



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.09.2021
Pronounced on	28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRIMINAL APPEAL NO.238 OF 2019

Mohamed Sameer Khan

.. Appellant/Accused

Vs.

The State, Represented by
Inspector of Police,
C-4, Rathinapuri Police Station,
Coimbatore.
Crime No.1119/2016.

.. Respondent/Complainant

PRAYER: This Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgement dated 17.11.2017 made in S.C.No.148 of 2017 on the file of the learned Second Additional Sessions Judge, Special Court for Bomb blast case, Coimbatore.

For Appellant : Mr.A.Abdul lathif

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor.

JUDGMENT

R.N.MANJULA, J.

This Criminal Appeal has been preferred by the appellant/accused to set aside the conviction and sentence made in S.C.No. 148/2017 on the file of the learned Second Additional Sessions Judge, Special Court for Bomb Blast Case, Coimbatore, dated 17.11.2017, as tabulated hereunder:



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Sl.No	Provision under which convicted	Sentence
1	Section 302 IPC	Life imprisonment and fine of Rs.1,000/- in default to undergo three months simple imprisonment
2	Sec.449, 376, 394 IPC	Ten years of Rigorous imprisonment each and fine of Rs.1000/- each section and in default to under three months simple imprisonment.

2.The facts of the case in brief are as follows:

The victim 'X' was an 85 years old woman. At the time of the occurrence and she was sleeping in her house. The accused with an intention of robbing her jewels and sexually abusing and murdering her, trespassed into her house at about 2.30 hours on 19.12.2016 and rapped her by force and then murdered her by strangulating her neck with a towel. Thereafter he robbed the golden bangles worn by her.

2.1. On receiving a complaint (Ex.P.1) at about 6.30 hours on 19.12.2016 from Deivanai, the daughter of the deceased (PW1), PW.15-Sub Inspector of Police, Padmavathi registered the First Information Report (Ex.P.17) in Cr.No.1119/2016 for the offence under Sections 302 and 380 IPC.

2.2. P.W.16-Gopi, Inspector of Police took up the case for investigation and went to the place of occurrence at about 17.15.a.m. and inspected the place of occurrence in the presence of the witnesses PW.4 and Ganesh and prepared an observation mahazar (Ex.P.2) and rough sketch (Ex.P.18). He brought finger print experts, sniffer dogs and photographer to the place of occurrence and took photographs. He also collected the samples of blood stained cement mortar (M.O.3) and plain cement mortar (M.O.4) along with a blood stained green colour in- skirt (M.O.5) from the place of occurrence under seizure mahazar (Ex.P.3).

2.3. PW.12- Arumugam, Inspector of Police, conducted inquest on the body of the deceased in the presence of the Panchayatdars and at that time he examined the witnesses and recorded their statements and thereafter he sent the body to Coimbatore Government Hospital for conducting post-mortem. The dresses and towel of the deceased (M.O.2, 8 & 9) collected by the Investigation Officer from the body of the deceased were also sent to Court) along with Form-91. He examined some of the



witnesses and recorded their statements. On 20.02.2016 at about 4.00 PM, on information he arrested the accused at the over-bridge, North Coimbatore. Since the accused jumped from the over bridge, the Police party went under the bridge and caught the accused with injuries and gave treatment to him at the Coimbatore Government Hospital.

2.4. The Accident Register copy issued by the doctor in this connection is marked as Ex.P.21. Next day morning at about 6.00 am, the accused gave a voluntary confession statement in Hindi and it was recorded in the presence of witnesses Arumugam, Ragavan-PW.8 who knew Hindi. During the confession, the accused produced the gold bangles (M.O.1) robbed from the body of the deceased and the same was seized under the Seizure Mahazar (Ex.P.6).

2.5. The learned counsel for the appellant alleged that he was beaten by the police but according to the Police the injuries on the leg of the deceased was sustained by him only when he has jumped from the over bridge. In fact the Magistrate has gone to the hospital for remanding the accused and he enquired the accused about the injury found on the leg of the accused and endorsed the same in his remanding report itself is under:

"Requestion of I.O. Is accepted. Accused seen in CMCH, Coimabtoe on 22.12.2016 at 11.47 AM. Accused enquired through HC.4647. Mr. Prasath, who speak in Hindi. Accused lying in Bed. Cause of arrest explained. No complaint of ill treatment. When questioned him about the bandage in his left leg, he stated that he fell down. Remand report, FIR, complaint, confession statement and checked connected records filed. Sec.4(12) Cr.PC. Accused remanded to judicial custody till 05.01.2016"

2.6. P.W.14-Dr. Jaisingh, who conducted the post-mortem on the body of the deceased has noticed the following injuries on the body of the deceased:

"The ante mortem external and internal injuries seen over the body:

1) Reddish contusion 3 x 1 cm noted over just below to left parotid region, 2 x 1 cm noted over top of left shoulder and 3 x 2 cm noted over left clavicular region.

2) A transverse complete ligature pressure abrasion mark measuring 31 x 3 to 4 cm noted around the neck.

The anatomical landmarks of the ligature abrasion



marks are:

-6 cm below to right ear lobe, 8 cm below to chin and 6 cm below to left ear lobe.

On bloodless dissection of Neck: The base of ligature mark is softened and intermittently bruised. Reddish contusion 4x2 cm noted over right side neck muscle and 5 x 3 cm noted over left side neck muscle. Right side hyoid bone found fractured in between body and greater cornu with surrounding tissue contusion reddish in colour.

On examination of the Pubic region- vaginal canal found roomy. Laceration 3 X 1 cm X muscle deep noted over posterior aspect of vaginal canal at the level of 6'O clock position with surrounding tissue contusion reddish in colour. Vaginal orifice found contused reddish in colour 3 X 1 cm noted over mid occipital region. Right temporolateral muscle found contused reddish in colour. Thin sub arachnoid haemorrhage seen over both frontal region. Brain found edematous.

OTHER FINDINGS: Pleural and Peritoneal cavities: empty. Heart: All chambers contains about few cc of fluid blood, Coronaries patent. Stomach contains about 100 ml of yellow colour partially digested food particles, no specific smell, mucosa congested. Small Intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa congested. Liver, Spleen, Kidneys, Lungs and Brain cut section congested. Urinary bladder-empty. Uterus: Normal in size , cut section empty.

- Viscera preserved and sent for chemical analysis.
- Vaginal and uterus smear preserved for analysis.

In his opinion, he has stated that the deceased had died because of asphyxia due to virulent compression of neck.

2.5. The post mortem certificate and viscera report and the opinion of the doctor are marked as Ex.P.13 & 14. He altered the charges from 449, 376, 302 & 380 IPC to 449 r/w 457, 376, 302 & 394 IPC and sent the alteration report (Ex.P.24) to Court. He caused the golden bangles identified by PW.1 and thereafter sent it to the custody of the Court. He sent the blood stained objects for chemical examination and got the report Ex.P.10 and sent it to Court.

2.6. P.W10-scientific expert has given his report on the chemical examination of the viscera and the material objects.



The reports have been marked as Ex.P.9 and Ex.P.10. The accused was also sent for medical examination by giving the request to the Court and was examined by the doctor P.W.14- Dr.Jaisingh. The accident register for the accused is marked as Ex.P.21 and the potency certificate issued in this regard is marked as Ex.P.16. He had also given 164 statement before PW.9- the Judicial Magistrate, Fast Track Court (Magistrate level) Coimbatore. He again altered the charges to Sec.449 r/w 457, 376, 302 and 394 IPC and after completion of the investigation, he filed a charge sheet against the accused for the offences under Sec.449 r/w 457, 376, 302 and 394 IPC.

2.7. After the charge sheet was filed, the learned Magistrate took cognizance of the same and observed the committal proceedings in PRC.No.10/2017. After the case was committed to the Principal Sessions Court, Coimbatore and was taken on file. Thereafter it was assigned to the file of learned II Additional Sessions Judge, Special Court for Bomb blast case, Coimbatore for trial. The trial Judge has framed the charges against the accused under Sec.302, 449, 376 and 394 IPC and questioned the accused. The accused pleaded not guilty and claimed to be tried.

2.8. During the trial on the side of the prosecution 16 witnesses have been examined as PW.1 to 16 and Exs.P1 to 25 and material objects 1 to 9 have been marked. The incriminating circumstances appeared from the evidence of the prosecution were put to the accused through Sec.313 Cr.P.C. proceedings and he denied the questions put to him. On the side of the defense no witness and no documents were also marked.

3. The evidence of the prosecution in brief:

P.W.1-Deivani, who is the daughter of the deceased, is the complainant. Her daughter who lives in U.S. owns a house next to the house of PW1 in the same compound. The deceased used to sleep in the said house and she was being maintained by her. Every night after serving supper to the deceased, her son Karunakaran (P.W.2) would lock the door from outside. Next day morning he would go and unlock the door in order to enable the deceased to come out and finish her practical purposes.

3.1. On 18.12.2016 at about 9.00 PM, PW.1 and PW.2 went to the house of the deceased and served her supper and thereafter, they locked the door from outside as usual and came to their house. Next day morning at about 5.30 am when P.W.2 went to the house of the deceased to open the door, he was shocked to see the doors were opened and the deceased was lying on the floor with injuries. On seeing this untoward scene he got scared and called his mother Deivanai. After his mother came, both of them



went inside the house and saw the deceased dead due to strangulation with a towel and her golden bangles were also missing from her hands. Thereafter PW.2 wrote a complaint and PW.1 signed it. Based on the said complaint (Ex.P.1), Police registered the case and started investigation.

3.2. PW.3-Thulasi, who is the neighbour of PW.1 also had the knowledge that PW.1 used to give food to the deceased and locked the door from outside. On the night of the occurrence at about 2.30 a.m to 3.a.m she heard the deceased murmuring "விடுடா விடுடா". Since the deceased was an aged woman and she used to murmur during night hours, P.W.3 did not take it seriously. Next day morning she came to know that the deceased was murdered by someone and her bangles were also robbed.

3.3. P.W.-4- Kannan, was the witness to the observation mahazar and rough sketch and seizure of the material objects like blood stained cement mortar (M.O.3), plain cement mortar (M.O.4) and a blood stained light green colour skirt (M.O.5) covered under the seizure mahazar (Ex.P.3).

3.4. P.W.5-Senthil Kumar, is also a person who is living in the same area where the house of the complainant was situated. On 18.12.2016 he went to Erode with his friend Balaji and returned on the next day early hours at about 2.30 a.m. When he was walking to his house he saw someone coming out of the compound wall of the house of the deceased. When he enquired the person he spoke something in Hindi and indicated the place nearby to the compound house. Since there are many Hindi speaking people residing there he thought PW.5 was a resident there. Next day morning he came to know about the murder of the deceased.

3.5. PW.6 -Akash Saxena, was staying in the compound nearby to the place of the occurrence; he was staying in the said house along with two other persons belonging to his State. Two women were staying in the next room. On 16.12.2016 the said women requested PW.6 that a person known to them by name Mohamed Sameer Khan, (the accused) had come from Manipur and he should be allowed to stay there for a few days. P.W.6 agreed and allowed him to stay there. Since 18.11.2016 was his birthday, he celebrated that night along with his friends Allile, Vimashitto, Nisamo, Akham, James, Rivas, Vivas, Manivel, Marcus and the accused. After the party was over at about 12 midnight Rivas, Nisamo, Akham, Janes, Vikas, Manivel went away. PW.6 was in his room along with Allile, Vimashitto, Marcus and the accused. At about 2.00 am the accused and Marcus went outside. When he enquired, they told that they just wanted to smoke cigarette. After one hour the accused came and he hurriedly kept



one object inside the bag and thereafter, he told that he had secured a job and then left the place with his bag. Next day morning P.W.6 came to know that the deceased was murdered and her jewels were stolen. He also gave statement about this before P.W.9- the Magistrate .

3.6. PW.7-Harisingh, helped the police to get the statements of the Hindi speaking witnesses by translating them in Tamil. P.W.8- Raghavan also helped the police to enquire the accused, when he was admitted in the hospital for treating the fracture on his legs. He also stood as a witness while his confession was recorded and the bangles were recovered from him. P.W.7 - Harisingh, identified the bangles (M.O.1) when they were shown to him in Court.

3.7. The photographer who was examined as PW.11, has deposed in his evidence that he took the photographs of the place of occurrence and the relevant C.Ds were marked as (M.O.6 series & 7).

3.8. On considering the evidence let in by either side, the learned Trial Judge found the accused guilty and convicted and sentenced him as supra. Aggrieved over the same, the appellant/accused has filed this appeal.

4.Heard the submissions of Mr A.Abdul Lathif, learned Counsel for the Appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

5.The learned counsel for the appellant has submitted that though this is a case of circumstantial evidence, every link of the circumstance is not well connected and the learned Sessions Judge had convicted the accused without properly appreciating the evidence; the police has falsely alleged that the accused have jumped over the bridge, at North Coimbatore fractured his leg on 22.12.2017; the appellant could not successfully defend his case as he is the native of Manipur and he did not know the local language and the counsel who defended him also did not know Manipuri or Hindi; the contradictions in the evidence of the prosecution were not appreciated properly in order to give benefit of doubt to the accused; one Marcus who is said to have accompanied the accused was not examined; no scientific evidence is available in order to connect the accused with the crime; the accused has been falsely implicated just in order to close the case.

6.The learned Additional Public Prosecutor has submitted that the evidence of the witnesses are cogent, clear and trust-



worthy and the report of the doctor who conducted the postmortem and other materials objects seized from the accused would show the pointer towards the accused; no interference is required at the hands of this Court and the appeal has to be dismissed.

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7. The point for consideration is

Whether the conviction and sentence of the accused for the offences under Sections 302, 449, 376, 392 IPC by the learned Sessions Judge basing on the materials available on record is fair and proper?

8. Point:- This is a case based on the circumstantial evidence. The deceased Palaniammal is the mother of PW.1 who is the complainant in this case. PW.1 owns line houses situated inside a compound. One of the houses in the compound was purchased by her daughter Uma Maheswari. In the said house deceased Palaniammal was living. However she was maintained by PW.1. Every day, after giving supper to Palaniammal, she would lock the door from outside. The next day morning at about 5.00 pm her son PW.2 Karunakaran used to go and open the door in order to enable the deceased to come out of the house. On 19.12.2016 at about 5.30 am when PW.2 Karunakaran went to open the door, he found the door was opened and the deceased was lying motionless and she was strangled with a towel. He noticed that her bangles were also missing. He called his mother and PW.1 rushed there and noticed the same. Immediately thereafter a complaint was given by PW.1 and First Information Report was registered.

9. A perusal of Ex.P.23 would show that the complaint was received at 6.30 a.m on 19.12.2016. So there was no delay in registering the First Information Report. Though the time of occurrence might be somewhere during the night hours of 18.12.2016 to 19.12.2016, PW.1 and PW.2 could see the deceased only at about 5.30 am on 19.12.2016. After knowing about the occurrence they gave the complaint to Police. So the lodging of the complaint seems to be spontaneous and immediate.

10. As there is no eyewitness, the prosecution relies on the circumstantial evidence. In the cases based on circumstantial evidence, it has to be established that the circumstances form a complete chain and from which the guilt of the accused can be inferred. The facts established should connect with each other and it should lead to the one and only conclusion that the accused is guilty and it should exclude any other possibility.



11. In this context it is relevant to refer to the judgement of the Hon'ble Supreme Court of India in Sharad Vs. State of Maharashtra (AIR 1984 SC 1622), in which the Hon'ble Supreme Court has laid down the following five golden principles on circumstantial evidence:

"The following conditions must be fulfilled before a case against an accused can be said to be fully established:

1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by Apex Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the following observations were made: [SCC para 19, p.807:SCC (Cri) p.1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3) the circumstances should be of a conclusive nature and tendency.

4) they should exclude every possible hypothesis except the one to be proved, and

5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

12. The above principles have been reiterated in Padala Veera Reddy vs. State of Andhra Pradesh [(1989) Supp (2) SCC 706] as under:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;



(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

13. In the light of the above principles, it has to be tested whether the circumstances available in the present case turns the pointer towards the appellant. Some of the circumstances established from the evidence are listed as follows:

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



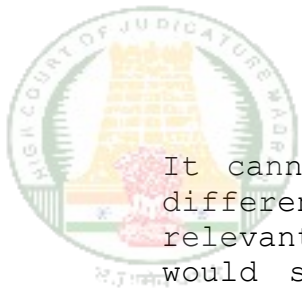
- The doctor who conducted the postmortem on the body of the deceased has given his opinion that the deceased died because of asphyxia due to virulent compression of neck. The doctor also noticed injuries on the body of the deceased, which indicated that she was subjected to rape.
- The medical report of the accused has shown that there was nothing to suspect that he was an impotent.

15. It is not denied that the occurrence had been taken place at the house of the daughter of PW.1, where the deceased was staying. The house of PW.1 also situated inside the same compound adjacent to the said house. PW.1 was in a habit of giving supper to the deceased during nights and locking the door thereafter from outside. Since PW.2- Karunakaran noticed the deceased lying on the ground during the morning of 19.12.2016, it is needless to state that the occurrence should have taken during the previous night only.

16. PW.6- Akash Suksena was a neighbour of PW.1. On the night of the occurrence the accused was accommodated at PW6's room and he celebrated his birthday party along with some other friends and the party went till midnight. After the party, a few of his friends left to their home. But he noticed the accused going outside along with one Marcus at 2 a.m for smoking cigarette. When the accused came back in an hour appeared very tensed and took an object from his pocket and kept it inside his bag and thereafter he left the place.

17. According to the evidence of PW.6, the accused went outside the room and available somewhere between 2 am to 3 am. At 2.45 a.m he was noticed by PW.5. The other friend Marcus did not accompany the accused while he returned to PW.6's room. The said Marcus was not examined as witness before the Court. He was neither arrayed as an accused in this case.

18. The learned counsel for the appellant claimed that the non-examination of the said Marcus in this case is fatal and that would earn the benefit of doubt in favour of the accused.



It cannot be omitted to be noted that the accused exhibited a different conduct when he returned to PW.6's room and it is a relevant fact. The holistic reading of the evidence of PW.6 would show that he did not harbour any personal ill-will or motive against the accused in order to state that the accused was tensed and behaved weirdly. Whatever stated by PW.6 is something that had been happened between the night of 18.12.2016 and the wee hours of 19.12.2016. The accused kept something in his bag and thereafter he had the urge to leave the place, despite there was no objection from PW.6 for his stayal. To leave the house at that odd hour without any compelling circumstances is also a pertinent fact surrounding the doubtful conduct of the accused.

19. P.W.9- the Judicial Magistrate, Fast Track Court (Magistrate level) Coimbatore, has stated that PW.6 has given 164 statement before the Magistrate also and his evidence is cogent and consistent. So there is nothing to suspect the evidence of PW.6. PW.5 is an incidental witness who noticed the accused coming out of the compound of PW1 at that odd hour. Since the accused appeared new, it is quite natural for PW5 to make enquiries about him. PW5 can not have any motive against the accused who was just new to the place. Hence his evidence is reliable only.

20. Under such circumstances, there is no reason for PW.5 also to have any motive against the accused. It would have been good, if the prosecution examined Marcus who accompanied the accused when they went outside. But non examination of Marcus does not disrupt the chain of circumstances which are directed against the accused. P.W.3 who is the neighbour of the deceased has also stated that at about 2.30 am to 3 am, she heard that the deceased shouting " விடுடா விடுடா ". But she did not take it serious since she thought that the deceased was murmuring due to senility.

21. One of the circumstances which also directly connect the accused to the crime is the recovery of the golden bangles of the deceased from him after he was arrested. PW.6 stood as a witness during the recovery of the golden bangles from the accused. PW.8 is a person who knows Hindi and Tamil and he helped to effect good communication between the Police and the accused by offering translation service. The golden bangles (M.O.1) were recovered when it was produced by the accused himself from his pocket.

22. It was submitted by the learned counsel for the appellant that as per the evidence of PW.6 the accused is said to have kept the golden bangles in his bag, but in the recovery



note, it is alleged that he has produced it from his pocket. The occurrence had taken place on the wee hours of 19.12.2016 and the accused was arrested on 22.12.2016 at 5.45 p.m. During this time there is every possibility that the accused could have again transferred the golden bangles to his pocket. The fact remains that the golden bangles were recovered from the accused in the presence of the witnesses and that were identified by the complainant PW.1. Since PW.1 is the daughter of the deceased, she is the right person to identify the golden bangles worn by her mother before her death. The golden bangles (M.O.1) were also sent to the Court in time.

23. It is claimed by the learned counsel for the appellant that the absence of sperms in the swab collected from the body of the deceased and her dresses would improbably the occurrence of rape. However P.W.14 has noticed the lacerated injuries and contusions on the vaginal region of the deceased. Just because there was no sperm detected from the swab and other dresses, the said medical evidence can neither be dispelled nor overlooked.

24. P.W.14 has concluded that there are enough evidence to show that the deceased was murdered and she was subjected to sexual assault before her death. He has further stated that the deceased would have died due to asphyxia due to virulent compression of neck.

25. So all these incriminating factors coupled with the potency certificate issued by the doctor for the accused and the injuries present on the body of the deceased would show that the deceased had struggled to save herself during that fateful night and it was unsuccessful. The accused being a young man, he had easily overpowered the victim and committed the offence of rape on her and also murdered her by strangulating her.

26. Though it is submitted by the learned counsel for the appellant that due to language problem, the accused could not defend himself efficiently, the records would show that at every stage of the investigation and during trial, the services of language interpreters and translators have been availed and it helped to have a seamless communication. So, the accused was given with a fair opportunity to defend himself.

27. Since the circumstances listed by the prosecution did not leave any gap to break the chain of circumstances and they lead to the one only conclusion that the accused is the perpetrator, his involvement in the offence cannot be ruled out. Hence the point for consideration is answered against the appellant.



In view of the above discussion, we do not find no reason to interfere with the judgement of conviction and sentence dated 17.11.2017 passed in Special Case No.148 of 2017 on the file of the learned Second Additional Sessions Judge, Special Court for Bomb blast case, Coimbatore for convicting and sentencing the appellant as stated in paragraph No.1, is confirmed.

In the result the Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The IInd Additional Sessions Judge,
Special Court for Bomb Blast Case,
Coimbatore.
2. The Inspector of Police,
C-4, Rathinapuri Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court,
Madras.
4. The Judicial Magistrate II,
Coimbatore.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Section Officer,
Criminal Section,
High Court,
Madras.
7. The District Collector,
Coimbatore.



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

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Predelivery- Judgement made in
Crl.A.No.238 of 2019

SR-II (CO)
K.RK. (30.11.2021)