Judicial Magistrate at the time of their remand on

08.10.2015 at 7.45 a.m. Until then, the police did not know this fact and only thereafter, the police went to the petrol bunk and learnt that the petrol bunk is fitted with CCTV cameras. Law does not permit us to suspect every action of the police without adequate reasons thereof. We are fortified in our views by the following observations of the Supreme Court in *Aher Raja Khima vs. State of* [AIR 1956 SC 217]:

"The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration."

This observation has been reiterated by the Supreme Court subsequently in *Jameel Ahmed and another etc. vs. State of Rajasthan* [2003 AIR SCW 6078].

63. When Selvam [A1] and Deivasigamani [A2] were specifically examined under Section 313 Cr.P.C. with regard to the photographs [Ex.P.22 series] and the Compact Disc [M.O.35], they did not say that the persons found in the photographs were someone else and not them.

64. That apart, it is the specific case of the prosecution that Selvam [A1] and Deivasigamani [A2] had carried a 35 litre Petrol Can [M.O.20] and had purchased petrol from the bunk on 05.10.2015 in the night hours. The Can [M.O.20] was recovered from the weaving unit of Selvam [A1]. Ramesh [P.W.8], the owner of the petrol bunk has in his evidence stated that Selvam [A1] and Deivasigamani [A2] came with a petrol can [M.O.20] bearing the letter "G", in which they filled petrol and went. Bearing the letter "G" in his mind, he identified the petrol can [M.O.20] in the Court. Petrol was detected in the cotton swab swipe [M.O.23] that was taken from the inner walls of the petrol can [M.O.20] with the help of Thangavel [P.W.48], the Assistant Director of Forensic Sciences Department in the weaving unit of Selvam [A1] on 07.10.2015.

65. Mr.R.Sankarasubbu and Mr.C.D.Sugumar, learned counsel submitted that the police had not produced any bill to show that the accused had purchased petrol from the bunk of Ramesh [P.W.8]. Ramesh [P.W.8] in his evidence has stated that when he asked Selvam [A1] as to whether he wanted any bill, Selvam [A1] told him that he does not want one and therefore, petrol was supplied without bill. Though this may be a blameworthy conduct on the part of Ramesh [P.W.8], that cannot lead to an inference that petrol was not sold to Selvam [A1] and Deivasigamani [A2]

at all. In fact, Ramesh [P.W.8] has stated in his evidence that Selvam [A1] was his regular customer, as he would come frequently to the bunk for purchasing diesel for his weaving unit.

66. To recapitulate:

- Selvam [A1] and Deviasigamani [A2] had provided information to the police on 07.10.2015 that they had gone to Meesakaran Petrol Bunk and had purchased petrol in a Can.
- Their disclosure statement had reached the Court at the time of his remand on 08.10.2015.
- On the information provided by him, the police went to the Meesakaran Petrol Bunk and stumbled upon the CCTV footages and had them recorded with the help of Ramesh [P.W.9], a CCTV technician in a Compact Disc [M.O.35] and also took photo print outs [Ex.P.22 series].
- The photographs taken from the record clearly show Selvam [A1] and Deivasigamani [A2] had come in a motorcycle and taken fuel in a 35 litre can, which has been marked as M.O.20.
- Selvam [A1] and Deivasigamani [A2] have not denied that the persons in the photographs [Ex.P.22 series] are someone else and not them.
- The can [M.O.20] was recovered from the weaving unit of Selvam [A1] on 07.10.2015 itself and the Seizure Mahazar had reached the Court on 08.10.2015.
- The Investigating Officer took the services of Thangavel [P.W.48], with whose help, he took cotton swab swipe from the can and petrol was detected therein by S.Rajaram [P.W.54], Scientific Officer (Analyst). Similarly, petrol spill has been detected in the floor mat of the Alto car which has been discussed above.
- The two dead bodies were half burnt bodies.

67. In the light of such overwhelming materials, this Court cannot shut its eyes either to the CCTV recordings [M.O.35] or photographs [M.O.22 series].

68. Mr.R.Sankarasubbu, learned counsel for Selvam [A1] submitted that a direction should be given to the police to

produce the CCTV cameras that were installed in the weaving unit of Selvam [A1] as additional evidence before this Court. To buttress his plea, he placed reliance on the judgment of the Supreme Court in *Tomaso Bruno and another v. State of Uttar Pradesh* [(2015) 7 SCC 178], wherein the Supreme court has deprecated the act of the police in not recovering the CCTV footages from a hotel, in which the murder had taken place.

69. In this case, neither in the cross examination of the witnesses nor in the 313 Cr.P.C. statement of Selvam [A1], has he stated anything about the existence of CCTV network in his weaving unit. For the first time, a plea is being taken that there was CCTV network in his weaving unit and that the police had failed to seize the same and therefore, the case is covered by the above judgment of the Supreme Court.

70. We are unable to countenance his submission, because had there been a CCTV network and the police failed to seize, Selvam [A1] could have produced it as a defence material or he could have cross examined the Investigating Officer on this aspect. He could have also stated about that in his examination under Section 313 Cr.P.C. Therefore, at this distant point of time, this Court cannot presume that there was CCTV network in the weaving unit of Selvam [A1] and that the police had failed to seize the same. In the Supreme Court judgment relied upon by Mr.R.Sankarasubbu, it was admitted that the hotel had CCTV network and in those circumstances, the Supreme Court held that, failure of the Investigating Officer to seize the footages was fatal to the prosecution case, whereas, that is not the situation in the case at hand.

EVIDENCE AS AGAINST NAGARAJ [A3] AND ANANDAN [A4]:

71. It is the specific case of the prosecution that Nagaraj [A3] and Anandan [A4] were with Selvam [A1] and Deivasigamani [A2] at the time of abduction of Thangavel [D1] and his daughter Mahalakshmi [D2] on 05.10.2015 and thereafter, all the four had caused the death of Thangavel [D1] at Selvam's [A1] weaving unit, by attacking him with three wooden weaver sticks and with the cycle pump. Haridas [P.W.2], who had seen the abduction did not identify Nagaraj [A3] and Anandan [A4] either in the Identification parade or in the Court.

72. Learned Public Prosecutor submitted that based on the disclosure statement of Nagaraj [A3], police recovered three wooden weaver sticks [M.O.30] under the cover of Mahazar [Ex.P.13] in the presence of Kuppuraj [P.W.5] from a bush beneath a bridge near Ayyankovil Road. He also submitted that one of the sticks was found to be with blood stains and the same was examined by Srinivasan [P.W.58], Serologist, who in his

evidence and in his report [Ex.P.83] has stated that the blood is human blood and is of 'B' group. He further submitted that the prosecution have proved satisfactorily beyond doubt that Thangavel [D1] had 'B' group blood and therefore, this Court could be legitimate in drawing an inference that it was the accused who had caused the death of Thangavel [D1] by attacking with wooden weaver sticks [M.O.30]. We are unable to concur with the submissions of the learned Public Prosecutor inasmuch as there is no other evidence other than the recovery of the stick from under a bush on the showing of Nagaraj [A3]. Though blood stains in the stick tallies with that of the deceased Thangavel [D1], in the absence of any other evidence other than the recovery of the stick, we are unable to persuade ourselves to return a finding of guilt as against Nagaraj [A3] and Anandan [A4].

#### EVIDENCE AS AGAINST RANGARAJ [A5]

73. It is the specific case of the prosecution that Selvam [A1], Deivasigamani [A2], Nagaraj [A3] and Anandan [A4] abducted Thangavel [D1] and Mahalakshmi [D2] and caused the death of Thangavel [D1] at the weaving unit of Selvam [A1] and thereafter, A2 to A4 parted company with Selvam [A1]. After sending A2 to A4, Selvam [A1] is said to have carried the body of Thangavel [D1] and taken Mahalakshmi [D2] with him in his car to No.63 Velampalayam Village, where he had abandoned the body of Thangavel [D1] and set fire to it with petrol. After that, he had contacted Rangaraj [A5] and at the instance of Rangaraj [A5], he took Mahalakshmi [D2] to VVK Nagar Layout, where Rangaraj [A5] joined. There, Rangaraj [A5] sexually abused Mahalakshmi [D2] and thereafter, silenced her by attacking her with an iron rod [M.O.43] and caused her death. After causing her death, they poured petrol and set the body on fire. In order to establish these facts, the prosecution strongly relied upon the evidence of Dinesh [P.W.21], who, in his evidence has stated that on 05.10.2015 around 10.30 in the night, he saw Rangaraj [A5] standing beneath a street lamp near Karuppannan Koil in Pongaliyur. At that time, when Dinesh [P.W.21] questioned Rangaraj [A5], he told him that he is waiting for his brother from Palladam. Beyond that, Dinesh [P.W.21] has not stated anything. In his cross examination, he has stated that Rangaraj [A5] was not his friend. Apart from this evidence, there is no other piece of material evidence to show that Rangaraj [A5] was with Selvam [A1] in and around that time.

74. Rangaraj [A5] was arrested by the police at 1.15 a.m. on 08.10.2015 on being identified by Selvam [A1] and based on his disclosure statement, a blood stained shirt [M.O.33] was recovered under the cover of Mahazar [Ex.P.19]. The blood stained shirt [M.O.33] was sent to the Forensic Science

Department and the Serologist Report shows that it is human blood, but the result of the blood group showed inconclusive.

75. Learned Public Prosecutor submitted that Rangaraj [A5] had used the iron rod [M.O.43] to assault Mahalakshmi [D2] and the said iron rod [M.O.43] was found with blood stains and therefore, it was seized under Mahazar [Ex.P.31] and was sent to the Serologist for determining the blood group. He submitted that the Serologist Report [Ex.P.82] states that the blood stains found on the iron rod [M.O.43] is human and is of 'O' group. It has been established that Mahalakshmi's [D2] blood group was also 'O' group and therefore, the learned Public Prosecutor submitted that the prosecution have proved the participation of Rangaraj [A5] in the rape and murder of Mahalakshmi [D2].

76. We gave our anxious consideration to this submission of the learned Public Prosecutor.

77. It is true that the blood stain found in the iron rod [M.O.43] is of human blood group 'O' and that Mahalakshmi's blood group is also 'O'. However, the iron rod [M.O.43] was discovered by Vadavalli Police near the body of Mahalakshmi [D2] on 06.10.2015 itself, whereas, Rangaraj [A5] was arrested by Palladam police only on 08.10.2015 at 1.15 a.m. In other words, the discovery of the rod [M.O.43] was not pursuant to the disclosure statement of Rangaraj [A5] and it was prior in point of time and hence, his disclosure statement is not relevant under Section 27 of the Evidence Act. Except the solitary evidence of Dinesh [P.W.21] who had seen Rangaraj [A5] standing near the lamp post on 05.10.2015 around 10.00 p.m. waiting for his cousin, there is no other material to connect Rangaraj [A5] with the alleged offences.

78. Before concluding, we hereby once again catalogue the incriminating materials against Selvam [A1] and Deivasigamani [A2]:

[a] The prosecution have proved beyond doubt that Selvam [A1] had a strong motive as against Thangavel [D1] since Thangavel [D1] had taken Rs.60,000/- from Selvam [A1] in the year 2014 and had repaid only Rs.8,000/-. When Selvam [A1] demanded to return the money, Thangavel [D1] had given a complaint against Selvam [A1] and had taken him to the Police Station.

[b] Enquiry was conducted by Palanisamy [P.W.35], Sub Inspector of Police, Palladam Police Station on the complaint [Ex.P.33] that was lodged by Thangavel [D1] against Selvam [A1]. During the enquiry, Thangavel [D1] agreed to repay the amount of

Rs.52,000/- to Selvam [A1] before February 2015, but did not return. Selvam [A1] was incensed with it and on 05.10.2015, he had openly threatened Thangavel [D1] of dire consequences in the presence of his wife Tamilselvi [P.W.1] and neighbour [P.W.3].

[c] The prosecution have proved beyond doubt that on 05.10.2015 after 6.00 p.m., Thangavel [D1] and his daughter Mahalakshmi [D2] left their house by TVS XL Super motor cycle [M.O.36] to Palladam market to purchase brown paper rolls for putting cover to the books and thereafter, they did not return.

[d] The prosecution have proved through the evidence of Haridas [P.W.2] that Selvam [A1] and three others abducted Thangavel [D1] and Mahalakshmi [D2] and bundled them up in the Alto car on 05.10.2015 around 6.45 p.m.

[e] The prosecution have proved that Selvam [A1] and Deivasigamani [A2] had gone to Meesakaran Petrol Bunk and had bought petrol in a petrol can [M.O.20] in the night of 05.10.2015. The half burnt body of Thangavel [D1] was found on the road side near 63, Velampalayam Village at 6.30 a.m. The half burnt body of Mahalakshmi [D2] was found at 7.00 a.m. on 06.10.2015 near VVK Nagar Layout in Vadavalli Pongaliyur road.

[f] The prosecution have established that Thangavel [D1] was assaulted in the weaving unit of Selvam [A1], from where blood stained scrappings of the wall [M.O.13], the Alto car [M.O.25], Spectacles [M.O.16] of Thangavel [D1], 5 rolls of brown wrapper sheet [M.O.17], petrol can [M.O.20], blood stained rexin from the car seat [M.O.18], a portion of the floor mat [M.O.45] from the Alto car with petrol odour, for which there has not been any plausible explanation offered by Selvam [A1] either in the cross examination of witness or in his statement under Section 313 Cr.P.C. when these incriminating materials were put to him.

[g] The prosecution have proved that on the showing of Selvam [A1], the TVS XL Super motor cycle [M.O.36] was discovered and recovered from the well of Palanisamy [P.W.13] with the help of fire service personnel.

79. Bearing these facts in mind, we now proceed to analyse the legal position in cases involving abduction and murder.

80. We have already extracted a passage from State of West Bengal vs. Mir Mohammad Omar and others (supra). Following the law laid down therein, the Supreme Court in Sucha Singh vs. State of Punjab [(2001) 4 SCC 375] has held as follows:

"15. The abductors alone could tell the court as to what happened to the deceased

after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.

.....

20. We have seriously bestowed our consideration on the arguments addressed by the learned Senior Counsel. We only reiterate the legal principle adumbrated in State of W.B. v. Mir Mohd. Omar [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] that when more persons than one have abducted the victim, who is later murdered, it is within the legal province of the court to justifiably draw a presumption depending on the factual situation, that all the abductors are responsible for the murder. Section 34 IPC could be invoked for the aid to that end, unless any particular abductor satisfies the court with his explanation as to what else he did with the victim subsequently, i.e., whether he left his associates en route or whether he dissuaded others from doing the extreme act etc. etc. "

81. Very recently, in Suresh & another vs. State of Haryana [2014 (13) Scale 390], it has been held as follows:

"8. Apart from the above, this is a case where Section 106 of the Evidence Act is clearly attracted which requires the accused to explain the facts in their exclusive knowledge. No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused. Recovery of dead bodies from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully established. It casts a duty on the accused as to how they alone had the information leading to recoveries which was admissible under Section 27 of the Evidence Act. Failure of the accused to give an

explanation or giving of false explanation is an additional circumstance against the accused as held in number of judgments, including State of Rajasthan vs. Jaggu Ram (2008) 12 SCC 51)."

82. We are not mulcting criminal liability on Selvam [A1] and Deivasigamani [A2] merely on their failure to discharge the burden under Section 106 of the Evidence Act. Though in the judgments referred to above, the Supreme Court has held that when abduction is proved satisfactorily and thereafter, if the body of the abducted person is found shortly, an inference can be safely drawn that it was the abductors who had murdered the person, in the absence of the accused giving an explanation as to what had happened to the abducted person after his abduction.

83. In this case, we are not only relying upon the failure of Selvam [A1] and Deivasigamani [A2] to discharge the burden under Section 106 of the Evidence Act, but also about the seizure of several incriminating materials and also the presence of Selvam [A1] and Deivasigamani [A2] in the Meesakaran Petrol Bunk for purchase of petrol. All these circumstances cumulatively lead us to an inescapable inference that after abduction, it was Selvam [A1] and Deivasigamani [A2] who had murdered Thangavel [D1]. Of course, the prosecution themselves have not charged Deivasigamani [A2] for the murder of Mahalakshmi [D2]. In the absence of evidence as to who between the two, viz., Selvam [A1] and Deivasigamani [A2], had murdered Thangavel [D1], we cannot acquit both of them, as that would be a travesty of justice and would make Section 34 IPC otiose.

84. The overarching capability of Section 34 can be explained with the following illustration:

'A', 'B' and 'C' enter a hotel room at 10.00 a.m.. At 10.15 a.m., 'A' and 'B' come out of the room, close the door and leave the hotel. At 10.30 a.m., the waiter finds blood seeping out from beneath the door of the room and he pushes the door and thereafter, screams on seeing the body of 'C' lying in a pool of blood. The entire scene has been captured by the CCTV cameras placed in the corridor. In the trial of 'A' and 'B' for the murder of 'C', except the police confession, which is hit by Section 25 of the Indian Evidence Act, if the prosecution does not have legal evidence to prove as to who between the two, viz., 'A' and 'B' had actually committed the murder of 'C', can the Court acquit both 'A' and 'B'? Here, Section 34 IPC comes to the aid, with which, both 'A' and 'B' can be individually convicted under Section 302 read with 34 IPC, unless it is proved by the accused that between the

two, only one of them had committed the murder despite the protestation of the other. It is trite law that Section 34 IPC is not a penal section and even if a charge is not framed specifically, the Court can convict the accused based on the available evidence with the aid of Section 34 IPC [See: Ramji Singh v. State of Bihar-2001 (7) Supreme Today 751 and Nallabothu Venkaiah vs. State of Andhra Pradesh-2002 (5) Supreme Today 484].

85. In view of the above, the prosecution have failed to prove the charge of conspiracy against the accused and therefore, all the accused are acquitted of the charge under Section 120-B read with 302 IPC. We also give the benefit of doubt to Nagaraj [A3], Anandan [A4] and Rangaraj [A5] and acquit them of all the charges.

86. Accordingly, Crl.A.No.369 of 2017 filed by Nagaraj [A3], Crl.A.No.475 of 2017 filed by Anandan [A4] and Crl.A.No.322 of 2017 filed by Rangaraj [A5] are allowed and the conviction and sentence imposed by the learned Mahila Judge, (Fast Track Court), Tiruppur, by judgment dated 15.05.2017 in Spl.S.C.No.1 of 2016 against Nagaraj [A3], Anandan [A4] and Rangaraj [A5] are hereby set aside. The appellants/A3, A4 and A5 are acquitted of all the charges levelled against them and they are directed to be set at liberty forthwith, if their presence is not required in connection with any other case. The fine amount, if any paid, by the appellants shall be returned to them.

87. The trial Court imposed death sentence to Selvam [A1]. The mind of the Court was swayed by the fact that the accused committed murder of Thangavel [D1] and had also determined that his daughter Mahalakshmi [D2] has been subjected to physical violation and then murdered. However, in the course of our discussion, we were not able to accept the conviction imposed against Rangaraj [A5]. Insofar as Selvam [A1] is concerned, the sentencing must address his concerns in relation to judicial discretion and there must be an equal treatment of similarly situated convicts. The principle behind sentencing and sentencing as a policy has been discussed by the Supreme Court in State of Uttar Pradesh vs. Sanjay Kumar [(2012) 8 SCC 537] and the relevant portion would read as under:

"21. Sentencing policy is a way to guide judicial discretion in accomplishing particular sentencing. Generally, two criteria, that is, the seriousness of the crime and the criminal history of the accused, are used to prescribe punishment. By introducing more uniformity and consistency into the sentencing process, the objective of the policy, is to make it

easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts. The principle of proportionality, as followed in various judgments of this Court, prescribes that, the punishments should reflect the gravity of the offence and also the criminal background of the convict. Thus, the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualised justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.

22. Ultimately, it becomes the duty of the courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed, etc. The courts should impose a punishment befitting the crime so that the courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise.

23. The survival of an orderly society demands the extinction of the life of a person who is proved to be a menace to social order and security. Thus, the courts for the purpose of deciding just and appropriate sentence to be awarded for an offence, have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been

committed, in a dispassionate manner. In the absence of any foolproof formula which may provide a basis for reasonable criteria to correctly assess various circumstances germane for the consideration of the gravity of the crime, discretionary judgment, in relation to the facts of each case, is the only way in which such judgment may be equitably distinguished. The Court has primarily dissected the principles into two different compartments—one being the “aggravating circumstances” and, the other being the “mitigating circumstance”. To balance the two is the primary duty of the court. The principle of proportionality between the crime and the punishment is the principle of “just deserts” that serves as the foundation of every criminal sentence that is justifiable. In other words, the “doctrine of proportionality” has valuable application to the sentencing policy under the Indian criminal jurisprudence. While determining the quantum of punishment the court always records sufficient reasons. (Vide *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724 : AIR 1991 SC 1463], *Ravji v. State of Rajasthan* [(1996) 2 SCC 175 : 1996 SCC (Cri) 225 : AIR 1996 SC 787], *State of M.P. v. Ghanshyam Singh* [(2003) 8 SCC 13 : 2003 SCC (Cri) 1935], *Dhananjay Chatterjee v. State of W.B.* [(2004) 9 SCC 751 : 2004 SCC (Cri) 1484 : AIR 2004 SC 3454], *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [(2012) 4 SCC 37 : (2012) 2 SCC (Cri) 30] and *Brajendrasingh v. State of M.P.* [(2012) 4 SCC 289 : (2012) 2 SCC (Cri) 409 : AIR 2012 SC 1552] ).

88. There has always been necessity for the Court to record sufficient reasons. In the present case, though we hold that Selvam [A1] is guilty of the murder of Thangavel [D1] and Mahalakshmi [D2], the question which has to be addressed is, whether these acts warrant death punishment or whether, a life imprisonment which would act not only as a retribution for his crime, but also to some extent hopefully reform him can be addressed. It is also to be seen that the prosecution had not brought forward any previous conviction or history of criminal activities or antecedents against Selvam [A1]. Viewing the entire

sequence of events from his eyes, as a fact, he had lent Rs.60,000/- to Thangavel [D1]. It is also a fact that only Rs.8,000/- was repaid and Rs.52,000/- was not repaid. It is also a fact that Thangavel [D1] had undertaken to repay the said amount, but did not repay the same. This has established a strong motive for the commission of the crime. However, had this motive been removed or had this entire incident not surfaced in the life of Selvam [A1], the Court should also ask the question whether he would still have pushed himself to commit a grisly crime of murder. If the answer is 'yes', then certainly, he would deserve capital punishment, but, if there is doubt that he might not have exhibited the same conduct, then it is only just that the Court also recognises the fact and awards him life imprisonment and in this case, life imprisonment **(\*) concurrently.**

89. As regards Selvam [A1], we convict him as follows:

- We confirm the conviction and sentence imposed by the trial Court for the offence under Section 364 IPC (2 counts) [for abduction of Thangavel (D1) and Mahalakshmi (D2)] 10 years Rigorous Imprisonment for each count and fine of Rs.1,000/- each, in default to undergo one year Rigorous Imprisonment. The sentences shall run concurrently.
- We confirm the conviction imposed by the trial Court for the offence under Section 302 IPC, but we add Section 34 IPC to it for the murder of Thangavel [D1] and confirm the sentence of imprisonment for life and fine of Rs.5,000/- in default to undergo one year Rigorous Imprisonment.
- We commute the death sentence that was awarded by the trial Court for the murder of Mahalakshmi [D2] and impose imprisonment for life and fine of Rs.5,000/-, in default to undergo one year Rigorous Imprisonment.

((\*) The two life imprisonments shall run concurrently.)  
(The sentence of 10 years under Section 364 IPC (2 counts) shall run concurrently with the life imprisonment.)

- We confirm the conviction and sentence imposed by the trial Court for the offence under Section 201 read with 302 IPC, viz., 5 years Rigorous Imprisonment and fine of Rs.1,000/-, in default to undergo one year Rigorous Imprisonment. (This imprisonment shall run concurrently with the life imprisonment).
- We acquit Selvam [A1] for the offence under Sections 16 r/w 17 of the POCSO Act.

90. As regards Deivasigamani [A2] we convict him as follows:

- We confirm the conviction imposed by the trial Court for the offence under Section 364 IPC, but we add Section 34 IPC to it and confirm the sentence of 10 years Rigorous Imprisonment and fine of Rs.1,000/-, in default to undergo one year Rigorous Imprisonment.
- We alter the conviction under Section 302 IPC, to one under Section 302 read with 34 IPC for the murder of Thangavel [D1], however, maintain the sentence imposed by the trial Court, viz., imprisonment for life and fine of Rs.5,000/- in default to undergo one year Rigorous Imprisonment.
- We confirm the conviction and sentence imposed by the trial Court for the offence under Section 201 IPC, viz., five years Rigorous Imprisonment and fine of Rs.1,000/-, in default to undergo one year Rigorous Imprisonment.
- We acquit Deivasigamani [A2] for the offence under Section 120-B read with 302 read with 109 IPC.

The sentences shall run concurrently.

91. With the above modification, CrI.A.No.362 of 2017 filed by Selvam [A1] and CrI.A.No.476 of 2017 filed by Deivasigamani [A2] are dismissed and the Referred Trial is answered accordingly.

To sum up:

|                                               |           |
|-----------------------------------------------|-----------|
| CrI.A.No.362/2017 filed by Selvam [A1]        |           |
| - Dismissed with modification                 |           |
| CrI.A.No.476/2017 filed by Deivasigamani [A2] |           |
| - Dismissed with modification                 |           |
| CrI.A.No.369/2017 filed by Nagaraj [A3]       |           |
| - Allowed                                     |           |
| CrI.A.No.475/2017 filed by Anandan [A4]       | - Allowed |
| CrI.A.No.322/2017 filed by Rangaraj [A5]      | - Allowed |

**(\*) corrected as per the order  
of this Court dated 20.09.2017  
and made herein.**

Sd/-  
Assistant Registrar(CS III)  
**27.10.2017**

//True Copy//

Sub Assistant Registrar

gms

To

1.The II Additional District Judge,  
Mahila Court (Fast Track Court),  
Tiruppur.

2.The Principal District Judge,  
Tiruppur.

3.The Superintendent,  
Central prison,  
Coimbatore.

4.The Inspector of Police  
Palladam Police Station  
Tiruppur District.

5.The District Collector,  
Tiruppur.

6.The Director General of Police,  
Mylapore, Chennai-600 004.

+1cc to M/S.W.Camyles Gandhi, Advocate Sr. 68971

+1cc to M/S.C.P.Sugumar, Advocate Sr. 68216

+1cc to M/S.sT.Muruganantham, Advocate SR. 67700

+1cc to M/S.L.Mahendran, Advocate Sr. 68276

+1cc to M/S.R.Sankara Subbu, Advocate Sr. 68028

+1cc to the Public Prosecutor,  
High Court, Madras Sr. 67984

सत्यमेव जयते

Judgment in  
R.T.No.1 of 2017 and  
Crl.A.Nos.362, 476, 369,  
475 and 322 of 2017

MP(CO)  
VR(02/11/2017)

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