

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.03.2018	Delivered on 27.03.2018
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THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.A.Nos.510 & 551/2017 and Crl.MP.No.10989/2017
in Crl.A.No.551/2017

Sathishkumar .. Appellant / A-1 in
Crl.A.No.510/2017

Soundararajan .. Appellant / A-2
in Crl.A.No.551/2017

Vs.

State rep. by,
The Inspector of Police
Kodumudi Police Station
Erode District.

... Respondent in both the appeals

Criminal Appeals filed under Section 374[2] of the Criminal Procedure Code to set aside the conviction imposed in judgment dated 09.08.2017 made in SC.No.78/2014 on the file of the learned Additional Sessions Judge, Mahila Court [Fast Track Court], Erode, Erode District by allowing the appeals.

For Appellant in
Crl.A.No.510/2017 : Mr.N.Manokaran
For Appellant in
Crl.A.No.551/2017 : Mr.R.Sankarasubbu for
Mr.P.Kannan Kumar
For Respondent in
both the Appeals : Ms.M.Prabavathy, APP

COMMON JUDGMENT

N.SATHISH KUMAR, J.,

Appellant in Crl.A.No.510/2017 is arrayed as A-1 ; and appellant in Crl.A.No.551/2017 is arrayed as A-2 out of three accused in the case in SC.No.78/2014 on the file of the Court of the learned Additional Sessions Judge, Mahila Court [Fast Tract Court], Erode, Erode District.

2 Originally, A-1 to A-3, viz., Sathishkumar, Soundararajan and Manikandan, were prosecuted for the offences u/s.120[B], 364, 302 read with 34, 392 and 201 IPC and necessary charges have been framed as against them. On 07.11.2014, during framing of charges, A-3 [Manikandan] pleaded guilty and submitted an application to treat him as an Approver by giving

necessary pardon. Accordingly, A-3 was granted Pardon by the Trial Court and he was examined as Court Witness No.1 on the side of the prosecution. After the above procedure, necessary charges have been framed against A-1 and A-2 on 26.11.2014. The Trial Court, under impugned Judgment dated 09.08.2017 convicted and sentenced the appellants / accused as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A1	120[B] read with 302 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	120[B] read with 392 IPC	Sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of 2 years simple imprisonment.
	364 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	302 read with 34 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	392 IPC	Sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	201 [Part I] IPC	Sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.

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Rank of the Accused	Conviction under section	Sentence Awarded
A2	120[B] read with 302 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	364 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	120[B] read with 392 IPC	Sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- with a default sentence of 2 years simple imprisonment.
	302 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	392 IPC	Sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.
	201 [Part I] IPC	Sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/- each with a default sentence of 2 years simple imprisonment.

The sentences were ordered to run concurrently. Aggrieved over the said conviction and sentence, the present appeals came to be filed by the appellants/A-1 and A-2.

2 The brief facts of the prosecution case, are as follows:-

[a] Deceased Mohanasundari is the wife of P.W.1-Magudapathi. She was the Head of the Women Self Help Group known as "Yogam". She used to collect amounts from various members of the Group and regularly visit the Bank, Ezhumaathur Branch, to deposit the amount so collected. When the matter stood thus, on 23.11.2012, in the morning hours, P.W.1 dropped he at Kokkirikaadu Bus Stand in his Two-Wheeler in order to go to the Bank. Thereafter, the deceased boarded the bus named "Velmurugan", which proceeded towards Erode. Thereafter, she did not return home. P.W.1 made a search of her and also enquired P.W.2-Selvarani, sister of the deceased. However, she

did not return home. After searching for the deceased for 4 or 5 days, along with his family members, P.W.1 went to Sivagiri Police Station and lodged a complaint-Ex.P.2. Thereafter, on 08.12.2012, P.W.1 was called by the Inspector of Police attached to Sivagiri Police Station, where he was informed that his wife/deceased was done to death by Sathishkumar, Soundararajan and Manikandan, for want of cellphone, gold earstud and chain from her. Later, P.W.1 was taken by the police along with A-1 to a pit near Eastman Spinning Mill at Vedachandur and A-1 showed the place of occurrence wherein the skeletal remains of the deceased were found. P.W.1 identified the skeleton as that of his wife on the basis of the clothes found on the skeletal remains. Police collected the bones and skull. The hair of the deceased found in the place of crime, was also collected by the Investigating Agency. When the Investigating Authority asked for the hair of the deceased, if any, from the house, P.W.1 collected the same from the comb used by the deceased and handed over the same to the police.

[b] P.W.3-Subramaniam, a resident of Vilakethi, had stated about his seeing of the deceased at Vilakethi on 23.11.2012 at about 10.00 a.m., and his enquiring of her as to where she was proceeding towards. Deceased answered P.W.3 that she is going to Ezhumaathur Bank. At that time, an Omni Van came and the deceased boarded the said Van and left the place.

[c] P.W.7-Kamalavathy, was the Village Administrative Officer, Ichipalayam Village and she had stated that on 08.12.2012 at about 7.00 a.m., A-1 appeared before her and confessed the crime of committing the murder of Mohanasundari and the same was reduced into writing under Ex.P.9. She went to Kodumudi Police Station along with A-1 and her Menial Thangavel and handed over the custody of A-1 to the Station House Officer along with Ex.P.9.

[d] P.W.12-Palaniappan is running a Lodge near Erode Bus Stand in the name of "CPM Lodge". On 23.11.2012, A-1 came to his Lodge along with a lady and when P.W.12 enquired about her, A-1 introduced her as his wife and that her name is Mohanasundari. A-1 made entries in the Register/Book [marked as Ex.P.19 and the entry relating to A-1 is marked as Ex.P.20] maintained in the Lodge and was allotted Room No.208. On the same day evening, A-1 vacated the Lodge at 5.00 p.m. and got back the balance amount of Rs.350/- from P.W.12 and went in a Maruti Van along with the deceased. Thereafter, on 25.12.2012, A-1 was brought by the police to the Lodge and also showed the photograph of the deceased to P.W.12 to confirm as to whether it was she who had accompanied A-1 on the date of occurrence and P.W.12 identified the woman in the photograph as that of the deceased and that it was she who had stayed in his Lodge along

with A-1 on 23.11.2012.

[e] P.W.16-Selvi, is the owner of a Jewelry shop by name "Yuvaraj Jewellery Shop" and she had stated that the deceased used to visit the shop frequently and one month prior to her missing, the deceased had purchased 2 grams of earstuds and some time thereafter, police came and enquired P.W.16 by showing the photograph of the deceased and P.W.16 identified the jewels purchased in her shop.

[f] P.W.17-Sankar is the relative of the deceased and P.W.1. On 16.12.2012, P.Ws.1 and 17 collected the hair from the comb used by the deceased ; sealed the same in polythene cover and handed over the same to the police. The same was seized by the police under Form 91.

[g] P.W.18-Subramani, a photographer by profession, had deposed that on 08.12.2012, upon calling by the Inspector of Police, he went to the police station where he had seen A-1 and along with the police party and A-1, he went to the Odai near Eastman Spinning Mill at Vedachandur, on Karur-Dindigul Highways. He took the photographs of the skeletal remains of the deceased and handed over the CD and photographs series under Ex.P.26 to the Investigating Officer.

[h] P.W.19-Subramani, was running a Finance Company in the name of Amman Finance Company along with 6 other partners. He had stated that on 20.04.2012, A-1 and A-2 came to his Finance Company along with one Shanmugam and requested a loan of Rs.60,000/- and A-1 pledged the RC Book of the vehicle, viz., Omni Van bearing Registration No.TN-33-AJ-4898 and executed 2 Pronotes each for a sum of Rs.30,000/-. Three months thereafter, A-1 and the said Shanmugam came and paid the interest portion alone. Thereafter, the accused did not turn up. The police came along with the accused and seized the Pronotes [Ex.P.28 series] ; RC Book [Ex.P.27] ; and a Receipt [Ex.P.29].

[i] P.W.27-Jayasudha, Sub Inspector of Police attached to Sivagiri Police Station, on 28.11.2012 at about 12.00 Noon, received the complaint [Ex.P.2] from P.W.1 and registered a case in Cr.No.279/2012 for Woman Missing. Ex.P.44 is the First Information Report. She forwarded the originals of Exs.P.2 and 44 to the jurisdictional Court and copies of the same to the higher officials.

[j] P.W.30-Shanmugam, Inspector of Police, attached to Sivagiri Police Station, at the relevant time, on receipt of Ex.P.44-FIR from P.W.27, took up the case for investigation. He enquired P.Ws.1, 2 and others and recorded their statements. On

06.12.2012, he enquired the witnesses and on coming to know that A-1 took the deceased on the date of missing, he made a search for A-1. On 08.12.2012 at about 8.00 a.m., while he was on duty, P.W.7-VAO appeared before him along with her Menial Thangavel and A-1-Sathishkumar and handed over the letter/confession of A-1 [Ex.P.9] and A-1 to P.W.30. As A-1 confessed the crime, P.W.30 altered the offences to one u/s.302 and 392 IPC. Ex.P.49 is the Alteration Report. He recorded the confession statement of A-1 in the presence of witnesses, the admissible portion of which is marked as Ex.P.10. In pursuant to the said confession statement, A-1 took the police party to his house and produced a Receipt issued by Manapuram Finance Limited and a covering chain in the presence of P.W.7 and her Menial and the same were seized under Mahazar. Thereafter, the Investigating Officer went to the place of occurrence as identified by A-1 and in the presence of witnesses Saravanan and Gopal, prepared an Observation Mahazar [Ex.P.3] and also drawn an Rough Sketch [Ex.P.50]. He also seized material objects from the scene of crime under Mahazar [Ex.P.51]. On the same day, between 1.00 p.m. and 4.00 p.m., he held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses. Ex.P.52 is the Inquest Report. Thereafter, he gave a requisition to the Medical Officer attached to Vedachandur Government Hospital through Grade I Police Constable, to conduct autopsy in the place of crime itself. He also recorded the statements of the other witnesses.

[k] P.W.14-Dr.Dhilipkumar, Medical Officer attached to Vedachandur Government Hospital, on receipt of requisition from the Investigating Officer, came to the place of occurrence on 08.12.2012 and commenced the postmortem at about 4.00 p.m. He noted the following:-

"The following structures were found at spot:-

- Right femur and right both bones legs with remnants of muscles attached to it.
- C7 to Hemisacrum articulated with ligaments.
- C2 cervical vertebra with remains of soft tissues attached.
- C3 to C6 cervical vertebra with remains of soft tissues attached.
- Right arm bones with remnants of soft tissues.
- Left arm bones with scapula with calvicle with part of left forearm with decomposed soft tissues attached to it.
- Part of 2nd rib.
- Skull. Hyoid Bone not found."

Ex.P.24 is the Postmortem Certificate wherein he had opined that "with the above mentioned structures, cause and time of death could not be made out" He preserved Right femur and skull for sending those materials objects for forensic examination.

[l] P.W.15-Shankar, Watcher in the Forest Department had deposed about his seeing of the skeletal remains in the place of crime on 08.12.2012.

[m] P.W.30, Investigating Officer, in continuation of his investigation, on 08.12.2012 at about 5.00 p.m., went to Manapuram Finance, Kodumudi Branch, and seized a pair of gold earstuds in the presence of witnesses under Mahazar. He went to Vilakethi where the deceased boarded the Omni Van, along with A-1 and in the presence of witnesses, he drew a Rough Sketch [Ex.P.53] and also prepared an Observation Mahazar [Ex.P.12] and sent the material objects to Court along with Form 91. On 10.12.2012 at about 1.00 p.m., the police party intercepted an Omni Van bearing Registration No.TN-33-AJ-4898 and when the persons attempted to escape, they were caught and on enquiry, they admitted that they are A-2 and A-3 and were involved in the murder of Mohanasundari. A-3 came forward to give a voluntary confession statement, admissible portion of which is marked as Ex.P.15. So also A-2, whose admissible portion of the confession statement is marked as Ex.P.17. Pursuant to the confession of A-3 and A-2, the cellphone [M.O.5] of the deceased and the Omni Van [M.O.1] bearing Regn.No.TN-33-AJ-4898 were seized under Mahazar in the presence of witnesses. Both accused were sent for judicial custody on 11.12.2012. On 12.12.2012, the Investigating Officer seized the RC Book [Ex.P.27] regarding the Omni Van bearing Regn.No.TN-39-AH-6392 from P.W.19 under Mahazar. He also gave requisition to the Court for sending the skull and the femur bone for Superimposition Test and DNA Test. On 24.12.2012, P.W.30 took police custody of A-1 in connection with the case in Cr.No.197/2012 and recorded his confession, based on which, he went to CPM Lodge and seized the Ledger Book [Ex.P.19] wherein, the entry made by A-1 is marked in Entry No.150 under Ex.P.20. He obtained the specimen signature of A-1 in the presence of witnesses and sent the same to the Court under Form 91. On 31.12.2012, he sent the specimen signature obtained from A-1 and the Ledger Book seized from CPM Lodge to the Court for getting Handwriting Expert Opinion along with a requisition. On 16.08.2013, he recorded the statements of witnesses ; on 21.08.2103, recorded the statement of the Medical Officer who conducted autopsy. He also recorded the statements of the Forensic Experts ; Head Clerk attached to Judicial Magistrate, Kodumudi and other witnesses on various dates.

[n] P.W.20-Tmt.Radhika Balachandran, Deputy Director

attached to Regional Forensic Science and Research Centre, Coimbatore, at the relevant time, had examined and compared the hair collected from the place of crime with that of the hair produced by P.W.1 from his house and gave a Report under Ex.P.31, wherein she had stated that both hairs are human hairs and are similar with each other.

[o] P.W.21-Thamaraiselvan, Scientific Officer-cum-Documents Expert attached to the Forensic Science Lab, Chennai, had examined the signature found in the Ledger Book seized from CPM Lodge and the signature of A-1 and compared both. He gave a Report under Ex.p.34, wherein he had stated that the handwriting agrees with each other cumulatively.

[p] P.W.22-Visalatchi, Assistant Director in the Chemistry Division of the Forensic Science Department examined the wet earth collected from the place of occurrence and the sample earth and issued the Report under Ex.P.35. P.W.23-Janarthanan, Head Clerk/Writer in the Judicial Magistrate Court, Kodumudi, received the case properties in the presence of the Magistrate concerned. P.W.24-Chandrakumar, Head Clerk/Writer in the Sub Court, Gobichettipalayam, received the requisition from the Investigating Officer, to send the skull and other skeletal remains, earth collected etc., to Forensic Department, for examination and also for DNA Test. On 20.01.2014, as per the requisition of the Judicial Magistrate, blood sample collected from Subashree, daughter of the deceased and P.W.1 in FTA Card in the hospital and was sent to the Forensic Lab for test. Similarly, the femur bone was also sent to the Lab for examination, as per the orders of the Magistrate. P.W.28-Lakshmi Balasubramanian, Deputy Director, DNA Department attached to the Forensic Science Laboratory, Chennai, compared the DNA found in the Femur Bone with that of the DNA from the blood samples and found that the deceased Mohanasundari is the biological mother of Subashree. The Report issued by her in that regard is marked as Ex.P.46. P.W.29-Pushparani, Scientific Officer attached to the Forensic Science Laboratory, Chennai, conducted Superimposition Test on the skull of the deceased and gave a Report under Ex.P.48, stating the skull tallies with the photograph of the deceased.

[q] P.W.30, the Investigating Officer, in continuation of the investigation, after recording the formal statements of the Experts, Medical Officers and after receipt of the reports, finally filed the Final Report against the accused on 11.05.2014 for offences u/s.120[B], 364, 302, 392, 201 r/w 34 IPC before District Munsif-cum-Judicial Magistrate, Perundurai, who took it on file in PRC.No.3/2014 and issued summons to the accused and on their appearance, furnished them copies of the documents u/s.207 Cr.P.C. and having found that the case is

exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Erode, who in turn, had made over the case to the learned Sessions Judge, Mahalir Needhimandra [Fast Track Court, Erode, who took it on file in SC.No.78/2014 and on appearance of the accused, had framed the charges against the accused, viz, 120[B] r/w 302, 120[b] r/w 392, 364, 302 r/w 34, 392. 201 [Part I] IPC as against A-1 ; 120[B] r/w 302, 120[b] r/w 392, 364, 302, 392. 201 [Part I] IPC as against A-2 and A-3 and questioned them. A-1 and A-2 pleaded not guilty to the charge framed against them.

[r] A-3 [Manikandan] during framing of charges on 24.07.2014 pleaded guilty and prior to that, he filed an application in CrI.MP.No.100/2014 seeking for tender of Pardon to him. Accordingly, he was granted Pardon by the Trial Court on 21.11.2014 and thereafter, he was examined as the Court Witness [C.W.1] on the side of the prosecution.

[s] It is the evidence of the Approver that he is a lorry cleaner by profession and used to come to his village once in three months and A-1 is known to him from his childhood. In due course, A-2 [Soundararajan] also became the friend of the Approver Manikandan. All three used to consume liquor often. During the year 2012, when Manikandan came to his village during Diwali Holidays, he requested some amount from A-1 as loan for getting License Badge. A-1 told C.W.1 that he will oblige the request made by C.W.1 provided C.W.1 does the work as directed by him. On 20.11.2012, all three went to the liquor shop and had Ber. A-1 and A-2 informed C.W.1 that A-1 has already availed loan from the Financial Company and as the amount is due, the Finance people may seize the Van at any time and to meet out the pressing necessities, A-1 and A-2 decided to do away the deceased Mohanasundari as she was already known to A-1 [Sathishkumar] and used to accompany him whenever he demanded and rob her gold chain and ear studs and after selling the same, to repay the debt and also to part with some amount to C.W.1 for getting the Badge License. Accordingly, on 23.11.2012 at about 9.30 a.m., A-1 took the deceased in the Omni Van bearing Regn.No.TN-33-AJ-4898 [M.O.1]. A-2 called C.W.1 and both went to Erode and when C.W.1 enquired about A-1 with A-2, A-2 had informed Manikandan that A-1 has already booked a room and he is with the deceased in the said room. Thereafter, A-2 and C.W.1 went and consumed Beer. Subsequently, A-1 called A-2 over phone and informed him that he will be ready by 4.00 p.m. and asked A-2 and C.W.1 to come near the Government Hospital, Erode. All of them assembled near the Government Hospital, Erode at the relevant time and C.W.1 found the deceased sitting in the vehicle. Both A-2 and C.W.1 got into the car and the car went to the place called Solar and had tea. Thereafter, when the car

was proceeding towards Dindigul Road, the deceased asked as to where they are going. In reply, A-2 had told her that they will go to Kodaikanal and have fun. On the way, A-1, A-2 and C.W.1 consumed Beer and they reached Vedachandur, car was stopped near a bridge at Eastman Spinning Mill and A-1 asked the deceased to part with her chain and the ear studs and A-2 asked C.W.1 to catch hold of her. When the deceased raised alarm, A-2 beat her. A-1 caught hold of her legs, while A-2 removed her saree and fastened the same on her neck. While he was holding one end of the saree, he asked C.W.1 to hold the other end. After five minutes, the deceased succumbed. Thereafter, A-1 and A-2 removed the chain and ear studs of the deceased and thrown the dead body beneath the bridge and they left the place. They also took the cellphone of the deceased ; removed the SIM card and gave the cellphone to C.W.1 to keep under safe custody. While they were consuming liquor, A1 found the chain to be a covering chain. Both A-1 and A-2 were conversing with each other saying that it was their fourth murder case and that nobody can identify them. When C.W.1 enquired them, both A-1 and A-2 confessed about their taking of ladies with them and committing murder of them for their valuables, after having fun. On 27.11.2012, all the three accused went to Manappuram Gold Finance and pledged the ear studs in the name of C.W.1 and got Rs.3,600/- and handed over the cash to A-1 and A-2. On 10.12.2012, C.W.1-Manikandan and A-2 [Soundararajan] were arrested by the police during vehicle check-up.

[t] The prosecution examined P.Ws.1 to 30 and marked Exs.P.1 to 53 besides marking M.O.1 and M.O.9. On the side of the Court Witness, viz., C.W.1, Exs.C.1 to C.8 were marked.

[u] A-1 A-2 were questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and they denied it as false. On the side of the defence, D.W.1 and D.W.2 were examined and Exs.D1 and D2 were marked.

[v] D.W.1-Mr.P.M.Subash, is none other than the son of the defence counsel who defended the accused before the Trial Court. He was examined to show as if the Approver [C.W.1] has given evidence at the hands of police. It is his evidence that on 19.01.2015, the case was posted for the evidence of the Approver and thereafter, it was adjourned to next day, i.e., 20.01.2015. On 20.01.2015, the chief examination was completed in the morning hours and thereafter, during lunch hours, the Approver was sitting with the police people and having food, in respect of which, he took photographs in his Mobile phone. Photographs are marked as Ex.D.2 series. D.W.2-Alagesan, Deputy Director-cum-Documentary Expert, attached to Documentary Department, Forensic Science Laboratory, Chennai, was examined

to show that the application given by A-3 [Manikandan] seeking tender of Pardon, was written only by the Head Constable and not by the Approver. D.W.2 in his evidence, has further stated that the statements of P.Ws.3 and 4 has been written by the Head Constable and the said handwriting tallies with the handwriting found in the petition seeking tender of Pardon by the Approver. However, no documents whatsoever have been submitted for comparing the signature found in the application seeking tender of Pardon.

[w] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had convicted and sentenced the appellants/A-1 and A-2 as above stated and hence, these appeals.

3 Mr.N.Manokaran, learned Counsel appearing for the appellant/A-1 in CrI.A.No.510/2017 made the following contentions:-

- ♦ The entire case rests upon the circumstantial evidence and all the circumstances relied on by the prosecution has not been established beyond all reasonable doubt.
- ♦ In respect of motive aspect, viz., committing murder for gain, neither in the complaint nor in the evidence of P.W.1, the material objects were identified and none of the witnesses have identified the same. Hence, motive cannot be inferred merely on the basis of the evidence of P.W.30-Investigating Officer.
- ♦ There is no evidence available on record to show that with whom the deceased had accompanied on the date of missing, i.e., 23.11.2012.
- ♦ Arrest of A-2 and A-3 and the subsequent recovery projected by the prosecution is also highly doubtful as it is the specific evidence of P.W.1 in his chief examination that he has seen all the accused on 09.12.2012 in Sivagiri Police Station ; whereas it is the evidence of P.W.30-Investigating Officer that he had effected arrest of A-2 and A-3 on 10.12.2012 at 1.30 p.m. Hence, arrest of A-2 and A-3 on 10.12.2012 and the alleged recovery, relied on by the prosecution on the subsequent date, assumes insignificance and it cannot be given much importance.
- ♦ The prosecution has not produced any call details from the cellphone recovered from one of the accused. This is fatal to the prosecution.
- ♦ The alleged extra-judicial confession said to have been given by A-1 to P.W.7 has been falsified in view of the own admission of P.W.7 that the same has been prepared at the Police Station.
- ♦ The seizure of the so-called Ledger [Ex.P.19] from P.W.12, owner of CPM Lodge is also highly doubtful and the same has

been created only at later point of time to suit the convenience of the prosecution case. In fact, at the time of the arrest of A-1, the Investigating Officer has not made any attempt to collect Ex.P.19 and only after some time, when the accused taken into police custody in some other case, the Investigating Officer has allegedly seized Ex.P.19 from the Lodge and the same would indicate that the same has been created only for the purpose of implicating the accused.

- ◆ No member of the Women Self Help Group run by the deceased was examined to prove the prosecution theory that the deceased left her home to deposit the money collected from the members in the bank.
- ◆ There is no evidence for conspiracy. Exs.P.27 to 29, viz., RC Book, Pronotes [2 in Nos.] and Receipt issued by Sri Amman Finance, were seized at a later point of time.
- ◆ A-3 had turned Approver after framing of the charges and the evidence of D.Ws.1 and 2 clearly proves that A-3 was compelled to give evidence against A-1 and A-2 and the evidence of the Approver is nothing but tutoring and even the application filed by him seeking Tender of Pardon was written by a Police constable and not by himself and all these facts, throw considerable doubt in his evidence and the same is unworthy of credence and not corroborated in a particular manner and therefore, the evidence of the Approver cannot be given much importance.
- ◆ The accused were not given a fair trial. The prosecution has not filed any documents such as the Loan Application / Receipt for pledging of M.O.4-Ear Studs.
- ◆ The identity of the deceased has also not been properly established.

Hence, the learned counsel appearing for the appellant / A-1 submitted that the judgment of the Trial Court warrants interference at the hands of this Court. In support of his contentions, he placed reliance upon the judgments reported in 1975 [3] SCC 741 [Ravinder Singh Vs. State of Haryana] and 1978 [4] SCC 90 [Chandran Vs. The State of Tamil Nadu].

4 Mr.R.Sankarasubbu, learned counsel appearing for Mr.P.Kannan Kumar, learned counsel for the appellant/A-2 on record in Crl.A.No.551/2017, adopting the arguments advanced by Mr.N.Manokaran, learned counsel appearing for the appellant in Crl.A.No.510/2017, submitted that after A-3 [Manikandan] was given Pardon, charges have not been framed as against A-1 and A-2 separately and therefore, the entire trial is vitiated. Hence, the evidence of the Approver cannot be given any weightage. It is his further contention that it was the very Trial Judge who had given Pardon to A-3 [Manikandan], had tried the Sessions Case and such act is not permissible in law.

Further, the Trial Court has not given 24 hours reflection time to the Approver before recording his confession and the non-examination of the Presiding Officer who recorded the confession of the Approver caused much prejudice to the appellants.

5 Per contra, Ms.M.Prabavathy, learned Additional Public Prosecutor appearing for the State submitted that the prosecution has proved the motive aspect through the evidence of the Approver ; the theory of arrest and recovery has been amply substantiated by the evidence of the Investigating Officer as well as the other prosecution witnesses who attested the Seizure Mahazars. The evidence of the Handwriting Expert also proved the presence of A-1 along with the deceased in the lodge run by P.W.12 and the Approver was not compelled to give evidence as against A-1 and A-2 and it was his own confession which was recorded by the Trial Judge after giving Pardon. It is the further submission of the learned Additional Public Prosecutor that the Superimposition Test as well as DNA Test also corroborates the prosecution version and hence, submitted that the Trial Court, on considering these aspects had arrived at the correct finding and the same warrants no interference at the hands of this Court and prayed for dismissal of the appeals.

6 I We have perused the entire materials and evidence on record including the written submissions of the respective learned counsel.

7 In the light of the above submissions, now it has to be analysed whether the prosecution has brought home, the guilt of the appellants / accused beyond all reasonable doubt?

8 Originally, three accused were chargesheeted and necessary charges were framed by the Court. On 07.11.2014, A-3, namely, Manikandan, now examined as C.W.1, pleaded guilty. Prior to that, he filed an application to grant Pardon on 21.07.2014. Thereafter, charges were framed and even during framing of charges, he pleaded guilty. On his application, he was granted pardon on 21.11.2014. Before granting such Pardon, he was examined by the learned Trial Judge in CrI.MP.NO.100/2014 and after giving necessary warning, the Trial Court has recorded his statement and thereafter, granted him Pardon, vide order dated 21.11.2014 and the Approver was examined as C.W.1 on the side of the prosecution in the trial. After grant of Pardon, the accused were re-arrayed as A-1 and A-2 and necessary charges were framed against A-1 and A-2 on 26.11.2014 by the Trial Court and they denied the charges. On a careful perusal of the above proceedings and records, we straightaway reject the contention of the learned counsel for the appellants that no charges were framed against the accused after tendering Pardon to A-3.

9 The case of the prosecution is that A-1 who had acquaintance with the deceased Mohanasundari, took her in an Omni Van on 23.11.2012 and went to the lodge owned by P.W.12 and thereafter, along with A-2 and the Approver [C.W.1] proceeded in a Car to Kodaikanal and on the way, near the place of occurrence, he asked the deceased to remove her chain and ear studs and when she resisted,

she was murdered by A-1, A-2 and C.W.1 and had thrown her dead body underneath the bridge.

10 The prosecution mainly relied on the following circumstances:-

- ➔ Motive
- ➔ Extra-Judicial Confession said to have been given by A-1 to P.W.7.
- ➔ Arrest of the accused and the subsequent recoveries as well as the corpus.
- ➔ Scientific Evidence, viz., Superimposition Test and DNA Test.
- ➔ Evidence of the Approver [C.W.1] to bring home the guilt of A-1 and A-2.

11 Before proceeding to consider the above said circumstances, it is relevant to state that it is well settled that in a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should be fully proved and circumstances must be conclusive in nature to connect the accused with the crime. Keeping in mind, the above said settled principle of law, let us now consider the circumstances relied on by the prosecution.

CIRCUMSTANCES NO.1 TO 4:-

12 P.W.1-Magudapathy is the husband of the deceased Mohanasundari. P.W.2 is her sister. P.W.3 knows P.W.1 and deceased. P.W.1 in his evidence has stated that his wife is the President of the Women Self Help Group called "Yogam" and she used to visit the Bank frequently to deposit the money collected from the members of the Self Help Group and on the date of occurrence, i.e., on 23.11.2012, P.W.1 dropped her in the Bus stop to board the bus to go to Erode. Thereafter, she did not return. After effecting search and enquiries, P.W.1 lodged a complaint under Ex.P.2 on 28.11.2012. P.W.3 in his evidence has stated that on 23.11.2012 at about 10.00 a.m., he saw the deceased alighting from the bus at Vilakethi and thereafter, boarded the Omni Van. Thus, from the evidence of P.Ws.1 and 3, it can be seen that the deceased left the house on 23.11.2012 in the morning hours and thereafter, did not return home. Ex.P.2-complaint reflects the evidence of P.W.1, on the basis of which, a case came to be registered in Cr.No.279/2012 for Woman

Missing. From the above, the prosecution has established that the deceased was in fact, found missing from her home since 23.11.2012 onwards.

13 P.W.7-Kamalvathy, Village Administrative Officer, in her evidence, has stated that on 08.12.2012 at 7.00 a.m., A-1 appeared before her and gave an extra-judicial confession [Ex.P.7]. Immediately, she handed over A-1 as well as the extra-judicial confession to P.W.30 - Investigating Officer and the police arrested A-1. Thereafter, recovery was made in pursuant to his confession. Though the prosecution has projected the extra-judicial confession said to have been given by A-1 to P.W.7, we are of the view that the same cannot be given much importance for the simple reason that P.W.7 herself has admitted in the cross-examination that the extra-judicial confession as well as her letter under Ex.P.8 were prepared only at the Police Station on 08.12.2012. Therefore, the prosecution theory that A-1 appeared before P.W.7 at the first instance on 08.12.2012 is unbelievable. However, the fact remains that A-1 was arrested on 08.12.2012 by the Investigating officer and he recorded the confession statement of A-1, admissible portion of which is marked as Ex.P.7 and in pursuant to the discovery of facts unearthed from his confession, the crime was altered to one u/s.302 and 392 IPC under Ex.P.49. The Investigating Officer seized the Receipt [Ex.P.6] issued by the P.W.8-Manager of Manappuram Gold Finance. Thereafter, he proceeded to the place of occurrence along with A-1, viz, Vedachandur Road, near Eastman Spinning Mill and found the skeletal remains and seized the cloth from the place of occurrence and conducted inquest over the dead body and prepared the Inquest Report. He also requested the Medical officer to conduct the Postmortem in the place of crime itself. Accordingly, P.W.14 went to the place of crime ; and found the skeletal remains as that of a human being ; conducted postmortem and collected skull and femur bone and sent the same for superimposition test and DNA test. P.W.6-VAO also accompanied the Investigating Officer to the place of crime along with A-1. It is to be noted that P.W.1 initially lodged a complaint under Ex.P.2 for his wife missing and he was called by the police on 08.12.2012 after the arrest of A-1 and he also accompanied the police and A-1 to the place of occurrence, as shown by A-1 and his evidence also clearly shows that the place of occurrence was identified only by A-1 where the skeletal remains of the body was found. The Investigating Agency also collected the scalp hair from the place of crime and thereafter, P.W.1 along with P.W.17 handed over the hair found in the comb used by the deceased at home. From the above, it is clinchingly established that the skeletal remains of the human body was recovered from the place identified by A-1 in pursuant to the disclosure made by him in his confession statement before the Investigating Agency u/s.27 of the Indian Evidence Act. P.W.20, Scientific Expert compared the scalp hair recovered from

the scene of crime with that of the hair collected from the comb as produced by P.W.1 from his house and gave a report, stating both have similarities. Evidence of P.W.24-Head Clerk of the jurisdictional Court shows that in order to identify the dead body, a requisition was sent to the Forensic Lab through Magistrate along with the blood samples collected from the daughter as well as the husband [P.W.1] of the deceased Mohanasundari. P.W.28, Deputy Director in the DNA Section of the Forensic Science Laboratory, has examined the blood samples collected from the husband and daughter of the deceased and compared the DNA of the said samples with that of the DNA found in the femur bone recovered from the place of crime and found that the femur bone belongs to a female and the said female is the biological mother of one Subashree, daughter of P.W.1, in respect of which, he has issued Reports [Exs.P.45 and 46 series].

14 Evidence of P.W.28 thus clearly reveals that the matching was so accurate to 99.9998% and when the DNA Test clearly establishes the identity, it is a conclusive proof that the skeletal remains recovered from the place of occurrence at the instance of A-1 is that of the deceased Mohanasundari only. P.W.15-Forest Watcher also senn the skeletal remains on 08.12.2012 underneath the bridge. The occurrence place is an isolated place from the main road and the skeletal remains were identified at the instance of A-1 only. From the above materials available on record, we have no hesitation to hold that the prosecution has clearly established the identity of the skeletal remains as that of Mohanasundari-wife of P.W.1. Similarly, deceased was found missing from 23.11.2012 and her skeletal remains was found under the bridge at the instance of A-1 in a forest area and till such time, nobody had an idea where the dead body was thrown. Further, Ex.P.26-Photographs series, clearly shows that the dead body was in fact, thrown under the bridge, a place to which human intervention is less and though the place of occurrence is abutting the Highways, on seeing the photographs, movement of human to such place appears to be rare and such place, was in fact, identified by A-1 from where the skeletal remains were recovered. Only upon the disclosure made by A-1 in his confession, the facts which were not within the knowledge of the Investigating Officer, could be unearthed. It is further to be noted that the prosecuted also conducted Superimposition Test of the skull. P.W.29-Scientific Expert who has conducted the Superimposition Test, in her evidence has stated that the photographs of the deceased Mohanasundari found tallied with the skull as per the techniques adopted by them and in respect of which, she had issued the Reports under Exs.P.47 and 48. Though the said test, viz., the Superimposition Test, is not a conclusive proof to establish the identity accurately, the fact remains that the prosecution has not only established the identity of the accused by

Superimposition Test ; but also through DNA Test. Hence, these circumstances leading to the recovery of the dead body of the deceased at the instance of A-1 is of great significance and certainly goes against A-1.

15 Now, in the above background, the other evidence relied on by the prosecution is carefully analysed.

16 P.W.8-Branch Manager of Manappuram Gold Finance, in his evidence has stated that on 27.11.2012, i.e., four days after the occurrence, the accused came to their Finance Company and pledged the ear studs in the name of Manikandan [A-3 / Approver] for a sum of Rs.3600/-, in respect of which, a receipt [Ex.P.6] was also issued to them. Thereafter, the said material object was seized by the Investigating Agency on 08.12.2012 at the instance of A-1. It is the further evidence of P.W.8 that all the 3 accused were brought to his shop on 08.12.2012 by the police. His evidence in that regard cannot be given much importance since the arrest of the other accused was subsequent to 08.12.2012 only. Whereas, the evidence of the Investigating Officer as well as P.W.-VAO clearly shows that only A-1 was taken to the Finance Company of P.W.8 at the relevant point of time and recovered M.O.3 and M.O.4. Merely because P.W.8 has given evidence to the effect that as if all the accused came to his Company on 08.12.2012, it cannot be inferred that all the accused were arrested on 08.12.2012 itself and as such, this part of the evidence of P.W.8 is unbelievable and unreliable. It is to be noted that P.W.8 was examined during the year 2016, four years after the occurrence. Therefore, some discrepancies is bound to occur in the evidence of the witnesses and the witnesses cannot be expected to remember minute details. Hence, we are of the view that when the witnesses were examined after a gap of four years, some minor contradictions spoken by such witnesses cannot be given much importance when the evidence of the other witnesses clearly proves the factum of discovery made only at the instance of A-1 at the relevant time. Only after the arrest of A-1 on 08.12.2012, the involvement of the other accused came to light. The discovery about the usage of vehicle also came to be known to the investigating officer during interrogation and thereafter, on 10.12.2012, the Investigating Officer intercepted the vehicle bearing Regn.No.TN-33-AJ-4898 and in the presence of P.W.10-VAO and his Menial, effected the arrest of A-2 and A-3 [Approver/CW1] and recorded their confession statements and also seized the vehicle [M.O.1] under Mahazar. The Investigating officer also seized the cellphone of the deceased from A-3 [CW1/Approver]. He also seized the RC Book of the vehicle bearing Regn.No.TN-39-AH-6392 on 12.12.2012 from P.W.19. RC Book exhibited as Ex.P.27, reveals that the same stands in the name of A-1 and the same has been transferred to A-1 from 07.09.2009. In this regard, the evidence of P.W.19

- a partner in Sri Amman Finance, when carefully analysed and scanned, it is evident that on 20.04.2012, A-1 and A-2 came to their company through their Finance Broker one Shanmugam and A-1 pledged the RC Book [Ex.P.27] and borrowed a sum of Rs.60,000/- in respect of which he had executed 2 Pronotes [Ex.P.28 series], each for a sum of Rs.30,000/- and A-2 stood as a Guarantor. The Pronotes reveal that the said Shanmugam has signed the same as a witness and A-1 also executed a bond wherein A-2 stood as a Guarantor. The Photograph of A-1 was also fixed in the Bond. It is to be noted that RC Book was seized immediately after the arrest of A-1 by the investigating officer on 12.12.2012. P.W.19, in his evidence, also supported the seizure of the material objects by P.W.30. It is to be noted that both the accused had signed the above documents and the RC Book was in fact seized from P.W.19. The above fact establishes the factum of A-1 pledging the RC Book with P.W.19 and there was no reason for P.W.19 to implicate the A-1 and A-2 falsely and they are Financiers and there was no reason for them to create false documents against A-1 and A-2. Therefore, the defence version that those documents are prepared at a later point of time, cannot be countenanced. It is not the case of the accused in their explanation that the RC Book was came into possession of the police in some other manner. When the above circumstances, taken cumulatively, we are constrained to hold that the prosecution has proved the fact that prior to the occurrence, A-1 had pledged the RC Book and borrowed money from P.W.19.

17 P.W.16 is the owner the Jewelry shop and she in her evidence has stated that the deceased used to come to her shop frequently and deceased Mohanasundari had purchased a pair of ear studs weighing 2 grams from the said shop. She had identified the same through the photographs. It is to be noted that the deceased has casually left the house on 23.11.2012. It cannot be expected that every member of the family to remember accurately of each of the jewels worn by the other family members. Therefore, merely because P.W.1 has not identified nor stated anything about M.O.4-ear stud in the complaint, it cannot be stated that there was no recovery at all. P.W.16 has clearly stated that she has sold the ear studs to the deceased Mohanasundari and the same weighs only 2 grams. Merely because the Receipt is not produced by the prosecution, it cannot be stated that the entire evidence of P.W.16 be discarded. The prosecution also examined P.W.12 to prove the fact that A-1, after taking the deceased from Vilakethi, stayed in the lodge owned by P.W.12 on 23.11.2012 upto 5.00 p.m. on the same day and vacated the room and went along with the deceased. While booking the room, A-1 made entries in the Ledger Book / Register maintained in the Lodge [one, at the time of entering into the Lodge and the other, while leaving the same]. It is to be noted

that P.W.12 in his evidence, has categorically stated that A-1 came along with a woman and when enquired, A-1 introduced her as his wife and thereafter, he was allotted Room No.208. It is the further evidence of P.W.12 that only after the seizure of the Ledger Book/Register by the police, he came to know of the fact that while vacating the room, A-1 has made an entry as if he vacated the room on 24.11.2012 at 5.00 a.m. Till such time, he was not aware of the said entry made by A-1 while vacating the Lodge. It is to be noted that it is the common knowledge that when any person goes to a Lodge and book a room, normally he/she will make an entry in the Register. So also at the time of vacating and normally, what are the entries made at the time of vacating the room, will not be meticulously followed by the person in-charge of the Lodge. Only at the time of booking the rooms, it will be the tendency of the Hotel/Lodge in-charge to note whether correct particulars have been entered in the respective columns of the Ledger / Register or not. Whereas, in this case, A-1 left the place on the same evening and made an entry as if he has vacated the room on the next day, i.e., 24.11.2012 at 5.00 a.m. Therefore, it cannot be concluded that A-1 left the lodge only on 24.11.2012 and when the evidence of P.W.12 does not suffer any infirmity, we are of the view that his evidence cannot be discarded.

18 Though it is the contention of the learned counsel for the appellants that the prosecution has not seized the CCTV footages from the Lodge, the Investigating Officer, has categorically stated in this regard that there was no CCTV Camera installed in the Lodge at the relevant time. Though P.W.12 admitted that as per Rules, CCTV camera is to be installed in the Lodge, the police did not seize any CCTV footages. It is to be noted that it is not the definite answer from P.W.12 that CCTV was very much available in the Lodge and only leading questions as to the following of rules with regard to CCTV has been asked in the cross-examination. When the witness admit that they should follow rules, such admission cannot be taken to contend that there was in fact CCTV already installed in the Lodge. At any event, it is to be noted that A-1 stayed in the Lodge only on 23.11.2012 and after one month only, the police came to the Lodge and seized the Ledger from P.W.12. Even assuming CCTV footage has not been seized, we are of the view that the same will not affect the case of the prosecution since the other materials are available against A-1. We have also perused Exs.P.19 and 20 [Ledger/Register maintained in the Lodge and the entry made by A-1]. A careful perusal of the entire Ledger/Register [Ex.P.19], we find that it is a continuous one and the possibility of fabricating such ledger/register is highly remote. In fact, the entries from the beginning to end is continuously made and admittedly, A-1 has signed in the said Ledger, indicating that two persons have

occupied Room No.208 on 23.11.2012 at 11.20 a.m. Except suggesting that all the documents in this case were prepared at the police station at a later point of time, it is not even denied by A-1 that his signature was obtained at a later point of time. It is further to be noted that the Investigating Officer also collected specimen signatures of A-1 under Ex.P.33 series. The specimen writings made by A-1 were sent to the Handwriting Expert through Court on 11.01.2013 and P.W.21-Handwriting Expert has compared both the disputed signatures and concluded that both were written by one and the same person and gave a report under Ex.P.34 in that regard with reasoning sheet. The reason given in the report coupled with the evidence of P.W.21 also not been challenged seriously in the cross-examination. A-1 signing the Ledger is clearly spoken by P.W.12-Owner of the Lodge and the said Ledger has been seized by the Investigating Officer during investigation and the specimen signatures were also obtained from A-1. Though specimen signatures and handwritings were not obtained without the permission of the Court u/s.311-A Cr.P.C., we are of the view that there is no Constitutional bar for the Investigating Officer to obtain specimen handwritings and signatures from the accused. Though section 311 Cr.P.C., provides procedure for obtaining specimen handwritings, merely because the said procedure has not been followed, it cannot be stated that the entire evidence would be erased. When there is no bar expressly to take such specimen signature during investigation, mere failure to follow procedure, will not erase the evidence, which has been proved before Court of law through Expert. A-1 giving the specimen signatures is not disputed. Similarly, while questioning under 313 Cr.P.C., there was no denial with regard to Ex.P.20. Hence, these facts also clearly establish that it was only A-1 who had stayed in the lodge with the deceased till 5.00 p.m., on 23.11.2012. Though it is the contention of the learned counsel for the appellant / A-1 in CrI.A.No.510/2011 that Ex.P.20 was recovered only on 24.12.2012 when A-1 was taken into police custody in connection with some other case, the Investigating Officer also admitted in this regard that on 24.12.2012 A-1 was taken into police custody in connection with the case registered in Cr.No.197/2012 on the file of the Kodaikanal Police Station and while examining about the said case, he recorded the confession of A-1 and in pursuant to the same, he proceeded to the lodge owned by P.W.12 and seized Exs.P.19 and 20. It is to be noted that while investigating the crime, several facts could be unearthed only during proper examination of the accused. Merely because some of the facts has not been disclosed by the accused in the earlier instance, it cannot be said that subsequent disclosure by the accused of any new fact, cannot be true at all. Discovery of the fact is always depend upon the disclosure made by the accused. When the accused deliberately fails to disclose certain facts and when

examining the accused in some other case, some new fact is discovered, investigating officer proceeding making any recovery based on such examination, cannot be faulted at all.

19 From the above discussions, the following facts have been clearly established by the prosecution, viz.,

- Deceased Mohanasundari leaving her home in the morning hours on 23.11.2012.
- She boarded the Omni van belonging to A-1
- Staying of her with A-1 in the Lodge owned by P.W.12 on 23.11.2012 at 11.20 a.m. and vacating the same at 5.00 p.m. on the same day.
- Thereafter, dead body was recovered on 08.12.2012 at the instance of A-1.
- Receipt in respect of the Ear Studs and M.O.4-Ear Studs were recovered at the instance of A-1 and Seizure of Omni Van at the instance of A-2.
- Identification of dead body is clearly established.
- Signature and handwriting found in the Ledger/Register [Ex.P.19] is clearly established as that of A-1 by P.W.21-Handwriting Expert.
- Further, the motive, viz., the accused in dire need of funds to clear the loan obtained from P.W.19 and as such, they committed the murder of the deceased for her valuables, has also been clearly established by the prosecution.

CIRCUMSTANCE No.5:-

20 Now, in the above background, now this Court analyses the evidence of the Approver [C.W.1].

21 A-3 - Manikandan, filed an Application in CrI.MP.No.100/2014 in SC.No.78/2014 for grant of Pardon on 21.07.2014 and he was granted Pardon by the Trial Court on 21.11.2014. Even prior to that, while framing charges against A-3 on 07.11.2014, along with other accused, he pleaded guilty. However, the Trial Court has not convicted him. On the other hand, he was granted pardon on the basis of the application submitted by him and the charges leveled against him on 07.11.2014 were cancelled subject to condition that he may be tried in future if necessity arise u/s.308 Cr.P.C. It is to be seen that the very object of sections 306 Cr.P.C., viz., Tender of Pardon to Accomplice and 307 Cr.P.C., viz., Power to direct tender of pardon, on a careful reading, is to obtain true evidence of offences for grant of pardon to accomplice so as to prevent escape of the offender from punishment for lack of evidence in grave offences. Similarly, sections 306 and 307 Cr.P.C., does not mandate recording of the statement of the person who is to be pardoned before granting him such pardon.

However, the Trial Court was conscious enough to record the statement of A-3 / Approver / C.W.1, after giving necessary warning to him as per law. The pardon in this case was granted by the Trial Court and not by the Judicial Magistrate. Therefore, the examination of the accused as a Court Witness before committal, as mandated u/s.306 Cr.P.C., did not arise at all. The accused has no right to cross-examine such witnesses before the Trial Court before committal. Therefore, we are of the view that the contention of the learned counsel for the appellants that A-1 and A-2 have not been given an opportunity to cross-examine the Approver/CW1, has no legs to stand. Similarly, merely because the accused/A-3 himself has filed an application directly, for pardon, cannot be faulted even though, normally, it is for the prosecution to ask that particular accused out of several, that he may be tendered pardon. Admittedly, in this case, the prosecution also given a notice of application and on hearing the prosecution, the tender of pardon has been granted by the Trial Court. Thereafter, he was examined as C.W.1 and his statement was recorded. The learned Trial Judge, invoking the power u/s.307 Cr.P.C., had granted pardon. The Power of the Trial Court to grant Pardon is not limited to particular stage. The Trial Court can grant tender of pardon at any stage of trial. Therefore, the Pardon granted by the Trial Court to A-3 in this case, even after the accused pleaded guilty at the time of framing charges as against all the three accused, in our view, is valid and the examination of the Approver as a witness on the side of the prosecution cannot be faulted with.

22 We have also scanned the entire evidence of C.W.1
- Approver.

23 The evidence of C.W.1, in a nut shell is as follows:-

Manikandan - Approver is a lorry cleaner by profession. He used to come to his native once in three months. He was acquainted with A-1-Sathishkumar from the childhood. He also befriended A-2 - Soundararajan in due course. All three used to consume alcohol together. During Diwali holidays in the year 2012, when Manikandan came to his native, he requested some money from A-1 to get his Badge Licence. A-1 in turn, had told Manikandan that he will give him the money, provided he has to do the work as told by A-1 and A-2. He further in his evidence has stated that A-1 has informed him of his acquaintance with the deceased Mohanasundari and that she will join A-1 whenever he calls her and that she always wear a gold chain and ear studs. Hence, in order to repay the loan obtained from Sri Amman Finance, they decided to do away the deceased and to take her valuables. On the date of occurrence, i.e., on 23.11.2012,

A-2 took C.W.1 to Erode and when C.W.1 enquired about A-1, A-2 informed that A-1 and the deceased have booked a room in the Lodge at Erode. Thereafter, both A-2 and C.W.1 consumed Beer. In the evening hours on 23.11.2012, A-1, A-2, C.W.1 and deceased Mohanasundari, travelled together and when the Car was nearing Dindigul Road, deceased questioned as to where she was taken to. A-2 replied that they are proceeding towards Kodaikanal to have fun. Thereafter, on reaching the place of occurrence, A-1 stopped the car and asked A-2 to remove the chain and ear studs from the deceased and when deceased resisted, A-2 beat her and when she fell inside the car, A-1 caught hold of her legs ; while A-2 removed her saree and tied the same on her

neck and by holding the one end of saree, A-2 asked C.W.1/Approver to catch hold of the other end and due to such act, the deceased succumbed. It is the further evidence of C.W.1/Approver that after confirmation of the death of the deceased, A-1 and A-2 removed the chain and ear studs and had thrown the dead body under the bridge. Thereafter, after destroying the SIM card of the deceased, A-2 handed over the cellphone of the deceased to C.W.1/Approver. He also stated that the alleged time of occurrence was at 10.00 p.m. on 23.11.2012. All three went to a Wine Shop and consumed Beer. A-1 found that the chain to be of a covering chain and not a gold chain. Both A-1 and A-2 admitted that the murder in the instant case in the fourth one and prior to that, they committed the murder of the wife of A-2 along with one Moorthy and thereafter, through Brokers, they took women ; had fun and subsequently, murdered them for the valuables they were wearing. A-1 had further told that nobody can come to know of the murder committed by A-1 ; A-2 and C.W.1. A-2 also threatened C.W.1/Approver that C.W.1 would also be done to death if he reveals the act committed by them to anyone else. On 27.11.2012, A-1 came to the house of C.W.1 and took him along with A-2 to Manappuram Gold Finance and pledged the ear studs in the name of A-3 and obtained a sum of Rs.3600/-. Thereafter, A-2 and C.W.1 was arrested by police on 10.12.2012 at about 1.00 p.m. during vehicle check up. Police recorded their statements in the presence of VAO and his Menial.

24 The main contention of the learned counsel for the appellants is that the evidence of the Approver cannot be relied upon since he was under the influence of the police. Much emphasise was made by the learned counsel about the evidence of D.W.1 and D.W.2 to show that the application for grant of tender of Pardon filed by A-3, was written by one Mansoor, Head Constable. Further, A-3 [Approver/C.W.1], on the date of examination, was with the police. D.W.1 was examined to show that after completion of the chief examination, the Approver was found in the company of the police during lunch hours. To prove

the same, photographs taken in the mobile phone of D.W.1, were exhibited before the Court as Ex.D.2 series. We are at last to understand, how the evidence of D.W.1 is relevant or help the defence. We have already stated that it is normally the prosecution who has to seek tender of pardon of any of the accused out of several accused. That being the position, merely the accused was sitting together with the police, it cannot be said that the evidence of the Approver is unreliable. It is the duty of the prosecution to produce the witnesses on their side. Even while opening the case of the prosecution, it is for the Public Prosecutor to open his case by describing the charge against the accused and who are all the witnesses they propose to examine to prove the guilt of the accused and production of witnesses for examination is also the duty of the prosecution. Therefore, we are of the view that the evidence of D.W.1 is no way helpful to the defence, even though they made a feeble attempt to show that the Approver was closely sitting with the police in the Court Campus. If such evidence is accepted to discard the prosecution witnesses, no prosecution will survive in the Court of Law. Therefore, we have no hesitation to hold that the evidence of D.W.1 cannot be taken into consideration to discard the evidence of the Approver / C.W.1. Though the Approver has given his application seeking Tender of Pardon on 21.07.2014, he was examined at a later point of time and it was the contention of the learned Additional Public Prosecutor that the delay in granting pardon was due to non-receipt of DNA Report from the Lab. We are of the view that the delay in recording the statement of the Approver, cannot by itself be a ground to reject the evidence of the Approver. It is rather strange to note that D.W.1 is the son of the defence counsel who appeared for the accused in the Trial Court. In fact, D.W.1 stepped into the shoes of the accused which is, in fact, against the professional ethics. We are not proposed to say much in this regard. Though D.W.2 was examined to show that the handwritings found in the statements of the witnesses recorded

u/s.161[3] Cr.P.C., by one Mansoor, Head Constable, tallies with the writings in the application submitted by A-3 / Approver for tender of pardon, we are of the view that merely because the Head Constable has helped in preparing the application/petition, that itself cannot be a ground to throw out the evidence of the Approver. C.W.1, in his evidence, has clearly stated that he sought the help of his uncle and he does not know whether his uncle has consulted others and prepared the application. But the fact remains that the Approver has signed the petition with full knowledge of his action. In fact, C.W.1 has pleaded guilty and he has given his statement before the Magistrate despite warning. Thereafter, he was examined as a witness before the Trial Court. All these facts clearly establishes that A-3 has cautiously taken a decision to become an Approver, in order to

avoid the consequences against him. Hence, we are of the view that the contention of the learned counsel for the appellants in this regard, cannot be given much weightage. We are also conscious of the fact that though conviction is not illegal merely because it proceeds on the uncorroborated testimony of an Approver, yet the practice is not to convict upon the testimony of accomplice unless it is corroborated with the material particulars.

25 The Hon'ble Apex Court in the decision reported in 1975 [3] SCC 742 [Ravinder Singh Vs. State of Haryana] , has held in paragraph 12 which reads thus:-

"12 An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected *brevi manu*. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the Court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based."

26 The Hon'ble Apex Court in the decision reported in AIR 2000 SC 3352 [Narayan Chetnaram Chaudhary and Another Vs. The State of Maharashtra] , has held in paragraph 29 which reads thus:-

29. Such is not the position in the instant case. Otherwise the words of the section "at any

time after commitment of the case but before judgment is passed" are clearly indicative of the legal position which the Legislature intended. No time limit is provided for recording such a statement and delay by itself is no ground to reject the testimony of the accomplice. Delay may be one of the circumstances to be kept in mind as a measure of caution for appreciating the evidence of the accomplice. Human mind cannot be expected to be reacting in a similar manner under different situations. Any person accused of an offence, may, at any time before the judgment is pronounced, repent for his action and volunteer to disclose the truth in the court. Repentance is a condition of mind differing from person to person and from situation to situation. In the instant case PW2 appears to be repenting upon his action from the very beginning as is evident from the two notes (Exhs.84 and 85) recovered from his pocket at the time of his arrest. It appears that the apprehension of his colleagues being convicted and sentenced prevented him from taking a final decision at an early stage to make a truthful statement. The defence has not put any question to the aforesaid witness which could suggest that the delay in PW2 becoming the Approver by itself was fatal to the prosecution case. In one of the notes Exhibit 84 dated 11.10.1994 addressed to his parents and brother he is shown to have stated:

"I am not worth calling your son. I have committed gruesome crime for which I could not be pardoned by God also. I was instigated by my friend Jeetu and Narayan and due to which I help them in the murder and robbery which took place in the Rathi family in Pune. I have no guts to face after this incidents. I have tremendous repentance over it for which I have decided to commit suicide. Please do not be sad after my death."

In Exhibit 85 he is reported to have informed the police:

"I have not committed murder of anyone during the crime of robbery and murder of Rathi family of Pune. I was only involved

in the conspiracy of robbery and murder with my friends Narayan and Jeetu. I only assisted my friend Jeetu and Naryana in committing those seven gruesome murders on that faithful days. I had not assaulted any one but committing murder and helping to commit the same are both sine. I am burning in that sine. I have dependence over my act and I want get rid of this feeling that is why, I am thinking of committing suicide. I request you that my family should not be harassed after my death. They have no fault of any kind. 11.10.94."

We, therefore, do not find any substance in the submissions of the learned defence counsel that as the statement of the Approver was recorded after a prolonged delay, no reliance could be placed upon it. The delay in granting the pardon may be a just criticism, where it is found that the pardon had been tendered at the end of the trial and in effect was intended to fill up the lacunae in the prosecution case. Such is not the present case."

27 From the above judgments, though corroboration is necessary to act upon the evidence of accomplice, the conviction on the uncorroborated evidence of an approver is not illegal depending upon the facts and circumstances of the case.

28 Mr.N.Manokaran, learned counsel appearing for the appellant / A-1 in Crl.A.No.510/2017 has also relied upon the Judgment of this Court reported in 2014 [6] CTC 484 [R.Dineshkumar @ Deena Vs. State represented by the Inspector of Police, CBCID Metro Wing, Alandur, Chennai] to substantiate his contention that when the prosecution wishes to treat any accused as a witness, he should have been produced before the Magistrate concerned for grant of pardon. We are unable to accept the view taken by the learned Single Judge of this Court in the said decision, wherein he has held that where the prosecution treat some of the persons, who are originally arrayed as accused, as witnesses, the said person/accused should be treated as an Approver after grant of pardon by the Magistrate. The said Judgment went on Appeal before the Hon'ble Supreme Court of India in Criminal Appeal No.454/2015 arising out of Special Leave Petition [Criminal] No.9928/2014 and the Hon'ble Apex Court, in its judgment dated 16.03.2015, has held in paragraphs No.55 and 56 :-

".....

55 In the light of the above two decisions, the proposition whether the prosecution has a liberty to examine any person as a witness in a criminal prosecution notwithstanding that there is some material available to the prosecuting agency to indicate that such a person is also involved in the commission of the crime for which the other accused are being tried requires a deeper examination.

56 Unfortunately, before us, except asserting the proposition no clear submissions are made in this regard. In the circumstances, we do not propose to examine the proposition in the present case. However, in view of the fact section 307 Cr.P.C., authorises even a Court conducting trial to tender pardon to such a person, we believe that the ends of justice in this case would be met by directing the trial court to grant pardon in favour of PW4 after following the appropriate procedure of law and record his evidence afresh."

29 On a careful perusal of the above decision of the Apex Court, it is seen that the Apex Court has directed the Trial Court to exercise the power u/s.307 Cr.P.C. to tender pardon to a person who are originally arrayed as an accused, viz., P.W.64. In view of the above settled position and also in view of the above discussions, we are of the view that the Trial Court itself is vested with the power u/s.307 Cr.P.C. to grant pardon to the accused and the contention of the learned counsel has no relevance at all.

30 Mr.R.Sankarasubbu, learned counsel for the appellant / A-2 in CrI.A.No.551/201 contended that the confession recorded by the Trial Court is not as per law and there was no reflection time granted to the Approver. It is to be noted that such contention of the learned counsel, in our view, is not at all maintainable. It is not the confession of the accused recorded by the Approver, has been used as an evidence. In fact, while granting pardon, even though the statement is not mandatory, the Trial Court has recorded the statement out of caution and the above statement was not used as an evidence ; but the Approver himself was examined and tendered his substantive evidence before the Court which was also subjected to cross-examination. Therefore, the said contention of the learned counsel has no relevance at all.

31 Our careful perusal of the entire evidence of the Approver would reveal that he had acquaintance with A-1 and A-2 during the year 2012 and on the eve of Diwali, he requested an amount from A-1 for the purpose of obtaining Badge License and at that time, A-1 agreed to pay the amount provided A-3/Approver will act according to the sayings of A-1 and A-2 and also informed C.W.1 that in order to repay the loan borrowed from Sri Amman Finance, he wanted to rob the jewels of the deceased and accordingly, A-1 picked up the deceased on 23.11.2012 in a Car bearing Regn.No.TN-33-AJ-4898 and A-2 also joined A-3 [C.W.1]. When the Approver and A-2 were waiting, A-2 informed that A-1 went to a Lodge along with the deceased and sometime thereafter, A-2 and the approver joined A-1 in the car. All of them travelled towards Udumalai and committed the murder of the deceased and had thrown the dead body underneath the bridge and thereafter, they pledged the ear studs in Manappuram Gold Finance for Rs.3,600/-. Thereafter, police arrested them. The evidence of the Approver when perused with other materials as already discussed, his evidence was corroborated by various circumstances by examining independent witnesses by the prosecution. The deceased leaving the house on 23.11.2012 was spoken by P.Ws.1 and 2 and P.W.3 also seen the deceased going in a car and P.W.12-Owner of the Lodge had also seen the deceased and A-1 together staying in his lodge and vacating on the same day and the signature of A-1 found in the Ledger [Ex.P.19] Book maintained in the Lodge is also established by comparing the specimen signatures and handwritings of A-1 [Ex.P.33 series] with that of the handwriting found in Ex.P.19 and the Handwriting Expert-P.W.21 was also examined in this regard. Arrest of A-1 on 08.12.2012 is also spoken by P.W.7-VAO and P.W.30-Investigating Officer and pursuant to the disclosure made by A-1, skeletal remains were seized from the place of occurrence and the identity of the body was also established through the scientific evidence like Superimposition Test and DNA Test as discussed earlier and P.W.10 has also spoken about the arrest of A-2 and Manikandan [A-3 turned Approver] on 10.12.2012. P.W.8-Branch Manager of Manapuram Gold Finance was examined to prove the pledging of the gold ear studs and recovery of the same from him. P.W.16 also identified the ear studs sold to the deceased from her shop. Arrest of the Approver and A-2 and recovery of the Omni Van is also proved by the prosecution. The evidence of P.W.19 also proves the factum of A-1 borrowing Rs.60,000/- upon pledging the RC Book and executing two Pronotes, each for a sum of Rs.30,000/- and necessary documents were also filed as discussed earlier. All these facts and circumstances corroborates the evidence of the Approver. Therefore, this Court is of the view that the evidence of the Approver is corroborated by the other material particulars and the same cannot be eschewed merely because A-3, later, had turned Approver and supported the prosecution

version. Hence, we are of the considered view that the prosecution has clearly established the charges against A -1 and A-2.

32 This Court also finds that from every circumstances placed by the prosecution, charge u/s.120[B] IPC also has been clearly established as against accused. To prove the charge of conspiracy, direct evidence is always impossible. The said charge can be inferred from various circumstances. However, in this case, apart from the circumstances, the evidence of the Approver coupled with the other corroborative evidence establish the above charge against A-1 and A-2. Therefore, this Court is of the view that the prosecution has proved all the circumstances beyond all reasonable doubt and the judgment of the Trial Court warrants no interference at the hands of this Court.

33 In the result, the criminal appeals are DISMISSED. The conviction and sentences imposed on the appellants/accused by the learned Additional Sessions Judge, Mahila Court [Fast Track Court], Erode, Erode District, in SC.No.78/2014 vide Judgment dated 09.08.2017, are hereby CONFIRMED.

34 It is reported that the appellants / accused are in jail. They are directed to undergo the remaining period of sentence. Period of sentence already undergone by them, shall be given set off u/s.428 Cr.P.C. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

AP

To

- 1.The District Munsif-cum-Judicial Magistrate
Perundurai.
2. Do Thro The Chief Judicial Magistrate,
Erode District.
- 3.The Additional Sessions Judge
Mahalir Neethimandram [Fast Track Court]
Erode District.

4.Do Thro The Principal District and Sessions Judge
Erode District.

5.The Superintendent of Prison
Central Prison, Coimbatore.

6.The District Collector
Erode District.

7.The Director General of Police
Mylapore, Chennai-4.

8.The District Munsif cum Judicial magistrate,
Kodumudi.

9. The Superintendent of Police,
Erode District.

10. The Public Prosecutor,
High Court, Madras.

11.The Inspector of Police
Kodumudi Police Station,
Erode District.

12.The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No. 24059

+1cc to Mr.P.Kannan Kumar, Advocate SR.no.24470 (10/07/2018)

Cr1.A.Nos.510 and 511/2017

MG(CO)
GN(13/04/2018)

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