



Bail Slip

The Appellants / Accused namely 1) Satham Hussain & Karuppu Satham Hussain, aged about 28 years, S/o. Kamel Bawa, 2) Suresh, aged about 32 years, S/o. Raja are directed to be released on bail as per order of this court dated, 11.06.2018 and 23.04.2018 and made in Crl.MP(MD)Nos.3168 and 2631 of 2018 and made in Crl.A(MD)Nos.196 and 163 of 2018 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	:	05.03.2020
PRONOUNCED ON	:	18.05.2020

THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MR. JUSTICE B. PUGALENDHI

Crl. A. (MD) Nos.163 & 196 of 2018

Satham Hussain @ Karuppu Satham Hussain	Appellant in Crl.A.(MD)No.163 of 2018/ Accused No.1
Suresh	Appellant in Crl.A.(MD)No.196 of 2018/ Accused No.2

vs.

State represented through the Assistant Commissioner of Police Social Justice and Human Rights Unit Madurai City Police, Madurai (Cr. No.317 of 2015)	Respondent in Crl.A. (MD) No.163 of 2018/ Complainant
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State represented by the Assistant Commissioner Anna Nagar Circle K. Pudur Police Station Madurai (Cr. No.317 of 2015)	Respondent in Crl.A.(MD) No.196 of 2018
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Criminal Appeals preferred under Section 374 Cr.P.C. seeking to call for the records and set aside the judgment and order dated 12.03.2018 passed by the III Additional District and Sessions Court and Special Court for PCR Cases, Madurai, in Spl. S.C. No.17 of 2016.



For appellant in
Crl.A. (MD) No.163 of 2018

Mr. V. Kathirvelu, Sr. Counsel
for M/s. S.M.A. Jinnah

For appellant in
Crl.A. (MD) No.196 of 2018

Mr. Veera Kathiravan, Sr. Counsel
for Mr. R. Manickaraj

For respondent/State
in both appeals

Mr. K.K. Ramakrishnan
Additional Public Prosecutor

COMMON JUDGMENT

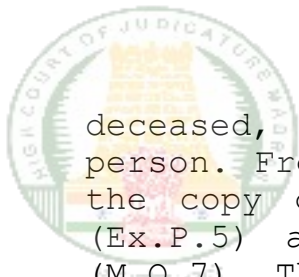
Inasmuch as both the instant criminal appeals emanate from the same F.I.R. and judgment and order, they are considered and decided by this common judgment.

2 The facts in a nutshell leading to the institution of these criminal appeals are as under:

2.1 The prosecution story is that Arumugam (P.W.3) was the Watchman in Dr. City Residential Complex at Ulaganeri in Madurai - Trichy four-way lane; the said four-way lane runs near the said complex; around 7.00 a.m. on 29.03.2015, Arumugam (P.W.3) noticed a white colour Maruti Omni van (M.O.7) (for brevity "the Maruti van") bearing Regn. No.TN 07 H 1372, parked in the mud road adjacent to the four-way lane near Dr. City Residential Complex; again, in the evening, around 8.00 p.m., when he came for duty, the Maruti van (M.O.7) was found at the same place and that aroused suspicion in his mind; he informed Kannan (P.W.1), V.A.O., who came along with Pandi (P.W.2), Village Assistant, to the said place around 11 p.m.; Kannan (P.W.1), Pandi (P.W.2) and Arumugam (P.W.3) peeped into the Maruti van (M.O.7) and found a dead body in it.; Kannan (P.W.1) gave a written complaint (Ex.P.1), based on which, Vairavasundaram (P.W.37), Special Sub-Inspector of Police, registered a case in E-1, K. Pudur Police Station Cr. No.317 of 2015 at 1.00 a.m. on 30.03.2015 under Section 302 IPC and prepared the printed FIR (Ex.P.29) against unknown accused.

2.2 The FIR reached the jurisdictional Magistrate at 6.00 a.m. on 30.03.2015, as could be seen from the endorsement thereon. Meanwhile, the investigation of the case was taken over by Chakravarthy (P.W.50), Inspector of Police, who went to the place at 1.45 a.m. on 30.03.2015 and in the presence of witnesses, Kannan (P.W.1) and Pandi (P.W.2), prepared the observation mahazar (Ex.P.2) and rough sketch (Ex.P.45).

2.3 Chakravarthy (P.W.50) requisitioned the services of Kumar (P.W.35) attached to the Mobile Wing of the Tamil Nadu Forensic Sciences Laboratory (for brevity "the TNFSL") and with his assistance, retrieved a bloodstained Samsung cell phone (M.O.3) and a bloodstained 500 rupee note (M.O.5) from the shirt pocket of the



deceased, besides a pair of VKC Pride slippers (M.O.4) from his person. From the dash board of the Maruti van (M.O.7), he retrieved the copy of the R.C. book (Ex.P.4) and certificate of insurance (Ex.P.5) and also an Exide battery (M.O.6) from the Maruti van (M.O.7). The Maruti van (M.O.7) and the aforesaid items were seized under the cover of mahazar (Ex.P.3). The mahazar (Ex.P.3) reached the jurisdictional Magistrate on 31.03.2015, as could be seen from the endorsement thereon. Added to this, Chakravarthy (P.W.50) has stated that he recovered a bus ticket bearing no.ECC 29-45844 (M.O.10) issued by the Tamil Nadu State Transport Corporation from the shirt pocket of the deceased.

2.4 Chakravarthy (P.W.50) sent the seized items under Form No.91 (Ex.P.46) to the Judicial Magistrate No.VI, Madurai, on 30.03.2015. Since the identity of the deceased was not known, he did not conduct inquest at the spot and instead, despatched the body through Ramakrishnan (P.W.34), Head Constable 1012, to the mortuary in the Government Rajaji Hospital, Madurai. From the Samsung mobile phone (M.O.3) of the deceased, he found out a mobile number 76398 06121 and called that number. The call was attended by one Ramar (P.W.6), who turned out to be the younger brother of the deceased and through him, the police learnt that the deceased was one Karuppusamy. The relatives of the deceased came to the Government Rajaji Hospital, where, Chakravarthy (P.W.50) conducted inquest over the body of the deceased from 9.30 a.m. to 11.30 a.m. on 30.03.2015.

2.5 During inquest, it came to light that the deceased Karuppusamy was the son of Veeraiah (P.W.4) and Valli (P.W.5); his family was from Mosukkudi village in Paramakudi Taluk in Ramanathapuram District; he worked abroad and returned home in January 2015; he used to wear gold ornaments like chain and ring and was a spendthrift; on 25.03.2015, he ran away with a lady by name Kaleeswari and was with her for three days in Vailankanni in Nagapattinam District, after which, he sent her back; in connection with that, the family members of Kaleeswari called the family members of the deceased to Parthibanoor village and at that time, the family members of the deceased said that they will not accept Kaleeswari, for which, Kaleeswari's brother and uncles challenged that the deceased will be taught a lesson for eloping with their daughter and abandoning her. Apart from the said motive, it is also stated in the inquest report that there is every possibility of the deceased being murdered for gain as he was wearing gold chain weighing 3.50 sovereigns, ring and ear studs and was also having cash.

2.6 After the inquest, the body was sent for post-mortem. Dr.Natarajan (P.W.32) conducted autopsy on the body of the deceased on 30.03.2015 at 4.10 p.m. and recorded the following in the post-mortem certificate (Ex.P.22):

"Appearances found at the post-mortem:



Early stage of decomposed body of a male, aged about 31 years.

Face, chest, abdomen, scrotum and penis are slightly bloated. Eye balls and tongue are slightly bulged out. Marbling of skin noted over upper part of chest in patches. Scalp hair comes off with little resistance.

The following ante-mortem injuries are noted on the body:

A transversely oblique stab injury measuring 3 cm. x 1 cm. cavity deep noted on front of left side of chest, 1 cm. below left nipple.

On dissection:

The wound passes obliquely downwards and backwards piercing the underlying muscles, vessels in the 5th inter costal space, piercing the left ventricle of heart measuring 4 cm. x 1 cm. entering into left ventricle.

Note: The stab injury is having regular margins and both ends are pointed.

Other findings:

Peritoneal cavity empty; pleural cavities contain 20 ml. of decomposed fluid on each side. Pericardium contains 15 ml. of decomposed fluid. Heart - flabby and described in injury column. Lungs - cut section shows early signs of decomposition. Larynx and trachea - normal. Cut section empty. Hyoid bone intact. Stomach contains 50 ml. of brown colour fluid with pungent odour. Mucosa decomposed. Liver, spleen and kidneys - cut section shows early signs of decomposition. Small intestine contains 20 ml. of brown colour fluid, with pungent odour. Mucosa decomposed. Bladder empty. Brain pulpy.

Opinion:

Reserved pending "Chemical Examiner's report"

2.7 The samples of the visceral organs were sent to the TNFSL and after obtaining viscera report, Dr. Natarajan (P.W.32) opined as under in his final report (Ex.P.23):

"Final opinion:

The deceased would appear to have died of external injury no.01 and its corresponding internal injuries 30 to 36 hours prior to autopsy."

2.8 Chakravarthy (P.W.50) proceeded with the investigation and



recorded the statements of Kaleeswari, Shanmugavalli, Chithiraivelu, Muniasamy, Senthilkumar and Ramakrishnan on 31.03.2015. He collected the apparel of the deceased from the hospital and sent the same to the Judicial Magistrate No.VI, Madurai, under Form 91 (Ex.P.48) and they were marked as follows:

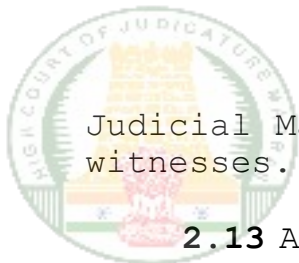
- Striped shirt (M.O.14)
- Bloodstained blue jeans (M.O.15)
- Bloodstained brown underwear (M.O.16) and
- Bloodstained belt (M.O.17)

2.9 The articles seized by Chakravarthy (P.W.50) were sent to the TNFSL through the Judicial Magistrate No.VI, Madurai.

2.10 Chakravarthy (P.W.50), in his evidence, has stated that on 02.04.2015, he seized a black colour Nokia mobile phone (M.O.9) without sim card, allegedly belonging to the deceased from Thilagar (P.W.53), Proprietor of Thilagar Mobiles at Door No.137-C, Meenakshi Bazaar under Form No.91 (Ex.P.49) in the presence of witnesses Nagarajan and Chandrakanth. He has further stated that he gave a requisition to the Judicial Magistrate No.VI, Madurai, to send the articles with bloodstains that were seized by him to the Tamil Nadu Forensic Science Department for examination.

2.11 On 13.04.2015, this case was transferred to the file of the Serious Crime Squad, Madurai and the investigation was taken over by Pethuraj (P.W.51), Inspector of Police. As per the evidence of Pethuraj (P.W.51), on intelligence, he went to the Maattuthaavani Omni Bus Stand on 01.11.2015 at 7.00 a.m. and arrested Satham Hussain (A.1) in the presence of witnesses Muthumozhi (P.W.36), V.A.O. and Santhana Murugesan (not examined), as he (P.W.51) found him (A.1) wearing a gold chain with fish dollar (M.O.8); he seized the gold chain with fish dollar (M.O.8) weighing 3.50 sovereigns from Satham Hussain (A.1) and recorded his confession statement; on the same day, he arrested Suresh (A.2) near Samrat Hotel in Lake View Road in the presence of the same witnesses and recorded his confession statement; based on the confession statement of Suresh (A.2), he went to the house of one Raja and on the information provided by Raja, he seized a knife (M.O.13) from his house in the presence of witnesses Muthumozhi (P.W.36) and Santhana Murugesan (not examined); based on the confession statements of Satham Hussain (A.1) and Suresh (A.2), the police went to the places where all the accused had gone; on 26.11.2015 at 11.00 a.m., he seized two stainless steel vessels (M.Os.11 and 12) from the TASMAC Bar of Anand (P.W.15) in the presence of witnesses Pandi (P.W.2) and Senthilpandi (P.W.16). The relevancy of these two stainless steel vessels (M.Os.11 & 12) will be discussed later.

2.12 After the accused were remanded to judicial custody, the police made a requisition for the recording of Section 164 Cr.P.C. statements of some witnesses and accordingly, Palpandian (P.W.57),



Judicial Magistrate No.II, Madurai, recorded the statements of some witnesses.

2.13 At the request of the police, test identification parade was conducted by Dhananjayan (P.W.52), Judicial Magistrate No.III, Madurai on 26.11.2015 in the Central Prison, Madurai, in which, Ajmeer Kaja (P.W.22) identified Satham Hussain (A.1). Again, at the request of the police, test identification parade was conducted by Selvanayagi Kannan (P.W.56), Judicial Magistrate No.I, Madurai on 27.01.2016, in which, Thangamani (P.W.23) identified Satham Hussain (A.1) and Suresh (A.2).

2.14 Since the deceased belonged to Scheduled Caste, the case was altered and the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ("the SC & ST Act") were added and consequently, the investigation of the case was transferred to Vincent Jayaraj (P.W.59), Deputy Superintendent of Police, who collected the various reports, completed the investigation and filed a final report before the Judicial Magistrate No.VI, Madurai in P.R.C. No.18 of 2016 against Satham Hussain (A.1) and Suresh (A.2) for the offences under Sections 342, 364, 379, 394 read with 397 and 302 IPC and Section 3(2) (v) of the SC & ST Act.

2.15 On appearance of the accused, the provisions of Sections 207 Cr.P.C. were complied with and the case was committed to the Court of Session in Spl. S.C. No.17 of 2016 and was tried by the III Additional District and Sessions Court, Madurai.

2.16 The trial Court framed the following charges:

Name of Accused	Provision under which charged and description of offence
Satham Hussain (A.1) Suresh (A.2)	➤ S.379 IPC for the theft of Maruti van (M.O.7) and two stainless steel vessels (M.Os.11 & 12). ➤ S.364 IPC read with Section 3(2) (v) of the SC & ST Act for abduction of the deceased. ➤ S.342 IPC for wrongful restraint. ➤ S.394 IPC read with S.397 IPC and S.3(2) (v) of the SC & ST Act for robbery of chain and a bag containing items worth Rs.71,000/-.
Satham Hussain (A.1)	S. 302 IPC and S.3(2) (v) of the SC & ST Act for murder.
Suresh (A.2)	S.302 IPC read with S.34 IPC and S.3(2) (v) of the SC & ST Act for murder.

2.17 When questioned, the accused pleaded "not guilty".



2.18 To prove the case, the prosecution examined 59 witnesses and marked 65 exhibits and 17 material objects.

2.19 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the allegations. However, for one question, Satham Hussain (A.1) has stated "Yes", which will be discussed in detail later.

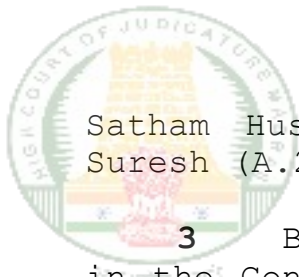
2.20 From the side of the accused, two witnesses, Mushtaq Ahmad (D.W.1) and Sheik Dawood (D.W.2), were examined and no document was marked.

2.21 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 12.03.2018, acquitted the accused of the offence under Section 3(2)(v) of the SC & ST Act, but, convicted and sentenced them under the IPC as follows:

Name of accused	Provision under which convicted	Sentence
Satham Hussain (A.1) Suresh (A.2)	S.379 IPC S.364 IPC S.342 IPC S.394 r/w 397 IPC	1 year rigorous imprisonment and fine of Rs.500/- each, in default to undergo one month simple imprisonment. 10 years rigorous imprisonment and fine of Rs.1,000/- each, in default to undergo six months simple imprisonment. 1 year rigorous imprisonment and fine of Rs.500/- each, in default to undergo one month simple imprisonment. 10 years rigorous imprisonment and fine of Rs.1,000/- each, in default to undergo six months simple imprisonment.
Satham Hussain (A.1)	S.302 IPC	Life imprisonment and fine of Rs.2,000/- in default to undergo one year simple imprisonment.
Suresh (A.2)	S.302 IPC r/w S.34 IPC	Life imprisonment and fine of Rs.2,000/- in default to undergo one year simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.22 Challenging the aforesaid conviction and sentences, while
<https://hcservices.ecourts.gov.in/hcservices/>



Satham Hussain (A.1) has preferred Crl.A. (MD) No.163 of 2018, Suresh (A.2) has preferred Crl.A. (MD) No.196 of 2018.

3 Bearing in mind the following sapient words as enunciated in the Constitution Bench judgment of the Supreme Court in **Govinda Reddy vs. State of Mysore**¹, this Court proceeds to appraise the evidence adduced by the prosecution:

"5. The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of Madhya Pradesh [AIR 1952 SC 343] and it is as follows:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, 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."

4 The prosecution has proved the following facts beyond a peradventure.

- (a) The deceased was the son of Veeraiah (P.W.4) and Valli (P.W.5) and elder brother of Ramar (P.W.6).
- (b) The family of the deceased was from Mosukkudi Village in Paramakudi Taluk in Ramanathapuram District.
- (c) The deceased was last seen in the village on 25.03.2015 and thereafter, Kaleeswari also went missing.
- (d) The deceased had run away with Kaleeswari and had checked in at Room No.201, J.R. Lodge, Vailankanni at 5.00 p.m. on 25.03.2015 and checked out on 28.03.2015 at 5.00 p.m. vide the evidence of Velusamy (P.W.8), Manager, J.R. Lodge and the lodge register (Ex.P.6).
- (e) The body of the deceased was found in the Maruti van (M.O.7) at 11.00 p.m. on 29.03.2015 on the margin of the Madurai - Trichy four-way lane near Dr.City Residential Complex.
- (f) The death was a homicide.



5 The case projected by the police in the final report is as follows:

5.1 Satham Hussain (A.1) and Suresh (A.2) were friends. Satham Hussain (A1) had previous cases of robbery to his credit. The Maruti van (M.O.7) belonged to Maharajan (P.W.11), who ran a wet grinding shop in Door No.5, Karpaga Nagar, Madurai and delivered the batter by his Maruti van (M.O.7) to small canteens and roadside eateries. He had bought the Maruti van (M.O.7) for Rs.50,000/- from one Anand Pal (not examined), who had bought it from one Soundara Rajan (P.W.12).

5.2 On 25.03.2015, when the Maruti van (M.O.7) was parked near Maharajan's (P.W.11's) shop, it went missing. There were two stainless steel vessels (M.Os.11 and 12) containing batter in the Maruti van (M.O.7). He went to K.Pudur Police Station and lodged a complaint, for which, C.S.R. Receipt No.155 of 2015 (Ex.P.39) was given on 28.03.2015. Two days later, he learnt that his Maruti van (M.O.7) was involved in a murder case.

5.3 The case of the police in the final report is that Satham Hussain (A.1) and Suresh (A.2) had stolen the Maruti van (M.O.7) on 25.03.2015; they threw the two stainless steel vessels (M.Os.11 & 12) with batter on the southern bank of the Vaigai river; the said vessels (M.Os.11 & 12) were picked up by Anand (P.W.15) around 11.30 p.m., who emptied the batter, washed the vessels (M.Os. 11 & 12) and was using them.

5.4 The further case of the police in the final report is that the deceased was a Dalit and hailed from Mosukkudi Village in Paramakudi Taluk in Ramanathapuram District; he was living with his parents Veeraiah (P.W.4) and Valli (P.W.5) and younger brother Ramar (P.W.6); he had worked in Singapore and had returned to India; he would flaunt his affluence by wearing gold ornaments and spending money lavishly; he picked up Kaleeswari from the neighbouring village, took her to Vailankanni, checked in at Room No.201, J.R. Lodge at 5.00 p.m. on 25.03.2015 and checked out on 28.03.2015 at 5.00 p.m.; thereafter, he came alone from Vailankanni in Nagapattinam District to Thozhuthoor bus stop in Perambalur District and while he was standing in the said bus stop on 28.03.2015, around 9.00 p.m., one Subramani (P.W.9), a stranger, borrowed the mobile phone of the deceased, contacted his (P.W.9's) son and returned the mobile phone to the deceased; from Thozhuthoor bus stop in Perambalur District, the deceased came to Maatuthaavani bus stand in Madurai District around 4.00 a.m. on 29.03.2015 and boarded a State Transport Corporation bus at 4.10 a.m., in which, Sakthivel (P.W.10) was the Conductor, who issued the ticket (M.O.10); the deceased got down at the Madurai District Court bus stop and went to I.O.B. ATM Centre nearby to withdraw money; since there was no money in the ATM, he was unable to withdraw; the deceased came out of the ATM



Centre and called an auto-rickshaw, but, the auto-rickshaw driver Thangamani (P.W.23) did not oblige; the deceased was seen by Gajendra Sathyavan (P.W.33), a by-stander, loitering near the I.O.B. ATM Centre and conversing with Thangamani (P.W.23); thereafter, around 4.45 a.m. on 29.03.2015, Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33) saw Satham Hussain (A.1) and Suresh (A.2) talking to the deceased and they took him in the white colour Maruti van (M.O.7); Suresh (A.2) was on the wheels of the Maruti van (M.O.7); Satham Hussain (A.1) stabbed the deceased with a knife (M.O.13) and murdered him and the accused took away the gold chain with fish dollar (M.O.8) and the Nokia mobile phone (M.O.9) from the person of the deceased and abandoned the Maruti van (M.O.7) near Dr. City Residential Complex, after which, the deceased was found in the Maruti van (M.O.7) with stab injuries on 29.03.2015 at 11 p.m. by Kannan (P.W.1), Pandi (P.W.2), and Arumugam (P.W.3).

5.5 The above, in essence, is the police story projected in the final report. We are consciously using the expression "police story in the final report" in order to differentiate it from the prosecution story that unfolded during trial. For example, the prosecution witnesses, in the examination-in-chief, went about narrating the events that took place in the village after the deceased eloped with Kaleeswari and projected a motive different from the one in the final report.

6 As alluded to above, the first round of investigation was done by Chakravarthy (P.W.50), who conducted the inquest, seized the Nokia mobile phone (M.O.9) without sim card on 02.04.2015 from the shop of Thilagar (P.W.53), who told the police that it was sold to him by Nagaraj (P.W.54), who, in turn told the police that he bought it from Ajmeer Kaja (P.W.22), who told the police that two persons came to his shop and sold the mobile phone for Rs.300/-.

7 Till investigation was in the hands of Chakravarthy (P.W.50), there was no breakthrough. Even after the investigation was transferred to Pethuraj (P.W.51) on 14.04.2015, for six months, there was no clue for the police. The breakthrough came only on 01.11.2015 when Pethuraj (P.W.51), the second Investigating Officer saw Satham Hussain (A.1) in Maattuthavani bus stand at Madurai wearing a gold chain with a fish dollar (M.O.8). He arrested Satham Hussain (A.1) at 10.30 a.m. and seized from him the gold chain with fish dollar (M.O.8) under mahazar (Ex.P.25) in the presence of Muthumozhi (P.W.36) and Santhana Murugesan (not examined). On his confession, he arrested Suresh (A.2) on the same day at 1.30 p.m. and seized from him a Blackberry mobile phone with sim card at 1.40 p.m. On the confession of Satham Hussain (A.1) and Suresh (A.2), by a process of reverse engineering, Pethuraj (P.W.51) identified that it was Satham Hussain (A.1) and Suresh (A.2) who had stolen the Maruti van (M.O.7) from the shop of Maharajan (P.W.11) on 25.03.2015. While taking the car, the accused found two stainless



steel vessels (M.Os.11 & 12) with batter, which, they threw on the southern bank of the Vaigai river. When the police went to the southern bank of the Vaigai river, Anand (P.W.15), a worker in a TASMAC shop, came forward and told the police that he found two stainless steel vessels (M.Os.11 & 12) with batter on the southern bank of the Vaigai river, emptied the batter, washed them and kept them with him. The police seized the two stainless steel vessels (M.Os.11 & 12) from Anand (P.W.15) under mahazar (Ex.P.12) on 26.11.2015 at 11.00 a.m. in the presence of witnesses Pandi (P.W.2) and Senthil Pandi (P.W.16). On the further confession of Suresh (A.2) that he handed over a knife to one Raja (not examined), the police went to the house of the said Raja on 01.11.2015 between 14.15 and 14.45 hrs. at No.237, E Block, Anna Nagar, Madurai and on the showing of the said Raja, seized the knife (M.O.13) under cover of mahazar (Ex.P.28) in the presence of witnesses Muthumozhi (P.W.36) and Santhana Murugesan (not examined). In order to show that Satham Hussain (A.1) and Suresh (A.2) were close friends, Pethuraj (P.W.51) recorded the statements of Salim Raja (P.W.24), Raja Sahul Hameed (P.W.25), Ravichandran (P.W.26) and Balamurugan (P.W.27).

8 Distilled from the projected facts, the nub of the prosecution case rests on the following circumstances:

- i. Motive was "murder for gain";
- ii. Loss of the Maruti van (M.O.7) belonging to Maharajan (P.W.11) on 25.03.2015;
- iii. The presence of the deceased in Thozhuthoor bus stop in Perambalur District on 28.03.2015 at 9.00 p.m.;
- iv. Recovery of bus ticket (M.O.10) from the pocket of the deceased and the evidence of Sakthivel (P.W.10) that the holder of the said ticket had travelled in his bus on 29.03.2015 at 4.00 a.m. from Maattuthaavani bus stand;
- v. The deceased, Satham Hussain (A.1), Suresh (A.2) and the Maruti van (M.O.7) were seen by Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33) at 4.45 a.m. on 29.03.2015 going together in the Maruti van (M.O.7);
- vi. The Maruti van (M.O.7) was found abandoned on 29.03.2015 from 7.00 a.m. near Dr. City Residential Complex and the dead body inside the Maruti van (M.O.7) was found by Kannan (P.W.1), Pandi (P.W.2) and Arumugam (P.W.3) at 11.00 p.m. on 29.03.2015;
- vii. Recovery of the Nokia mobile phone (M.O.9) of the deceased sold by Satham Hussain (A.1) to Ajmeer Kaja (P.W.22), who, in turn, sold it to Nagaraj (P.W.54), who, in turn, sold it



to Thilagar (P.W.53), from where, the Nokia mobile phone (M.O.9) was recovered on 02.04.2015;

viii.Recovery of gold chain with fish dollar (M.O.8) from Satham Hussain (A.1) at the time of arrest on 01.11.2015; and

ix.Recovery of knife from the house of Raja on the confession of Suresh (A.2);

9 Now, this Court proceeds to make a threadbare analysis of the aforesaid circumstances one after the other.

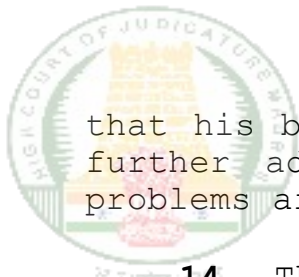
(i) Motive was "murder for gain":

10 It is trite that in a case predicated on circumstantial evidence, motive indubitably assumes great significance. This case, according to the prosecution, is a murder for gain. What is the gain? One old basic model Nokia mobile phone valued at Rs.300/-, a gold chain with fish dollar (M.O.8). (Though in the charge, it is stated that the accused had taken away materials worth Rs.71,000/- from the deceased, there is no shred of evidence for that). This is also attributed to Satham Hussain (A.1) and not to Suresh (A.2). On the contrary, from inquest onwards, the family members of the deceased, viz., Veeriah (P.W.4), Valli (P.W.5) and Ramar (P.W.6) have been clamouring that the motive for the murder was to avenge the elopement and abandonment of Kaleeswari by the deceased.

11 Veeriah (P.W.4), in his evidence, has stated that his son Karuppusamy had taken Kaleeswari with him and had gone missing, on coming to know of which, Kaleeswari's uncle Chithiraivelu called a panchayat on 28.03.2015, which was attended by his (P.W.4's) wife Valli (P.W.5) and his (P.W.4's) two brothers-in-law, Panchavaranam and Kumariah, in which, Chithiraivelu is said to have challenged that he will eliminate the deceased.

12 Valli (P.W.5), the mother of the deceased, in the cross-examination, has stated that Chithiraivelu convened a panchayat on 28.03.2015 and she (P.W.5) attended it and in that panchayat, Kaleeswari's relatives Chithiraivelu, Munusamy and Nagaraj insisted that the deceased should marry Kaleeswari, lest he should face dire consequences.

13 Superadded, Ramar (P.W.6), brother of the deceased, has admitted in the cross-examination that Kaleeswari forcibly took him to Rameswaram earlier. (In the cross-examination, when Ramar (P.W.6) was asked by the defence counsel as to whether he had earlier eloped to Rameswaram with Kaleeswari, Ramar (P.W.6) has defensively stated that it was Kaleeswari who took him to Rameswaram. Whether he took her to Rameswaram or she took him to Rameswaram hardly matters. The fact is both of them ran away to Rameswaram and thereafter, the deceased, the brother of Ramar (P.W.6), followed suit by eloping with Kaleeswari to Vailankanni). Ramar (P.W.6) has also admitted



that his brother (deceased) also ran away with Kaleeswari. He has further admitted that after Kaleeswari returned to the village, problems arose between both families.

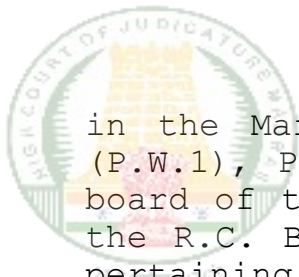
14 Thus, the evidence of these three witnesses, viz., P.Ws. 4 to 6, clearly show that Kaleeswari had affair with Ramar (P.W.6) and his brother (deceased) and that both of them (P.W.6 and deceased) had taken her to different places, to wit, Ramar (P.W.6) had taken her to Rameswaram earlier and the deceased had taken her to Vailankanni on 25.03.2009. This had infuriated the family members of Kaleeswari and hence, they had openly challenged that they would eliminate the deceased. The family members had last seen the deceased alive on 25.03.2015 and thereafter, they saw his body only on 30.03.2015.

15 In the teeth of such overwhelming evidence to show that Kaleeswari's relatives had a strong motive to eliminate the deceased, the failure of the prosecution to adduce evidence by examining Kaleeswari or Chithiraivelu in order to show that they did not harbour any ill-will towards the deceased, assumes significance and cannot be lost sight of. According to the prosecution, the deceased and Kaleeswari were together in J.R.Lodge in Vailankanni from 25.03.2015 to 28.03.2015. After that, what happened to the deceased? Where did he go? When did he part company with Kaleeswari? Kaleeswari would have been the best person to speak this important fact. Why was she not examined? There is absolutely no explanation whatsoever as to why there was no evidence adduced by the prosecution to exclude the possibility of the murder being committed by the relatives of Kaleeswari, because, they were naturally incensed at the brothers playing ping pong with the life of Kaleeswari. Viewed from this angle, there appears to be some substance in the contention of the defence that the police had foisted a case of murder for gain on Satham Hussain (A.1) who was after all, a petty thief.

16 The defence further contended that the Samsung Android mobile phone (M.O.3) was recovered by the police from the shirt pocket of the deceased and had the motive for murder been to rob the mobile phone of the deceased, the accused would have taken the Samsung Android mobile phone (M.O.3) and not the old Nokia basic model mobile phone (M.O.9). There does appear to be logic in this submission also of the learned defence counsel. The outcome of the aforesaid discussion leads this Court to infer that the prosecution has not proved the alleged motive satisfactorily.

(ii) Loss of the Maruti van (M.O.7) belonging to Maharajan (P.W.11) on 25.03.2015:

17 As stated above, the prosecution has proved beyond cavil the fact that the body of the deceased with stab injuries was found



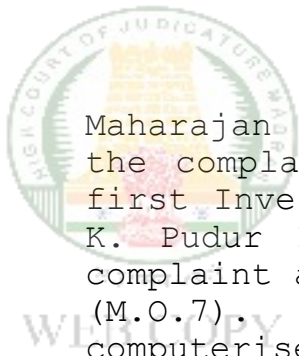
in the Maruti van (M.O.7) at 11.00 p.m. on 29.03.2015 by Kannan (P.W.1), Pandi (P.W.2) and Arumugam (P.W.3). On checking the dash board of the Maruti van (M.O.7), the police found the photocopy of the R.C. Book (Ex.P.4) and certificate of insurance (Ex.P.5), both pertaining to the Maruti van (M.O.7). The copy of the R.C. Book (Ex.P.4) bears the photograph of Soundara Rajan (P.W.12). Surprisingly, Soundara Rajan (P.W.12) was not examined by Chakravarthi (P.W.50), the first Investigating Officer and he was examined by Pethuraj (P.W.51) on 06.01.2016. If the first Investigating Officer, viz., Chakravarthy (P.W.50) had examined Soundara Rajan (P.W.12), then, they would have come to know that he had sold the Maruti van (M.O.7) to Anand Pal on 20.07.2012 vide receipt, (Ex.P.10). Anand Pal was not examined as a witness.

18 The learned defence counsel contended that the character called Maharajan (P.W.11) was deliberately introduced by the police to fill up the gap qua the ownership of the Maruti van (M.O.7) and its loss. In support of this contention, the learned defence counsel contended that, except the *ipse dixit* of Maharajan (P.W.11) that he had purchased the Maruti van (M.O.7) from Anand Pal (not examined) for a consideration of Rs.50,000/-, there is no other material to support this assertion. Even in his evidence, Maharajan (P.W.11) has not stated as to when he purchased the Maruti van (M.O.7) from Anand Pal (not examined). The learned defence counsel further contended that for the loss of the Maruti van (M.O.7) on 25.03.2015, the police complaint was given by Maharajan (P.W.11) only on 28.03.2015 vide C.S.R. No.155 of 2015 (Ex.P.39).

19 As a riposte, the learned Additional Public Prosecutor submitted that the CSR receipt is a computerised one and the same cannot be manipulated.

20 As stated above, Maharajan (P.W.11), in his evidence, has stated that he runs a shop grinding wet rice and pulse; he has his unit at Door No.5, Karpaga Nagar, Madurai; he had purchased the Maruti van (M.O.7) from one Anand Pal (not examined) for Rs.50,000/-; the R.C. Book of the Maruti van (M.O.7) stands in the name of Soundara Rajan (P.W.12); he uses the Maruti van (M.O.7) for supply of batter to canteens and roadside eateries; on the night of 25.03.2015, the Maruti van (M.O.7) was parked outside his shop and it went missing; there were two stainless steel vessels with batter inside the Maruti van (M.O.7) and those two stainless steel vessels are M.Os.11 & 12; at the time when the Maruti van (M.O.7) went missing, he was in his house; his employee Rasathi told him about the loss of the Maruti van (M.O.7); he went to El, K.Pudur Police Station on 28.03.2015 and lodged a complaint for which Vasantha (P.W.46), Special Sub Inspector of Police, El, K.Pudur Police Station, gave a receipt.

21 Strangely, the receipt that was said to have been issued to



Maharajan (P.W.11) was not obtained by the police from him nor was the complaint given by him marked through him. Chakravarthy, the first Investigating Officer (P.W.50), who was the Inspector of E-1. K. Pudur Police Station, did not take any steps to collect the complaint and other documents relating to the loss of the Maruti van (M.O.7). The complaint given by Maharajan (P.W.11) and the computerised receipt were all marked through Vasantha (P.W.46), Special Sub Inspector of Police of the same police station. A perusal of these documents shows that they were seized by Pethuraj (P.W.51), the second Investigating Officer, from the police station only on 05.11.2015. The whole file has been marked as Ex.P.39. Surprisingly, the computerised receipt that was said to have been issued to Maharajan (P.W.11) as proof of having received his complaint forms part and parcel of Ex.P.39. In other words, had the police issued CSR Receipt No.155 of 2015 to Maharajan (P.W.11) on 28.03.2015 on receipt of his complaint, the said receipt would have been with Maharajan (P.W.11) and not with the police as part of the enquiry file (Ex.P.39). That apart, in the complaint which forms part of Ex.P.39, there is no whisper that Maharajan (P.W.11) had left the two stainless steel vessels (M.Os.11 & 12) containing batter in the Maruti van (M.O.7). At the risk of repetition, Chakravarthy (P.W.50) was the Inspector of Police of E-1, K. Pudur Police Station and Vasantha (P.W.46) was the Special Sub Inspector of Police (Crimes) of the same police station. Chakravarthy (P.W.50) had already seized the Maruti van (M.O.7), from the dash board of which, he had recovered the photocopy of the R.C. Book (Ex.P.4) which shows its owner as Soundara Rajan (P.W.12). If really Maharajan (P.W.11) had given the complaint of loss of Maruti van (M.O.7) on 28.03.2015 to Vasantha (P.W.46), Chakravarthy (P.W.50) would have known about it and he would have seized those documents immediately for investigation purpose. In fact, Vasantha (P.W.46), in her evidence, has stated that she was examined only by Pethuraj (P.W.51) after he took over the investigation of the case from Chakravarthy (P.W.50).

22 In Ex.P.39, there is yet another letter purportedly written by Maharajan (P.W.11) to the Inspector of Police, E-1, K. Pudur Police Station stating that he had given a complaint for the loss of his Maruti van (M.O.7) and that he has now been informed about the involvement of his car in a murder case and therefore, the complaint given by him may be closed. This letter does not bear any date nor is there any material to show as to when it was sent to the Court. If Maharajan (P.W.11) had really lost his car on 25.03.2015, he would not have delayed giving the complaint till 28.03.2015. Further, he would have insisted upon the police to register an FIR for the loss of his Maruti van (M.O.7) and would not have remained contented with the issuance of a CSR receipt for it. Soundara Rajan (P.W.12), whose name figured in the copy of the R.C. book (Ex.P.4) that was recovered from the car, was strangely not examined by Chakravarthy (P.W.50), but was examined only by Pethuraj (P.W.51).

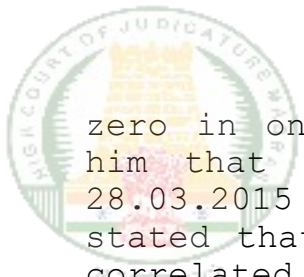


23 In such perspective of the matter, this Court is unable to hold that the case of the prosecution that Maharajan (P.W.11) was the owner of the Maruti van; he lost it on 25.03.2015; he gave a complaint on 28.03.2015 for which receipt in CSR No.155 of 2015 was issued to him; and that he gave a subsequent letter to the police requesting them to drop action on his complaint as he had come to know that his Maruti van (M.O.7) was involved in a murder case, has been satisfactorily proved.

(iii) The presence of the deceased in Thozhuthoor bus stop in Perambalur District on 28.03.2015 at 9.00 p.m.:

24 According to the prosecution, the deceased had left his village on 25.03.2015 with Kaleeswari and had taken a room in J.R. Lodge at Vailankanni in Nagapattinam District; he vacated the said room at 5.00 p.m. on 28.03.2015. Thereafter, there is absolutely no evidence to show where Kaleeswari and he had gone. The prosecution introduced Subramani (P.W.9), who, in his evidence, has stated that while he was waiting at the Thozhuthoor bus stop in Perambalur District around 9.00 p.m. on 28.03.2015, he saw a boy standing next to him; from the boy, he borrowed his mobile phone, made a call to his (P.W.9's) son and returned the mobile to that boy. Finally, Subramani (P.W.9) has stated, "I was shown the photograph of that person and on that photograph, I signed. The police enquired me in this regard". This statement does not say who showed the photograph to him. The photograph so shown was not marked as an exhibit. By reading this statement contextually, one can infer that the police had shown the photograph to him and he (P.W.9) had identified the person in the photograph as the one from whom he had borrowed mobile phone. Unfortunately, the contextual inference that the police showed him the photograph of a person and he identified that person as the one from whom he borrowed the mobile phone to make a call to his son, is covered by the ban under Section 162 Cr.P.C. However, had the prosecutor shown the photograph to Subramani (P.W.9) and had asked him to identify the person in the photograph and in that context, if Subramani (P.W.9) had stated that the person in the photograph is the person from whom he had borrowed the mobile phone at Thozhuthoor bus stop to make a call to his son, that would have been relevant under Section 9 of the Evidence Act. That not having been done, in the opinion of this Court, this circumstance also has not been proved in a manner known to law.

25 Even extending the benefit of doubt to the prosecution and if it is construed that this circumstance has been proved, it does not advance the prosecution case any further. It can only show that the deceased was in Thozhuthoor bus stop at 9.00 p.m. on 28.03.2015 and nothing beyond that. According to the prosecution, the accused had not come into the picture at any time on 28.03.2015, but, came into the picture only at 4.45 a.m. on 29.03.2015. Lastly, the Section 161(3) Cr.P.C. statement of Subramani (P.W.9) has been recorded by Pethuraj (P.W.51) only on 29.10.2015 While that being so, this Court is unable to fathom as to how the police were able to



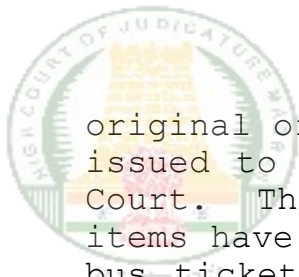
zero in on the character called Subramani (P.W.9) and learnt from him that he had borrowed the mobile phone of the deceased on 28.03.2015 at Thozhuthoor bus stop. Subramani (P.W.9) has also not stated that he saw the photo of the deceased in the newspaper and correlated it with the incident of borrowing his mobile phone on 28.03.2015 and as a good Samaritan, he voluntarily went to the police seven months later and told them of his interaction with the deceased on 28.03.2015.

(iv) Recovery of bus ticket (M.O.10) from the pocket of the deceased and the evidence of Sakthivel (P.W.10) that the holder of the said ticket had travelled in his bus on 29.03.2015 at 4.00 a.m. from Maattuthaavani bus stand:

26 It is the case of the prosecution that the deceased came from Thozhuthoor in Perambalur District to Maattuthaavani bus stand in Madurai District around 4.00 a.m on 29.03.2015 and boarded a State Transport Corporation bus to go to Madurai District Court bus stop. The prosecution sought to prove this fact through the recovery of the bus ticket (M.O.10) from the shirt pocket of the deceased. Sakthivel (P.W.10), the conductor of the bus, has not identified the passenger, but has only identified the bus ticket (M.O.10) and has stated that the said ticket was issued on 29.03.2015 around 4.10 a.m. to a passenger who had travelled from Maattuthaavani bus stand. Naturally, one cannot expect a bus conductor to remember the faces of the passengers who had travelled in his bus on a particular day, unless he had had a special occasion to interact with a particular passenger or that the passenger was a regular commuter in his bus.

27 According to the defence, the bus ticket (M.O.10) was introduced by the police subsequently. Chakravarthy (P.W.50), the first Investigating Officer, in his evidence, has stated that he went to the place of occurrence and with the help of Kumar (P.W.35), Scientific Assistant in the Mobile Forensic Wing, collected various clue materials from the body of the deceased. Kumar (P.W.35), in his evidence, has stated that he helped the Inspector of Police in collecting bloodstains from the floor of the Maruti van (M.O.7), a Samsung mobile phone (M.O.3), a pair of VKC Pride slippers (M.O.4), a bloodstained 500 rupee note (M.O.5), a copy of the R.C. book (Ex.P.4), a copy of the insurance certificate (Ex.P.5) and an Exide battery (M.O.6). He has not stated that the bus ticket (M.O.10) was recovered from the pocket of the deceased. He has specifically stated that the 500 rupee note (M.O.5) was bloodstained. Whereas, the bus ticket (M.O.10) that was filed in the Court did not have any bloodstain.

28 Further, Chakravarthy (P.W.50), the first Investigating Officer, has stated that he recovered 7 items under Form No.91 from the body of the deceased apart from the Maruti van (M.O.7). The learned defence counsel invited the attention of this Court to the



original of Form No.91 (Ex.P.46). Form No.91 (Ex.P.46) is a proforma issued to the police with serial numbers for sending properties to Court. This Court perused Ex.P.46 in original and found that three items have been entered in the form bearing no.506388, in which, the bus ticket (M.O.10) does not find place, but, it finds place in a separate form which bears the serial number 506392. Chakravarthy (P.W.50) has been extensively cross-examined with regard to the differences in the serial numbers in Ex.P.46, viz., 506388 and 506392. He admitted that the bus ticket (M.O.10) has not been noted in the observation mahazar (Ex.P.2) and it also does not find place in the seizure mahazar (Ex.P.3). All the other items mentioned in Form No.91 (Ex.P.46), except the bus ticket (M.O.10), find place in the seizure mahazar (Ex.P.3). Chakravarthy (P.W.50) has not given any satisfactory explanation as to how the bus ticket (M.O.10) was missed out by Kumar (P.W.35) and also in the seizure mahazar (Ex.P.3). He has also not given any satisfactory explanation as to the differences in the serial numbers of Form No.91 (Ex.P.46). Therefore, the alleged recovery of the bus ticket (M.O.10) from the shirt pocket of the deceased becomes suspect. Even if the benefit of this doubt is also extended to the prosecution, nothing turned out from the bus ticket (M.O.10) and from that, at the most, this Court can infer that the deceased travelled from Maattuthaavani bus stand to the Madurai District Court bus stop and nothing beyond that.

(v) The deceased, Satham Hussain (A.1), Suresh (A.2) and the Maruti van (M.O.7) were seen by Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33) at 4.45 a.m. on 29.03.2015 going together in the Maruti van (M.O.7):

29 The free English translation of the evidence of Thangamani (P.W.23) is as follows:

"I am living in K.K. Nagar and I am an auto-rickshaw driver. I am attached to the auto-rickshaw stand that is near the Wakf Board in K.K. Nagar. I know A.1 and A.2. In the last day of the third month of last year, around 4.00 a.m., I was having tea in a tea shop near the E.B. Office in K.K. Nagar. At that time, I saw A.1 and A.2 walking there. At that time, they asked me for auto-rickshaw for which I said "No". In front of them, another well clad person was walking. He was short and dark. He was walking and going down. At that time, a white colour Maruti van came. They were all talking to one another. All the three got into the Maruti van (M.O.7) and left the place. The third person was having a shoulder bag. The police enquired me. Last year, I went to prison and identified the accused."

His police statement was recorded on 14.01.2016. This Court is consciously not discussing the cross-examination of this witness.

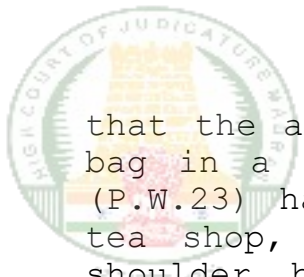


Gajendra Sathyavan (P.W.33) is as follows:

"I am residing in Meenakshi Street in K.K. Nagar. I am into real estate business. Last year, on the last day of March month, around 4.45 to 5.00 a.m., I came to Meenakshi Coffee Bar near E.B. Office in K.K. Nagar and had tea. After taking tea, I was waiting to buy milk from the milk depot next to the tea shop. At that time, I saw a person, aged about 28 years with a shoulder bag, standing near the I.O.B. ATM Centre. An auto-rickshaw driver came there and asked him (deceased) whether he needs auto-rickshaw, for which, that person said "No". I wondered as to why that person said "No", because, there was no free movement of vehicles at that time. At that time, a short person came to him and picked up a conversation. The short person showed signal to someone standing on the opposite side of the road. At that time, a white colour Maruti van came and the person with the shoulder bag and the short person got into the Maruti van and left. A.1 is the person who was conversing with the person with the shoulder bag and A.2 was the driver of the Maruti van. Two days later, I saw in the newspaper, the photograph of a person who was found dead in a Maruti van and I related it to the person who was carrying the shoulder bag. 7 months later, I learnt that the police are conducting investigation and I went to the Serious Crime Squad and told them as to what I had seen. They showed me the photograph and I identified the deceased in the photograph. In Ex.P.21 series, the first photograph is that of the Maruti van which came and picked them up. The sixth photograph in Ex.P.21 series is that of the person who was standing at the entrance of the ATM Centre with the shoulder bag. My statement was recorded under Section 164 Cr.P.C. by the Judicial Magistrate, Melur. The said statement is Ex.P.24."

His police statement was recorded on 27.11.2015.

31 It is essential to state here that no test identification parade was conducted for this witness to identify the accused. Though in the cross-examination of this witness, contradictions between his evidence and his police statements have been put to him in order to impeach his testimony, yet, this Court does not want to traverse into them and instead, one answer in the cross-examination alone needs a mention, viz., "I know Thangamani (P.W.23). He is not my close friend." The chief-examination of Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33) contradict each other on fundamental facts. Thangamani (P.W.23) has not stated a word about the presence of Gajendra Sathyavan (P.W.33) at the relevant point of time, though the latter says that he knows the former. At the cost of repetition, Thangamani (P.W.23) has stated that while he was having tea in the tea shop, the accused came to him for engaging his services, but, he declined. Gajendra Sathyavan (P.W.33) has stated



that the auto-rickshaw driver approached the man with the shoulder bag in a soliciting manner, but, the latter declined. Thangamani (P.W.23) has stated that both the accused were loitering near the tea shop, they picked up a conversation with the man with the shoulder bag (deceased) and Satham Hussain (A.1) signalled to someone, after which, the white colour Maruti van came and all the three got into the Maruti van and left. In other words, Thangamani (P.W.23), auto-rickshaw driver, has stated that the accused approached him for engaging his services, whereas, Gajendra Sathyavan (P.W.33) has stated the auto-rickshaw driver approached the deceased, but, the latter declined the offer. If the accused had come by a Maruti van, where is the need for them to approach an auto-rickshaw driver for transporting them?

32 There is absolutely no evidence to show as to how six months later, the police identified Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33) and recorded their statements. Gajendra Sathyavan (P.W.33) has stated that within two days, he saw the photograph of the person with the shoulder bag in the newspaper and went straight to the Serious Crime Squad office six months later and disclosed whatever he had seen between 4.15 a.m. and 5.00 a.m. on 29.03.2015. Had this witness been examined by Chakravarthy (P.W.50), the first Investigating Officer, sometime after the dead body was found on the premise that these two witnesses came to the police station *suo motu* after seeing the photograph of the deceased in the newspaper, then, we can give some credence to their testimony. It is the case of the prosecution that these two witnesses were examined only after the arrest of the accused on 01.11.2015. [Thangamani (P.W.23) was examined on 14.01.2016 and Gajendra Sathavan (P.W.33) was examined on 27.11.2015]. It is not the case of the prosecution that from the interrogation of the accused, the names of these two witnesses came to their knowledge. Even such a discovery is relevant under Section 27 of the Evidence Act (See **Emperor vs. Ramanuja Ayyangar**²). In the opinion of this Court, the evidence of these two witnesses do not pass muster the definition of the word "proved" in the Evidence Act, for placing reliance for mulcting criminal liability on the accused.

33 Mr. Ramakrishnan contended that in a case predicated on circumstantial evidence, the Court should give a certain amount of leeway to the falterings of witnesses and in support of the said contention, placed reliance on the following passage in the judgment of the Supreme Court in **Vikram Singh and others vs. State of Punjab**³:

"We must also emphasise that in a case of circumstantial evidence some uncertainty is bound to occur in the statements of the prosecution witnesses and that

² 1935 (42) LW 124 FB

³ <https://hcservices.ecourts.gov.in/hcservices/>
(2016) 3 SCC 38



this flaw is occasioned by the fact that what they have witnessed is often an innocent transaction and it is only after the event that it transpires that what had been seen was a crime or a prelude to the commission of a crime. A witness, therefore, does not assimilate or imbibe the scene as carefully as he would, say in a case where he was an eyewitness to a murder."

34 Even if we loosen the standards of appreciation of evidence of Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33), we are unable to place reliance on their testimonies for the reasons aforementioned. At the risk of repetition, Gajendra Sathyavan (P.W.33) has stated that he knows Thangamani (P.W.23). Both of them have stated that they knew neither the deceased nor the accused and that they saw all the three of them around 4.45 a.m. near the E.B. office in K.K. Nagar. Gajendra Sathyavan (P.W.33) has stated that the auto-rickshaw driver (meaning his friend Thangamani - P.W.23) voluntarily solicited the deceased for a lift and the deceased declined. Whereas, Thangamani (P.W.23), auto-rickshaw driver, has stated that the accused approached him and wanted to engage him, but, he declined. Gajendra Sathyavan (P.W.33) has stated that one person picked up the deceased and went in a Maruti Omni van, whereas, Thangamani (P.W.23) has stated that two persons picked up the deceased and went by a Maruti Omni van. Both of them have stated that they learnt about the murder of the deceased from newspaper reports. But, both of them went to the Serious Crime Squad only seven months later after the arrest of the accused without going to the local police station. Further, there is no material to show that the photograph of the deceased was published in any newspaper for these two witnesses to see the newspaper and relate it to the deceased. The newspapers would have reported only about the murder of Karuppusamy. Admittedly, Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33) did not have acquaintance with Karuppusamy earlier. No test identification parade was conducted for Gajendra Sathyavan (P.W.33) to identify the persons whom he saw with the deceased seven months earlier. These are the main reasons, apart from the other ancillary reasons, for us to disbelieve Thangamani (P.W.23) and Gajendra Sathyavan (P.W.33), even after applying the test laid down in **Vikram Singh** (supra). (emphasis supplied).

vi The Maruti van (M.O.7) was found abandoned on 29.03.2015 from . 7.00 a.m. near Dr. City Residential Complex and the dead body inside the Maruti van (M.O.7) was found by Kannan (P.W.1), Pandi (P.W.2) and Arumugam (P.W.3) at 11.00 p.m. on 29.03.2015:

35 In the opinion of this Court, the prosecution has proved beyond a peradventure this circumstance.



(vii) Recovery of the Nokia mobile phone (M.O.9) of the deceased sold by Satham Hussain (A.1) to Ajmeer Kaja (P.W.22), who, in turn, sold it to Nagaraj (P.W.54), who, in turn, sold it to Thilagar (P.W.53), from where, the Nokia mobile phone (M.O.9) was recovered on 02.04.2015:

36 As regards this circumstance, this Court is unable to comprehend as to why the accused left the costly Samsung Android mobile phone (M.O.3) of the deceased and instead, took away a very cheap basic model Nokia mobile phone (M.O.9) of the deceased. It is pertinent to mention that there is no reference to the mobile numbers of the deceased either in the complaint (Ex.P.1) or in the evidence of the close relatives of the deceased, viz., P.Ws.4 to 6. Chakravarthy (P.W.50), with the assistance of Kumar (P.W.35), recovered the Samsung mobile phone (M.O.3) from the shirt pocket of the deceased. However, there is no evidence on record to show what was the mobile number. The police could have easily found out from the Call Detail Records (CDRs) of this mobile number as to where all the deceased went after eloping with Kaleeswari. The CDRs will also show who all were in touch with the deceased till the time of his murder. In fact, Chakravarthy (P.W.50) has stated that from the log of the Samsung mobile phone (M.O.3), he found a number, viz., 76398 06121 and called that number, which turned out to be the number of Ramar (P.W.6), brother of the deceased and he informed him about the finding of a dead body. When he had done this much, it is not known why the mobile number used in the Samsung mobile phone (M.O.3) was not placed before the Court. Let us assume that it was a remissness on the part of the Investigating Officer, including Pethuraj (P.W.51), who was specially entrusted with this case after it was transferred to the Serious Crime Squad.

37 Now, coming to the recovery of the Nokia mobile phone (M.O.9), Chakravarthy (P.W.50), the first Investigating Officer has seized it from the shop of Thilagar (P.W.53) on 02.04.2015 at 16.00 hrs. vide seizure mahazar (Ex.P.58). It is not known as to how the Investigating Officer landed on the shop of Thilagar (P.W.53) and seized the Nokia mobile phone (M.O.9) on 02.04.2015 when the accused themselves were arrested only on 01.11.2015, i.e., nearly seven months from the date of seizure.

38 Mr. Ramakrishnan, learned Additional Public Prosecutor contended that with the help of the IMEI number of the Nokia mobile phone (M.O.9), the police had traced the mobile to the shop of Thilagar (P.W.53). There is a fallacy in the said submission. It is not the case of the prosecution that the accused had sold the mobile phone with sim card. Once the police have the mobile number, then, they can get the IMEI number of the mobile phone from the service provider. As stated above, no evidence has been adduced before the trial Court to show what was the mobile number of the Samsung mobile phone (M.O.3) that was recovered from the shirt pocket of the deceased and what was the mobile number of the Nokia mobile phone

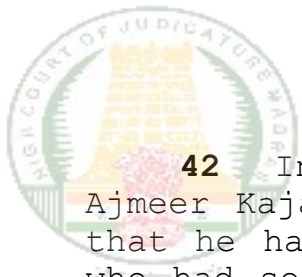


(M.O.9) that was allegedly seized from Thilagar (P.W.53). In the absence of this basic information and in the absence of the Investigating Officer saying as to how he landed on the shop of Thilagar (P.W.53), the learned Additional Public Prosecutor's theory advanced across the bar cannot be substituted as evidence to infer that the police landed on the shop of Thilagar (P.W.53) with the help of the IMEI number of the Nokia mobile phone (M.O.9). It is the case of the prosecution that after the Nokia mobile phone (M.O.9) was seized from Thilagar (P.W.53) on 02.04.2015, they identified Nagaraj (P.W.54) based on the information provided by Thilagar (P.W.53) that Nagaraj (P.W.54) had sold the mobile phone to him and from Nagaraj (P.W.54), the police learnt that he had purchased the Nokia mobile phone (M.O.9) from Ajmeer Kaja (P.W.22) and when Ajmeer Kaja (P.W.22) was approached, he told the police that two persons sold the mobile phone to him without sim card for Rs.300/-. After the accused were arrested by the police on 01.11.2015, Ajmeer Kaja (P.W.22) identified them in the test identification parade on 26.11.2015 as the persons who sold the mobile phone to him. However, in the witness box, Ajmeer Kaja (P.W.22) looked at the accused and stated that he does not remember them.

39 The learned Additional Public Prosecutor placed strong reliance on the judgment of the Supreme Court in **Ram Nath Mahto vs. State of Bihar**⁴ and submitted that it should be deemed that Ajmeer Kaja (P.W.22) had identified the accused in the dock.

40 This Court carefully read the above ruling. In that case, two witnesses identified the accused in the test identification parade and when one witness was asked to identify the accused in the dock, the accused looked daggers at him and out of fear, he did not identify. The trial Judge had recorded the demeanour of the accused and the witness in the deposition. The other witness clearly identified the accused in the dock and the Supreme Court relied on his evidence to sustain the conviction.

41 In the instant case, the situation is totally different. There is no material to infer that the accused had threatened the witness from the dock. Even if we extend the benefit of this doubt to the prosecution, Ajmeer Kaja (P.W.22), in the cross-examination, has stated that after Satham Hussain (A.1) was arrested, he was brought to his shop by the police and was shown and only thereafter, test identification parade was conducted on 26.11.2015. The fact that the accused were taken to the shop of Ajmeer Kaja (P.W.22) and shown to him before the conduct of the test identification parade has made the test identification parade a farce. As alluded to above, Ajmeer Kaja (P.W.22) did not identify the accused in the dock during trial.



42 In this scenario, can this Court read unspoken words of Ajmeer Kaja (P.W.22) into his testimony and come to the conclusion that he has identified the accused in the dock as the two persons who had sold the Nokia mobile phone (M.O.9) to him? The answer to this question is an emphatic "No". When the witness says that he does not remember, this Court cannot read between the lines and conclude that he has rightly identified the accused in the dock. Such a misreading would amount to gross judicial impropriety.

43 Chakravarthy (P.W.50) has been extensively cross-examined by the defence with regard to the mobile phone numbers of the deceased. He was asked as to whether he ascertained the mobile phone numbers and when he answered in the affirmative, he was asked as to whether he took any steps to get the CDRs of the mobile numbers, for which, he stated that he made attempts to get the CDRs by submitting an application. It was suggested to him that he had deliberately suppressed the CDRs of the deceased as that would disclose a wealth of information about the movement of the deceased and the involvement of others in his murder, which suggestion he denied.

44 Mr. Ramakrishnan, learned Additional Public Prosecutor drew the attention of this Court to the answer given by Satham Hussain (A.1) when he was questioned under Section 313 Cr.P.C. with regard to the evidence of Ajmeer Kaja (P.W.22). At this juncture, it may be apposite to extract the free English translation of the question and answer as under:

Question:

"Ajmeer Kaja (P.W.22), in his evidence, has stated that he had seen the 1st accused of you; that on the last day of March 2015, a person resembling the 1st accused and another person came to his shop and sold the Nokia 113 model cell phone to him for Rs.300/-; that he (P.W.22) gave Rs.300/- to both of them towards cost of the mobile; that it was around 6 p.m. at that time; that he sold that mobile phone to his customer Nagarajan; that he sold that phone to Nagarajan after getting a China mobile phone from him (Nagarajan). What do you say for that?"

Answer:

"Yes"

45 This is a jumbled up question. According to the prosecution, Satham Hussain (A.1) sold the mobile phone to Ajmeer Kaja (P.W.22), who, in turn, sold it to Nagaraj (P.W.54). It is not the prosecution case that Ajmeer Kaja (P.W.22) sold the mobile phone to Nagaraj (P.W.54) in the presence of the accused. Therefore, Satham Hussain (A.1), after selling the mobile phone to Ajmeer Kaja (P.W.22), would not have known as to whom Ajmeer Kaja (P.W.22) would



have, in turn, sold it. In the above question, the sale by Ajmeer Kaja (P.W.22) to Nagaraj (P.W.54) has also been added and for everything, Satham Hussain (A.1) has stated "Yes". The defence took this Court through the Section 313 Cr.P.C. questions and answers recorded by the trial Court and demonstrated that at several places, the trial Judge has written "Yes" answer, struck it and has recorded it as "No". Time and again, the trial Court Judges have been advised not to pose jumbled up questions and put the incriminating materials alone while examining the accused under Section 313 Cr.P.C., but, to no avail. In this context, felicitous it is to allude to the judgment of the Supreme Court in **Lallu Manjhi and another vs. State of Jharkhand**⁵, wherein, it has been categorically held that jumbled up questions should not be posed to the accused, but, none seems to follow this dictum. The relevant passage from the said judgment is usefully extracted:

"14". Incidentally, it may also be stated that the manner in which the trial court has recorded the statements of the accused persons under Section 313 CrPC is far from satisfactory. The entire prosecution case running into very many details has been summed up into just 5 questions asked to each of the accused persons. It is obligatory on the part of the trial court to examine the accused for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him. If such opportunity is not afforded, the incriminating pieces of evidence available in the prosecution evidence cannot be relied on for the purpose of recording the conviction of the accused persons."

46 Mr. Ramakrishnan, learned Additional Public Prosecutor, placed reliance on the judgment of the Supreme Court in **State of U.P. vs. Lakhmi**⁶, wherein, the Supreme Court has held that if an accused admits any incriminating circumstance against him, there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy. However, be it noted that, in paragraph no.11 of the very same judgment, the Supreme Court has struck a note of caution thus:

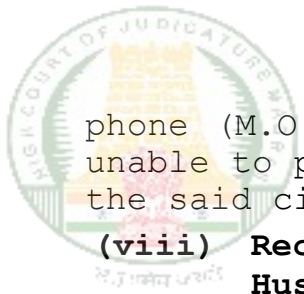
"11. We make it clear that answers of the accused, when they contain admission of circumstances against him are not by themselves, delinked from the evidence, be used for arriving at a finding that the accused had committed the offence."

47 Can this Court say that the answer "Yes" given by Satham Hussain (A.1) to a jumbled up question is sufficient enough to hold that such a circumstance has been proved, especially when Ajmeer Kaja (P.W.22) himself did not identify Satham Hussain (A.1) in the dock, coupled with the fact that the recovery of the Nokia mobile

⁵ (2003) 2 SCC 401

<https://hc.services.ecourts.gov.in/hcservices/>

⁶ (1998) 4 SCC 338

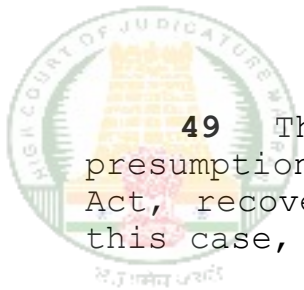


phone (M.O.9) from Thilagar (P.W.53) itself is under cloud? We are unable to persuade ourselves to say "Yes, the prosecution has proved the said circumstance."

(viii) Recovery of gold chain with fish dollar (M.O.8) from Satham Hussain (A.1) at the time of arrest on 01.11.2015:

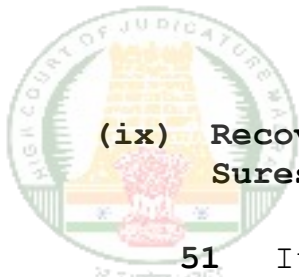
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48 Pethuraj (P.W.51), the second Investigating Officer, has stated that he arrested Satham Hussain (A.1) at Maattuthaavani bus stand on 01.11.2015 based on the gold chain with fish dollar (M.O.8) which Satham Hussain (A.1) was allegedly wearing. During police investigation, it is possible that the police would accidentally stumble upon a suspect and would later come to know that he was involved in a certain heinous crime. For such arrests, it is not necessary for the police to have a panch witness. Whereas, Pethuraj (P.W.51) has stated that he and his party saw a person at 7.00 a.m. on 01.04.2015 at Maattuthavani bus stand sporting a gold chain with a fish dollar (M.O.8) and standing in a suspicious manner and hence, they enquired him and later, arrested him. Whereas, Muthumozhi (P.W.36), V.A.O., in her evidence has stated that she was called by the Inspector of Police, Serious Crime Squad, to come to Maattuthaavani bus stand at 7.00 a.m. on 01.11.2015 for arresting certain persons and accordingly, she, along with Santhana Murugesan (not examined), Village Assistant, went there; the Inspector of Police, K.Pudur Police station was there at 8 o' clock and the police arrested a person by name Hussain. Thus, in one breath, the police say that the gold chain with fish dollar (M.O.8) helped them to identify Satham Hussain (A.1) and in another, they say that they already had information about Satham Hussain (A.1) and had requisitioned the services of Muthumozhi (P.W.36) and Santhana Murugesan (not examined) to be with them for effecting arrest. It is true that during trial, the relatives of the deceased, viz., P.Ws.4 to 6, identified the gold chain with fish dollar (M.O.8) as that belonging to the deceased. However, there is absolutely no material to show that the deceased was wearing the gold chain with fish dollar (M.O.8). Even in the inquest report, there is no mention of the gold chain with fish dollar (M.O.8). Therefore, the contention of the defence that the gold chain with fish dollar theory was an invention of the police to connect Satham Hussain (A.1) to the crime, appears to be plausible. In this case, at the cost of repetition, the body was discovered on 29.03.2015 and the arrest of Satham Hussain (A.1) was only on 01.11.2015. When according to the prosecution, the accused had sold the Nokia mobile phone (M.O.9) for Rs.300/- to Ajmeer Kaja (P.W.22), a day after it was stolen from the deceased, which only shows that they were hard pressed for money, the assertion of the police that Satham Hussain (A.1) was flaunting the gold chain with fish dollar (M.O.8) by wearing it around his neck for everyone to see, even seven months after the offence, defies credulity.



49 The learned defence counsel further contended that to draw presumption under illustration (a) of Section 114 of the Evidence Act, recovery should have been done soon after the theft, but, in this case, the recovery was six months after the theft.

50 To repel the above contention, Mr. Ramakrishnan placed reliance on the judgment of the Supreme Court in **Earabhadrapa @ Krishnappa vs. State of Karnataka**⁷ wherein, the Supreme Court has held categorically that no fixed time limit can be laid down to determine whether possession is recent or otherwise, and each case must be judged on its own facts. This Court is in agreement with this submission of the learned Additional Public Prosecutor. In this case, the accused are not charged for theft, but, are being implicated for murder also based on the recovery of the gold chain with fish dollar (M.O.8), which, in the opinion of this Court, will amount to stretching the presumption envisaged under Section 114 of the Evidence Act, too far, in the facts of this case. This Court will not say that such a stretching is not permissible at all. This Court hastens to add that an inference for murder for gain can be drawn based on the recovery of valuables of the deceased from the accused. In **Earabhadrapa @ Krishnappa** (supra), the accused therein gave a false name and joined the household of Prakash (P.W.4) as a househelp. Prakash (P.W.4) slept in the courtyard of the house and when he woke up in the morning, he found that his mother was murdered by throttling. The towel of the accused that was used for throttling was found near the body, her jewels were missing and the accused had absconded. The accused was arrested almost a year later, but, still, in the light of the above circumstance, the Supreme Court confirmed his conviction for murder and theft. The facts obtaining in this case have no similarity to those in **Earabhadrapa @ Krishnappa** (supra). In our case, none knew who the murderers were until the arrest of Satham Hussain (A.1) and Suresh (A.2) on 01.11.2015. The fact that Satham Hussain (A.1) is a petty thief is not seriously disputed. The Maruti van (M.O.7) with the dead body was found in the public road on 29.03.2015 from 7.00 a.m. to 11.00 p.m. Finally, even if we were to agree with the prosecution story that the deceased was wearing a gold chain with a fish dollar (M.O.8) at the time of his death, the possibility that he was murdered by Kaleeswari's group to wreak vengeance and Satham Hussain (A.1), being a petty thief, removed the gold chain with the fish dollar (M.O.8) surreptitiously from the dead body on 29.03.2015, after dusk, as conceded, the dead body was in the Maruti van (M.O.7) till 11.00 p.m., cannot be completely ruled out, though the defence had not taken such a plea during trial. Ergo, this circumstance has also not been satisfactorily proved by the prosecution.



(ix) Recovery of knife from the house of Raja on the confession of Suresh (A.2) :

51 It is the case of the prosecution that after the arrest of Satham Hussain (A.1), Suresh (A.2) was arrested on the same day; based on the police confession of Suresh (A.2) that he gave the knife (M.O.13) that was used by him to commit the offence, to one Raja, the police went to the house of Raja and on his statement, seized the knife (M.O.13) under mahazar (Ex.P.28) on 01.11.2015 at 14.25 hrs. in the presence of Muthumozhi (P.W.36) and Santhana Murugesan (not examined).

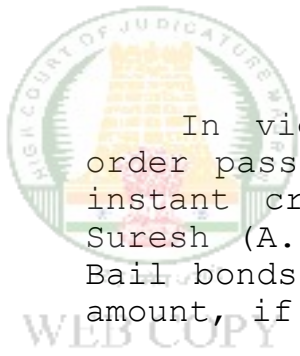
52 In the opinion of this Court, the discovery of the knife (M.O.13) was not based on the confession statement of Suresh (A.2). The confession statement of Suresh (A.2) led to the discovery of a person called Raja. Raja is neither an accused nor was he examined as a witness. From the statement of Raja, the police recovered the knife (M.O.13). The law governing the contours of Section 27 of the Evidence Act has been elaborately expatiated in the article "**The Afterlife of Athappa Goundan - Raju Manjhi vs. State of Bihar**"⁸, wherein, the learned author has discussed in extenso the various judgments on Section 27 of the Evidence Act, commencing from the one rendered by late lamented Justice T.Muthuswamy Iyer in **Queen Empress vs. Commer Sahib** ILR⁹ to the oft-quoted judgment of Beaumont, J, in **Pulukuri Kottaya vs. King Emperor**¹⁰. Therefore, it cannot be stated that the knife (M.O.13) was discovered by the police based on the disclosure of Suresh (A.2) for it to be relevant under Section 27 of the Evidence Act. Had Raja been examined as a witness and if he had stated that Suresh (A.2) had handed over the knife (M.O.13) to him, then, the situation would have been different. That is not the case here.

53 Before bringing the curtains down, this judgment will stand incomplete if we do not return a finding that the prosecution has failed to prove that Satham Hussain (A.1) and Suresh (A.2) knew each other. To establish that Satham Hussain (A.1) and Suresh (A.2) were friends, the prosecution examined Salim Raja (P.W.24), Raja Sahul Hameed (P.W.25), Ravichandran (P.W.26) and Balamurugan (P.W.27). But, unfortunately, all of them turned hostile and did not support the prosecution case. Satham Hussain (A.1) examined two witnesses, viz., Mushtaq Ahmad (D.W.1) and Sheik Dawood (D.W.2), to show that he was picked up from Chennai and not Madurai, as alleged by the police. We do not want to dilate much on the testimonies of the defence witnesses in the light of our findings that the prosecution has failed to prove the circumstances (i) to (viii).

⁸ (2019) 1 MLJ (Crl.) 15 - penned by Mr. Sharath Chandran, advocate

⁹ 1889 (ILR) 12 Madras 153

¹⁰ <https://hcservices.ecourts.gov.in/hcservices/>



In view of the above discussion, the impugned judgment and order passed by the trial Court is set aside and as a sequel, the instant criminal appeals are allowed. Satham Hussain (A.1) and Suresh (A.2) are acquitted of all the charges framed against them. Bail bonds, if any, executed by them, shall stand discharged. Fine amount, if any, paid by them, shall be refunded.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1. THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE
AND SPECIAL JUDGE FOR PCR CASES, MADURAI
2. -DO-THRO THE PRINICPAL SESSIONS JUDGE, MADURAI
3. THE JUDICIAL MAGISTRATE NO.VI,MADURAI
4. -DO-THRO THE CHIEF JUDICIAL MAGISTRATE, MADURAI
5. THE SUPERINTENDENT,CENTRAL PRISON, MADURAI
6. THE DISTRICT COLLECTOR,MADURAI
7. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI
8. THE ASSISTANT COMMISSIONER OF POLICE,
SOCIAL JUSTICE AND HUMAN RIGHTS UNIT,
MADURAI CITY POLICE, MADURAI
9. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

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Common judgment in
Crl. A. (MD) Nos.163 & 196 of 2018
18.05.2020

sma/01/06/2020/29p/12c